A Most Unusual Year
Legal Community Responds to COVID-19, Social Justice Movement and Wildfires

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When Oregon residents were asked to wear masks to prevent the spread of COVID-19, even public artwork complied — one of the most visible signs, perhaps, that 2020 was a very unusual year. Legal professionals responded quickly, not only to the pandemic but also to a social justice movement that called for reform and devastating wildfires that ravaged communities across the state. Writer Melody Finnemore chronicles it all in her special report, which begins on Page 16.

Cover photo by Jonathan House

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FROM THE EDITOR

Caring for Each Other

By Gary M. Stein

Johnston, a Portland personal injury attorney who lives in Clackamas County, says he had the luxury of staying in a beach house in Pacific City when flames forced him to flee, but he saw many people with their belongings packed in cars, trucks and trailers on their way out of town.

“I thought to myself, ‘I’ve got to do something’ because, number one, I can. I know about making insurance companies honor their obligations,” he says. “I knew it was going to be a huge undertaking and it has been, but it was something I had to do.”

In her story that starts on Page 16 of this month’s Bulletin, freelance writer Melody Finnemore talks to Morse, Johnston and many other Oregon lawyers about their response to what has been a very unusual year. Some jumped in when disaster struck.

Others relied on their skills as attorneys and their compassion as human beings to make sure their neighbors were managing in the face of a worldwide pandemic that continues to infect and kill so many people.

“With two young children and two full-time lawyers in my household, I am right there along with my clients navigating these challenges and fears,” says Erin Morris, a partner with Morris, Stannard & Batalden Family Law. “So much of my advice has focused on prioritizing thoughtfulness and engaging rationally and critically with the best available information and data we have. I also spend a significant amount of time empathizing with my clients, and acknowledging their fears as we move ahead with less-than-perfect information and resources.”

Not surprisingly, that caring attitude has also extended to the way Oregon lawyers are looking out for each other. The pandemic may have imposed significant challenges on individuals and their firms, but it has also created opportunities to change for the better.

“We’ve had to be a lot more careful and safer. We’ve had to communicate a lot more by Zoom and phone. It’s slowed down our cases a little bit with the courts and the inability to push forward with jury trials,” Johnston says. “But it’s also made me a better and more sensitive boss, I suppose, by making me think more about my people and how to make them feel comfortable and safe and still be able to do their jobs.”

Reach Editor Gary M. Stein at (503) 431-6391 or gstein@osbar.org.

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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 ad rates and details, advertising@osbar.org (ext. 356), fax: (503) 684-1366. Display advertising and Lawyer Announcements: Contact LLM Publications at (503) 445-2240, law@llmpubs.com.
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New Survey Examines Law Student Debt

The Young Lawyers Division of the American Bar Association has released the results of a new survey titled “2020 Law School Student Loan Debt” that examines law student debt at the beginning of 2020, before the pandemic began. According to the survey, more than 75 percent of respondents owed more than $100,000 at graduation, over half had more than $150,000 in loan debt, and more than 25 percent had at least $200,000 in loans.

Loan balances also have grown. Among those admitted to the bar before 2014 and those who have been working for several years, 45 percent have seen their debt increase since graduation, according to the survey. Thirty-two percent of recent graduates and newer lawyers say they also have a higher current balance than they did at graduation.

Unsurprisingly, the survey showed that high loan debt has a negative impact on borrowers’ mental health, and that many new lawyers are postponing major life decisions — or rejecting some choices outright — because of their debt. (See “By the Numbers,” right.)

For the full ABA report, visit tinyurl.com/2020LawStudentDebt.

Family Law Committee Seeking New Members

The Statewide Family Law Advisory Committee is recruiting new members who are committed to supporting successful family law policies, reforms and programs that serve all individuals and families who access Oregon’s courts.

The committee believes that mission can be accomplished only with a diverse membership, which actively cultivates a culture of equity and inclusion. Visit bit.ly/SFLAC_info to learn more; questions (and completed forms) can also be directed to Debra Dority at ddority@oregonlawcenter.org.

MBA New Admittee Social Scheduled for Dec. 17

Recently admitted attorneys are invited to join a presentation from the Multnomah Bar Association’s Young Lawyers Section Board of Directors to learn more about what the MBA has to offer.

The online event will be held on Dec. 17 and is free. RSVP to Ryan Mosier at ryan@mbabar.org.

NALP Report Shows Employment, Salary Disparities

The National Association for Law Placement (NALP) recently released its “Jobs & JDs, Employment and Salaries of New Graduates, Class of 2019” report. The findings show many disparities in outcomes by gender, race and ethnicity, including Black and Native American law school graduates having the lowest overall employment rates. Also, Black graduates were employed in bar-passage-required jobs at a rate 17 percentage points lower than white graduates.

Native Hawaiian or other Pacific Islander graduates were at the bottom of median starting salaries for employed graduates by race/ethnicity at $62,500.

While women had the highest employment rate (90.6%), men had a higher median salary ($75,000) than women ($70,000) and non-binary graduates ($67,500).

Read the entire report at www.nalp.org/classof2019.

‘Diversity Legal Job Fair’ Scheduled for Early March

A group of Oregon attorneys and community members have come together to develop the “Oregon Diversity Legal Job

By the Numbers

Dealing with Debt

Many new lawyers are postponing major life decisions — or rejecting some choices outright — because they are carrying heavy student loan debt, according to a survey of nearly 1,100 new lawyers conducted in March. Participants reported a median current debt of $160,000 for law school, undergraduate and other education expenses, and said the financial burden is affecting virtually every aspect of their lives, including:

Buying a House
56% said they have postponed or decided not to buy a house. Some said they cannot afford rent and have moved in with their parents to save money.

Having Children
48% said they have postponed or decided not to have children.

Owning a Car
46% said they postponed or decided not to buy a car.

Getting Married
29% said they have postponed or decided not to get married.

Choosing a Job
37% said they chose a job that pays more instead of a job they really wanted; 17% said they chose a job that qualifies for loan forgiveness instead of a job they really wanted.

Source: ABA 2020 Survey on Student Loan Debt
Quotable

“This is going to be a place where students know they are enough, and they can build from that and grow from that and become the wonderful human beings they are designed to be.”

— Oregon Supreme Court Justice Adrienne C. Nelson, during the groundbreaking ceremony for Adrienne C. Nelson High School in Happy Valley. Justice Nelson, the first African American to sit on Oregon’s highest court, promised to be a frequent visitor at the high school after it opens in fall 2021.

Source: ABA Journal (Sept. 30, 2020)

Fair,” presented by Bullivant, Houser, Bailey and the Oregon Association of Defense Counsel. The event, which is scheduled for March 9-10, 2021, will occur in a virtual format due to COVID-19 considerations.

The event will be Oregon’s only diversity job fair focused on practicing attorneys, paralegals and legal assistants who are seeking an employment opportunity with an Oregon employer. Applicants can participate for free; participating employers will be charged a nominal amount.

While there are employment initiatives focused on diverse law students, Oregon as a state has no diversity job fair focused on practicing attorneys and legal professionals, according to Washington County District Attorney Kevin Barton. The closest similar event is the annual Northwest Minority Job Fair in Seattle, he says.

For more information, contact Barton at Kevin.Barton@co.washington.or.us or Geoff Horning at ghorning@oadc.com.

“With everything that I must accomplish between now and Christmas Eve, there is one legal phrase you can be certain that I understand: Time is of the essence.”
How Lawyers Stumble into Personal-Interest Conflicts

A Divergence in Loyalty

By Nik Chourey

Conflicts! It’s members’ most common concern when I connect with them on the Oregon State Bar’s Ethics Helpline.

The lawyers’ hypotheticals are never routine. This is because the truth is stranger than fiction, but also because identification of conflicts evades a per se approach. Conflict analysis is incredibly fact-specific, requiring deliberate consideration. This is the case for spotting conflicts, and in seeking a client’s written waiver of the conflict if permitted.

Conflicts often involve intense emotions in our clients, and even in ourselves. There are many personal circumstances for attorneys that squarely implicate ethics rules on conflicts, because they may result in division of our client loyalty. Such a divergence in the undivided loyalty we owe our clients is governed by Rule of Professional Conduct (RPC) 1.7(a)(2).

Representation when a personal-interest conflict exists is prohibited, unless the lawyer reasonably believes it is possible to continue to provide diligent and competent representation and the client provides written, informed consent. RPC 1.7(a)(2), RPC 1.7(b). When a personal interest conflict requires an attorney to withdraw from the representation, attorneys must do so mindfully and in accord with the duties upon withdrawal, under RPC 1.16. Ordinarily, an attorney’s personal-interest conflict will not be imputed to the other members of their law firm.

We Owe Undivided Loyalty to our Clients

No ethical duties are more important than the duties we owe to our clients. Like our duty of confidentiality, our duty of loyalty to clients is at the core of our joint professional identity.

Consistent with these foundational principles, disciplinary authority provides that a single conflict violation warrants suspension. It is well established “that a finding that a lawyer has violated the rule prohibiting current or former client conflicts of interests, standing alone, typically justifies a 30-day suspension.” In re Hostetter, 348 Or 574, 603 (2010).

Lawyers with an understanding of how personal-interest conflicts may arise are better-suited to reduce regulatory risk and avoid ethical dilemmas. As noted earlier, a lawyer has a personal-interest conflict with a current client when there is a “significant risk” that the lawyer’s representation will be “materially limited” by a personal interest of the lawyer. RPC 1.7(a)(2).

Because conflicts analysis is so fact-specific, I offer the following hypothetical tales of personal-interest conflicts within a casework role of additional rule violations. If the fact patterns start to sound familiar, a call to the ethics helpline may be in order.

Chronicles of Conflicts: Oregon Attorneys and their Current Clients

Malpractice: Attorney’s Interest to Avoid Liability

Attorney A represents Client B in a high-value personal injury claim, but Attorney A lacks the attention to detail and knowledge reasonably necessary to represent Client B. Attorney A does not know how and when to timely file suit to preserve Client B’s legal rights. Only when an insurance claims adjuster alerts him to the passing of the statute of limitations does Attorney A recognize his professional error.

Attorney A is embarrassed that (in his view) his staff totally blew the deadline to file, and he’s concerned about his reputation and individual liability. So Attorney A conceals his mistake from Client B and sends her a fabricated complaint that he falsely claims was filed.
Attorney A fails to advise Client B of the legal options and information reasonably necessary for her to make informed decisions about the representation, including Attorney A’s conflict in continuing the representation when he has shown no intention to repair his error.

In addition, Attorney A does not reach out to the OSB Professional Liability Fund (PLF). Instead he falsely advises Client B that she is unlikely to recover any damages because she caused the accident (omitting material information, i.e., that recovery is unlikely because of Attorney A’s failure to timely file suit, act to repair and seek the advice of the PLF).

In doing so, Attorney A’s conduct directly implicates RPC 1.7(a)(2), among other rules, because he continued to provide Client B with legal advice when there was a significant risk his own interest in avoiding malpractice materially limited his professional judgment.

Bar Complaint: Attorney’s Interest to Avoid Liability

Attorney B represents Client C in a pending criminal matter. Client C submits a bar complaint against Attorney B, alleging that Attorney B has failed to respond to his request for an accounting of the $50,000 that Client C paid to him or his reasonable requests for case information. Having stolen Client C’s funds, Attorney B refuses to respond in substance to the bar’s investigation or respond to Client C’s requests.

Knowing that Client C is copied on his responses to the bar’s investigation, Attorney B claims that because Client C has felony convictions, he cannot be believed; that the bar complaint, as a public record, will only lead to additional criminal charges against Client C; and that Attorney B is the only attorney smart enough to save Client C from a true-life sentence. Seeing this response, Client C concludes that he cannot terminate Attorney B and risk grievous harm to his criminal case.

Without any of Client C’s funds remaining, Attorney B disregards Client C’s directive that he use his $50,000 to effectuate a civil compromise and/or offer full restitution. Instead, Attorney B repeatedly delays the criminal proceeding and bar investigation to avoid exposure to his own criminal and professional liabilities. Client C is left without any legal services of value or any of his funds, and he cannot leverage a favorable plea agreement.
Again, Attorney B’s conduct implicates RPC 1.7(a)(2) because there is a significant risk that his professional judgment will be limited by his own interest in avoiding criminal prosecution and professional discipline.

**Financial: Attorney’s Profit Interest Above Client Interests**

Attorney B also represents Client D in a land-sales transaction. In representing Client D, Attorney B knows that this client is elderly, infirm and intends to use his life’s savings to purchase land and retire. Because of his representation of Client C in the case discussed above, Attorney B knows that he will need $50,000 fast to replace the funds that he converted from Client C.

With this motivation, Attorney B then enters into a loan with Client D, borrowing $50,000 with no maturity date, security or clearly stated interest rate. Attorney B does not comply with the rules controlling such a business transaction with Client D, under RPC 1.8; and he fails to inform Client D that this loan may frustrate his objective in purchasing the land. Based on his reliance and confidence in him as his attorney, Client D accepts Attorney B’s subsequent recommendations to agree to various unfavorable and amended loan agreements. Attorney B fails to make any payments to Client D on the loans.

Attorney B also drafts a will for Client D that would in part forgive the loan to Attorney B, contrary to Client D’s intentions for his destitute and deserving beneficiaries. Fearing that Client D would act to collect his debt from Attorney B if the client’s land purchase moved forward, Attorney B works to derail and delay the transaction at the heart of his representation. Here, Attorney B’s conduct implicates RPC 1.7(a)(2), because his professional judgment is limited by his own financial interests.

**Family Staff and Long-Term Clients: Disloyalty to Other Clients**

Attorney Y reluctantly took over his father’s estate-planning practice composed of many of the families in and around their small town. Attorney Y also represents the Pumpkin Pals, a much more lucrative, long-time client. Attorney Y serves as the Pumpkin Pals’ legal advisor, board member and treasurer, and he depends on the organization for most of his annual income.

Attorney Y does not know how to practice probate law, so he has left that work entirely unsupervised to his longtime...
non-lawyer paralegal, who happens to be his Cousin E — even though Attorney Y knows that Cousin E is addicted to gambling. Cousin E holds unsupervised access to the firm’s trust account and funds in clients’ trusts, and Attorney Y knows that Cousin E occasionally funds his gambling from client funds. But Cousin E is family, and he eventually does win and restore clients’ funds.

This time, however, Attorney Y learns that Cousin E has stolen all of the Pumpkin Pals’ funds for their annual Pumpkin Toss, as well as most of the funds from several client trusts. Attorney Y notifies the Pumpkin Pals and law enforcement, but fails to communicate with or disclose the theft to his other victim-clients. Following his criminal convictions, Cousin E is ordered to make restitution to all of his victim-clients. Attorney Y pays himself and Pumpkin Pals from Cousin E’s restitution, but Attorney Y does not notify or pay restitution to his other victim-clients.

Without question, Attorney Y’s continuing representation of his clients was materially limited by his loyalty to his family member and personal financial interest in retaining the long-term representation of the Pumpkin Pals.

Conclusion

Because lawyers are human, we have personal interests. But because we are professionals, we must stay attuned for any adverse impact such interests have on our independent professional judgment.

Lawyers with ethical concerns are always welcome to contact the Legal Ethics Helpline or turn to legal ethics resources on Bar Books for answers. Together, we can work to manage hard ethical questions that may arise during the practice of law.

Nik Chourey is deputy general counsel for the Oregon State Bar. Reach him at nchourey@osbar.org or connect with him on the bar’s Legal Ethics Helpline at (503) 431-6475.

