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Brett VandenHeuvel and Columbia Riverkeeper Protect Crucial Waterway

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Brett VandenHeuvel leads Columbia Riverkeeper, a nonprofit striving to organize and empower local communities, enforce environmental laws and build strategic coalitions in an effort “to protect and restore the Columbia River and all life connected to it.” He knows everyone values clean water and protecting the health of their families, which are two of the reasons he’s been doing this since 2009. Read more starting on page 16.

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OSB Annual Awards

CALL FOR NOMINATIONS

The nomination deadline for the 2021 OSB awards honoring Oregon’s most outstanding lawyers, judges and others is

**Tuesday, June 29 at 5 p.m.**

Nomination criteria, forms and other information about the following awards can be found at [www.osbar.org/osbevents](http://www.osbar.org/osbevents)

- OSB Award of Merit
- Wallace P. Carson Jr. Award for Judicial Excellence
- President’s Diversity & Inclusion Award
- President’s Membership Service Award
- President’s Public Service Award
- President’s Public Leadership Award
- President’s Sustainability Award
- President’s Technology & Innovation Award

- The Oregon Bench & Bar Commission on Professionalism’s Edwin J. Peterson Professionalism Award

For additional information, please contact Cathy Petrecca at (503) 431-6355 or cpetrecca@osbar.org
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By the Numbers

Older (and Wiser?)

Lawyers are older than most American workers on average, according to the U.S. Bureau of Labor Statistics. The median age for lawyers in 2019 was 47.5 years old, which means half are younger and half are older; by comparison, the median age of all U.S. workers is 42.3.

Why? First, very few lawyers are younger than 25, but roughly 12 percent of all American workers are. Second, roughly 15 percent of all lawyers are 65 or older, compared to only 7 percent of all U.S. workers.

Here's the breakdown:

- Lawyers between the ages of 25-34, compared to 23% of all U.S. workers: 25%
- Lawyers between the ages of 35-44, compared to 21% of all U.S. workers: 25%
- Lawyers between the ages of 45-54, compared to 20% of all U.S. workers: 23%
- Lawyers between the ages of 55-64, compared to 27% of all U.S. workers: 18%
- Lawyers 65 years of age and older, compared to 7% of all workers in the United States: 15%

For more information, contact Amy Benedum at amy.e.benedum@ojd.state.or.us or visit oregonsatf.org and click on Trainings.

Diversity Legal Job Fair Attracts 133 Applicants

More than 130 career seekers interacted with 81 employer booths during the first annual Oregon Diversity Legal Job Fair, a two-day virtual event held March 9-10.

A steering committee representing the Urban League of Portland,
“Who knows what could have happened? But we need to understand that judges are at risk. That we put ourselves in great danger every day for doing our jobs.”

— U.S. District Court Judge Esther Salas, telling CBS News in February that a gunman who killed her son and wounded her husband in 2020 had also set his sights on Supreme Court Justice Sonia Sotomayor. Salas and others are working to pass legislation that would protect judges’ personally identifiable information from publication on public internet sites.

members of Oregon’s affinity and specialty bars and the Oregon State Bar, and various public- and private-sector legal employers came together to organize the gathering, which focused on connecting Oregon legal employers to diverse attorneys, paralegals and other legal support professionals.

During the fair, 133 applicants met with prospective employers through more than 600 instant messaging and video interview sessions. Attendees came from Oregon and beyond, including international career seekers. Several second interviews have already been scheduled as a result, organizers say.

Thanks to the support of more than a dozen sponsors — including presenting sponsors Bullivant Houser, Davis Wright Tremaine and the Oregon Association of Defense Counsel — the job fair was free for all career seekers to attend.

Now, the steering committee is looking ahead to next year, with the hopes of offering a hybrid virtual and in-person event. For more information, visit ODLJF.org or follow the Oregon Diversity Legal Job Fair on LinkedIn (linkedin.com/company/Oregon-Diversity-Legal-Job-Fair) and Facebook (facebook.com/odljf). ■

“Dear, let’s do something wild and crazy tonight -- let’s break one of our condo bylaws!”

Glick
OSB Sees Continuing Upward Trend in Claims

Client Security Fund Report

By Amber Hollister

The past year was one of both challenge and change for the Oregon State Bar Client Security Fund.

In 2020, the fund made more than $450,000 in reimbursements to clients, a number far above an average claim year. Over the past year, the bar also sought ways to enhance public protection by increasing the cap on Client Security Fund claims and pursuing a legislative initiative to deter future malfeasance.

More than 50 years after it was created, the existence and operation of the fund continues to demonstrate the OSB’s dedication to the public good and to provide evidence of the high standards that the bar and the public expect of Oregon lawyers.

An Historic Effort

The Oregon Legislature created the Client Security Fund (CSF) in 1967, at the request of Oregon lawyers, to establish a fund “to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law.” The fund made its first award in 1969 and has continued its work ever since.

Each year, a group of dedicated volunteer lawyers and a public member serve on the Client Security Fund Committee. They investigate claims, issue reports and vote on whether reimbursements are appropriate under the Client Security Fund Rules. The Board of Governors then reviews all awards of more than $5,000.

Member assessments, interest on invested funds and money collected by subrogation from defalcating lawyers make up the fund. The CSF is a dedicated account, not part of the OSB General Fund, and is used only to reimburse claimants and pay the expenses of operation.

Recently, the Oregon State Bar entered into an agreement with the Oregon Department of Revenue, based on new statutory authority, to collect outstanding judgments held by the Client Security Fund. This collaboration has the potential to aid CSF collection efforts for years to come.

Enhancing Public Protection

Recognizing the important work of the fund to protect clients, the Board of Governors directed the Client Security Fund Committee in 2019 to study the issue of whether the bar should raise the $50,000 cap on claims for reimbursement. The cap was last raised in 1993 from $25,000 to $50,000.

After receiving member input and the committee’s report, the board voted in 2020 to increase the claims cap for Oregon

Client Security Fund Claims Paid in 2020

<table>
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<tr>
<th>Bar Number</th>
<th>Lawyer</th>
<th>Amount Paid in 2020</th>
<th>Current Status with the Bar</th>
<th>Disciplinary Proceedings?</th>
<th>Criminal Proceedings Related to Allegations</th>
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Total Claims Paid $457,263.82
clients from $50,000 to $100,000 for losses that occur on or after Jan. 1, 2022. Earlier this year, the board amended the Client Security Fund Rules, effective Jan. 1, 2022, to implement this change.

As part of its decision to raise the cap, the board also decided to pursue “payee notification” in the 2021 session of the Oregon Legislature. Senate Bill 180 would require that notice of an insurance settlement be sent to the claimant as well as the lawyer upon payment of a settlement. Doing so would alert the client early to the existence of a settlement (which they should already know), providing both a deterrent to malfeasance and a means of prompt notice for the payee in the rare event of misconduct.

The proposal is modeled on legislation already enacted in 15 other states.

Upward Claims Trend Continues

Recent years have seen an upward trend in the number of Client Security Fund claims filed. As a result, 2020 proved to be another challenging year for the CSF.

In total, the CSF Committee and Board of Governors received 15 new claims and investigated and approved 33 claims for payment, with awards totaling more than $457,000. For each claim, the accompanying chart (See “2020 Client Security Fund Claims,” Page 9) shows the attorney, amount paid, status with the bar and whether the CSF claim resulted in discipline or criminal prosecution. As in years prior, this column does not discuss the specifics of pending CSF claims. Any pending claim that is later granted will be included in future reports.²

Under CSF rules, decisions by the CSF Committee and Board of Governors are limited in scope to the question of whether an award is appropriate in any given instance. Whether an attorney may have engaged in ethical misconduct, malpractice or is subject to criminal liability is outside of the scope of the CSF Committee’s decision-making.

At the end of 2020, 23 claims remained under investigation or were in abeyance. Two claims were denied and two claims were withdrawn because the attorney repaid the claimant.

For open claims pending as of Jan. 1, 2021, aggrieved clients sought to recover for additional losses of more than $924,000. Because current CSF Rules provide that claims be capped at $50,000, the total
exposure to the fund from pending claims is limited to approximately $470,000.

**Looking Forward**

While the demands on the fund in the past year have been significant, the committed work of bar volunteers has kept the fund on track.

The members of the 2020 Client Security Fund Committee were Daniel Steinberg (chair), Stephanie Thompson (secretary), Jennifer S. Hisey, Richard C. Whitlock, Tara Kaylene Millan, Jeffrey B. Durocher, David A. Hytowitz, Valerie Wright, Melissa May, Wendy Beth Oliver, Michael Thomas McGrath, Theresa (Terry) L. Wright, Jen Zammetti, Michael T. Purcell and Steve Bergmann (public member).

For more information about the Client Security Fund, including an explanation of what claims are eligible for reimbursement and a claim form, visit [osbar.org/csf](http://osbar.org/csf). Anyone who is interested in supporting the work of the OSB Client Security Fund should consider volunteering through the member volunteer survey, available at [osbar.org/volunteer/volunteeropportunities.html](http://osbar.org/volunteer/volunteeropportunities.html).

Amber Hollister is general counsel for the Oregon State Bar. Reach her at ahollister@osbar.org.

**ENDNOTES**

1. This annual report to the membership regarding awards made in the past year is required by Client Security Rule 6.9.
2. For all Client Security Fund claims of $5,000 or more, a staff memorandum and investigatory report are published as part of the Board of Governors agenda, available online at [osbar.org/leadership/bog/bog_mtg.html](http://osbar.org/leadership/bog/bog_mtg.html).

Justin has been assisting individuals, families, and businesses for over 24 years. He brings his extensive experience working with clients on a variety of matters including:

- **Agriculture Law**
- **Employment Law**
- **General Business**
- **Litigation & Dispute Resolution**
- **Real Estate & Land Use**

Justin works with his clients to identify their goals and concerns. With that information in hand, he implements an approach unique to their needs.
How do we rebuild a better Oregon?

After a year of tremendous hardship, how do we rebuild a more interconnected, equitable, resilient Oregon? How do we help each other recover, rebuild, and restart our lives and businesses? How do we start listening to and considering each others’ point-of-view? How do we inject opportunity, across the state so everyone has a chance to add to the greater good? The answer — Together. Join us as we learn and share how to rebuild a better Oregon, for all Oregonians.
Context is Key When Tossing Out Contronyms

Opposites Attract

By Elizabeth Ruiz Frost

This month’s column is inspired by one of my favorite Instagram accounts, Depths of Wikipedia, which unearths all sorts of weird tidbits buried deep in the online encyclopedia.1

From the author’s posts, I’ve learned about things like crinkle crankle wall design, the Gombe Chimpanzee War, chicken guns and contronyms. And while I’d like to write about each of those, contronyms seem most relevant for this column.

A contronym (or auto-antonym, antonym or Janus word)2 is a word that has two contradictory meanings. The word is its own opposite! Usually, the context in which the writer uses the word makes clear which meaning the writer intends, but not always.

I’m enchanted by this contradictory category of words, so I decided to share a few with you. The following five contronyms seem particularly relevant to legal practice and particularly ripe for confusion.

- **Continue**: When non-lawyers use the word continue, they mean that something will keep happening. Lawyers, a group known for making everything more difficult than it needs to be, use continue to mean to halt or temporarily stop, as in a continued proceeding. That is, a lawyer will seek to continue a hearing so that it will not continue.

- **Enjoin**: Enjoin means both to urge or request a behavior and to prohibit a behavior. For example, an employer might enjoin its employees to remove their rotting food from the shared fridge at the end of the week. Meanwhile, employees may be enjoined from microwaving fish in the office kitchen.

- **Rent/Lease**: These two words mean both to agree to lease a place as tenant and to agree to lease a place as landlord. As a landlord, I rent a room in my house, but when I was in college, I rented a room in my landlord’s house.

- **Sanction**: To sanction can mean both to approve of and to punish. If an activity isn’t sanctioned, a participant may face sanctions. Writers had better make very good use of context to ensure that this word isn’t misunderstood.

- **Trim**: This can either mean “to add to” or “to remove a part of.” The contradiction is particularly evident in the context of trees. And as a child, this word really threw me off. Each Christmas, I’d cry when my mother said it was time to trim the tree. I thought she would cut it to pieces. The relief I felt when she decked it with lights instead! Then when it was time to trim my hair, I half hoped she’d put ribbons in it and leave the length alone.

