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Technology & the Law

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James J. Damis, Administrator/Attorney
They say “seeing is believing.” But because of advances in artificial intelligence, that old adage is no longer true. With readily available software, anyone with access to a laptop can now produce fake content. In his story beginning on Page 18, attorney David Dorfman kicks off our special report on Technology & the Law with a look at “deepfakes” and the profound impact they could have on the entire judicial system.

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From the Editor

Fighting Off the Bad Guys

By Gary M. Stein

Think of a burglar walking down your street, looking for the best house to rob. One home has lights on, a barking dog at the window and a security sign out front; the other is dark and quiet.

Which one do you think the bad guys will target?

“IT security is no different,” says Matt Katzer, the founder and CEO of KAMIND. “If you don’t guard your assets, there’s a high likelihood that you will be compromised and have a data breach.”

Katzer’s best advice mirrors the cybersecurity information we’ve gathered for the Bulletin’s special report on Technology and the Law, which you’ll find throughout this issue of the magazine. “There is no free lunch anymore,” he says.

“You are protecting your reputation and business and need to invest appropriately,” Katzer told me when we sat down to talk about cybersecurity last month. “Assume that your data will be compromised. Your objective is no different than in writing a contract — how do you mitigate damage and business loss?”

Katzer says most of his clients “get it” now, so the issues they face most often are phishing attacks that they catch themselves — you know, those bogus email links from scammers looking for credit card or other valuable personal information. But he did get a call recently from a company that hadn’t been applying the latest updates to its system and was eventually compromised by hackers.

The firm received a ransomware demand from bad guys who had encrypted data and demanded payment to decrypt it, Katzer says. The firm initially decided not to pay because IT staff believed they could restore the data from backup — only to discover later that they had not paid attention to their backups and had overwritten them all.

“Their intentions were good, but they didn’t have the right process or discipline in place,” Katzer says, and the resulting cost in time and lost data was substantial.

CEO fraud attacks can also be costly, Katzer says. One recent example: “Shark Tank” television star Barbara Corcoran was swindled out of nearly $400,000 in a phishing scam in late February after her bookkeeper received a fraudulent email from someone she thought was Corcoran’s assistant, approving payment by wire for a real estate renovation.

No one suspected anything was amiss until the bookkeeper sent a note to the real email address used by Corcoran’s assistant, letting her know the payment was made. By then, the money was gone and the scammer had disappeared.

(I didn’t tell Katzer about the phony emails I’ve received from someone pretending to be the bar’s CEO, asking if I have time to work on an assignment outlined in a clickable link. Probably would not have cost me $400,000, but I’m glad I walked over to her office instead.)

“In some cases, the bad actor will also compromise a company’s phone system and add an extension to the PBX so they can make and receive calls as if they were legitimately coming from your company,” Katzer says. “When was the last time your IT person changed the password on your phones?”

The bottom line, Katzer says, is that it’s not enough just to install cybersecurity measures and call it good. Your cybersecurity system must be managed.

“Buy the correct security licenses and have a professional configure them for you. If you have the extra resources, then hire someone to manage it. If not, then do it yourself,” Katzer says. “If you’re a small firm, pick enterprise security plans (that safeguard data as it travels between on-premise devices and cloud servers). They cost maybe $20 more a user, but give you the tools the big companies use. Either way, you need to pick the right license
It’s important to keep in mind, Katzer says, that there is a monthly cost associated with security, and the price tag depends on ease of use. “There are tons of tools to manage and monitor security, but they are not free,” he says. “The good news is that if you get the security implemented correctly, your IT support costs drop dramatically.”

The one thing firms must not do, Katzer says, is ignore the issue of cybersecurity and hope they’ll be safe. Organized crime is involved now, he says, and today’s bad guys are a moving target. What worked last month may not work this month, and “you need to put systems and processes in place so that if you lose your computer or phone, you can buy a new one and just continue on with no interruption.”

“Hardware is disposable, but your reputation is not. Your client’s data is not,” Katzer says. “You can no longer not pay attention to the attacks.”

Matt Katzer’s latest book, “Securing Office 365: Masterminding MDM and Compliance in Cloud” (Apress; from $39.49) is available online through Amazon.com, Barnesandnoble.com and Apress.com. Reach Editor Gary M. Stein at (503) 431-6391 or gstein@osbar.org.
Expand ‘Celebrate’ Event to Honor More Women

I am writing to request a small addition to the Celebrate Oregon Lawyers event that will be held on Oct. 29 (“From the Editor,” February/March 2020). I ask that the bar enlarge the evening event to celebrate 40-year members as well as 50-year members. I know it will be a big change to a long tradition, but I have an important reason for the request.

By making that small change, the bar will be opening the door to many of us women who entered the practice of law between 1970 and 1980 and who might never live long enough to be able to attend a 50-year celebration.

When I became an Oregon lawyer in 1980, I was 37 years old. If I could have attended law school 10 years earlier, even 15 years earlier, I would have. But women who made that choice in 1965 or 1970 were still not welcome in the profession of law once they graduated. Once they earned a J.D., they were likely to be offered positions as secretaries or clerks only. So I, like many other women who became lawyers in the ‘70s and ‘80s, chose an alternate profession temporarily. I became a foreign language instructor.

After the Civil Rights Act of 1964 began to be implemented in the mid- to late-’70s, more women began entering law schools. When I entered Willamette Law School in 1977, 20 percent of my class were women and most of us were over age 25. We had worked in other professions and some of us were mothers. We all wanted to be lawyers and finally had that opportunity.

I think you will find that those of us who entered the profession between 1970 and 1980 will be a lively group to help make the Celebrate Oregon Lawyers event really special.

Sandra Smith Gangle
Camas, Wash.
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Fifty-year members have already been notified of the changes and pro bono hours have been counted. The nomination deadline for the 2020 annual awards is 5 p.m. on Tuesday, June 30. Forms and details are available online at osbar.org/osbevents.

For more information about the event, including a variety of sponsorship opportunities, contact Cathy Petrecca at (503) 431-6355 or cpetrecca@osbar.org.

LSC Says Grants Available to Fund Civil Legal Services

The Legal Services Corporation (LSC) has announced the availability of grant funds to provide civil legal services to eligible low-income clients, Native Americans and agricultural workers during calendar year 2021.

In accordance with LSC’s multiyear funding policy, grants are available only for specified geographic service areas. A list of those service areas is available online at tinyurl.com/LSCGrants2020.

A Request for Proposals (RFP) is expected to be available online on June 1, 2020, at tinyurl.com/LSCRFP. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC’s online application system in order to participate in the grants process.

For more information, including filing dates, applicant eligibility, submission requirements and updates regarding the LSC grants process, visit lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant. Questions about the process can also be emailed to LSCGrants@lsc.gov.

OAAP, PLF Respond to Pandemic With Online Meetings, Resources

In response to health recommendations and precautions related to the coronavirus and COVID-19, the Oregon Attorney Assistance Program has canceled some meetings and CLEs through April, including the 13th-annual Wellness Retreat at Sunriver and all in-person recovery meetings.

But the organization says it does plan to offer some of those events via remote access, and its attorney counselors will still be available to meet with clients at the OAAP (520 S.W. Yamhill St., Suite 1050, Portland), by telephone or online.

Already on the schedule: two weekly online recovery-focused video meetings for lawyers, judges and law students. The meetings will be held Mondays at 5:30 p.m. and Wednesdays at 12:30 p.m., at least through the end of May. For information on how

‘Celebrate Oregon Lawyers’ to Include Annual Awards

Nominations are now being accepted for the 2020 Oregon State Bar Annual Awards, which honor OSB members for their contributions to member service, public service, diversity and inclusion, technology and innovation, sustainability and more.

This year’s awards will also feature a unique twist: For the first time ever, they’ll be presented at a gala event in October called Celebrate Oregon Lawyers. In addition to the OSB awards, the evening will include the bar’s traditional salute to 50-year members and recognition of those who provided significant access to justice through pro bono work.

There will be no sit-down dinner or long speeches at the event, which is scheduled from 5-7 p.m. on Thursday, Oct. 29, at the Sentinel Hotel in downtown Portland. (A pre-event reception for 50-year members will precede the main gathering.) Instead, guests can expect cool displays, heavy hors d’oeuvres and the opportunity to spend more time chatting with friends as they come and go as they please.

In addition, a special October issue of the Bulletin will shine an even brighter spotlight on all of the evening’s honorees.

By the Numbers

Report: Lack of Diversity on State Supreme Courts

The Brennan Center recently released an update on its “State Supreme Court Diversity” report, which was originally published in 2019. The most-recent release, available online at tinyurl.com/SupremeCourtDiversity, does not paint a diverse picture of the racial and gender makeup of state supreme courts around the United States.

23 States with all-white state supreme court benches, down from 24 in May 2019

12 States with all-white benches where people of color represent at least 20 percent of the population

15 States with just one or no female state supreme court justices

37 Overall percentage of state supreme court seats held by a woman

Note: Oregon is ahead of the curve when it comes to racial and gender representation on the state’s highest court. Of the seven Oregon justices, five are women and two are people of color. In addition, Oregon is one of only six states — California, Connecticut, Minnesota, North Carolina and Washington are the others — that have a supreme court bench where the percentage of people of color is higher than their representation in the state’s population as a whole.
“Quotable”

“Unclaimed funds from class actions can now make a transformational difference in the lives of Oregonians who most need help. People facing eviction or needing protection from abusers often have nowhere else to turn, and now legal aid will have more capacity to do their great work.”

— State Treasurer Tobias Read, who was honored alongside former state Rep. Jennifer Williamson with the Public Access to Justice Award from the Campaign for Equal Justice at CEJ’s annual awards luncheon in February. While serving in the Legislature, Read and Williamson played key roles in advocating for a change in Oregon law to allocate class action cy pres funds to support legal aid and other nonprofits. For more on the awards luncheon, see Page 34.
What Should You Do If You or a Client is Feeling Ill?

Coronavirus & Legal Ethics

By Amber Hollister

The novel coronavirus continues to ripple through communities across the state. As of this writing, leaders have declared national and statewide emergencies, canceled large gatherings and closed entire school systems. The courts have drastically limited court proceedings and enacted new juror procedures. Many employers have instituted telecommuting policies and called off meetings to encourage social distancing.

Every industry is wrestling with the effects of this pandemic, and the legal profession is no exception. The month of March saw a notable increase in calls to the Legal Ethics Helpline as lawyers across the state confronted questions about their ethical obligations in light of the outbreak, and that’s likely to continue through April and beyond.

To provide lawyers with concrete guidance on ethical obligations, this month’s Bar Counsel column tackles the questions we’ve been fielding. We’re also continuously updating the bar’s website as new information about the coronavirus and COVID-19 becomes available; for the latest on how the disease is impacting the practice of law in Oregon, go to osbar.org.

How can I support the justice system and lawyer wellness in the midst of the Coronavirus outbreak?

Part of being a competent, diligent lawyer is remaining aware of current events and considering how they may impact pending client matters. RPC 1.1, 1.3. Court closures, public health orders or declarations of emergency will have real impacts on clients’ substantive and procedural legal rights. During the duration of the outbreak, therefore, lawyers should remain up to date on recommendations and advice of public health experts, including the Oregon Health Authority (tinyurl.com/OHAUpdates).

Further, lawyers should regularly review information and updates provided by courts, including the Oregon Judicial Department (courts.oregon.gov/Pages/default.aspx), local circuit courts, the U.S. District Court for the District of Oregon (tinyurl.com/DistrictCourtCovid19) and any other jurisdictions in which they appear. If courts close or delay proceedings, lawyers have a duty to communicate with clients about how their matters will proceed. RPC 1.4.

I’m not sick, but I want to prepare for the possibility I may be ill or need to self-quarantine. What should I do?

There is no time like the present to create a lawyer succession plan so that you have backup available if you become ill or unavailable to clients. Lawyers should plan now for the possibility that they may unexpectedly become incapacitated.

As the Legal Ethics Committee explains in OSB Legal Ethics Op 2005-129 (osbar.org/_docs/ethics/2005-129.pdf), a lawyer’s duty of competent representation includes arranging to safeguard clients’ interests in the event of the lawyer’s impairment, incapacity or death. RPC 1.1. This duty is especially pressing for a lawyer who has no partners, associates or employees.

Absent advance planning, if a sole practitioner with no staff becomes incapacitated, there may be a significant lapse of time after the problem arises when the lawyer’s clients’ needs are not met. As the committee explains, “The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such circumstances.”

Having a comprehensive succession plan is encouraged and can protect clients’ interests. The Professional Liability Fund’s guide, Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death, provides detailed information about the steps practicing attorneys can take to plan for possible incapacity. The guide is available at no cost to members on the PLF’s website (osbplf.org/practice-management/books-from-the-plf.html) or on BarBooks (osbar.org/legalpubs/BarBooks.html).

While this column focuses on coronavirus, this experience is an opportunity to prepare for other kinds of potential disruptions. For other resources related to disaster planning, including resources from the PLF, see the Bar Counsel article When Disaster Strikes in the November 2018 issue of the Bulletin (tinyurl.com/BulletinDisaster).

I am sick, and I’m afraid it may be COVID-19. Even if it’s not, I cannot go to court or meet with others because of possible exposure to coronavirus. What are my ethical obligations to clients?

While lawyers work hard to represent clients to the best of their abilities, we are only human. If you are sick or worried that you might become ill, follow the advice of your medical provider. But know that even as you do, your decisions will trigger...
Coronavirus is a serious illness. If a lawyer’s physical health materially impairs the lawyer’s ability to represent the client, the lawyer must seek to withdraw from representing the client. RPC 1.16(a)(2).

To help protect a client’s interest, lawyers commonly ask law firm colleagues to substitute on matters for the duration of an illness. Alternately, lawyers with succession plans in place can elect to initiate the plan. When lawyers plan to rely on representation by lawyers outside of their firms, they should seek client consent (unless it is already in their engagement agreement).

If withdrawal is necessary, lawyers must take all reasonably necessary steps to
protect clients’ interests upon withdrawal. RPC 1.16(d). Upon withdrawal, RPC 1.16(d) requires that the lawyer take steps to the extent reasonably practical to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees or expenses that have not been earned or incurred.

What notice is reasonable and what steps are reasonably practicable to protect clients’ interests will depend on the particular case. But if a lawyer becomes ill quickly, substantial notice may not be possible.

If a matter is pending before a court, lawyers must comply with any court rules requiring lawyers to provide notice or obtain the court’s permission prior to withdrawal. RPC 1.16(c). Again: If you are ill, do not go to court without first notifying the judge assigned to your case — or the presiding judge — and seeking direction on how to appear. And do not engage in ex parte contact about the merits of your matter unless permitted by court rule. RPC 3.5(b).

Finally, if you believe you have committed malpractice as a result of your illness or need specific advice regarding avoiding malpractice during your illness, call the Professional Liability Fund at (503) 639-6911.

I am a law firm partner and I have learned a lawyer at my firm is sick. What are my ethical obligations?

If a lawyer is too sick to continue to provide diligent, competent representation to a client, firm leaders should step in to mitigate any potential harm to clients. Under RPC 5.1(b), law firm partners and supervisors with knowledge of misconduct have an ethical obligation to act to mitigate the consequences of ethical missteps by the lawyers they supervise. This includes situations where a lawyer is too sick to provide competent, diligent representation.

To avoid missteps, law firm supervisors should encourage lawyers to communicate about whether a serious illness might undermine work. Remedial actions depend on the specific circumstances, but they might include communicating with the affected lawyer’s clients about a delay, substituting as counsel of record, or moving to continue matters.

Stepping in to aid an ailing colleague is the right thing to do, but it also helps avoid other consequences — a supervisor who...
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The Oregon State Bar says members with specific coronavirus-related questions should call the Ethics Helpline at (503) 431-6475.

has knowledge of misconduct and fails to take reasonable remedial action may be held vicariously responsible for the ethical violation. RPC 5.1.

My client is sick and may have the coronavirus, but a court date is fast approaching. What information can I share with the court?

Often, disclosing a health condition will help the lawyer obtain a continuance or other relief that benefits the client. If a client consents to disclosing information to the court, disclosure is permitted. RPC 1.6(a).

In some circumstances, a lawyer might determine that disclosure is impliedly authorized because a client has asked the lawyer to pursue a particular goal. RPC 1.6(a).

But if you are unable to obtain client consent to disclosure, proceed with caution. Lawyers have a duty to keep all “information relating to the representation of a client” confidential. This includes not just information protected by the attorney-client privilege, but also extends to “other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.” RPC 1.0(f).

Typically, a client’s health information falls into this category of protected information.

Where consent is not an option because a client is too sick to communicate, other rules may apply. For instance, if a court orders a lawyer to answer questions about a client’s failure to appear, lawyers may disclose information the lawyer reasonably believes is necessary to comply with a court order. RPC 1.6(b)(5).

Alternately, if a client is so ill that the lawyer reasonably believes the client has diminished capacity and is at risk of substantial harm unless action is taken, the lawyer may take “reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.” RPC 1.14(b).

Any action the lawyer takes should be the least restrictive action available. For instance, in the case of a seriously ill client, a lawyer might consider disclosing limited information to a court in order to secure a necessary continuance.

Amber Hollister is general counsel for the Oregon State Bar. She says members with specific coronavirus-related questions should call the Ethics Helpline at (503) 431-6475.
Some New-School Solutions for Old-School Work

Better, Smarter, More Efficient

By Elizabeth Ruiz Frost

Lawyers can incorporate new technology into their practice in myriad ways, from office management software to cybersecurity tools. Often overlooked, though, are several new-school ways to do old-school work, all designed to support our critical thinking and careful expression, not to supplant them.