ENDNOTES

2. Whether a conflict may be waived by a client’s informed written consent turns on the elements of RPC 1.7(b), including — under RPC 1.7(b)(1) — whether the lawyer “reasonably believes” that she “will be able to provide competent and diligent representation to the client. Reasonableness is considered under the circumstances, and may be informed by the defined terms of “reasonable” and “reasonably believes.” RPC 1.0(k) and RPC 1.0(l), respectively.
5. RPC 1.0(h): “Knowingly,” “known” or “knows” denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person’s knowledge may be inferred from circumstances.
6. RPC 1.0(b): “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
7. RPC 1.0(g): “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.
8. RPC 1.16(a)(1): Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law. Note also that a resignation caused by a current client conflict is governed by UTCR 3.140 (see https://www.courts.oregon.gov/rules/UTC/2020_UCTR_ch3.pdf).
9. RPC 1.10(a): While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
10. Suspension is generally appropriate when a lawyer knows of a conflict and does not fully disclose to a client the possible effect of that conflict, and causes injury of potential injury. ABA Standard 4.32.
11. Of course, Attorney A, not his non-lawyer staff, is responsible for Attorney A’s compliance with the Rules of Professional Conduct. RPC 5.3.
**THE LEGAL WRITER**

**Word Choices Offer Subtle Shifts in Meaning**

**Shades of Gray**

By Suzanne E. Rowe

During the gray, smoky days when many of us in Oregon were forced inside by hazardous air quality, I reached for my favorite dictionary to see whether a word was being used exactly as the writer intended. Alas, my current edition was locked inside my office, while I was locked inside at home. My slightly older edition\(^1\) was handy, though, and it offered a spark of light on the otherwise gray days.\(^2\)

Tucked throughout the book are gray boxes labeled “The Right Word.” Each box explains the slightly different meanings of words that we might negligently view as interchangeable. While this exciting feature existed throughout the pages of the second edition, it disappeared from the third edition. I can’t imagine why.

Legal writing is precise writing, and choosing the right word can make legal documents more accurate, more precise and possibly more dynamic. I found the nuances explained in “The Right Word” illuminating. Or maybe the nuances just seemed particularly illuminating to me on an otherwise gray day. You be the judge.

**Work, Labor, Drudgery, Grind, Toil and Travail**

Most readers of this column work as attorneys or with attorneys. We exchange our knowledge and creativity for some form of payment. Even when we provide that knowledge and creativity pro bono, we still call it work.

Labor more often refers to physical work. The wonderful people who harvest our food are called laborers because of their labor. When our attorney work becomes especially onerous, we might refer to it as labor, though I doubt writing even the most laborious appellate brief compares to the labor of harvesting food.

As work becomes less desirable, we use other words to describe it. Drudgery is “unpleasant, uninspiring and monotonous” work. In law practice, attorneys often assign this type of work to paralegals and legal assistants, some of whom attend law school in a misguided attempt to escape.\(^3\) My dictionary suggests that a grind is even worse than drudgery, in part because of external pressures. That means the team of attorneys, legal assistants and other professionals preparing for a trial might feel their work has become a grind. On the other hand, going to the office seemed like a grind, until we couldn’t do it anymore.

Two other words, toil and travail, suggest the worker or laborer needs help. Toil is “prolonged and very tiring.” Anyone organizing Zoom school for children while caring for aging parents and also practicing law — they are toiling and hoping for relief. The final word in this group, travail, applies when the worker endures “pain, anguish or suffering.” If that applies to your career, please see the footnote for ways to get help.\(^4\)

**Lenient, Forbearing, Merciful, Indulgent, Lax and Permissive**

This set of words might be helpful for those attorneys and judges involved in family law, or for anyone with views on how other people raise their children. My favorite dictionary compares and contrasts these six words based on parental discipline.

Lenient describes the parent who lowers standards when it comes time to impose discipline. A lenient parent might have strict rules that the child knows are unlikely to be enforced. (The same might be said of some teachers, but I’m sure the students who called me “Death Rowe” never expected leniency in my classes.)

The rest of the words move away from the idea of leniency, with both positive and negative connotations. Forbearing is positive, describing the parent who tries to control impulses and “is therefore able to abstain from hasty or ill-tempered actions.” (Note there’s no extra “e” to make fore-bearing.) The child of a forbearing parent is unlikely to get off completely, but a stern lecture is more probable than a more dire response. Merciful is also positive in connotation, showing the parent relaxing standards because of compassion.

On the negative side of the ledger are indulgent, lax and permissive. The first, indulgent, might be forbearing gone overboard, with the parent catering to the child’s every wish. Both lax and permissive show extreme leniency. Lax involves “laziness or indifference,” while permissive shows “tolerance to the point of passivity.” To my ear, lax seems more negative, while permissive seems a more formal rendering of the idea.

**Latent, Potential, Dormant and Quiescent**

These four words are about unseen activity. Let’s take them in pairs, since the first two apply more often to people and the last two don’t.
A latent talent is one that hasn’t yet emerged. I think of the 1L who never speaks up in class but has a brilliant oral argument before that first panel of judges; she had a latent talent that no one recognized. Slightly different, potential describes a talent that exists but hasn’t been developed. This student offers thoughtful insights in class and shows promise after the first practice round, though he’ll need more practice to reach his full potential before the bench.

Dormant is a current state of inactivity, like sleeping. If you’ve studied French, you’ll see the link between dormant and the verb dormir. Or maybe you remember the childhood song about Frère Jacques: Dormez-vous? But in English dormant describes things, not Brother Jack, the friar who slept through morning prayers. My garden goes dormant each fall, sleeping until early spring when the crocus and daphne begin blooming. We’d like for Mount St. Helens to be dormant. We wish the novel coronavirus would go dormant for 1,000 years.

While dormant suggests cycles of activity and rest, quiescent emphasizes the current state of inactivity. It focuses on today, regardless of yesterday or tomorrow. The Pacific Ocean was so named because some European explorer caught it on a calm day and assumed it was quiescent (pacifico in Spanish and Portuguese). He might have asked the native people, who had lived near the ocean for millennia, or stuck around for more observation, but the misnomer stuck.

Likeness, Similarity, Resemblance and Affinity

When comparing people, be sure to recognize the shades of gray among these words. Likeness might describe family members. I bear a strong likeness to my paternal grandmother, though I don’t look like anyone else in my immediate family. My father told me often, and typically with exasperation, that I acted like her, too. (I took this as a badge of honor.)

Similarity can also refer to things as well as people. For example, two cars can
be similar despite being manufactured by different companies.

Resemblance is related, but it “suggests a similarity only in appearance or in superficial or external ways.” Young siblings who wear matching clothes bear a resemblance to each other. Affinity builds on that superficial similarity with something of substance, perhaps temperament or experience. Those siblings might both be rambunctious, or quiet, or share a common experience in foster care. They share an affinity.

One related word that probably won’t appear in your legal documents is similitude. It’s more literary and refers to abstract things. The common example is “a similitude of truth,” though I can’t find a definition for how close to “truth” the similitude has to be. Another dictionary gave an example of similitude in a criminal case: “The two robberies, committed on opposite ends of the country, show some curious similitudes.” But that’s a little fancy for my tastes.

Conclusion
Keep old dictionaries. In the days ahead, we might need all the entertainment we can get.

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ENDNOTES
2. Gray is the American spelling; grey is the British spelling of the same color.
3. Sadly, they find more drudgery in law school.
4. Attorney counselors at the Oregon Attorney Assistance Program are available to help legal professionals deal with the unique pressures of practicing law. Reach them at (503) 226-1057 or (800) 321-6227, or visit www.oaatp.org.
A Most Unusual Year

Legal Community Responds to COVID-19, Social Justice Movement and Wildfires

By Melody Finnemore
A Most Unusual Year

When Gov. Kate Brown issued a stay-at-home order in response to the COVID-19 pandemic in March, Oregon’s legal community quickly figured out new ways to continue serving clients and keep the justice system running. It also established free resources to help people struggling to file unemployment claims and obtain federal stimulus funding, and to protect the most vulnerable populations from living and working in unsafe conditions.

As voices rose across the state in a call for social and criminal justice for people of color, Oregon’s legal professionals joined in the movement to effect change. Their work extended all the way to the Oregon Supreme Court, which implemented initiatives that include educating jurors about implicit bias and encouraging circuit courts to establish pilot projects that hone best practices for fair and impartial trials.

When historic wildfires swept across the state in September, members of Oregon’s legal community — some of whom had to evacuate their own homes — immediately reached out to help others who had lost everything. Some, like Medford attorney Faith Morse, acted individually and volunteered countless hours. Others acted through legal associations and private firms, including Portland’s Ball Janik, which provided free legal advice for residents and businesses affected by the wildfires.

What does all of that have in common?

It’s this: During this most unusual year, which has made so many feel helpless, anxious and afraid, Oregon’s legal community overwhelmingly chose to take action. Scores of individuals, law firms and other organizations have volunteered their time, expertise and resources to protect people during the pandemic, support gains in social and criminal justice, and provide invaluable services to those impacted by the wildfires.

Here are a few of their stories.

Protections during a Pandemic

By early December, the number of coronavirus cases in Oregon had surpassed 77,000 and more than 900 people had died from the COVID-19 pandemic. Nationwide, more than 13 million had been infected and more than 270,000 had died — the worst public health crisis the country has faced since the 1918 Spanish flu.

Along with the spikes in those cases, COVID generated a wave of lawsuits in 2020, with issues ranging from layoffs and sick leave to unpaid insurance claims and landlord/tenant disputes.

Andrew Schpak, co-managing partner at Barran Liebman, says state and federal legislation passed to address the pandemic has included financial relief and new forms of medical leave and emergency paid sick leave. For example, the Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Schpak says he and other employment law attorneys have been busy throughout the pandemic, educating employers and employees about protections covered under the FFCRA. As an example, the act provides leave for parents who cannot go to work because schools and daycares closed and they need to take care of their children. The FFCRA is supposed to sunset Dec. 31, Schpak says, but that could be extended if schools remain closed.

Other considerations for businesses include how to be compliant with phased reopenings, how to help employees continue to work remotely and how to navigate tax laws for businesses that work across state lines. In addition, COVID-19 mandates from Oregon Occupational Safety and Health (OR OSHA) were expanded to include all businesses starting Nov. 1. Previously, much of the earlier guidance for employers from OR OSHA and the Oregon Health Authority was limited to specific industries or types of facilities.

“It’s going to continue to be a challenge for a lot of organizations, because when someone used to say they were sick you gave them paid sick leave, but when someone is sick now, especially if they have a cough or fever, there is a prohibition of that person coming into the workplace until those symptoms subside,” Schpak says. “Now we’re looking more long-term, like people who are working from home and aren’t particularly interested in returning to the office even when it’s allowed.”

Schpak notes that when he and his colleagues go into the office, they have to take their temperature and sign in. If they have symptoms or don’t feel well, they have the luxury of working from home. However, people who work in service industries such as gas stations and grocery stores, as well as farmworkers and others who cannot

The Oregon Trial Lawyers Association organized pro bono services clinics in wildfire-affected communities to help people register for FEMA support, file insurance claims and take care of matters with the Small Business Administration, among other work. Photo courtesy of Kathleen Bergin

Andrew Schpak
work remotely, may not be paid if they don’t work and disclosing symptoms could hurt them financially.

That’s among the issues the Oregon State Bar met head-on this year by creating a COVID-19 panel of nearly 70 volunteers who provide up to 30 minutes of pro bono advice to people who have basic legal questions arising from the pandemic. Most of the calls so far have been related to unemployment benefits. On its public-facing website, the OSB added a series of FAQs on COVID-19 topics, proclamations from the governor, changes in operations within the courts and updated moratoriums, among other topics.1

COVID-related updates on landlord/tenant law, family law and wills and trusts have been the most popular, with articles on employment, business and immigration law close behind. All together, these public information articles, written by lawyer volunteers, had been viewed nearly 160,000 times by late November.

Legal Aid Services of Oregon’s (LASO) emergency response to the pandemic included expanding its statewide hotline to help more clients with issues related to unemployment insurance, medical needs and other public benefits. It also rapidly shifted its service delivery model to provide legal services remotely, and continues to provide critical legal representation in domestic violence cases at a time when crisis calls have increased.

As another example of the organization’s work during the pandemic, Legal Aid’s Roseburg office reached out to 140 former and current clients to help them get the federal stimulus money they were entitled to receive. Its attorneys worked with clients, who are on either Social Security or Veterans Administration benefits, to meet the deadline to get information to the IRS regarding their dependent children.

“Helping these struggling families get the full amount of their stimulus checks was vitally important,” says Joan-Marie Michelsen, regional director of the Roseburg office. “Our clients are clearly under stress, but they are doing their best and have been so thankful that we are still open to help them.”

As LASO helped meet the need through myriad pro bono services, private law firms formed specialized teams to provide guidance for current and prospective clients. Lane Powell established a COVID-19 Landlord/Tenant Response Team, for example, to help property owners and tenants understand their obligations and rights and keep up on the rapidly developing legal landscape. (See “Shelter from the Storm,” Page 28.) Among the topics raised most often: uncertainties surrounding Paycheck Protection Program loans,
state and local regulations and proclamations, and emergency court rulings and procedures.

“Property owners and tenants are facing real uncertainty right now about their businesses, their obligations and their rights,” says response team co-chair Bruce Cahn, whose practice focuses on sophisticated large-dollar commercial, business and real estate disputes. “Our Landlord/Tenant Response Team brings together a number of experienced professionals to help navigate the changing governmental regulations, legal requirements and practical realities of the pandemic. Our goal is to help our clients get through this current situation in a position to succeed and thrive in a post-pandemic environment.”

Erin Morris, a partner with Morris, Stannard & Batalden Family Law in Portland, says that while COVID-19 has altered the entire legal industry, family law has been particularly hard hit because of substantial disruptions in the care and education of children and the impact of traditional family support, childcare and school on economic stability for divorcing or separated parents, especially working mothers.

As an example, Morris notes that parenting plans largely do not contain provisions for widespread and enduring pandemics. Parents must navigate substantially different risk tolerances in two-home families, which often involve stepparents or other children or stepchildren. Custody cases are surging due to disagreements regarding social distancing, travel, vaccinations and people generally not having the emotional energy to navigate ongoing conflict regarding their kids, she says.

Early in the pandemic, Morris says, she saw a surge of immediate-danger petitions for divorced or divorcing parents of minor children where a parent or non-parent spouse worked in a “high-risk” job, such as an emergency room nurse or airline pilot. In the early stages particularly but continuing almost nine months later, she says, is the lack of available, reliable data to support one position over another when it comes to the safety of sending young children to daycare and what kinds of exposure present the highest likelihood of transmission.

“All of the traditional supports that used to exist for families in caring for their children have completely fallen away. This is particularly true for single parents or parents navigating separation and divorce,” Morris says. “The absence of a regular school year or reliable and safe childcare options that allow parents to work full time has compromised the financial security of divorced or separating parents and is affecting the social and emotional health of families across the board.”

At the same time, she adds, the normal mechanisms available to family law attorneys in the past have become severely restricted at a point when divorce cases are on the rise, requiring a new approach to the scope of litigating a case and a heavier reliance on mediation and other forms of alternative dispute resolution.

“Courts have limited the number and kind of domestic relations motions and hearings substantially out of necessity,” Morris says, “leaving traditional avenues of reaching a timely and final resolution of your case all but foreclosed.”

Other tools traditionally utilized in the custody and parenting time litigation process, such as the use of Ph.D child psychologists to conduct forensic custody and parenting time evaluations, have also been substantially curtailed. These modalities rely, ultimately, on personal observation and interaction with the family unit and observing the health of the attachment between a parent and young child in their home and other environments, Morris says.

“It’s difficult to say how and to what degree the data collected through alternative, socially distant or entirely remote means, such as Zoom or Skype observations of parent-and-child interactions by a professional who may never have any in-person contact with the parties or the children, affects the reliability of the data and the weight applied to it when the report and clinical recommendations are published,” she says.

Morris notes that spousal support cases loom large as an area of the law that will likely need to be re-examined. Spousal support is not typically awarded to former spouses who are highly educated and have substantial work experience, she says. However, the unexpected loss of employment or the counterweight of new and overwhelming childcare obligations completely throws any traditional analysis into flux.

“We don’t know what the long-term effects of a COVID-19 job loss of six months to two years will do to a parent’s long-term income-earning potential,” Morris says, “and how much one can reasonably request that the other spouse/parent be on the hook for ameliorating the professional and financial impact of a state of emergency on their ex-spouse.”

Exploring Racial Justice Reforms

The deaths of George Floyd, Breonna Taylor, Tony McDade and other Black Americans at the hands of police officers ignited months of demonstrations across Oregon that began in May and continued even as the Bulletin went to press in December.

Oregon Supreme Court Chief Justice Martha L. Walters wrote a June 5 letter to the state’s legal community addressing the deaths,
The committee, chaired by Polk County Circuit Court Judge Rafael Caso, was scheduled to hold its first public meeting virtually in the fall. It includes community groups involved in evaluating and proposing changes to the criminal justice system, as well as public safety officials and organizations. Members also include legislative Judiciary Committee chairs Sen. Floyd Prozanski and Rep. Janelle Bynum; three circuit court judges; and representatives from other state agencies, public safety associations and community groups involved in criminal justice system issues.