- **Clip**: Like trim, this can mean either to cut or to attach. One clips paper to add it to something else or clips a paper to remove a portion.

- **Cleave**: Cleave can mean both to split something in two or to cling or adhere to. The former definition seems more common; one might think of cleavers and cloven hoofs. But it also means to stick closely to something — not divide from. In this context, one could write, “The young attorney listened closely to her mentor, cleaving to his advice and warnings.”

The rest of the contronyms on this list are somewhat harder to categorize, so I offer them alphabetically.

- **Alight**: When one alights, she either settles onto or dismounts from something. Based on no evidence at all, this contronym comes up more in Russian literature than any other context. People in Russian novels are always alighting from trains (and falling in front of them).

- **Cull**: Cull can mean to collect or select, and it can mean to reduce or reject. For example, a person might cull the most experienced lawyers to start a new firm, gathering them together like an all-star team. By contrast, when a person culls a group of animals, he’s usually reducing the number (and, er, slaughtering them). If you hear you’ll be culled from a list, be sure to ask follow-up questions.

- **Dust**: Dusting means both to remove particles and to spread them. You can dust a shelf to clean it of debris, and sometimes the chef dusts your French
toast with powdered sugar. Both are good.

- **Fix:** A fix can be both a problem and a solution, as in “I hope he can offer a fix for the fix he left us in.”

- **Garnish:** To garnish means both to add to and to take away from. When I decorate a roast, I garnish it with rosemary; when one garnishes a person’s bank account, money is taken away from the account.

- **Go:** Go can be used to describe proceeding and breaking down. This might not technically be a contronym, as proceeding isn’t properly the opposite of breaking, but you can imagine a sentence in which the two uses seem in contrast. For example, “My knees are going, so I can’t keep going.”

- **Goes/went off:** We use this phrase to describe when something starts and when something stops. When an alarm goes off, it starts buzzing. When the TV goes off, it has stopped projecting.

- **Oversight:** This word can mean to supervise and it can mean an error or omission. “With proper oversight, we’d avoid these types of oversights.” With proper context, the meaning is clear enough, but some sentences can yield ambiguity. For example, in a sentence like, “Due to Nick’s oversight, the project is two days behind schedule.” Has Nick failed to do something that has set us back? Or is this a criticism of Nick’s management skills? The word “overlook” works the same way.

- **Screen:** The word screen can be used to mean both to hide and to show. “Because I was screened from working on the matter, I used my spare time to go to the theater that screened the Sundance films.”

- **Stem:** Stem means both to start and to stop. One can seek to stem a destructive behavior so that it will cease. Or one can hope to stem the sort of personal growth that allows a person to stem destructive behaviors.

- **Toss out:** The term “toss out” can be used to mean both to offer up and to discard. A person can toss out an idea in a brainstorm, and then toss out the idea when she decides it’s no good.

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**YOU CAN MAKE A DIFFERENCE**

The Oregon State Bar is currently seeking candidates for the Board of Governors. The board is charged with the executive functions of the state bar.

- Three positions open for Region 2 (Lane County) and Region 5 (Multnomah County)
- Four-year terms
- Filing deadline is 5 p.m. on May 11, 2021

For more information go to osbar.org/leadership/bog or contact Danielle Edwards at (503) 431-6426 or (800) 452-8260, ext. 426.

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**KLARQUIST WELCOMES TWO NEW PARTNERS**

Klarquist is pleased to welcome Carsten Grellmann and Ryan Heck to the firm’s partnership.

**Carsten C. Grellmann**  
B.S., OSU ’09; J.D., Michigan State ’12  
Mr. Grellmann’s patent prosecution specialties include mechanical and electro-mechanical technologies.

**Ryan A. Heck, Ph.D.**  
B.S., Louisiana Tech ’93; Ph.D., UNR ’98; J.D., Univ. Colorado ’01  
Mr. Heck assists clients with acquisition and enforcement, primarily in computer science technologies related to database systems and applications.

www.klarquist.com
Tricky words like contronyms are fun to think about and to write around. As I think about alarms and TVs going off and wages beautifully garnished with rosemary, I can’t help but feel in awe of those who learn English as a second or third language.

Elizabeth Ruiz Frost teaches Legal Research and Writing and other courses at the University of Oregon School of Law. Reach her at efrost@uoregon.edu.

ENDNOTES
1. See instagram.com/depthofwikipedia/
2. The term Janus word is interesting in its own right. It comes from Janus, the Roman god of beginnings, transitions and dualities. He is often depicted as having two faces — a perfect namesake for these two-faced words.
Attorney Brett VandenHeuvel and Columbia Riverkeeper Partner With Schools, Residents to Protect Crucial Waterway

— By Cliff Collins —
Cheryl Johnson’s family has lived on 13 acres within walking distance of the Columbia River near Astoria for 40 years, and she sensed an immediate threat to her beloved river.

It was 2004, and word was spreading of a planned Liquefied Natural Gas terminal to be built in the Columbia River estuary. The project would include the largest private dredging in the history of the river in order to accommodate gigantic LNG-hauling tankers.

“That river is a really important part of our lives,” says Johnson, a retired school librarian who never dreamed she would end up being a conversation activist. “I have huge respect for salmon as part of the history and culture of the Northwest.”

Residents on both sides of the river, some facing the prospect of pipelines being built across their farmland, began to get organized.

“Each of the local communities started educating themselves about LNG, because it was clear to us we needed help” to tackle the maze of local, state and federal permits required to allow digging “huge pits out of the Columbia River” that would threaten endangered salmon, Johnson says. “We were beginning to learn more than we ever wanted to know. It was clear we would be ending up in court.”

She and other concerned citizens unsuccessfully sought help from numerous environmental groups.

“Finally, it was Columbia Riverkeeper that said, ‘Yes, we will work and partner with you on this,’” Johnson relates. “That began a wonderful relationship with small groups that strung out over a decade, preventing two LNG developments from being approved.”

Attorney Brett VandenHeuvel has led Columbia Riverkeeper since 2009. His official title, “executive director and riverkeeper,” reflects how he sees his role. Because of the 20-year-old group’s success in blocking numerous fossil fuel-related proposed projects that he considers a threat to the river and its surroundings, VandenHeuvel is seen as alternately a hero and an obstructionist, depending on the point of view.

He says he does not mind being thought of as a gadfly by major corporations that have lost lengthy legal battles over the years with him and his 15-member staff, which includes four attorneys.

“I don’t shy away from controversial issues, and I strongly believe that we need to protect clean water and our environment,”

Columbia Riverkeeper Executive Director Brett VandenHeuvel teaches second-graders from May Street Elementary School in Hood River about erosion and sedimentation during a field trip to Marina Beach. The organization’s education program, led by Lorri Epstein and Ubaldo Hernandez, engages more than 800 students a year in learning about ecology and efforts to transform the nearby Nichols Natural Area from a former industrial site into a vibrant riverfront habitat. Photo courtesy of Columbia Riverkeeper
says VandenHeuvel, who lives in Hood River, where the organization has its main office. “When you believe in what you’re doing, then you’re willing to stick your neck out. The vast majority of feedback (I receive) is extremely positive. I think people of all political persuasions see the value of clean water and protecting the health of our families. We don’t always agree how to get there. I try to approach this work with honesty and integrity, and I think people respect that.”

His nonprofit strives to organize and empower local communities, enforce environmental laws and build strategic coalitions, with the stated mission “to protect and restore the Columbia River and all life connected to it.” VandenHeuvel leads Columbia Riverkeeper’s policy and legal advocacy work and designs and implements campaigns, including current efforts to protect the Pacific Northwest from fracked gas, oil and coal infrastructure. His principal legal expertise lies in energy-facility siting, the Clean Water Act and land use.

He and his team have used that knowledge to defeat what he refers to as “huge fossil fuel infrastructure projects,” which include those related to LNG, coal, methanol, oil and propane.

“The Columbia has been targeted by some of the nation’s largest fossil fuel shipping companies,” VandenHeuvel says. “To defeat every single new project over the last decade — more than a dozen projects — that’s been a huge accomplishment to have protected habitat from major new infrastructure projects.”

His organization generally has about five lawsuits going at any given time, he says, and corporations’ plans to ship oil down the river is an ongoing battle. But the proof of Columbia Riverkeeper’s success is in the pudding, says Johnson.

“There are zero LNG terminals on the entire length of the Columbia River,” she notes. “Columbia Riverkeeper was really the model for working with smaller organizations. Under Brett’s leadership, they worked really hard for us and helped us with organizing, in addition to legal” matters. She feels a key to VandenHeuvel’s and his attorneys’ success is that they listen to community groups’ and tribes’ concerns. “They didn’t dictate how it should go,” she says, “but were respectful working with us.”

Thane W. Tienson, a partner with Landye Bennett Blumstein and a co-founder of Columbia Riverkeeper, was on its board of directors at the time the group hired VandenHeuvel. Before he passed away unexpectedly in late January, he told the Bulletin he believed VandenHeuvel gained important insights when the group sent him and a delegation to offer “solidarity and support to the people” in the area where the 2010 Deepwater Horizon oil spill occurred in the Gulf of Mexico.

“That opened up Brett’s eyes about people who have been dependent on (oil) but also wanted to take care of the environment,” Tienson said, a lesson VandenHeuvel applied to relating with residents and communities along the Columbia.

“We had a beautiful working relationship under the leadership of Brett,” says Johnson, who collaborated closely with him and Columbia Riverkeeper to help stop the LNG projects. “Brett has a real passion for the river. He is able to use that passion and his ability to work with people to make a better world. He is solid, steady and brilliant, kind of a low-key guy but a great leader. The passion he has for the river is the magic inside him.”
How the Passion Began

VandenHeuvel grew up playing in woods and swimming in lakes near Muskegon, Michigan. “I didn’t know much about environmental advocacy, and didn’t know any lawyers, but I think falling in love with nature, birds and wildflowers were the building blocks of later working to protect the environment,” he says. “I was interested in how the earth worked.”

During high school, he made a couple of trips to the Rocky Mountains in Colorado and became enchanted with mountains and glaciers. Those experiences led him to Hope College in Michigan to study geology, chemistry and hydrology, and how to clean up oil spills and groundwater. Afterward, “wanderlust” prompted him to move to Portland, he says.

He got a job loading packages onto trucks, but also began working for the Oregon Museum of Science and Industry as a naturalist and educator. Over a three-year period, VandenHeuvel taught community education classes about ecology and geology in Fossil, Bend and on the Oregon coast.

“It was a very formative time in my life,” he recounts. “I spent time and lived in remote field camps.”

He became interested in climate change, rivers and melting glaciers, and contemplated becoming a researcher. While pursuing a master’s degree from the University of Maine, VandenHeuvel conducted climate change research in Antarctica and New Zealand. He enjoyed the fieldwork and academic side of it, he says, but when he was writing a paper about the ice sheet’s response to climate change, the realization struck him that “no one but other scholars will be reading this, that there’s a disconnect between policymakers and scientists.”

As VandenHeuvel became more aware of environmental destruction, he concluded that “we need more advocacy.” He decided he wanted to take action. In a conversation with his wife, he told her, “I want to pick a side and argue for it.” Her response: “That’s what lawyers do.”

VandenHeuvel began applying to law schools, and “Lewis & Clark was high on my list because I had previously fallen in love with the Northwest,” VandenHeuvel says, and because he was aware of Lewis & Clark Law School’s renowned environmental law program.

Once he completed his degree, he ran into the obstacle faced by many graduates who are intent on finding law jobs to protect the environment: tough competition and a dearth of openings. As a result, VandenHeuvel set up a sole practice and “made myself available” to take on contract work, he says. In what he calls “a testament to members of the Oregon State Bar,” fellow attorneys were “willing to take me under their wing” and referred work to him. Most were environmental lawyers, including Brent Foster, who was also executive director of Columbia Riverkeeper.
Foster gave VandenHeuvel contract work “here and there, and put me in touch with other people” in the conservation community, VandenHeuvel says. Columbia Riverkeeper started giving him more and more contract work, and in 2008 he began working full-time there as a staff attorney. Meanwhile, Foster left the organization the following year to work for then-Oregon Attorney General John Kroger, and VandenHeuvel became executive director.

