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Attorneys’ Marketplace

Attorney Stephen Hendricks owns Ruby Vineyard & Winery in Hillsboro with his wife, Flora Habibi. Toiling among the tanks and barrels offers rewards that can’t quite be duplicated in legal triumphs, he says, no matter how grand. And he’s not alone in feeling that way, as writer Susan G. Hauser discovered when she interviewed winemaking lawyers across the state for “A Perfect Blend.” Her special report begins on Page 18.

Photo by Jaime Valdez
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FROM THE EDITOR

The More Things Change

By Gary M. Stein

“Change is the only constant in life,” Greek philosopher Heraclitus once said, and that’s especially true during this time of unprecedented uncertainty. So imagine my surprise when a recent review of the Bulletin’s income and expenses led us not to switching gears, but to sticking with folks who have been at our side for years.

Don’t get me wrong: As part of the process, we were able to support local jobs, embrace a new, sustainable product that’s good for the environment and save a lot of money, too. It’s just that we’ve done all of that by deciding to stick with Journal Graphics, a Portland-based company that’s been in operation since 1937.

The woman-owned-and-managed corporation has been printing the Bulletin since January 2009.

“It has truly been a pleasure, and I am proud of the long partnership we have established,” says sales associate Tammy Rilatt. “I’m looking forward to our future partnership and promise to continue to provide you with the solutions you and the community value as a priority.”

Those priorities figured greatly into the Bulletin’s decision to conduct a nationwide review of printing options. An out-of-state firm was competitive in price, but Journal Graphics’ commitment to Oregon’s economy — the company employs 140 people — and its belief in sustainability made our final choice an easy one.

“Our Forest Stewardship Council Certification and paper waste recycling via International Paper demonstrates our continuous commitment to environment-friendly practices,” says Tiffany Spears, the company’s vice president for business development. “For 83 years, we have continued to evolve and deliver print solutions for our customers.”

When that happens, the Bulletin will be among the first magazines to switch to the new product. But it’s not the only change we’re implementing:

- As part of the renegotiated contract with Journal Graphics, we’ve moved the final stages of production to the first week of the month, when the printing presses are less busy and costs are reduced. That means the Bulletin will arrive in your mailbox one week later than usual, beginning with the issue you hold in your hands.

Have an event during the first week of the month that you’d like to promote? It’s probably best to include it in the previous month’s issue.

- We’ve streamlined our advertising sales process. Display advertising has always been sold for us by LLM Publications; now, the Portland-based agency will also sell and produce Lawyer Announcements, which we used to handle in-house before staff reductions made that process inefficient. The smaller ads will still allow individuals and firms to promote new hires and other business-related activity, however, in a compact format for less money.

For ad rates and details, contact Grandt Mansfield at (503) 445-2246 or law@llmpubs.com. (Classified ads will still be sold in-house; for more information, contact Spencer Glantz at (503) 431-6356 or advertising@osbar.org.)

- And we’ve increased our efforts to work with OSB members who would like to write stories about topics that range from access to justice, legal funding and judicial independence to diversity in the profession, professionalism and future trends. We’re also encouraging members to contribute columns on legal practice tips, practice management strategies, history, sustainability and new technology. In addition, Associate Editor Mike Austin and I plan to do more writing ourselves, focusing on the topics we know best.

Added together, these changes are expected to increase the variety of voices you’ll find in the Bulletin and reduce production costs significantly — all while keeping jobs local and improving the environment.

Somehow, we think even Heraclitus would approve.

Have a story idea you’d like to see in the Bulletin? Reach out to Editor Gary M. Stein at (503) 431-6391 or gstein@osbar.org.

HOW TO REACH US: Call (800) 452-8260, or in the Portland area call (503) 620-0222. Email addresses and voicemail extension numbers for Bulletin staff are: Gary M. Stein, editor, gstein@osbar.org (ext. 391); Mike Austin, associate editor, maustin@osbar.org (ext. 340); Kay Pulju, communications director, kpulju@osbar.org (ext. 402); and Spencer Glantz, classified ads and lawyer announcement ad rates and details, advertising@osbar.org (ext. 356), fax: (503) 684-1366. Display advertising: Contact LLM Publications at (503) 445-2240, law@llmpubs.com.
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Class of 2020 Ready For Challenges Ahead

With the recent announcement by the Oregon Supreme Court regarding changes to the bar examination and the unprecedented granting of diploma privilege, the Class of 2020 has again found itself at the precipice of history. But that’s OK. We’re used to it.

The Class of 2020 has witnessed more seminal Supreme Court decisions, world-altering events and economic strife in aggregate than any previous graduating class since the Great Depression nearly a century ago. Our first day of law school was heralded by a total solar eclipse — a sign, perhaps, that even the cosmos had predicted the impact that the Class of 2020 might have on the world. And yet, in spite of the hardships we have faced, that face us now and that lie ahead, we have shown that we are worthy of the challenge.

That includes the challenge that comes with accepting diploma privilege, including the stigma surrounding our class from older generations of attorneys who took a bar exam, and the same concerns from lay persons who will come to us for help. Whether we like it or not, we have become a marked group, but I take that mark as a badge of honor, and I’ll wear it as an emblazoned “A” on my chest (or in this instance, we may settle for a “C” instead).

As members of the “COVID Class,” we have proven we have all the right makings of a great generation of advocates. We finished law school over computers from our couches, our bedrooms, our kitchen tables and, in a few unfortunately well-documented instances, from our bathrooms. We finished law school while caring for our children, who we often homeschooled as well. We finished law school while the world burned around us and, frankly, we would have passed the bar exam had we had to take it, because that’s what this class does: We push through our struggles together.

There should be an asterisk next to the name of each law student, indicating that we accepted diploma privilege. I want everyone to know I was a part of the COVID Class, and that this asterisk is a commemoration of our triumph. All we want to do is be the very best attorneys we can be. The world threw everything it had at us, and we proved time and again that we could withstand it.

Look out Oregon, here we come.

Nathaniel E. Woodward, Class of 2020 Willamette University College of Law

Court Should Have Chosen Less-Drastic Exam Option

Whatever benefits eliminating the bar exam requirement this year may have, research suggests there may be more malpractice, discipline and disbarment as a result. So I was surprised that a bare majority (4-3) of our Supreme Court chose to risk protection of the public and the integrity of the profession in this way — especially when the bar proposed less drastic measures, noting “significant problems of equity and inclusion” with the option adopted by the Court majority.

No test is perfect. But a bar exam can indeed serve as a valid competency test, as a California study found after extensive research in 2017. As a professor of legal methods and director of academic development noted in “Content Validation Study for the California Bar Exam,” more study for those who failed the exam helped improve an applicant’s competency with the ability to finally pass the bar.

Research also has found that lower exam scores are correlated with more malpractice and discipline, and more disbarments — the most serious measures of failures of competency and public protection. (“The High Cost of Lowering the Bar,” by Robert Anderson IV and Derek T. Miller; Georgetown Journal of Legal Ethics, Summer 2019). No exam means those who would have failed can now be licensed to practice regardless of the effect on public protection and professional integrity.

For myself, I can attest that unlike law school itself, studying for my bar exams did help me get up to speed with current practical issues in each jurisdiction, and did help prepare me to be a more competent lawyer. And I’m not alone in that view.

In a large survey conducted for the State Bar of California (“Report to the Admissions and Education Committee and the Committee of Bar Examiners Regarding Public Comments on the Standard Setting Study”), attorneys and members of the public overwhelmingly supported high bar exam score standards and opposed lowering the score threshold — citing public protection and integrity of the profession as the top reasons. In fact, many suggested raising the bar in order to better protect the public.

Like the vast majority of jurisdictions, we should have chosen a less-drastic option, while still maintaining professional standards and protecting the public.

Mark Anderson, Garden Home

Starving the Wolf of White Supremacy

Like most Americans, I am heartened to see the peaceful protestors in our streets demanding a long overdue recognition of the humanity and citizenship of Black Americans. This struggle to affirm our common humanity began more than 150 years ago during the Civil War, when Abraham Lincoln issued the Emancipation Proclamation. Since then, in my view, the war waged
for the soul of America has largely been between white supremacy and equal justice for all citizens.

As I consider the amount of hard work ahead of us to build a better America, I am reminded of the wisdom of “Two Wolves,” an old Cherokee legend: When teaching his grandson about life, an elder warned his grandson, “A fight is going on inside me. It is a terrible fight, and it is between two wolves. One wolf is evil — he is anger, greed, arrogance, self-pity, resentment, false pride and superiority.” He continued, “The other wolf is good — his is joy, peace, love, hope, humility, kindness, compassion and truth. The same fight is going on inside you — and inside every other person too.”

Concerned, the boy then asked his grandfather, “Which wolf will win?” The elder simply replied, “The one you feed.”

As lawyers, let us resolve to starve the wolf of white supremacy. For too long, it has threatened our homes and our communities. But, even more importantly — particularly in light of our troubled past — we must feed the wolf of peace, compassion and truth. We will live up to the best of our history when — in our neighborhoods, workplaces, schools, board rooms, houses of worship and in government — we make a sustained and determined commitment to address our pressing issues of racial injustice.

In doing so, we honor the sacrifices of our ancestors of all colors who have labored and bled to secure our freedom and prosperity.

Richard C. Baldwin
Associate Justice
Oregon Supreme Court (Retired)

Clarification

A description of a 2019 Client Security Fund award in the February/March 2020 issue of the Bulletin stated that the CSF paid claims to two clients of Portland attorney Andrew Long. In so doing, it was stated that Long claimed he paid $4,000 to post bail for a “mutual acquaintance.” Long claims that the beneficiary of his disbursement of his client’s funds was not known to Long.

Correction

President George W. Bush signed the Second Chance Act of 2007 into law on April 9, 2008. An article in the July issue of the Bulletin incorrectly stated that the bill was signed during the Obama administration. The Bulletin regrets the error.
Exam Options

Oregon Supreme Court justices voted 4-3 in June to allow some 2020 law school graduates to practice in Oregon without passing a bar exam. The July exam still took place for those graduates who opted to take a UBE instead of choosing "diploma privilege." An October online-only option is also available for those who qualified. Here is the breakdown of what original applicants for the July exam decided to do:

- **235** Planned to sit for the July exam
- **24** Planned to take the October online bar exam

Keep in mind, the number of people sitting for the October online exam was expected to increase through mid-August as additional factors for those applicants were resolved. For more details about diploma privilege and Oregon's exam options, turn to the Bar News section on Page 50.

Willamette Clinics Offering Free COVID/BLM Services

Willamette University College of Law opened its law school clinics two months early and added outside attorneys in July to meet the demand for free legal services from individuals and entities affected by the COVID-19 pandemic and the Black Lives Matter movement.

Faculty and students had been informally providing legal help to those affected by the pandemic since March, when Oregon began to shut down in an effort to contain the spread of COVID-19. But Warren Binford, director of the college’s Clinical Law Program, says she began to see a sharp spike in demand for free legal services from people, businesses and nonprofits affected by the pandemic.

Willamette’s Clinical Law Program is normally closed for the summer, but a team prepared to reopen its clinics midsummer to meet that demand — and then the Black Lives Matter movement further increased the need for legal services. Teams of students are now working on matters as diverse as the Salem-Keizer Education Foundation’s dissolution due to the pandemic and the formation of “Save Ourselves,” a new nonprofit created by Black Lives Matter leader Gregg Simpson.

Binford partnered with Dominique Alepin of Nike to support the provision of free legal services by law students under the supervision of Willamette Law faculty and volunteer attorneys. Since Willamette’s Clinical Law Program is an Oregon State Bar Certified Pro Bono Program, the volunteer attorneys are covered by the Professional Liability Fund and may receive MCLE credit for their pro bono hours.

Binford and Alepin recruited Erich Paetsch of Saalfeld Griggs, Casey Kaplan of Nike and Susan Cook of Willamette Law to join the effort. Together, they are overseeing six law students who offer free legal services in areas such as bankruptcy, estate planning, applying for and managing government loans, employment matters, nonprofit formation, family law matters and more.

Potential clients can apply for assistance by calling (503) 370-6140 or by emailing lawclinic@willamette.edu.

UTCR Committee Seeks Volunteer Attorney

The Uniform Trial Court Rules (UTCR) committee will have an opening for an attorney with significant trial experience in general civil litigation beginning Jan. 1, 2021. This is a volunteer position, with appointment by the chief justice of the Oregon Supreme Court.

To apply, send a resume and cover letter describing your law practice, areas of expertise, qualifications, rulemaking experience and involvement in similar groups to aja.t.holland@ojd.state.or.us or Aja T. Holland, Office of the State Court Administrator, Supreme Court Building, 1163 State St., Salem, OR 97301. The application deadline is Nov. 30.

The UTCR committee is an advisory group to the chief justice that makes recommendations on the UTCR and supplementary local rules. It meets twice a year in the fall and spring in Salem; members are asked to serve two three-year terms for a total of six years of service.

Visit courts.oregon.gov/programs/utcr/Pages/currentrules.aspx for more information.

New Central Courthouse Opening Delayed to Oct. 5

The opening of the new 17-story Multnomah County Central Courthouse in downtown Portland has been postponed to Monday, Oct. 5, because of pandemic-related construction delays. The last day of court business in the old courthouse will now be Tuesday, Sept. 29.

The historic courthouse on Southwest Fourth Avenue will be closed from Wednesday, Sept. 30, to Friday, Oct. 2, to accommodate the move. Matters previously set at the new courthouse for September will need to be rescheduled.
Quotable

“I refuse to leave because my continued presence is beneficial for younger generations. I also try to be the mentor that I wanted when I started out. My daughter should NOT have to deal with the same crap that I have.”

— An anonymous Latinx woman, describing why she’s stayed in the legal profession, as quoted in a new ABA report titled, “Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color.” Read the full report at tinyurl.com/LeftOutLeftBehind.

When the new courthouse does open at the west end of the Hawthorne Bridge, the Multnomah Bar Foundation plans to staff the information desk with a “navigator” to answer basic questions about the court and connect individuals who need accommodations or extra assistance to services and resources within the courthouse. To help with these efforts, donate online at mbabar.org/courtsupport or contact Pamela Hubbs at pamela@mbabar.org for more information.

Portland Community College Establishes New Scholarship

Portland Community College has established the Carmen M. Sylvester PCC Criminal Justice Scholarship, which is named to honor Sylvester, the first Black woman hired by the Portland Police Bureau and one of the first five women to work patrol.

The scholarship also reflects Sylvester’s belief that the best officers are those who, like many PCC students, have real-life experiences and who are committed to helping their communities.

Contributions (of which 97 percent go to tuition and books) may be mailed to: PCC Foundation, P.O. Box 19000, Portland, OR 97280. (In the memo, include “Carmen M. Sylvester Scholarship”). Donations can also be made online at pcc.edu/give (choose “other” in the first drop down designation, then type into that field “Carmen M. Sylvester scholarship”).

“My client has authorized me to sweeten his offer in order to reach an acceptable settlement with your client. So... how many more carrots will it take?”
Rules Still Apply No Matter Where in the World You Are

A Vacation from Ethics?

By Amber Hollister

In the past few months, the legal profession has weathered incredible change. Whether setting up impromptu home offices, moving client files to a new cloud platform or mastering the latest videoconferencing tool, each one of us is finding new ways to serve our clients.

But let’s face it — 2020 has been exhausting. We all need a bit of a break. And since leisure travel is limited, this month’s Bar Counsel column takes you on a tour of a few favorite vacation spots, all while testing your legal ethics expertise. Maybe by the end of it, you will have new destinations on your travel wish list for 2021.

So sanitize your favorite pen, dust off your Rules of Professional Conduct and answer the questions below. Then, turn to the answer key for the correct responses and a discussion of the issues. Any lawyer with a perfect score deserves to go to their dream locale; but then, all of the rest of us do, too.

1. After settling a major personal injury matter, Tobin has decided to visit a friend’s cabin on the Copper River to fly fish for Alaskan trout. While relaxing at the cabin, she receives word that her firm has received a settlement check and her client is awaiting disbursement. What should Tobin do?

A. Ask her firm to deposit the settlement check in its business account and immediately write the client a check for the amount due.
B. Call the client and let her know that she will be paid as soon as Tobin returns home, four weeks from now. Spend some quality time hand-tying flies.
C. Ask her firm to deposit the settlement check in the firm’s lawyer trust account, and after the funds are available, promptly forward all funds to which the client is entitled.
D. Direct the firm to loan the client the settlement funds immediately so the client does not have to wait for the check to clear. After all, the case will be dismissed within a week.

2. While reading a murder mystery on a quiet stretch of beach at Hanalei Bay, Kauai, Lindsey’s phone pings with an email from the opposing party in a real estate transaction. After weeks of trying to close the deal with opposing counsel, the email is a welcome development. What should Lindsey do?

A. Respond immediately. Maybe after working through the last points with the party, Lindsey can schedule closing for the week she returns.
B. Forward the email to opposing counsel and ask for permission to correspond with the client on the deal.
C. Call her client, talk about next steps and then put on more sunscreen.
D. Either B or C.