Judge Caso says CJAC’s goal is to provide Chief Justice Walters with information and recommendations she can use to improve the administration of justice and ensure equal access to the courts. “The new committee represents one additional way,” he notes, “that the Oregon Judicial Department is working to fulfill its mission to provide fair and impartial justice, protect people’s rights, preserve community welfare and inspire public confidence.”

CJAC initially has been asked to make recommendations in several areas, including remote proceedings and in-person appearances that best serve individuals and entities in the criminal justice system; implementation of a statewide pretrial release program; and collection and analysis of data on race and ethnicity to address disproportionate outcomes.

In addition, the committee will address imposition and collection of court-ordered financial obligations to reduce negative impacts and improve collection rates; processes to ensure that courts do not create or exacerbate disparate impacts for Black, Indigenous and other people of color; and instruction to jurors and others to mitigate the effect of bias during fact-finding and decision-making.

CJAC’s vice-chair, Multnomah County Circuit Court Judge Melvin Oden-Orr, began addressing implicit bias as part of his jury noting that they “have had a tremendous impact on all of us, but especially on our colleagues, family and friends from communities of color, who experienced them on a very personal level.”

She said she and her colleagues on the Oregon Supreme Court are committed to addressing their own bias and prejudice; identifying systemic and institutional racism; working to ensure that the courts are open and accessible to all Oregonians, particularly communities that have been historically marginalized and oppressed; ensuring the justice system, including the criminal justice system, is fair and provides equal justice to all and collaborating with public safety stakeholders to that end; and continuing to promote diversity, equity and inclusion in judicial education and community outreach and engagement.

“We acknowledge that there is injustice here in Oregon, and that we, collectively and individually, bear responsibility for that injustice,” Walters wrote. “Saying that aloud is a recognition of a wrong, but it will only compound that wrong if we do not act, collectively and individually, to bring change.”

In September, Chief Justice Walters established the Criminal Justice Advisory Committee (CJAC), a 24-member group that will advise her on a range of topics related to the coronavirus pandemic and racial justice reforms.

“Courts, community organizations and public safety entities must work together to better serve the interests of justice during this time of great challenge and change,” the chief justice wrote in announcing the formation of the committee. “We have an opportunity in this moment, and we cannot tolerate a return to business as usual. I want to ensure I am hearing directly about changes we need to make, and that our courts are taking a leadership role in ensuring justice throughout Oregon.”
instructions a couple of years ago and has been talking about that process during recent town halls, roundtable discussions and panels on racial disparity in the criminal justice system.

“I want to inspire confidence in the criminal justice system so that each and every person can come into the court and feel that they are in a place where they can be treated fairly and without bias. That’s the goal and that’s the dream,” he says. “What I tell the jury, essentially, is we’re looking for people who can be fair and impartial. We all have biases. Some are explicit and we know we have this bias, and some are implicit and we don’t know that we have these biases.”

Judge Oden-Orr says it’s ultimately up to him to determine whether a juror’s bias will impact a trial in his courtroom. While he does not talk with jurors about their deliberations, he does invite them to meet after the trial to talk about the justice system and the courts in a general or hypothetical sense.

“They really want to talk about the trial with the judge, and I make it clear I’m not there to talk about whether they made the right decision,” he says. “What I’ve gotten from people in those conversations is that they’ve appreciated that I brought up the issue of implicit bias. It’s not new for people, but to have the judge bring it up makes an impact.”

In July, the Oregon Judicial Department (OJD) approved the use of an Oregon Unconscious Bias Juror video in an effort to create a courthouse culture that embraces diversity and inclusion. In an email announcement, Chief Justice Walters and Justice Adrienne Nelson said the video explains the concept of unconscious bias and provides tools for jurors to use to ensure fair and impartial jury proceedings.

The Committee on Bias in the Justice System in Oregon, which includes both state and federal practitioners and judges, created the video with funding from the OJD and the federal courts in Oregon.

In addition, the OJD’s Strategic Campaign 2020-2021 makes four commitments to advance the state’s constitutional obligation to provide justice for all Oregonians and sets out 19 initiatives the state will undertake over the next two years. The campaign is the work of the OJD’s Strategic Planning Steering Committee, with assistance from the National Center for State Courts and the State Justice Institute.

The steering committee reviewed OJD’s past strategic plans and convened 12 focus groups to obtain insights and experiences of diverse people who make up the state’s justice system. The first groups included presiding judges, trial court administrators and division heads from the Office of the State Court Administrator. Later focus groups included community leaders, legal advocates, bar leaders, law enforcement, governmental partners and court staff. The committee also solicited the advice of legislators and conducted on OJD-wide survey that provided information about how well Oregon measures on national indicators of highly effective courts.

The steering committee compiled what it had learned and presented the results during a two-day summit, where 40 volunteer participants from across OJD — including judges, trial court administrators and central staff — identified the most pressing concerns and made recommendations to address them. The committee then adopted the plan for a focused two-year campaign.

According to Judge Oden-Orr, the campaign encourages the circuit courts to initiate pilot projects to further the goals outlined in the document, and he has suggested to his colleagues in Multnomah County Circuit Court that they move forward with their own Impartial Jury Project. Through the project, a diverse group of attorneys would explore recommendations related to the issue of implicit bias and suggest best practices for conducting civil trials.

“That’s something that our court has authorized, so I’m going to be working on that in the coming months,” he says. “My personal hope is that the public learns about the efforts and that not just the court but the lawyers who are engaged in this work are striving to create an experience that will show people that the court is fair.”

In October, hundreds of law enforcement officials and community members gathered via Zoom for the fifth-annual “Building Bridges of Understanding in Our Communities” event, hosted by the Muslim Educational Trust. The goal: to build and strengthen trust between public safety leaders and civic organizations and to cultivate that trust within the communities they serve.

This year’s theme was “Redefining Community and Public Safety Relationships,” and the gathering included a variety of moderated panel discussions. In “Defunding Police and Reimagining Public Safety,” for example, public safety leaders laid out their goals for accountability, transparency and community engagement. Participants included officials from Word is Bond, Coalition of Communities of Color, Reimagine Oregon, Latino Network and the Muslim Educational Trust, as well as police chiefs, sheriffs, district attorneys, the U.S. Attorney’s Office and the FBI.

Washington County District Attorney Kevin Barton, whose office was among the sponsors of the event, is now involved in organizing a hiring fair that hopes to attract diverse professionals to the legal community across Oregon. The fair, which is scheduled for March 9-10, 2021, will be Oregon’s only diversity job fair focused on practicing attorneys, paralegals and legal assistants who are seeking an employment opportunity with an Oregon employer.

“In my role as district attorney, I know that the obligation to promote justice includes ensuring an equitable system exists for everyone in our community,” Barton says. “A key aspect of ensuring this mission is promoting diversity in our hiring practices, and this job fair is part of our effort to achieve that goal.”

Several large law firms — including Schwabe, Williamson & Wyatt, Tonkon Torp, Dunn Carney, Miller Nash Graham & Dunn, Stoel Rives and Davis Wright Tremaine — have already established Diversity, Equity and Inclusion committees and continue to evaluate how they can recruit, retain and promote diverse talent.

Their efforts include diversity fellowship programs and internships, as well as Conversation Project lunches for staff and attorneys, held in partnership with Oregon Humanities, that explore topics ranging from racial disparity and gender equity to understanding disability and homelessness.

Miller Nash has also established a Women and Minority Business Enterprise Program, which provides its attorneys with billable credit of 150 hours per year for work on specific diversity initiatives. In addition, the firm recently completed Diversity Lab’s Mansfield 3.0 program certification, joining 100 law firms from across
the country that have received certification and becoming one of 67 firms to receive Certification Plus status. That status recognizes that Miller Nash affirmatively considers at least 30 percent women, attorneys of color, LGBTQ+ attorneys and attorneys with disabilities for leadership and governance roles, equity partner promotions, formal pitch presentations to clients and senior lateral positions.

On an individual level, some legal professionals have taken to the streets in support of the Black Lives Matter movement and its call for racial justice. Lawyers gathered for a moment of silence on June 8 in front of the Jackson County Justice Building, for example; on the same day, public defenders and other lawyers gathered at Lownsdale Square Park in downtown Portland to voice their support.

In addition, several “Know Your Rights” trainings have been held across the state. Kasia Rutledge, a Portland criminal defense attorney for 13 years, is among those who lead them.

“Everyone should know what their rights are and how to enforce them,” she says. “My goal is always to help prevent people from entering the criminal justice system.”

Rutledge also leads anti-racism workshops and trainings for people ranging from middle and high school students to professionals in the legal community. She presents them with Rakeem Washington, a former criminal defense attorney who is now director of access and re-entry at Portland Community College’s Cascade campus; the pair does between five and 10 such events a month.

“I just see young people so thirsty for knowledge about how to protect themselves,” Rutledge says. “The BLM movement asks us lawyers to take a hard look at how we are participating in that and how we can listen to communities of color, particularly Black communities.

She adds that the charge to just listen to people of color rather than lead a call to action may feel counterintuitive to many attorneys.

“This moment is asking that those of us who are white, as I am, move back and center around and lift up Black voices. That’s an interesting thing for lawyers, because our intuition and instinct is that we are always helpful and useful, so we’re ready to rush in, and we’re being asked not to do that right now,” she says. “We need to listen without putting one’s own world view on things and be of service in a way that may not be comfortable because it doesn’t look like it has looked oftentimes in the past.”

A Rapid Wildfire Response

In September, hot temperatures and powerful winds fueled historic wildfires that killed at least 11 Oregonians, burned more than 1 million acres and destroyed more than 4,000 homes. The Holiday Farm Fire burned just outside of Eugene; the Beachie Creek, Riverside and Lionshead fires burned between Clackamas County and Salem and were centered around the Mount Hood National Forest; the Echo Mountain Fire burned near Lincoln City; and several fires burned in Southern Oregon, including the devastating Almeda and South Obenchain blazes.
As wildfires decimated communities across the state, the Oregon State Bar, the Oregon Trial Lawyers Association (OTLA), LASO, the Oregon Law Center and other organizations raced to help people who had been displaced. At one point, the Red Cross alone had more than 300 people on the ground in fire-ravaged communities, working with more than 1,700 families who had lost everything.

Some lawyers put their expertise to use almost immediately.

Ball Janik Partner Damien R. Hall says he knew that in a time of uncertainty, internet connectivity and electrical power have become even more critical for work, education and staying in touch with loved ones. So when the Holiday Farm Fire burned more than 27 miles of fiber optic lines in the McKenzie River Valley in September, Hall stepped up to provide pro bono services and partnered with Elevate Technology Group to help restore Wi-Fi and emergency management services to the impacted area.

Elevate worked around the clock with community volunteers to help restore services and connections between equipment in the area that impacted functioning communication towers several miles away. Hall contributed his expertise related to communications legalities, workers comp and liabilities arising from the volunteer effort.

“When a catastrophic event like this takes place, response and recovery has to evolve quickly,” says Hall, who played a key role in contract reviews and risk mitigation to help the team. “Being able to adapt and change plans is critical, and it must be done safely.”

The area of the fire, which burned more than 170,000 acres, is especially challenging because of its location in a valley. Satellite coverage is difficult, and local communities did not have any redundant internet connectivity to fall back on when the fiber lines were destroyed. All forms of communication, including critical services like 911 emergency calling, were wiped out.

But with partnerships with community players who helped with fast-track agreements — including the Eugene Water & Electric Board and the U.S. Forest Service — the team was able to bring in connectivity while waiting for licensed and franchised telecommunication carriers/cable providers to restore normal infrastructure.

The work is expected to be complete by late December, Hall says.

In October, the Oregon State Bar launched a Disaster Legal Services program, in conjunction with the Federal Emergency Management Agency, the Oregon New Lawyers Division and the ABA Young Lawyers Division. The program provides pro bono disaster-related legal services to those who live in the eight counties given Individual Assistance designations: Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn and Marion.

Responding to requests from Chief Justice Walters and OSB President Liani Reeves, more than 130 lawyers across the state signed on to help. Specialized training was established in three key areas: FEMA appeals, landlord/tenant matters and manufactured home issues. Additionally, the ABA provided several dozen training videos in a wide variety of relevant areas, as did the Practicing Law Institute and Equal Justice Works.

Other partners included the Red Cross, the Oregon Governor’s Office of Emergency Management, the Small Business Association and Legal Aid Services of Oregon.
LASO also partnered with the Oregon Law Center and the Center for Nonprofit Legal Services to create a disaster relief website — oregondisasterlegalservices.org — where fire victims could get help with a variety of legal issues, and a Disaster Assistance Panel composed of lawyer volunteer who stood ready to provide critical legal assistance to low-income wildfire survivors.

One of the key areas of need involved assisting FEMA applicants who faced ineligibility because of lost documentation (lease agreements, deeds, photo IDs, etc.). FEMA received approximately 20,000 applications for assistance from fire victims, and up to 40 percent of those applicants faced ineligibility challenges.

“The timelines for FEMA claims are tight,” Reeves and the chief justice wrote in encouraging lawyers to volunteer. “Victims have 30 days from the date of the disaster declaration to file their claims with FEMA. If their claims are denied, they have 60 days to appeal. Having the advice and guidance of a lawyer during this process could make a tremendous difference for our neighbors who are already dealing with devastating losses.”

Other areas of need included contracts for housing repairs; power of attorney/estate administration; insurance claims (life, medical, property, etc.); mortgage foreclosure; guardianship and conservatorships; consumer protection; and housing challenges. (The program does not cover cases that will produce a money award.)

As part of its outreach effort, the bar invited calls from wildfire victims to its Referral & Information Services staff. OTLA created its own hotline, established a list of frequently asked questions and put out a call to members, some of whom were evacuated themselves, to help out.

Among them was Faith Morse, who practices with Andersen Morse & Linthorst in Medford. She and her husband were forced to leave their home and spent their first couple of days driving around with their horse trailer, helping neighbors move their horses to the county fairgrounds, which had been designated as a shelter for displaced families. By the first weekend after the fires, she was helping people file insurance claims from a makeshift office there.

“We were blessed. Our home is standing and the fire got very close, but we’re fine,” Morse says. “But a lot of people down here aren’t. Seeing the absolute devastation and hearing the stories is just … heartbreaking, heart-wrenching — and that doesn’t cover it. The devastation is just jaw-dropping.

“I saw how much my community was hurting and I looked around and thought, ‘What can I do that will help?’” Morse adds. “I can’t drive heavy equipment to help people move the rubble, and I can’t swing a hammer as effectively as someone who does that professionally. But I can do insurance claims.”

OTLA organized a pro bono services station at Talent Elementary School, a designated FEMA response site, to help people register for FEMA support, file insurance claims and take care of matters with the Small Business Administration, among other work. It also sent attorneys out into the community to meet with people who couldn’t come to them.

“We’re trying to be flexible in that way as well,” Morse says. “It’s an honor and a privilege to help people out when they need it, and if we all pull together as a community, we will get through this.”

Portland attorney Marc Johnston lives in Clackamas County, and he and his family also were forced to evacuate when wildfires approached. He says he had the luxury of staying in a beach house in Pacific City, but saw many people with their belongings packed in cars, trucks and trailers on his way out of town.

“I thought to myself, ‘I’ve got to do something’ because, number one, I can. I know about making insurance companies honor their obligations,” he says. “I knew it was going to be a huge undertaking and it has been, but it was something I had to do.”

Johnston was among the OTLA members who organized a series of 12 training videos that provide information from lawyers who specialize in fire-related claims and are available for volunteers. The volunteers have led pro bono sessions in Molalla, Estacada and other cities and plan to continue them.

Johnston notes that this year’s wildfires have created a foundation for OTLA to prepare for even better disaster response in the future.
“We have sort of the bones of what we’re going to do, how we can organize it, so we can be more effective quicker and help people sooner,” he says.

Looking Ahead

What lies ahead for Oregon’s legal community as it deals with what OSB President Reeves calls “this time of challenge and change”? For some, it will mean joining the rest of the business community in adapting to a new way of getting work done.

“It (has been) incredibly depressing to see the office closures, layoffs and furloughs and to see all of these people going through this dramatic period,” says Barran Liebman’s Schpak. “Some firms had to put employees and staff on partial salaries, and firms that moved into new space and signed a giant lease in the past few years now have a huge commercial lease payment each month. Those organizations are hurting, and some are in conversations to give back a floor if they are on multiple floors, not only to lower that monthly expense but for the long term if more people want to continue working from home.”