“He really was just a godsend for the organization,” Tienson told the Bulletin late last year.

VandenHeuvel’s background, self-confidence and the fact that he was “a good listener” were qualities “badly needed for the organization,” Tienson said. “He is a good supervisor, which is hard to find, and has good judgment, knowledge of science, and reaches out to other folks to seek advice and to build coalitions for the organization. A strength of his is reaching out to Columbia River tribes. To be successful in taking on large corporations, you have to have organizational skills.”

VandenHeuvel possesses those, and has a knack for “getting people excited,” Tienson said.

VandenHeuvel’s scientific background greatly aided Columbia Riverkeeper in dealing with opponents, Tienson added. Also, “he is a mound of integrity,” he said. Sometimes big corporations offered to find a “path forward” through a settlement that they claimed would benefit both sides, Tienson said, but VandenHeuvel’s answer was: ‘No. My river and LNG are not compatible. We’ve got to abandon fossil fuels. Exporting is still going to be harmful.’”

The Oregon State Bar Environmental and Natural Resource Section recognized VandenHeuvel for his work with its 2015 Leadership and Service Award. He also received Lewis & Clark Law School’s 2017 Distinguished Graduate Award.

He acknowledges that his administrative duties preclude him from writing long legal briefs as he did in earlier years, but says: “I keep very engaged in Riverkeeper’s legal work, and I’m fortunate to work with an amazing team here. It’s a really great situation to be part of the legal strategy, but I have complete trust in them” to carry out the legal steps needed.

The COVID-19 pandemic has intruded on but not stopped his organization’s work, he says. “Our work hasn’t paused. Companies continue to seek permits and move forward. We’ve had to continue to do the work to protect the river.”

Much of Columbia Riverkeeper’s community organizing and meeting with partnerships has to be done online now, of course. “We’re a place-based organization to protect communities along the Columbia,” he says. “Not being able to sit at the kitchen table and listen to their concerns has been a real challenge.”

But, VandenHeuvel adds: “One of the great joys of my job is working with people up and down the river. People often feel helpless; Riverkeeper has been able to provide legal resources and help them stand up and protect things they love. We’ve built great relationships in dozens of places on the Columbia. We do so value local knowledge to help, instead of coming in and saying, ‘This is the way it should be.’”

Cliff Collins is a Portland-area freelance writer. Reach him at tundra95877@mypacks.net.
Now Hiring
Employment Outlook Promising Despite Pandemic and Economic Slowdown
By Melody Finnemore
Editor’s note: This is the first in a three-part series about the economic impact of COVID-19 on Oregon’s legal profession. Coming in May and June: What does the transition to remote work mean for brick-and-mortar offices and other traditional methods of practicing law, and how are employers adapting their associate training programs in the wake of the pandemic?

A one-two punch from the COVID-19 pandemic and subsequent economic slowdown in 2020 forced attorneys and their staffs to be nimble and adapt in myriad ways. Both private-sector firms and public-sector organizations experienced everything from changes in daily operations and caseloads to uncertainty about hiring.

In 2021, though, members of Oregon’s legal profession say they are cautiously optimistic that the pandemic will soon be under control and that the economy will grow stronger, providing a more promising employment outlook in the year ahead.

That same optimism is reflected at the national level. The U.S. Bureau of Labor Statistics predicts that employment in legal occupations will grow 5 percent from 2019 to 2029, faster than the average for all occupations, and will result in about 67,600 new jobs.

As law firms try to increase the efficiency of legal services and reduce their costs, the bureau says, there is expected to be strong demand to hire more paralegals and legal assistants. In addition, the demand for lawyers is expected to continue as individuals, businesses and governments see their need for legal services increase in a variety of areas.

Ellen Grover and Erin MacDonald certainly agree. The managing partners at Karnopp Petersen in Bend say that not only were they able to avoid laying off any of the firm’s 12 attorneys during the pandemic, but they actually saw an increase in business last year in areas such as estate planning and employer counseling services.

“We’re expecting to see the economy and the private sector rebound, and I would think we’d be looking in this coming year at some additional business,” Grover says, noting that Bend’s economy is driven in large part by tourism — a sector that has not been impacted as heavily in Central Oregon as in other areas of the state.

MacDonald says the partners hope to grow the firm at a “conservative pace” and hire new members cautiously as they monitor the pandemic in the coming months. She admits, though, that finding those new team members may present a challenge.

“Everybody wants to move to Bend theoretically and a lot of people are interested,” MacDonald says, “but then they find out the cost of living is similar to the Portland market. So that can be a little bit tricky in terms of actual recruitment.”

Gerry Gaydos, of counsel with Hershner Hunter in Eugene, says the mid-size firm is expecting to add at least one new law school grad this year and is always open to considering more experienced attorneys looking to make a lateral move. “As we look at the future, there is going to be a need for more lawyers. We know there are going to be concerns about evictions and economic issues that arise because people have not been able to generate income and make payments,” he says, adding that people will continue to need attorneys who specialize in wills and estate planning as well.

Gaydos notes that as the pandemic subsides and the economy becomes more robust, Oregonians will regain the confidence to start their own businesses. That means lawyers who practice business law — such as those at Hershner Hunter — will also be in greater demand, he says. But what won’t change, he insists, is that as the firm adds new members, its leaders will continue to give careful consideration to job candidates’ personalities and potential fit within its culture.

“We’re a small-town practice and people have to fit, they have to know their community and they have to understand that, in a smaller community, you’re not going to make as much money as in a larger community,” he says. “People’s goals are different, though. Some people place a higher priority on family life or living in a college town.”

For lawyers who are drawn to the big city, the economic news is also promising. Attorneys interested in working for a large firm like Portland’s Miller Nash Graham & Dunn should find promising opportunities this year, says managing partner Kieran Curley.

Curley says he anticipates a strong private-sector market this year, noting that Miller Nash was among several Portland-area participants in the first Oregon Diversity Legal Job Fair in early March. The two-day virtual event drew more than 20 employers from across the state, including private firms and public agencies.

Curley says Miller Nash did have to lay off a few staff members at the start of the pandemic, although it focused on positions that could not be done remotely. Its attorneys and staff continue to work remotely now, he says, and the firm’s Portland office is adding lawyers to strengthen several practice areas.

“We continue to be impressed by the large, local pool of highly qualified candidates for our open attorney positions,” Curley says. “Since the onset of the pandemic, we are also seeing more highly qualified candidates who have relocated from other parts of the country.”

Public-Sector Possibilities

Public-sector employers say they are cautiously optimistic, too. Among the agencies represented at the Diversity Legal Job Fair in March: the Oregon District Attorneys Association (ODAA) and DAs in Clackamas, Deschutes, Multnomah and Washington counties; several public defenders offices; and the Oregon Department of Justice.
“Doing the work of public safety will always be a necessity across the state, and the work of district attorneys’ offices are essential to keeping communities safe,” says Marion County District Attorney Paige Clarkson, who also serves as president of the ODAA. Still, she does acknowledge that the economy plays a significant role in agencies’ ability to hire.

“Unlike the private sector or even indigent defense budgets contracted with state dollars, our budgets are funded almost entirely by the local county general fund,” she says. “So the ability to hire deputy district attorneys will always be connected to the strength of our local economies. That can vary widely in normal times, let alone in the middle of a worldwide pandemic.”

Washington County District Attorney Kevin Barton agrees. “Just as this pandemic has impacted different communities throughout Oregon differently, the same is true with DAs’ offices,” he says.

Barton notes that in Washington County, “we are always on the lookout for talented attorneys who are drawn to public service as a prosecutor.” And Clarkson says she’s confident that she will be able to maintain her budget into the future as well. But there is one interesting twist on the public-sector hiring front, at least in Marion County.

“We hire a robust cadre of second- and third-year law clerks every year, primarily from Willamette University given our location but also from Lewis & Clark and the University of Oregon at times. And when we do have an opening for a deputy district attorney position, we turn to that pool first,” Clarkson says. “The training and experience they get with us, including real trial experience, has always proven to provide us with the best hires. But this year, we had an extreme dearth of applicants.”

Clarkson surmises that the pandemic-induced move to virtual law school classes is taking its toll on applications. Students may also be looking at jobs that are more easily performed remotely, she says, or they may simply not be looking to prosecution as a viable option in this climate.

“Regardless, we still need honest, hard-working, trustworthy trial professionals to be deputy district attorneys, and being a prosecutor is one of the best ways to serve one’s community,” she says. “We are hopeful this year’s law clerk recruitment is just part of a pandemic pause, and that we will be back looking at greater numbers after this blip.”

District attorneys outside the Willamette Valley say they’re facing unique hiring challenges, too. Daniel Primus says that when he became Umatilla County’s district attorney in 2011, his office had two openings and a robust pool of qualified candidates. Since then, he’s seen a downturn in the number of applicants when positions open up.

“Sometimes now, positions stay open for quite some time and we have a lot of turnover,” he says. “It’s still a place for people to begin their careers and then transition back to the (Willamette) Valley.”

Primus and his wife graduated from Pendleton High School and he says he returned to his hometown to raise his family and give
back to the community that supported him growing up. Last year, he created a law clerk position to enhance work opportunities that already exist in his office of 11 attorneys — a position that offers a broad array of court experience.

“I’m hopeful that creating that position will provide opportunities for young attorneys to get their foot in the door and create a pool of individuals interested in returning back to Umatilla County,” he says. “We’re just constantly trying to get creative to attract new talent and retain people.”

Nearby Union County faces similar challenges in competing with the Willamette Valley and beyond to fill positions, says District Attorney Kelsie Davis McDaniel.

“Eastern Oregon DAs’ offices sometimes are all hiring around the same time, so we are competing even against each other for qualified applicants,” she says. “At one point in the past couple years, there were six DAs’ offices in this region hiring at the same time. Wallowa County has had a deputy district attorney position open since June of 2018.”

McDaniel says her office hopes to bolster its legal intern program to increase its built-in pool of candidates. She is also looking beyond the COVID-19 pandemic to when job fairs can happen again and her staff can train new employees in person rather than remotely.

She notes that rural DAs’ offices offer a unique opportunity for the right person.

“You get to handle a wide variety of cases and are thrust into the courtroom almost immediately. It is a different experience in that a smaller office means that you do not have a specific assignment,” she says. “On a personal note, it is the chance to become a part of a wonderful community. Life in Eastern Oregon is a wonderful change of pace from city living, and a great place to raise a family.”

Attorney Keith Rogers — who served as executive director of Portland-based Multnomah Defenders Inc. (MDI) for 12 years before leaving the agency in late 2020 — has worked as a legal professional for about 40 years. He says he has witnessed a variety of economic and employment cycles in the public sector, some of which are familiar and others that are not. After the Great Recession, for example, MDI was inundated with people who wanted to work there, Rogers says, but that dropped off dramatically over the past two or three years.
While MDI did not have to lay off staff members in 2020, it did suspend its usual practice of hiring third-year law students. Rogers says he expects that program will resume as soon as it’s possible under new Executive Director Jessica Kampfe, who joined Multnomah Defenders Inc. on March 11.

Funding remains a looming uncertainty for MDI and other public-sector legal organizations, Rogers says, although he notes that while salaries and benefits for people working in public defense are traditionally lower than private-sector practice, many young attorneys are inspired to do public-sector work.

“Money is always an issue when you’re state-funded,” he says. “In addition, no one really knows when the courts will go back into full throttle, and there is a new DA in town. So there are a lot of unknowns.”

One thing that is certain, however, is that when the courts do fully reopen and Multnomah County District Attorney Mike Schmidt’s office ramps back up, MDI’s staff will be charged with tackling a growing backlog of cases. Rogers says that’s a stressful situation to consider, but also an indicator of job opportunities for those interested in public defense.

“I think there will still be plenty of work for public defenders and attorneys who are doing indigent defense work,” he says. “I don’t see any reason to think it’s going backwards in terms of opportunities for law students and new grads.”

**Plenty of Options**

Rogers’ optimism no doubt extends to the private sector, although 2020 was a rough year for many recent law school graduates who sought work at Oregon firms. Job offers often were rescinded last year as brick-and-mortar offices were closed because of COVID-19 restrictions and attorneys worked remotely from home, according to Rebecca Ivanoff, assistant dean for career planning and professional development at the University of Oregon School of Law in Eugene.