3. After almost a year of quality work-at-home time and homeschooling, Mark has booked a family vacation with his two young boys to Legoland. After landing in San Diego, Mark remembers he needs to call a client with a confidential status update on an urgent litigation matter. What should Mark do?

A. Duck into the airport coffee shop; he can chat with the client while waiting for a double espresso.
B. Wait until he makes it to the hotel so he can make a call from the peace and quiet of his room.
C. Put it off until he returns; he can make it up by picking up a Lego set for his client’s child.
D. Either B or C.

4. After a long day kayaking in the sparkling waters of the Puget Sound, Emily picks up a call from her law partner and learns that the firm is trying to complete a conflict check for a potential new client. Emily currently represents a corporation on general employment advice matters; her partner would like to represent another client that is seeking to collect a large judgment against the same corporation. What should Emily do?

A. Pull out her Rules of Professional Conduct and review Rules 1.7 and 1.18, because conflicts analysis is technical and it never hurts to review the black letter rules.
B. Recognize that the firm as a whole has a fiduciary obligation to avoid conflicts of interest to its current clients, even if it means the firm has to turn down representing a prospective client.
C. Ask the partner whether they could explore limiting the representation...
of both the current and prospective clients to employment advice and the collections matter, respectively, and seek informed consent confirmed in writing.

D. All of the above.

5. Simone is planning a five-month sabbatical to hike the Pacific Crest Trail with old friends from college. Before she departs her law firm and her many business transactions clients, what steps should she take?

A. Set her out-of-office voicemail and email to note she will return in five months and state who to contact in her absence.

B. Inform all current clients about her upcoming sabbatical and explain which firm colleagues will be available to assist while she is gone, and update her law partners on the status of pending matters prior to her departure.

C. Purchase a satellite phone so she can be available to clients on the trail after each day’s hike.

D. Both A and B.

6. While staying at a quaint bed and breakfast agriturismo during her vacation to Tuscany, Christine receives a call from an associate who tells her opposing counsel has just filed an opening brief in a pending appeal. The associate has noticed that opposing counsel failed to cite case law that is directly on point and adverse to their client’s position, and asks Christine for her advice. What should Christine suggest the associate do?

A. Recommend that the associate tell the client about opposing counsel’s error and wait to see if opposing counsel cites the case in the reply brief.

B. Disclose the existence of the adverse case law, but continue to assert that the firm’s client should succeed on the merits.

C. Suggest that it is not their firm’s problem; after all, it was opposing counsel’s mistake.

D. Tell the associate she is on her own and have another glass of Brunello. Isn’t Tuscany great?
Answer Key

1. Answer C. Lawyers have an obligation to place all funds of clients or third parties in a lawyer trust account. RPC 1.15(a)-1. Depositing settlement funds in a business account would violate this requirement, even if the firm is entitled to collect a portion of the funds. Because Tobin has a duty to “promptly” deliver client funds, waiting until she returns from her trip is ill-advised. RPC 1.15-1(d).

Further, the rules prohibit extending a loan to a client in connection with pending litigation. RPC 1.8(e) (prohibiting advancing financial assistance to a client in connection with pending litigation) and 1.8(j) (prohibiting obtaining a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client). In this case, the case is still pending because a judgment has not been entered, and loaning the client funds is prohibited.

For those of you wondering whether the large judgment should be deposited in the firm’s pooled IOLTA account or a separate lawyer trust account, you have earned a bonus point. The firm should deposit the funds in a separate lawyer trust account if it would earn net interest for the client; RPC 1.15-2(d) outlines the factors to consider.

2. Answer D. Even while enjoying the beautiful scenery of Hanalei Bay, Lindsey must be careful not to communicate with a represented party on the subject matter of the representation. RPC 4.2.

Under the facts provided, we recognize that opposing counsel has been less than helpful, but that does not provide an excuse for direct client contact. Instead, Lindsey may only communicate directly with the client if she has the permission of opposing counsel, RPC 4.2(a), or another explicit exception applies. See OSB Formal Op No 2005-6.

One approach would be to forward the email to opposing counsel to seek permission to speak directly to the client; another would be to call her own client to strategize before taking any steps.

3. Answer B. When on the move, client confidentiality may not be utmost in your mind, but lawyers should remember that RPC 1.6(a)’s duty to keep all information related to the representation of a client confidential remains the same when at home or on the go.
This means that lawyers must take reasonable steps to protect client confidences, including considering whether their conversations may be overheard when fitting client calls into breaks in a vacation. RPC 1.6(c); see OSB Formal Ethics Op No 2005-141.

While it is ideal to cease work during vacation, Mark has identified that the litigation update is “urgent.” This means he should provide it himself, or perhaps better, seek the assistance of a law firm colleague to avoid a delay that could potentially harm the client. The duty to communicate, RPC 1.4(a), and diligently represent clients, RPC 1.3, does not cease when lawyers are out of the office; arranging for backup is key.

4. Answer D. Savvy lawyers will reread the conflicts rules with some frequency. While you probably recognized off the bat something was not quite right in the fact pattern above, the conflict rules are far from intuitive.

Under the facts described, Emily’s current corporate client appears to be directly adverse to her partner’s prospective client, at least with respect to the collections action. See OSB Formal Op No 2005-28. Based on RPC 1.7(a)(1)’s rule against representing one client against another, even when the matters are unrelated, and RPC 1.10(a)’s imputation rule, which imputes to an attorney’s conflicts rules a client’s conflicts with the lawyer’s existing corporate client is resolved through informed consent. See ABA Model Rule Comment [6] (“absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated”).

Sophisticated clients may be willing to grant informed consent even if it means their counsel will represent an opposing party in unrelated litigation against them. But informed consent is not available unless the firm can provide competent and diligent advice to both the current and prospective clients, and the firm is not obligated to contend for something on behalf of one client that it has an obligation to oppose on behalf of the other. RPC 1.7(b)(1) and (3).

In order to ensure the firm is not under an obligation to represent the clients on the same matter (e.g., by providing both clients advice on the collections matter on which they are adverse), Emily’s firm may wish to explore whether it is possible to obtain consent to limit the scope of representation of both clients, pursuant to RPC 1.2(b), so that a waiver of the conflict, under RPC 1.7(b), becomes possible. Emily’s firm should also be aware that the additional obligations to prospective clients, outlined in RPC 1.18(c), could create challenges for Emily’s continuing representation of the corporate conflict if the prospective client was allowed to disclose information to Emily’s partner that could be substantially harmful to that prospective client in the collections matter (although RPC 1.18(d) might permit the consulting lawyer to be screened or the firm to obtain informed consent to solve the problem).

A robust conflict check and client-intake system, however, should avoid the likelihood of such a problem occurring.

5. Answer D. As noted in the answer to Question 3, a lawyer’s duty to communicate with clients and diligently respond to matters is not suspended when on vacation or sabbatical. See RPC 1.3, 1.4. But taking time off is still allowed — and a great idea for maintaining balance and good mental health.

For lawyers who are a part of a law firm, transitioning clients to a colleague during the absence is a great idea. For solo practitioners, one option is to consider entering into an assisting attorney agreement to allow another lawyer with a similar practice to cover for you while you are away.

Lawyers who enter into assisting lawyer agreements with other lawyers who are not part of their firm should ensure that they have client permission (through an engagement agreement or otherwise) for the outside lawyer’s assistance, that they have adequately communicated the plan to each current client, that the assisting lawyer does not have conflicts that would prevent their assistance, and that the lawyer complies with RPC 1.5(d) by obtaining the client’s informed consent prior to sharing legal fees.

6. Answer B. RPC 3.3(a)(2) provides that a lawyer shall not knowingly “fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel[,]” For that reason, the lawyers of record have a duty to disclose the adverse authority.

While Christine might be tempted to let the associate deal with it, Christine may have exposure for ethics misconduct under RPC 5.1(b) if the associate makes the wrong decision. If she is a firm partner or has direct supervisory authority over the associate and “knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action,” she could be held responsible for the associate’s bad decision.

Given this risk, Christine should assist the associate to make the right decision (or, as noted in Question 5, perhaps she could have asked another partner to cover her caseload so she could soak up the joys of Tuscany without interruption). Even after making the disclosure, the firm can argue in good faith for a modification or reversal of existing law. RPC 3.1.

Amber Hollister is general counsel for the Oregon State Bar. Reach her at ahollister@osbar.org, or direct questions to the Ethics Helpline at (503) 431-6475.
Have you heard that robots are ghostwriting legal briefs now? That’s right. Log on to Compose by Casetext and, for $1,499, you can in theory create a serviceable piece of legal writing by selecting arguments, rules with citations and case illustrations, all from drop-down menus. According to one user quoted on the service’s website, “Compose gets you 95% of what you need to file.” Then use your own creativity and style to fine-tune the finished product. Easy!

But how does this development mesh with disciplinary rules that have been interpreted as prohibiting practicing lawyers from plagiarizing by submitting prose that includes passages drafted by others without proper attribution?

Arguably, copying published works without proper attribution is different from paying for access to a technology company’s stock language — which includes citations to underlying sources — and then using that language without crediting the company whose computer algorithms drafted the brief. But aren’t both technically “plagiarism”?

**Plagiarism Is Broadly Defined**

“Plagiarism means using someone else’s ideas or words without attribution to the original source.”¹ I have to quote and cite that sentence because I did not write it. My colleague Elizabeth Frost wrote it in this column in 2017. I’m taking care to give her the credit she deserves. “Direct plagiarism means taking language word for word without quotation and proper attribution,” she also wrote.³ She’s right, and she’s succinct. It’s more efficient for me to simply quote her than to craft my own version, which would almost certainly be inferior.

Plagiarism can occur even absent borrowed language. Patchwork plagiarism — which can include borrowing another writer’s ideas or paraphrasing her prose without properly citing the source — is still plagiarism.⁴ So, because now I am relying on Professor Frost’s explanation, I have to cite it, even though I figured out a new way to express the same idea.

Further expanding the definition of plagiarism is one final rule: Intent is irrelevant. As Frost explained, “Even unintentional copying without attribution is plagiarism.”⁶ Black’s Law Dictionary disagrees with her on this point. It defines plagiarism as the “deliberate and knowing presentation of another person’s original ideas or creative expressions as one’s own.”⁷ The difference between those two definitions likely signals a distinction between the kind of intentional misrepresentation that constitutes unprofessional, unethical conduct and the strict-liability offense of academic dishonesty.

**For Students and Publishing Authors, Plagiarism Enforcement Makes Absolute Sense**

In law school, we teach students that they must generate their own work product. That is merely an extension of a rule they learn early in secondary school, if not sooner. Their writing must be their own. Any borrowed idea must be cited; any borrowed language must be quoted as well.⁸

We also teach students how to generate that original work product. They practice organizing their ideas into outlines, synthesizing thorough and precise rules, drafting concise case illustrations, blending facts and law into novel arguments and polishing their finished product. If law students borrow ideas without attribution or borrow language without quotations, we instruct them to address those deficiencies; ethical considerations aside, it’s ineffective lawyering to neglect to mention that the legal principle on which they rely is not merely their creation but rather binding precedent. Shortcutting this process by using a paid service to draft a brief via drop-down menus would, without a doubt, constitute academic dishonesty.

Authors who are publishing scholarly or literary works must adhere to the same standards. They are representing to the world that they have created something fresh, and they are hoping to personally benefit in some way — through recognition, reputation, promotion or compensation. But if the writing is plagiarized — not a fresh creation but rather a stale reproduction — the misrepresentation is actually theft. Copyright law adds an additional layer of concern.

**For Practicing Lawyers, Plagiarism Enforcement Is More Problematic**

Applying plagiarism rules to the everyday work of lawyers is awkward. As Frost explained, “In legal practice, the line where plagiarism begins can be a little hazy.” Indeed, Frost noted that “(t)ransactional lawyers routinely use forms authored by others,” and “in litigation, lawyers borrow from past pleadings regularly and often co-author with unnamed associates and
partners. That’s all certainly copying, but whether it’s plagiarism isn’t so clear."

Strictly speaking, it is plagiarism, at least under Frost’s inclusive definition. And in fact, in extreme cases, lawyers have been disciplined for plagiarism on the grounds that it is a form of dishonesty.

For example, in Iowa Supreme Court Board of Professional Ethics & Conduct v. Lane, 642 N.W.2d 296, 299-300 (Iowa 2002), Lane submitted a brief with whole pages of text copied from a treatise; imposing a six-month suspension, the court held that Lane’s actions constituted misrepresentation because he did not exert any apparent personal effort on a brief that he claimed required 80 billable hours. Eight years later, in Iowa Supreme Court Disciplinary Board v. Cannon, 789 N.W.2d 756, 757, 759 (Iowa 2010), Cannon inserted 17 pages of text copied from an article into his brief, leading the judge to observe that Cannon’s submission was “of unusually high quality”; in the disciplinary matter that followed, the court publicly reprimanded Cannon because, by copying without attribution, Cannon had engaged in a “material misrepresentation” that violated Iowa’s ethics code.

Borrowing from existing documents is popular because it can minimize risk and lower cost. Though it may be common, not everyone agrees that it is ethical. Last year, in the ABA’s Criminal Justice Matters, J. Vincent Abrile surveyed the troubling implications of labeling as “plagiarism” a lawyer’s reliance on material borrowed from a brief bank:

“Using the mantra of plagiarism coupled with alleged ethical violations, prosecutors and courts from time to time have challenged criminal defense attorneys for relying on motions that could be traced back to sample libraries. Often the attack on the attorney who filed the document is contemporaneously coupled with a veiled or conditional threat to bring a complaint to the bar association seeking to have the document’s proponent disciplined.”

Because litigants can weaponize perceived copying by an opponent, some scholars have suggested that plagiarism should not necessarily be grounds for an ethical violation. Context matters. Other experts suggest redefining plagiarism, essentially limiting what qualifies as plagiarism by litigators; in their eyes, lawyer plagiarism occurs “only (with) . . . the word-for-word copying of a substantial, non-routine por-
Are Automation Users Vulnerable to Plagiarism Accusations?

Relying on an automation service seems a lot like diving into a brief bank. Both actions seek to expedite the drafting process by using stock language as a steppingstone to a tailored brief. Those who have questioned the ethical propriety of lifting language from a sample library may similarly question the ethical propriety of submitting computer-generated prose.

But what the Compose user does seems more akin to an “author” — such as a musician, politician, comedian or judge — paying a ghostwriter to craft material on the ostensible author’s behalf. We accept unattributed borrowing where the true writer, perhaps a junior associate or law clerk, is compensated (but not credited) for her creation. So paying professionals are not “plagiarizers” when they attach their own name to someone else’s purchased writing, even though students who submit purchased term papers are.

Just as a literary writer does not “plagiarize” her paid ghostwriter, a lawyer probably should not be criticized for “plagiarizing” her paid computer brief automator. Indeed, Compose’s system, which automatically generates citations to underlying authorities, ought to insulate lawyers from the risk of inadvertent copying without attribution.

Still, as lawyers submit automated briefs on common topics, courts will likely notice. Some briefs will raise eyebrows because they contain unexpectedly strong prose, like in Cannon. Other briefs will feel familiar and, upon close inspection, may prove quite similar to parallel filings by other lawyers. That homogeneity may prompt courts to question whether the lawyers personally prepared the papers or otherwise gained the knowledge necessary to sign the pleadings. It may also lead courts to examine through a new lens language from a sample library may similarly question the ethical propriety of submitting computer-generated prose.

ENDNOTES

1. See Compose, https://compose.law (last accessed June 6, 2020). This is neither an endorsement of Compose nor a critique of it. Rather, it is an exploration of how this new tool may compel us to reconsider longstanding professional norms and expectations.
Winemaking Lawyers Nurture a Healthy Work/Life Balance Amid the Vines

By Susan G. Hauser
Stephen C. Hendricks had a pretty strong reaction when he read “In Pursuit of Well-Being,” the Bulletin’s October 2019 cover story about the Oregon legal community’s efforts to make healthy living a priority. Among other things, the special report painted a rather bleak picture of lawyers’ troubled relationships with alcohol.

But Hendricks, a medical malpractice lawyer who with his wife, Flora Habibi, owns Ruby Vineyard & Winery in Hillsboro, believes the topic deserves a second look — an emphasis not on consumption and overuse but on creation, from planting to pouring. In short, Hendricks says, it’s important to acknowledge the passion that lawyers like him have found in wine.

“Yes, it is an alcoholic beverage,” he says, “but a little perspective would be useful.”

Sue Steinman agrees.

“It’s not about the drinking,” says Steinman, a business attorney who was lured to the Pacific Northwest from New York City by her love of Oregon wine; she is now part-owner of Walter Scott Wines in Salem. “It’s really about the production, about the product and the science and the nature and the sharing.”

Wellness concerns have caused the legal profession to back away from all things related to alcohol in recent years. Some studies show that between 23 percent and 36 percent of attorneys in the U.S. qualify as problem drinkers — a rate higher than most other professional populations. But current and former lawyers across Oregon say their work in vineyards and wineries has had an uplifting effect on their lives. Rather than posing a problem, they say, wine has become for them almost a raison d’être — or at least a driving force and inspiration. It has provided new levels of personal satisfaction while creating vibrant and, in some cases, international networks of friends and associates, all linked by a shared passion for wine.