Deputy Marshal Jon Gadberry picks up some of the nearly 100,000 masks that have been donated for use in Oregon courthouses as part of a drive coordinated by the Oregon Association of Defense Counsel. The effort was initiated over the summer by the Oregon Judicial Department, which estimates the need at 1,200-1,500 masks per day for jurors, employees or visitors who come to court without them. Photo courtesy of Geoff Horning/OADC

Several large law firms had already been experimenting with working remotely before the COVID-19 pandemic struck, but the state’s stay-at-home order showed that it could be a successful strategy for many attorneys.

“We’ve had to get really good at communication within the firm, since I can’t just walk to someone’s desk and talk to them about something,” Morse says. “We were already electronic file-based and used case management software, so that didn’t change much. But mediation, depositions and hearings are all via Zoom now. That actually has been a fantastic change. I would have been very skeptical pre-COVID, but I’m not sure I’ll do in-person mediations again absent compelling circumstances. Video recording of depositions is easy as can be, and accommodating witnesses at a distance is a breeze now. It just simplifies things.”

While the loss of face-to-face meetings with clients, cybersecurity risks and the wellness challenges caused by isolation pose concerns, the American Bar Association and law-related websites such as Law360 and Above the Law report a growing number of firms are embracing remote work options and flexible schedules permanently. The benefits for both associates and managers include increased productivity, more positive engagement with work and improved quality of services to clients, according to Above the Law.6

Many attorneys, and particularly working parents, have noted that remote work and reduced hours have fostered a better work-life balance. Working from home has also helped some attorneys better empathize with their clients.

“With two young children and two full-time lawyers in my household, I am right there along with my clients navigating these challenges and fears,” Morris says. “Holding this with my clients and bearing witness to their unique challenges has infused my practice with so much meaning, and it gives me a lot of strength to continue holding the center, both professionally and personally.”

Earlier this year, the ABA and Working Mother magazine partnered to create a list of top law firms for women to highlight the fact that work flexibility is key to attracting and retaining the best employees. The list includes several firms with offices in Oregon, including Davis Wright Tremaine and Perkins Coie.7

Solo practitioners and small firms have faced their own set of challenges while transitioning to working remotely, much of which has involved technology. Resources from the ABA and the 2020 Solo and Small Firm Legal Technology Guide have helped provide guidance, ranging from cybersecurity protection to legal software recommendations.8 The guide was written by Sharon D. Nelson, John W. Simek and Michael C. Maschke, founders of Sensei Enterprises Inc., and published by ABA Publishing.

“The year 2020 will be remembered as the moment in time when lawyers were catapulted into the future,” say Nelson and Simek, who share “lessons learned” in their Technology & the Law column on Page 48 of this month’s Bulletin. “Some were prepared for working remotely, but many were not.”

In October, Clio’s Legal Trends Report was released in conjunction with the Clio Cloud Conference. Among the trends it spotted:

- 96 percent of lawyers say they’ll store firm data in the cloud in the future;
- 95 percent say they’ll support electronic documents and signatures;
- 96 percent say they’ll accept electronic payments;
- 96 percent say they’ll use practice management software; and
- 83 percent say they’ll meet clients through videoconferencing.

Oregon’s courts also are continuing to adapt to changing conditions related to the pandemic, with a series of orders from Chief Justice Walters regarding Level 2 and Level 3 restrictions on court operations, closures of courts and OJD offices, remote appearances during arraignments and other proceedings, and the use of face coverings in courts, among other issues.7

Physical damage has impacted the court system as well. Gatherings that began peacefully often devolved into violence late at night, causing about $1.3 million in damage to the Multnomah County Central Courthouse and Justice Center in downtown Portland. Protesters also set fires and broke glass inside the federal courthouse, which was covered in graffiti shortly after the protests began. As
of late November, there was no public timeline for when repairs would be made to the buildings.

While some of the legal community’s physical spaces were in limbo, attorneys both at the beginning of their careers and well into their practices were able to progress with mentorships and continuing education using remote technology and other innovative options. In addition to the in-person July bar exam, for example, the Oregon Supreme Court authorized an online exam in October and granted a one-time diploma privilege that allows 2020 graduates who meet all other requirements to practice in the state without passing a bar exam.

At the same time, the OSB encouraged ongoing participation in its New Lawyer Mentoring Program and offered a series of online CLEs, including courses on the science of implicit bias and a free Zoom CLE on access to justice.

In a letter dated Sept. 11, Reeves acknowledged all that Oregon’s legal community has endured in 2020 and said she has been “grateful for how this community has looked for ways to stay connected and support each other.”

“On this 19th anniversary of Sept. 11, 2001, I am reminded of how that tragic event also physically separated people in its aftermath, but also brought people together to collectively grieve,” Reeves wrote. “It has been a challenging year for many of us. I encourage people to try to find space and time to reflect and regroup if necessary.”

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ENDNOTES
1. See osbar.org/public.
2. Watch the video at tinyurl.com/OregonBias Video.
3. Read the report at tinyurl.com/OJD Campaign.
5. See the 2020 list at workingmother.com/best-law-firms-for-women-2020.
6. The guide is available for purchase online at americanbar.org/products/inv/book/392770760.
7. The latest orders from the chief justice cover the use of protective face coverings in state courts, procedural changes at the Oregon Court of Appeals and new restrictions on court operations because of a surge in COVID-19 cases. All are available online at osbar.org/resources/covid19.html.
Shelter from the Storm

Commercial Leasing under the Cloud of COVID-19

— By Bruce Cahn and Cozette Tran-Caffee —
Boarded-up windows throughout downtown Portland have become colorful reminders of the impact of the COVID-19 pandemic, which has forced many commercial tenants to close their doors or fundamentally change the way they do business. Photo by Jonathan House

Editor’s note: This is the first of a two-part series on the impact of the COVID-19 pandemic on Oregon landlords and tenants. Watch for our report on the residential sector in an upcoming issue of the Bulletin.

OVID-19 has devastated lives and livelihoods, severely impacting economic relationships throughout society. Commercial tenancies are one such severely impacted area.

In order to protect public health, many businesses have closed their doors. Employees have lost their workplaces, often their jobs, and many people have been deprived of their valued public spaces. The widespread and ongoing shutdown has also put property owners in a tough spot — significantly reducing income but not reducing obligations to pay lenders, taxes, utilities and other costs.

Precise numbers are hard to come by, but reasonable industry estimates indicate a more than 8-percent decrease in rental payment rates across retail tenants nationally, with smaller tenants performing considerably worse than larger chains. A recent industry report estimates that 85 percent of independent restaurants will close as the result of COVID-19 (absent government assistance). Closer to home, the amount of space available for sublease in downtown Portland jumped by 36 percent as tenants have attempted to vacate office and retail space.

The impact of COVID-19 extends well beyond landlords and tenants. Commercial tenancies support most aspects of our cultural life and social existence — from music venues and art studios to restaurants and bars, leased commercial property provides the spaces in which we gather. They also support our essential needs and labor force — from medical provider offices, childcare centers and grocery stores to warehouse and supply chain distribution centers and beyond.

While some tenants were starting to recover before the latest “freeze” in social activities took effect in late November, continuing public health restrictions will have long-term — and in some instances, permanent — effects. And many tenants have survived this long only by delaying payment of rent and other debts that remain due.

Landlords are facing their own challenges, falling behind on loan payments and seeing demand for their property change in ways that were unforeseeable at the start of 2020 — all of which are being exacerbated by new restrictions. This leaves a number of difficult decisions for both sides to the lease: renew or terminate, pay or withhold, remain or vacate.

None are easy choices, and each comes with a host of additional issues.

The Current Landscape

Virtually all commercial leases require the payment of rent (sometimes a fixed amount, sometimes a percentage of sales, and sometimes both), and many require the payment of some share of taxes and other common expenses. But since mid-March 2020, significant numbers of commercial tenants have missed one or more rent payments. In addition, vacancy rates are up, as are tenant inducements like tenant improvement allowances and free-rent periods.

On April 1, 2020, Gov. Kate Brown issued Executive Order 20-13 (EO 20-13), which provided a temporary moratorium on residential and commercial evictions for nonpayment of rent caused by the pandemic. The Legislature replaced EO 20-13 with House Bill 4213, which allowed tenants to defer paying rent accruing through Sept. 30, 2020, and granted a grace period for the repayment of back rent until March 31, 2021.

Brown has since extended the protected non-payment period for residential (but not commercial) tenancies until Dec. 31, 2020. The Legislature enacted similar relief from loan payments for property owners under HB 4204 (as extended by EO 20-37).

We have seen firsthand that Oregon landlords and tenants are reacting rationally, often working together to maintain their relationships and survive the current crisis. Many landlords voluntarily deferred or abated rent in the early days of the pandemic, and numerous tenants continued paying all or some of the rent due. Even when availing themselves of the available

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rent deferrals, some tenants have worked with landlords to develop payment plans that fit the needs (if not necessarily the desires) of both parties.

Complicating Factors

Additionally, the impact of the pandemic is not limited to rent deferrals, particularly for large, multi-tenant properties. Landlords must navigate complex lease provisions, with little control over the events that affect them.

For example, large retail tenants often require a co-tenancy clause in their leases, obligating the landlord to lease to certain other tenants or types of tenants in order to maximize the desired foot traffic at a certain location. Similarly, a multi-tenant retail lease may contain a continuous operations clause, requiring other tenants to remain open.

The remedy for violations of these types of lease provisions is often significantly reduced rent for an extended period, or even lease termination. If a required co-tenant goes out of business or is forced to close because of a shutdown order (think movie theaters, indoor dining or buffets), the reduced rent provision could kick in.

In addition, the landlord’s lender will generally have approval rights for rent concessions and other lease amendments that may restrict a landlord’s ability to grant specific tenant requests for assistance.

Anticipating the Unknown

Because of rapidly changing governmental action and legislation, planning for the future can feel daunting, and forward-looking contractual provisions can be tricky.7

Landlords understandably wish to limit rent concessions to those tenants in genuine need, both to preserve the landlord’s ability to meet its own financial obligations and to ensure that limited resources are not going to tenants whose businesses have remained stable. Accordingly, many landlords require copies of a tenant’s financial statements prior to granting rent relief.

Such financial statements can also help a landlord identify tenants likely to fail even with significant assistance, and plan appropriately. Tenants, understandably, may be reluctant to provide this information if not required to do so under the lease.

Landlords often also request that tenants pursue all other relief options, including business interruption insurance and CARES Act benefits8 — and some have helped tenants apply for those protections. Addressing presently available government assistance during lease negotiations is fairly straightforward; more difficult, though, is addressing the impact that future government action might have on a commercial tenancy. Landlords have tried to account for this uncertainty by trading rent concessions for a promise to pass through any future rent assistance and/or waiver of the benefit of future eviction moratoriums and the like. The enforceability of this type of contract provision has yet to be tested in the Oregon courts.

Anticipating the Known

Despite best efforts and intentions, the reality is that we remain in a precarious situation. Tenants will undoubtedly seek bankruptcy protection, bringing a new set of considerations into play. Under Section 365 of the Bankruptcy Code, which covers commercial leases, tenants have two basic options: assumption or rejection.9 Any commercial lease not affirmatively assumed or rejected within the time allowed will be automatically deemed rejected.10
If the tenant assumes the lease under Section 365(b), then it must cure the default or provide adequate assurance of prompt cure; compensate the landlord for any actual pecuniary loss resulting from the default or provide adequate assurance of prompt compensation; and provide adequate assurance of future performance under the lease. However, if the landlord has deferred or abated rent before the tenant files for bankruptcy protection, then the tenant is not in default for nonpayment of such rent, and the unpaid deferred (or abated) rent is not recoverable if the tenant assumes the lease.11

This means that if the landlord has deferred or abated rent, then the tenant need not pay the deferred rent as a prerequisite to continuing under the lease. Accordingly, where bankruptcy is likely, a landlord may be better off declaring a default and allowing the unpaid rent to accrue than it would be working out a payment plan.12 Because HB 4213 treats the unpaid debt as statutorily deferred, it is an open issue as to whether such statutorily deferred rent needs to be repaid upon assumption, even though the landlord did not voluntarily defer the unpaid rent.

One recent case that deserves consideration is In re Hitz Restaurant Group, No. BR 20 B 05012, 2020 WL 2924523 (Bankr. N.D. Ill. June 3, 2020). There, the bankruptcy court reduced the tenant’s rent obligation based on the force majeure provisions in the lease. While the decision turned in part on the specific language of the lease and the landlord’s conduct, it does highlight the difficulty in enforcing lease terms during these trying times. Other cases have addressed extraordinary rent relief claims because of COVID-19 and government shutdown orders.13

If the landlord is the party that declares bankruptcy, it generally has the same right to assume or reject an unexpired commercial lease; however, the tenant has heightened protection under the Bankruptcy Code. Essentially, Section 365(h) provides the tenant with two options: either treat the lease as terminated, or retain possession and use of the property (including any applicable renewals or extensions). If the tenant chooses the latter, the lease terms must remain the same. However, the landlord will no longer be obligated to provide any services required under the lease. Instead, the tenant may offset any damage resulting from such nonperformance against rent that comes due.
Collaboration is Key

More than any other event since the Great Recession, the COVID-19 pandemic has highlighted how all our fates are intertwined. The resiliency and survival of Oregon’s vibrant business community depends on continued flexibility, creativity and collaboration among landlords, tenants and government.

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ENDNOTES
1. See tinyurl.com/RestaurantClosures.
3. Under Chief Justice Order 20-06, issued by Chief Justice Martha L. Walters, eviction proceedings (Forcible Entry and Detainer or “FED”) were effectively suspended during the emergency period and, in any event, local circuit courts were not allowing FED actions to proceed. This was extended by subsequent orders. While FED actions are now moving forward, they are limited to nonpayment defaults and payment defaults that occurred after Sept. 30, 2020.
4. HB 4213 Section 5(7) allows the landlord to offer an alternative payment plan for payment of the nonpayment balance (rent, late charges, utility charges and service fees). However, the default is that the tenant need only pay the unpaid balance by March 31 in the absence of an alternative arrangement. HB 4213 Section 5(4). The landlord cannot take any action to terminate the lease for nonpayment of rent during the emergency period (April 1-Sept. 30). HB 4213 Section 5(2).
5. EO 20-56.
6. However, property owners have not been relieved of their obligation to timely pay property taxes, nor have they been given relief from paying utility bills as they have come due. Further, even though tenants may not be paying rent, landlords are still required to fulfill their maintenance obligations and care for common areas, or face potential defaults themselves under their leases.
7. Gov. Kate Brown issued Executive Order 20-65 on Nov. 17, limiting restaurants to takeout only and reducing the capacity of
8. Under the CARES Act Paycheck Protection Program, tenants may use PPP funds to cover rent payments due under leases in effect before Feb. 15, 2020.

9. The tenant’s decision is ultimately subject to bankruptcy court approval, after notice and hearing, via application of the typical “business judgment” standard. See In re Pomona Valley Med. Grp., Inc., 476 F.3d 665, 670 (9th Cir. 2007).

10. Under Section 365(d)(4), the tenant has until the earlier of plan confirmation or 120 days from the petition date to affirmatively assume or reject its commercial leases, subject to one 90-day extension upon a showing of good cause. In Chapter 7, the applicable period is 60 days, but that may also be extended for cause. 11 U.S.C. § 365(d)(1). Any additional extensions require the consent of the counterparty to the lease.

11. Deferred rent is typically due on a future date or in accordance with future payment terms, while abated rent typically need not ever be repaid. However, in some instances, abated rent is merely deferred indefinitely but may become due upon the event of a future default. It is an open question as to how the bankruptcy court would treat abated rent that became due as result of the bankruptcy filing. (Often, a tenant’s bankruptcy filing is an event of default under the lease.)

12. Unpaid deferred rent will likely be treated as unsecured debt in the bankruptcy estate, rather than a rent default that needs to be cured under Section 365(b) as a prerequisite to assumption. However, the court may treat deferred pre-petition rent as a post-petition administrative priority claim, though there is a split of authority as to how a deferred rent claim meshes with other provisions of sections of the Bankruptcy Code. This will need to be considered when advising a landlord as to whether to defer rent and how.

13. See In re Modell’s Sporting Goods, Inc., Case No. 20-14179 (Bankr. D.N.J., Mar. 23, 2020) and In re Pier 1 Imports, 615 B.R. 196 (ED Vir.).