Even the most steadfast Luddites might find inspiration from these suggestions.

Smart Pens and Gadgets

Sometimes, technology and our cognitive functions are somewhat at odds. For example, technology offers us the capacity to type very quickly. But while taking notes in a meeting or while reading a case, writing by hand tends to be more effective than typing, even though handwriting is slower.

The speed of typing is the very problem. When notetakers type, they capture information verbatim. When they hand-write, the reduced speed requires them to be more selective about what they write, which in turn requires them to process the material while listening. That processing helps them encode the material, yielding better understanding.

Typing verbatim means reduced processing and understanding, but it produces a better record to reflect back on later. That record sounds appealing, of course, but in repeated studies, participants with handwritten notes performed far better in conceptual-application exercises.

I’m a paper person. I typically hand-write meeting notes or research notes. After a dozen projects, though, I end up with notes scattered across a dozen notepads. For any given matter, I have electronic documents sitting in folders on my computer’s desktop, and I have dogeared, salad-dressing-stained paper swimming around my actual desktop.

Switching from notepads to a smart notebook has allowed me to preserve the cognitive benefits of writing by hand while also helping me stay organized.

Smart notebooks replicate the experience of handwriting but yield a digital document. They have reusable pages that approximate the look and feel of real paper. A writer can write on the pages with a pen, just as she would normally write on a notebook. But when the writer is finished with her notes or her draft, she can instantly digitize the text and convert it to a PDF.

Several manufacturers make these at different price points. Moleskin’s smart notebook converts handwritten pages simultaneously in an app on a device as a person writes. Rocketbook allows a writer to scan the page once it’s completed using an app, which then converts the notes to a nice-looking PDF.

A skeptic would suggest one could do the same thing with a piece of paper and a camera phone. But a smart notebook will send clear, nicely formatted PDFs every time, and it’ll send them automatically to any destination the writer chooses — to her inbox, her assistant’s inbox or cloud storage, for example. Some programs will even convert handwritten notes to editable text files. Then when a writer is finished with the handwritten project and has sent the notes digitally, she can simply wipe away the ink and reuse the page again later.

Using my Rocketbook smart notebook has helped me in several ways.

First, I feel more connected during meetings to the people around the table. Without a laptop’s screen dividing me from my colleagues and without the lure of email right there, I feel and seem more present.

Second, my notetaking is nimbler. I can more freely draw arrows, circle important information and throw together a quick chart, whereas I used to spend time carefully inserting bullet points and tables. As I write, I’m free to think about ideas and content instead of worrying about format.

Third, I am more organized. I can have one online repository for all my notes and documents instead of electronic files in one place and paper files in another. And finally, because the pages are reusable, I don’t run through reams of paper anymore. I feel good about reducing waste.

Smart pens offer a similar benefit, but they tend to be a little more expensive than smart notebooks. Just like smart notebooks, though, smart pens create digital documents from handwritten work. Some work with tiny cameras and others with GPS technology; they record a handwritten project, convert it to a digital document and send it to a device.

Some smart pens require companion smart paper. Some will create PDFs,
while others will translate your scrawl into editable text files. Nice for those with challenging handwriting.

Smart notebooks and pens lend themselves well to old-school writers (and some new-school ones) who prefer not just to take notes by hand, but to draft by hand as well. Drafting by hand may benefit the writer, but it means that, somewhere down the road, someone has to transcribe that handwriting to typed text. However, because some of these smart gadgets yield editable text, using them could allow a person to draft the way she feels most comfortable without sacrificing efficiency.

Smart pens and notebooks may benefit those with visual impairments as well. For people who struggle with the screen, writing by hand with the potential to convert to editable text may be a more usable and efficient option.

**Document Sharing for Better Collaboration**

Lawyers have always traded drafts for review and comment, either as co-authors or as opposing sides on a transaction. Without online collaboration tools, trading drafts has traditionally meant shooting revised versions back and forth via email. Inevitably, someone along the way works from an older version, causing confusion and wasted time. But online collaboration tools allow co-authors to write together in real time on the same shared document.

In my transactional practice, the attorneys met frequently by phone to talk through revisions on loan documents. And almost every conference call included at least a moment of this type of dialogue:

“I’m sorry, what are you looking at?”
“The insurance provision.”
“On page 7?”
“No, I’m on page 14.”
“OK, I’m getting there. Now what line are you looking at?”
“About midway through the paragraph, it says, ‘Lender shall not...’”
“Oh, OK, give me a second ... You’re looking at the Intercreditor Agreement right? Version 7?”

That worked well enough, but now that modern conferencing programs like Zoom and GoToMeeting allow for screen sharing, a participant can display a document for all participants to review right on the screen during the call. Having everyone tuned into a single shared screen brings back the efficiency of an in-person meeting.

With real-time editing, the group can agree upon revisions in the moment instead of drafting after the call and trading another round of drafts by email. Moreover, some platforms transcribe the conference, which provides a helpful record of the conversation without a participant having to take notes.

**Modern Day Dictation**

Some writers, particularly those who experience writer’s block when approaching a blank screen, feel freer expressing their ideas out loud. For others, speaking is just plain faster than typing. For those writers, speech-to-text programs can make work more comfortable and more efficient.

Google Docs Voice Typing will do it for free; some of the more expensive programs, like Dragon, may do it better or with more bells and whistles.

Older speech-to-text programs were less accurate than modern ones and were less adept at capturing industry-specific terms. Some newer programs are customizable, so they will more reliably catch a speaker’s legal terminology. And some speech-to-text programs can do more than just transcribe your speech nowadays. They even allow for editing via voice commands.

Writers might find it useful to flip the programs’ function, turning their text back to speech. Using text-to-speech programs is a helpful tool for proofreading. Hearing our text read back to us can reveal awkward passages, omitted words and other opportunities for improvement.

**Fighting Technology with Technology**

Technology has introduced opportunities for efficiency, but with that has come tons of potential for distraction. Some of us work on pretty dull stuff on these machines that, with just a couple clicks, could provide endless fun and entertainment.

For example, most days I would rather use my computer to watch viral dance videos than to write about, say, persuasive rhetorical devices, but I cannot. At least not all the time.

Lots of apps out there will help increase a writer’s productivity by discouraging distraction and procrastination, basically using technology to fight technology. Some of them, like Freedom, will shut down the internet completely for a set period of
time so that a writer cannot wander over to 
check the news for just a quick sec and then 
end up down a deep, deep, reality-show-
research rabbit hole.
(I’ve heard that can happen.)

An app called Anti-Social will allow 
writers some internet access while selec-
tively shutting off the garbage that really 
wastes their time. You can customize it for 
your own vices. Mine would be dog videos 
on Instagram. Once Anti-Social is set to 
run, the writer can access the internet to do 
legal research, for example, but she’d have 
to reboot to find out whether her aunt and 
her high school friend are still fighting on 
Facebook about an offensive meme posted 
by a foreign bot.

Maybe you don’t need peace for pro-
ductivity; you need fear. Write or Die could 
be the app for you. Write or Die is a pro-
ductivity app that uses threats and conse-
quences to keep a writer writing. Once she 
starts typing, she has to keep typing. When 
she pauses for a while, the app starts delet-
ing what’s written. I’m all for consequenc-
es, but I don’t actually recommend this one.

A Typewriter Keyboard
This suggestion, just for fun, is for those 
who reminisce about the golden days of 
typewriters. They miss the clacking of the 
keys, the zipping of the wheel when re-
leasing a finished page, hitting the eraser 
tape’s end and having to live with mistakes 
from that point forward.

Using a typewriter is not particularly 
practical these days, but there is a way to 
keep one foot in both worlds. Qwerky-
writer is a computer keyboard with type-
writer-style keys that click and clack. The 
keys even depress like an old typewriter. 
All the nostalgia with none of the need for 
eraser tape.

Conclusion
New technology doesn’t have to turn us 
into cyborgs (looking at you, Google Glass) 
or compel us to walk blithely into intersec-
tions with our eyes on a screen. When tech-
ology is at its best, it enhances our work, 
improves efficiency and connects us, allow-
ing us to do what we do better.

Elizabeth Ruiz Frost teaches Legal Research 
and Writing and other courses at the Univer-
sity of Oregon School of Law.

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Decoding Deepfakes

How Do Lawyers Adapt When Seeing Isn’t Always Believing?

By David Dorfman
hey say “seeing is believing.” But because of advances in artificial intelligence, that old adage is no longer true. With readily available software, anyone with access to a laptop can now produce fake content.

With a sufficient clip of a person, a new video can be created depicting that person doing anything at all. If the authentic file contains audio, it is possible to falsify speech and literally put words in someone’s mouth. Most troublingly, even the most advanced, commercially available detection technologies are unable to distinguish between authentic content and sophisticated forgeries.

Needless to say, these so-called “deepfakes” pose an unprecedented threat to our society.

Today, the greatest concern is that deepfakes will be mistaken for real videos, particularly in the contexts of election interference and pornography. But in the not-so-distant future, as manipulated media becomes more prevalent, an equal concern may be the impact of deepfakes on trust in visual and audio recordings generally.

Each of these concerns, namely the ability to undetectably produce fake videos and our inability to authenticate real videos, will have profound implications on the practice of law — both for corporate lawyers and litigators. As deepfakes proliferate, how will counterparties in a merger know whether the voice on the other end of the line is actually a company’s CEO or merely a digital impersonation seeking to glean insider information? In the criminal context, how much faith will prosecutors, defense attorneys and juries place in surveillance footage that could have been easily altered?

And even if reliable deepfake detection tools emerge in the future, to what degree will the need for additional witnesses and new forensic authentication techniques raise the already steep costs of civil litigation?

These questions and challenges are no longer hypothetical. There are real-life examples of deepfakes being used today to commit wire fraud and interfere in official proceedings. Yet most courts and professional bodies have yet to meaningfully grapple with these case studies. In fact, the Oregon State Bar became the first bar association in the nation to explicitly acknowledge these risks when the House of Delegates passed a resolution in November 2019 mandating analysis and assessment of how Oregon can adapt its policies and procedures to address the threat of deepfakes.

What HOD members acknowledged was that the legal community cannot wait for a Sputnik moment — such as a serious criminal conviction being overturned on the basis that the underlying video evidence was falsified — to start taking deepfakes seriously. Attorneys have a special obligation to familiarize themselves with the basics of content manipulation now, and to help craft procedures to reliably distinguish actual content from deepfakes.

**Deepfakes 101: Tech, Trends and Policy**

In learning about the technology behind deepfakes, one quickly realizes that lawyers don’t hold a monopoly on using needlessly complex terms to describe simple phenomena.

For example: Deepfakes are created with artificial intelligence and, in most cases, a specific class of machine learning utilizing “generative adversarial networks” (GANs). Essentially, GANs pit a “generator” (an algorithm creating fake content) against a “discriminator” (an algorithm trying to distinguish real content from fake content). These algorithms then compete against each other until a sufficiently convincing deepfake is produced, or until the generator algorithm determines it does not have enough authentic content to manipulate into a convincing forgery.

Look beyond the buzzwords, though, and one thing remains clear: Like most new technologies, deepfakes hold both promise and peril.

In Hollywood, deepfakes will unleash a whole new world of special effects and daredevil action sequences (at a fraction of the present cost and with far less risk of injury to performers). Recently, Snapchat unveiled a feature that allows users to create GIFs of themselves to share with friends. And the positive uses extend far beyond fun and entertainment: Start-ups are already enabling people experiencing disabilities such as ALS (or Lou Gehrig’s disease) to clone their voiceprint, which allows them to continue communicating with their own tone and mannerisms after losing the ability to speak.

But most of the discussion regarding deepfakes has focused on the potential for harm. And as the 2020 election approaches, the most immediate concern is the ability of deepfakes to disrupt democracy.

Here in the U.S., a widely distributed video of House Speaker Nancy Pelosi highlighted these risks; it was altered to make her appear intoxicated when she actually was not.

Recent YouTube videos put an unseen actor’s words in President Barack Obama’s mouth and combined President Donald Trump’s face with the speech and mannerisms of actor Alec Baldwin — both examples of how easy it would be to create videos of politicians saying or doing something outrageous or unacceptable.

Two examples from Gabon and Malaysia suggest the stakes will continue to increase.

Last year, Gabon was immersed in an intense debate about whether a video featuring a disoriented President Ali Bongo, who...
had not appeared in public for months, was real or fake. One week after the video’s release, the military launched an unsuccessful coup, claiming the alleged deepfake was proof of a government conspiracy.

Meanwhile in Malaysia, Economic Affairs Minister Azmin Ali is immersed in a potentially career-ending scandal — and facing possible criminal charges under the country’s colonial-era laws — after a video appeared online featuring him supposedly engaging in same-sex sexual activity. The Malaysian public remains deeply divided on the question of whether the video is real or a deepfake.

The minister’s predicament is not unique. In fact, the most frequent existing abuse of deepfake technology today is falsified pornography. A recent study found that 96 percent of deepfakes posted online involve nudity, and celebrity nudity in particular.

But increasingly, women who are not celebrities are also becoming victims. A discontinued app called DeepNude allowed users to “strip” photos of clothed women and then post the resulting images online. Although DeepNude’s creator is no longer distributing the app, similar applications now exist across the web.

Fortunately, lawmakers in Congress and in statehouses across the country have begun to explore the path forward.

The most significant bill in Congress is the DEEPFAKES Accountability Act. It would mandate that many classes of deepfakes contain digital watermarks as well as prominent written or audio statements disclosing the extent of the alterations. It also creates criminal and civil rights of action to enforce these requirements. In addition, it updates false personation laws to encompass digital impersonation, creates an in rem litigation procedure to sue unidentifiable deepfake creators (or open up the discovery process to aid in their identification), and establishes a national security task force to develop detection tools and share them with online platforms. Other proposed bills require federal agencies to produce reports on the implications of deepfakes, undertake or sponsor research on GANs, or ban “malicious” manipulated media.

The 2020 National Defense Authorization Act includes two of the first-ever deepfake-specific federal statutes signed into law. The first of the provisions requires the Intelligence Community to conduct annual assessments regarding the foreign weaponization of deepfakes, particularly by China and Russia, and to notify Congress whenever a foreign power deploys a deepfake to interfere in an American election. The second provision creates a prize program to incentivize research into detection tools.

There have also been a number of state-level and corporate efforts to regulate deepfakes. For example, California recently enacted two statutes: one temporarily prohibiting the posting of doctored videos of politicians within 60 days of an election, and another allowing victims of deepfake porn to sue.

Texas and Virginia have also passed criminal legislation. The Texas law only covers election-related content and Virginia only prohibits falsified pornography, but as more jurisdictions take on the issue, it is expected that legislators will also recognize that deepfakes can be used to manipulate financial markets, slander professional and personal rivals, incite violence and blackmail people falsely depicted as engaging in unethical conduct.

The limited scope of the existing state-level efforts — and the constitutional scrutiny they will inevitably face, given that many of them ban, rather than require labeling of, deepfakes — means forthcoming corporate actions are potentially more significant. Just in the past year, Facebook, Twitter and Google all started to create policies governing the distribution of deepfake content on their platforms.

Deepfakes and the Law

So far, however, most legislative and corporate efforts have not specifically addressed the impact of deepfakes on the legal profession and the broader justice system. This is a significant gap, given the field’s unique vulnerability to content manipulation. Today, video and audio recordings are an indispensable element of many criminal and civil actions, but a shadow of uncertainty may linger over each of these proceedings until the implications of deepfakes are addressed.

Some of the most obvious examples come from the criminal context. For prosecutors, how useful is a videotaped interrogation and confession if the jury doesn’t believe it’s actually the defendant? For defendants, what purpose do body cameras serve if the jury simply believes the depicted police misconduct was altered?

Does security-camera footage of a suspect shooting a murder victim prove
anything beyond a reasonable doubt if it could simply be a deepfake? Or on the flip side, how does a defendant prove surveillance footage placing him miles away from the scene of the crime actually substantiates his alibi?

Risks abound even in cases that do not directly implicate video evidence. For instance, in a civil matter, how do we reconcile a discrepancy between a deposition transcript and a video of the deposition, in light of deepfakes?

Fortunately, all of these examples share a common element: They involve recording devices that we know will eventually produce content that requires verification. Therefore, video and audio technologies can be developed to embed or upload authenticating data at the time of capture.

Several start-ups are already pioneering these tools. Often, they rely on generating “hashes” (cryptographic representations of data) on a public or private database called a blockchain. If the content is ever altered, the video or audio data will no longer match the hashes on the blockchain.

One can easily imagine a future where such technology becomes standard on body cameras, surveillance cameras and video cameras used for recording depositions and interrogations. And thanks to the newly amended Federal Rule of Evidence 902 — which allows “a record generated by an electronic process or system that produces an accurate result” to be self-authenticating — litigators could take advantage of this technology with relative ease.

More complicated questions arise, though, when dealing with situations where automatic authentication is not practical.

For instance, imagine a lawsuit involving an automobile accident where a bystander’s smartphone video of the crash is key to proving the plaintiff’s case. Or even an international human rights tribunal where an activist’s smartphone footage is evidence of a war crime. The smartphone may not contain automatic authentication software. Nor is this necessarily desirable, particularly for the human rights activist who may have compelling privacy concerns.

In these contexts, we must develop procedures to reliably litigate the provenance of disputed content.

While researchers are hard at work developing deepfake identification tools, the arms race between content manipulators and detectors means seeking absolute confidence in an unauthenticated recording’s integrity is a fool’s errand. Accordingly, we may come to view this type of unauthenticated video or audio as more analogous to eyewitness testimony than DNA evidence. That is to say, unverified recordings may increasingly be probative but no longer dispositive.