Ivanoff says the pandemic had a “dramatic and immediate impact” on recent grads, with many law firms and other private companies pulling out of spring interviews and withdrawing job offers. Other new grads were forced to suspend their job searches, she adds, because they had to homeschool children or take care of other family members.

In response, Ivanoff says the law school now is looking back at steps it took during the Great Recession, such as helping new graduates establish solo practices or consider job opportunities where they can use their legal education in ways other than by practicing law.

“We also need to keep our fingers on the pulse of areas of the legal profession that are hot, including employment law and health care law.”

Ivanoff says she believes that “we’re going to be in this space of having disruption continuing and we’re going to be looking more at helping students to think broadly about where they want to be in the legal profession.”
to the legal profession for at least the next couple of years,” but she notes that students and recent graduates did gradually begin finding work in 2020 as law firms and other employers adapted to pandemic-related changes.

One of those changes had an especially big impact, school officials say: the Oregon Supreme Court’s decision in 2020 to offer “diploma privilege” as a one-time alternative to the traditional bar exam.

“Once employers accepted diploma privilege and working remotely, they started hiring,” says Phylis Myles, assistant dean for placement for Willamette University College of Law in Salem. “Grads were available to apply for jobs earlier than normal because they were not studying for the bar. Employers were able to start hiring earlier because they did not have to wait for bar results. Now our Class of 2020 hiring is on track to meet or exceed recent employment outcomes.”

Myles says that as of early February, summer job opportunities for 2021 look relatively normal. Employers such as Oregon district attorneys, nonprofits, the Oregon Department of Justice, the Washington Attorney General’s Office and smaller firms all seem to be hiring the same number of law clerks as in the past, she says. This year’s Northwest Public Service Career Fair had 90 employers participating, which is similar to previous years.

Large Portland firms, which typically hire law students in August for the summer following their 2L year, did cancel on-campus interviewing in 2020 because of COVID, and Myles says that sector remains a mixed bag.

“The consensus was to wait until January 2021 to decide if they would hire law clerks for summer 2021. Some chose to interview in January, while others have opted not to hire any law clerks for this summer,” Myles says. “But we do have remote/virtual on-campus interviewing going on right now with some of the larger firms.”

She notes that the law school created a “how-to” on remote interviewing, addressing everything from lighting and background to clothes and microphones. It also organized virtual mock interviews with attorneys and had four times the usual number sign up, which increased the number of students who could participate.

“Every spot was filled,” Myles says. “In the past, with in-person mock interviews, we sometimes had to send several notices to students announcing open interview spots. Not this time.”

Melody Finnemore is a Portland-area freelance writer. Reach her at precisionpdx@comcast.net.
Our Behavior Can Increase Faith in the Judicial System

Professionalism Amid the Pandemic

By David Wade

The workplace has changed. Courtrooms — and court operations — are utterly transformed. We as lawyers and human beings are under some unusual strains. Our clients are often under even greater strain.

We have learned to give ourselves and our colleagues a modicum of grace as children and pets run through a meeting screen — the realities of our home workspaces in the years 2020 and 2021. We all shared in a worldwide delight at a cat appearing before the bench in Texas, even as we felt a tinge of sympathy for our technologically challenged cohort.

One thing has not changed, though. While our concept of professionalism can and should embrace that modicum of grace, our own vision of our best professional selves might also be a balm for these times — a reminder of who we are as individuals, and the ideals of our profession.

As we’ve worked to craft a healthy approach to a transformed work life, we’ve also heard of less-encouraging trends. Anger bleeding into briefs. Inability to settle cases. Vitriolic emails zinging around the web. And of course: the ever-present social media miscues.

We know from studies that unprofessional behavior is more than poor manners. Its impact goes beyond merely making the workplace an unpleasant place to pass one’s time. Anger and vitriol extend the length and complexity of litigation. They generate superfluous pleadings and unnecessary correspondence, driving up both the emotional weight and the cost of litigation for clients. For obvious reasons, this has an unsettling impact on how our clients and the public perceive of both the legal profession and the justice system writ large.

By contrast, when lawyers on all sides of litigation demonstrate a collegial approach to dispute resolution, studies show that faith in the judicial system increases, even for the losing party in a dispute.

We also know that as this pandemic comes under greater control, the courts will face a backlog of cases, and litigants will need efficient resolution to issues that came to a virtual halt more than a year ago. For the sake of justice in Oregon, it will be incumbent upon us all to be a part of the solution; to push against trends toward more vitriol in our work, even as the strains of this era are ever-present; to take comfort in the lawyer’s fundamental role as problem-solver.

Perhaps the timing is right for a brief respite. To do some reading on those aforementioned professional ideals. To consider the most earnest reasons why we chose to be lawyers. To seek out a strong CLE on the subject of professionalism (which also counts toward our ethics requirements). We will come out of those programs refreshed, and buoyed about our work and our roles as lawyers.

Finally, perhaps we might consider putting away those pajama pants for today’s client meeting. Perhaps we dress fully for that arbitration, or show up for that court appearance dressed for court. Of course, no one will know. No one is privy to our off-screen attire (most of the time).

But it just might feel good, and relevant, to remind ourselves of everything that makes us want to be lawyers, to be engaged in the one area of our world where disputes are resolved by professionals with the utmost respect for the court, for the rule of law, and for ourselves. Even, or maybe especially, during COVID times.

“For the sake of justice in Oregon, it will be incumbent upon us all to be a part of the solution; to push against trends toward more vitriol in our work; to take comfort in the lawyer’s fundamental role as problem-solver.”

David Wade is president of the Oregon State Bar. Reach him at dwade@osbar.org.
SERVING ALL OF OREGON AND THE NATION

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WORK hard.

It was the mantra for their lives. With sixth-grade educations and speaking no English, Mariano and Lucia Vega moved from the sprawling colonial city of Leon, Mexico, to Woodburn 50 years ago with their 3-year-old daughter, Angelica.

Together, they strove to set a good example, instilling in Angelica (and later, her sisters) a desire not only to work hard, but also to weave herself deeply into the fabric of the community.

“They both modeled the importance of hard work, which, of course, helped me succeed in school,” Angelica Vega says. “They were also not shy about verbalizing their expectations. Their daughters’ succeeding in school was their number one priority.”

Today, Angelica Vega is the regional director of the Salem office of Legal Aid Services of Oregon, a post she’s held since 2017. The office serves low-income residents of Marion and Polk counties, handling family, housing and public benefits problems. Vega has served as a legal aid lawyer for about 30 years, earning enormous community respect in the process.

She was attracted to law, she says, because she wanted to help the Latino community.

“I knew I wanted to be an attorney since I was in high school,” Vega recalls. “I remember being interviewed by my high school newspaper and stating so. I do not recall strongly considering any other profession, which seems strange because I didn’t know anyone in my life who was an attorney.”

Thanks to her family’s involvement in the community, through church, dances and cultural activities — she did meet many people who were connected to commercial agriculture. She heard stories about work-related accidents, about not getting paid and about employer discrimination and retaliation, and she knew there would be a role for her as a lawyer.

Social Justice, Access to Justice Issues Shape Her Career Path

Vega didn’t know she would be a legal aid lawyer, but a mentor steered her in that direction. As an undergraduate at Willamette University, she served as an intern on Gov. Neil Goldschmidt’s Commission on Agricultural Labor as an assistant to its program manager, Danny Santos.

“In those days, we were working on agricultural issues after the confusion of the 1986 Immigration Reform and Control
Act,” remembers Santos. “This federal law caused both an influx of laborers in the winter of 1988-1989 and a shortage of laborers during the 1989 harvest season. Angelica did stellar work on researching policies, what other states were doing, and helping set up possible legislative solutions.”

It was clear to Santos, he says now, that Vega would follow her passion for social justice and her commitment to increasing access to justice for those whose voices often go unheard.

Santos and Vega became and remain friends. She turned to him during her first year of law school at the University of Washington for advice on where to apply for clerkships.

“It was a different experience from what my two roommates had clerking in large Seattle law firms,” she says.

Lawyer Mark Wilk supervised Vega’s work with migrant laborers that summer.

“She was able to communicate in their language and to relate to them positively and sincerely,” he says. “Workers felt more comfortable opening up to a Latina advocate who was a native Spanish speaker.”

Vega believes her strong cultural identity is an important part of her connection with clients, and she credits her parents for that strength.

“My parents made it really important to our family that we know our culture and language,” she explains, remembering that the family visited Mexico at least 10 times over
the years. “I also was very lucky to have attended school in Woodburn during the 1970s. There were already Latino and Latina teachers and staff there.”

Her classmates were diverse, too — “about one-third were Russian and one-third were Mexican,” she says. Those influences helped her maintain her cultural identity and helped her learn to navigate among different cultures, she says.

Back in Seattle for her second year of law school, Vega clerked at the Northwest Immigrant Rights Project and, later that summer, at the Washington State Attorney General’s Office in its Department of Labor and Industries. As soon as law school was over, she returned to Woodburn, clerking at the Oregon Legal Services farmworker program until OLS hired her; she worked in the agency’s Oregon City office until 1999.

“My supervisor, Ellen Mendoza, encouraged me to volunteer in the community,” Vega says. “I signed up for the Bradley-Angle House domestic violence and facilitator training,” and soon she was co-facilitating a domestic violence support group for Spanish-speaking women through El Programa Hispano. “Listening to survivors’ stories every week really motivated me to do my part to help empower survivors of domestic violence.”

Intervening in domestic violence became an important part of her practice as time went on. She remembers that later, when she had transferred to the OLS office in Salem, she worked with a very young undocumented woman and her baby to obtain a Family Abuse Protection Act order against the woman’s much-older abusive husband, and later a divorce and custody of the child.

“Many years later, the client came to our office for copies of some documents,” Vega says. “When she saw me, she had a huge smile on her face, and she gave me a loving hug.”

Undocumented victims of domestic violence are eligible for visas under limited circumstances, and Vega helps those who qualify to secure their legal status.

“I have to hold back tears when a client’s U Visa petition is approved and I hand them their employment authorization card,” she says. “This is a truly life-changing moment for the client.”

One domestic violence survivor who obtained her U Visa gave Vega a small pink rose.
bush, which Vega planted next to her house. “I see it almost daily,” she says. “It is a good reminder of why I work at Legal Aid.”

Devoting Her Time to the Greater Good

In her current role, Vega spends about a third of her time supervising a staff of eight. The rest of her time is devoted to client representation, but her skills are in demand by more than individual clients. She has served on numerous boards and committees, among them Clackamas Women’s Services, the Center for Hope and Advocacy, the Marion County Circuit Court Family Law Advisory Committee and the State of Oregon Law Library Committee.

In 2005, the Oregon Community Foundation named her to its Latino Partnership Project Advisory Team. She’s been a member of the Oregon State Bar’s House of Delegates and president of the Mary Leonard Law Society (the Salem chapter of Oregon Women Lawyers). She has also worked with new attorneys as a mentor through the OSB’s New Lawyer Mentorship Program.

More recently, Vega completed a three-year term on the Oregon Supreme Court Council on Inclusion and Fairness. “My goal as a member of this council was to present the challenges our clients face in the court system, especially in the area of family law,” she says. “I think my perspective as a practicing attorney of color was helpful.”

What obstacles does she see in achieving social justice reform, not only in the courts but also in society generally?

“I think the biggest obstacles in reaching racial equality are local and national institutions not prioritizing this issue — that is, investing financial resources to make changes, and the fear of change among some people,” she says. “By fear of change, I mean the irrational idea that someone needs to lose for someone else to win. Racial equality would benefit everyone.”

In 2019, Vega received the Marion County Bar Association’s Paul J. DeMuniz Professionalism Award. The honor goes to lawyers who present a spirit of public service; demonstrate high competence, integrity and ethical conduct; and serve as role models for other attorneys. She was nominated by a former staff attorney in her office, Brena Lopez.

“Vega is a listener and a thinker, which makes her an amazing leader,” Lopez says. As a mentor to Lopez when the latter first joined legal aid, “she mentored me not only in the practical aspects of the law, but was a role model to me, demonstrating through her own example how to interact with other attorneys and our clients in a way which promoted the very highest ethical standards in our profession.”

For her part, Vega finds mentoring other lawyers gratifying.