LEARN MORE

Oregon lawyers are providing updated legal information for the public as the COVID-19 pandemic continues, including a Landlord/Tenant Law FAQ and links to videos, pamphlets and more. Find it all at osbar.org/public/legalinfo/landlordtenant.html.
Aid & Assist

How Best to Balance Mental Health Needs and Public Safety?

— By Cliff Collins —

The knotty challenge of protecting both mentally ill defendants’ rights and public safety has come to a head in Oregon over the past couple of years.

Consider:

- A multidisciplinary Senate Bill 24 Work Group, co-facilitated by representatives from all three branches of Oregon government, is working to revise and refine a bill that the Legislature passed in 2019 to address issues surrounding "Aid and Assist," a term that refers to whether defendants are sufficiently mentally competent to understand the charges brought against them and to work with their attorney in their own defense. The work group plans to present a bill to the Oregon Judicial Department for introduction in the 2021 legislative session.

- Oregon Chief Justice Martha L. Walters appointed a Behavioral Health Advisory Committee in the fall of 2019 composed mainly of circuit court judges from around the state. It is charged with developing and helping implement best practices for courts “to efficiently, effectively and humanely serve individuals who present with behavioral health challenges," as well as providing direction to the Oregon Judicial Department on legislation regarding behavioral health issues. Circuit Court Judge Nan Waller, who co-chairs the committee and leads Multnomah County’s mental health court, says the committee is focusing first on the Aid and Assist process.

- Gov. Kate Brown appointed a Behavioral Health Advisory Council in October 2019 to recommend to her and legislative leadership specific actions and investments necessary to improve access to behavioral health care. The council’s recommendations, released in October 2020, included increased support for restoring Aid and Assist defendants in community settings rather than at the Oregon State Hospital, and adding an additional 16-bed secure residential treatment facility for defendants the court deems are unable to aid and assist in their own defense.
Aid and Assist presents a conundrum that encompasses major societal dilemmas such as mental illness and drug and alcohol addiction, which are more prevalent in Oregon than in many other states, and issues such as homelessness and police interactions with mentally ill people that affect Oregon as well as the rest of the nation.

Under Oregon state law, courts have the ability to order a psychiatric evaluation before or during a trial in a criminal case when there is reason to doubt the defendant’s fitness to proceed because of “a qualifying mental disorder.” But that process is often complicated by the increasing number of defendants being referred for evaluation, limits on how long a defendant can be held in jail while awaiting mental health services, and a lack of secure options — treatment or residential facilities beyond the Oregon State Hospital — for where they can be housed.

Judge Waller calls it “an Aid and Assist crisis.”

“The reality is, we don’t have enough mental health services for people in this country,” she says. “Unfortunately, our jails have become a big place for provision of mental health services. They don’t want to be that.”

The landmark case for affirming defendants’ constitutional right to have their competency evaluated before proceeding to trial occurred 60 years ago. Dusky v. United States determined that “due process does not permit the trial of persons who do not possess a rational and factual understanding of the proceedings, and who lack the ability to cooperate with their attorneys with a reasonable degree of rational understanding.”

In 2003, the organization now known as Disability Rights Oregon won a case before the 9th U.S. Circuit Court of Appeals that sought to limit how long Aid and Assist defendants could be held in jail before referral for “restoration services.” Restoration refers to mental health or addiction treatment that allows the defendant to regain enough competence to proceed with trial. A federal district court had found that defendants who were unable to aid and assist in their defense waited in jail for an average of 32 days before being transported to Oregon State Hospital, but Oregon Advocacy Center v. Mink established a seven-day limit for placement once an evaluation is complete.

More recently, after lawsuits began challenging the length of time defendants were held in jail while awaiting competency evaluation, a federal court found in a class-action suit that the Washington Department of Social and Health Services was taking too long to provide competency evaluation and restoration services. That 2016 case, Trueblood v. DSNS, placed limits on both the time allowed to refer for evaluation and for restoration. The court ordered the state of Washington to provide court-ordered competency evaluations within 14 days and competency restoration services within seven days.

“In Trueblood, the 9th Circuit again upheld that there must be a bright line regarding how long a prospective patient can languish in jail before receiving timely court-ordered mental health restoration services,” says Emily Cooper, legal director of Disability Rights Oregon, who litigated those cases when she worked at Disability Rights Washington.

But that line is often blurred, Oregon lawyers and judges say, because of financial issues, a lack of secure housing options and a criminal justice system that Lane County prosecutor Jay D. Hall says “was never designed to be a long-term solution for mental health issues and real treatment.”

A Lack of Options

The reasons for delay in referring defendants are complex, but one of the most basic is a lack of space in the state hospital.

Since the Mink ruling in 2003, the number of defendants sent to the Oregon State Hospital for restoration of competency to stand trial has increased 166 percent, according to Micky F. Logan, co-chair of the SB 24 Implementation Work Group and legal affairs director for the hospital. Aid and Assist patients now represent the highest percentage of the overall hospital census, amounting to 42 percent in 2019. The average daily population under an Aid and Assist order was about 260 last year, whereas in 2012 it was 109.

In 2010, the state built a new hospital to replace its aging facility. But it contained fewer beds than the old one — intentionally, Logan says, because stakeholders wanted fewer people institutionalized and more treated in community settings. Indeed, SB 24 specifically aimed to place limits on how many people were sent to the Oregon State Hospital so that only those defendants most in need of expensive hospital-level care could be accepted.

“The old hospital was expandable; the new one is not,” Logan says. “The courts and attorneys in Oregon were used to being able to commit people fairly easily, but now the hospital is licensed for only a set number of beds — a development that has collided with the dramatic uptick in cases referred for evaluation.

“The Legislature had not planned for Aid and Assist to go up tremendously,” Logan explains. “This issue is a nationwide issue. Every state is having this problem.”

Since the Kennedy administration, a gradual trend has been to move psychiatric patients out of inpatient facilities and treat them as outpatients in community settings. But adequate funding to achieve this objective has never happened, according to experts.

“The problem is, (Oregon lawmakers) didn’t give any resources to the counties to bolster their secure treatment facilities or residential treatment facilities,” says Jackson County Circuit Court Judge Lisa Greif. “It has created a crisis around the state. We’re really struggling with this because there is simply not room at the state hospital for people deemed eligible for Aid and Assist.”

In addition, there is a dearth of local secure residential treatment facilities in Oregon capable of accepting people who need the supervision and oversight required of many Aid and Assist defendants, Judge Greif says, and an increase in homelessness has only added to the problem.

“With the housing crunch, we’re really seeing how that plays out,” Judge Waller says. “There’s not enough housing, period.”

In fact, at least 65 percent of defendants sent to the state hospital over the past two years were experiencing homelessness at the time they were arrested, Logan says, and “until recently, 40 percent of people sent to Aid and Assist were charged with misdemeanors; many were minor misdemeanors.”

In the view of many stakeholders, including some whose job is to defend the constitutional rights of people arrested while suffering from mental illness or alcohol or substance use disorder, those are all reasons why the state needs to examine more closely who is
getting referred for Aid and Assist services in the first place.

“The underlying problem is criminalization of homelessness,” says Sarah Radcliffe, managing attorney for Disability Rights Oregon, “and along with that, behavioral health needs.”

Elizabeth N. Wakefield, an attorney with Metropolitan Public Defender, concurs.

“Some (of these) folks don’t need to be in the criminal justice system,” says Wakefield, who has two decades of experience as a public defense attorney. “They need services that it is not able to provide.”

But the reality is that “people with mental illness are overrepresented in criminal justice, and Aid and Assist (orders) are the most common way these people are interacting with the criminal justice system,” says Allison Knight, lead mental health attorney with Public Defender Services of Lane County.

Judge Waller says most defendants who appear before her court have “significant mental health and substance abuse issues,” and what is needed most are more options besides jail or the hospital.

“We need to look long and hard” at whether these cases need to be brought into the criminal justice system at all, she says. “Probably not. The general consensus (nationally) is that misdemeanors should not be sent through Aid and Assist to hospitals. We need alternatives. There is an ongoing conversation about what cases should be put into (the criminal justice system). We need a better way of sorting who comes in.”

That’s why both the SB 24 Work Group and the Behavioral Health Advisory Committee are looking at ways to revise and refine current law and suggest potential new legislation.

“The present system we have in Oregon has some very notable gaps in terms of care people can receive,” says Melissa Marrero, a deputy district attorney in Multnomah County. “With respect to criminal defendants who are unable to aid and assist, access to treatment is severely limited for people who are not safe in the community but who arguably don’t require hospital-level care. This gap places the public at risk and leaves the courts and parties struggling
to find ways to treat those in need of treatment while at the same time keeping communities safe.

“With this legislation, we’re attempting to strike the right balance between protecting public safety, protecting the rights of mentally ill defendants and preserving critical treatment resource issues that are in high demand,” she says. “Eventually, there will need to be a greater discussion that goes beyond Aid and Assist regarding how we address and treat mental health issues. I think it’s safe to say that we would all love additional treatment options. But secure and semi-secure placements are expensive, and we don’t have enough of those resources in place at this time. We’re working together to find a way to improve outcomes, even if it’s an imperfect solution.”

Restoring Competency

Hall, a senior prosecutor with the Lane County District Attorney’s Office and a member of the SB 24 Work Group, calls the effort “our ongoing multidisciplinary approach to helping the Oregon State Hospital best utilize its scarce resources to address the needs of its Aid and Assist population.”

For a decade in Lane County, Hall has handled what he calls “a number of cases that unfortunately fall at the intersection of criminal conduct and mental health issues.” The work group formed at the hospital’s request, and is composed of a team of folks who have “some connection to justice-involved people with mental health issues.” These include representatives from county governments, the Legislature, prosecution, defense, the courts, the Department of Justice, the Oregon State Hospital, the Oregon Health Authority, community mental health care providers, law enforcement and civil rights advocacy.

“Law enforcement and the justice system handling mental health issues should be a last resort when other services have failed and something has gone terribly wrong. It shouldn’t be the plan for dealing with people who have mental health issues.”

Knight agrees. “The criminal justice system is poorly situated to be involved with mental illness in every way, but you have to have a competent defendant,” she says.

Competency evaluation is performed by certified forensic evaluators, most of whom are employed by, and do evaluations at, the state hospital, according to Logan. But Knight points out that the “goal is restoration of competency, not treatment of mental illness. It is time-consuming and takes a lot of resources, and doesn’t address their long-term recovery.”

The time required to bring a person to competency — including time spent waiting for evaluation and referral — can amount to “substantially longer” than the time the person would have served if convicted of a low-level offense, Knight adds. “There are no real meaningful wraparound services that assure that their stability is maintained. The system as a whole isn’t serving anybody.”

Moreover, people suffering from mental illness often are held in custody longer because of their illness, notes public defender Wakefield. “Research and experience support that holding people in custody for long periods of time can be extremely harmful,” she says.

Wakefield, who also serves on the work group, says Judge Waller “has taken a leadership role as a trial judge. That perspective has helped people come to the table. Everybody is trying to find the best way to go forward in a manner we can afford.”
Pandemic Exacerbates Delays

The COVID-19 pandemic has had an impact on several aspects of Aid and Assist.

For example, the chief justice’s Behavioral Health Advisory Committee had planned to hold an Aid and Assist Summit in March to train judges and staff, Judge Waller says. Although the summit was canceled because of COVID restrictions, sponsors did supply judges and staff with materials intended to be distributed at the conference and are developing Aid and Assist forms to enable collection of data to identify gaps in community services and placements.

In addition, the Oregon State Hospital had to halt all admissions at the beginning of the pandemic in order to plan how to continue operating safely, says spokeswoman Rebeka Gibson-King.

“The state hospital is not taking civil commitments right now,” Judge Waller says. “They have so many Aid and Assist cases that they can’t accept civil. The community placements also have been reduced because of (social) distancing. I think that we need, across Oregon, a much more robust range of community placement.”

Once the hospital stopped new admissions, “all these people waiting, held in jail, had a huge impact on the behavioral health system,” says Judge Greif. “That really created a crunch for us.” She notes that the seven-day limit to send defendants for evaluation already was often difficult to meet for counties such as hers, which are able to transport people to Salem only two days a week.

Aid and Assist “still needs legislative fixes; we still need more facilities, more beds, more local resources,” she says. “They didn’t dole out money to do local treatment. It’s an unfunded legislative mandate.”

Logan says that until the past few years, the state hospital was the only place to restore Aid and Assist defendants. Now community mental health offices are performing restoration services in a few counties, and she considers “significant” the fact that misdemeanor cases now being sent to the Oregon State Hospital are “more serious. That means (courts) are doing a better job of triaging defendants in front of them.”

Logan adds that she doesn’t receive many complaints that patients being sent to the state facility should not have been. Even so, “the state hospital’s numbers of Aid and Assist are still not going down,” she says, while at the same time the numbers seen at the community level also are going up. “Our admissions unit works hard to continue to find beds for people.”

District attorneys across Oregon say they want legislation to state more clearly which defendants should be sent to Salem. They also want to be able to provide adequate information to the judges who decide whether someone will be treated at the hospital.

“The statute as written makes it difficult for prosecutors to explain to the court when someone needs to go to the state hospital,” Marrero says. “We’re hoping to clarify that process so that everybody understands. There are often times when prosecutors have important information about safety concerns related to victims and the public. SB 24 seeks to prevent defendants from going to the hospital if they don’t need to go there, especially low-acuity cases. But they may be dangerous for reasons that may or may not be related to their diagnosis, and a secure placement may be the only safe and appropriate place for them to be. We need to be able to bring these concerns to the courts.”
Hall says the work group’s overall plan involves looking at community-based alternatives to treatment that can serve as “a replacement to the very costly in-person treatment at the Oregon State Hospital.” But there are some “cases that everyone would agree are not a good fit for community treatment as opposed to residential treatment.

“The first example that comes to mind,” he says, “is a person charged with murder. It stands to reason that the dangerousness associated with such an offense is so egregious that no judge is really going to place that person into the community while they are struggling with mental health issues. That is certainly a case with which hospital in-patient restoration is in order, so the work group is taking up language that would correct that oversight.”

Aside from those related to the pandemic, delays also occur in obtaining the evaluations that determine whether someone is even eligible for Aid and Assist. Notably, the Mink decision that imposed the seven-day limit applies only to the time required for someone who has already been evaluated as needing restoration of competency to be referred for services.

“Mink is limited to the period after which the defendant has been found unfit, the timeline when ordered and when they go,” points out Disability Rights Oregon’s Radcliffe. But “there are delays at both of those segments.”

Washington state addressed both with the Trueblood ruling. By contrast, Oregon has no legal waiting-time limits for initial competency evaluations, she says.

In Washington, “the court held that 14 days was the longest someone should wait in jail for a mental health evaluation,” says Disability Rights Oregon legal director Cooper. “In Oregon, we know that these individuals can wait weeks or months. For individuals who have been charged with misdemeanors such as trespassing, this person may wait longer in jail than (the time they would serve) had they been convicted of the alleged crime.”

The Work Will Go On

Despite the steep challenges, members of the groups working to improve the statutes governing Aid and Assist are encouraged that people on all sides of the issue are talking together.

“Everyone’s really trying and agrees on the issues, but how do we get there?” Waller asks. “I’m gratified that people are trying to come up with good solutions.”

Among signs of progress: The Oregon Judicial Department has launched “The Intersect,” a behavioral health newsletter for courts “to highlight issues at the intersection of behavioral health and the justice system,” as well as an internal data “dashboard” to assist courts in managing their Aid and Assist caseloads, says Debra C. Maryanov, senior assistant general counsel in the Office of the State Court Administrator of the Oregon Judicial Department and co-chair of the SB 24 Implementation Work Group.

She also notes that in January 2020, the GAINS Center for Behavioral Health and Justice Transformation, part of the federal Substance Abuse and Mental Health Services Administration, selected Oregon as one of seven states and Washington, D.C., to participate in its Community of Practice for Competence to Stand Trial and Community Restoration project.
According to Oregon’s strategic plan for the project, its object is to develop regional behavioral health centers to increase fast competency evaluations and opportunities for community restoration, as well as to support diversion from the criminal justice system for appropriate individuals with behavioral health needs.

The Oregon Judicial Department’s efforts on Aid and Assist are part of its Strategic Campaign initiative launched in January to participate in statewide efforts to examine how to best meet the needs of Oregonians with behavioral health challenges, and to develop best practices for courts to use in cases where those challenges must be addressed, Maryanov says.