Even with a video entered into evidence, counsel will need to seek out corroborating witnesses who back up what is depicted, in addition to calling data forensics experts who can vouch for the authenticity of the footage. These challenges are surmountable, but they will certainly make litigation even more expensive.

What happens when there are no human witnesses to corroborate the events captured by the recording device? Oregon law allows for third-party “identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.” ORS 40.505. But that standard may not be high enough as deepfakes go mainstream.

If a speaker’s words can be easily and undetectably altered, verifying his or her voice is no longer the sole inquiry. Instead, we must place equal weight on considering the identity of the party proffering the recording, the incentives he or she may have to alter it, and the digital chain of custody since the recording’s alleged creation.

The implications of deepfakes will be felt outside of the courtroom, too. In the Wild Wild West of plea bargains, settlement negotiations and demand letters, deepfakes may be used to obtain negotiating leverage.

While existing ethics rules would prohibit an attorney from knowingly using a deepfake to extract a criminal plea or settlement offer, counsel may not always be aware that their clients are providing them with altered content. How much due diligence should attorneys be required to exercise before using a video to their client’s advantage?

On the other hand, if a client potentially facing capital charges could avoid indictment because of a smartphone video shot by a friend that may or may not have been altered to help him avoid charges, would it constitute ineffective assistance of counsel to not present that video to the prosecutor if it hasn’t been conclusively shown to be fake?

These are difficult ethical questions on the edges, but for now one thing is clear: If an opposing party credibly contends a recording is a deepfake, ethics rules should unambiguously require attorneys to undertake reasonable measures to verify that recording’s
probable authenticity — whether through witness corroboration or technical analysis — before using it as leverage in a negotiation.

Of course, deepfakes will not just appear in existing fact patterns. Indeed, some litigation will revolve around deepfakes themselves, with falsely depicted individuals lodging defamation, libel, false light, extortion and right of publicity claims against deepfake creators or distributors. Only time will tell whether existing statutes provide plaintiffs with adequate protections.

In the context of election interference, for instance, falsely depicted politicians may struggle to win libel or defamation lawsuits against deepfake purveyors, given the high bar of “actual malice” set by the U.S. Supreme Court in the context of public officials, particularly if it cannot be proven that the defendant was the one who actually created the fake video. False light laws may also fail where the deepfake is labeled as altered, but in a manner where that label is deliberately made easy to eliminate by third parties. (The DeepNude app, for instance, placed a watermark over the altered content, but it was easily removable by users).

Moreover, extortion statutes won’t apply if the creator — let’s say a foreign intelligence agency — is trying to sow societal chaos and views the victim of false depiction as mere collateral damage. And while right-of-publicity statutes in some states may entitle plaintiffs to not have their likenesses commercially misappropriated in a deepfake, people who aren’t celebrities may struggle to show commercial harm.

And while right-of-publicity statutes in some states may entitle plaintiffs to not have their likenesses commercially misappropriated in a deepfake, people who aren’t celebrities may struggle to show commercial harm.

Moreover, the rights to one’s persona can be easily signed away by plaintiffs in contracts. It is not inconceivable that disputes will emerge where persons who granted third parties the right to use their likeness in promotional materials (a common contractual term) will see those provisions expansively interpreted to include not just actual photographs, but also falsified videos.

In addressing the complicated questions raised by these scenarios, of course, it is imperative that lawmakers proceed with vigilance to ensure that the First Amendment is fully upheld.

Finally, a few words about the importance of transactional attorneys also being alert to the implications of deepfakes and the related phenomenon of voice-spoofing. Last year, newspapers reported the story of a British energy executive who thought he was on the phone with his parent company’s CEO. The executive was asked to wire a large sum to a supposed supplier. He complied, but it turns out the voice on the phone — which was indistinguishable from the CEO’s actual voice — was spoofed.

Anecdotally, this is far from a one-off incident. Law firms hold vast troves of insider information on their clients, particularly those engaged in sensitive transactions such as mergers. Attorneys need to recognize that the same technology that allows for deepfakes enables voice-spoofing, and that phone calls from clients or counterparties requesting sensitive information or the transfer of funds should be authenticated before proceeding. Scammers may be able to fake the voice of a client, but they are less likely to know the restaurant where you and your client last shared a lunch or the name of your mutual friend.

At this juncture, it is hard to predict which threat is greater: believed deepfakes resulting in unjust convictions, wrongful judgments and massive fraud, or conversely, the specter of deepfakes casting widespread doubt on legitimate recordings and conversations. In any event, lawyers need to be clear-eyed about these risks and prepare for them.

Charting a Path Forward

As deepfakes proliferate, we will need to consciously treat unauthenticated video and audio recordings with a certain level of skepticism while simultaneously developing reliable methods for detecting, and then labeling or removing, altered content.

It is tempting to imagine that a foolproof deepfake detection software will emerge and restore full faith in videos. But currently, the tools to create deepfakes are advancing more rapidly than the tools to identify them. Even legislative solutions can only mitigate — but not fully solve — this puzzle. No matter how many safeguards are enacted, or how much liability is imposed on creators or distributors of harmful deepfakes, the most dedicated bad actors will almost certainly persevere.

An important first step, then, is creating a new generation of citizens (and lawyers in particular) who are more intelligent consumers of video and audio content. After all, if a supposed video seems too outrageous to be true, perhaps it is. That being said, our expectations of credibility for video and audio content simply may not adapt fast enough to keep pace with technology.

In the context of social media posts involving just words, which lack the added element of verification that imagery or audio historically provided, we have seen firsthand the difficulty of combating disinformation. A simple scroll through Facebook, Twitter or Reddit provides ample proof that many people will readily treat conspiracy theories, no matter how absurd, as fact if their personal beliefs happen to align with the falsified narrative. As lawyers, if we are presented with video evidence that seemingly proves our client’s allegations or alibi, we may be similarly predisposed to believe the footage that supports our case.
However, the answer is not to give up on videos and audio recordings as mechanisms of adjudicating truth. Instead, in concert with technologists and legislators, we must create new tools to verify legitimate content and reliably litigate the provenance of disputed content.

The first part of this equation is easier. As new authentication tools emerge, such as cameras that automatically upload data to blockchains and video-editing software that tracks and logs each alteration, we can develop expectations, or even statutory requirements, that certain types of media — such as surveillance camera feeds, deposition and interrogation videos and body camera footage — must be accompanied by verification. The second part is harder, because we will not always be able to say with 100 percent certainty whether an unauthenticated recording is real or fake.

In developing new procedures to resolve these disputes, we should not be guided by case-by-case evidentiary rulings written by judges who may be understandably unfamiliar with the technological nuances of deepfakes. If we want consistent and predictable standards, legal professionals must work in concert with AI experts to establish federal and state best practices for assessing manipulated media, and eventually translate these practices into binding rules of evidence, standardized jury instructions, rules of professional conduct regarding the disclosure and use of suspected deepfakes, and digital chain-of-custody protocols.

Deepfakes are here to stay. So as society creates the technological and statutory frameworks to deal with them, the legal community needs to ensure the impacts of manipulated media on our profession are part of the national conversation. The best way to do this is by the power of our example. The time to adapt our profession’s practices and procedures is now.

The future of justice depends on it.

David Dorfman is a general counsel and legislative director at the U.S. House of Representatives, where he drafted the first deepfakes bill ever introduced in the House and authored the first federal statute signed into law regarding deepfakes. Dorfman is also executive director of the Congressional National Security Association, and he has served as chief counsel for the House Foreign Affairs Committee’s Subcommittee on Asia, the Pacific and Nonproliferation. He has represented a wide variety of technology and entertainment companies in private practice, and currently serves on the Oregon State Bar’s House of Delegates. The views expressed in this article are his own and do not necessarily represent the views of any members of Congress or the United States Government.

ENDNOTES

1. Disclosure: The author of this article drafted and introduced the discussed resolution, entitled “Assessing the Risks of Machine-Manipulated Media, Including Deepfake Videos and Recordings on Litigation and Other Judicial Proceedings in Oregon.”

2. Disclosure: In his official capacity, the author of this article drafted the DEEPFAKES Accountability Act, as well as related legislation to regulate artificial intelligence more generally.

3. Disclosure: In his official capacity, the author of this article drafted NDAA provisions regarding deepfakes, as well as corresponding provisions of the Intelligence Community authorization bill.
When Dave Bourgeau helped establish the Portland intellectual property firm Kolitch Romano about a year ago, he was charged with implementing the firm’s technology systems. Fortunately for the firm, Bourgeau also chairs the Oregon State Bar’s Technology Law Section and was already familiar with the many options available.

But Bourgeau says he empathizes with small and solo firms that are just starting up and are trying to figure out new technology systems — as well as larger, established firms that are looking to upgrade — because there are so many options available. Fear of making the wrong choice, industry watchers say, can often lead to “cyber paralysis.”

“We’ve definitely gone 100 percent cloud-based, and I think that’s the next step for most firms. But a lot of firms have trouble with that because they have legacy hardware,” Bourgeau says, adding that firms that implemented their systems before the development of cloud-based technology often find it difficult to make improvements without doing a full-blown replacement of their systems.

Another barrier can be the cost of new technology, he says. Law firms large and small are spending an increasing amount on technology each year, with some estimates putting total expenditures at more than $1.2 billion in 2019 alone.
“For a new or solo firm, it might be a lot easier to just use your laptop and get by with what you have until you have enough clients to finance an upgrade,” Bourgeau says.

Rachel M. Edwards, a practice management attorney with the Professional Liability Fund, has led several CLEs on technology for the PLF and says a firm’s size does play a role in technology choices to a certain extent. Large firms generally have a bigger budget for it and can hire an in-house IT person or an outside consultant. Smaller and solo firms have smaller budgets and will be looking for technology that is less expensive and serves fewer people.

“There is so much technology out there so you really have to take a look at individual needs,” she said, adding a firm’s number of clients, practice areas, geographic location and employee comfort with using the system are other factors that need to be taken into consideration.

“I try to encourage people to think about general, overarching best practices. From the PLF perspective, we recommend a good system with at least a reliable calendar, email, document storage, conflict checking, timekeeping, billing, accounting and task management, as well as backup in case of a security issue or crash,” Edwards says. “I try not to give them anything less than three options and let them know I’m not advocating for any particular program. I just want to give them some tailored suggestions and then let them decide where to go from there. And then I’m available to discuss any questions or issues they may have as they begin the process.”

Into the Cloud

Jeremy Vermilyea started his first law practice in 1997, later joined Schwabe Williamson & Wyatt and then started his own practice again three years ago. He says the experiences have taught him a lot about integrating technology as a solo practitioner and within a large firm, and he’s been able to use the lessons learned to operate his current practice in Portland, Vancouver and Seattle.

“There’s such a stark difference in what I had to do with the infrastructure the first time around and what I did the second time,” Vermilyea says, adding that his first practice involved several file cabinets, a Canon copier/scanner/fax machine that generated about 30,000 pieces of paper a month and a “100-pound server” to handle his emails and electronic files.

When he closed his practice to join Schwabe, he says, he estimates he had about 35 large banker boxes filled with files.

“My practice is bigger now in terms of the size of the clients, the complexity of the cases and the number of clients, and my filing for that entire three years is probably less than six inches thick because everything is stored on the cloud or on hard drives,” he says.

Technology allows solo practices and small firms to spend less money because they need less space and equipment to operate, Vermilyea says, so the question solo and small practice owners need to ask themselves first in creating their technology strategy is, “How much space do I need?”

“We don’t need libraries anymore and we don’t need large storage spaces,” he says. “Get all your files offsite, because there’s just no need for them. You can put everything on the cloud.”

Vermilyea says one of the biggest challenges in the tech odyssey for firms that are just starting out is the overwhelming number of options for timekeeping, document management and other administrative functions, but there are few all-in-one products like those available to larger firms. And a product that works well for one small firm won’t necessarily be the best for another, he says.

His solution was to run everything on Surface Pro. He has two monitors on the desktop configured in his Vancouver office, and he keeps a second mouse and portable monitor in his backpack.

“I can literally unplug it from my desktop setup and have it in my backpack and be out the door in less than 30 seconds,” Vermilyea says. “All of the equipment is pretty inexpensive these days, and if you think about it, you can get pretty close to replicating your home office on the road.”

He notes that a good team can counterbalance and support the administrative functions that a solo or small practice owner doesn’t have experience managing. He has an assistant who handles his bookkeeping and other tasks and a paralegal who lives in another state. The team meets weekly by teleconference or videoconference, and Vermilyea rents conference room space when he needs it.

“For anybody starting out, it’s really easy because you just buy the best system you can get. For companies that are bigger and already invested in their systems, they’re often afraid to bite the bullet and make the change because it can be expensive,” he says, adding the cost of an upgrade is worth the improved efficiency and staff productivity.

Leigh Gill, managing attorney for Immix Law, says practice management and records retention programs were the firm’s priority when it was founded in 2011. Since then, he has seen different generations of attorneys adopt different technologies depending on comfort levels. A prime example is communication tools.

“The more established attorneys tend to prefer the phone and email and the younger attorneys prefer instant messaging and secured communications on their mobile device,” he says. Generations also differ in their opinions about cloud-based services such as Clio and online payment programs such as LawPay.

“Ten or so years ago, there was a lot of hesitance to adopt a lot of technology because there were concerns about security,” Gill says, but many legal professionals now believe a firm is taking greater security risks if it doesn’t store confidential information in cloud-based technology. “I think it’s really shifted over the past 10 years, where cloud data is more secure than local data in most cases.”

Gill says Immix Law replaced its on-site server with cloud-based technology and found that it’s a better user experience because it’s a remote-first approach with strong adoption across the firm. Its ability to store records online has also been easier to manage with attorneys in multiple offices, he says.

Bourgeau says Kolitch Romano also found that it’s more affordable to have cloud-based, subscription services in place, rather than setting up servers and hardware in a physical space. The firm’s attorneys also feel more confident about the cloud-based security.
“Obviously, we have an obligation to keep our clients’ materials confidential, so there are concerns about whether it is adequately protected,” he says. “Our thought on that is the solutions that are actually built for law firms have teams that are hired to protect everything and are reliable and secure.”

A Word of Caution

John E. Grant, founder of The Agile Attorney Network and a member of the OSB’s Board of Governors, consults with law firms on strategy and operations processes that include technology. He says a crucial first step is needed before making any technology upgrades.

“Most law firms don’t need new technology. Probably what they could use instead is to take a step back, see the forest for the trees, do some work to fix their workflows and processes, and by doing that they can usually get more out of the technology they have,” Grant says. “What I’ve seen time and again is that doing the harder work of getting better about understanding process and workflow will put you in a better position to work with the technology you have.”

Once a firm has done that evaluation and still determines that a technology upgrade is needed, he says, it’s important that they don’t make the common mistake of starting with client intake.

“It’s totally natural to want to start with intake because it’s usually the first part of your process,” Grant says. “However, there is a concept that comes from Lean manufacturing that is called the theory of constraints, or bottleneck theory. In any multistep workflow, there is always one phase of the process that is limiting the flow of work for the entire system. The reason I tell people to be really careful about improving intake is that if it’s not their bottleneck, it will be upstream of the bottleneck and it could actually put more strain on the practice.

“There are technology companies out there whose sole purpose is to help attorneys improve their intake process, and that scares me a little bit,” Grant says, “because it puts a lot of strain on the firm and the attorneys downstream of that work.”

Grant also urges caution in the implementation of e-discovery tools, which he says can improve efficiency and include an inherent degree of practice management but also overwhelm attorneys with information at times. On the other hand, he applauds the development of practice management software that has an application programming interface (API) that “allows one piece of software to both talk to and exchange data with another piece.”

“Law firms are all over the board in terms of their technology adoption, and it’s still fairly common to see firms that are running practice management software on a server in the closet where the law firm is,” Grant says. “And that’s OK, but you don’t get the network effects. Part of what’s exciting to me in the modern generation of law firm tech is that API connection that allows you to almost roll out your own total solutions.”

The challenge, of course, is that those systems are best operated by someone who is reasonably technical and has a certain level of comfort with change and ambiguity — “neither of which are hallmarks of the legal profession,” Grant says. “I get that there are a lot of lawyers who are concerned about security and feel the server in their closet is the safest solution, but that may or may not be the case.”

As an example, he points to the tech company HotDocs, which worked with many law firms to customize installations stored on servers. When another company purchased HotDocs, it ended support for the installed products; now, those won’t work on new cloud-based platforms, and firms find themselves caught between the proverbial rock and a hard place.

“The unfortunate answer for those firms is that you have to invest in where the technology is going and not where it has been,” Grant says. “One of the realities in technology generally, and legal tech is part of it, is that companies are going to change hands and some of them are going to go out of business. If you become too dependent on a particular software to run your business, then that is in itself a kind of risk.”

Despite the potential challenges and pitfalls, Grant says the outlook for legal technology is overwhelmingly positive.

“I’m a big fan of legal tech in the right place,” he says, “and there has never been a better time in the history of the legal profession to start a new practice, because the technology tools that are available are outstanding.”

Trending Now

Sharon Nelson and John Simek of Sensei Enterprises Inc. produce a Solo and Small Firm Legal Technology Guide every year for the American Bar Association. They say recent trends include the widespread implementation of Microsoft Office 365, particularly among small firms, and upgrades to Windows 10 fueled in part by a bug that occurs while using Windows 7. Simek advises attorneys to do their due diligence in selecting cloud-based services, noting reports of one case management system that crashed and caused a couple of firms to ask for continuances in court because they couldn’t access their data. Mergers and acquisitions among case management services also are frequent, he says.

Nelson points to the growing prevalence of artificial intelligence in law firm technology, ranging from e-discovery and other legal research to document management programs and predictive analytics.