In the wine world, these winemakers say, they have found ample opportunity to put their legal minds to work. Their law training kicked in when they were confronted by the myriad details of managing a vineyard, or while organizing a grape harvest, crafting a product and then distributing and selling it, all within the framework of a complex regulatory system.

That’s a natural high that is born in creativity and nurtured by a healthy work/life balance, they insist — and not something they do just for the money. Just ask John Hirschy, a partner at Black Helterline and owner with his wife, Linda Hirschy, of Hirschy Vineyards in Yamhill.

“What’s that old saying about how to make a small fortune in the wine industry?” he asks with a laugh. “You start with a large fortune . . .”

Roots

Some of Oregon’s lawyer/winemakers say they entered the wine world sideways, seemingly through an odd twist of fate — a chance encounter, a fortuitous journey or a college course. But several, including Hendricks, say part of the attraction was a return to their family’s agricultural roots.

For Hendricks, it goes all the way back to 1843, when his great-great grandparents, Abijah and Mary Jane Hendricks, traveled from Tennessee by wagon train. The couple settled near Carlton on their 640-acre Donation Land Law claim to raise fruit and livestock. Hendricks Road, east of Carlton, is named for them.

“I actually have my great-great grandfather’s rifle, which is hanging over the bar in the tasting room,” says Hendricks, whose law office is in the daylight basement beneath Ruby Vineyard’s tasting room. “We also have the actual deed signed by James Buchanan for the property that they homesteaded in 1845.”

In 2012, Hendricks and his wife bought a vineyard already planted with cuttings from one of the original pinot noir vineyards owned by Oregon wine pioneer David Lett. The connection with Lett, who died in 2008 and was known as “Papa Pinot” for discovering the Willamette Valley’s supreme suitability for pinot noir vines, might have been enough legacy to satisfy Hendricks. But soon he learned that he could also buy pinot noir grapes from Timbale and Thyme Vineyard, which was situated on what once was Abijah and Mary Jane’s property. Those grapes are now used to make Hendricks Legacy Pinot Noir, which is bottled with a label that bears a copy of the land deed signed by Buchanan in 1854.

“I was always described as a fifth-generation Oregonian, and when I was 12, my granddad took us out to the property,” he says. “Now I get grapes from the ground that my family used to walk on and homesteaded.”

Like Hendricks, Rebecca Moore also was a few generations removed from her family’s farming roots.

Now the vintner, “cellar flunky” and brand ambassador at MonksGate Vineyard east of Carlton, Rebecca Moore was a litigator in the San Francisco Bay area when her parents purchased 50 dilapidated acres in Oregon and built a vineyard as a retirement investment. “For me,” she says, “it’s very much a return to my roots.”
Now in charge of all operations at MonksGate Vineyard outside Carlton, Moore was for 11 years a litigator in the San Francisco Bay area. Her father, Ron Moore, was raised on a farm and cattle ranch in Colorado, but he left to become a pilot. Conveniently for his wine-loving daughter, though, he was based near Napa, Calif., and when her parents built an Oregon vineyard as a retirement investment, Moore moved north and welcomed a career change from law to wine.

“For me,” she says, “it’s very much a return to my roots.”

Hirschy, too, feels that tug from the past. He still remembers visiting the Indiana farm where his paternal grandfather was raised. “It took three generations and considerable capital,” he says now, “to get back to the land.”

Wine/Work Balance

Many lawyer/winemakers continue to work in the law, having created a balance between the hours they dedicate to their work for clients and the hours they devote to growing grapes and/or making wine. Some, like Hirschy and Chris Hermann, are actually able to blend the two parts of their lives, because many of their law clients also inhabit the world of wine.

Hirschy developed an interest in wine in the 1970s while serving in the U.S. Navy, thanks to port calls in France, Spain and Italy. He and his wife moved to Portland in 1983 and, by 1985, he had a number of clients who were winery owners. Although his specialty at Black Helterline is estate planning and business, tax and real estate law, “I ended up probably spending 15 to 20 percent of my professional career in the wine industry over the years,” he says. “I was handling transactions and doing contracts. Just working with their business problems gave me a window into the industry.”

One of his clients, beginning almost 20 years ago, was renowned winemaker Ken Wright of Ken Wright Cellars. “In 2003, I helped him with a transaction,” recalls Hirschy. “He bought most of the available commercial property in Carlton so he could control the vision for the commercial development of the town.”

Wright purchased and restored numerous historic buildings, including the 1923 train station that now serves as his winery’s tasting room. These days, Wright is a neighbor and one of Hirschy’s...
grape clients, regularly purchasing pinot noir grapes from Hirschy Vineyard for his prized wines.

In the late 1980s, meanwhile, Stoel Rives began encouraging its lawyers to develop specialty practices. As a life-long oenophile raised near Corvallis by German parents — both professors at Oregon State University who served wine with meals and vacationed in the wine regions of Europe — Hermann slipped easily into a wine-law niche. After numerous discussions with local winery owners and tours of their wineries, Hermann had acquired an impressive body of knowledge. “I realized there were about 20 different issues that kept coming up for these wineries and so I wrote what I called The Law of Wine, a book with 20 essays on different legal issues that everyone running a winery should be aware of,” he says. “I gave away hundreds of copies. I thought, ‘I want this industry to be a success. If they fail, there will be no legal work!’”

By that time, Hermann had founded Stoel Rives’ Alcoholic Beverage Group, which included breweries and distilleries. The group has since morphed into the Beverage and Hospitality Group, composed of about 15 lawyers in Portland, Seattle, Sacramento and San Francisco. Hermann’s own practice changed too as his clientele expanded to include many of the overseas winery owners who have invested in Oregon vineyards. He now represents wineries from France, such as Domaine Drouhin, whose local winery is in the Dundee Hills, as well as wineries from Europe, South America, South Africa, New Zealand and Australia that have an Oregon presence.

With his wife, Kathryn, he also owns 00 (Double Zero) Wines at the Carlton Winemakers Studio, as well as wine projects in Burgundy and Champagne, France.

“To me, it’s really the best possible combination when you get to live in Oregon but you get to travel the world visiting your clients and doing work for them here and internationally,” he says.

Sue Steinman traded life on the Upper East Side of Manhattan for five acres (and the obligatory chicken coop) outside Salem, where she and her husband, Andy Steinman, are part owners of Walter Scott Wines. Here they pose in front of Justice Vineyard, which adjoins Walter Scott’s property and provides some of the fruit used in its wines. Photo courtesy of Sue Steinman

Sue Steinman traded life on the Upper East Side of Manhattan for five acres (and the obligatory chicken coop) outside Salem, where she and her husband, Andy Steinman, are part owners of Walter Scott Wines. Here they pose in front of Justice Vineyard, which adjoins Walter Scott’s property and provides some of the fruit used in its wines. Photo courtesy of Sue Steinman

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John Moore owns Aurora Colony Vineyards in historic Aurora and the three-lawyer Moore Law Group in Lake Oswego. His specialty is family law, which he considers a calling after a previous career at Multnomah Bible College, where he was a professor and counselor. In 2002, he bought property in Aurora for a wholesale nursery. Part of the business was a small vineyard, but that took center stage when the nursery business withered during the recession of 2008-09.

“I basically backed into the wine industry,” says Moore. “I didn’t plan on it initially, but it became the prudent thing to use the property for. We did custom crush (making wine for other brands) for a few years, until we built our own winery and hired a winemaker.”

Now Moore’s wine business is quite the production, complete with a tasting room and music stage, a popular wedding venue and a restaurant helmed by Aurora native Vance Wilson, who trained at Paris’s Le Cordon Bleu before returning to look after his father. When the chef stopped by to say he had grown up on Moore’s property, Moore hired him on the spot.

“I almost consider it providential,” Moore says, adding that he still works full time at his law practice. “When I go out to the winery, I just kind of stand off to the side and cheer people on. It’s been an enjoyable blend of law in the morning and watching the tractors work in the afternoon.”

The Call of the Wine

Rebecca Moore and fellow Oregon winemakers Shelby Perkins and Robert Bailey have all ceased practicing law. Interestingly, the point of no return for all three was an identical experience: They worked a grape harvest.

The heady adventure of picking ripe grapes in the coolest hours of the day and seeing them off to be crushed and their juices transferred to fermentation vessels is typically the pinnacle of the year for wine folk. “It fully hooked me,” says Bailey. Even after he had owned vineyards and for years had participated at the periphery of the wine world, this special event had eluded him. He worked the grape harvest at Mark Ryan Winery in Woodinville, Wash., and winemaking took over as the driving force in his life.

Now assistant winemaker at Portland’s Seven Bridges Winery and winemaker at Arenness Cellars, which he owns with his wife, Su Matemanosak, Bailey spent nearly 16 years as corporate counsel for Glenborough Realty Trust in San Mateo, Calif. About a dozen years into his law career, he bought a vineyard in Paso Robles.

“I was looking for something else to do, just to break the monotony and stress of my job,” he recalls. “It couldn’t have been more different, and it was awesome. That was my first formal venture into the wine industry.”

After moving to Oregon, where he had planted a new vineyard, Bailey worked as vice president of real estate for Oil Can Henry’s and then Umpqua Bank — but he says his heart wasn’t in it and he left the bank in 2012. He hasn’t worked as a lawyer since 2006, but he keeps his license current. “I’m still an active member of the California bar,” he notes. “I haven’t given that up. It took a lot of effort to get that degree, and I’m not just going to throw it out the door.”

Shelby Perkins is the winemaker at Perkins Harter Wines in Amity and co-owner of Bracken Vineyard with her husband, Peter Harter. She was a nuclear-waste lawyer at the U.S. Department of Energy when she began accompanying Harter to business functions at high-end restaurants in Washington, D.C. He was then a lobbyist, leading conversations over dinner about intellectual property and patent reform.

“Oh, that’s only exciting for the first conversation,” says Perkins with a laugh. To ease her boredom, she would strike up conversations with the restaurants’ sommeliers. In short order, she discovered that wine was fascinating to her.

Shortly after that, she talked a lawyer/winemaker into letting her work the harvest at his Healdsburg, Calif., winery. She began weaving wine experience and education into her regular work routine until wine came to fully dominate her life. She stopped practicing law in 2006.

After Rebecca Moore moved from Oakland, Calif., to Oregon to stay at her parents’ vineyard, she thought for a time that she would join the Oregon bar and continue her work as a lawyer. But at her parents’ vineyard that autumn, she was transformed, just like Perkins and Bailey, by working the harvest.
That hadn’t happened earlier, even while she was living in Napa.

“ Judges like their dockets clean at the beginning of the year, so fall tends to be a busy time for litigation,” she explains.

Nevertheless, she had been quite involved with wine while working as a litigator. She joined Women for WineSense, an educational and networking group for wine professionals and aficionados, and was later named to the board of the Napa-Sonoma Chapter. In time, she became president of the national organization. Her dream was to shift her legal work to the wine side.

“But getting into the legal world of wine never really panned out,” she says, “especially during the early 2000s when those jobs were few and far between and they were jealously guarded.”

**Law Links**

Still, not all winemaking lawyers find it to be an either/or proposition.

“It’s amazing how much intersection there is in this business with law, across the board,” says Hendricks, who notes that winemakers have to comply with city and/or county zoning regulations; state rules enforced by the Oregon Liquor Control Commission, the Department of Agriculture, the Department of Environmental Quality, the Bureau of Labor and Industries, and other agencies; federal rules and regulations regarding licensing and labels; and more.

“Having the ability to interpret all those rules and regulations is really helpful. And it really is very helpful to have J.D. behind your name as you’re trying to do compliance.”

Bailey agrees.

“Legal skills come up on a daily basis in what I’m doing now,” he says.

For Rebecca Moore, “being an attorney and a litigator has really stood me in good stead in the wine industry. This is an information-dense occupation, with myriad legal aspects to it. I did premise liability and construction defect law, and when you’re in a business that involves the public and alcohol, premise liability is a wonderful thing to know.”

In wine as in law, “it’s all about relationships,” says Steinman. “My legal mind understands relationships and understands people’s concerns and their anxieties about business and about where they want to be in the next steps they take in life.”

Perkins draws a comparison by noting that “the law categorizes human behavior; when I’m in the vineyard, I’m categorizing natural behavior.” She says her experience as a nuclear-waste lawyer, coupled with past work as an outdoor guide in Oregon and related classroom and job experiences, led to her current work in sustainable and regenerative agriculture.

Since leaving the law, Perkins says, she still uses her legal skills as an advocate for the wine industry, most recently in an effort to block proposed tariffs on European wines.

Hermann notes that one of the most valuable skills he learned from 33 years with Stoel Rives is how to build a team of experts.

“Having the ability to interpret all those rules and regulations is really helpful. And it really is very helpful to have J.D. behind your name as you’re trying to do compliance.”

“Having the ability to interpret all those rules and regulations is really helpful. And it really is very helpful to have J.D. behind your name as you’re trying to do compliance.”

Now that he is acquainted with wine experts the world over, Hermann doesn’t hesitate to seek out the best of the best, no matter the distance. “If we need to find someone in the world who knows this specific thing, and if the guy who know this is in France, let’s go get him,” he says.

Hirschy’s years of experience in advising vineyard and winery owners meant that when he and his wife bought the first 29 acres of their 95-acre vineyard in 2006, they did it with eyes wide open. “I know it for what it is,” he says. “It is capital intensive and it has a fairly low rate of return. In terms of cash flow, it’s the worst real estate investment I’ve ever made.

“But there are other returns ...”

**The Returns**

In fact, says Hirschy, “a cloud lifts” when he and his wife depart for their vineyard retreat each weekend. “It’s a different rhythm. You can find comfort in watching the vines go through their cycle, from bud break to harvest.”

The salubrious effects of working in a vineyard or winery are often mentioned by winemaking lawyers. Those still practicing law during the week admit they do chafe at the bit while awaiting a weekend escape to wine country, but their overarching message is that they’ve achieved the elusive work/life balance — finding satisfaction and personal enrichment in both areas of their lives — that the Bulletin’s October 2019 cover story promoted.

Well-being is not just the absence of illness, the article pointed out, but also a
positive state of wellness driven in part by creative or intellectual endeavors and pursuits that cultivate personal satisfaction.

“The source of satisfaction that I’ve gotten from being a lawyer has been the same as with the wine experience,” says Hermann, who adds that his work as a lawyer and his wine-making projects are both so rewarding to him simply because he has followed his own interests. “The most satisfying thing,” he says, “is creating your own pathway.”

Hendricks agrees, although he’s quick to point out that toiling among the vines and tanks and barrels offers rewards that can’t quite be duplicated in legal triumphs, no matter how grand. There’s a special, unbeatable satisfaction, he says, in simply holding a bottle of wine that is the fruit of your labors, one that represents months of creative energy.

“When it’s all said and done,” he concludes, “and you have a bottle of wine in your hand that you have produced, you feel really good.”

Susan G. Hauser is a Portland-area freelance writer. Reach her at susan.hauser@gmail.com.

On the Front Cover: Medical malpractice lawyer Stephen Hendricks owns Ruby Vineyard & Winery in Hillsboro with his wife, Flora Habibi. Toiling among the tanks, barrels and vines offers rewards that can’t quite be duplicated in legal triumphs, he says, no matter how grand. Photo by Jaime Valdez.
When Oregon courts slowly began resuming jury trials in the spring and summer, they faced two sometimes conflicting goals: delivering justice, and keeping people safe. The result has been a wave of physical changes to courtrooms across the state, and a robust discussion about what constitutes a fair and impartial jury trial in the midst of a pandemic.

The 2020 concept of deliberate social distancing doesn’t fit neatly into the traditional courtroom setting. Nor do jurors; jury selection is partly a numbers game, and the number of jurors needed to conduct a trial doesn’t mesh easily with COVID-19 restrictions on how many people can occupy an enclosed area.

Standard ways of operating, such as packing people together and conferring closely with others in the courtroom, simply do not work in a pandemic.

“It’s definitely a space issue,” says Linda A. Hukari, trial court administrator for Marion County Circuit Court. “We now need to use more space.”

Like her counterparts in other counties, Hukari and her staff had their hands full in preparing to host juries and still meet government-mandated directions for keeping people at least 6 feet apart. Counties’ courtroom sizes and numbers vary widely across the state, but nearly all share one characteristic: Their jury rooms are too small to accommodate prescribed social distancing.

As a result, just to hold a single trial, circuit courts commonly are using as many as four courtrooms to assemble enough potential jurors to conduct voir dire and provide enough space for juries to meet and deliberate.
Some are making physical changes to their courtrooms to accomplish this. For example, the Marion County court pulled out benches and replaced them with movable chairs, marking where jurors could sit. Deschutes County Circuit Court made structural alterations to its courtrooms that involved renovation and construction.