“What’s unique and impressive is how Oregon approaches problems in behavioral health and the justice system in a collaborative manner,” she says.

Similarly, the state hospital’s Logan calls the effort to improve Aid and Assist “a great representation of how Oregonians work together to create solutions.”

However, no matter what steps stakeholders take to improve the process, at base is the overarching model the nation brings to “how we deal with mental illness,” emphasizes Lane County defender Knight. “I expect (the challenges) to be ongoing for a long time.”

Although she sees progress and collaboration on the work group, “I don’t think a change to the statute will solve the problem alone,” Knight says.

Likewise, Multnomah County Deputy DA Marrero says the work group brings “a lot of very good people to the table who recognize this is a difficult area of the law and that there are a number of competing interests involved. We’ve been able to work quite collaboratively with all of the involved stakeholders; it is not an easy task to take on, but we’re trying to be thoughtful and responsible with our work and actions. By bringing a diverse group of individuals to the table so that everyone’s perspective is taken into account, we achieve better results and a more equitable system.”

That said, “It will take additional work even after the coming session,” Marrero says. “I don’t think our work will be done even if we get the changes in place, but it’s a step in the right direction. We will continue to work for a system that works for everybody.”

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ENDNOTES
1. Oregon has the fourth-highest addiction rate in the U.S., according to data from the Substance Abuse and Mental Health Services Association; it ranks 51st — at the very bottom of the list — for prevalence of adult mental illness and lower treatment access, according to a survey by Mental Health America.
2. See ORS 161.370. The primary treatment goals for patients under what courts refer to as a “.370 order” are stabilization and achieving a level of capacity so they can cooperate with attorneys and participate in their own defense.
4. Oregon Advocacy Center v. Mink, No. 02-35530 (March 6, 2003)
5. Trueblood et. al. v Washington State D.S.H.S., No. 15–35462 (May 6, 2016)
Looking Back on a Tumultuous Year

Reflections

By Liani JH Reeves

I could never have imagined what 2020 was to become.

As I started my year as Oregon State Bar president in January, I was looking forward to traveling around the state, attending judicial investitures and other celebratory bar association events. I hoped to meet with lawyers and community members throughout Oregon. Instead, like many of you, I spent the year largely confined to my home because of the COVID-19 pandemic.

I did not get to travel. My partner and I were isolated from our friends and family. And I spent most of the year separated from my mom as she lost her battle with cancer. It was only because she entered hospice that I was able to be reunited with her briefly before saying goodbye. Needless to say, the pandemic impacted every part of our lives.

So did the tragic death of George Floyd. Like many people of color, I struggled not only with the sheer tragedy of it all, and the anger it sparked, but also with facing my own privilege and how to reconcile my trust in the rule of law and the justice system with the experiences of others who have lived very different lives. As president of the Oregon State Bar, I struggled with how to engage in the long-overdue conversation about racism and racial justice.

Given all of that, it would be disingenuous if I did not acknowledge that this was one of my most challenging years, both personally and professionally. But I also want to acknowledge that there have been positives that came out of 2020 as well.

First, I was able to find meaningful connections with many of you. I had to look for new ways to connect with lawyers and build community without leaving my house, so I turned to one of my loves: writing. And in some ways, as an introvert by nature, I thrived.

In my communications, both in the Bulletin and in my regular email messages, I tried to embrace a style that was not focused on providing updates on programs and operations but more on sharing my genuine and imperfect experience navigating 2020 as your bar president and as a human. I believe I succeeded in some areas. I failed in others. But as I opened a window into my own challenges, struggles and fears, my hope was to build personal connection in a time when so many of us felt isolated and overwhelmed.

In response, I have heard from so many lawyers who were there to just offer support and community, and I am so thankful for all of the kindness that has been offered to me throughout this year. I also heard from many who shared their own stories — their own challenges and vulnerabilities. Stories of isolation, grief, financial and personal loss. I am so sorry this has been such a challenging year for so many, but I am honored that you have chosen to share so much with me.

What we’ve learned together, I think, is that it’s OK to admit that there were times when we were not at our best. I have heard from you when I made missteps, and that is appreciated as well. I have let some of you down, sometimes by saying too much and sometimes by saying too little. Thank you to those of you who have engaged in respectful and professional conversations and debate. And while there were some who took a different approach, I understand that my position as bar president opens the door to criticism in all its forms. I am pleased to report that the majority of my interactions with lawyers has been positive and reinforced my role in the critical conversations that have occurred this year.

Second, we learned how technology can bridge the geographic divide in our bar. While the bar president typically tours several parts of the state, this year we used videoconferencing to reach out to every local bar association and were able to travel virtually to all corners of Oregon, from Coos and Curry counties (where I grew up) to Klamath, Lake, Malheur and Wallowa counties — and everywhere in between. As a result, even though I never left my house, I met with more lawyers this year, not fewer.

I also used technology to hold several discussions about issues I care about as president — an inter-generational conversation between boomers, Gen Xers and millennials on the future of the legal profession, for example, and an honest conversation about race, gender and privilege in the justice system. Both events, which were free and took place by videoconference, were attended by hundreds of people.

That kind of turnout would never have been possible had we not been forced to pivot to video, so I know the bar will continue to use the technology and tools we employed this year to have a wider and more equitable reach across the state.
Third, I want to acknowledge that as a community, I have seen us come together to help others during this tumultuous year. Oregon lawyers have stepped up to provide pro bono counsel to people with COVID-related legal questions, as well as victims of the devastating wildfires that are still ravaging parts of our state. (See “A Most Unusual Year,” Page 16.) Oregon lawyers have stepped up to help proctor a bar exam under the most challenging and unusual circumstances. And more than at any time before, Oregon lawyers have stepped up to serve as mentors to the next generation of lawyers who will need our support.

Your generosity inspires me, especially because I know that so many of you are dealing with your own personal and professional challenges, including your physical and mental health.

As my year comes to a close, I want to take this opportunity to thank bar staff, who despite many challenges — including furloughs and layoffs — have continued to offer outstanding support to the Board of Governors and exceptional service to members and the public. Every employee of the bar made significant sacrifices this year — personally, financially, professionally — in order to continue the bar’s public protection mission.

I also want to thank all of my colleagues on the Board of Governors for their dedication and support.

And finally, I want to thank the community of lawyers who have supported me, including my colleagues at Bullard Law and especially my partner, Iván Resendiz Gutiérrez. This year has taken a toll on me and my relationships, and Iván has been my center. ¡Gracias por tu amor y paciencia!

Like many of you, I am ready to put this year behind me. But despite the challenges, I have no regrets. I know that the resiliency that got us through 2020 will propel us forward into a new year filled with possibilities.

Thank you for the opportunity to serve as your president during this memorable year.

Liani JH Reeves is president of the Oregon State Bar. Reach her at lreeves@osbar.org.
After 67 Years of Practice, William Mansfield Still Leading by Example

Private Attorney, Public Citizen

By Janay Haas

October 23, 1929. Most people recognize it as the day the New York Stock Exchange began its plummet to Black Tuesday. But a few people know it’s also the birth date of one of Oregon’s longest-practicing attorneys.

That attorney is William Mansfield, who lives and works in Medford. He joined the Oregon State Bar in 1953. Now 91, he’s been practicing for more than 67 years — a milestone few lawyers reach and one that has become a source of amusement for him.

“I get written about just because I’ve lived a long time and haven’t retired,” he chuckles. But longevity isn’t his only distinction. Local governments, nonprofits, educators, civil libertarians and music-lovers all point to his role as a public citizen who has shaped his community and theirs.

He’s done that by serving as a director on a wide variety of community boards, raising funds for music enrichment, teaching other lawyers the basics of the practice of law, developing public transit, supporting legal aid and standing up for the civil rights — with and without the backing of the American Civil Liberties Union — of the disenfranchised in Jackson County.

Mansfield was born in Redmond into the hard-scrabble life brought by the Great Depression. Escaping poverty was always on his mind, and he took every opportunity to earn money.

“In September, after the first frost, it was time to harvest potatoes,” he recalls. “We had two weeks off from school to work in the fields.”

As a 14-year-old, he became a temporary janitor at his school after the adult employee was dismissed. On his first afternoon on the job, he walked into an empty classroom to see a newly started fire in a corner of the room. He called for help, the fire was extinguished — and the police came for him. They accused him of setting the fire, interrogating him for several hours.

“I was scared to death,” he remembers. “I suspect that experience was the foundation for my feelings about police misconduct later on.”

For the time being, though, Mansfield’s focus remained on school, which he viewed as the way out of a hand-to-mouth existence. After high school, he headed to the University of Oregon in Eugene, following a pre-med track as an undergraduate. Just as organic chemistry loomed on the horizon, however, Mansfield says he became distracted by history, philosophy, economics and political science. A career in medicine was shelved for a life in the law.

“There were about 50 of us in my entering law school class,” Mansfield says, noting that the University of Oregon School of Law had a boot-camp-like environment in those days. “About 12 of us graduated.”

Law school was followed by service in the U.S. Air Force. Then Mansfield joined the Oregon Attorney General’s office, learning about public and private land rights. The Interstate Highway System was coming into being during this time, and Mansfield quickly became an expert in eminent domain law as the state and the federal government developed plans for Interstate 5. He negotiated rights-of-way with Oregon landowners for access to property along the soon-to-be I-5 corridor, and then spent a year in Washington, D.C., with the federal Bureau of Public Roads.

In 1962, Mansfield became the city attorney for Medford, serving for three years before opening a solo practice in 1965, where he focused on municipal and property law. Much of his practice was typical for a private attorney, but much of it wasn’t.

Shortly after he arrived in Medford, Mansfield joined a Jackson County bar
committee that was planning to launch a legal aid program for low-income county residents. Thanks to the work of the committee, the Center for Non-Profit Legal Services opened its doors in 1972. Once the operation was running, he mentored its VISTA volunteer attorneys, provided forms and other materials, and served on the program’s board of directors. CNPLS is still the legal aid office for Jackson County.

Supporting legal aid programs is an important component of access to justice, Mansfield says, because very few low-income people get their legal needs met. “There’s a segment of the population that is underserved by the legal profession,” he says, “because of the inability to pay the cost of legal fees.”

Mansfield served three terms on the Medford City Council, and now is a member of the city Planning Commission. An advocate for high-density and affordable housing, he says his role on the commission is to “present the minority view.”

The Planning Commission isn’t the only venue for his minority view, though. Mansfield was for many years the Southern Oregon volunteer attorney for the American Civil Liberties Union, serving on its state board from 1971 to 1977. While he didn’t always agree with the ACLU’s positions, he says, its work often “seems to be the best route for dealing with civil liberties.”

Over the years, Mansfield has taken pro bono cases on behalf of individuals whose First Amendment rights ran into obstacles imposed by local governments. In 1974, for example, he appeared before the Ashland City Council to persuade it not to adopt a stop-and-frisk ordinance that he believed would invite police harassment of transients.

In 1977, Mansfield represented a defendant in a companion case to State v. Smith, 31 Or App 749, which challenged the state law governing the crime of “frequenting a place where controlled substances are used” as overbroad and vague. The case resulted in the Legislature amending ORS 167.222 to narrow its application.

Measure 9, the Oregon Citizens’ Alliance’s anti-gay ballot initiative, drew Mansfield’s opposition in 1992. Retired Southern Oregon University sociology professor and gay rights supporter Bryce Johnson praises Mansfield for championing gay rights as human rights, and credits him with influencing the outcome in conservative Jackson County through a televised debate.

“For gays in Oregon, it was a very dark period,” Johnson remembers. “Having this kind of support, along with the support of the university, made a huge difference.”

Mansfield parted ways with the ACLU over its stance in the case of Citizens United v. F.E.C., 558 U.S. 310 (2010), when the organization supported ending limits on corporate money in political campaigns. But he hasn’t stopped challenging laws and official conduct that appear to violate individual rights of free speech, movement, travel and assembly.

In 2012, Mansfield represented the colorful political columnist Herb Rothschild against a charge of trespassing after the journalist was cited at the Central Point post office for distributing anti-war leaflets on a public sidewalk. The district attorney quickly dismissed the case.

“Bill’s most recent work involves issues related to governmental enforcements, which tend to infringe upon our right to stay, stand or congregate in public places,” Municipal Judge William Haberlach observed in 2018, when he nominated Mansfield for the Center for Non-Profit Legal Services’ annual William V. Deatherage Pro Bono Award. At the time Mansfield won the honor, he was representing a client challenging a Medford ordinance that created a “downtown exclusion zone,” an
area of town from which a person could be banned for up to 90 days after conviction for offenses such as public drunkenness, graffiti, harassment and public urination.

“There is still a need and always will be a need for the protection of people’s civil liberties,” he says.

Mansfield says he has less stamina than he used to, reducing his time in the office to around 15-25 hours per week. While he still counsels clients on municipal, water and real estate law, he says, he now also does some probate work.

“As you get older,” he says, “your friends get older, too.”

He also is an arbitrator, with a caseload averaging five to eight cases, and finds he really enjoys the process. “I like crafting answers to difficult questions,” he explains.

Despite these demands on his “reduced” schedule, Mansfield still offers pro bono help to a variety of nonprofit organizations, helping them incorporate and training and advising their boards. Planned Parenthood, Head Start, the Rogue Valley Opera, Siskiyou Violins, the Youth Symphony of Southern Oregon, the Jefferson Baroque Orchestra and the Rogue Valley Symphony are among his current or past clients, and he has served on the boards of directors for several of them.

Mansfield also sits on the board of the Rogue Valley Transit District, the public bus service that he helped to form in the mid-1970s and that now serves most of Jackson County. And since 2018, he has been a council director of the Osher Longevity Institute at Southern Oregon University, where he also teaches a popular course called “Law and Things: How to Avoid Legal Problems.”

“I’ve always respected Bill’s commitment to public service, and admired his courage in advocating for the rights of marginalized persons in controversial matters,” says Medford lawyer Jerry Jacobson, who has known Mansfield since the 1970s.

The public citizen is also a private citizen with other interests. A bust of Johann S. Bach sits on his fireplace mantel and explains some of Mansfield’s work on behalf of classical music groups locally: He is a serious aficionado of baroque music.

“I wasn’t raised with classical music. I first heard Bach when I was 20, at a friend’s home,” he says. “The sounds were so wondrous, I thought, ‘This is my music.’” He likens his discovery of baroque music to the way in which some people find religion.
In 1963, Mansfield’s love of classical music found expression in establishing the Peter Britt Music Festival in Jacksonville, where he served on its fledgling board. “We were a working board,” he recalls, charged with hacking down the waist-high weeds on the concert site hillside while a work crew from the county jail set up a rudimentary plywood platform for the performers. Later, when his law practice was more established, Mansfield even studied baroque music in East Germany.

East Germany was one of several fairly unusual tourist destinations for Mansfield; others included Cuba, Nicaragua, Guatemala, Russia and China (including a tour of a Chinese prison). His interests were both cultural and political. Much of his travel, which extended over 25 years, was as a member of Witness for Peace, a human rights and justice organization active primarily in Central and South America.

Mansfield’s long legal career can perhaps be attributed to “his penchant for running and his affinity for good Oregon wine,” suggests Jacobson, mentioning two more aspects of Mansfield the private citizen. But Mansfield says he stopped running in his early 80s, “when I started to get creaky.” Until then, he was a middle-distance runner who would stretch himself to take on the former half-marathon at Medford’s Pear Blossom Festival.

As for good Oregon wine, Mansfield thanks some vintner clients for teaching him about local pinot noirs. He has watched the wine industry mature over the years and knows his wines well. There’s even a wine “cellar” in his home where a walk-in entry closet used to be, showing off scores of slightly chilled bottles.

Even as a private citizen, “he has a fundamental belief that people should be treated equally and decently,” says Mansfield’s son John, an intellectual property lawyer in Portland. “He’s believed it — and he’s lived it.”

Retired Jackson County Circuit Court Judge Philip Arnold agrees. Mansfield “is a great guy,” he says, “and an example to all lawyers.”

As Haberlach wrote in 2018, “Bill Mansfield is continuing a tradition he began, straight out of law school, of using his legal education and his experience to make his community a better, safer place to live.”

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What Working from Home has Taught Us about Cybersecurity

Lessons Learned

By Sharon D. Nelson and John W. Simek

The year 2020 will be remembered as the moment in time when lawyers were catapulted into the future. As a result of COVID-19, the majority of law firms suddenly found themselves thrust into a work-from-home environment. Some were prepared for working remotely, but many were not.