“Even the solos and smalls are using it and they may not even know it,” she says. “It is something that every single lawyer needs to understand to be competent.”

Recent developments in AI include systems that can automatically ingest proposed contracts, thoroughly analyze them using natural language processing technology and determine which portions are acceptable and which are not. Other new AI programs include one that will create an initial draft of a court brief and another that schedules meetings and calls, Nelson says.

“It’s not that expensive, and programs like that are all the rage these days,” she says. “It’s remarkable what’s out there.”

Melody Finnemore is a Portland-area freelance writer. Reach her at precisionpdx@comcast.net.
Technology has brought attorneys and law firms efficiency and convenience, but those gains have also come with enhanced risks to clients’ data and privacy.

Law offices large and small have suffered a variety of data breaches in recent years. In fact, a Law.com investigation in 2019 found that more than 100 firms across 14 states had reported being hit in the past five years. And those incidents may be just the tip of the iceberg, the report says, because many breaches often go unreported.

“Law firms are pretty discreet on how they report” data breaches, Claudia Rast, a member of the American Bar Association’s cybersecurity legal task force, told Law.com, noting that the ABA’s 2018 Legal Technology Survey found that only 9 percent of breached firms had notified clients and only 14 percent had notified law enforcement. “Unfortunately, many law firms don’t report it. They don’t want their clients to know about it.”

Law firms represent potentially vulnerable targets because some lack adequate safeguards and most house valuable personal information; some also store large amounts of money in trust or operating accounts, says Rachel M. Edwards, a practice management attorney for the Oregon State Bar Professional Liability Fund. External or internal perpetrators may be trying to cause disruption of service, she says, or are seeking money, personally identifiable information, intellectual property, trade secrets, business plans or information on litigation and transactions.

Guarding Against Cyberattacks

Lawyers and Firms Need to be Proactive, Experts Say

By Cliff Collins
In some cases, the results can be dire and traumatic, as one small Central Oregon law firm found out a few years ago when it placed a want ad online for a legal assistant.

One of the responses to that online ad replied with a zip file attached, purporting to be a resume and cover letter. When a member of the firm opened the link, nearly all the firm’s files became encrypted and inaccessible. Then a note appeared on the downloading attorney’s computer that said, “Congratulations. Your documents encrypted and inaccessible.” The note demanded payment in bitcoins to decrypt the files.

After reporting the attack and paying the ransom, the firm slowly reopened after being shut down for a week, estimating the cost of the ransomware attack at about $14,000 in IT support, a new server, other hardware, new software, bitcoins and attorney fees.

Other firms have faced similar consequences. According to the ABA tech survey, 41 percent of breached firms reported downtime and a loss of billable hours, 40 percent reported consulting fees for remediation of the problems, 11 percent reported loss or destruction of files, and 27 percent reported replacement of hardware or software. And that doesn’t include the existential risks that a breach can represent for a lawyer or firm, both in practical terms and from a loss of reputation.

Increasing Awareness

Edwards says the most common problems she sees related to security breaches include:

• Losing devices in the mail, such as flash drives, or having laptops stolen from cars or offices.

According to a paper in the American Journal of Trial Advocacy, the profession is becoming more aware of cyber threats. “But lawyers need to be more proactive in confronting them,” the paper says, “especially considering the serious consequences that can result from a cyberattack affecting clients, law firms and individual members of the profession. In addition to the potential of destroying attorney-client privilege, clients and third parties may find themselves victims of fraud, identity theft and bankruptcy, not to mention negative publicity and tarnished business reputation.”

“Affected clients and third parties could also face civil actions, administrative proceedings or even criminal charges,” the paper says. “Law firms that fail to employ reasonable cybersecurity measures can face discipline from courts, government investigations, fines, private lawsuits and malpractice claims, in addition to irreparable harm to the reputation of the firm and its members due to lost trust of clients, judges, the legal community and the public.”

The American Bar Association’s Cybersecurity Handbook makes its point clearly and succinctly: “Information security is not just good business practice,” it says. “It is becoming a legal obligation.”

Mark J. Fucile, an expert on legal ethics and an attorney with Fucile & Reising in Portland, notes that under state variants of ABA Model Rule 1.6(c) in Oregon and Washington, lawyers have a duty to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” But, he adds, “our duty of confidentiality ... also includes the attorney-client privilege and work product. The duty of confidentiality is also expressed in fiduciary terms.”

A failure to meet this fundamental responsibility potentially exposes a lawyer to regulatory discipline and also a civil claim for damages, Fucile points out.

Fucile notes that “under 2012 amendments the ABA made to the competency rule — ABA Model Rule 1.1 on which Oregon’s rule is based — we now have a duty to stay abreast of the technology we use in our law practice, just like we have an obligation to stay current on legal developments in our practice areas.” If necessary, he
says, this can include going to outside IT consultants to understand the technology being employed, in order to protect client privacy. (See “Cyber Security & Legal Ethics,” Page 29.)

Fucile adds that the emphasis on electronic security has always been important, but especially now with portable devices being used in all types of different settings.

“Lawyers sometimes forget there remains a physical risk” of loss or theft of devices or the information on them, he cautions. If viewing sensitive information on a laptop, an airplane or coffee shop “may not be the best place to look at it.”

Creating a Response Plan

In addition to safeguarding clients’ digital and physical property and understanding how to use technology safely, Fucile says, law firms need to have a response plan in place when something does go wrong.

In fact, businesses of all types would do well to perform an analysis to determine what risks the enterprise faces and what steps it should put in place to safeguard information, says Chris Apgar, president and chief executive of Apgar & Associates, a Portland company that focuses on information privacy and security and works with businesses to develop a security incidence-response plan.

“If something goes wrong, you don’t want to try to figure out what to do after it happens,” Apgar says. “You want a process upfront,” because you may be required under state law to notify any individuals whose private information was breached.

Firms also should have a business continuity plan in place, Apgar recommends. He emphasizes concentrating on beefing up firewalls and using encryption — “the real basic stuff. Unfortunately, folks don’t pay attention to that.”

According to Daniel J. Moses, an associate with Jackson Lewis in Portland, the Oregon Consumer Information Protection Bill, which took effect in January, amended the state’s consumer identity-protection statute and specifies that “breach of security” includes possessing personal information, not just maintaining it. The law also says that a breach of an individual’s account identification is sufficient to trigger the obligation to notify that individual.

Writing in *The National Law Journal* last year, Moses adds that the amended state law also defines the terms “covered entity” and “vendor” and creates new obligations for vendors, including a requirement to notify the applicable covered entity within 10 days of discovery of a breach. It also requires that the vendor notify the state attorney general if a breach affects more than 250 consumers or an undetermined number of consumers.

In line with Oregon’s statute, if an attorney or law firm is “not vetting vendors, you’re not following reasonable security measures,” says Alex Wall, a Portland lawyer who specializes in U.S. and global regulatory and contractual privacy requirements.

Wall says that attorneys who use cloud storage, a service provider, e-discovery or other vendors must make sure data is secure as part of privacy compliance and “should have an agreement in place that includes confidentiality and data protection terms, including the availability of and the right to delete and export data, and
a promise to use the data only as directed by the attorney except as required by law.”

Wall says it’s appropriate to refuse to use cloud providers if they cannot accommodate such terms. And even where they do agree to the terms, it’s important to understand that most cloud providers technically have access to data, even though they promise not to misuse that access. In cases where such access is too great a risk, attorneys can use services that provide encryption that only the attorney has the ability to decrypt, or the lawyer can encrypt data before storing it in the cloud.

Such services are now inexpensive and available, Wall says.

Monitoring Access

Protected health information now is easily and widely available to many more people than before the health care industry’s conversion from paper to digital medical records. Technology can provide good data protection, but problems related to privacy often are with people, not computers, says Kelly Hagan, a shareholder with Schwabe Williamson & Wyatt and a specialist in health care law and the Health Insurance Portability and Accountability Act (HIPAA).

Digital health care records make it easier for more people to access patients’ records, but whether they do so appropriately or not is a function of an organization’s culture rather than of regulation, Hagan says. Breaches often occur because of carelessness or misplaced curiosity.

Hagan, who has advised several law firms, notes that in 2013, HIPAA expanded application of the law to business associates, such as “people who run your back-office operations and have access to protected health information,” he says. They have contractual and legal obligations too, and they become subject to regulation by the U.S. Department of Health & Human Services’ Office for Civil Rights.

These requirements pertain to law firms as much as any other businesses. Lawyers often handle protected health information, and “I worry about who gets protected health information and never thinks about having a business associate agreement in place,” Hagan says. “If you get that information in the capacity of being their lawyer, you’re likely a business associate.”

Protecting Yourself

In 2016, a Portland attorney in sole practice received a stark reminder of what a data breach entails when his laptop was stolen from the backseat of his car.

The incident shook him, but he had taken several measures beforehand in case such an event ever happened. He had facial recognition logins installed, and a backup security feature. Most important, he had taken out excess coverage through the bar’s Professional Liability Fund.

In 2013, the PLF added a Cyber Liability & Breach Response Endorsement to all PLF Excess Coverage plans. The endorsement provides coverage for information security and privacy liability, privacy breach response services, regulatory defense and penalties, website media content liability, cyber extortion, and crisis management and public relations services. The endorsement also covers many claims that otherwise would be excluded under both PLF primary and excess plans, according to Emilee Preble, lead underwriter for the PLF’s excess-coverage program.

After the Portland attorney’s laptop was stolen, he reported the theft to the PLF, which works with Beazley Breach Response Services, a professional and management liability insurance company, to handle the claim.

“Given the stress of the situation, I was very pleased with Beazley,” the attorney says. “I had just gone out on my own, so the timing was terrible. But at least I had the coverage in place. Beazley made all the arrangements for offering ID theft coverage to the clients.”

The attorney says very little of the information on the computer was sensitive, and none of the 100 clients with files on the laptop have reported incidents or made claims.

“The attorney (with Beazley) was easy to contact and made sure I understood what needed to be done in each step,” the Portland lawyer says. “All in all, it was resolved as quickly and painlessly as possible under the circumstances. I appreciate the peace of mind that it gives me. I tell everyone I know to get the cyber coverage.

“Given the increasing cyberattacks and dangerous emails I see daily, I think this coverage is imperative,” he adds. “Unfortunately, that is the world we now live in.”

Cliff Collins is a Portland-area freelance writer. Reach him at tundra95877@mypacks.net.
Oregon lawyers frequently turn to practice management attorneys at the OSB Professional Liability Fund for answers to questions about technology. So we did too, sitting down recently for a wide-ranging conversation with Hong Dao, Rachel M. Edwards and Sheila M. Blackford.

How does technology impact the practice of law? Here’s what they had to say:

Q: What are the biggest obstacles that prevent lawyers or firms from transitioning to new technology?

Sheila Blackford: Frequently, lawyers are reluctant to adopt new technology even though they are dissatisfied with their existing or non-existing technology. There is an overwhelming number of options available, and who has time and money to waste trying to choose the right option?

Rachel Edwards: Fear of change is certainly one factor that plays into lawyers’ hesitation to transition to new technology. I see the hesitation in their fear of loss of productivity while making the transition, as well as fear that information will be lost or misplaced during the transition. Usually the transition is fairly simple. But sometimes challenges arise, such as when transferring information from one format to another. Remember that the vendors are usually willing and able to assist with the transition as part of encouraging
you to utilize their product. So don’t hesitate to ask for help in making the switch if it isn’t offered up front.

Hong Dao: Based on my experience working with smaller firms and solos, the biggest obstacles are time and cost. It takes time to learn how to use a piece of new technology and integrate it into the office’s existing systems. While most software programs come already packaged and ready to use, lawyers still need to do some sort of setup, learn how to use the features and navigate the interface of that program. This takes time. It’s hard for smaller firms and solos to prioritize this when they’re dealing with practicing law and the management of their office with no or little support staff. In terms of cost, many software programs are now offered as software-as-a-service (SaaS), where users pay a monthly fee to access programs online (practice management software, G Suite, Office 365, cloud backup, cloud storage, etc.). Subscriptions to different SaaS services do add up. There is also the sunk-cost bias that can prevent lawyers from transitioning to new technology. They already “invested” a lot of time/money in their existing programs, so there is a tendency to want to keep on using it although it’s not doing much for them.

Q: What areas of a law firm operation can benefit most from leveraging or using more technology?

Hong Dao: Again, from my experience working with small firms and solos, one of the areas that can benefit from technology is general office systems — case/matter management, conflict checking, time and billing, trust accounting, calendaring, etc. These systems can be streamlined and automated with the use of an all-in-one practice management software. Also, lawyers can benefit from integrating the different web services and applications they use. This can be done by using workflow automation tools like Zapier, ITTTT or Tray.io.

Sheila Blackford: Technology can streamline client intake. There are numerous applications that are increasingly playing well with each other. If one is in a high volume of document production, especially when documents relate to a single client, automating document creation and assembly translates to happier paralegals who really would like to leave work at 5 p.m.

Q: What are the differences between larger firms’ adoption of technology and the experiences of smaller firms and solos?

Sheila Blackford: There really is no comparison. The scalability of applications necessary to a large firm are unwieldy to a smaller firm and solo practice. Many of the programs attractive to a smaller firm or solo practice are not suitable to a large firm. Luckily, larger firms have an IT manager who will prevent selecting the wrong program based on seeing its advertisements in legal magazines.

Hong Dao: Bigger firms are better at adopting technology than smaller firms and solos. Big firms have resources in the form of revenues to purchase a new piece of technology or a dedicated IT person or an office administrator who can oversee the adoption, implementation and training of a new software program. They are more likely to represent corporate clients who may drive the use of certain technologies. Millennial attorneys in smaller firms and solo offices grew up with technology, so they may feel more comfortable adopting it as opposed to the older generations of solo lawyers.

Q: What’s the one piece of technology you wish all lawyers would use?

Hong Dao: A practice management software program that allows them to streamline all of their office systems.

Sheila Blackford: The most important piece of technology is nothing new: up-to-date antivirus, anti-malware protection. Nothing takes the place of practicing safe computing. Beware of emails bearing attachments, especially if they end in ‘exe’ and a hyperlink. Take the time to hover over the true address of the sender of an email; spoofer’s capture names from websites and then send email messages cleverly disguised as coming from a trusted source. The best advice: “Don’t trust; verify.”

Q: We just entered a new decade. Look into your crystal ball and tell us how technology will have changed the practice of law by the time this decade ends.

Sheila Blackford: Although access to justice is a concern, lawyers will face more competition from non-lawyers in the future. That means technology will need to change enough so that lawyers can afford to be affordable.

Learn More

Professional Liability Fund practice management attorneys will present a CLE titled “Harnessing Technology to Improve Your Practice” at sessions scheduled around the state in April and May. Each session will include information on apps, websites, tools and other resources to help keep offices up to date. Attendees will also have an opportunity to meet with a practice management attorney for a private consultation immediately after each session; email deannas@osbpflf.org to reserve a time.

The CLEs, which are approved for 1.5 Practical Skills/General CLE credits, cost $15. Upcoming dates include:

- Hillsboro (April 8): Noon-1:30 p.m. at Holiday Inn Express;
- Oregon City (April 9): Noon-1:30 p.m. at Rivershore Bar and Grill at the Best Western Plus Hotel;
- Gold Beach (April 28): 9-10:30 a.m. at SureStay Plus Hotel;
- Coos Bay (April 29): 9-10:30 a.m. at Red Lion Hotel;
- Lincoln City (April 30): 9-10:30 a.m. at Surfides;
- Tigard (May 13): 9-10:30 a.m. at the OSB Bar Center;
- Klamath Falls (May 27): 9-10:30 a.m. at Olympic Inn;
- Medford (May 28): 9-10:30 a.m. at Rogue Regency Hotel.

Note: Some sessions may be canceled or postponed because of the continuing impact of the coronavirus outbreak. For the latest information, go to osbpflf.org/cle/upcoming/html.

Have more questions about technology? Reach Hong Dao, Rachel Edwards or Sheila Blackford by calling the PLF at (503) 639-6911 or visiting osbpflf.org.
Supporting ACCESS to JUSTICE

Supporters of the Campaign for Equal Justice gathered in downtown Portland in February to celebrate the efforts of hundreds of dedicated volunteers who power CEJ’s efforts to support Oregon legal aid programs.

Over the past year alone, CEJ Executive Director Maya Crawford Peacock says, members of Oregon’s legal community contributed $1.9 million.

Oregon Supreme Court Chief Justice Martha Walters welcomed more than 400 attorneys, staff and judges to the CEJ’s 29th Annual Awards Luncheon. Oregon Law Foundation President Ethan Knight reminded the crowd that “where they bank matters,” noting that if every Oregon lawyer banked with a leadership bank, they could generate an additional $1.25 million a year for legal aid.

Perkins Coie won this year’s Large Firm Award for garnering 100 percent attorney participation in the campaign. Bullard Law won the Midsize Firm Award for increasing firm members’ participation to 100 percent. Sarah Lowe from Collier Law in Salem won the Associate Award.

Jackson County won CEJ’s Justice Cup for being the region of the state with the highest percentage of lawyers giving to the campaign; an impressive 41 percent of lawyers in the county contributed. The Equity Cup went to Grants Pass for increasing its year-over-year giving by 75 percent.

State Treasurer Tobias Read and former State Rep. Jennifer Williamson were awarded the Public Access to Justice Award. The award recognizes individuals who, through public service and leadership, have made a longstanding commitment to ensuring civil legal services for the poor.