“How a court tackles a jury trial is really facility-dependent,” says Jeff Hall, Deschutes County Circuit Court’s trial court administrator. Three of his courtrooms had been slated for an update and remodel this fall to make them ADA-compliant, so the court revised the construction schedule to take place in May to prepare for trials during the pandemic — and added a few design changes, too.

“We moved where the defendant was sitting,” Hall says, and rather than move jurors to a jury room as before, the jury stays in place in the courtroom for deliberations. That means Hall’s court needs to use only two courtrooms for a trial instead of three or more, he says.

Government-recommended sanitation procedures, such as cleaning chairs and tables after each use, also require more resources.
“It’s definitely a process to have a jury trial,” says Hukari. “It’s also a staff issue. It takes more time because jurors are spread out to three or four rooms. Every jury trial takes two courtrooms, because we can’t use jury rooms.”

As a result, many courts have looked for other venues in order to address the growing backlog of cases. For instance, Hukari says Marion County Circuit Court was considering renting space from a theater across the street that contains conference rooms and a ballroom. In an opinion piece for The Oregonian, Washington County District Attorney Kevin Barton said, “We are looking for creative ways to conduct necessary jury trials outside of our small courtrooms, such as moving trials to a school gymnasium — literally with the judge at the free-throw line, the attorneys at half court and the jury spread out in the bleachers.”

That hasn’t happened yet, but Washington and other counties have worked to find other creative solutions, from consolidating smaller courtrooms to redesigning and adding safety features to others.

“This is new and uncharted territory,” says Sally Bovett, trial court administrator for Lincoln County Circuit Court.

‘A Lot of Planning’

Courts’ allowed capacity in a given room depends on the level a court gets assigned through Oregon Supreme Court Chief Justice Martha L. Walters’ order 20-016, which was issued on May 15. Those levels relate directly to the phases of reopening that Gov. Kate Brown has designated for each county. In late July, for example, Lincoln County was still in Phase 1 — which allows gatherings of up to 25 people, provided physical distancing is in place — and its court was under Level 2 restrictions.

The 25-person limit per room has “been a huge challenge,” Bovett acknowledges.

Bovett says she and her counterparts in other counties share information during weekly teleconference calls about what has worked and what hasn’t; in her court, she says, space constraints have cut down capacity by more than half. The jury box now contains only three chairs, with the other nine moved to different parts of the courtroom — a typical tack other courts have taken, distributing jurors throughout a courtroom in the area normally used by observers.

By the second week of March, Lincoln County court staffers had measured for social distancing throughout all the rooms the court controls and marked those areas with blue stickers to direct seating and traffic, Bovett says. For the jury trials that were held, staff staggered juror check-in times, allowed jurors to self-identify as vulnerable and excused those people from jury service, provided masks for those who did not bring one, and distributed potential jurors among multiple rooms while they went through jury selection. Those not in the same room where voir dire took place viewed it via video, Bovett says, “to ensure social distancing and to prevent having to repeat it.”

“I think the first trial we did we were nervous because we hadn’t done this before,” Bovett says. “I think it went as well as it could have, and we received very positive input from many prospective jurors. Our biggest concern is to keep everyone who comes in as safe and healthy as possible.”

In places where the governor has authorized gatherings of at least 50 people in one location — 29 counties as of mid-August, all outside the Portland metro area — courts could conduct jury trials beginning July 1 in all criminal and civil cases, provided “sufficient staff are available and social distancing requirements can be met,” according to the chief justice’s order. Multnomah, Washington and Clackamas counties all were poised to move to Phase 2 in mid-July, but that decision was put on hold when coronavirus cases spiked.

Richard E. Moellmer, Washington County’s trial court administrator, says his court moved jury trials to its largest courtrooms for Phase 1, using software that helps with space planning. But the software showed that gatherings of 50 people in an indoor space requires 1,800 square feet, and the county’s largest courtroom encompasses just 1,300 square feet.

“Clearly, we can’t get close to that new maximum,” Moellmer says, even if the governor were to move up the county to Phase 2 to allow that number, “which means we must continue to limit occupancy in our courtrooms to maintain 6-foot social distancing.”

“With social distancing, courtroom maximum occupancy in our largest courtroom is 25. Smaller courtrooms are able to accommodate fewer,” he notes. As a result, “many courtroom participants — such as attorneys, interpreters and probation officers — now
routinely appear remotely by audio or video conferencing, which allows more people to appear and participate without being physically present and subject to occupancy limitations.”

To ensure safety, Washington County helped procure movable Plexiglas shields for placement at the court’s public service counter and in key locations inside each courtroom — between the judge on the bench and witnesses on the stand; between the judge and judicial support staff in adjacent courtroom clerk workstations; and between those workstations and the courtroom well. Judicial preference determines how many and where movable shields are deployed, Moellmer says.

Multnomah County Circuit Court faced the dual challenge of preparing to move to a new facility in early October and carrying on business while still in the old Central Courthouse in downtown Portland. The first two trials it held after COVID-19 restrictions took effect both happened during the first week of May and “took a lot of planning,” says Rachel McCarthy, public information analyst for the court.

When potential jurors arrived at the courthouse, they saw signage and markings on the street directing them to wait in line, 6 feet apart. Court staff greeted them, distributed a juror information sheet and gave them a face covering if they didn’t arrive with one — though most did, McCarthy says. She says her court now requires everyone to wear masks in the courtroom, following guidance from the chief justice.

Chief Justice Walters’ Order No. 20-016 states that the local presiding judge “may require that specified persons in the courtroom, excluding witnesses when testifying, wear masks,” and that the court provide masks and information about how to use them.

Individuals called for jury duty in Multnomah County now wait in four different courtrooms, each marked and measured for social distancing according to capacity, McCarthy says. “Since the trial courtroom’s capacity is lower now,” she says, “we stream the trial to an overflow courtroom so the public, family, etc. can watch the trial from there.”

Why Early Trials Happened

The principal reason any counties conducted jury trials at all during the first few months of the pandemic — and why nearly all trials were for in-custody cases — is because of Oregon statutes that Chief Justice Walters characterized as “unique” in adding to the challenges associated with holding jury trials during the pandemic.

In a June 25 letter to legislative leaders, the chief justice wrote that those laws required “that most individuals who remain in custody pending trial must be brought to trial within 180 days or be released. In most states, trials have been postponed, yet Oregon’s courts continue to hold trials consistent with ORS 136.290 and ORS 136.295, which impose 60- and 180-day limits for those who are in custody as they await trial.”

In the first special session of the 2020 Legislature, the chief justice called for passage of key provisions of House Bill 4212, including the extension of statutory deadlines for both civil and criminal cases. (The bill also extends pre-filing statutory timelines for specific cases and authorizes a pilot project to allow for remote online notarization.) She noted that Oregon is now “faced with an unparalleled test of this (180-day) statute as hundreds, possibly thousands, of jury trials will be required by law in the coming months. This is so because hundreds of cases have been postponed since March, often at the request of legal advocates, and new cases are coming in each day.”

The deadline-extension provision, which the Legislature passed along with the overall bill and the governor signed into law on June 30, “addresses the need for flexibility in cases where trials cannot safely proceed and defendants cannot safely be released,” Chief Justice Walters wrote.

HB 4212 gives the court more time to schedule a trial without releasing the defendant, says Kimberly McCullough, legislative director for the state Office of Public Defense Services. The provision allows for up to a 60-day extension beyond the 180-day limit to detain a defendant pretrial who is accused of a person crime, should the court find that a case meets certain specified conditions.

For example, a judge may determine that, without security posted, persons held in custody are either unlikely to return to court if released or pose a continuing safety threat to their victim or the community at large, says John Wentworth, chief deputy district attorney for Clackamas County. “That decision is made with a full understanding of the health concerns raised due to the current pandemic,” he says.

Barton echoes that sentiment. The Washington County DA says that while many county jails have decreased their inmate population to make spacing accommodations due to COVID-19, the facilities “continue to hold defendants who are charged with crimes that impact public safety, including murder, sexual assaults, domestic violence and significant property crimes. Many of these defendants are either flight risks or present significant risks to the safety of the public or the victim.”

“Every defendant who is sitting in jail waiting for a trial has a right to a prompt hearing before a judge so that the judge may determine whether a bail amount is appropriate based on that defendant’s
Defense Counsel Spearhead Mask Donations to Courts

When Oregon Chief Justice Martha Walters asked Oregon State Bar members in May for donations of masks to distribute to courtrooms, the Oregon Association of Defense Counsel answered the call.

“When her desire was to require or encourage people to wear masks to enhance the safety of courthouses,” says Grant Stockton of the law firm Brisbee & Stockton in Hillsboro and president-elect of the OADC. “So she reached out to the bar and asked, ‘Can you help with this project?’”

Stockton was a member of one of several work groups convened by Walters to respond to the pandemic, and he offered to have the OADC lead a solicitation effort to the entire bar for donations of face coverings. “The chief justice was looking for someone to pick this up and run with it,” he says. “We’re trying to partner with as many legal groups as possible to reach as many people as possible. The OADC is collecting masks and donations, and we’re helping get it to the marshal’s office and distribute them.”

Stockton says courts can’t be expected to require masks if they lack an adequate supply to hand out to any jurors, employees or visitors who arrive at court and don’t have one. “We don’t want jurors to be afraid to go into the courthouse,” he says.

Chief Marshal Evan West of the Oregon Judicial Department says his office had received more than 40,000 disposable and cloth face coverings by mid-July from OSB members. OJD uses a shuttle run to deliver face coverings to the seven counties that encompass the largest courts. The rest are shipped directly to courts around the state on an as-needed basis, he says.

West’s office has sent out about 60,000 face coverings so far, and has a stockpile of around 100,000 — about a three-month supply. “We initially estimated that we would need a couple thousand per week,” he says. “However, with face coverings becoming the new normal, we are now estimating (we need) 1,200-1,500 per day.”

Stockton emphasizes that the collection effort is “not a one-off. It’s going to be ongoing. It’s great to see lawyers step up and say, ‘If this is what the courts need to make them safe, let’s do it.’ It’s nice to see the legal community come together.”

— Cliff Collins

Editor’s note: The OJD Marshal’s Office has asked that the Oregon Association of Defense Counsel act as the point of donation for masks. Donations can be sent to or dropped off at the OADC office, 147 S.E. 102nd Ave., Portland, OR 97216. Questions about drop-off or mailing can be answered by the OADC’s manager, Geoff Horning, at ghorning@oadc.com. He and Stockton also are available to answer any questions about the effort in general.

unique circumstances,” Barton adds. “While there are some who have suggested releasing all inmates, such a drastic step is unwise, unsafe and unnecessary. Our criminal justice system is equipped to ensure that the rights of all individuals are honored while the public health needs are met.”

Some defense attorneys have in fact argued that most of the affected defendants are in jail only because they cannot afford to post bail, and that the courts could have solved the deadline problem by releasing the defendants until a later court date. But McCullough, who served on a workgroup that fashioned the language of the deadline-extension provision, says HB 4212 imposes “a pretty high standard” on courts that want to hold someone longer than 180 days.

She says the workgroup engaged in challenging but collaborative discussions to try to achieve a balance between the health concerns of holding jury trials and “concern for those incarcerated,” who are at high risk of infection.

“I’m glad we were able to reach a consensus,” McCullough says. “It was difficult to get to that point, but I think we threaded the needle.”

Perspectives from the Bench

Nevertheless, judges across the state are worried about the growing number of cases that have accumulated during the slowdown. Restricted court operations since mid-March have prioritized in-custody criminal, in-custody juvenile and emergency cases, such as protective orders. But everything else — civil and domestic cases, for example — has been delayed.

“Cases are backing up. At some point, we know we’ve got to deal with the backlog,” says Washington County Circuit Court Judge Janelle Factora Wipper. “But we have no clue when that’s going to be, or any sort of returning to normal.”

Making matters worse, Chief Justice Walters says, is that the backlog is only expected to get worse “as new cases, such as evictions, foreclosures and business disputes, are filed.”

Part of the problem in Washington County, Judge Wipper says, is that officials have had to consolidate courtrooms because of a lack of staff to support opening additional spaces. Many employees have been furloughed, and some had to stay at home for medical reasons. As a result, the court could bring in only 17 potential jurors at a time for voir dire, Judge Wipper says, when normally there would be up to 45 at a time.

“That made the biggest difference timewise,” she says. “(In one case), it took a day and a half just to pick the jury.”

Three courtrooms were needed to seat that jury: one for the trial, one for jury deliberations and one for members of the public. Judge Wipper’s first jury trial took 10 days; in normal times, she says, it would have taken two or three.

Because jurors had to be spaced apart in the courtroom, the majority were situated behind the lawyers and defendant. Afterward, when Judge Wipper asked jurors for their reaction to the trial, some “brought up that they could not see the lawyers’ and defendant’s expressions on faces, and that is sometimes important,” she says. “That was something of concern to the jurors. The jurors were a lot more removed from the process.”
Judge Wipper says she has been surprised that some attorneys haven’t adapted to the new courtroom setting. The people charged with rendering a verdict are seated behind them, yet some lawyers don’t turn around to address jurors, even when showing exhibits. In addition, those exhibits have to be encased in plastic sleeves and wiped down after being touched, and the witness box has to be sanitized between trials — another contributing factor to the length of trials, she notes.

Trial court administrators in counties that have held early post-COVID trials say they haven’t seen any significant changes in jury-duty responses or turnout. In Marion, Lincoln and Washington counties, for example, about the same percentages have answered and shown up when called as before the pandemic.

“It is amazing how cooperative the jurors were,” says Judge Wipper, who adds that the Washington County court informs jurors that if any are not feeling well, they can reschedule their jury duty. “Only two bowed out for those reasons; I expected more.”

Marion County Circuit Court Judge Courtland Geyer says he’s seen three substantial differences once jury trials resumed. The first was the need for jury selection to “balance safety and capacity.”

Because of physical-distancing requirements, Judge Geyer says, the court’s ability to host jury trials has been substantially reduced, to a maximum of two trials starting on any given day. Moreover, given that fewer people can occupy a room at one time and jurors must be selected in “waves,” the process takes far longer — a factor that has proved to be a challenge for trial counsel to accept and adapt to, Judge Geyer says, and a potentially bigger imposition on jurors who don’t end up being selected.

Marion County Circuit Court pulled out benches in some courtrooms and replaced them with movable chairs, marking where jurors could sit. The court installed large multimedia screens in the courtrooms several years ago, which help bridge the gap for jurors now seated behind the attorneys’ table. Photo courtesy of Linda Hukari
Second, in the four trials he conducted in May and June, “I strongly encouraged the jurors to wear masks but did not require them or the attorneys to wear masks,” Judge Geyer says. He notes that per the chief justice’s order, the presiding judge for each court gives judges discretion about whether to ask witnesses, a criminal defendant or others to wear a mask in the courtroom. He says he read an interview of a juror from another county who said that a mask made the defendant appear more threatening, “and you have to give strong consideration to that objection and who we are requiring and not requiring to wear masks.”

Judge Geyer did not wear a mask during those early trials, but after reviewing new information and after much contemplation, he decided to don a mask beginning with a trial in mid-July. He also now requires everyone in the courtroom to wear masks, except for witnesses when they give testimony. But he says he feels that, under ideal circumstances, judges’ faces should not be covered, because their countenance and demeanor alone can project and help maintain calm in the courtroom, even when they don’t say anything.

“I am generally going to have witnesses remove their masks when they testify,” he says. “Exceptions would be for witnesses who ask to leave them on — if neither party objects, that is not a problem.”

Defendants who choose to testify on their own defense would, of course, be able to remove the mask during their testimony.

“The backdrop for my concern about defendants being required to wear masks were trials where some jurors, attorneys and the judge were not,” Judge Geyer adds. “With everyone wearing a mask, the potential for prejudice to the defendant may not be completely removed, but I believe it is mitigated quite a bit.”

The third change Judge Geyer says he has observed is that “we’re running into situations where attorneys are telling me witnesses have been exposed” to COVID-19. This presents a major safety concern, and he says he would not allow witnesses into the courtroom who know they’ve recently been exposed to someone with the coronavirus. He predicts this will become a new addition to the standard questions asked, and he is going to add that to his list to ask juries for potential risk categories before they are brought into the court.

Like Judge Geyer, Deschutes County Circuit Court Judge Beth Bagley says the bottom line is that courts need to “re-imagine a process to safeguard everyone’s constitutional rights and keep people safe.” During her first trial back, she wrote up a checklist of procedures to follow, given how much her routine had changed and how “dramatically” different the courtroom looked.

“I made sure to explain to jurors the difference and why we made the changes,” she says. Among the procedural differences: Now that a courtroom has become the jury room, Judge Bagley says, “When we recess, we are now leaving the room instead of the jury leaving.”

Another new complication is posed by moving an in-custody defendant in and out of the courtroom. Before the pandemic, jurors would be in the jury room instead of the courtroom and would not see the defendant enter and leave, or being escorted or handcuffed. Now that’s not the case.