We’ve helped a lot of lawyers transition to a different working environment by providing training and implementing new technologies in their practice. Along the way, we’ve learned some things about how lawyers have responded to the pandemic. Here are 10 cybersecurity lessons we’ve learned this year about working from home:

1. **Home networks are 3.5 times more likely than corporate networks to have at least one family of malware.** A study by BitSight analyzed data from 41,000 U.S. companies. The study found that 25 percent of devices (e.g., printers, computers, IoT devices, etc.) on a home network had services exposed to the internet. Another scary statistic is that “nearly one in two organizations (45 percent) had one or more devices accessing its corporate network from a home network with at least one malware infection.” Ouch.

2. **Sharing the device you use for law firm work with family members is a bad idea.** Devices used to access the law firm network and work on confidential client data should only be used for that purpose. Family members should not be using the same device, even if there is a separate login ID and password for the device. If a family member inadvertently performs an action that allows the installation of malware, client data and law firm access could be compromised.

3. **Zoom is currently the choice of clients/potential clients.** Teams, Webex, Zoom and GoToMeeting are all good video conferencing platforms. The reality is that Zoom is the technology of choice for your current and potential clients. All the other platforms are playing catch-up to Zoom. Despite some early histrionic media reports, you can now use Zoom securely for client communications.

4. **Make sure your confidential client conversations are kept private.** Many of us are sharing working space in our homes. As a lawyer, you have an obligation to ensure that client conversations are private. That means having a separate room to conduct client conversations, and consider using a headset too. You wouldn’t loudly discuss a client matter while commuting on the train, so why would you allow family members to eavesdrop?

5. **Employee security awareness training is more important than ever.** The work-from-home environment has put law firm employees into situations that carry different risks than when they were in the firm’s office. As item No. 1 in our list identifies, we need to be even more diligent about practicing safe computing. The cyber criminals know there are a lot of targets working from home using insecure home networks. Training employees to recognize the current cyber threats is an absolute must at this time.

6. **Have a work-from-home policy.** If you don’t already have one, now would be a good time to develop a work-from-home policy. The policy serves to set employee expectations about what they should and shouldn’t do. Specific technology requirements may be part of the policy too. The policy can also
have a statement about family use of devices to further support item No. 2 in our list.

7. **Consider issuing firm-owned laptops so that you control the security of devices used at home.** More and more of our clients are not purchasing desktop computers, opting instead for laptops (or tablets) with docking stations as the primary computing device. Taking that approach makes it much easier to quickly migrate to a work-from-home scenario. A firm-owned laptop is configured with the security software and applications the user needs to perform their job. Relocating the laptop to the home network preserves the security of the computer, making it safer to use than the typical home machine.

8. **There are options for home users “competing for bandwidth.”** Your spouse is probably working from home and your children may be attending school remotely as well. This means that you are probably sharing the same Wi-Fi network as everyone else and experiencing a slowdown. You may want to try the hotspot on your phone to see if the speed would be better than your home network. Directly connecting your computer via Ethernet to the router will help maximize speed. If you don’t have Ethernet cabling in your walls, try using an Ethernet power-line adapter. The TP-Link AV1000 is a good choice; it costs around $50 on Amazon, although pricing and availability are all over the place.

9. **Utilize a Virtual Private Network (VPN) for remotely connecting to the firm network.** Using a VPN is better than not using one. A VPN creates an encrypted communication channel from your computer to the firm network. Many users will be tempted to use Remote Desktop Protocol (RDP), especially since it is included free with Windows, but there are many known vulnerabilities with various versions of RDP. If you must use RDP, consider running RDP through a VPN tunnel instead of exposing RDP directly to the internet. And by all means, utilize multi-factor authentication (MFA) for any connection.

10. **Prioritize lawyer wellness.** Lawyers in wellness trouble are a security risk. Lack of concentration, mental health problems or substance abuse can cause serious lapses in making smart decisions concerning the use of technology.

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2021 Deadlines for Payment of PLF Assessments

Mark these critical deadlines in your calendar to avoid possible late fees or bar suspensions:

**Jan. 11, 2021:** This is the deadline to either pay the annual PLF assessment or submit a request for exemption from coverage.

**Jan. 12, 2021:** If payment has not been received or an exemption requested, a $100 late fee will be charged on this date. If an exemption is then requested, the late fee will be waived. Installment payment privileges are extended for a one-month grace period.

**Feb. 12, 2021:** If payment is not received by this date, payment by installment will no longer be an option.

**Feb. 15, 2021:** If payment has not been received or an exemption requested by Feb. 12, 2021, a second $100 late fee will be charged. If an exemption is then requested, the late fee will be waived.

**March 15, 2021:** This is the last date to pay the assessment or request an exemption to avoid suspension by the Oregon State Bar.

**March 16, 2021:** If payment has not been received or an exemption requested, the member will be suspended by the Oregon State Bar on this date.

For more information, visit osbplf.org/assessment-exemptions/overview.html.

Unclaimed Client Funds Go Toward Legal Aid

Prior to 2010, abandoned client funds in a lawyer’s trust account were turned over to the Department of State Lands (DSL), but amendments to the Uniform Disposition of Unclaimed Property Act (ORS 98.302 to 98.436) enacted by the 2009 Legislature changed how this money is appropriated and disbursed. Now unclaimed funds held in lawyer trust accounts must be reported to the DSL, but paid to the Oregon State Bar with a copy of the DSL reports.

Funds held by a fiduciary (including a lawyer) are deemed abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. Funds deemed abandoned as of June 30 of each year are to be reported to the DSL during the month of October of that same year, but it is not too late to report unclaimed funds for 2020. Unclaimed funds will be appropriated to the Legal Services program, which funds legal aid organizations that provide civil legal services to low-income residents statewide.

Questions about forwarding abandoned funds can be addressed to Jerri Shay at (503) 431-6334 or jshay@osbar.org. More information can be found online at osbar.org/resources/abandonedfunds.html.

MCLE Compliance Season Moved to the Spring

On Sept. 18, 2020, after receiving overwhelming support from the OSB membership, the Oregon Supreme Court ordered the MCLE compliance season moved to the spring. This change is permanent and will apply to future reporting seasons.

The new MCLE deadline to complete required credits is April 30, and the deadline to electronically certify and submit reports is May 31. This change applies to all active bar members in all reporting cycles.

If you have questions, visit osbar.org/mcle/index.html to find the answers to frequently asked questions about MCLE deadlines and reporting instructions, or email mcle@osbar.org.

Streamline Firm’s OSB Tasks as a Company Administrator

The Company Administrator tool on the OSB website grants authorized individuals firm-wide access to assist OSB members with administrative and regulatory compliance tasks, including paying membership fees; submitting IOLTA reports; purchasing section memberships, certificates and legal publications; registering members for CLE events; managing the firm contact information; disassociating individuals no longer with the firm; and adding programs to members’ MCLE transcripts. (Note: Each member will need to certify and submit their own MCLE information).

For more information on company administrators, visit osbar.org/company
On-Demand CLE Library
Includes COVID-19 Topics

The Oregon State Bar has created several free on-demand resources to assist OSB members with issues related to COVID-19 and Oregon’s stay-at-home order. Topics include working remotely, attorney wellness, financial wellness and several practice area-specific resources.

Visit osbar.org/cle/resources.html to access these programs.

BarBooks and Fastcase Are Member Benefits

The COVID-19 pandemic has brought about many changes for Oregon lawyers. Some have been able to transition to working from home with few changes in their day-to-day work. Some have been furloughed or laid off due to new budget pressures. And some are new lawyers who were just getting ready to begin their career when everything suddenly changed.

Whatever your current situation, it’s important to remember that BarBooks and Fastcase are two member benefits included for all active and active pro bono members. BarBooks give an Oregon-centric view on legal topics ranging from Family Law and Insurance Law to Cannabis Law, all in a searchable online format that includes forms and jury instructions. Fastcase is a comprehensive nationwide law library that includes case law, statutes, regulations, court rules and more.

To try either program, visit osbar.org and log in at the top of the page; you’ll find links to BarBooks and Fastcase on your member dashboard.

Volunteer to Be an OSB Mentor

Any OSB member who has practiced for at least five years can volunteer to be a mentor in the New Lawyer Mentoring Program.

The NLMP offers new bar members one-on-one guidance on the elements of a highly competent practice while promoting professionalism, civility and collegiality. The program also emphasizes a flexible approach so that mentors and new lawyers can take the core curriculum and shape it to best meet the needs of the new lawyer.

For more information or to volunteer to be a mentor, visit osbar.org/nlmp.
2020 Executive Committee members are listed from left to right in top to bottom rows:

Row 1: **Mae Lee Browning** (2020 Chair; At Large Rep; Liaison to OSB’s Leadership Institute), Legislative Director of the Oregon Criminal Defense Lawyers Association. **Ralph Gzik** (Chair-Elect; Region 4 Rep). Ralph Gzik is an associate at Kroll & Johnson, PC. **Yvana Mols** (Treasurer; Co-Chair Student Outreach Committee; At Large Rep; Liaison to OSB’s Quality of Life Committee). Yvana Mols is an associate at Hillsboro Law Group PC. **Sean Pank** (Secretary; Region 1 Rep). Sean Pank is an associate at Morris & Sullivan, PC. **Carlotta Alverson** (Co-Chair Student Outreach Committee; Region 6 Rep; Liaison to OSB’s ACDI). Carlotta Alverson is an attorney at SAIF Corporation.

Row 2: **Erik Bonn** (Region 2 Rep; Liaison to OSB’s Loan Repayment Assistance Program). Erik Bonn is an associate attorney at Gleaves Swearingen LLP. **Melina Martinez** (Co-Chair Member Services Committee; Liaison to OSB’s ACDI). Melina is an attorney at Richardson Wright, LLP. **Autumn Steele** (Co-Chair CLE; Region 7 Rep; Liaison to OSB’s MCLE Committee). Autumn Steele is a Deputy District Attorney at the Clackamas County District Attorney’s Office. **Michelle Bartov** (Co-Chair Access to Justice Committee; At-Large Rep; Liaison to OSB’s Legal Services Committee). Michelle Bartov is the owner of Michelle S. Bartov, Attorney at Law, LLC. **Grant Elder** (Co-Chair CLE Committee; Region 3 Rep). Grant Elder is an associate attorney at Scheer.Law PLLC.

Row 3: **Nathaniel Kofi Aggrey** (Co-Chair Student Outreach Committee; Liaison to OSB’s ACDI). Nathaniel Kofi Aggrey is an attorney at the Oregon Department of Justice. **Matt Tripp** (Co-Chair Member Services Committee). Matt Tripp is an associate at Miller Nash Graham & Dunn. **Amanda Pham Haines** (Lewis & Clark Student Rep). **Chapell Hailey** (Willamette Student Rep). **Billie Jo May Risheim** (U of O Student Rep).

Row 4: **Joel Sturm** (Past Chair). Joel Sturm is a partner at Thuemmel Uhle and Eder. **Vanessa Kuchulis** (Co-Chair Member Services Committee; Region 5 Rep). Vanessa Kuchulis is an associate at Miller Nash Graham & Dunn. **John Grant** (BOG Liaison). John Grant is Owner of Agile Attorney Consulting. **Kaci Hohmann** (Co-Chair Access to Justice Committee; Liaison to OSB’s Pro Bono Comm). Kaci Hohmann is an associate attorney at Emerge Law Group. **Zach Walsh** (Co-Chair Access to Justice Committee; At Large Rep). Zach Walsh is an attorney at McKean Smith LLC.

The 2021 officers and new regional reps will be: **Ralph Gzik**, Chair; **Yvana Mols**, Chair-Elect; **Sean Pank**, Treasurer; **Erik Bonn**, Secretary; **Jamie Pruitt**, Region 3 Representative; **Ekua Hackman**, Region 5 Representative; **Grant Elder**, At-large Representative; **David Hayes**, At-large Representative.
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.

KIMBERLY S. BROWN
OSB #0983861
Sandy
Public reprimand

By order dated Sept. 29, 2020, the disciplinary board approved a stipulation for discipline and publicly reprimanded Kimberly S. Brown for violations of RPC 1.15-1(d) (duty to promptly return client property) and RPC 1.16(d) (duties upon termination of representation) in connection with a family law matter.

Brown accepted a $4,000 retainer to represent a mother in a child custody, parenting time and child support dispute. Approximately six months later, in late October 2018, the mother terminated the representation and requested a refund of any unearned portion of the retainer. At that time, Brown held $793 of the retainer, having earned fees and incurred costs totaling $3,207.

Brown forwarded file materials to the mother’s new counsel and offered to send counsel the retainer balance, but was uncertain whether to contact the mother directly because she was now represented by counsel. Brown eventually tried to contact the mother by phone, but her voicemail could not accept messages. The mother moved during this period, but after obtaining her new address in April 2020, Brown mailed her a refund.

By holding her client’s unearned retain- er for approximately 18 months after the representation ended, Brown violated RPC 1.15-1(d) and RPC 1.16(d).

Aggravating factors included Brown’s substantial experience in the practice of law. The stipulation cited the absence of a dishonest or selfish motive and the lack of prior discipline as mitigating factors.

WILLIAM E. CARL
OSB #022679
Madras
60-day suspension

Effective Jan. 2, 2021, the disciplinary board approved a stipulation for discipline and suspended Madras attorney William E. Carl for 60 days for violations of RPC 1.5(c) (3) (nonrefundable fee without required disclosures), RPC 1.7(a)(2) (current conflict of interest), RPC 1.15-1(c) (failing to deposit client funds into trust account) and RPC 1.16(d) (duty to refund unearned fees upon termination).

Carl executed fee agreements with three different clients that did not meet the requirements of RPC 1.5(c)(3). Specifically, the fee agreements designated the fees as “earned upon receipt” but failed to explain that the funds would not be deposited into the lawyer trust account or that the client could discharge the lawyer at any time and, in that event, that the client could be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.

In each case, Carl deposited the fees paid to him into his business account rather than his trust account, in violation of RPC 1.15-1(c). Carl violated RPC 1.16(d) when one of the clients terminated Carl and requested a partial refund, and Carl did not respond.

In a separate matter, Carl represented a woman in a divorce and child custody case while he was engaged in a sexual relationship with her. Carl’s romantic involvement with his client created a significant risk that his representation would be materially limited by his own personal interest in the case, and Carl did not obtain written informed consent from the client, in violation of RPC 1.7(a)(2).

The stipulation acknowledged that Carl’s conduct was aggravated by a dishonest or selfish motive, multiple offenses and substantial experience in the practice of law. Carl’s conduct was mitigated by full and free disclosure to the disciplinary board, a cooperative attitude toward the proceedings, and remorse.

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

Legal Ethics Assistance

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

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

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

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Among Ourselves

After 25 years on the job, Lake Oswego City Attorney David Powell has announced his retirement, effective Jan. 1, 2021. During his tenure in Lake Oswego, Powell worked with five mayors, six city managers and 34 council members. In addition to countless daily legal issues and challenges, he was involved in a series of major projects, including development of a new City Hall, a “partnership” water system, a new sewer system, downtown urban renewal projects and several major road projects, as well as legal issues surrounding Stafford-area planning and public access to Oswego Lake. Powell’s sense of humor and “roll with the punches” approach resulted in a loyal staff: Only seven people filled his department’s four positions in 25 years, including just one deputy city attorney.

Senior Judge Paul Crowley of Hood River, who served in the Seventh Judicial District for almost 23 years, has been designated by Oregon Supreme Court Chief Justice Martha L. Walters as the Senior Judge of the Year. Since his retirement in 2014, Crowley, 61, has continued to actively assist the judicial system wherever and whenever needed as a Plan B Judge, in addition to maintaining a private mediation practice with clients ranging from Baker City to Lake Oswego.

Leora Coleman-Fire, associate general counsel for Ajinomoto, recently won the “Women, Influence & Power in Law Award” in the manufacturing industry from Corporate Counsel magazine. Coleman-Fire, based in Portland, manages all litigation and employment matters for all 10 companies in Ajinomoto’s North American division.