Nike and adidas were Titanium sponsors for the event. Diamond sponsors included Columbia Bank, Heritage Bank and Pacific West Bank. The Bar Plan, Law Pay, Northwest Bank and the PLF Excess Program were Gold sponsors, and Morel Ink was an in-kind sponsor.
1. Oregon Law Center Executive Director Monica Goracke (from left), Public Access to Justice Award winners Rep. Jennifer Williamson and State Treasurer Tobias Read, CEJ Board President Elizabeth Knight and Legal Aid Services of Oregon Executive Director Janice Morgan.

2. Sarah Lowe and her posse. Lowe, an attorney at Collier Law in Salem, won CEJ’s Associate Award.

3. Jason Douthit, Jess Osborne, Liani Reeves and Benjamin O’Glasser of Bullard Law, winner of the Midsize Firm Award.

4. Debra Lee, executive director of the Center for Nonprofit Legal Services (left), and Amanda Thorpe. Lee and her colleagues in Jackson County won the Justice Cup as the region with the highest percentage of lawyers who contribute to CEJ; Thorpe and her fellow lawyers in Grants Pass won the Equity Cup as the region with the biggest improvement in CEJ participation.

5. Danielle Benderly, Julia Markley and Holly Martinez of Perkins Coie, winner of the Large Firm Award.

6. Oregon Supreme Court Chief Justice Martha Walters (left) and Nike executive Julia Brim-Edwards. Nike and adidas are Titanium sponsors of the CEJ luncheon and community supporters in the access to justice mission.

7. CEJ Board President Elizabeth Knight and Oregon Law Foundation Board President Ethan Knight.

8. Board of Governors member Adrian Lee Brown (from left), Diane Sykes, Mariann Hyland, Oregon State Bar CEO Helen Hierschbiel and Valerie Colas.

9. Julia Markley (from left), Wayne Landsverk and Mark Wada.

10. CEJ volunteer Dale Silver (from left), Program Assistant David Sternesky, Programs & Information Specialist Shari Nilsson, Executive Director Maya Crawford Peacock and Associate Director Lois Smith.

Photos courtesy of White Lion Photography & Design
Lawyers, Staff Play Critical Role in Fighting Tech-Enabled Scams

The Human Dimension

By Mark J. Fucile

Law firms have two things that thieves value: money and information. So it should come as no surprise that criminal schemes aimed at one or the other are neither new nor novel.

In re Galasso, 978 NE2d 1254 (NY 2012), for example, involved a law firm office manager who embezzled more than $4 million from a firm trust account. Similarly, a classic account of 1980s Wall Street scandals describes a lawyer at a major New York law firm who provided advance information to an insider trading scheme on six significant deals before they went public — generating more than $600,000 in illegal profits.

What has changed in recent years, however, is thieves’ increasingly sophisticated use of technology to steal both money and information from law firms.

Although comprehensive statistics are hard to come by, a New York City Bar ethics opinion issued five years ago reported that email scams had stolen $70 million from lawyers nationally. Similarly, hackers relatively recently targeted seven large New York law firms for information on potential mergers and acquisitions.

Although these illustrations come from New York, the Oregon State Bar and the Professional Liability Fund routinely issue alerts to Oregon lawyers, warning about a wide variety of internet scams targeting lawyers here.

Because many of today’s scams exploit technology, technology plays an equally central role in combating them. But law firms cannot be lulled into a false sense of security that defending against technology-enabled scams is solely the province of the firm’s IT department or consultant. To the contrary, lawyers and staff play an absolutely critical role in defending their firms, because many technology-related scams prey on our human reactions.

In this column, we’ll first focus on scams oriented around stealing money from law firms and then on information. With each, we’ll initially survey common risks and then outline corresponding practical solutions.

Stealing Money

Some thefts from law firms are the equivalent of armed robbery — such as “ransomware,” where criminals encrypt law firm files and then demand money in return for an electronic “key” to decrypt them. Others are more like common street crime — such as “toner pirates” who impersonate a firm’s copy vendor over the telephone to sell unsolicited printer supplies.

The former usually occurs when an unsuspecting lawyer or staff member clicks on a seemingly legitimate link included in an email; instead, the link downloads malware, encrypting the firm’s files throughout its network. The latter is often directed at busy lawyers who think they are dealing with the firm’s actual vendor.

Having your own money stolen is bad, of course. But having your clients’ money stolen from your care is even worse, because it can have significant regulatory and liability consequences.

A sophisticated scheme in this regard occurs when a lawyer is contacted by a new “client” with a collection matter in the lawyer’s hometown. The lawyer contacts the debtor with information supplied by the client, and the debtor quickly agrees to pay the balance due.

The debtor follows with a check on a seemingly legitimate bank, which the lawyer deposits into trust. The client is pleased but would like the money quickly, so the lawyer issues a corresponding check out of trust before the debtor’s deposit has cleared. Later, the debtor’s check is returned as uncollectible.

By this time, however, the client has cashed the firm’s check — which cleared because other firm clients had money in trust. The “client” has disappeared with the money. And in effect, the law firm has unwittingly assisted thieves in stealing other clients’ money that was being held in trust.

Schemes such as these often take perverse advantage of two increasingly common facets of law practice today. First, unlike even a few years ago, we may now only meet our clients or others we interact with electronically — and unfortunately, thieves often exploit that electronic familiarity. Second, today’s competitive market puts an accent on quick client service. Again, thieves exploit today’s speed of practice by designing schemes that take advantage of the lack of time for reflection.

Confronting these risks involves both training and awareness. Training educates lawyers and staff about new and recurring threats. Awareness uses the training to
recognize and deter the threats when they occur. Properly implemented, neither should compromise the efficiency of electronic practice or sacrifice responsive client service.

While both training and awareness must adjust to threats as they emerge, practical steps firms can take to meet recurring scams include:

- Train lawyers and staff to be wary of any link or file they receive electronically. Unless it is both from a trusted source and expected, it should not be opened on a device connected to the firm’s network. If it is from what appears to be a trusted source but is not expected, the recipient should independently verify with the source that it is legitimate;
- Train lawyers and staff to be polite but appropriately skeptical about unexpected calls they receive from claimed service providers seeking information about firm equipment, services and banking. Information should not be shared unless and until the identity and authority of the person calling has been verified; and
- Funds should never be disbursed from trust until the corresponding deposit has cleared. “Cleared” in this context means more than simply that the bank has accommodated your firm with a "provisional credit" that makes it appear online that the funds are “available” in your account. “Cleared” means your bank has actually received the funds involved from the check-writer’s bank.9

This is not intended to be an exclusive list. Firms should regularly take advantage of the excellent resources available from the OSB and Professional Liability Fund to reassess their defenses in light of evolving threats.10

Stealing Information

One of our opening illustrations involved hackers who successfully penetrated several large law firms electronically to steal sensitive information on pending deals.11 The hackers were able to compromise one of the law firms by obtaining employee log-in credentials, entering the network involved and planting spyware that allowed them to monitor the emails of key firm partners for market-moving information.12
Although this could occur without human interaction, a more common approach is through “phishing” emails, which fool unsuspecting users into providing their log-in credentials. Therefore, the same training of lawyers and staff on an appropriate level of wariness toward any email including links — beyond technology-based defenses such as strong passwords and “two-factor authentication” — applies with equal measure to those seeking log-in information.

Depending on the firm’s practice, thieves may be seeking information about the firm’s clients or the firm itself. Firms doing business acquisitions like our opening example may be targets for thieves seeking client information to profit in the stock market. By contrast, firms carrying large trust account balances, such as the law firm in another of our opening examples, may be targets for thieves seeking banking information as part of an effort to steal funds being held by the firm. Although potential regulatory and liability consequences vary with what is stolen and from whom, none of them are “good.”

Beyond the firm’s office, lawyers and staff should also be cautious when using mobile devices in public settings where they could be viewed or overheard. Using electronic security measures such as “virtual private networks” instead of open public wi-fi is essential; so is activating built-in device security features such as passwords, hard-drive encryption and remote “kill switches.”

Often equally important to protecting confidential information, however, are simple steps like positioning laptop screens so they will not be seen by “prying eyes” and limiting conversations so they will not be overheard by “noisy neighbors.”

**Summing Up**

The U.S. Department of Homeland Security has described thieves’ use of human behavior to further technology-enabled schemes as a form of “social engineering.” Given that human dimension, lawyers and staff continue to play a vital role in protecting their clients and their firms from technology-exploiting schemes.

Mark J. Fucile is an attorney at Fucile & Reising, where he handles professional responsibility, regulatory and attorney-client privilege matters for lawyers, law firms and legal departments throughout the Northwest. He is a member of the OSB Legal Ethics Committee.
Committee and a past chair of the WSBA Committee on Professional Ethics. He is a co-editor of the OSB Ethical Oregon Lawyer, the WSBA Law of Lawyering in Washington and the WSBA Legal Ethics Deskbook. He also teaches legal ethics as an adjunct for the University of Oregon School of Law. Reach him at Mark@frllp.com.

ENDNOTES

4. This column focuses on thefts by outsiders using technology. Firms should not overlook trust account and practice management addressing “old fashioned” thefts of either money or information by personnel within their firms. See generally Mark J. Fucile, “The Bookkeeper Did It! Lawyer Responsibility for Staff Theft of Client Funds,” 25, No. 2 ABA *The Professional Lawyer* 30 (2018).
7. See, e.g., RPC 1.15-1 (duty of safekeeping client property).
8. This is a variant of a scheme described in New York City Bar Formal Opinion 2015-3.
11. See Note 3, supra.
12. Id.
14. Under RPC 1.6(c), we have a regulatory duty to take reasonable measures to protect client confidential information from “unauthorized disclosure.”
15. See Note 13, supra.
The world is trying to deal with the coronavirus pandemic in a variety of ways, but controlling the spread of the deadly virus is at the top of the list. Travel is being restricted, and some countries have even closed their borders. As a result, social distancing and maintaining clean hygiene practices are the normal mode of operation now, and more and more businesses are asking their employees to stay at home where possible. Some are actually being commanded by civil authorities to have their workers do so.

What does that mean for the practice of law? How will attorneys meet with clients? Many firms have or will adopt a telework environment that allows their employees to work from home. But making the decision to work remotely will have different consequences, depending on a firm’s current capabilities and whether a plan is already in place. While we can’t cover all the possibilities and capabilities of every law firm, we’ll attempt to attack some of the common considerations here.

**Equipment and Workspaces**

Believe it or not, people at some firms are picking up their work computers, monitors, keyboards and other peripherals on their desk and taking them home. We can’t imagine the headaches IT support people will have instructing a user to connect all the cords and devices properly, not to mention configuring the desktop to connect to the home network.

Our suggestion is to avoid taking desktops home and just deal with laptops and home machines. It will save a lot of headaches, wasted time and support costs. Hopefully, everyone is already using a laptop as their main office machine. If firms planned properly, those laptop users are already configured for remote access. If not, now would be a good time to modify infrastructure plans and budget for laptops and docking stations for those folks that need a mobility option.

In the short term, you can expect some popular models of laptops to be in short supply. Worst case, you may have to find a Best Buy, Target, Walmart, etc., and see if you can purchase consumer-grade machines.

If employees will be working from home (or other remote location) for an extended period of time, we recommend having an external monitor, full-size keyboard (wireless preferred) and mouse available. They’ll be much more comfortable, and more productive.

Another consideration is printing. Firms may need to help employees configure their home printer (if they have one) to work with the firm’s computer. If they don’t need to print, so much the better.

With equipment in hand, employees should try to designate a separate area in their home as their work environment. The space should be away from the kitchen, living room, family room or other active family areas. If they don’t have a desk available, they can always use a table for their work surface.

They should also consider positioning the work area so they have a view out of a window if possible. The view will help during those periods of mental blocks. And besides, working in a windowless area can make you feel like you’re in prison, which isn’t a good thing.

**Network Connectivity**

Many of us have a home wireless network that can be used for our work-at-home environment. But we recommend avoiding using home wireless, especially if other family members are also working from home. Besides the security issues (now would be a good time to make sure the network is protected with WPA2 encryption), connecting to home wireless means competing for bandwidth with all the other connected devices.

Instead, we suggest connecting computers directly to an Ethernet connection. Ideally, employees’ home offices already have a hard-wired Ethernet connection; if not, they can purchase a long Ethernet patch cord if their computer isn’t too far away from their internet router.

As an alternative, they can purchase a powerline Ethernet adapter. The adapter provides Ethernet connectivity utilizing the electrical wiring in the house. You plug one adapter in an electrical outlet near the router and a second adapter where you set up the computer. The TP-Link AV1000 Powerline Ethernet Adapter is an excellent choice; it’s available on Amazon.com for around $55.

Depending on their situation, employees may also need to get re-educated in how to use the hot spot capability of their smartphone. While the connection speed may be a little slower, it’s a more secure network.
than connecting to free Wi-Fi at a Starbucks, McDonald’s, etc. Our long-standing recommendation has been to avoid any free Wi-Fi and use your hot spot, even if using a VPN.

And just for the record, employees shouldn’t be working at a public facility during these times anyway. The health risk is just too great, even if your locality/state permit it.

Remote Access Software
There are a lot of choices for provisioning remote access.

Many firms will already have a Virtual Private Network (VPN) available. If yours is among them, make sure you check the licensing and capacity for your VPN implementation. If your entire firm is working remotely using a VPN, there may not be enough capacity at your office to handle the load.

It’s also probably a good idea to refresh the procedure for using the VPN with those who will be connecting remotely, especially if they don’t regularly access the firm’s network that way.

And don’t forget that as organizations increase the use of VPNs for working at home, more vulnerabilities are being discovered. The bad guys are shifting focus to target VPNs, since they know so many more users will be remote during the pandemic. So make sure the latest Windows security updates and patches are installed, and that you are using multi-factor authentication for your VPN and any other remote access solutions.

Have your IT support personnel review AA20073A: Enterprise VPN Security (https://www.us-cert.gov/ncas/alerts/aa20073a) from CISA for technical details about using and securing VPNs as a result of the COVID-19 pandemic.

Some firms will want to enable the Remote Desktop Protocol to connect to their office computers. Words of caution: There is a reason the Remote Desktop Protocol is disabled by default on Windows computers. Generally, it’s not recommended to expose your firm’s computer(s) to the internet using Remote Desktop Protocol. Larger firms with Terminal Services have controls in place to safely use the Remote Desktop Protocol.

Another alternative is to use a remote-control solution such as LogMeIn. Many of our clients already have LogMeIn licenses available as part of the desktop monitoring solution that we deploy. If you use a remote-control solution, you will have to leave your office computer turned on at all times.

Larger firms may already have a remote access solution such as Citrix or Microsoft Terminal Services. As previously stated, make sure you have sufficient licenses and bandwidth for all the intended connections, and that you have configured multi-factor authentication.

Using Home Computers
We understand that not everyone is using laptops as their primary work computer and that law firms don’t want to spend the money to purchase laptops for remote employees. Instead, many firms want their employees to use their home computers to work remotely. But understand that there are a LOT of issues and concerns when you decide to allow a home computer to connect to the firm network, even if you are using a VPN.

The obvious concern is security. The firm doesn’t own or control the home machine. You really don’t know what security software may be installed or if the computer is fully patched with the latest updates. Still, the reality is that many solo and small firm lawyers will be using home computers to connect to the office.

One of the first considerations is to determine what the firm will do about the security software on home machines. Will you allow employees to use their personal security software and enforce it through policy? We would suggest a better approach is to extend your law firm’s licensing to the home machines. In other words, make the home machines part of the centrally managed endpoint security system that already exists for the office. Such an approach may not be economically feasible, depending on the firm’s size and licensing terms. But if you are using a managed service provider for your IT needs, you should be able to add licenses on a monthly basis instead of paying an annual fee for each seat, which could get pretty expensive.

Do employees have the necessary software on their home computers? At this point, you are probably rethinking the options for using cloud services. If you subscribe to Office 365, users could use Office in the cloud or possibly install Office on their home computer. If the firm uses a VPN to connect, do employee already have the appropriate software installed and configured? Bottom line: Firms will need to assess what capabilities will be required for work-at-home employees and address any gaps that may exist.

Another challenge with home machines is the mixing of business and pleasure. Make sure everyone at the firm understands any applicable data protection laws, because using home computers puts the firm at risk for exposing client confidential data. It would be a nightmare, for example, if an employee inadvertently shared confidential data using their personal social media account.

If employees do use their home computers for work, try to limit (or ban) family members, especially children, from using the machine. Family members may be duped into downloading malware that compromises the computer and may transfer to your firm’s network.

The truth is, cybercriminals never miss an opportunity to profit from a disaster, and the coronavirus pandemic is no different. Scammers are already targeting people who are searching for information about the virus and infecting them with malware. Thousands of domain names have suddenly been registered to host malicious websites. Regardless of which security software they use, remote users should be particularly vigilant concerning requests to reset passwords, even if the email looks like it is valid.

Telephone and Mail
Don’t forget to address how the firm will handle telephone calls, especially those inbound from current or potential clients. If you have traditional phone lines, don’t forget to forward the firm’s number(s) to a number that you will be using to answer calls prior to closing the office. If you are not going to forward the number, have a message for callers to advise what number to call and how best to reach you.

The situation is so much better if you have VoIP phones. Employees should be able to just take their VoIP phone home and connect it to their home network; it will ring just like it was sitting on their desk. As an alternative, firms could install software on employees’ computers to emulate their desk phones. They would then use their computer sound and microphone (or head-set) to answer and make calls.

Don’t forget about mail deliveries. Will the carrier deliver mail if your office is closed? You may have to have the mail held at the post office or have the mail delivered to an alternate address.
Once you’ve decided where the mail will end up, someone needs to handle it. The mail should be scanned (converted to electronic form) and sent to the appropriate person. Obviously, you’ll need a scanner. You may be able to use your copier as a scanner if you don’t have a separate scanner. An alternative is to use a scanning app for your smartphone.