“New attorneys have benefited from my advice about cases and the legal profession in general,” she says. “In turn, I have benefited from hearing their perspective on matters through fresh eyes.”

Although her professional life is time-consuming, Vega is just as committed to her family and to maintaining a work-life balance as much as possible. She is a doting auntie and godmother to one sister’s twin teenagers and, as Lopez reports, Vega is “really funny” as well as a “world-class shopper of purses and shoes, and an avid Trekkie.”

Santos describes his longtime colleague and friend this way: “She is a kind soul, committed to family, to her community and to a life of servant leadership.”

Wilk looks back on his time working with Vega and echoes Santos’ thoughts.

“I knew when she clerked in Ontario those many years ago that she would be an amazing advocate for the low-income community, and especially for Latina and immigrant populations,” he says. “It is great for these underserved and underrepresented communities to be able to see a leader who looks like them.”

And one who works hard for them, too.

Janay Haas is a frequent contributor to the Bulletin. Reach her at word prefect@yahoo.com
**The Vigors of Private Continuing Legal Education**

**Engaging a ‘Strength Multiplier’**

By Kelly L. Andersen

During a pre-pandemic vacation to the United Kingdom, my wife and I were assigned seats on a tour bus next to a delightful couple, Andy and Linda. During the passing days, as we got to know them better, we learned that Andy had been a nuclear engineer. Spending much of his career at nuclear power plants all over the United States, his duty was to spot problems and find solutions before those problems could develop into disasters. He mentioned, almost casually, that engineers in nuclear power plants spend every fourth day in training.

*Every fourth day.*

These words turned over and over in my mind. If a nuclear power plant was not watched and cared for properly, the plant could quickly become a national disaster. Think Chernobyl. Think Three Mile Island. The key to nuclear disaster prevention, it seems, was continuing education.

What, I wondered, if I were to spend 25 percent of my time — the equivalent of every fourth day — in legal study and training? What if I spent an average of 10 hours each week reading legal books and treatises, attending legal seminars and teaching others about things legal? Could the improved judgment and skill gained by such study make me 25 percent more effective and productive?

While that much time in legal education may at first seem unreachable, it really isn’t. If you add formal CLE classes and reading legal periodicals to your personal studies, the total time on that 25-percent investment begins to stack up.

Nearly 160 years ago, John M. Brockman wrote Abraham Lincoln to ask what would be “the best mode of obtaining a thorough knowledge of the law.” The very next day, Lincoln answered with this succinct advice: “The mode is very simple, while that much time in legal education may at first seem unreachable, it really isn’t. If you add formal CLE classes and reading legal periodicals to your personal studies, the total time on that 25-percent investment begins to stack up.

Nearly 160 years ago, John M. Brockman wrote Abraham Lincoln to ask what would be “the best mode of obtaining a thorough knowledge of the law.” The very next day, Lincoln answered with this succinct advice: “The mode is very simple, would you do if you had just five minutes to chop down a tree?” He responded, “I would spend the first two and a half minutes sharpening my ax.”

Commenting on Lincoln’s quotation, CNN contributor Zachary Forget observed that an ax is a “strength multiplier.” He continues: “Learning how to learn, improving before doing … All these things are strength multipliers. You can work hard, hustle, put in the hours, do the work, etc., etc., but the magic happens when you aim to perfect your skills beforehand.”

Personal legal study is just such a powerful “strength multiplier.”

Business consultant and organizational behavior expert Stephen Covey, in his highly acclaimed book “The Seven Habits of Highly Effective People,” listed “Sharpen the Saw” as the seventh — and final — habit.

“Just remember that every day provides a new opportunity for renewal, a new opportunity to recharge yourself instead of hitting the wall. All it takes is the desire, knowledge and skill.”

Covey’s website describes more fully what he meant:

“Sharpen the Saw means preserving and enhancing the greatest asset you have — you. It means having a balanced program for self-renewal in the four areas of your life: physical, social/emotional, mental, and spiritual. As you renew yourself in each of the four areas, you create growth and change in your life. Sharpen the Saw keeps you fresh so you can continue to practice the other six habits. You increase your capacity to produce and handle the challenges around you. Feeling good doesn’t
just happen. Living a life in balance means taking the necessary time to renew yourself. It’s all up to you. Just remember that every day provides a new opportunity for renewal — a new opportunity to recharge yourself instead of hitting the wall. All it takes is the desire, knowledge and skill.”

I have now been practicing law for more than 41 delightful years (since September 1979). Looking back, I can see several phases of my career:

- During the first 17 years, I just barely filled the minimum mandatory CLE requirements of 36 hours every three years, often finishing just before the Dec. 31 deadline.
- During the next eight years (to about my 25-year mark), I began attending legal education courses in person (both locally and nationally). By this means I usually gained about 150 hours in CLE credits in any three-year period. While this helped enormously, I gradually realized I was living on the borrowed light of others who did a lot of private reading to come to their insights. That observation led me to my current phase.
- During the past 16 years, I have added a tremendous amount of individual reading to my legal education. The rewards of such private study have been pleasantly stunning.

In a recent pre-pandemic catastrophic injury case, for example, I sensed that my final argument would largely determine the amount of non-economic damages — more so than what any of the witnesses had said. Discerning this, I spent many hours before trial pouring over the two-volume set of “Closing Arguments: Child Injury/Child Wrongful Death,” edited by Atlanta attorney Don Keenan. Reading these arguments infused me with ideas on how to successfully structure my own final argument. While this study was for a particular case, what I learned changed how I compose final arguments in every case.

In another instance involving a legal malpractice case within a medical malpractice case, I attended a Continuing Legal Education course in Las Vegas just for that one case. I also read a half-dozen books with that one case in mind. What I learned benefited not just that case, but also every case I have handled since that time.

And in yet another case, what I learned at a national conference of the Association of Trial Lawyers of America (now the American Association for Justice) helped me win a hotly disputed liability case that I probably would have lost without the knowledge gained at the seminar.

Realizing that reading and attending CLEs is incomplete unless we develop a system for remembering, I have created a three-part method to help me recall what I have read:

1. When attending a formal CLE, I use my iPad to keep detailed notes. Often these notes will run between five and 10 single-spaced typewritten pages per day. The act of typing the notes brings greater focus to the CLE than attendance alone. Reviewing such notes later greatly enlarges my recall of what was taught.

2. When reading legal periodicals such as the Oregon State Bar’s Bulletin, the Oregon Trial Lawyers Association’s Trial Magazine or the American Association for Justice’s Trial, I highlight important sentences or paragraphs of selected articles, then tear out those pages to retain in my CLE file for future reference.

### Andersen’s Dozen

Here are 12 of the books that Medford attorney Kelly L. Andersen recommends for all attorneys. For a more complete list of the books he has read and re-read as part of his personal continuing legal education, go to Andersenlaw.com/andersens-dozen.

**“Now What Makes Juries Listen”**

*Sonya Hamlin*

In this book, Hamlin — a thought leader in communication for 25 years — distills her best tips. Beautifully written and carefully edited, this book is a treasure for anyone trying any type of case — civil or criminal, plaintiff or defense. Note: It does haves a slight institutional bias to the prosecution in criminal cases and to the defense in civil cases.

**“McElhaney’s Trial Notebook”**

*James McElhaney*

Writing with vigor and spunk, McElhaney offers in each chapter the Wisdom of Solomon. He captivates his readers by crafting scenarios in which fictitious attorneys or law professors analyze what went right or wrong in various trial situations. The book has been through numerous editions, each improving on the one before.

**“The Art of Public Speaking”**

*Dale Carnegie*

Written in 1910, this book continues to be republished because its principles of excellent communication are as valid today as they were a hundred years ago. Carnegie identifies the most common mistake most speakers make (trying to cover too much material), the most common oversight (not speaking from personal experience) and the most common sin (not knowing when to stop). He shows how to make a speech sparkle.

**“Words That Work”**

*Frank I. Luntz*

Luntz, a political wonk who coined a number of words that have shaped our national political discourse, reveals how just a few carefully selected words can make all the difference in the outcome of a debate. What I learned from the book is to embed a half-dozen or so meticulously chosen key words or phrases into a trial. If done right, the whole trial will begin to revolve around those words.

**“In Search of Excellence: Lessons from America’s Best-Run Companies”**


I read this book in the early 1980s, soon after it had become an international bestseller. Though some of the companies discussed in the book have since fallen from glory, the principles Peters and Waterman identify are still as true today as they were four decades ago. Two of the principles I have repeatedly applied are “stick to the knitting” (find a core competency and constantly improve within that niche, rather than diversifying and losing the competitive edge) and always be reliable (Frito Lay consistently delivered fresh chips when its competitors did not).
Continued from Page 35

“The Effective Executive”
Peter F. Drucker
If there is one book that will increase any attorney’s effective use of time, this is that book. The mantra Drucker repeats is: “Feed the opportunities and starve the problems.” This book is worth reading multiple times.

“Seven Habits of Highly Effective People”
Stephen R. Covey
With 25 million copies now translated into 70 languages, this book continues to guide organizations large and small in developing the universal habits of all successful people and businesses. Covey talks of the “P/PC balance” (the balance between “production” and “production capacity”) and the “four quadrants” (showing how we unwittingly slip into doing what is urgent at the expenses of doing what is important).

“How to Win Friends and Influence People”
Dale Carnegie
First published in 1936, this book has sold more than 30 million copies and continues to be a bestseller. It changed my life in high school and continues to teach me today. I have re-read it multiple times. Using story after story after story, Carnegie reveals the wellsprings of human motivation and behavior.

“Resonate”
Nancy Duarte
Duarte designed Microsoft’s PowerPoint background slides and has prepared visuals for many Fortune 500 companies. She discovered that every great speech contains a contrast between what is and what could be. She urges readers to “murder your darlings,” meaning to get rid of those elements of your speech (or your case) that don’t contribute, no matter how hard you have worked on them and no matter how much you love them.

“Presentation Zen” and “Presentation Zen Design”
Garr Reynolds
In these companion books, Reynolds identifies what makes for effective presentation and design (simplicity and restraint). No one can read his work, or that of Duarte, without flinching — even cringing — at the almost constant misuse of PowerPoint in most CLE presentations, even by national speakers who ought to know better.

“Made to Stick: Why Some Ideas Survive and Others Die”
Chip & Dan Heath
This is a must read for any attorney. The Heath brothers come up with a simple formula to make any concept “stick.” To stick, the idea must be presented as a Simple, Unexpected, Concrete, Credible, Emotional Story (SUCCESs).

“The Autobiography of Benjamin Franklin”
Benjamin Franklin
No one’s education can be complete without having read this delightful autobiography. Finishing the book near the end of his life, Franklin enjoys the perspective of the long view and is able to instruct any person in business how to succeed by diligence, good habits, frugality and discipline.

3. When reading books, I underline and make margin notes. Then, before concluding that day’s study, I dictate a summary of what I have learned into a “notes” file on my iPhone. As I always have my iPhone with me, this is the ideal place to store such notes.

From time to time, I review my CLE files and dictated notes. Doing so refreshes my memory of what I have learned. I highly recommend this three-part system.

According to an old Chinese proverb, “The best time to plant a tree was 20 years ago, and the second best time is now.” If you have settled into your practice for years without planting a good, high-yield, Continuing Legal Education tree, it is not too late to plant it now. (It is never too late.) The ongoing habit of private legal study each day, just five days a week and only 50 weeks a year, produces an enormous volume of scholarly deposits into the brain.

If you have made notes of those studies — and have reviewed those notes regularly — then all those hours of study will inform your judgment in all aspects of every case. You will find you will have better discernment in case selection, better judgment on the use of time and better ideas on how to present evidence.

In short, every aspect of the practice of law will improve, not by just a little but by a lot.

A lawyer has only two things to offer a client: diligence and good judgment. Personal legal study will greatly multiply both. If you dare invest 25 percent of your time in Continuing Legal Education, you will find a greater return on that investment than ever you could have imagined. The quality of your legal work will improve, and so will the quality of your life.

Kelly L. Andersen is a partner and trial attorney at Andersen Morse & Linthorst in Medford, which handles devastating-injury cases throughout the state. Reach him at kelly@andersenlaw.com.