Tonkon Torp business attorney Mick Harris has been appointed to College Possible Oregon’s Ambassador Board, as well as to the Board of Trustees for Community Services Inc. College Possible Oregon’s Ambassador Board is a group of young professionals under the age of 40 who raise support and awareness for College Possible, which helps students in Oregon achieve their college goals. Community Services Inc. is a non-profit organization that provides individualized services for adults with developmental disabilities in the greater metropolitan Portland area. Harris is an associate in Tonkon Torp’s business department, where he works with the firm’s cannabis industry, real estate and land use, and entrepreneurial services practice groups, among others.

Longtime Lake Oswego lawyer Peter Glazer and his wife, Cyndie, are the 2020 recipients of their community’s Lifetime Achievement Award, which recognizes citizens whose extraordinary service, inspiration and/or financial contributions have made Lake Oswego a better place to live. Glazer, a trial lawyer in private practice since 1982, and his wife, who retired this year from the Lake Oswego Public Library, each have a long history of service. She has been deeply involved in the cultural and educational life of the city, including co-founding the popular LO Reads program and serving on the board of the Lakewood Center; he has served as Lake Oswego Rotary Club president, Rotary District 5100 assistant governor, Royal Rosarian prime minister, Clackamas County Bar Association president, Governor’s Advisory Committee on DUII chair, McLoughlin Memorial Association president and Meridian Park Medical Foundation board member.

Moves

Alison Smith has joined Gleaves Swearingen as an associate. Her practice focuses on business transactions and intellectual property. Smith earned her J.D. from the University of Oregon School of Law, where she served as the executive editor for the Journal of Environmental Law and Litigation.

Sophie von Berger has joined the law office of Stoll Berne as an associate attorney. Her practice will focus on complex litigation matters. Prior to joining Stoll Berne, von Berger was summer associate with the firm. She also served as a judicial extern for the Honorable U.S. Magistrate Judge Stacie F. Beckerman (U.S. District Court, District of Oregon), researching and drafting opinions in civil cases.

Al Larsen is now the senior advisor for governmental and legal affairs for Ipsun Solar, a solar energy company based in northern Virginia. He helped pass the Virginia Clean Economy Act in the recently concluded session of the Virginia General Assembly. He is engaged in ensuring that local jurisdictions in the District of Columbia, Maryland and Virginia metro areas implement the act and similar new le-
gal mandates to eliminate impediments to installation of commercial and residential solar-generating projects.

Jeffrey P. Kapp has joined the real estate team at Jordan Ramis. Kapp advises his clients on a variety of complex commercial real estate and finance transactions. He represents real estate owners, business owners and developers in the development, financing, leasing and acquisition/disposition of their projects. In addition, he regularly counsels his clients on any issues relating to their businesses, such as entity formation, corporate governance, joint venture and partnerships agreements, business operations, contracts, and business and asset sales and acquisitions.

Alia Williams has joined Eiva Law as an associate. Williams will handle cases involving physical injury torts and assisting in complex litigation involving wrongful death, catastrophic financial torts and medical malpractice.

After 22 years in private practice and public service, Heather Van Meter has opened her own law firm, Practical Solutions Law, with offices in Lake Oswego and Vancouver serving the Portland-Vancouver region and the Columbia Gorge. Van Meter’s law firm assists businesses, property owners, professionals and their families with general business and real estate advice, representation in legal disputes, assistance with employment and licensing matters, as well as estate planning and probate/trust litigation.

In Memoriam
M. Scott Sorensen-Jolink
70, Portland, Aug. 1, 2020
Scott J. Nemeth
51, Bainbridge Island, Wash., Aug. 16, 2020
Jeffrey L. Dye
77, Portland, Aug. 18, 2020
FOR SALE
LAW LIBRARY, COMPLETE SET OREGON REPORTS and Oregon Appellate Reports, $4,500, (503) 650-8010.

OFFICE SPACE
ALL-INCLUSIVE OFFICE SPACE – Private secure offices include mail service, phone reception, internet, conference rooms, kitchen, signage, parking, 24/7 building access. No setup fee’s, use of furniture, on-site bicycles. Great condition and location.

BUILDING FOR OVER 40 YEARS
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LAND – $975K FOR SALE - CLOSE-IN NE PORTLAND – Nice lawyers office, 13th month waived!

HILLSBORO – 2 elegant office suites 1 block from courthouse. $800.00/ea, utilities included w/first month free. For pics/info contact John Elliott (971) 404-6631 or JMEDrums@Earthlink.net.

HILLSBORO DOWNTOWN OFFICE SPACE one block to courthouse, free reserved parking. Single private office of $325 per month. Larger suites also available. New Comcast high speed internet available! Call Jay Weil (503) 924-5772, or email jayweil@aol.com.

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

OFFICE AVAILABLE IN THE BUTCHER & SMITH LAW FIRM SUITES – Located at 520 SW Yamhill St. across from Pioneer Courthouse Square. 121 sqft with large windows. Telephone system, copy/scan machine services and front desk person available to greet clients. $1,010.00 per month. Inquires to Elizabeth at (503) 972-7380.

OFFICE SPACE AVAILABLE PREMIER PORTLAND LOCATION! 1000 SW Broadway, ninth floor, 742 total sq. ft. Two offices, a common area large enough for up to three support staff, private entry, separate suite number, and signage. Located on a floor with a fitness center and direct access to a parking garage. The building provides the use of a large conference room located on the ninth floor with a capacity of 42. You will also have use of our private conference room, reception area, break room, internet, and phone system. The building has seven levels of secured and monitored parking. We are located two blocks from Pioneer Square and near theaters, hotels, and restaurants. $2,313.64 per month. Internet and phones included. Available November 16th. Contact Renea Amaya-Jolly, Office Administrator, at renea@roylawgroup.com.

OFFICE SPACE – DOWNTOWN MILWAUKIE – 207 SE Jefferson St. Single private office space available on a modified gross lease. Second floor unit with separate entrance on a 24/7 secured access system. Quiet and friendly environment shared with medical and financial professionals. Free parking behind building or on the street. Walking distance to downtown shops and restaurants. For more information, contact Lauren Lancell at lancell@daywireless.com or (503) 794-3760.

OFFICE SPACE – FREE RENT FOR TWO MONTHS – JOHN’S LANDING – Looking for other professionals to share office space on the third floor of the River Park Plaza Building in John’s Landing with other sole practitioners and a small law firm. Current tenants include Estate Planners, Family Law, Elder Law, Tax Preparers and Investment Advisors. This is Class A space in a building that was built in 2003. Rent includes high speed Internet, phones, reception, voicemail, meeting rooms, kitchen and parking! We have five offices available between $600-$750 each. We are looking for a one-year commitment. Please contact Bob Cronk at (503) 245-0894 or bob@naylaw.com.

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

TWO OFFICES AVAILABLE IN DOWNTOWN PORTLAND – Nice upstais office (11 x 14.5) with large window, newer carpet and paint and separate secretarial area with desk and chair outside door. $650. Large (12 x 15) partially furnished office with balcony, newer carpet and paint and separate secretarial space outside office with desk. $850. Building located on the corner of 5th and Clay near the transit mall. Full reception and custom telephone answering from 8:00 am to 5:00 pm, library w/fireplace, conference room, shower, all usual equipment. 6 experienced attorneys, 4 blocks to courthouse, fitness center one block. Parking available $200/month. 521 SW Clay. George: (503) 226-3607.

TWO OFFICE SHARES IN DOWNTOWN PORTLAND 1 MONTH FREE WITH A 12 MO LEASE – One is 14x12 for $1,200 per month and the other is 15x10 for $1,025 per month. 10th floor office in Cascade Building. 2 blocks from Pioneer Square and MAX Transit hub. Alder Street Parking Garage across street. Rent includes reception, telephone/internet, office conference room, shred, copier & postage machine use. Building amenities: Gym, w/shower, tenant lounge. Contact Jamie @ (503) 243-2733 or jamie@kramer-associates.com.

WE HAVE TWO OR THREE SPOTS IN OUR TERRIFIC SUITE – Two “partner” offices with Mt. Hood views plus interior office in welcoming, fully-equipped suite. Staff space options. 811 SW Naito Parkway, Suite 420. Fitness room, indoor bicycle storage, near MAX, bus & new courthouse! $1,250/month for largest, $1,000/month for second-largest, interior office/staff space TBD. NEGOTIABLE DUE TO COVID. Parking additional through landlord. Contact Lisa Butler at 503-445-2100, lisa@forumlawgroup.com.

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

A LATERAL MOVE IS A DIFFICULT DECISION, so let us find you the perfect fit. Since 2000, Stayer Legal Search has been connecting lawyers with great opportunities in all sizes of law firms and companies. Our current searches cover nearly all practice ar-
families. Let’s talk in confidence. Candice Wilson Stayer, Stayer Legal Search LLC cwstayer@stayerlegalsearch.com (503) 968-0901.

BUSINESS TRANSACTIONAL ATTORNEY – Work from home! Looking for a fun, hard-working, tech-savvy attorney to help with M&A, formations, contract drafting, trademarks, and employment law. New lawyers welcome! Guidance provided. 15-25 hours per week. Pay DOE. E-mail résumé to jason@stateralaw.com.

ESTABLISHED AND GROWING REDMOND, OREGON, LAW FIRM looking for an associate attorney to practice in Bend. This is NOT an associate ship opportunity in Bend – a resume to careers@naegeliusa.com. If you are looking for a long-term career with a stellar reputation and desires to sell the business as a turnkey opportunity in order to retire. The average gross revenue for the past two years is over $530,000, and the 2019 Seller’s Discretionary Earnings (SDE) was over $350,000! The practice/case breakdown is 100% Family Law. The Practice was established in 1975 and is located in a desirable, fully-furnished office. The Practice employs three (3) staff, including the owner. Email info@privatepracticetransitions.com or call (253) 509-9224.

WASHINGTON MEDICAL MALPRACTICE LAW FIRM with average gross revenues of over $1,600,000 that last three years (2017-2019), and weighted Seller’s Discretionary Earnings (SDE) of over $1,200,000. This successful firm is completely turn-key and employs five (5) staff, including the owner. The firm’s processes are very well documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call (253) 509-9224.

RECREATIONAL RENTALS

KHEI, MAUI, HAWAII – Large oceanview 1BR-2BA condo, LR sofasleeper, two pools/spas, tennis, across from beach. Attorney discounts. mjs@aterwynne.com (503) 291-1423; Video: https://www.youtube.com/watch?v=txEcuMz2ELE – Pictures: samsandmire idaho@gmail.com.

KONA, HAWAII – Lovely oceanfront 1BR condo. Large MBR, vaulted ceilings, great view. Tennis, oceanside pool and spa, walk to town (503) 780-3139. For photos, email: nanevin@aol.com.

OCEANSIDE – Beach house on cliff side overlooking ocean and Netarts Bay. 3 bedrooms and 3 baths, 4 decks, fireplace, spa tub, washer/dryer, and fully equipped kitchen. $200 per night, $1,200 weekly rate plus $125.00 cleaning fee. Contact Mary at mexmary@comcast.net or (503) 784-5277.
PARIS APARTMENT – At Notre Dame. Elegant 2 bedroom, 1 ½ bath, with lift. In the heart of Paris.

PROVENCE. 4 bedroom, 3 ½ house with stunning, panoramic view of Menerbes. Owned by OSB member (202) 285-1201 or (503) 227-3722.

SCOTTSDALE – North Scottsdale 227-3722. member (202) 285-1201 or (503) 227-3722.

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

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

Services


contract paralegal service – S&T support, LLC – Seasoned Paralegals available on an as-needed basis. Backgrounds in estate planning, probate/trust administration, business law, and litigation. Will work remotely or on-site serving Salem, Portland and Eugene. Visit www. sstsupportlc.com for services and staff. Call (503) 967-6023 or email tammy@sstsupportlc.com to discuss your paralegal needs.

Divorce/Estate Planning Appraisals – Appraisal Valet can expertly manage your next residential appraisal assignment. We order, review and deliver hundreds of appraisals monthly throughout the Pacific Northwest allowing you to benefit from the excellent rapport we have established with the most qualified/experienced appraisers. Email admin@appraisalvalet.net or call (503) 828-9441 for a free quote.


Freelance Civil Litigation Paralegal & Mediation Services – New and dynamic option for the legal community to obtain superior paralegal and mediation services. I have over 20 years of experience, expertise in Construction and Employment Law, including all aspects of litigation, mediation, arbitration and trial. Being freelance provides me the flexibility to offer my paralegal and mediation services for all who need assistance, from large law firms to solo practitioners without the burden of expensive overhead. Shawn Stanley-Slingshot Legal Services; shawn@slingshotlegal.com; www.slingshotlegal.com (503) 956-6629.

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

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

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

Need Help With a Big Case? Want to expand your practice? Want to take a vacation? Contact the OWLS Contract Lawyer Service. We can help. Fast! You contact us with project/job information. We immediately post the announcement to our contract lawyer listserve. You pay the contract lawyer you hire. Effective! Contract lawyers statewide. Many levels of experience. Many types of expertise. For more information, or to post a job, contact the OWLS office at (503) 841-5720 or email cassondra@oregonwomenlawyers.org.


research, memos, briefs, and appeals from a 25-year trial lawyer in Arizona and in Oregon. $75/hr. Roger Perry LLC; (520) 332-0132. For more information, see www.rogerperry.com.

Stress, anxiety, depression psychotherapy and counseling, career counseling; confidential assistance improving strained relationships, clarifying career considerations, responding constructively to occupational, family, and individual emotional developments, transitions, etc. Standish McCleary III, J.D., Ph.D., Lic. psychologist (16 yrs. atty); (503) 228-0688.

will search

searching for the will of Dale O. Moford. Please contact T. Beau Ellis (503) 594-8116.

To submit a classified

Positions Available $30 for the first 20 words, 50 cents each additional word.

Services $40 for the first 20 words, 50 cents each additional word.

All Other ADS $40 for the first 20 words, 50 cents each additional word. Oregon State Bar members receive a $10 discount on these ads.

Color Color may be added to any ad for an additional $20.

 Blind ADS Add $15 to the cost of the ad for this service.

Blind AD Replies To protect the confidentiality of an anonymous advertiser as well as the reader, we offer the following service: if there is a firm you do not wish to respond to, list that firm (or firms) on a note along with your response to the blind ad. If the anonymous advertiser is a firm you have listed, your response will be recycled. Send both to blindad@osbar.org with the blind ad number in the subject line. Or, mail in a 9 x 12 inch envelope to Oregon State Bar, Attn. Blind Ad #[fill in the blank]. P.O. Box 231935, Tigard, OR 97281.

Submit to Email: advertising@osbar.org; mail: P.O. Box 231935, Tigard OR 97281, Attn: Advertising. For questions, contact Spencer Glantz at advertising@osbar.org, (503) 431-6356 or (800) 452-8260 ext. 356.

Deadlines The first business day of each month for the following month’s issue.

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ATTORNEYS’ MARKETPLACE

ACCIDENT RECONSTRUCTION

Accident Analysis Service
Don Webb
3890 Brush College Rd, Salem, OR 97304
PH 503-931-0670 FX 503-589-1826
donwebb531@msn.com
www.crashspeed.com

Collision Analysis & Research, LLC
Russ Anderson
PO Box 865, Seaside, OR 97138
PH 971-320-4236 FX 503-589-1826
russ@azbiomech.com
www.azbiomech.com

ACCOUNTANTS

Cogence Group, PC
Jay Sickler, CPA, CFF, ABV, ASA
935 NW Everett St, Portland, OR 97209
PH 503-467-7900 x1
jsickler@cogencegroup.com
www.cogencegroup.com

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Holmes & Company, LLP
William N. Holmes, CPA, CFE
7128 SW Gonzaga St, Ste 100
Portland, OR 97223
PH 503-270-5400 FX 503-270-5401
wnholmes@pdxcpas.com
www.pdxcpas.com

Fraud and Forensic Accounting | Economic Damages | Business Valuation | Commercial Litigation | Accounting and Tax Malpractice | White Collar Financial Crime | Expert Testimony | Full Service Public Accountants | Plaintiff and Defense. Mr. Holmes has approximately 25 years of experience in matters ranging from complex litigation, bankruptcy, class action, construction, contract disputes, embezzlement, employment, financial statements audits, intellectual property, personal injury, professional liability and malpractice, securities fraud, shareholder rights and tax issues.

ACCOUNTANTS, CONT.

Litigation Support

Morones Analytics, LLC
Serena Morones
625 SW Broadway, Ste 200
Portland, OR 97205
PH 503-223-5168 CELL 503-906-1579
FX 503-223-5179
serena@moronesanalytics.com
www.moronesanalytics.com

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