Video Conferencing

Instead of face-to-face meetings, many law firms are utilizing some sort of video conferencing capability. There are a lot of choices out there to connect with people visually, and as a result of the coronavirus situation, many companies are allowing temporary free usage. As an example, Microsoft is offering free usage of Teams for up to six months. (Office 365 subscribers already have Teams included.)

Zoom offers a free videoconferencing solution that can host up to 100 participants, and the company has lifted the 40-minute time restriction for the free version; the Pro version is an affordable $15/month. Of course, many larger firms already have enterprise accounts for services such as GoToMeeting or Webex, to name a couple.

To state the obvious, everyone will need some sort of camera to participate in a video conference call. Most modern-day laptops are equipped with a webcam for video calls; you can also use iPads or smartphones with some of the video conferencing apps. Another consideration is sound. The built-in microphones for laptops or phones don’t sound particularly good if you are on the receiving end, so consider using a headset (with microphone) or earbuds instead.

Finally, participants should pay attention to where they physically sit during the video conference. If backs are to an open window, the brightness may make folks difficult to see. Objects behind them may be distracting, too. Everyone should think about what the person on the other end is seeing, and be cognizant of the people around them. Family members may be able to hear discussions involving confidential information, even if participants are wearing a headset.

Cloud to the Rescue

Is it too late to move to the cloud? Not in our opinion, because there are so many great tools available to enhance the practice of law.

Cloud-based practice management is a good place to start. We’ve already...
mentioned Office 365 for productivity software, but there are options for document management and document assembly in the cloud too.

Of course, putting clients’ confidential information in the cloud brings different considerations for security. How does the cloud provider protect data from unauthorized access? Will firms need to encrypt the data before they use the cloud service? Having a good local backup is critical for surviving a ransomware attack, but we’ve always recommended having additional encrypted versions stored in the cloud, too.

If firms are not currently in the cloud, it’s probably not a good time to take their critical business functions and move them there during the current pandemic. But it is a good time to prepare for any future disaster that may come along, and secure cloud storage is the best way to assure that needed data is readily accessible from anywhere.

**In Conclusion**

If your firm is not currently participating in a work-at-home environment, you should be planning for it in the future. If employees have a laptop as their primary work machine, they should bring it home every day. That way, they’ll be ready to respond quickly should the situation change overnight.

Sharon D. Nelson, John W. Simek and Michael C. Maschke are the president, vice president and CEO of Sensei Enterprises, Inc., a legal technology, cybersecurity and digital forensics firm based in Fairfax, Virginia. Reach them at (703) 359-0700 or www.senseient.com.

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**Be an Author**

The Bulletin is always on the lookout for quality manuscripts for publication on these pages. We publish articles on a wide variety of subjects and favor such topics as access to justice, legal funding, judicial independence, diversity in the profession, professionalism and future trends. We also publish columns on ethics, practice tips (in specific areas of law), law practice management and legal history, as well as essays on law and life.

The editorial staff welcomes inquiries and is happy to discuss requirements for publication. If you have a manuscript, suggestion or idea, contact Editor Gary M. Stein at (503) 431-6391. He can also be reached by email at editor@osbar.org.
As an active member of the bar, you have access to 50 legal publications written for and by Oregon attorneys.

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**CLE Seminars**

_Seminar operations during COVID-19 situation_

Please check our events calendar at [www.osbar.org](http://www.osbar.org) to see the current status of OSB CLE Seminars Department and section CLE events. If you have questions, please contact the OSB CLE Service Center at (503) 431-6413 or (800) 452-8260, ext. 413 or by email at cle@osbar.org.

Several section CLE events scheduled for April that are not cosponsored with the OSB CLE Seminars Department have already been canceled. Registrants will receive notice by email of program cancellations and any plans to reschedule.

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**Legal Publications**

*Insurance Law in Oregon, 2020 Edition*

This new edition of Insurance Law in Oregon is completely reorganized and updated, with 12 chapters covering new subject matter never before included in this publication. Our expert authors explain the fundamental issues of insurance law, such as interpreting policy language and the insurer’s duty to defend, settle, and pay. In addition, they address cutting edge issues, such as cyber and privacy insurance and employment practices liability insurance. This comprehensive resource will make a perfect addition to your library.

*Oregon Insurance Law Codebook, 2020 Edition*

This new two-volume codebook includes all of the Oregon Revised Statutes relevant to insurance law, chapters 731 to 752, and is the perfect companion to Insurance Law in Oregon.

Preorder these books by May 1 and save 10% with coupon code INSURANCE2020

**More Publications Coming in 2020**

- *Rights of Foreign Nationals*, including a new chapter on airport issues.
- *Oregon Civil Pleading & Litigation*, a melding of Oregon Civil Litigation Manual and Oregon Civil Pleading and Practice.

View the full catalog at [www.osbar.org/publications](http://www.osbar.org/publications) or contact the order desk: (503) 431-6413.
Four Positions Open on Board of Governors

The Oregon State Bar is seeking candidates for four open seats on the Board of Governors — one each in Region 1 (Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler counties), Region 3 (Coos, Curry, Douglas, Jackson, Josephine and Klamath counties), Region 4 (Clatsop, Columbia, Lincoln, Tillamook, Washington and Yamhill counties) and Region 5 (Multnomah County).

The Board of Governors determines the general policies of the bar and approves its budget each year. It consists of 15 lawyers elected from eight regions, four public members appointed by the board and the non-voting position of immediate past president.

The board has five regular meetings a year; nearly half are in the Portland area and the remainder at locations around the state. Committee meetings are held at the bar center in Tigard, three to four weeks prior to regular board meetings. Board members also serve as liaisons to the Professional Liability Fund, bar sections and committees, and numerous other groups.

Candidates for the four open seats have until 5 p.m. on Tuesday, May 12, to file statements with the bar. Ballots and candidate statements will be sent to members on Oct. 5 via an email link to an online ballot, which must be completed by 5 p.m. on Oct. 19. Elected board members will begin their four-year terms on Jan. 1, 2021.

For more information or to print a copy of the candidate statement, go to osbar.org/leadership/BOG, or contact Danielle Edwards at dedwards@osbar.org or (503) 431-6426.

File & Serve Upgrade Set for April 10

The Oregon Judicial Department will upgrade File & Serve, the electronic filing system for Oregon’s circuit courts and tax court, on April 10. The upgrade is set to begin at 6 p.m., and the system will be offline for at least four hours. Plan to submit any filings for eFile prior to 6 p.m.
The new version of File & Serve will look and function the same as the current version. The only substantive difference will be the addition of case subtypes as a filing option. The new version of File & Serve has other optional features to be evaluated after the upgrade.

OJD will host several File & Serve webinars from April 6-10, which will cover functionality, including how to add case subtypes, and a discussion about Oregon’s Electronic Filing Standards.

For more information about the upgrade, email L.S.Dupree@ojd.state.or.us or call (503) 986-5883.

LRAP Applications Are Due April 15

If you work in public service — as a public defender, district attorney, for a civil legal services provider or for a nonprofit organization providing legal representation to low-income individuals — you know how hard it is to pay off law school debt on a public servant’s salary. Your job is vital for increasing access to justice, but the lower-than-average pay means lower-than-average payments on your school loans.

That’s why the Oregon State Bar created the Loan Repayment Assistance Program.

LRAP uses forgivable loans to help lawyers working in public service pay their student debt. The program offers loans in any amount up to $7,500, and participants can receive the loans for three years as long as they stay in qualifying employment.

The LRAP application deadline for 2020 is Wednesday, April 15.

For more information, visit www.osbar.org/lrap, or contact LRAP Coordinator Cathy Petrecca at cpetrecca@osbar.org or (503) 431-6355.

New Small-Estate Affidavit Form is Now Available

The Oregon Judicial Department has created a new Small-Estate Affidavit (with instructions) for statewide use in small-estate probate cases, following enactment of House Bill 3007 (2019), Or Laws 2019, ch 165.

The new form is available as a printable PDF on the OJD’s online forms center at www.courts.oregon.gov/forms/Pages/small-estate.aspx.
Discipline

Note: More than 15,000 people are eligible to practice law in Oregon. Some of them share the same name or similar names. All discipline reports should be read carefully for names, addresses and bar numbers.

MARK JOHN HOLADY
OSB #900682
Beaverton
60-day suspension

Effective Dec. 23, 2019, the disciplinary board accepted a stipulation for discipline and suspended Beaverton lawyer Mark John Holady for 60 days for violations of RPC 1.3 (neglect of a legal matter) and RPC 1.15-1(d) (duty to promptly deliver to a third party funds the party is entitled to receive).

In 2008, Holady started to represent an heir search firm, Brandenburger & Davis, in the pursuit of heirs’ claims to an intestate estate that had reverted to the State of Oregon. Holady commenced work on the file in April 2008 but did not resolve the matter until February 2018, with much of the delay due to his own repeated periods of inaction that exceeded a year or more.

In February 2018, Holady received a warrant from the state representing the estate’s funds. He deposited the funds into his trust account, but waited for seven months before distributing the funds.

The stipulation said Holady’s conduct was aggravated by a pattern of misconduct, multiple offenses and his substantial experience in the practice of law. In mitigation, Holady had no prior disciplinary history, did not act with a dishonest or selfish motive, and expressed remorse.

ERIKA HUEBSCHMAN
OSB #131859
Jacksonville
1-year suspension, 6 months stayed; 3-year probation

Effective Jan. 5, 2020, the Oregon Supreme Court approved a stipulation for discipline suspending attorney Erika Huebschman for one year for violations of RPC 1.4(a) & (b) (inadequate client communication), RPC 1.15-1(a) & (c) (failure to segregate and maintain client funds in trust), RPC 1.15-1(d) (failure to promptly deliver client property), RPC 1.16(a)(1) (failure to withdraw when continued representation will result in a violation of the RPCs), RPC 5.5(a) (unauthorized practice of law), RPC 8.1(a)(1) (knowing false statement in a disciplinary matter), RPC 8.1(a)(2) (failure to respond to a lawful demand from a disciplinary authority), RPC 8.4(a)(3) (dishonesty or misrepresentation) and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

Six months of the suspension is stayed pending completion of a three-year probation.

Huebschman’s violations stemmed from four separate client matters and her dealings with the bar. In the first matter, she failed to deposit a retainer into her trust account and, after the client terminated the representation, she failed to return the client’s funds in a timely manner and failed to respond to the bar’s inquiries.

In the second matter, Huebschman failed to respond to opposing counsel or the court until after counsel complained to the bar; after that, Huebschman negotiated with counsel, communicated with her client and participated in a status conference while she was administratively suspended. Huebschman’s suspension interfered with the scheduled trial, but she did not inform her client that she was suspended and could not appear until four days before trial, necessitating a reset.

In the third matter, Huebschman failed to notify her client of her intent not to seek child support before she sent a demand letter for other relief on the client’s behalf.

In the fourth matter, Huebschman failed to respond to her client’s inquiries about unremitted costs or specifically discuss Huebschman’s intention to dismiss one of the client’s causes of action prior to arbitration. Following a successful arbitration, Huebschman failed to remit the amount designated for costs to her client or the court to pay the deferred filing fee.

During her administrative suspension, Huebschman failed to withdraw from the matter and instead signed the satisfaction of judgment on behalf of her client, and thereafter failed to respond to the bar concerning the matter.

In the final matter, Huebschman inaccurately stated in her reinstatement affidavit that she did not practice law during her suspension.

Note: Current disciplinary opinions and orders not yet published in the Disciplinary Board Reporter may be found at orbar.org/publications/dbreporter/2019.html.

Legal Ethics Assistance

The bar’s General Counsel’s Office is available to discuss prospective legal ethics questions related to a member’s own conduct. A staff attorney can help identify applicable ethics rules, point out relevant formal ethics opinions and other resources and share an initial reaction to callers’ ethics questions.

The assistance that bar staff provides is informal and nonbinding and is not confidential; no attorney-client relationship is established between callers and the lawyers employed by the Oregon State Bar. (Lawyers seeking confidential ethics advice about the propriety of their previous decisions or actions should consult a private attorney.)

Members with questions can call the ethics helpline at (503) 431-6475 to be connected to the first available bar staff attorney.
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BAR PEOPLE

Among Ourselves

Peter O. Tuenge of Keating Jones Hughes has joined his colleagues — Robert M. Keating, Steven P. Jones and Scott G. O’Donnell — as a member of the American Board of Trial Advocates. ABOTA is a highly selective, invitation-only, national association of experienced trial lawyers and judges that strives to foster improvement in the ethical and technical standards of trial practice. Tuenge has obtained defense verdicts on behalf of some of the leading health care systems in Oregon and Washington, defending emergency medicine doctors, neurologists, oral surgeons, dentists and nurses.

Lane Powell has selected Lisa Poplawski to participate in the Leadership Council for Legal Diversity Fellows program. The 2020 class of fellows is a select group of experienced attorneys from diverse backgrounds who have been recognized for their potential as leaders in their organizations. The fellows participate in a year-long, in-depth program devoted to relationship-building, in-person training, peer-group projects and contact with LCLD’s top leadership.

Mannix Law Firm has announced two new hires. Nicole Weston joined the firm in August 2019 after serving almost 17 years as a prosecuting attorney in King County, Wash. She will be the key person in the firm working on victim advocacy and improvements to public safety. Joe Huddleston now is an associate after previously clerking at the firm. His work includes transportation projects, estate planning and administration, and business law. The Mannix Law Firm is celebrating its 34th anniversary in 2020 as Kevin Mannix leads efforts to improve the transportation system in Oregon. He is pressing for rail improvements, focusing on the use of rail to reduce carbon emissions.

Connor Harrington, formerly an associate at Mannix Law Firm in Salem, is now of counsel to the firm. He continues to work on Mannix Law Firm projects, especially relating to transportation and property taxes. In addition, Harrington has established his own law office in Eugene — Harrington Legal. This practice focuses on business law, estate planning and probate administration.

Bend-based Karnopp Petersen has announced that Sarah R. Monkton has joined the firm as an of counsel attorney practicing in the areas of business and employment law, Indian law and natural resources and water law. She provides counseling and defense to employers and offers workplace investigations and trainings to aid employers in managing risk and cultivating a positive work environment. Her practice also emphasizes federal Indian law and natural resources concerns relating to the Endangered Species Act, National Environmental Policy Act, forest management and timber harvesting, and federal, state and tribal environmental and natural resources regulations.

Elizabeth Rosso has been elected as a shareholder at Jordan Ramis. Rosso is a member of the firm’s environmental practice group, focusing on environmental compliance, water quality, and wetlands and drainage. She is experienced in a full range of environmental issues, including compliance with the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act, as well as natural resources conservation and protection under the Marine Mammal Protection Act, Coastal Zone Management Act and Endangered Species Act. She joined the firm in 2018 after serving 14 years as an officer in the U.S. Navy’s Judge Advocate General’s Corps.

Lake Oswego law firm Olsen Barton has announced that Alex Graven has joined the firm as an associate. His practice focuses on business, real estate and general civil litigation matters. He has served as a law

Moves

Gregory Zerzan has been named principal deputy solicitor of the U.S. Department of the Interior. Previously, Zerzan served as deputy solicitor for the agency’s General Law Division. The Department of the Interior is the fourth Cabinet agency established in the executive branch. Created in 1849, it has responsibility for management of the nation’s natural resources and cultural heritage.

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The Bulletin welcomes short items about Oregon lawyers and law firms for the Bar People pages of the magazine. Notices are published at no cost.

Email notices to: editor@osbar.org

Submissions are subject to editing and published in the order received.

The Bulletin publishes photographs (single headshots only) in “Moves” and “Among Ourselves” and “In Memoriam.” The fee is $20 for each photograph. The notice itself is free. Paid professional announcements are also available. Inquire at advertising@osbar.org.

Questions? Call the Bulletin, (503) 431-6356 or (800) 452-8260, ext. 356.

Gwyn Styarfyr has become a shareholder with Arneson and Stewart in Roseburg. The firm’s name now will be Arneson, Stewart & Styarfyr. The six-lawyer firm will continue to emphasize family law, dependency and criminal defense. Styarfyr is the treasurer of the Douglas County Bar Association, a member of the Oregon Criminal Defense Lawyers Association and a donor and supporter of Battered Person’s Advocacy.

Andrea Meyer has joined Sussman Shank as an associate in the firm’s litigation department. Meyer is a litigator whose practice focuses on general commercial litigation, business disputes and real estate litigation. She counsels individuals and businesses on a number of issues, including business owner disputes, contract disputes, foreclosure matters and boundary line disputes.

Edward T. Decker has joined the Portland office of Miller Nash Graham & Dunn. He joins the firm’s litigation team and will represent businesses and individuals in disputes and government regulatory investigations, as well as in class-action lawsuits. Before joining Miller Nash Graham & Dunn, Decker practiced as a litigation associate in the New York office of Shearman & Sterling.

Eileen Eakins has opened a new firm in a new location, where she continues to provide general counsel to local governments. Effective Jan. 1, 2020, The Law Office of Eileen Eakins is now Northwest Local Government Legal Advisors and has relocated to

Parsons Farnell & Grein, LLP

is pleased to announce that

Paul A. Mockford & Lisa M. Farrell

have been made partners with the firm.

Paul practices in the firm’s insurance recovery group, representing individuals and businesses in disputes with insurance carriers. Paul has been recognized as a “Rising Star” for insurance coverage in the Oregon Super Lawyers® 2014–2019 lists. Before focusing his practice on insurance coverage, Paul prosecuted jury trials for the Multnomah County District Attorney’s Office.