ENDNOTES
1. https://medium.com/@zacharyforget/abraham-lincoln-was-quoted-as-saying-give-me-six-hours-to-chop-down-a-tree-and-i-will-spend-the-e1a4fc842292
2. https://quoteinvestigator.com/2014/03/29/sharp-axe/
3. http://meaningring.com/2014/05/24/7habits-habit7-by-stephen-r-covey/
4. On the very last day of one reporting year, I listened to Continuing Legal Education tapes in my van while returning from a Lake Tahoe ski trip with my oldest daughter and her high school friends. This was a real hit with the teenagers, as you might imagine.

LEARN MORE
For a complete listing of Continuing Legal Education seminars offered by the Oregon State Bar, including a link to download the CLE Seminars product catalog, visit osbar.org/cle.
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Conflicts and Confidentiality in Insurance Defense

A Balancing Act

By Mark J. Fucile

"The tripartite relationship among defense lawyer, insured, and insurer requires a delicate balance of rights and duties."
ABA Formal Op 01-421 at 3 (2001)

In the 20 years that have passed since the American Bar Association made our opening observation, the balancing act for insurance defense counsel hasn’t gotten any easier. At the same time, insurance defense remains a core practice area for many lawyers.

In this column, we’ll look at two of the most delicate elements of the balancing act for insurance defense counsel: conflicts and confidentiality.1

Conflicts

The starting point for most conflict analysis is a simple one: Who is my client?

An earlier ABA ethics opinion — Formal Opinion 96-403 (1996) — noted that this simple question has a not-so-simple answer in the insurance defense context: "The Model Rules of Professional Conduct offer virtually no guidance as to whether a lawyer retained and paid by an insurer to defend its insured represents the insured, the insurer, or both.2 As a result, states vary in their approach to the "who is the client?" question, with some answering the insured only and others including both the insured and the carrier.3

Oregon is a "two-client" state, absent an agreement to the contrary, under a series of Oregon State Bar ethics opinions and associated Oregon case law.4 Under Oregon’s "default" approach, therefore, an insurance defense counsel represents the insured and the carrier jointly.5

Oregon’s predominant "two-client" approach has important implications for conflicts. Three of the more commonly recurring involve coverage, case management "guidelines" and settlement.

First, insurance defense counsel under the "two-client" model cannot advise either the insured or the carrier on coverage issues.6 In other words, the job of insurance defense counsel is to defend the case rather than wade into coverage disputes between the jointly represented insured and carrier that would create a multiple-client conflict under RPC 1.7(a)(1).

This can sometimes be easier said than done.

OSB Formal Opinion 2005-121, for example, suggests that insurance defense counsel should not "file a motion that arising from payment for legal services on a client’s behalf by others, insurance defense counsel cannot shade their judgment in defending an insured by the fact that they are being paid by the carrier.

Third, insurance defense counsel under the "two-client" model cannot act as a "referee" between an insured and the carrier if there is a disagreement over settlement. RPC 1.2(a) requires a lawyer to “abide” by a client’s decision on settlement.11

When dealing with a covered claim within policy limits, insureds and carriers usually agree on settlement because...
a primary reason the insured bought the policy involved was to shift responsibility for indemnity contractually to the carrier. Nonetheless, ABA Formal Opinion 96-403 observes that “[w]hatever the rights and duties of the insurer and the insured under the insurance contract, that contract does not define the ethical responsibilities of the lawyer to . . . [the] . . . client.”

In the relatively rare scenario where an insured and a carrier disagree over settlement, therefore, ABA Formal Opinion 96-403 suggests that insurance defense counsel advise both to consult independent counsel regarding the consequences and associated coverage issues. If the insured at that point rejects coverage and wishes to proceed with separate, privately retained counsel, insurance counsel would ordinarily be expected to withdraw through substitution in light of conflicting instructions between jointly represented clients.

In contrast to the predominant “two-client” model, Oregon allows a lawyer to limit the client to the insured only. This is usually done through an engagement agreement with the insured and an accompanying “non-representation” letter to the carrier. This variant most frequently occurs when a sophisticated corporate client — often with a large self-insured retention — wishes to use the same law firm for both defense and coverage advice.


In Evraz, a corporation retained its long-time law firm to represent it in an environmental liability matter in which the corporation’s legal expenses were being reimbursed by an insurance carrier. The law firm specifically disclaimed an attorney-client relationship with the carrier so that the law firm could continue to advise its corporate client on coverage issues while defending the environmental liability matter.

Later, the corporate client asked the law firm to represent it in subsequent coverage litigation against the carrier. The carrier moved to disqualify the law firm, arguing under the ethics opinions noted earlier that the firm had represented it as well in the liability matter. The court denied the motion, holding that the law firm had expressly disclaimed an attorney-client relationship with the carrier and, therefore, no attorney-client relationship was created.

In doing so, the court noted that this was simply a specific application of Oregon’s general “reasonable expectations of the client” test for an attorney-client relationship that looks to both a putative client’s subjective belief and whether that subjective belief is objectively reasonable under the circumstances.

Although comparatively rare, the model illustrated in Evraz avoids many conflicts because the law firm only has one client — the insured.

Confidentiality

In the “two-client” model, confidentiality is ordinarily straightforward: Both the insured and the carrier are clients, so joint communications are privileged (as long as the other requisites for the attorney-client privilege are present).

OSB Formal Opinion 2005-157 makes this point in the context of billings and OSB Formal Opinion 2005-166 does the same for case reports. This approach is also consistent with the duty of communication because we are generally expected to communicate material developments to all jointly represented clients.

In the “one-client” model, communications between insurance defense counsel and a carrier are generally protected by the “common interest” doctrine. The federal district court in Portland summarized the broad outlines of this doctrine:

“The ‘common interest’ doctrine provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group.” . . . “The ‘common interest’ doctrine is an exception to the general rule that the voluntary disclosure of a privileged attorney client or work product communication to a third party waives the privilege.”

The “common interest” doctrine allows insurance defense counsel in the “one-client” model to provide reports and other information necessary for the carrier to contribute to both the defense and any settlement of the case involved.

Summing Up

The tri-partite relationship is a time-honored formula spanning practice areas ranging from personal injury to employment law.

In each case, however, insurance defense counsel needs to carefully balance
the nuanced conflict and confidentiality elements of this three-cornered relationship.

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility risk management and attorney-client privilege matters for lawyers, law firms and legal departments throughout the Northwest. He is a member of the OSB Legal Ethics Committee and a past chair of the WSBA Committee on Professional Ethics. He is a principal co-editor of the OSB Ethical Oregon Lawyer and the editor-in-chief of WSBA Legal Ethics Deskbook. Before co-founding his own firm in 2005, he was an in-house ethics counsel for a large Northwest regional law firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Reach him at (503) 224-4895 or Mark@frllp.com.

ENDNOTES

1. Some insurance defense counsel are employees of carriers. Although this column is oriented primarily to insurance defense counsel who are in private practice, the topics discussed also apply generally to lawyer-employees of carriers who represent the carrier’s insureds. See generally ABA Formal Op 03-430 (2003) (discussing lawyer-employees of carriers who represent insureds).

2. Id. at 2.

3. ABA Formal Op 01-421, supra, at 3-4 (surveying jurisdictions nationally).


5. ORS 465.483(1), which was enacted in 2013, provides as a matter of insurance law that an insured in an environmental case with either a reservation of rights or excess exposure must be provided with “independent counsel” paid for by the carrier but only representing the insured. See generally Siltronic Corporation v. Employers Insurance Company of Wasau, 176 F Supp 3d 1033, 1047-54 (D Or 2016) (discussing ORS 465.483 and the “independent counsel” requirement); see also Schnitzer Steel Industries, Inc. v. Continental Casualty Company, 2013 WL 12212732 (D Or Dec 17, 2013) (unpublished) (also discussing the legislative history of ORS 465.483).


7. Id. at 4. This opinion refers to the insured as the “primary” client under insurance
law. It is important to note, however, that the Oregon Rules of Professional Conduct do not distinguish between “primary” and “secondary” clients.

8. See ABA Model Rule 1.7, cmt 29 (“Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails.”).

9. See UCJI No. 45.04 (Oregon legal malpractice jury instruction in legal for standard of care). See also ABA Formal Op 01-421, supra (addressing case handling “guidelines” from a national perspective).

10. See also RPC 1.7(a)(2) (the general rule on “material limitation” conflicts).

11. See also OSB Formal Op 2019-195 2 (2019) (“Under Oregon RPC 1.2(a), a decision to settle must be made by the client, not the lawyer.”); see, e.g., In re Kang, 32 DB Rptr 191 (Or 2018) (attorney disciplined for violation of RPC 1.2(a) by agreeing to settlement without first confirming authority with client). This is also consistent with Oregon agency law applied to attorney settlement authority. See generally Grudzien v. Rogers, 294 Or App 673, 679-80, 432 P3d 1169 (2018) (discussing agency principles as applied to attorney settlement authority).

12. Id. at 3.

13. Id. at 4.

14. Id. at 5.

15. See generally OSB, Ethical Oregon Lawyer § 10.2-2(e)(2) (rev 4th ed 2015) (discussing joint representation of multiple litigants); RPC 1.4 (duty of communication). See also ABA Formal Op 08-450 (2008) (discussing scenario where lawyer knows that sharing information with carrier will result in loss of coverage).

16. In re Premera Blue Cross Customer Data Security Breach Litigation, 296 F Supp 3d 1230, 1240 (D Or 2017) (citations omitted); see also U.S. Gonzalez, 669 F3d 974, 977-79 (2012) (noting that when applied in the defense setting the common interest doctrine is also known as the “joint defense” privilege); Port of Portland v. Oregon Center for Environmental Health, 238 Or App 404, 413-16, 243 P3d 102 (2010) (addressing the common interest doctrine under Oregon law).

17. See also RPC 2.3 (addressing evaluations provided to non-clients).
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‘Celebrate Oregon Lawyers’ to Include Annual Awards

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

This year’s awards will also feature a unique twist, as long as COVID restrictions allow for large gatherings: For the first time ever, they’ll be presented at a gala event in the fall called Celebrate Oregon Lawyers. The evening will also include a salute to 40-year and 50-year members, as well as recognition of legal professionals who provided significant access to justice through pro bono work.

There will be no sit-down dinner or long speeches at the event, which is scheduled from 5-7 p.m. on Thursday, Oct. 28, at the Sentinel Hotel in downtown Portland. Instead, guests can expect interesting displays, heavy hors d’oeuvres and the opportunity to spend more time chatting with friends as they come and go as they please.

Of course, there is a chance that the event will have to be canceled and replaced with a virtual gathering, which happened last year. But regardless of COVID’s impact, a special October issue of the Bulletin will shine an even brighter spotlight on all of this year’s honorees.

Members celebrating their 40th or 50th year with the OSB have already been notified of the changes, and pro bono hours are currently being counted. The nomination deadline for the 2020 annual awards, meanwhile, is 5 p.m. on Tuesday, June 29; forms and details are available online at osbar.org/osbevents/index.html.

Donaldson Wins Special Election for Region 5 Seat on BOG

Lee Ann Donaldson, an attorney with the Nichols Law Group in Portland, will represent Region 5 on the OSB Board of Governors after winning a special election in March. She fills the seat vacated by Adrian Lee Brown, who was elected to the Multnomah County Circuit Court bench in November 2020.
Donaldson is a 2009 graduate of Willamette University College of Law who has worked in both the public and private sectors; before joining Nichols Law Group in 2018, she served as a clerk to three presiding Multnomah County Circuit Court judges. She is a member of Oregon Women Lawyers, the Multnomah Bar Association, the Oregon Trial Lawyers Association and the American Association of Justice.

Her term on the board will run through Dec. 31, 2023.

Filing Deadline for Open BOG Positions is May 11

Candidates hoping to fill one of three open seats on the OSB Board of Governors have until 5 p.m. on Tuesday, May 11, to submit their applications.

The three board positions open to active bar members include one in Region 2 (Lane County) and two in Region 5 (Multnomah County). The board consists of 15 active bar members elected from eight regions, four public members appointed by the board and the non-voting position of immediate past president. Board terms are for four years; the new members will begin their service on Jan. 1, 2022.

For more information or to print a copy of the candidate statement form, visit osbar.org/leadership/bog or contact Danielle Edwards at dedwards@osbar.org.

