

# OREGON STATE BAR BULLETIN

FEBRUARY/MARCH 2021



## Is There a Place for Us?

**A Conversation About  
Being Muslim-American  
Members of Oregon's  
Legal Community**

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Even though they came to Oregon a quarter of a century apart, U.S. Magistrate Judge Mustafa T. Kasubhai and lawyer Sarah Malik say the Islamophobia they've faced as legal professionals has caused both of them to experience a frustrating disconnect between how they see themselves and how others see and interact with them. They share their thoughts in a new feature called "Conversations," which begins on Page 18.

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# FROM THE EDITOR

## Creating ‘Conversations’

By Gary M. Stein



Bulletin File Photo

Gary M. Stein

When U.S. Magistrate Judge Mustafa T. Kasubhai and lawyer Sarah Malik first contemplated writing the story you’ll find on Page 18 of this month’s *Bulletin*, their idea was to craft a traditional column like the ones you’ll typically find toward the back of the magazine.

But their first meeting, which was supposed to be a one-hour chat over coffee, turned into a multi-hour discussion about how similar their experiences in Oregon’s legal community have been, despite the differences in their age and gender.

“What struck us most is how common this conversation must be behind closed doors,” Malik says, “but how infrequently we hear these words in public spaces.”

That’s true across all segments of society, of course. Much of our political and social discourse tends to feel adversarial these days. But it is often behind closed doors,

in informal conversations with colleagues, that the need to be right often transforms into a desire simply to be heard. There’s a recognition of differences, to be sure, but also an understanding of shared values and a desire to nurture dialogue that moves us forward as a profession and as a community.

Toward that end, the *Bulletin* introduces a new, occasional feature this month called “Conversations” — a place where lawyers and judges can engage in open, honest discussions about topics that are germane to the law, lawyers, the practice of law, the courts and the judicial system.

Future stories might offer stark contrasts: exploring the urban/rural divide; the perspectives of a prosecutor and a defense attorney; a solo practitioner and a big-firm partner. Others will focus on similar experiences: two working lawyer parents; two lawyers who have relocated to Oregon; or maybe two lawyers who failed the bar exam before eventually earning a passing score, talking about their initial disappointment, how their preparations differed after failing the first time and how the entire process impacted their legal careers.

Those are all important conversations for legal professionals to have, of course. But I believe they become especially critical when they help to shine a light on barriers to law practice and access-to-justice issues.

This month, Malik and Judge Kasubhai do exactly that by talking about their experiences as Muslim Americans in Oregon’s legal profession — a conversation that began more than a year ago and raised some uncomfortable issues.

“After our first in-person meeting long before COVID-19, we stayed in regular contact over email discussing how best to share our experiences,” Judge Kasubhai

says. “But even more importantly, we regularly returned to the question, ‘Was it safe for us to share these experiences?’ In a national environment where it is quite easy to communicate and act on hate, we struggled with the potential cost to ourselves.”

Malik and Judge Kasubhai say they resolved to accept that risk and continued with finding a way to share their conversation with a broader audience. “When we moved

*Continued on Page 6*

### Our Editorial Policy

All articles published in the *Bulletin* must be germane to the law, lawyers, the practice of law, the courts and judicial system, legal education or the Oregon State Bar. All opinions, statements and conclusions expressed in submitted articles appearing in the *Bulletin* are those of the author(s) and not of the editor, other editorial staff, employees of the Oregon State Bar, or members of the Board of Governors.

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forward with having this conversation become an article in the Oregon State Bar *Bulletin*,” Malik says, “we met over Zoom to explore (the topic) in greater detail.”

Future “Conversations” may follow that lead and take place over email and Zoom or, once COVID is under control, in face-to-face meetings. Some may involve a moderator who offers specific questions and guides the discussion, while others could go in directions that grow organically.

At the end of the day, though, all will aspire to follow the example set by Malik and Judge Kasubhai by aiming to foster a dialogue that relates to the law, the legal profession and the judicial system — a conversation that hopefully continues beyond the pages of this magazine.