Judge Bagley says courts do “a number of things to try to prevent jurors from consciously or unconsciously drawing adverse conclusions, opinions or biases about the dangerousness or guilt of a defen-
If they are aware that the person is in jail. Defendants appear in
their own clothing for trial and not jail-issued clothing, and defen-
dants are only restrained with visible or nonvisible restraints after
a hearing prior to trial, after the court has made findings about the
level of security needed in the courtroom. This can range from no re-
straints used at all to nonvisible restraints worn under the clothing,
or visible restraints like handcuffs, which is very rare.”

The Deschutes County court livestreams trials so that members
of the public can observe. Judge Bagley says everyone in her court
must wear a mask, with the exception of witnesses giving testimony,
so that witnesses can be seen and heard clearly and so defendants
can see witnesses face to face in order to ensure their Sixth Amend-
ment rights.

**DAs and Defenders Weigh In**

District attorneys across the state “see it as very important that
the work of the courts needs to continue” to the extent possible
under health and safety measures, says Paige E. Clarkson, Marion
County DA and president of the Oregon District Attorneys Associa-
tion. “There are differences in every county; everybody’s in a dif-
ferent place as to what they’re able to do. The reality is that each
individual county is constrained by their own courthouses.”

Marion County is blessed with a large court-
room, which Clarkson refers to as resembling
those in many movies. “Not every county has
a Hollywood-style courtroom,” though, and as
a result, some are looking at holding courts in
other settings such as gymnasiums, armories
and auditoriums, she says.

Lincoln County District Attorney Jonathan
Cable says his court held some of the first jury
trials in Oregon after the pandemic struck, but progress slowed af-
after the county’s case numbers rose. From his viewpoint, the biggest
challenges to conducting jury trials in the pandemic are jury selec-
tion, not being able to hand exhibits back and forth, and “getting
people to show up” for jury service when they understandably are
wary because of the COVID-19 threat.

Wentworth, the deputy district attorney in Clackamas County,
says the key is flexibility. ”As a prosecutor, the more quickly we can
get a case to trial, the greater the safety provided to the victim and
the community,” he says. “So it is always in the state’s best interest
to get the case resolved by plea or trial as quickly as possible. That
priority hasn’t really changed.”

As a result, Wentworth says, “our office is meeting with the local
defense bar and the court to come up with solutions to the growing
backlog. We’re all aware that some creativity will be involved in re-
solving cases before trial, as well as diligence in being ready for trial
on the days they are scheduled, so there won’t be a need to continue
trials to a later date.”

The same is true in Washington County, where Barton says he
often looks to the creativity and ingenuity of the private sector for
inspiration and ideas. “Put simply,” he says, “if Costco can stay open
for business, so too can our criminal justice system.”

“Our criminal justice system is an essential service that must
continue to function while it adapts to meet current challenges,”
Barton adds. “One of the essential roles of our system is to honor
the rights of both defendants and victims to a speedy trial or disposi-
tion. While this task is certainly more challenging during a time of
COVID, it is essential that we do everything possible to meet this obligation."

At the end of the day, Barton says, "When I think about the impact of delays on a criminal case, I think of the individuals involved. In addition to the defendant who is waiting for the court proceeding to occur, there is often a victim and victim family members who are also waiting for a day in court and justice to occur."

Finding some way to keep the system moving is important, of course. But for Shaun S. McCrea, executive director of the Oregon Criminal Defense Lawyers Association, a bigger issue is what she calls "the tension" between the accused getting full protection of their rights and the safety of all involved. Some defense attorneys have had misgivings about holding jury trials at all during the pandemic, and McCrea — a trial attorney for more than three decades — is among them. She notes that the National Association of Criminal Defense Lawyers (NACDL) has outlined numerous obstacles courts face to ensure justice if jury trials continue during the pandemic.3

Emphasizing that she is speaking only for herself and not for her association’s board, McCrea says that “it’s extremely difficult to give” defendants the rights they are due “and for jurors to put aside their fears” of catching the virus while serving.

Jessica Kampfe, executive director and public defender for Marion County Public Defender, says she has additional concerns. For example: If courts try only in-custody cases, it potentially erodes the presumption of innocence if juries are aware of that fact. It’s also difficult to communicate verbally with a client if the client is 6 feet away from defense counsel.

“As defense counsel, we communicate a lot of empathy by sitting by the defendant, to let the jury know they’re not scary to us as individuals,” says Kampfe, who serves as a member of Marion County’s Criminal Justice Advisory Committee. She also worries that jurors won’t always hear lawyers’ questions when they are seated far away, and that jurors may arrive with expectations that a case is especially serious or they would not have been called during a pandemic — a perception that undermines fundamental fairness, she believes.

Portland defense attorney Janet Lee Hoffman, who has tried many cases and taught jury selection, worries about numerous aspects of resuming jury trials. She says she’s afraid that courts will rush to catch up with the backlog and not take the necessary “time to appropriately address and consider a defendant’s constitutional rights.” These include that “you have to work out a way so that all the jurors have a similar vantage point,” she says.

In addition, she says, because jurors reasonably may feel anxious about congregating in public spaces, they may focus more on their own safety and less on the trial, and they may even arrive feeling “hostile” because they are “risking their lives” to serve on a jury.

“These health concerns create a significant risk that jurors will not represent our general population,” Hoffman says. Otherwise-qualified jurors may exclude themselves from jury duty based on increased risk factors such as age, underlying health issues or race or ethnicity.

“Research (by the Centers for Disease Control and Prevention) has shown that COVID-19 disproportionately impacts Black/African American and Hispanic communities,” Hoffman says. “Assuming legitimate health concerns are a basis to be excused as a juror,
these disparities will prevent many defendants from being judged by a jury of their peers.”

Each safety measure adopted by the court potentially impacts different components of what together constitute a fair and impartial jury trial, she maintains. “The challenge facing litigants and the courts today,” Hoffman says, “is how to reconcile the constitutional mandates with the legitimate health concerns facing jurors.”

Chief Justice Walters acknowledged that balancing act in a letter to bar members in early August, saying that “protecting the health of jurors and others who participate in trials has proved daunting.”

“The right to jury trial is a significant right and we are proud to guarantee it,” she wrote, “but when permitted to do so by statute, some courts may have to continue to postpone jury trials, particularly those in civil cases. That said, it is essential that all cases, both criminal and civil, move to resolution, and we are exploring ways to make sure that happens.”

As part of that effort, the chief justice said, she asked presiding judges across the state to reach out to their local bar associations or members to talk about the policies they have put in place “and to encourage you to communicate directly with your local courts, expressing both your accolades and your criticisms.” The presiding judges were also tasked with discussing remote proceedings conducted in their jurisdictions, with the goal of eliminating any barriers to their effective use.

In addition, the chief justice formed workgroups based on case type and asked them to “take a hard look” at whether there are reasons to seek more consistency with remote proceedings and improve overall transparency.

“Most importantly, though, we are asking the workgroups to make recommendations about how we can best serve the people of Oregon while protecting their health and safety,” she wrote, with recommendations due back to her by Sept. 1.

In the meantime, Hall — the Deschutes County trial court administrator — says Oregon’s high unemployment rate and the fact that jurors may “self-select out because of risk” will continue to factor into potentially different jury pools; so will how and where courts seat jurors and the ways in which attorneys now present evidence. But whether or not that creates fairness questions, he says, “this is the circumstance we are in, and we have to deal with it.”

Moellmer, his counterpart in Washington County, echoes those sentiments.

“We’re making the best of the circumstances,” he says. “It’s not ideal or preferred; we are adapting.”

Cliff Collins is a Portland-area freelance writer. Reach him at tundra95877@mypacks.net.

ENDNOTES
1. Find the chief justice’s order online at tinyurl.com/CJ20-016.
2. Find details of House Bill 4212 online at tinyurl.com/HB4212.
3. Find “Criminal Court Reopening and Public Health in the COVID-19 Era” online at tinyurl.com/NACDLReopening.
4. See tinyurl.com/CDCEthnicRacial.
5. Read the chief justice’s letter to bar members online at tinyurl.com/LetterToOSB.
‘Thinking Bigger, Digging Deeper’
Campaign for Equal Justice Marks Its 30th Year

By Janay Haas
In February 2020, 450 Oregon lawyers gathered in downtown Portland to celebrate their continuing commitment to supporting the state’s legal services programs through the annual Lawyers’ Campaign for Equal Justice (CEJ). The attendees learned that they and their colleagues had raised a record-breaking $1.8 million in the 2019-2020 campaign. More than 3,000 lawyers — nearly 20 percent of active members of the bar — had contributed to the cause.

There were quiet grins and raucous cheers.

And now CEJ is launching its 30th season as one of the country’s most successful fundraising campaigns on behalf of people least able to access the justice system. This year’s campaign, with a “Justice Endures” theme, will be an especially important one, says CEJ Executive Director Maya Crawford Peacock — and a very different one, too.

In February, Crawford Peacock was ecstatic. “I wanted to brag about our best year ever,” she says. “But now I can’t, because it has been a truly horrible year for low-income legal aid clients.”

Oregon’s economy slammed shut in March in response to the coronavirus pandemic, and Crawford Peacock says it is likely that the demand from low-income people for civil legal services in the next year or two will dwarf anything that legal aid programs have seen since at least the early 1980s.

The Scope of the Challenge

The pandemic has hit low-income Oregonians especially hard, with communities of color the hardest hit among them. Tens of thousands of Oregon’s working poor lost their jobs as the state’s unemployment rate spiked from 3.4 percent in December 2019 to an all-time high of 14.9 percent in April 2020, according to the U.S. Bureau of Labor Statistics.

Tenants have been unable to pay rent or utilities. Classes from kindergarten through high school have been canceled or put online (where many low-income families can’t access them because public libraries closed, too). Child care and housekeeping jobs have evaporated.

Medical debt has soared. Police logs have reported more and more calls about domestic violence and child abuse as already volatile households went into isolation. People who had no homes have been turned away from many kinds of shelter and find themselves unable to isolate themselves on the street.

Even before the pandemic, a comprehensive legal needs assessment confirmed that access to justice was becoming more elusive, especially for single parents; Black, Indigenous and other people of color (BIPOC); domestic violence and sexual assault survivors; people with disabilities; and youth with juvenile records. As of 2018, less than 15 percent of low-income Oregonians with civil legal problems received any kind of assistance with those issues, despite the best efforts of federal, state and local supporters to meet the need.

A study 18 years earlier showed about 20 percent getting any legal services at all.

“The real problem is that we only fully served 10-20 percent of the legal needs in the best of times,” reflects Ira Zarov, retired director of the Professional Liability Fund, who was at the helm of Oregon Legal Services and later Legal Aid Services of Oregon in the 1990s.

How will the pandemic impact those numbers? In 2014, a statewide task force on legal aid funding concluded that to have even a “minimally adequate” legal aid program, funds needed to double from $15 million annually to $30 million. Given the financial impact of COVID-19 on the legal profession and its clients, the future looks daunting.

Meeting the Need

Fortunately, CEJ has a history of thinking bigger and doing better. Over the past 29 years, Oregon lawyers have committed more than $30 million for civil legal services for the poor through CEJ, as well as channeling nearly $2 million to the campaign’s endowment fund.

Those numbers show the Oregon bar’s commitment over time to ensure that “justice endures,” according to Crawford Peacock. “There are so many lawyers who are helping us to endure both the current economic and health crises and who will be supporting us into the future.”

“As lawyers concerned about equal justice,” says lawyer and former CEJ Executive Director Sandra Hansberger, “we must look at doing better, thinking bigger and digging deeper.”
In-person justice-trivia events, new-lawyer events, the 2020 Champion Donor event at Mahonia Hall and the annual stakeholders’ and advisory meetings have already been canceled or postponed, as have most regional celebratory luncheons.

Crawford Peacock ticks off some of the other changes: “We’ve canceled the Marion-Polk luncheon in September, in which more than 300 lawyers participate, and the Lane County luncheon in October, with more than 200 lawyers. We don’t know yet if we’ll still have the Central Oregon event in November or the Southern Oregon lunch in December.”

CEJ’s 30th anniversary luncheon is still on the calendar for February 2021 at the downtown Marriott in Portland, but Crawford Peacock says all plans are tentative now.

While in the past CEJ and its 300 volunteer lawyer fundraisers gathered in communities around the state for events and activities, “now we’re looking at fewer, possibly even no events,” she explains. Those lawyer volunteers are meeting remotely as regional steering committees, developing new ways of doing things.

“Our volunteers have come up with some great ideas to stay connected to lawyers across the state, Crawford Peacock says. Stay tuned for small outdoor events and virtual events that are currently in the works. We’re doing our best to pivot with creative outreach.”

So far this year, that outreach has included a collaborative project with Oregon Women Lawyers in July for a virtual CLE on public speaking, featuring past winners of CEJ’s popular “Laf-Off” fundraisers. Another project will be to continue outreach to other affinity bars that have signed on to CEJ’s Call to Action — the Oregon Minority Lawyers Association, the LGBT Bar Association (OGALLA), the Chinese Lawyers Association, the South Asian Bar Association, the Hispanic Bar Association, the Oregon chapter of the National Bar Association, the Oregon Asian Pacific American Bar Association and the Filipino American Lawyers Association.

The perspectives of these groups are important, Crawford Peacock says.

“When we are serving vulnerable people,” she says, “we have to make sure that we have lawyers from all backgrounds to help us do the best possible work.”

Another way in which legal aid and its many partners will be thinking bigger is in determining how to allocate a sizable cy pres award they received in 2019. If that money were used to replace the funding system now in place, the award would be gone in two years — with legal aid programs still funded to meet only 15 percent of civil legal needs.

“We’re hoping that we don’t have to use this money to support ongoing operations, but to make some big leaps. Legal aid can’t make true progress if they use this money to do what we already are doing,” says Crawford Peacock. “We want to make sure that legal

When the Stars Aligned

Astrology has recently enjoyed a resurgence, as it often does during times of societal unrest. But while most lawyers might roll their eyes at this pseudo-science, they would be hard-pressed to deny that the stars aligned one hot summer night 30 years ago.

It happened at the downtown Portland Safeway store at SW 10th Avenue and Jefferson Street at about 10:30 p.m., according to one of the people who saw it unfold.

“My husband, Michael, and I were walking home from a Wednesday night road-trip performance by the Oregon Shake- speare Festival downtown,” recalls Linda Clingan. “We saw some- one we knew, Bob Joondeph, in the Safeway parking lot. It looked as if he was talking down a distraught client.”

Joondeph was the lawyer-director of what was then known as the Oregon Advocacy Center (now Disability Rights Oregon).

“The guy he was talking to was wearing a stained T-shirt and shorts,” Clingan says. “His socks were slumped around his ankles. He was waving his arms. His eyes looked wild, and his face was flushed. A soaked handkerchief headband barely held back his tangled hair.”

The couple decided to keep moving, but Joondeph had noticed them and waved them over.

“I want to introduce you to my friend Ira Zarov,” he said. “Ira is the director of Oregon Legal Services. Ira, Linda is a fundraiser for the symphony.”

“You’re a fundraiser? I need a fundraiser!” Zarov shouted, shaking Clingan by both shoulders.

In the conversation that followed, Zarov mentioned that he was just heading home after two hours of playing basketball and still had a lot of adrenalin to work off. Clingan walked back her first impression.

Looking down from the heavens, the stars high-fived each other. They had just witnessed the birth of the Oregon Lawyers’ Campaign for Equal Justice. Clingan, a nationally known development expert, would soon become its first executive director.

— Janay Haas
aid donors, volunteers, community partners, legislators and others know that they are just as important now as ever.

“If we are to make progress toward the goal of getting legal aid to an annual budget of $30 million,” she explains, “then we need to double down on all of legal aid’s sources of funding.”

The Origin of the CEJ

The history of funding for legal services for low-income people is a singularly rocky one.

A component of the President Lyndon B. Johnson’s War on Poverty, civil legal services for the poor were first overseen by the Office for Economic Opportunity (OEO). Advocates for equal justice later convinced the Nixon Administration to create a quasi-independent oversight agency, the Legal Services Corporation (LSC), to protect legal aid programs from political winds as funding for the OEO lost momentum.

The LSC Act, which created that agency, was the last bill President Nixon signed as he left office.

Federal funding for the national program, at $91 million its first three years, more than tripled the following year, with strong support from both sides of the congressional aisle. But soon the political winds began to blow hard enough to jeopardize continued funding, as legal services programs successfully challenged the practices of the welfare system, mental health services, the credit industry, housing providers and employee and consumer abuses by large corporations.

By the time former California Gov. Ronald Reagan ascended to the presidency, legal aid programs in his home state had earned his enmity. For seven of his eight years in office, he zero-funded appropriations for the Legal Services Corporation and even appointed an opposing party in a legal services-brought case to be the president of the LSC board of directors. Funding, although not eliminated entirely, plummeted.

In fact, for many years the LSC programs survived only because of congressional continuing resolutions instead of affirmative appropriations of new funds. The resolutions meant there would be no or little increase in program resources from the government, and it often meant reductions — between 5 and 31 percent. Accounting for inflation, LSC legal aid programs’ funding now is at a level below that of the early 1980s.