PLF Installment Deadline for 2nd Quarter is April 12

The deadline for making your Professional Liability Fund second-quarter installment payment is Monday, April 12. Late charges will be assessed if payment is not received by this date.

Payments can be made on the PLF website at osbplf.org/assessment-exemptions/overview.html. Questions? Call the PLF accounting department at (503) 924-1771.

Deadline for Completing MCLE Credits is April 30

If 2020 was your MCLE reporting year, the deadline to complete required MCLE credits is Friday, April 30, and the deadline to electronically certify and submit your compliance report is 5 p.m. on May 31.

OSB members can log on to the member dashboard at hello.osbar.org to view their MCLE requirements and add credits to their transcripts. Visit osbar.org/mcle/index.html for FAQs and complete reporting instructions.
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.

CHRISTOPHER K. SKAGEN
OSB #911020
New Zealand
Disbarment

In a reciprocal discipline proceeding arising from professional discipline in New Zealand, the Oregon Supreme Court disbarred Christopher K. Skagen effective Nov. 19, 2020. In re Skagen, 367 Or 236, 476 P3d 942 (2020).

On review of a New Zealand Law Society Disciplinary Tribunal opinion striking Skagen from New Zealand’s Roll of Barristers and Solicitors, the New Zealand High Court found that Skagen violated New Zealand disciplinary rules in his handling of two matters, including failing to act timely and competently and failing to repay money due to a client at the termination of representation.

The High Court also found that Skagen failed to cooperate with the Law Society investigation of his misconduct and that he had accepted instructions directly from a client rather than an instructing solicitor, as required by New Zealand’s disciplinary rules. The High Court upheld the tribunal’s decision to strike Skagen from the Roll.

The Oregon court found that the High Court judgment justified reciprocal discipline here for two reasons. First, the New Zealand procedure afforded Skagen due process. And second, the misconduct for which he was disciplined in New Zealand would violate Oregon rules (neglect, failure to communicate, excessive fee, failure to account for client property, failure to refund unearned fees, practicing law in violation of the regulations of the profession, failure to cooperate with a disciplinary authority, and conduct prejudicial to the administration of justice) and justify discipline in Oregon.

In imposing disbarment, the court noted Skagen’s significant prior discipline for similar misconduct, his selfish motive, a refusal to acknowledge the wrongfulness of his conduct, substantial experience, multiple offenses and a pattern of misconduct.

JOSEPH RAYMOND SANCHEZ
OSB #010090
Portland
1-year suspension

Effective Jan. 6, 2021, the disciplinary board suspended Portland attorney Joseph Raymond Sanchez for one year on a petition for reciprocal discipline based on discipline imposed in Maine.

Sanchez previously stipulated to violations of the Maine Rules of Professional Conduct regarding his representation of a landowner in a claim against the U.S. Department of the Navy for environmental contamination of the client’s property.

After the Navy rejected the client’s notice of claim under the Federal Tort Claims Act and requested that Sanchez cure specific defects and provide additional information, Sanchez failed to respond and perfect the client’s claim. As a result, the statute of limitations as established by the discovery date in the claim notice ultimately ran and expired, thereby defeating any claim by the client against the U.S. Navy. This conduct violated RPC 1.3 (neglect of a legal matter).

Sanchez failed to notify his client of the initial claim rejection and caused the client and the client’s wife, either directly or indirectly through Sanchez’s spouse or legal assistant, to believe incorrectly that Sanchez was still working on the client’s claim. On one occasion, for example, the legal assistant responded to the client’s status inquiry by stating that “there has been no recent paperwork from the U.S. Navy” and that Sanchez would contact the client, although Sanchez never did so. This conduct violated RPC 1.4(a) (duty to keep a client reasonably informed about the status of a matter) and RPC 5.3(a) (lawyer shall make reasonable efforts to ensure conduct of nonlawyer directly supervised by lawyer is compatible with the lawyer’s professional obligations).

Sanchez’s conduct was aggravated by a history of prior discipline, a refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. In mitigation, Sanchez demonstrated a cooperative attitude toward the disciplinary proceedings.

RICHARD F. ALWAY
OSB #770966
Salem
Public reprimand

Effective Jan. 22, 2021, the disciplinary board publicly reprimanded Salem lawyer Richard F. Alway for violating RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) and RPC 5.3(a) (failure to supervise non-lawyer personnel).

After prevailing in a dissolution proceeding, Alway prepared an attorney fee petition and instructed his legal assistant to file it, but she failed to do so. When the client subsequently inquired about the status of the fee petition, Alway’s assistant did not inform Alway about the situation or the client inquiries. Alway did not take proactive steps to review his assistant’s work or stay informed of his client’s case. After nine months of attempting to reach him, the client complained to the bar.

The disciplinary board found that Alway’s conduct was aggravated by a history of prior discipline, substantial experience in the practice of law and a refusal to acknowledge the wrongful nature of his conduct. In mitigation, the board found that Alway lacked a dishonest or selfish motive and had a cooperative attitude toward the disciplinary proceedings.

MELISSA BLYTHE JAFFE
OSB #083702
Portland
120-day suspension

Effective March 31, 2021, the Disciplinary Board approved a stipulation for discipline and suspended Portland lawyer Melissa Blythe Jaffe for a period of 120-days for violating RPC 1.15-1(a) (duty to hold funds.
belonging to clients separate from lawyer's own property), RPC 1.15-1(c) (duty to deposit client funds into trust), RPC 1.5(c)(3) (charging or collecting a fee denominated as earned on receipt without required disclosures) and RPC 1.8(a) (duties when entering a business transaction with a client).

Jaffe entered flat-fee agreements with her client that charged a monthly fee deemed "earned upon receipt" as well as 10 percent interest for every 10 days a payment was late. The agreements did not state that the funds would not be deposited into the lawyer trust account, that the client could discharge the lawyer at any time or that the client might be entitled to a refund of unearned fees. Jaffe did not deposit and maintain the fees she received in a lawyer trust account prior to earning them.

The fee agreements were later modified to include the above language and to charge 10 percent interest for every 20 days a payment was late, or approximately 180 percent per annum. Additionally, the agreements were modified to add a termination fee equivalent to two months of flat fees. After being terminated, Jaffe charged her client for the amount of the termination fee plus late-payment interest, then initiated a lawsuit against her former client, claiming these fees as damages.

Amid the representation, Jaffe entered two business transactions with her client: subleasing office space and charging $10,000 for a business retreat. Neither agreement included the written disclosures required by RPC 1.8(a) when entering into a business transaction with a client.

The stipulation recited Jaffe's selfish motive and multiple offenses as aggravating factors. In mitigation, it recited her lack of a prior disciplinary record.
BAR PEOPLE

Among Ourselves

Schwabe, Williamson & Wyatt attorney Sarah Lawson has been elected to the board of directors for the National Native American Bar Association. Lawson works with tribal governments and tribal entities to achieve self-governance and economic development goals while protecting tribal resources and sovereignty. Her work is particularly focused on tribal tax and real estate matters, and she is widely regarded as an authority on issues involving Indian trust land.

Stoll Berne attorney Rob Shlachter and his wife, Mara Shlachter, are being honored with Classroom Law Project’s 2021 Legal Citizen of the Year Award, which is scheduled to be bestowed virtually on April 15, 2021. Since 1996, the Shlachters have been coaching high school mock trial teams, first at Catlin Gabel and then at Lincoln High School. Their teams have won four state championships and have finished in the top four many times. They have mentored more than 300 students. In 2012, the Shlachters received the Sussman Award for their outstanding contributions in the community. In 2018, they were honorees during the 10th Anniversary Celebration of Hillel of Greater Portland, where they provided key leadership and funding and where Rob served as the first board chair. Also in 2018, Rob received the Oregon State Bar Association’s Owen M. Panner Professionalism Award.

Megan Ferris, a trial attorney and shareholder with MacM illan, Scholz & Marks, is now a member of the Federation of Defense & Corporate Counsel (FDCC). The FDCC is an invitation-only organization for U.S. and international civil defense litigators, senior corporate counsel and insurance claims executives. Only a limited number of lawyers in private practice can participate. Nominees must be of high professional standing, demonstrate good moral character and devote a substantial amount of their professional time to the defense of civil litigation. Ferris’ civil litigation practice includes construction defense, insurance defense and commercial litigation in Oregon and Washington.

Kim Hoyt, a senior litigation partner at Garrett Hemann & Robertson in Salem (where she also served as managing partner from February 2015 through December 2020), has been selected as the Oregon Chapter president of the American Board of Trial Advocates. Her term began Jan. 1, 2021. ABOTA is an invitation-only national association of 7,600 experienced trial lawyers and judges dedicated to the right to civil jury trials.

Tonkon Torp litigation partner Anna Sortun has been elected to the board of directors of Oregon Humanities. Oregon Humanities was established in 1971 and works to connect Oregonians to ideas that change lives and transform communities through programs such as Humanities in Perspective and The Conversation Project. In 2016, Tonkon Torp began hosting Conversation Project lunches for lawyers and staff as a way to engage in thoughtful dialogue about aspects of diversity.

Moves

Kilmer, Voorhees & Laurick has moved into new offices at Montgomery Park in Portland. The firm had spent the past 25 years in Portland’s Koehler House. The move allows for new ergonomic equipment, efficient office design and improved collaborative opportunities. The firm now can be found at 2701 N.W. Vaughn St., Suite 780, Portland 97210, as well as at kilmerlaw.com.

Lane Powell has welcomed two new associates to its commercial litigation team in the Portland office. Sarah Molinoff has a broad range of experience defending companies in complex commercial disputes and litigation, and has appeared before state, federal and administrative tribunals. She also has experience with a wide range of white-collar matters (including criminal trials), as well as internal and regulatory investigations. She has defended clients in enforcement actions by the Department of Justice, the Consumer Financial Protection Bureau and other agencies. Carlisle M. Pearson worked as a summer associate at the firm, assisting with litigation matters involving real property and land use, constitutional law, landlord-tenant law, as well as civil, business law, contracts, fraud and intellectual property.

Francis Barnwell, Kathryn Hindman, J. Kent Pearson, Maryann Yelnosky and Anne Denecke have joined to form Arbor Employment Law in Portland. The new firm focuses on representing private and public sector employers in employment and labor law matters. For more information, visit arboremploymentlaw.com.

Dunn Carney has announced that three attorneys have been named partner
and another has been hired as an associate. New partner David Boyer joined the firm in 2015 and handles real estate and corporate matters. He focuses on working with closely held businesses and commercial real estate transactions. Chelsea Glynn joins Boyer among the partner ranks; she helps businesses, municipal bodies, property owners, tenants, property managers, homebuilders, employers and individuals with an array of real estate, employment, construction and design, land use, administrative and environmental matters. Jason Powell also has been promoted to partner. He is a seasoned real estate, securities and corporate attorney with substantial experience advising real estate investment companies and developers, real estate fund managers, lenders and investors in experienced businesses and startups across the United States. Sam Klau sen has joined the firm as an associate. She recently graduated from Willamette University College of Law, where she was an extern to Oregon Supreme Court Chief Justice Martha Walters and editor-in-chief of the Willamette Law Review.

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In Memoriam

Lawrence A. “Lare” Aschenbrenner passed away peacefully in his sleep on Sept. 5, 2020, surrounded by family at his home in Anchorage, Alaska. He was 90 years old.

Aschenbrenner was born in Spokane, Wash., on Aug. 16, 1930, to Edward and Lydia Aschenbrenner. He was proud to be a Grants Pass High School Caveman and appropriately “loathed” their local rivals, the Medford Black Tornadoes. He was also a proud Duck, having graduated from the University of Oregon. He served in the U.S. Army during the Korean War, attaining the rank of corporal.

As the son of a Methodist minister, Aschenbrenner learned at an early age to treat all people fairly. His parents were vocal opponents of all forms of discrimination, and he embraced those beliefs by dedicating his life to fighting for the rights of underrepresented communities. His pursuit of equality and justice began soon after his graduation from the University of Oregon School of Law in 1957, when he accepted the first of his positions in public service. He was appointed as a justice of the peace in 1958, elected as a district attorney in 1960 and became Oregon’s first public defender in 1964.