“If there is anything that we hope readers take away from our conversation, it is that equity takes real, painful and expensive work. We hope readers will feel inspired to lead conversations of their own, learn about and challenge their own institutions’ work on equity and take a moment to acknowledge their own biases and privileges,” the authors say. “If this is a reader’s first time learning about Islamophobia, we hope they take some time to reflect on why it’s their first conversation — and how to not make it their last.” ■

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

### Letters to the Editor

The *Bulletin* welcomes letters. They should be limited to 250 words. Preference is given to letters responding to letters to the editor, articles or columns recently published in the *Bulletin*.

Letters must be original and addressed to the *Bulletin* editor. Unsigned or anonymous letters will not be published. (There are exceptions. Inquire with the editor.) Letters may not promote individual products, services or political candidates.

Letters may be edited for grammatical errors, style or length, or in cases where language or information is deemed unsuitable or inappropriate for publication. Profane or obscene language is not accepted.

**Send letters to:** Editor, OSB Bulletin, P.O. Box 231935, Tigard, OR 97281. Or you may email them to [editor@osbar.org](mailto:editor@osbar.org).



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# LETTERS

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## The Right Word

As a semi-retired Oregon lawyer, I so appreciate the *Bulletin's* Legal Writer columns by Professor Suzanne Rowe, whose evident enjoyment of the nuances of the English language deepens lawyers' attention to precision and detail, thereby enhancing the practice of law in our state.

Her delightful December column, "Shades of Gray," distinguished proper usage among clusters of words relating to similar subjects. My wife Barb, a published writer and editor, found interesting Suzanne's astute review of differences of meaning among the words *work*, *labor*, *drudgery*, *grind*, *toil* and *travail*. Leave it to Barb to discern a commonality among these words, and an absence of other words, that tend to reflect what she saw as a subtle, unfortunate feature of our contemporary culture and language.

"What about work for love that brings no material compensation?" Barb asked. "Does she have a word for that?" She was thinking of mothering, with its elements of labor, drudgery, toil and travail, suffused with bursts of joy, discovery and intimacy, and an expansion of self-awareness and love of another accessible through no other relationship. I thought of fathering our three dear and complicated adult children.

We lawyers of course are not unacquainted with pro bono "work for love" — advocacy of a penniless refugee struggling to flee life-threatening danger abroad, or of an indigent criminal defendant or trafficked young woman or child with no family or friends to help them.

In the most basic sense, words are a way of capturing in sounds and letters shared human experiences. They also reflect choices we make as a culture. The transactional economy pervades our public life so thoroughly that we have a difficult time finding or inventing words that integrate, precisely, important but very real impulses and experiences outside the marketplace.

How to convey in a word the choice to do the right thing when the soul calls for that — say, taking a pro bono case — and forgo the appropriate self-interest of working for money?

Are there words that capture the decision to "spend" (there's that marketplace word) some portion of one's time (an irreplaceable human commodity) without material compensation, in favor of obtaining nonmaterial value? Parenting is a common instance of this; but what is the word for the work/labor/travail of the unpaid, unknown artist "working" among us today, compelled to take up her palette and paint from the heart, using up the time she could otherwise devote to earning more money by painting houses?

What words capture the plain fact that as humans our hearts, imaginations, empathy, skills and commitments push us to serve others, and our souls, in ways that are not financially remunerative, despite such efforts draining away our limited time? "Sacrifice" captures parts of this kind of effort, but does not reflect the fact that we deeply desire to do those things. We are therefore not sacrificing, but working for what we desire.

I believe it's a good thing that our lives include serious work that does not pay the bills or grow the bank account, whatever words do or do not exist for that in our language. Perhaps Suzanne might have a word for this "labor of love," alongside her word

cluster of work/labor/drudgery/grind/toil/travail. If so, I would love for her to share it with us in a future column. Calling it out might help summon us to remember those deeper yearnings within us and encourage us to populate our daily planning with efforts to develop the richness of life that transcends the marketplace.

If Suzanne can't locate a word, perhaps a new subcommittee of the bar's pro bono task force might be formed to explore as a public service, without compensation, inventing such a word!

Gary Scharff  
Portland

## Financial Impact

When I passed the bar exam in 1968, I was informed that if I survived as a bar member for 50 years, I would not have to pay bar dues after that. Now, the House of Delegates and Board of Governors have voted to change that contract.