In Oregon, the shift meant that neighborhood legal aid offices in Portland closed, leaving only one office to serve the entire city. Some rural offices had to close their doors, too. The need to look harder for alternative sources of funding became urgent. Temporary funding provided by grants was valuable, but it couldn’t be counted on long-term. Lawyers who took low-paying jobs with legal aid knew that their positions could evaporate on short notice.

Zarov, who had begun his career as a legal aid VISTA volunteer in the mid-1970s, was the director of Oregon Legal Services (OLS) in the late ’80s and ’90s, trying to steer the program through one financial crisis after another. (See “When the Stars Align,” Page 38.) With no predictability in funding levels, he found it increasingly challenging to allocate scarce program resources effectively. And as time went on, cash-strapped offices became smaller and could assist fewer and fewer clients.

Zarov had heard about equal-justice campaigns developed by local bar associations to support urban legal aid programs in New York City, Atlanta and Boston. Those efforts yielded better results for the urban poor, but not for rural populations. Zarov wanted to see a statewide version of these campaigns, in which funds were allocated based on population and level of need.

To get statewide distribution, Zarov enlisted the cooperation of independent legal aid offices in Medford, Salem, Eugene and Portland. With OLS money, he hired a nationally known funding developer, Linda Clingan, to start the nation’s first statewide campaign. A year later, Clingan convinced the Meyer Memorial Trust to provide $750,000 in matching funds over three years to start the project. (See “The Benefit of Negative Stereotypes,” Page 40.)

Reliable Resource

With legal aid programs in Oregon operating on about $17 million annually, CEJ has provided one relatively stable source of ongoing income, helping legal aid plan and operate more efficiently.

“It has lessened the impact of cuts in other areas,” Hansberger observes.

CEJ funding has meant that, in 1992 — for the first time since the 1970s — OLS was able to open, rather than close, a rural field office. The Grants Pass office, now affiliated with the Oregon Law Center, would serve Josephine County with two attorneys, helping to establish an emergency domestic violence shelter, collaborate with local agencies to start the first rural supervised child visitation program in the state, participate in the development of affordable housing and, over time, improve relations with the local housing authority.
that has produced better support for tenants. The office has grown to four lawyers, now known especially for strong advocacy on behalf of homeless county residents.

OLS later was able to adopt and expand a former stand-alone office in Deschutes County, making affordable housing development and a more comprehensive domestic violence response its primary focus. It then had sufficient funds to reopen an office in Klamath Falls.

About More than Money

Along with its fundraising mission, the CEJ has served an important role in focusing the attention of the bar on the larger issue of equal access to justice. Oregon Supreme Court Chief Justice Martha Walters explains that focus this way:

“For each of us to live fully, it is essential that all children be safe — so that they can learn, work and contribute to their communities. It is essential that those with behavioral and mental health challenges get services and treatment so that they too can do their part,” she says. “And it is essential that Black, Indigenous and other people of color have access to our courts to enforce their legal rights so that all can benefit from their talents and all can have faith and confidence in a legal system that functions as it should — for all.”

Crawford Peacock and others involved with CEJ say they’ve witnessed the increasing unity of the bar over the years to fulfill that mission.

“We have a large and effective coalition to advance the cause of equal justice,” says Elizabeth Knight, a partner at Dunn, Carney and former CEJ board president, “including the legal services programs themselves, the Oregon Law Foundation and state bar staff, including Susan Grabe with legislative advocacy, the Oregon Judicial Department and the state’s Department of Justice.”

Individual lawyers are a critical part of the support system for legal aid, Knight adds. “A broad base of private attorney support means we have a lot of credibility” with Congress and the state Legislature, she says. “Oregon is often the top or near the top in the nation for the number of lawyers who support legal aid.”

Lawyer support is visible when the CEJ participates in the American Bar Association’s annual lobbying effort in Washington, D.C. Each year, the delegation includes a number of lawyer volunteers.

“Ed Harnden, a CEJ board member with Barran Liebman in Portland, has gone back to D.C. for more than 20 years. He even received the ABA’s grassroots lobbying award,” Crawford Peacock says, noting that other frequent advocates include Knight, Howard Arnett of Bend, Ray Heyesell of Medford and Brent Smith of LaGrande.

“Every year, the OSB president goes as well,” she says, “The OSB president can speak for the entire bar, and this is very powerful.”

At the state level, more than a hundred lawyers have participated in legislative work to generate more support for legal aid over the years. Just in recent years, lawyers who have testified at Ways and Means Committee hearings on behalf of legal services have included Julia Markley, Wayne Landsverk, Mark Wada, David Rosen, Peter Werner, Harnden, Arnett, Amy Edwards, Michael Mason, Lane Shetterly, Louis Savage, Beverly Pearman, Sara Gray and Mark Comstock, among others.

“Thanks to the efforts of the volunteers and many others over the years,” Crawford Peacock says, “Oregon has broad bipartisan support for legal aid at both the federal and state levels.”

What makes these lawyers so passionate about the mission of CEJ? Rosen, a Bend lawyer who is president-elect of the Oregon Law Foundation, puts it this way: “As attorneys, we cannot participate in a system that is grounded in justice without working toward equal access to justice for all. If justice is our goal, equal access must be our cause. For me, giving to CEJ is not only an investment in our justice system, but in our state as a whole.”

Knight agrees.

“I support the Campaign for Equal Justice because I believe that as lawyers we have a responsibility to champion a fair, equal, and accessible legal system,” she says. “And I always come back to the question: If we don’t ensure equal access to justice, who will?”

The Benefit of Negative Stereotypes

Thirty years ago, then-director of Oregon Legal Services, Ira Zarov, suggested to his new development director, Linda Clingan, that the state’s fledgling Campaign for Equal Justice should solicit annual contributions of $100 from each of the state’s lawyers.

She countered with $250, an amount that would represent only one or two billable hours per year.

In the room with them were Henry Hewitt of the Portland firm Stoel Rives; Louis Savage, director of Multnomah County Legal Aid Services; and Thomas Balmer, then with Lindsay Hart of Portland and currently an Oregon Supreme Court Justice. They had assembled to develop an advisory committee across the state to support the campaign. Their eventual list included U.S. Attorney Sid Lezak, Stoel Rives partner Ernest Bonyhadi, Dennis Karnopp of Bend, Susan Hammer of Stoel Rives and Christie Helmer of Miller Nash.

“At the time we met,” remembers Hewitt, “Linda had initiated contact with the Meyer Memorial Trust about a possible fund-matching grant. Linda said they were thinking about asking for $500,000 over three years to match funds contributed by Oregon lawyers. I commented that, if they wanted $500,000, they should ask for $750,000 because grant requests are seldom awarded in full.

“When the grant request was considered by the Meyer Trust trustees,” Hewitt says, “one of them suggested the full amount should be awarded because the prospect for success was small because they were proposing to raise money from lawyers.”

According to Clingan, the Meyer trustees were confident that lawyers were so tight-fisted that the foundation could come off looking extremely generous without having to match much money at all. But the trustees were wrong about the level of generosity among Oregon’s lawyers.

In each of the three years of the match, the state’s attorneys contributed the maximum amount eligible for the match. And they never stopped giving generously for the next 27 years.

— Janay Haas
Landsverk, a partner at Miller Nash who has served on the CEJ advisory committee, adds, “As I see it, lawyers are in a unique position to level the playing field of justice by financially supporting Oregon’s hugely talented legal aid attorneys. Not every lawyer can be (former Oregon Supreme Court Justice) Jake Tanzer or (longtime U.S. Attorney) Sid Lezak, but every lawyer can and should contribute to the CEJ each and every year.”

For the lawyers who contribute to CEJ, says Henry Hewitt, “it’s not just charity.”

In local communities, legal aid offices report that, as local bar associations become acquainted with the services legal aid can provide, private lawyers step up to provide pro bono services and refer low-income community members to written resources and advice available at the legal aid office. In turn, legal services staff offer occasional CLEs for local lawyers, police training, domestic violence advocacy cross-training and community education for low-income families.

“Justice, diversity, equity and inclusion are the framework for what we do every day,” says Debra Lee, executive director of the Center for Non-Profit Legal Services in Medford. “Each of us has something to offer. We are each a piece of the puzzle. Together we can motivate each other, our colleagues, legislators, bar associations and others to stand up for our shared belief that justice is a right, not a privilege.”

For her part, Crawford Peacock recognizes that the immediate future is a series of question marks. But she is certain about one thing: that Oregon’s lawyers will work together to find more ways to support this critical legal resource.

“Once people know what legal aid is and what it does, once people know who we are, it’s hard to find someone who’s against it,” she says. “It feels good to be part of a legal community that truly cares.”

Janay Haas is a frequent contributor to the Bulletin. Reach her at wordprefect@yahoo.com.

ENDNOTES

1. For more on the access-to-justice gap, see “Barriers to Justice,” a study commissioned by the Oregon Law Foundation, the Oregon State Bar, the Oregon Judicial Department, Legal Aid Services of Oregon, the Oregon Law Center and CEJ. It’s available online at olf.osbar.org/lns.

2. Both the American Bar Association and the National Legal Aid & Defender Association have said that best practices for “minimally adequate” access to justice is two legal aid lawyers for every 10,000 low-income people. Oregon has two legal aid lawyers for every 14,000 low-income people.
The Oregon State Bar’s Quality of Life committee is a community of lawyers involved in promoting the wellness and well-being of lawyers, whether it be in their private or professional lives. We do this by encouraging awareness about the ways we live our lives and the ways we interact with other members of our communities.

As lawyers, we affect our quality of life when we positively affect the quality of life of members in the communities where we live and work. This necessarily includes consideration of the communities’ emotional, occupational, intellectual, spiritual, social and physical well-being — and then tapping into all available resources to create change and improve lives.

One way for lawyers to ensure that communities receive all of the resources they deserve is to get full participation in the U.S. Census, which is tied not only to political representation but also to key sources of federal dollars. And of all years, this year is particularly important, because we are collectively participating in one of America’s time-honored traditions: the decennial census and enumeration of residents under Article I, Section 2 of the U.S. Constitution.

“In light of events that have impacted every person in our country, from the controversial attempt to change the census questionnaire to the coronavirus and now the death of George Floyd, support for our legal colleagues working to do this year’s census is more important ever,” says Tim Johnson, chair of the Quality of Life committee.

The census is more than just a staid counting of the residents of the United States. Federal, state and local governments use census data to calculate funding allocations for programs such as Medicaid, Head Start, highways and roads, schools and more. It is estimated that each person identified in the census yields approximately $3,200 per person in federal funding each year for 10 years.

For perspective, according to a report from the George Washington Institute of Public Policy, if there had been a 1-percent undercount of Oregon’s population in the 2010 census, it would have cost the state an estimated $44.8 million dollars in federal allocations in FY2015 alone.

Beyond the dollars and cents, the census helps determine each state’s number of congressional representatives. If population growth projections from the American Community Survey hold, Oregon will likely be entitled to a sixth seat in Congress, which in turn means that people across this state — and especially those in rural communities — will have better political representation.

Census data will also be used by the Oregon Legislature’s reapportionment committee to draw state legislative districts; better data naturally means that those districts can be drawn to be more representative of people across the state.

Unfortunately, many communities have historically been undercounted in the census, including people of color, children under the age of 5, immigrants, renters, residents of rural areas and low-income households. The reasons vary: Some of these groups tend to be more mobile than the general population, making them harder to count; others are simply afraid to share information with the government. But these are the communities most likely to benefit from dollars allocated according to population, making it especially important that every individual and family is fully counted.

For these hard-to-count communities, that requires robust public outreach to help people fill out their census form.

Because of the COVID-19 pandemic, fewer traditional census takers will be going door to door to conduct the count this year. But there are a variety of other avenues available for participation before the new deadline of Sept. 30.

By now, every household should have received a short or long census form in the mail with instructions for filling out the form and how to return it. Those who cannot complete the mail-in form or need assistance can call the census bureau for assistance at (844) 330-2020 (English), (844) 468-2020 (Spanish) or (844) 467-2020 (TDD). Finally, for the first time in history, individuals can complete their census form online, in multiple languages, at my2020census.gov.

While the COVID-19 pandemic has certainly changed the methods the census bureau and its community partners will use to help Oregonians complete the census, it has not changed the underlying duty of all Oregonians to be counted by filling out their census form via mail, phone or on the internet. This presents members of our
profession with a unique opportunity in 2020 to share information about the census and how to complete it.

Lawyers can help their communities, especially people of color, immigrants, refugees, residents of rural areas and other so-called “hard to count” communities, by ensuring that members of these communities complete their census form before the deadline.

“Participating in the census represents one of the most significant tools available to underrepresented communities seeking to create systemic change,” says Hansary Laforest, an attorney with Sussman Shank. “In a year in which there is renewed focus on systemic racism and inequality, the census serves as an important way for those of us seeking change to ensure that underrepresented communities are accounted for.”

It’s an important step, he says, toward improving the quality of life for all of us.

Amrit R. Mann is an administrative law judge with the Office of Administrative Hearings and the secretary of the OSB Quality of Life committee. Andrew Riley is a communications and policy associate for Unite Oregon. For more information about the committee, visit qualityoflife.osbar.org.

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.

ATTORNEYS

JUDGE ADVOCATE OPPORTUNITIES – Have you ever considered military service, but it never seemed like the right time? Maybe that time is now! The Oregon National Guard’s legal department (OSJA) in Salem, Oregon has two, part-time officer positions for attorneys interested in using their law degrees to provide legal assistance to service members and their families with real-world issues.

The OSJA offers a dynamic and rewarding environment, providing attorneys exposure to a variety of practice areas and career advancement. For more information regarding opportunities, pay, retirement, and family healthcare plans, contact Major David Wendell at (503) 584-3571 or david.a.wendell.mil@mail.mil.

OregonArmyGuard.com
Tips for Getting Better Solutions Faster

Persuasive Problem Solving

By Nancy Neal Yeend

“"It was six men of Indostan
To learning much inclined,
Who went to see the elephant
Though all of them were blind,
That each by observation
Might satisfy his mind.”

Each of these men approached the elephant from a different angle. Their descriptions reflected their unique and individual perspective. One of these men approached the elephant’s side and described it as a wall, while another placed his hand on the tusk and said it was a spear. The man who touched the tail described it as a rope, while the person who touched the trunk said it was a snake. The one who touched the leg said it was a tree, and the man who touched the elephant’s ear said it was a fan. The poem’s end sums it up.

“And so these men of Indostan
Disputed loud and long,
Each in his own opinion
Exceeding stiff and strong,
Though each was partly in the right,
And all were in the wrong!”

Frequently, when clients walk into an attorney’s office they rarely describe the problem they want resolved — they start with a solution: “I want a million dollars!” But a demand does not define a problem. The “I want” does not address what caused the situation, or describe the history and change of circumstances. Instead of defining the problem, the person is actually starting with a solution that they soon consider is the only option for resolution.

Problem Identification Strategies

Simply put, problems are situations that a person wants changed. Ordinarily, of course, problems do not miraculously disappear. But one helpful strategy is to consider ways of getting behind the “I want”: drawing out information, separating facts from perceptions and determining the impact of the event on the client.

The W-I-N technique of problem solving incorporates identifying and understanding the significance of these basic elements associated with a case:

- “W” represents what a person says he/she “wants” — a quick fix or often-unattainable solution.
- “I” represents the situation as it “is,” according to each person involved in the dispute. “Is” represents a mixture of both facts and perceptions.
Consider ways to get behind the ‘I want’: drawing out information, separating facts from perceptions and determining the event’s impact on the client.

Understanding a client’s priorities is helpful with finding solutions, but so is having some appreciation for the other side’s priorities. Knowing the priorities of the other side can help with “logrolling”: offering something that the attorney’s client doesn’t value but that the other side wants, in exchange for something desired by the client that the other side does not value.

Decision-Making Criteria

Once the client has announced to the attorney how they think a case should settle, the attorney’s work really begins. Asking questions to determine what is important to the client is a first step. What factors or criteria will the client use to make a decision?

Criteria are independent standards, principles or reasons that people use to make decisions. For example, when a person goes into a dealership to buy a car, most likely they would not walk into the showroom and say to the salesperson, “Sell me a car.” Instead, the prospective buyer might say, “I’m looking for a red convertible with leather seats, a Bose sound system and low-interest financing.” This list of features describes the criteria the buyer will use to decide if they will purchase a particular car.

Likewise, developing a list of the decision-making criteria that the client will use to evaluate suggestions for resolution is a good first step for successful negotiations and avoiding an impasse.

An attorney not only needs to identify the client’s criteria, but also needs to attempt to figure out what criteria the other side might use. Additionally, distinguishing the criteria attorneys typically use from those used by their client will help keep the attorney-client relationship on a more even keel. (Note that while the primary criterion used by attorneys is the law, clients rarely use the law as their primary criteria.)

Understanding the criteria that everyone will use accomplishes two important things. First, it helps to prevent personalities from dominating the conversation. When personalities get mixed into the problem-solving stew, settlements rarely result. It is well documented that people will then link unrelated issues to the matter at hand and wind up with a pile of mixed agendas, mixed messages and mixed results.