Lisa’s practice focuses on business transactions and estate planning. Lisa assists her business clients with corporate governance matters, a wide variety of general contract matters, mergers and acquisitions, and succession planning. Her estate planning practice dovetails with her business work and allows her to advise private business owners and high-net worth individuals on the important transition of ownership, management, and wealth to the next generation.
Jack Kinsey has joined McGaughey Erickson as an associate, focusing on securities litigation, business breakups and regulatory and white collar defense. Kinsey brings a wealth of experience, having litigated more than 30 jury trials and numerous bench trials and arbitrations across the state in criminal and civil matters.

Kara Stoddart has joined Foster Garvey as an associate in the firm’s trusts, estates and charitable organizations group in Portland. She is a fiduciary litigator with extensive experience representing individuals, trust companies and nonprofit organizations in a wide range of complex trust and estate disputes. Stoddart also is an experienced commercial litigator who advises clients on a variety of business disputes.

Karen Hobson has joined the estate planning practice group at Tonkon Torp. Hobson, who has practiced in the areas of tax, estate planning and administration since 2008, regularly advises clients on tax planning strategies to minimize state and federal transfer taxes through the use of charitable vehicles, grantor trusts and limited liability companies. Hobson also has experience advising on preFORMATION planning, entity formation and corporate governance issues — expertise that ideally complements her planning practice for those clients with sophisticated business succession goals.

from Bridgeport Village in Tualatin to 5285 Meadows Road, Suite 400, in Lake Oswego.
Wayne C. Annala, a member of the Oregon State Bar for more than 60 years, passed away on Feb. 2, 2020, at the age of 87. He was born in Hood River on Nov. 2, 1932. After graduating from Hood River Valley High School in 1950, Annala went on to receive his bachelor of science and his juris doctor degrees from the University of Oregon. He then clerked for the Hon. William G. East at the federal district court in Portland in 1957 before working as an associate attorney at the law firm of Boyrie & Miller until 1960.

Annala then returned to Hood River to take over John N. Mohr’s law practice following Mohr’s untimely passing. Soon, the law firm of Annala Lockwood was born, and Wilford K. Carey, a former City of Hood River municipal court judge, joined the firm in 1973. Over the years, many talented and respected local attorneys practiced with and were mentored by Annala, including the Hon. Jeff Baker, the Hon. Don W. Hull, Mike Thompson, Vic VanKoten and Ruben Cleaveland.

Annala was presented with the Edwin J. Peterson Professional Award from the Oregon State Bar in 2005.

Morris Chapin “Chap” Milbank passed peacefully at home on Feb. 13, 2020. Milbank was born to Margaret Willey Milbank and Morris Milbank in Grants Pass on June 17, 1933. He was the third sibling, brother to sisters Sally Milbank Thomson and Caroline Milbank. He attended Grants Pass schools through the ninth grade. His sister, Caroline, taught him how to swim in the Rogue River. After that, he spent many a summer day running the Rogue in a variety of watercraft. He finished high school at Midland School (Los Olivos, Calif.) in 1951. His college education was completed at the University of California, Berkeley, and he was commissioned an Ensign, USNR in 1955.

Lisa’s practice focuses on representing public and private sector employers in labor negotiations, labor arbitrations, and administrative hearings. Lisa has successfully litigated unfair labor practice charges before the National Labor Relations Board and state labor boards. She also advises and provides training to employers on the interpretation of collective bargaining agreements and other labor matters.
Milbank served two years on active duty aboard the USS Plumas County (LST-1083) in the western Pacific. Upon his release from active duty, he completed law school at Willamette University, received his J.D. degree and was admitted to the Oregon State Bar in 1960. He continued in the Navy Individual Ready Reserve and eventually attained the rank of commander.

Milbank clerked for one year for the Hon. Harold J. Warner at the Oregon Supreme Court. He was a founding partner of the firm Brown, Schlegel, Bennett and Milbank. In 1982, he opened his own law office and practiced until 2013.

Milbank was a fierce advocate for Oregon’s Public Trust Doctrine, which protects the right of free access to and use of the beds and banks on all Oregon navigable rivers for everyone. He was past president of the Marion County Bar Association, past president of Capital Kiwanis of Salem, commanding officer of Surface Division 13-28M (Salem) and past president and longtime secretary for the North Santiam River Guides Association. He was a former senior warden of St. Paul’s Episcopal Church in Salem, past president of the Walton Guest House and a longtime member of the Morningside Neighborhood Association, and he served a term as a member of Salem City Budget Committee.

Milbank enjoyed fishing in Alaska and drift boating on the rivers of Oregon and Idaho. He and his wife of 62 years, Dee, built a log cabin on the North Santiam River, where they spent many enjoyable hours in his later years.

He is survived by his wife; children Sam, Karen and Cliff; and grandchildren Edward, Jennifer, Maeve and Maren.

Forgivable Loans for Lawyers in Public Service

If you work in public service — as a public defender, district attorney, for a civil legal services provider, or for a non-profit organization providing legal representation to low-income individuals — your job is vital for increasing access to justice.

That’s why the Oregon State Bar created the Loan Repayment Assistance Program. LRAP uses forgivable loans to help lawyers working in public service pay their student debt. The program offers loans in any amount up to $7,500 and participants can receive the loans for three years, as long as they stay in qualifying employment.

April 15 is the deadline for LRAP applications.

Visit the website for forms and information www.osbar.org/lrap or contact LRAP Coordinator Catherine Petrecca at cpetrecca@osbar.org

Additional Notices

Hon. Garr M. King
83, Portland, Feb. 5, 2019

Lara L. Skidmore
50, Portland, July 7, 2019

Robert E. Burney
59, Beaverton, July 10, 2019

James T. Hubler
75, Portland, July 10, 2019

Roger F. Dierking
92, Portland, Aug. 12, 2019

Richard E. Talbott
80, La Jolla, Calif., Aug. 17, 2019
FOR SALE


FOR SALE – Complete set of Oregon Reports and Court of Appeals Reports. PRICE: $5,000 Shelves available. Will deliver in Oregon. CALL: (541) 426-4912.

LAW LIBRARY, COMPLETE SET OREGON REPORTS and Oregon Appellate Reports, $5,000, (503) 650-8010.

OFFICE SPACE

1400 SW MONTGOMERY STREET, PORTLAND Offices available in Goose Hollow neighborhood, just outside downtown core. Share space with small firm, solo lawyers, other professionals. $750/month includes parking, reception services, conference room, other amenities. Support staff space also available. Contact Gaylord Eyerman Bradley PC at (503) 222-3526 or email receptionist@gaylordeyerman.com.

5200 MEADOWS EXECUTIVE OFFICE SUITES – Offering Executive Suites, mail service, phone reception, meeting rooms, business support and more. Call (503) 726-5999 or visit 5200meadows.com.

$100/ MO. OFFICE SPACE - DOWNTOWN PORTLAND ON PIONEER SQUARE – Furnished office space in the Jackson Tower on Pioneer Square in downtown Portland. 24/7 secure elevator, shared conference room, kitchen, use of copier and scanner. One office, 11x11 overlooking pioneer square. There is also a cubicle across the hall available for $500/mo. We have a relaxed atmosphere with enjoyable people to be around. Only like-minded professionals need inquire. $1,000 per month, on a month to month basis. For more information, please contact Erik Lawrence at (971) 277-1080 or elawrence@swiderhaver.com.

BUILDING FOR SALE – $285,000. Ideal for law office. Gateway area.

Bob at Butler Brokers (503) 222-4949 Cell.

LAKE OSWEGO KRUSE WAY – Class A Office Building. 4248 Galewood Street, Lake Oswego, OR. 97035. Primarily Attorneys, Partner-sized, windowed offices. Receptionist, Phones, High Speed Internet, Conference Rooms available or included. Free parking. Office lease prices range from $600 to $1400 per month. Phone numbers or ported numbers available. Call for information. John (503) 675-4343.

NE PORTLAND CONVENIENT LOCATION – Large offices with reception services, phones, internet, copier, supplies, conference rooms and more included. Additional opportunities available as owner transitions to retirement. Price negotiable depending upon arrangement. (503) 256-0780.

OFFICE SPACE AVAILABLE IN THE HISTORIC AMERICAN BANK BUILDING - top floor overlooking Pioneer Courthouse Square (with Max stops), large support staff spaces also available. Rent includes reception, conference rooms, telephone system, internet, telephone lines and copier/scanner for additional fee. Building has a gym with showers, bike parking and the windows open. Rent $1150/mo. for office, $450-660/mo for support staff space. Contact Robert @ (503) 226-8122 or robert@swiderhaver.com.

ONE BEAUTIFUL OFFICE AVAILABLE IN MODERN, CLASS A BUILDING IN DOWNTOWN PORTLAND – Two secretarial spaces are available as well. Located in proximity to Multnomah County and Federal courthouses. The office is within a suite shared by two established law firms. The office and the available conference rooms present your clients with knockout views of the West Hills. The location is on the top floor of the 1000 Broadway Building. Two conference rooms, kitchen and file room available to share and receptionist services provided as part of lease. Copier, fax and postage services available. Parking (not included), private gym, and bank in building. Call Scott Brown at (503) 228-5027.

PORTLAND DOWNTOWN – Remodeled & modern Class A office space on 9th Floor of 1000 SW Broadway Building. Currently available for sublet is 1 office and 1 smaller work space/office. Offered together or separate. Price and terms are negotiable and depend on term and amenities. Usual amenities offered (conference room, kitchen, receptionist, copier, workout room, etc.). Contact Tim Landis @ (503) 220-1331 / tim@landislaw.com or Mark Olmsted @ (503) 445-4453 / mark@olmstedlaw.com.


SUBLEASE ONE OFFICE SPACE or make Virtual /Executive office arrangement with a law firm in Beaverton. Newly remodeled building in Griffith Park (off HWY 217, near Beaverton downtown). Free parking, internet & assistant work station. Rent is $200-600 depending on your needs. Contact Bao (503) 737-5621 or contact@askwang.com.

TWO LAW OFFICES AVAILABLE DOWNTOWN at the Honeyman House, 1318 SW 12th Avenue, Portland. Professionally remodeled Victorian House. Easy street parking for clients, 10 minute walk to the courthouse, and easy freeway access. Amenities include law library, large conference room, access to copier and fax. One office is $600 per month and a smaller office is $425 per month. Both offices come with a free tenant parking space ($205/month value) with a minimum 30 month lease. Contact Allan at (503) 781-7887 or Eric at (503) 224-1212.

TWO OFFICES AVAILABLE IN DOWNTOWN PORTLAND – Partially furnished, upstairs corner double office (22 x 16), with five large windows and sliding door to divide into two spaces. $1275. Nice upstairs office (11 x 14.5) with large window, newer carpet and paint, and separate secretarial area with desk and chair outside door. $695.
Two Offices Available in South Salem Office Building – $1,600 a month for each office space. (Office on the main floor and upstairs) Includes full-time receptionist, waiting room, kitchen, 8 hours a week clerical/paralegal assistance, phones, internet, placement in the corner of SW Clay. George: (503) 226-3607.

Two Offices Available in Downtown Portland 1 Month Free with a 12 Mo Lease – One is 14x12 for $1,200 per month and the other is 15x10 for $1,025 per month. 10th floor office in Cascade Building. 2 blocks from Pioneer Square and MAX Transit hub. Alder Street Parking Garage across street. Parking available $200/month. 521 Square and MAX Transit hub. Alder Street Parking Garage across street. Rent includes reception, telephone/assistance, phones, internet, place - marking assistance, phones, internet, place - marking equipment. 7 experienced attorneys, 4 blocks to courthouse, coffee shop and restaurant next door, fitness center one block. Parking available $200/month. 521 SW Clay. Jamie: (503) 243-2733 or jamie@kramer-associates.com

Positions Available

It is the policy of the Bulletin to only list opportunities for employment that are consistent with OSB Bylaw 10.

A Laterai Move is a Difficult Decision, so let us find you the perfect fit. Since 2000, Stayer Legal Search has been connecting lawyers with great opportunities in all sizes of law firms and companies. Our current searches cover nearly all practice areas. Let’s talk in confidence. Candice Wilson Stayer, Stayer Legal Search LLC cwstayer@stayerlegal search.com (503) 968-0901.

A Portland Metro Area AV Rated Law Firm is seeking an Associate Attorney to join their grow - ing defense litigation practice. This firm represents employers and insurers in the areas of workers’ compensation, employment law and insurance defense. This is an excellent opportunity for new lawyers who have strong interpersonal, analytical and organizational skills and a willingness to work in a demanding but informal and positive environment.

As an associate you will also have the opportunity to work closely with senior attorneys to develop hands-on experience and to work collaboratively in a team environment. The ideal Associate will be licensed in Oregon or Washington. Dual license is a big plus. Candidates should have strong research and writing skills, excellent verbal communication skills and have a competitive personality. This is a full time, full benefit position. Benefit package includes medical insurance, dental insurance, life insurance, long term and short term disability insurance and 401K options. Interested candidates must submit a cover letter, resume, transcript and writing sample to recruiting@bishophopcreekservices. com to be considered for the position.

Assistant Disciplinary Counsel – Investigation – The Oregon State Bar is looking for someone to provide counsel to the Bar in the evaluation, investigation, and, where appropriate, negotiated resolution of ethics complaints made against Oregon lawyers. Visit http://www.osbar. org/osbcenter/openings.html for job details. Equal Opportunity Employer.

Associate Attorney – Established Central Oregon law firm looking for a family law associate attorney to join our team. Ideal qualifications include at least 2-3 years of experience in family law, a competitive spirit, strong work ethic, and superior oral and written skills. Competitive salary and benefits will be based on experience and qualifications. Please submit a cover letter, resume, references and writing sample to resume@redmond-lawyers.com.

Associate Attorney – Family Law – Small, busy Portland family law firm seeks enthusiastic associate. Friendly, supportive work environment. 2-5 years relevant experience preferred. Email letter/resume to mark@kramer-associates.com or fax letter/resume, attn: Jamie: (503) 274-4774.

Associate Attorney, New - port, OR – Well established law firm representing a variety of local government entities, business organizations and individuals primarily in civil matters seeking a proactive attorney with excellent research, writing and communication skills who can produce the high-quality work the firm is known for. We offer the opportunity to gain experience in a variety of areas of civil law while taking on significant responsibility under the guidance and mentoring of senior attorneys. Please submit resume, writing sample and professional references to davis@mggdlaw.com.

Associate for AV Rated Southern Oregon Law Firm – Practice focused on Civil Litigation, Family Law, and Estates. Competitive salary/benefits based on experience. 0-3 years experience. Please fax resume to Hiring Partner, Cauble, Selvig and Whittington (541) 471-1704.

Attorney Position – Spokane preeminent AV rated, Super Lawyers recognized litigation oriented law firm, seeks lawyer with strong law school credentials, with at least 2 years’ experience, with top communication, research, and writing skills. This is an excellent opportunity to affiliate with one of the Region’s most prestigious litigation firms. Please send resume to Susan Nelson at Dunn & Black P.S., 111 N. Post, Ste. 300, Spokane, WA 99201 or snelson@dunnandblack.com. For more information, visit our website at www.dunnandblack.com.

Bank Firm Seeking Senior Litigation Attorney – The thriving Bend and Portland law firm of Lynch Conger LLP is seeking an experienced senior litigator to add to our growing Bend team. This position will work with many of our existing clients to provide litigation services in Central Oregon. The position is flexible in that we will consider Senior Associate, Of Counsel, and Partner-level litigators. The ideal candidate should be licensed in Oregon, have at least 10 years civil litigation experience, bring their own partial book of business, demonstrate excellent client relations skills, and enjoy working in a family-oriented environment. We value enthusiasm and personality. We are a team player. Headquartered in Bend with suburban Portland/Lake Oswego office. Competitive salary, benefits, and bonus structure.

Submit resume and short cover letter to Office Manager Kaci Price at kprice@lynchconger.com.

Business Attorney – Duffy Kekel LLP, a 13-attorney boutique law firm focusing on estate planning and administration, business, tax and real estate advice in Portland, Oregon, seeks a qualified candidate to fill an associate position. The ideal candidate will have the following qualifications: Minimum 7 years of experience working with business entities, including business transactions, real estate leases and acquisitions, and general business matters; Exceptional academic credentials; Strong written and interpersonal communication skills; Oregon and Washington bar admission. The ideal candidate will also have a desire to actively market and develop their practice, in addition to supporting the firm’s existing client base. We offer an exceptional work environment, outstanding community and professional reputation. We value our firm culture, which is collaborative, friendly and respectful. Qualified candidates should submit cover letter and resume to Desiree Shestakofsky, dshестакofsky@duffykekel.com.

City of Oregon City Request for Indigent Defense Attorney for Municipal Court Notice is hereby given that the City of Oregon City will receive proposals for an independent contract for an Indigent Defense Attorney opening until 4:30 pm on Friday, April 10, 2020. The attorney must be a member of the Oregon State Bar. The city contract will end on July 1, 2021. It may be renewed for an additional period of two-years with the mutual written agreement between the parties. The contract would start May 1, 2020 unless otherwise agreed. http://bids.orcity.org.


Estate Planning Associate – Arnold Gallagher P.C., a premier firm located in Eugene, Oregon, is seeking an associate attorney with three or more years of substantive estate planning experience to join the firm’s growing estate planning practice. The ideal candidate will...
have experience planning for taxable and non-taxable estates and administering large and small estates and trusts. Experience with structuring and drafting a wide range of estate planning documents desired. Strong academic credentials and analytical ability required. To apply, please send a cover letter, résumé, writing sample and law school transcript (unofficial is acceptable) to Kris Coburn at kcoburn@arnoldgallagher.com or Arnold Gallagher P.C., P.O. Box 1758, Eugene, OR 97440-1758. All replies are confidential. Arnold Gallagher P.C. is an equal opportunity employer committed to diversity in the workplace.