As public defender, Aschenbrenner pursued many post-conviction relief suits and gained the release of several wrongly convicted African Americans — some of whom were serving life sentences. In the summer of 1967, he spent a month in Jackson, Miss., as a volunteer attorney for the Lawyers’ Committee for Civil Rights Under Law. He returned to Mississippi with his family in January 1968 as chief counsel of the Jackson Office of the Lawyers’ Committee — at the time the largest civil rights law office in the South. He documented his first-person story in the book “Civil Rights Lawyers in the South, The Untold Story,” which is available on Amazon.

Aschenbrenner’s focus shifted to the protection of Native American rights upon returning from Mississippi to Oregon, and he spent the next 34 years seeking to establish and protect the rights and powers of Native American individuals and tribes. At one point, he worked for the Native Ameri-
can Rights Fund in Washington, D.C., and later opened a new NARF office in Anchorage. His work was instrumental in the federal government's recognition of 226 tribes in Alaska and included important and successful subsistence rights litigation.

The Alaska ACLU honored Aschenbrenner in 2002 with the Charlie Parr Lifetime Achievement Award for his lifelong commitment to advancing the cause of basic human rights for all people and his many years of public service. The University of Oregon Law School Alumni Association honored him in 2005 with the prestigious Frohmayer Award for Public Service, which is bestowed on graduates whose public service brings honor to the school.

Aschenbrenner is survived by his wife of 67 years, Catherine “Katy” Aschenbrenner; children Ted (Caroline), Dan (Sandy), Connie and John (Mimi); grandchildren Sam, Luke and Annykate; and loving in-laws, nieces, nephews and many longtime friends. His older brother, Stan Aschenbrenner (Jackie), and his younger sister, Ernestine Cole (Richard), both preceded him in death. A memorial service will be held when circumstances allow.

In lieu of flowers, the family asks that donations be made to the Mississippi Center for Justice at mscenterforjustice.org, 963 Division St., Biloxi, MS 39539; or the Native American Rights Fund, 1506 Broadway, Boulder, CO 80302-6217.

Alice Marie Plymell was born on Oct. 15, 1938. She passed away on Nov. 12, 2020. Physically disabled since childhood, Plymell decided in the eighth grade that she wanted to be a lawyer, as she saw it as something she could do regardless of her physical impairments.

She received her law degree from the University of Oregon in 1963 and became one of the first three women to practice law in Eugene. She was the only woman to graduate with her class.

During her lifetime, Plymell established the Wade and Elsie Marler Plymell Scholarship at the University of Oregon School of Law in honor of her parents. The scholarship assists young people with disabilities fund their higher education, so they may live their dreams of becoming lawyers.
Plymell was recognized by the Oregon State Bar with the President's Public Service Award in 1990. In 2004, the Lane County Coalition of Senior Programs honored her as one of 10 inspirational people over the age of 60 who were actively involved in work, community and volunteer projects.

During the course of her 57-year career, Plymell provided substantial pro bono work for Legal Aid and Senior Law Service. She also was a longtime champion of the Americans with Disabilities Act, representing the most vulnerable of clients while handling protective proceedings and Social Security Disability claims and appeals.

Outside the office, Plymell was a big sports fan and for many years had season tickets to the University of Oregon women’s basketball games. She was a music enthusiast and fancied Elvis Presley. Inside the office, Plymell loved the practice of law and socializing with colleagues. She was drawn to intelligent, like-minded people and always admired, encouraged and empowered the working mothers in her life, including April Johnson, who worked as a paralegal down the hall from Plymell.

“When my daughter was four, Alice gave her the Meritorious Service Award she received from the University of Oregon School of Law in 2005. It is a crystal duck. My daughter often carried it, especially when we visited Alice’s office,” Johnson recalls. “My daughter treasures it to this day and proudly displays it in our trophy case. Alice was one of the most independent, remarkable, intelligent, successful, strong women and zealous advocates I have had the pleasure to know.”

Jeffrey D. Jones passed away peacefully on Christmas Day 2020. He was 52.

Jones was proud to be an associate professor of law and philosophy at Lewis & Clark Law School. He taught employment law, disability law, property law, property transactions and several jurisprudence courses. He also taught a law and social justice course in Lewis & Clark College’s Department of Philosophy.

Almost as important to Jones as teaching was his love of mentoring students. He appreciated and understood the challenges
faced by law students (and in particular the challenges faced by students of color). He worked with the students to find solutions — he wanted them to succeed. Jones believed in one principle when it came to Lewis & Clark's students: “We may not see eye to eye, but you will have an ally in me for life.” Jones was deeply honored when he was awarded Leo Levenson Excellence in Teaching Award in 2018.

Jones' intellectual curiosity was always taking him in new directions. In 2011, he wrote a law review article ("Property Rights, Property Wrongs, and Dispossession under Self-Storage Leases") on the legal hardships faced by consumers who rent self-storage units. The article has been quoted in several court opinions and *The New York Times*, and resulted in multiple contacts from consumers and the attorneys who represented them. His final work, "Workforce Housing and Housing Preference Policies under the Fair Housing Act," was published posthumously in the *Lewis & Clark Law Review*.

Before his death, Jones’ plans included continuing his pro bono work with the Lincoln County office of Legal Aid Services of Oregon relating to homeless rights issues. He also had ideas under development for his Legalcide podcast and website (www. legalcide.com), which focuses on how the average citizen faces an often-daunting legal system on their own.

Jones and his wife, Tamara (also an attorney), were fortunate to have worked together on several presentations on a variety of employment law topics at state and regional conferences. They also co-wrote a law review article on Oregon's Pay Equity Act. These projects resulted in many loving debates as to who was the better speaker, writer, scholar, etc.

Jones was born in Milwaukee, Wisconsin. He received his master's and Ph.D. in philosophy from the University of Wisconsin-Madison and his Juris Doctor from the University of Michigan-Ann Arbor. Prior to joining the faculty of Lewis & Clark Law School in 2007, Jones was an associate attorney and of counsel at Barran Liebman.

Jones is survived by his wife, Tamara Russell Jones; his mother, Brenda Jones; sisters, Sherri Jones and Stacy Jones (David DiIorio); his mother-in-law, Beverly Russell (Jim Slagle); his brother-in-law, Michael Russell (Jill); and many other relatives and friends.
Memorial contributions should be made to the Jeffrey Jones Memorial Tribute Fund at Lewis & Clark Law School, which will award money annually to a student who has furthered social justice, racial justice and/or access to justice.


Born in Indonesia to a Dutch father and an Indonesian mother who were prisoners of war during World War II, DeGroot moved with his family to the Netherlands in 1950 and subsequently immigrated to Klamath Falls. He completed his undergraduate studies at the University of Denver, where he ran track and played soccer and still holds multiple scoring records.

After college, he joined the U.S. Army and was stationed in several locations, including Rotterdam in the Netherlands, before making his way back to Denver with his first wife and only child. There he became a realtor.

DeGroot furthered his education at the Northwestern School of Law of Lewis and Clark College, earning his Juris Doctor degree in 1982. While there, he served as the president of the Minority Law Student Association. He practiced with the law firm of Linstedt and Buono in Portland for several years before being called into active duty as an Army reservist to serve his country.

DeGroot was most proud of the efforts he and his friend Jordan Schnitzer led to restore the Astoria Column.

Most importantly, Tienson was a devoted father to his son, Erik; his daughter, Julia; Julia’s husband, Todd, and their baby, Gavin. He was a superb storyteller and looked forward to sharing those stories with Gavin who, at the age of 6 months, always smiled when Tienson entered the room.

For those who wish to make a contribution in memory of Tienson, the family suggests donations to the Chinook Indian Nation at chinooknation.org or Columbia Riverkeepers at columbiariverkeeper.org.

Additional Notices
Gersham Goldstein
81, Portland, Aug. 6, 2020
Sonya A. Wedin
77, Lake Oswego, Aug. 15, 2020
Karol Wyatt Kersh
84, Salem, Aug. 18, 2020
Mark W. Hohlt
65, Salem, Dec. 13, 2020
G. Duff Bloom
59, Lake Oswego, Dec. 24, 2020
Kendrick M. Mercer
85, Hope, Idaho, Dec. 24, 2020

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

Email notices to: editor@osbar.org

Submissions are subject to editing and published in the order received. The Bulletin publishes photographs (single headshots only) in “Moves” and “Among Ourselves” and “In Memoriam.” The fee is $20 for each photograph. The notice itself is free. Paid professional announcements are also available.

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PARTING THOUGHTS

The Power of L.A.C.E.

By Yvette M. Alex-Assensoh

According to the latest report from the National Association for Law Placement (NALP), women and people of color continue to be well represented in law school and summer associate positions. Yet, women of color leave law firms at higher rates than their white male counterparts and, as a result, comprise less than 2 percent of law firm partners.

These demographics have remained largely unchanged over the years, despite creative and sometimes expensive programmatic interventions to diversify law firms.

Having watched these numbers carefully for almost two decades while working closely with the legal and higher education communities, I am now convinced that partners, as leaders of their firms, must engage in the individual self-reflection, learning and unlearning that inspire organizational change from the inside out.

Rather than starting with large-scale diversity training, I coach law firm partners and other leaders to use the values of L.A.C.E. — Love, Authenticity, Courage and Empathy — to raise their own self-awareness and enact personal change. This positions partners to create the kind of work environment where women of color want to stay and contribute.

No matter the size or specialty of the firm, I encourage partners to start with love — an idea validated in scholarship on social neuroscience, positive psychology, and teaching and learning. According to world-renowned psychologist Barbara Fredrickson, for example, love is the master value that loosens the hold of negative emotions like fear and anger. Love helps partners understand how their own biases cause them to undervalue the contributions of women lawyers of color.

In L.A.C.E., love is a wholehearted and selfless concern about the welfare of employees in ways that add value. Authenticity is self-awareness and aligning personal values with behavior. Courage is being who we are afraid to be and doing what we are afraid to do. And empathy is recognizing that someone else’s emotions and experiences have value too.

The first step is for partners to apply L.A.C.E. to themselves.

Using law review articles and other tools, partners explore self-love through increasing their own knowledge about race, gender and power. Indeed, one of the most insidious and pervasive myths that self-love often exposes is an implicit bias about the racial inferiority of people of color.

According to a nationwide Nextion study, for example, partners gave legal memos lower ratings when told the authors were not white. But women lawyers of color who pushed through barriers to make it to the top echelons of law firms often share that a white partner’s sponsorship made their talents and skill visible to others in the firm, opening doors to choice projects and invitations to share new ideas.

As partners dismantle these personal myths, this work also requires authenticity. Research shows that authenticity, or an alignment between our values and behavior, is important for empowering workplace efficacy. As such, partners reflect on the unique aspects of themselves that they bring into the firm and how they are living out those values with respect to race and gender.

This is especially important for retaining colleagues of color, whose cultures offer different ways of being and engaging. That is why I encourage partners to reflect on the ways in which whiteness — which is the dominant culture in America — is preferred in terms of workplace appearance, culture and speech patterns.

Organizational psychologist Patricia Hewlin has documented how the devaluing of BIPOC cultures in the workplace impairs mental health and well-being. In the end, lawyers of color leave firms where their contributions are unappreciated in search of firms that allow them to bring their entire professional identities into the workplace.

Addressing authenticity also takes courage. This means utilizing self-reflection to show up differently in the firm and also with clients, being more attentive to the subtle but pernicious impact of bias, and embedding appreciation for the cultural insights of lawyers of color into daily operations and performance reviews. It also means welcoming the inevitable resistance and using it as an opportunity to educate others.

And empathy helps partners reflect on the ways in which their bodies respond to the stress and growing pains of personal change. In the book “My Grandmother’s Hands,” Resmaa Menakem writes about how racism causes trauma in all of our bodies, but that each of us reacts differently to that trauma. As a result, I encourage partners to lean into rather than ignore their moods, heart rates, breathing and bodily tension as a way to calm and process emotions. By doing so, they learn that fear is a natural part of change, but that self-empathy helps leaders face their fears and show up as their best, most effective selves.

This is how partners engage in the inner work that provides a steady foundation for the organizational change that transforms lawyers and law firms from the inside out. ■

Yvette M. Alex-Assensoh, a member of the Oregon and Indiana bars, leverages her coaching skills to help people lead more effectively. She is the vice president for equity and inclusion and a professor of political science at the University of Oregon, and adjunct faculty at the University of Oregon School of Law. Reach her at yalex@uoregon.edu.
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