Second, keeping criteria in mind helps focus people on looking for solutions, rather than just repeating “I want.” Ask simple, open-ended questions: “What are the three most important things you hope to accomplish during today’s discussion?” “What do you want your life to look like a year from now?” Relating comments to each person’s decision-making criteria helps reduce the adversarial nature of negotiations.

Criteria are as varied as the people involved in the dispute. For example, some may value time: “I’ll accept the offer to settle in six months.” Others want confidentiality: “I will agree to this, if the terms are confidential. I do not want copycat cases.” The list can also include — but is not limited to — finances (cover bills, fees, reserves); emotional reassurance (fear of the unknown); custom or tradition (industry, profession, culture); preservation of features describes the criteria the buyer will use to decide if they will purchase a particular car.

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or protection of something (future generations, the environment); prevention (“I don’t want what happened to me to happen to someone else.”); tax implications; relationship status (often apparent in divorce); ethics; practical considerations (Is it doable?); finality (reduce stress and get on with life); and more.

Communication and Creativity

There are three additional techniques to keep in mind when it comes to effective communication. First, remember that everyone is listening to the same radio station: WII-FM — “What’s in it for me!” When people disagree, they may not hear the message as the speaker intended. All they hear is that the other side wants everything and they get nothing. Even before the problem-solving phase begins, thinking about how suggested solutions could benefit the other side will go a long way to resolving a case.

Second, when negotiating or attempting to resolve a problem, seek the free exchange of ideas and never, ever assume — always clarify.

Third, and perhaps the best way to look at problem solving, is creativity — looking for the 18th camel. As the story goes, an old man in a village died and left all his wealth — consisting of 17 camels — to his three children. The oldest was to receive half of the camels, the second was to receive one-third, and the youngest was to receive one-ninth.

The children argued for some time over how to divide the herd of 17 camels. Finally, in frustration and anger about not being able to find a way to divide the herd according to their father’s wishes, they consulted the wise old woman of the village. She considered the problem for a long time, and finally, she said, “I do not know how to divide the 17 camels as your father wished. However, I have a camel. It is yours.”

The three children were delighted, as they now could divide the herd according to the will: The oldest got nine camels, or half; the second child got six camels, or one-third; and the youngest got two camels, or one-ninth.

When they finished counting the animals — 9 plus 6 plus 2 — they got a total of 17 camels. There was one camel left, and so they gave it back to the wise old woman. Looking for and finding the 18th camel will usually benefit the problem-solving process.
Conclusion

Focusing on the solution that the client demands will often delay and prolong — or even prevent — a case from coming to a satisfying conclusion. Integrating the W-I-N concept for problem identification, understanding decision-making criteria and how it influences how people make decisions and negotiate, and enhancing communication by focusing on radio station WII-FM will resolve cases, produce more lasting results and enhance client satisfaction ratings.

And always look for the 18th camel. ■

Nancy Neal Yeend is the founder of The End Strategy in Portland. As a dispute management strategist, she designs programs to reduce business-related conflict. She also mediates pre-suit, trial and appellate cases, and has served as National Judicial College faculty for 25 years. Reach her at nancy@tesresults.com.
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Three-part live webcast series
Friday, Sept. 25, Friday Oct. 9, and Friday, Nov. 13
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ELD20

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WR20

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Tuesday, Oct. 13–Wednesday, Oct. 14
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View the publications catalog at www.osbar.org/publications or contact the order desk for help: (503) 431-6413.
Supreme Court Grants 2020 Diploma Privilege

Fewer than half of the applicants who originally signed up to take the bar exam in July actually sat for the test this summer after the Oregon Supreme Court approved emergency measures in response to the COVID-19 pandemic.

The measures, which are outlined in SCO-012 and available online at tinyurl.com/OregonBarExam, include a one-time “diploma privilege” option that will allow some 2020 law school graduates to practice in Oregon without passing a bar exam. Applicants still must satisfy all other admission requirements outlined in the Rules for Admission of Attorneys, however, including the requirement to take and pass the Multi-state Professional Responsibility Examination (MPRE) and successfully complete a character and fitness review.

The justices made their decision at a public meeting on June 29 after considering a request from the deans of Oregon’s three law schools (available online at tinyurl.com/LetterFromDeans). Utah, Washington and Louisiana took similar action this year.

In split votes, the justices:

• Granted a one-time diploma privilege to people who submitted complete applications for the July 2020 Oregon bar exam and who either: (a) graduated in 2020 from one of Oregon’s three law schools; or (b) graduated in 2020 from any other ABA-accredited law school that had a minimum of 86 percent of its graduates pass a 2019 bar exam on their first attempt;

• Reduced Oregon’s passing score for the July 2020 Uniform Bar Exam from 274 to 266. Applicants who sit for the UBE earn a portable score that may be transferrable to other UBE jurisdictions; and

• Directed the Board of Bar Examiners (BBX) to offer an online-only Oregon bar exam in October for a subset of applicants described in the court’s order. The test, which will be administered Oct. 5-6, will also have a passing score of 266; examinees will be able to transfer their qualified scores to other jurisdictions that have signed a Memorandum of Understanding with the Oregon Board of Bar Examiners.
In the days following the Supreme Court’s order, 255 applicants elected the diploma privilege option and withdrew from the July exam; 235 decided to sit for the test (210 eventually did), and 24 applicants said they will sit for the online-only exam in October instead of the July UBE.

Additional applicants for the October exam had until mid-August to apply, including those who applied for the July 2020 exam but were not seated because of capacity issues and those who failed to pass the February 2020 exam. In accordance with the Supreme Court’s order, the BBX set a seating limit of 300 for the online exam.

For the latest information about the bar exam, including 2020 admissions FAQs, go to osbar.org/admissions.

**Multnomah Law Library to Move Across the Street**

The Multnomah Law Library, which has been in the same location for 130 years, will move to its new location across the street from the old Multnomah County Central Courthouse in mid-September.

The new library location is in the Sixth+Main Building at 1050 S.W. Sixth Ave. in the heart of downtown Portland. Note that the space is not at the new 17-story county courthouse, which is scheduled to open at the west end of the Hawthorne Bridge on Oct. 5.

The Multnomah Law Library will continue to offer library services remotely and will continue to operate from the old courthouse building on Fourth Avenue until the library moves in mid-September. For more information, contact the library staff at librarian@multlawlib.org, (503) 988-3394 or online at multlawlib.org.

**PLF to Host ‘Learning the Ropes’ Program Remotely Via Zoom**

Save the date for “Learning the Ropes,” the annual Professional Liability Fund program for new admittees to the Oregon State Bar.

The program will be held via Zoom this year. Dates are Oct. 27-30, with 15.25 approved MCLE credits: 9.25 Practical Skills Credits (Oregon Practice and Procedure); 2 Oregon Ethics Credits; 3 Introductory Access to Justice Credits; and 1 Mental Health/Substance Use Credit.

Registration is expected to open in early September. Check the PLF website, osbplf.org, for updates.
BAR ACTIONS

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.

ERIN C. WALTERS
OSB #082348
McMinnville
Disbarment

Effective May 21, 2020, the disciplinary board disbarred McMinnville attorney Erin C. Walters for violations of RPC 1.3 (neglect), RPC 1.4 (failing to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information), RPC 1.5(a) (collecting an illegal fee), RPC 1.15-1(a) (failing to safeguard client funds in trust), RPC 1.15-1(c) (withdrawing client funds from trust before they were earned), RPC 1.15-1(d) (failing to render an accounting upon request), RPC 8.1(a)(1) (knowingly making false statements of material fact to a disciplinary authority), RPC 8.1(a)(2) (failing to respond to requests for information from a disciplinary authority), RPC 8.4(a) (2) (committing a criminal act that reflects adversely on a lawyer’s fitness to practice), RPC 8.4(a)(3) (engaging in dishonest conversion of client funds and making material misrepresentations) and ORS 9.527 (felony convictions).

In 2011, a client hired Walters to handle an estate proceeding to probate a will. At the time of death, the decedent had pending personal injury claims against numerous defendants that were being handled by a New York law firm. As the New York law firm settled claims on the decedent’s behalf, the firm would remit settlement proceeds for the estate to Walters via check that Walters deposited into her trust account.

Between 2011 and 2016, Walters withheld $20,070 of those settlement proceeds for the payment of amended filing fees or attorney fees. However, Walters did not retain those funds in trust; instead, she disbursed those funds to herself and others and did so without seeking or obtaining court approval in violation of ORS 116.183. In September 2019, the Yamhill County Circuit Court convicted Walters of two counts of felony theft of client funds.

Additionally, while the estate proceeding was open from 2011 until the court dismissed it in the fall of 2017, Walters failed to file annual accountings and ignored court notices that the accountings were overdue. She also failed to diligently accept and handle the settlement checks that the New York law firm sent to her, failed to keep her client reasonably informed as to the status of the estate proceeding and failed to respond to reasonable requests for information.

After her client complained to the bar regarding her conduct, Walters made false statements of material fact regarding the disbursement of her client’s funds. After the bar determined that Walters had disbursed client funds throughout the years, Walters falsely represented that she had earned all of the funds as attorney’s fees in a separate civil action and then failed to respond to repeated requests for information relating to the alleged civil action.

By engaging in the foregoing conduct, Walters neglected the estate proceeding in violation of RPC 1.3 and failed to adequately communicate with her client in violation of RPC 1.4(a). With regard to her disbursement of client funds, she collected an illegal fee in violation of RPC 1.5(a), dishonestly converted client funds for her own use in violation of RPC 8.4(a) (3), and engaged in criminal acts reflecting adversely on her fitness to practice law in violation of RPC 8.4(a)(2). Her felony convictions for theft of client funds violated ORS 9.527. Such mishandling of client funds and failure to account also violated the trust account rules of RPC 1.15-1(a), RPC 1.15-1(c) and RPC 1.15-1(d). Walters’ false statements of material fact to the bar during its investigation violated RPC 8.1(a)(1), and her failure to provide requested information to the bar violated RPC 8.1(a)(2).

In disbaring Walters, the disciplinary board considered aggravating and mitigating factors and the Oregon Supreme Court’s case law.

BRENT S. TANTILLO
OSB #4258971
Washington, D.C.
60-day suspension

By order dated May 21, 2020, the disciplinary board approved a stipulation for discipline and suspended Brent S. Tantillo, a member of the Washington, D.C., bar, for 60 days for violations of RPC 3.3 (knowingly making a false statement of fact to a tribunal); RPC 5.3(a) and (b) (failure to properly supervise a non-lawyer assistant); RPC 5.5(a) (practicing law in violation of the regulations of the Oregon State Bar) and ORS 9.160(1) (unlawful practice of law in Oregon).

Tantillo represented an Oregon client in an eviction proceeding following a foreclosure on the client’s home. He filed a notice of removal of the eviction proceeding to federal court, and represented in that notice that he had been admitted to practice pro hac vice when he had not been so admitted. Tantillo’s paralegal had prepared the notice, which Tantillo failed to proofread before it was filed. When he learned of the misrepresentation concerning his status, Tantillo did not take prompt steps to correct it.

The bar and Tantillo stipulated to a prior disciplinary record and substantial experience in the practice of law as aggravating factors. Several mitigating factors were present: the absence of a dishonest or selfish motive, personal problems, cooperation with the bar’s investigation and remorse.

This matter will be reported to the Washington, D.C., bar pursuant to BR 1.4(a).

NAME WITHHELD
Dismissed

In an opinion dated May 21, 2020, the Supreme Court dismissed charges against an out-of-state attorney (respondent) who worked as general counsel for an Oregon
public school system for two and a half months before applying for reciprocal admission in Oregon. The charges alleged that the respondent had engaged in the unauthorized practice of law and improperly represented himself as admitted to practice in this state.

The bar charged the respondent with violating RPC 5.5(a) (prohibiting the unauthorized practice of law) and RPC 5.5(b)(1) (prohibiting lawyers who are not members of the Oregon State Bar from establishing an office or other systematic and continuous presence in this jurisdiction). But the court held that respondent’s conduct was permitted under RPC 5.5(c), which permits out-of-state lawyers in good standing to “provide legal services on a temporary basis in this jurisdiction” under certain circumstances.

The court held that an out-of-state lawyer in good standing in another jurisdiction provides legal services “on a temporary basis,” as that phrase is used in RPC 5.5(c), if that lawyer provides legal services pending admission to the bar and meets at least one of the specific circumstances set out in RPC 5.5(c), even if the lawyer has accepted permanent employment in Oregon.

The court also charged respondent with violating RPC 5.5(b)(2) (prohibiting lawyers who are not members of the Oregon State Bar from holding themselves out as admitted in this jurisdiction). On de novo review, the court found that the bar had failed to prove that respondent held himself out as admitted in Oregon.

MARYANN MEANEY
OSB #893081
Oregon City
Public reprimand

Effective June 2, 2020, the disciplinary board approved a stipulation for discipline and publicly reprimanded Oregon City attorney Maryann Meaney for violating RPC 1.16(d) (duties upon termination of representation).

Meaney represented a client in a criminal matter until October 2017. In January 2018 and May 2019, the client made repeated requests for his “complete file.” Meaney provided all outstanding file materials to her former client in April 2019.

Meaney admitted that she did not take steps to the extent reasonably practicable to protect her client’s interests upon termination of representation by failing to surrender papers to which her former client was entitled until April 2019, in violation of RPC 1.16(d).

The stipulation acknowledged that Meaney’s conduct was aggravated by a vulnerable victim and Meaney’s substantial experience in the practice of law, but was mitigated by the absence of prior discipline, the absence of a dishonest or selfish motive, her full and free disclosure to the bar and her cooperative attitude toward the disciplinary proceeding.

J. DEVORE
OSB #103706
Portland
Disbarment

Effective June 4, 2020, the disciplinary board disbarred Portland attorney J. DeVore for violations of RPC 1.3 (neglect), RPC 1.4(a) & (b) (failing to adequately communicate with client), RPC 1.5(a) (charging or collecting an excessive fee), RPC 8.1(a)(2) (failing to respond to requests for information from disciplinary authority), RPC 8.4(a)(2) (committing a criminal act that reflects adversely on the lawyer’s fitness to practice) and RPC 8.4(a)(3) (engaging in dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice).

In 2017, DeVore represented a client in a custody and child support matter that was mediated in December 2017. The mediation judge tasked DeVore with initiating a domestic relations proceeding so that the parties’ agreement reached in mediation could be entered as a judgment. After mediation, DeVore did not file any such proceeding and performed no further legal services for his client. He then charged and collected $1,350 from his client for work he did not perform.

In May 2018, DeVore falsely represented to his client that he had filed a peti-
In July 2018, he falsely represented to his client that he had served the petition on his client’s ex-husband and told her the case was set for trial in September. In September, DeVore falsely represented that the court had entered an order of default against his client’s ex-husband after he did not appear at trial. Thereafter, despite repeated requests for updates from his client, DeVore did not respond for months.

In January 2019, DeVore sent his client documents he claimed were pleadings filed in her case, including a judgment that contained the forged signature of a judge. DeVore sent the pleadings to his client with the intent to deceive her into believing he had pursued her case and obtained judgment on her behalf, when he had not done so. After a complaint was made regarding his conduct, DeVore did not respond to the bar’s requests for information.

The disciplinary board found that DeVore neglected his client’s legal matter in violation of RPC 1.3 and failed to adequately communicate with her in violation of RPC 1.4(a) and RPC 1.4(b). It further found that DeVore charged and collected an excessive fee in violation of RPC 1.5(a). DeVore failed to respond to requests for information from the disciplinary authority in violation of RPC 8.1(a)(2), committed criminal acts that reflected adversely on his fitness to practice in violation of RPC 8.4(a)(2), and engaged in dishonesty, fraud, deceit or misrepresentation that reflected adversely on his fitness to practice in violation of RPC 8.4(a)(3).

The disciplinary board disbarred DeVore after reviewing the aggravating and mitigating factors, as well as the Oregon Supreme Court’s case law.

MATTHEW L. SOWA
OSB #034617
Salem
60-day suspension

Effective June 10, 2020, the disciplinary board accepted a stipulation for discipline and suspended Salem lawyer Matthew L. Sowa for 60 days for violations of RPC 1.3 (diligence), RPC 1.4(a) (duty to keep a client reasonably informed about the status of a matter and promptly respond to reasonable requests for information) and RPC 1.4(b) (duty to explain a matter to a client to the extent reasonably necessary to per-
A client hired Sowa for a domestic relations matter. Starting approximately three months before trial, the client made at least 10 unsuccessful attempts to communicate with Sowa. During that time period, Sowa communicated with his client once, but did not do any other work on his matter. Approximately one month before trial and because he could not communicate with Sowa, the client retained new counsel.

Sowa stipulated that by ceasing work on the client’s matter, by failing to respond to his client’s inquiries and by failing to explain that he was no longer working on the client’s matter, he violated RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

The stipulation recited Sowa’s multiple offenses, his unwillingness to acknowledge the wrongful nature of his conduct and his substantial experience in the practice of law as aggravating factors. In mitigation, Sowa did not have any prior disciplinary offenses and he cooperated fully with the bar’s inquiries.