LITIGATION AND CREDITORS’ RIGHTS ATTORNEY – EUGENE LAW FIRM - Hershner Hunter, LLP is the largest full-service business firm in Eugene, and is seeking an associate attorney to work in a hybrid position in the litigation and creditors’ rights groups. This is a partner-track position that will involve litigation and creditors’ rights work in Washington, Idaho, Oregon and California. We are looking for candidates with two or more years of experience in commercial litigation and/or creditor bankruptcy fields. Past experience representing financial institutions is preferred. Candidates should send materials to Nicholas Frost, at nfrost@hershnerhunter.com. Hershner Hunter, LLP is an equal opportunity employer.

LOOKING FOR AN ATTORNEY WITH A SMALL PRACTICE that wants to expand in the SW Portland area. We have overflow work, would prefer someone with experience with criminal, and PI work, overflow will be some family law, we have overflow will be some family law, and we are seeking an associate attorney with three or more years of substantive transactional experience to join the firm. The ideal candidate will have experience with mergers and acquisitions, corporate finance, real estate and general corporate representation of businesses. Experience with structuring, negotiating, and drafting a wide range of transactional documents and contracts desired. Strong academic credentials and analytical ability required. To apply, please send a cover letter, résumé, writing sample and law school transcript (unofficial is acceptable) to Kris Coburn at kcoburn@arnoldgallagher.com or Arnold Gallagher P.C., P.O. Box 1758, Eugene, OR 97440-1758. All replies are confidential. Arnold Gallagher P.C. is an equal opportunity employer committed to diversity in the workplace.

STAFF ATTORNEY wanted for nine-lawyer public defender’s office. Full-time. Must be a member of the Oregon State Bar by start date. We handle misdemeanor and felony criminal cases, as well as juvenile delinquency and juvenile dependency cases. We prefer an attorney with felony experience, but all candidates will be considered. Salary depends on experience, plus benefits. For information contact: Southwestern Oregon Public Defender Services, Inc. Attention: Laynie Wilson, Office Manager 465 Elrod Avenue Coos Bay, OR 97420. (541) 267-2472. layniew@swopds.org.

TRANSACTIONAL ATTORNEY – EUGENE LAW FIRM - Hershner Hunter, LLP is the largest full-service business firm in Eugene, and is seeking a business transactions attorney to fill an associate position. The associate position is partner-track, working within the business transactions group on a variety of matters, including business acquisitions and sales, real estate, entity formation and corporate governance. The ideal candidate will have three to six years of experience, with experience in health care transactions preferred. Candidates should send materials to Nicholas Frost, at nfrost@hershnerhunter.com. Hershner Hunter, LLP is an equal opportunity employer.

TRIBAL COURT SEEKS INDIGENT DEFENSE ATTORNEYS – The Confederated Tribes of Grand Ronde Tribal Court is seeking applications for our Indigent Defense Program. These attorneys will represent children and parents for child abuse and neglect cases in our Tribal Court. Call (503) 879-4623, email CourtPrograms@grandronde.org or visit our website: https://www.grandronde.org/government/tribal-court/court-programs/

TRUSTS AND ESTATES ATTORNEY Established and close-knit Bend law firm seeks trusts and estates attorney. Ideal candidate will have at least 3+ years of estate planning experience. The candidate will execute on a wide-variety of planning and administration of taxable and non-taxable estates. Firm is offering a partnership track, full benefits package, and career growth. The candidate must have excellent qualifications, strong listening skills, and a client-relationship focus. Please email resume, cover letter and writing sample to rmiharbison@hurley-re.com.

PRACTICES FOR SALE

CENTRAL WASHINGTON ELDER LAW & ESTATE PLANNING PRACTICE with a practice/case breakdown by revenue of approximately 34% Probate, 30% Estate Planning, 19% Guardianship, 13% Medicaid Planning, and 4% Vulnerable Adult. The Practice has average gross revenues of over $266,000 the last three years (2017-2019), with 2019 gross revenues over $300,000. The Owner of the Practice is open to selling the office building to the person who purchases the Practice, if desired. Contact info@privatepracticetrs.com or call (253) 509-9224.

ESTABLISHED PIERCE COUNTY INSURANCE DEFENSE PRACTICE that was established in 1998 and has approximately 150 active clients as of December 2019. The average gross revenue the last three years was over $1,017,000. The practice/case breakdown by revenue is 50% Bodily Injury, 10% Property Damage, 10% Product Liability, 10% Professional Liability, 10% Personal Injury, and 10% Other. Contact info@privatepracticetrs.com or call (253) 509-9224.

ESTABLISHED SEATTLE ESTATE PLANNING PRACTICE that has a practice/case breakdown by revenue of approximately 45% Estate & Trust Administration, 40% Estate Planning, and 15% Other (Collateral Matters, Estate Tax Preparation, Real Property Issues, etc). The Practice is...
located in the heart of downtown Seattle, has averaged gross revenues of over $286,000 the last three years (2016-2018), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call (253) 509-9224.

ESTABLISHED TUMWATER FAMILY LAW & ESTATE PLANNING PRACTICE that has a practice/case breakdown by revenue of approximately 70% Family Law, 15% Estate Planning, 5% Real Estate, 5% Business, and 5% Other. The Practice is located in a 2,650SF building that is also available for sale, if desired. With 2019 gross revenue right around $200,000 and 166 active clients, this Practice is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call (253) 509-9224.

EXTREMELY PROFITABLE SEATTLE IMMIGRATION LAW PRACTICE that has average gross revenues of over $1,600,000 the last three (3) years (2017-2019). Even more, in 2019 the gross revenues were over $1,800,000! This successful firm has substantial advance fees in trust. The Practice employs two (2) attorneys in addition to the partners, seven (7) paralegals, three (3) full-time administrative staff, and one (1) part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call (253) 509-9224.

REAL ESTATE LEGAL PRACTICE WITH TWO LOCATIONS is head-quartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d'Alene), two attorneys, three support staff, and average gross revenues over $625,000 the last three years (2017-2019). For more information on this turn-key practice, contact info@privatepracticetransitions.com or call (253) 509-9224.

SUCCESSFUL KING COUNTY INSURANCE DEFENSE PRACTICE that is located in the heart of Seattle and had 2019 gross revenues of $1,300,000. The Practice was established in 2006, has a great reputation in the legal community, and has five (5) total employees, including the owner. Contact info@privatepracticetransitions.com or call (253) 509-9224.

THINKING ABOUT BUYING OR SELLING A PRACTICE? If you are, we can help you! Guaranteed. Private Practice Transitions, Inc. is the preeminent provider of specialized brokerage services in the Northwest, catered specifically to the owners of professional services businesses – like you! We have countless buyers and sellers waiting for the right opportunity. Take control of your tomorrow by calling us today at (253) 509-9224 or checkout our website at www.privatepracticetransitions.com.

KIEI, MAUI, HAWAII – Large oceanview 1BR-2BA condo, LR sofa-sleeper, two pools/spas, tennis, across from beach. Attorney discounts. mgs@aterwynne.com (503) 291-1423; Video: https://www.youtube.com/watch?v=1xEcuMF2ELE - Pictures: samsandmireidaho@gmail.com.

PARIS APARTMENT – At Notre Dame. Elegant 2 bedroom, 1 ½ bath, with lift. In the heart of Paris. PROVENCE. 4 bedroom, 3 ½ bath house with stunning, panoramic view of Menerbes. Owned by OSB member (202) 285-1201 or (503) 227-3722.

SUNRIVER – Cascara Vacation Rentals – Over 120 homes & condos with hot tubs, free Wi-Fi, many pet friendly & with free access to the Sharc aquatic & recreation facility. Contact us today at (800) 531-1130, visit our web site at www.cascaravacations.com or email us at cascara@cascaravacations.com.

SUNRIVER – Warm, cozy, 2 bedroom, 1 bath Ranch Cabin, ideal for a weekend getaway. Fireplace, TV,
Wi-Fi, DVD, CD, BBQ, washer/dryer, fully furnished & well-equipped. Sleeps 4. $95/night + $75 cleaning fee (541) 944-2694.

SERVICES

AVIATION LAW – Jon M Friedman is, and has continued to be, a FAA Certified Flight Instructor-Airplane and Instrument since 1981. We represent injured people. Law Offices Of Jon Friedman, LLC. (503) 242-1440; jon@jonathanfriedman.com.

CONSTRUCTION EXPERT WITNESS – Langford Enterprises 23 years Overall / Owner of The Home-Team Inspection Service 40 years Const. Background. Seeking court cases in need of an Expert Witness for: • Construction Defects • Material Failure • Construction Applications • Opinion on Home Building • Related Home Inspection issues. Greg Langford owner 503 675 7979 clacklangs@hotmail.com.


EXPERT WEATHER TESTIMONY – Weather & climate data research and analysis 25+ years meteorological expertise – Weather & climate data research and analysis 25+ years and includes experience in Construction and Employment Law, including all aspects of litigation, mediation, arbitration and trial. Being freelance provides me the flexibility to offer my paralegal and mediation services for all who need assistance, from large law firms to solo practitioners with at the burden of expensive overhead. Shawn Stanley-Slingshot Legal Services; shawn@slingshotlegal.com; www.slingshotlegal.com (503) 956-6629.

FREELANCE LITIGATOR – Former Big Law associate, licensed in TX and OR. Get high-quality help with out overhead costs: legal research, drafting, discovery, etc. For more, contact: sanja.muranovic@munrovinclaw.com.

INVESTIGATION – Diligent Investigations is a full service investigation firm specializing in Surveillance, Background Investigations, Locates, Difficult Service of Process, Interviews and more. In Portland since 2012, Diligent Investigations has earned a reputation for professionalism and integrity. Contact Robert Grady (503) 985-6659 or email: dilinives@gmail.com.

LEGAL ETHICS DEFENSE: ETHICS ADVICE & OPINIONS – Christopher R. Hardman – Providing defense services against Bar disciplinary proceedings; legal ethics advice, consultations, and opinion letters. Mr. Hardman is a former Assistant Disciplinary Counsel of the Oregon State Bar Office of Disciplinary Counsel; and a former Bar prosecutor. He is a speaker and moderator at Ethics Continuing Legal Education Seminars sponsored by the Bar, New Lawyers Division and others. He may be contacted at his office: Christopher R. Hardman, (503) 916-1787, or Fax (503) 916-1789; 25 NW 23rd Pl Ste 6, PMB 497; Portland, OR 97210.

LEGAL NURSE CONSULTANT – Offering Board Certified Legal Nurse Consultants with the LNCC certification from the American Association of Legal Nurse Consultants—the gold standard in LNC credentialing. The ONLY certification recognized by the American Board of Nursing Specialties. Offering the following services: review files for standards of care and any deviations that may have occurred, provide chronologies/ summaries, demonstrative evidence, translate and interpret medical records. Expert Witness location services. Average length of experience in nursing for our consultants is 20 years and includes experience in clinical areas such as: Corrections Healthcare, Critical Care, Telemetry, Long-Term Care, Workers’ Compensation as well as many other specialty areas! Willamette Nurse Consultant Group, (971) 777-2687 info@willamettenurseconsultantgroup.com. www.willamettenurseconsultantgroup.com.

NEED HELP WITH A BIG CASE? Want to expand your practice? Want to take a vacation? Contact the OWLS Contract Lawyer Service. We can help. Fast! You contact us with project/job information. We immediately post the announcement to our contract lawyer listserve. You are promptly contacted by contract lawyers who meet your criteria. Free! No fee to post jobs or projects. You pay the contract lawyer you hire. Effective! Contract lawyers statewide. Many levels of experience. Many types of expertise. For more information, or to post a job, contact the OWLS office at (503) 841-5720 or email cassondra@oregonwomenlawyers.org.

RESEARCH, MEMOS, BRIEFS, and appeals from a 25-year trial lawyer in Arizona and in Oregon. $60 hr. RogerPerry@live.com. (520) 332-0132. For more information, see www.rogerperry.com.

STRESS, anxiety, depression, psychotherapy and counseling; career counseling; confidential assistance improving strained relationships, clarifying career considerations, responding constructively to occupational, family, and individual emotional developments, transitions, etc. Standish McCleary III, J.D., Ph.D., Lic. psychologist (16 yrs. atty); Christopher R. Hardman - Providing defense services against Bar disciplinary proceedings; legal ethics advice, consultations, and opinion letters. Mr. Hardman is a former Assistant Disciplinary Counsel of the Oregon State Bar Office of Disciplinary Counsel; and a former Bar prosecutor. He is a speaker and moderator at Ethics Continuing Legal Education Seminars sponsored by the Bar, New Lawyers Division and others. He may be contacted at his office: Christopher R. Hardman, (503) 916-1787, or Fax (503) 916-1789; 25 NW 23rd Pl Ste 6, PMB 497; Portland, OR 97210.

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LEGAL NURSE CONSULTANT – Offering Board Certified Legal Nurse Consultants with the LNCC certification from the American Association of Legal Nurse Consultants—the gold standard in LNC credentialing. The ONLY certification recognized by the American Board of Nursing Specialties. Offering the following services: review files for standards of care and any deviations that may have occurred, provide chronologies/ summaries, demonstrative evidence, translate and interpret medical records. Expert Witness location services. Average length of experience in nursing for our consultants is 20 years and includes experience in clinical areas such as: Corrections Healthcare, Critical Care, Telemetry, Long-Term Care, Workers’ Compensation as well as many other specialty areas! Willamette Nurse Consultant Group, (971) 777-2687 info@willamettenurseconsultantgroup.com. www.willamettenurseconsultantgroup.com.

SERVICES

Estate Planning Paralegal – Established estate planning firm would like to hire a estate planning paralegal. We are interested in candidates that are passionate about what they do. Experience in trusts and estate admin, drafting, trust funding & distributions is required. Join our amazing team and you will be working closely with our attorneys on new and existing probate matters. You will also help coordinate with clients in a timely manner to set up consultations, collect information, provide draft documents for clients’ review, and ensure a positive and compassionate relationship with them. Please apply via https://tinyurl.com/naylawepp. We offer great benefits.

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I had to do some banking. My banking methods differ from those of my 23-year-old son, though: Swipe, swipe, tap tap tap on the smartphone, and he’s finished. I still use a (paper) check register, which I balance faithfully every month, using my (paper) bank statement, which arrives in the United States Mail. I trust most of us remember what that is.

For the privilege of receiving a paper bank statement, which cost nothing for my first 40 years of banking, I now pay a monthly “paper fee.” Two bucks. I resent this. But I digress; back to my banking practices.

They involve walking to my new bank, which charges $3 for paper but then reverses the fee, just for me, possibly with a subtext of condescension. At the bank, I speak in person to the tellers and, sometimes, as on this occasion, to the banker, Trenton. He is older than my son but not by much, and he finds my penchant for in-person interactions quaint and amusing.

During the “just shooting the breeze” portion of our banking, I complained about branches closing and Trenton predicted, possibly to torment me, that before long there will be no more bank branches at all, that everything will be done by computer.

“I hope I’m dead by then,” I muttered. I let him know about balancing my checking account every month, possibly to impress him. Which failed. So, to make it worse, I told him I prefer the kind of legal research that involves actual bound volumes in the law library and that I perform all the bookkeeping for my law practice on ledger sheets, with a pencil.

What’s a pencil?” he asked. I laughed because I was sure he was joking. Reasonably sure.

Sometimes when I record the $2 fee in my check register, I call it “Luddite Blood Money.” Luddites were a rebel group of English textile workers who smashed automated equipment, such as stocking frames. The Frame Breaking Act of 1812 made this activity a capital crime. Predictably, that had a chilling effect on the rebellion.

The Luddites were supposedly named for Ned Ludd, even though he didn’t exist (except as an excellent restaurant in Northeast Portland). But even if he had, I don’t take inspiration there. I don’t want to smash computers, mine in particular. I enjoy the ease of Fastcase and WestLaw, and I like communicating with my clients by email.

On the other hand, I do have a recurring fantasy in which, shortly after answering a robotic telephone call, I place my smartphone in the center of the sidewalk and smash it to smithereens with a 9-pound hammer of the sort useful for driving steel drill bits into bedrock.

It’s John Henry I find inspiring. Before he became an American folk hero and star of the ballad, “John Henry,” he was a “steel-drivin’ man” for the railroad. He pounded holes into rock so the railroad could stuff them with explosives and tunnel through mountains.

According to legend, John Henry was the fastest and strongest steel driver on the crew, so when a steam-powered drill arrived for testing, the railroad captain staged a competition between man and machine. John Henry beat the steam drill, but the effort cost him his life. As the song says, he died with a hammer in his hand.

I feel sure I understand why he did it. He squared off with that machine as if to say, “It matters to be human. Bodies matter: The strength of my arm, the calluses on my hand. The rasp of my pencil across paper. The smell of a book, just opened. The fingers that wield the pencil, that gently part the pages.”

Even the so-called Digital Age comes from the body, from the Latin root digitalis. “Digital” means “of the fingers.” Numbers are digits because we count them on our fingers.

Digitalis is also a poison found in the leaves of the common foxglove. It can kill you but, oddly, it acts as a heart stimulant, so it can also save your life.

Poisonous, but useful in small, careful doses — exactly how I feel about everything digital.

So let me die with a pencil in my hand. Though perhaps not quite yet.

Jennie Bricker is a natural resources attorney and a freelance writer whose fingernails are worn ragged from being forcibly dragged by the ankles, shrieking in dismay, into the Brave New Digital World. (Which is a reference to John Milton, by the way, who very likely is turning over in his analog grave right now.) Reach Bricker at brickworkwriting@gmail.com. 

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