By what authority can this change be retroactive to void the original agreement the OSB made with me in 1968? The Oregon Supreme Court has not allowed the Legislature or the voters the opportunity to retroactively change PERS agreements.

When BOG member David Wade presented the idea, he concluded that there would not be an anticipated financial impact, but he missed the financial impact on 50-year members. If the OSB is in financial straits, this income-based discount structural change may be necessary prospectively for future members, but it should not be applied retroactively.

William P. Haberlach  
Medford

## Inhibiting Free Speech

Judge Melvin Oden-Orr writes ("*Justice for All the People*," *January 2021*) about inspiring confidence in the courts by means of RPC 8.4, which restricts speech and writing by lawyers in 11 categories, including sex, race, religion and many more. The rules of judicial conduct limit the judges in talking





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or writing about even more categories, including political affiliation and socioeconomic status.

But the rules inhibit freedom of speech and violate the First Amendment as well as article 1, §8 of the Oregon Constitution, which protects the right to “speak, write or print freely on *any subject whatsoever*...” That includes race, sex and religion.

Lawyers must speak freely to protect their clients from the power of the court. Lawyers must speak equally freely to *invoke* the power of the court on behalf of themselves or their clients. Lawyers are not an arm of the court; lawyers are the champions of people in groups that are affected by the court’s powers.

The federal and state constitutions provide for the right to counsel in criminal cases, and to an *impartial* jury in Oregon. Art 1 §7. Federal and state constitutions provide for a jury trial, in Oregon for *all* civil cases. §17. But one cannot have an *impartial trial* in Oregon or anywhere else without vigorous voir dire to determine if jurors are desirable or impartial in areas of sex, marriage, political belief, race and religion. One cannot have a civil trial without a lawyer who likewise can vigorously present a case regardless of racial, sexual, familial issues — the list goes on — that may play a factor. This is plain common sense.

In a sentence, the right to a fair trial, before life, liberty, property or children are taken, trumps the sensitivity witnesses and parties have.

Judges should be free to speak, too. They represent the people, and the people care about the issues. The people deserve to know what judges think, and judges have the right to express themselves in a way that supports themselves and their sense of honor without fear of a disciplinary hearing. ■

*Roger Ley  
 Portland*



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## Number of Jury Trials Continues to Decline, ABA Study Says

A study administered by The American Bar Association Commission on the American Jury has found that the number of cases decided by jury trials has dropped so dramatically in recent years in both federal and state courts that “the jury trial is an exceptional rather than a commonplace outcome.”

The study, which surveyed 1,460 lawyers and judges from 2016 to 2019 about the importance of jury trials in the judicial process, says that while judges and lawyers agree that jury trials are fairer than other alternatives, jury trials have been suppressed by mandatory arbitration, damage caps, criminal sentencing guidelines, mandatory minimum sentences and other alternatives. Civil jury trials fell from 5.5 percent in 1962 to 0.8 percent in 2013, the study says, while the percentage of criminal jury trials decreased from 8.2 percent to 3.6 percent in 2013.

The study, “Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges,” was co-authored by American Bar Foundation research professor Shari Seidman Diamond and Jessica M. Salerno, associate professor of psychology at Arizona State University, and published in the Fall 2020 issue of the *Louisiana Law*

*Review*. In it, Diamond writes that “the factors that have reduced access to and use of jury trials comes at a cost to society. Our laws need to safeguard citizen participation in the justice system by ensuring that jury trials don’t disappear.”

To read the full study, go to <https://bit.ly/39oXcWY>.

## Legal Research Companies Fastcase, Casemaker Merge

Longtime competitors Fastcase and Casemaker officially merged on Jan. 1, creating a single online legal research company with an estimated subscriber base of more than three quarters of all lawyers in the United States.

The combined company now is operating under the Fastcase brand, serving more than 1 million lawyers from state bars in all 50 states, the District of Columbia and the U.S. Virgin Islands, as well as almost 50 local and special-focus bars. Nothing immediately is set to change for either platform, company officials say.

For details, log in to your OSB Dashboard at [hello.osbar.org](http://hello.osbar.org) or visit [fastcase.com](http://fastcase.com).