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.
Among Ourselves

The League of Minority Voters (LMV) has recognized K&L Gates as a 2020 Liberty and Hope Award recipient. K&L Gates is the first law firm ever to receive the award, which annually recognizes community leaders effectively promoting liberty and hope across all regions the LMV serves, including the Portland metro area and other Oregon communities. The LMV’s mission is to promote bipartisan advocacy for the advancement of minority voters’ rights within the electoral process through education and empowerment on the issues that uniquely impact communities of color. K&L Gates has received numerous recognitions recently for its commitment to opportunities for diverse lawyers, including a 10th consecutive rating as a “Best Place to Work for LGBT Equality” from the Human Rights Campaign in January; a ninth Gold Standard Certification from the Women in Law Empowerment Forum (WILEF) in June; a Top Performer designation by the Leadership Council on Legal Diversity (LCLD); and an “Employer of Choice for Diversity” certification by the Australian Workplace Gender Equality Agency.

The well-known nonprofit is part of a global network that works in communities across the United States. Miller Nash Graham & Dunn attorney Iván Resendiz Gutiérrez was recently elected co-chair of the board of directors of the Oregon Minority Lawyers Association (OMLA). frontier is committed to developing a legal community in Oregon that provides a welcoming environment where people of all colors, races and ethnic backgrounds can excel academically, professionally and personally. Resendiz Gutiérrez has served as a board member since 2016.

Tonkon Torp litigation partners Anna Sortun and Ryan Bledsoe have been admitted as fellows to the International Society of Barristers. The organization is an honor society that maintains a worldwide membership of fewer than 750 trial lawyers deemed by their peers and judges to be “outstanding in the field of advocacy.” One of the principal goals of the organization is the preservation of the adversary system and trials by jury in litigated matters. Membership is by invitation only and nominees are considered for their ability, experience, accomplishments and ethical standards.

Dunn Carney recently had two of its partners elected as board members to notable groups. Real estate and business partner Jon Bennett has been elected to his third three-year term on the board of Habitat for Humanity Portland Metro/East. The well-known nonprofit is part of a global housing organization that works in communities across the United States. Elizabeth Knight has been elected to the 2020 Multnomah Bar Foundation board of directors, a nonprofit that promotes community understanding of the legal system through civic education and assistance to legal services in Multnomah County. She recently completed her term as president of the Campaign for Equal Justice and also has been recognized for her dedication to pro bono work with the Oregon State Bar’s President’s Public Service Award.

Kirk Maag of Stoel Rives has been elected president of the board of directors for the Cultivating Change Foundation, a national nonprofit whose mission is to value and elevate LGBTQ individuals in the agricultural industry. Maag co-leads Stoel Rives’ firm-wide agribusiness, food, beverage and timber team, which consists of more than 50 attorneys and paralegals in nine offices nationwide. He also is a leader of the firm’s LGBTQ+ affinity group and serves as an ambassador for the firm’s diversity and inclusion initiative, Move The Needle Fund. Maag also serves as president of the Oregon Future Farmers of America Foundation. He sits on the board of the Oregon Water Resources Congress and the executive committee for the Oregon State Bar’s environment and natural resources section.

Bonnie Richardson, co-founder and managing partner of Richardson Wright, has been selected by the Portland Business Journal as one of 2020’s “Women of Influence.” This award is given to 25 business women who are selected across the region for making an impact, cultivating change and bringing the community together. Richardson represents clients on a multitude of cases including legal and professional malpractice, trust and estate litigation, complex commercial litigation and insurance coverage disputes. She is a current board member of the Oregon Asian Pacific American Bar Association.

Don Corson of Corson & Johnson in Eugene was named the distinguished...
Jesse Wm. Barton recently presented a Zoom-based webinar titled “#BlackLivesMatter: Reducing Racial Disparities in Oregon’s Criminal Justice System Via Sentencing and Jury Reform” on behalf of the Oregon Criminal Defense Lawyers Association. Dr. Rosa Colquitt, co-chair of the Oregon delegation to the DNC Convention, served as webinar moderator.

Tom Palmer, a partner at Tonkon Torp, has been elected to the board of directors for the Northwest chapter of the National Association of Corporate Directors (NACD). Palmer is a long-standing member of the NACD and is a frequent speaker at the organization’s events. The NACD provides information and insights to help corporate board members confidently navigate business challenges and enhance long-term shareowner value. Palmer specializes in securities and corporate transactions, including mergers and acquisitions, public offerings and private placements. General corporate counseling — including representation of special committees of directors, corporate governance issues and SEC reporting and disclosure matters — is an important part of his practice.

Global law firm K&L Gates is one of two law firm teams selected as finalists in Microsoft’s Trusted Advisor Forum on Innovation Volume II (“The Remix”), the second in the technology company’s series of legal business design challenges focused on legal services partnerships and delivery. As a finalist, a K&L Gates team comprised of both lawyers and allied business professionals will partner in a business accelerator program with Bold Duck Studio to work on

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- Jeff Napoli and Leah Johnson have a combined 47 years of representing plaintiffs in personal injury cases.
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refining the idea submitted in the first round of the challenge and plot a path to measurable success and execution. Focusing on Microsoft’s goal of becoming carbon-negative by 2030, K&L Gates’ submission concentrated on how to improve internal processes when executing large-scale contracts of renewable energy purchase agreements with an automated software solution. The solution would provide enhanced tracking, visibility, scalability and efficiency when working with various lead times, internal and external stakeholders, jurisdictional issues and signatories.

Moves

Hon. Allison R. Boomer has been appointed presiding magistrate of the Oregon Tax Court. The appointment was effective June 10, 2020. She has served as a magistrate since 2012.

Presiding Magistrate Boomer is the immediate past president of Oregon Women Lawyers and serves on the board overseeing Marion County CourtCare. As presiding magistrate, she will be involved in the court’s planning and outreach efforts.

Sara Winter has joined Gevurtz Menashe as the firm’s newest estate planning associate. Winter spent 10 years practicing estate planning law in Texas with an emphasis on taxes. After relocating to Portland, she will continue her practice handling wills and revocable trusts, estate and gift taxes, probate, asset protection planning and beneficiary and trustee representation for clients with legal matters in Oregon.

Matt Whitman has joined Richard “RJ” Sohler’s eastside Portland estate, tax and business firm, and the firm’s name has changed to Sohler Whitman. Whitman will continue his referral-based probate and trust litigation practice.
Peggy J. Richard has joined the law firm of Hershner Hunter as an associate. She graduated from the University of Oregon School of Law in 2018. Her practice will focus on creditors’ rights and bankruptcy.

Stefan M. Wolf has been named a shareholder of Gevurtz Menashe. He has been practicing estate planning law since 2010 and became an associate with Gevurtz Menashe in October 2014. He will continue his practice handling wills and revocable trusts, estate and gift taxes, probate administration, asset protection planning and beneficiary and trustee representation.

Schwabe, Williamson & Wyatt is expanding its natural resources industry group in its Anchorage office by welcoming six experienced attorneys, including OSB members Matt Singer and Christopher Slotte. These hirings bolster the firm’s presence in Alaska and its ability to serve clients across the Pacific Northwest.

Tonkon Torp partner Kurt Ruttum has been elected managing partner of the firm effective July 1, 2020. Ruttum succeeds Darcy Norville, who held the role since 2015. Ruttum’s practice includes general business and corporate law, with particular emphasis on mergers, acquisitions and finance. He has served on
the firm’s managing board since 2005. Ruttum began his law career with the firm in 1986 and was a partner in 1996 when he left to join a publicly held manufacturing client as vice president and general counsel. Ruttum rejoined Tonkon Torp in 2000. He is active in Portland’s business community and currently serves on the board of directors of Parrott Creek Child and Family Services, a nonprofit organization that assists vulnerable youth and families in Clackamas County. Norville will continue her work at Tonkon Torp as a senior business partner in the firm’s financial services and employee benefits practice groups, and as chair of its Diversity & Inclusion Committee.

After 18 years with a Eugene law firm, Derek D. Simmons has formed Simmons Law. His statewide practice focuses on business, real estate and estate planning, with a special emphasis on health care providers. Before entering private practice, Simmons served as a clerk to Judge David V. Brewer, since retired, on the Oregon Court of Appeals.

In Memoriam

Paul Richard Meyer, a man who lived a life of purpose and conviction, died of cancer at home on May 1, 2020. He was 95.

Born in St. Louis, Meyer was the middle son of Abraham and Adele (Rosenfeld) Meyer. He credited his lifelong commitment to civil rights to the family’s participation in the Ethical Culture Society and his mother’s extensive social activism. When he was 15, the family moved to New York City, where he graduated from the Ethical Culture Fieldston School.

Meyer was drafted at 18 and served as an infantry machine gunner in the 70th Oregon Trailblazers Division. Wounded in the second Battle of the Bulge in Alsace Lorraine in January 1945, he was awarded
a Purple Heart and Bronze Star for his service. After the war and graduations from Columbia College and Yale Law School, he came west to teach at the University of California, Berkeley School of Law before settling permanently in Portland in 1953.

Meyer practiced law in Portland for more than 50 years, starting as an associate at King Miller. In 1960, he joined Norm Kobin to form Kobin & Meyer, the first Oregon firm to specialize in construction law. Meyer often took on complex disputes that other lawyers turned away and successfully argued hundreds of cases before state and federal trial and appellate courts. In the 1990s, he practiced in partnership with his son, David, and was of counsel to his brother Roger’s firm, Meyer & Wyse. After retirement, Meyer served well into his 90s as a mediator and arbitrator.

While law was his vocation, civil liberties was his passion. As a first-year law student, Meyer founded the New Haven Civil Liberties Council, precursor to ACLU’s Connecticut affiliate. In 1955, ACLU founder Roger Baldwin asked Meyer to select a founding board for an Oregon affiliate, on which he served for more than 20 years. In the 1960s, he was a pioneer in successfully challenging Oregon’s obscenity laws and in bringing a civil rights action on behalf of 26 longshoremen to desegregate Portland’s longshore union. He was a cooperating attorney in more than 60 pro bono ACLU cases involving freedom of speech, separation of church and state, due process and equal protection. Meyer served on the national board of ACLU for 25 years, 18 of them on its executive committee.

He was deeply rooted in the Portland community and provided pro bono legal support and board service to countless civic, Jewish and music organizations. As a proud member of Portland’s City Club for nearly 70 years, he led many significant studies, including one about which he remained steadfast to the end: Portland’s continuing need for a strong mayor form of government.

Meyer is survived by his wife of 62 years, Alice; children David, Sarah and Andrea; granddaughters Eliana and Naomi; seven nieces and nephews; and 11 grandnieces and grandnephews. A celebration of Meyer’s life will be held when it is possible to gather. Remembrances may be made to Friends of Chamber Music, Oregon Jewish Museum & Center for Holocaust Education, or the ACLU of Oregon.
E. Richard “Dick” Bodyfelt passed away on May 11, 2020. Bodyfelt was born on Sept. 30, 1940, in Cloverdale. He was raised on a dairy farm in Tillamook County, which, if you ever tried a case against him, you heard about at some point.

Bodyfelt graduated from Nestucca Union High School and attended Oregon State University, where he met his future wife, Kathleen. After graduating from OSU, he worked for two years as a safety engineer in California. During that time, he decided to enter law school. To prepare for the LSAT, he decided he needed to broaden his education by reading, word for word, the Encyclopedia Britannica. (He only got through M). He served as editor-in-chief of the Oregon Law Review at the University of Oregon School of Law, graduated first in his class and was named to the Order of the Coif.

After graduation, Bodyfelt moved to the Portland area. In 1978, he and his friend started their firm, Bodyfelt and Mount, where he served his clients with utmost integrity. He was always proud of and held great affection for all the members of his firm.

Bodyfelt served as president of the Oregon Association of Defense Counsel, a member of the American College of Trial Lawyers, a member of the Federation of Defense and Corporate Counsel and a member of multiple committees of the Oregon State Bar.

A major cerebral hemorrhage cut short Bodyfelt’s legal career in 1989 at the age of 49. Over the next 30 years, he had the pleasure of seeing his sons graduate from college and start their families. A law student scholarship fund is being created to honor his legacy.

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Additional Notices

Joanne Reisman
62, Portland

Ben Martin
46, Peoria, Ariz.
CLASSIFIEDS

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BEND, OLD MILL, 1924 CRAFTSMAN with cozy reception area with fireplace, kitchen, conference room. Upstairs office with internet for $650 per month/year lease. May have some overflow of uncontested family law work. Contact: liiquinn927@gmail.com (541) 728-1974.

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NE PORTLAND/LLOYD CENTER NEIGHBORHOOD – Office space available to rent in the Lloyd Center neighborhood on NE Broadway in a nice 3-story building with 6 other attorneys. Receptionist available to greet your clients. On-site parking and conference room. Walking distance to many restaurants as well as many other small businesses. Available now. $500/Mth. Please contact Kim at (503) 288-8000 Ext. 112.

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Creating a Sense of Belonging

By Emil J. Ali

In 2020, it is at last acceptable for an attorney to admit that they are tired, overwhelmed or facing issues of substance abuse and mental health. Moreover, we are finally at the point that attorneys have access to robust platforms to receive treatment, with services from mindfulness and counseling to rehabilitation targeting the needs of struggling professionals.

For that, we should take a step back and finally congratulate the profession for supporting our hidden struggles from within.

However, before we return to resting on our laurels, we as attorneys (and law firms) should step back and understand that it takes a village to support our own and create an environment in which all can thrive. In a time of national conversations regarding equality, race and standing up for justice, attorneys and firms have a duty not only to assist those in need of legal services, but also to support their own and set a good example for society.

When we counsel clients to do no wrong, we similarly should heed that advice and show our colleagues and employees the respect that they deserve.

Even during a pandemic, when firms may struggle with their receivables and generating new business, they should be mindful of balancing the needs of clients with the needs of their own. While ethics rules indicate that a lawyer’s representation of a client does not constitute endorsement of their beliefs, firms must be mindful of how the representation impacts their team, including lawyers and professional staff. See ABA Model Rule 1.2(b).

While the rule should be read in balance with the need to provide competent representation to all deserving parties, we must carefully examine the issue through an equity and inclusion lens.

On one hand, even clients who are alleged to have committed the most heinous of crimes deserve legal representation in our justice system; however, what about those who have an unwillingness to work with members of their legal team? For example, if a client says they are unwilling to work with an attorney of color for nothing more than frank bias or racism, what should the firm do?

While arguably there would be no ethical violation in representing such a client — and the client is always free to choose their own lawyer — the advent of Rule 8.4(g) makes it clear that lawyers should be mindful of discrimination issues and may decline or withdraw from representation in accordance with the respective rules. ABA Formal Ethics Opinion 493, released in July, explains that “(d)iscriminatory and harassing conduct, when engaged in by lawyers in connection with the practice of law, engenders skepticism and distrust of those charged with ensuring justice and fairness.”

As ambassadors of the profession, we should hold up the flag of justice.

In the same way, firms should take a careful look at the example being set by not taking a stand in the face of explicit (or implicit) bias toward members of their team. While wanting to appease the client, provide access to competent legal representation and keep a source of revenue, firms must analyze whether and how enabling such conduct reflects on their values as an entity.

As a member of a minority group, I know firsthand that when this type of client interaction occurs, it sets deep in your core — and impacts your well-being. It makes you second-guess yourself, your abilities and, most of all, it makes you question your future in the legal profession.

To make matters worse, being asked to continue to work in the background simply because of a client’s improper beliefs adds insult to injury, especially when you are the only attorney at the firm with expertise in the matter.

While it is not necessary for a firm to terminate the client relationship or send a message of spite and anger, this hypothetical is best addressed by a willingness of the firm to send a polite but firm message to the client, such as: “Attorney A is the best lawyer for your case. With their knowledge, experience and expertise, we believe you would be best served by working with them. Unfortunately, we will be unable to staff the matter with another lawyer, and we understand if you need to seek the services of another firm.”

This message indicates an implicit understanding of the issue, without fear of creating a polarizing environment resulting in animosity between the client and firm in what could be a small geographic area. Meanwhile, it allows all attorneys to feel supported as valued members of the team.

As we progress as a society and a profession, we continue to learn and grow from our storied past. We come to understand that many deep-rooted feelings and troubled beliefs were wrong. Even as lawyers, we are first humans, and we make mistakes. However, the way in which we identify, react and adapt to changing times reflects on our profession and our abilities to be analytical thinkers — the hallmark of a good lawyer.

I truly hope that we can continue to improve attorney well-being by creating an inclusive workforce that treats all attorneys and professional staff with respect.

Emil J. Ali is a partner at McCabe & Ali, where he advises attorneys and financial professionals on ethics and compliance matters. He can be reached at emil@mccabeali.com.
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Congratulations

Each year, based on nominations from members and the public, the Oregon State Bar honors a select group of lawyers and judges who have made outstanding contributions to the community and the profession. The October edition of the Bulletin will include photos and stories celebrating this year’s recipients.

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