## CLP Legal Citizen of the Year Celebration Set for April 15

Join Classroom Law Project for a virtual event on Thursday, April 15, celebrating its 2021 Legal Citizen of the Year winners, Stoll Berne attorney Rob Shlachter and his wife, Mara.

The Shlachters are being honored for their contributions to civics education in Oregon, including serving as high school mock trial coaches since 1996.

For more information, visit [classroom-law.org/product/2021-legal-citizen-award-celebration](http://classroom-law.org/product/2021-legal-citizen-award-celebration).

## New Diversity Report Shows Slow, Incremental Progress

Women and people of color continued to make incremental progress in representation at major U.S. law firms in 2020, according to a report released Feb. 2 by the National Association for Law Placement (NALP).

The percentage of Black partners and Black associates exceeded 2 percent and

5 percent respectively for the first time in 2020, the annual “Report on Diversity at U.S. Law Firms” says; however, representation of Black lawyers in law firms still trails that of Asian and Latinx lawyers.

After experiencing several years of declines following the Great Recession, the percentage of Black women associates (3.04 percent) surpassed the 2009 figure of 2.93 percent for the first time, the report notes, but Black and Latinx women each continued to represent less than 1 percent of all partners in U.S. law firms last year.

## By the Numbers

### Doing Their Research

Sixty-five percent of lawyers in the U.S. regularly use free online resources to conduct legal research, according to the ABA’s 2019 Legal Technology Survey Report, while 57 percent turn to fee-based services. When asked which paid online legal research service they use most often, nearly half of all lawyers (49 percent) say Westlaw. About one-fourth (28 percent) say Lexis Advance. Here are the most popular free choices:

**20%** Findlaw

**18%** Fastcase

**18%** Cornell’s Legal Information Institute

**15%** Government website

**13%** Google Scholar

**8%** Casemaker

**Note:** Longtime competitors Fastcase and Casemaker officially merged on Jan. 1 and now operate under the Fastcase name. For details, see the story above or visit [fastcase.com](http://fastcase.com).

## Quotable

*"We take all of the questions out of the equation, and people who are non-binary and participating in the system can just focus on their participation instead of being distracted by whether or not their identity will even be recognized, respected. I hope it signals that you can be you and be a lawyer."*

— Vancouver, B.C., lawyer Lisa Nevens, who is non-binary, after the Provincial Court of British Columbia announced in December that it will require lawyers, witnesses, defendants and other participants in court proceedings to specify a gendered title — Mr., Ms., Mx. or "Counsel" — to ensure that the court addresses them correctly. "If a party or counsel do not provide this information in their introduction, they will be prompted by a court clerk to provide this information," the directive says.

**Source:** LGBTQ Nation (Dec. 24, 2020)

At the same time, the number of LGBTQ lawyers in large law firms continued to rise steadily in 2020. The overall percentage of LGBTQ lawyers increased by approximately one-third of a percentage point last year, rising to 3.31 percent. LGBTQ representation among summer associates continued to grow at a much faster pace, increasing from 6.86 percent in 2019 to 7.68 percent in 2020.

The percentage of summer associates who are people of color increased by 1.2 percentage points in 2020, the report says, growing from 35.26 percent in 2019 to 36.48 percent in 2020. Women accounted for over half of all summer associates (53.62 percent) for the third year in a row.

Read the full report online at [www.nalp.org/reportondiversity](http://www.nalp.org/reportondiversity). ■



*"I always forget - when we switch to Daylight Savings Time, do we gain a billable hour or do we lose one?"*

# OREGON STATE BAR BULLETIN

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# BAR COUNSEL

## *Tips for Remote Lawyering Outside of Oregon*

### Ethics Abroad

By Nik Chourey and Amber Hollister



Over the past year, many Oregon lawyers have picked up their laptops, smartphones and files and moved their law practices to a home office or another more scenic locale — whether it be a few miles or a whole country away.

This newfound geographic flexibility may be one of the few silver linings of coping with the pandemic.

Prior to making a move, though, Oregon lawyers should consider how another jurisdiction's ethics rules might apply to their remote practice elsewhere. After all, no lawyer wants to deal with an unlawful practice of law complaint when seeking a change in scenery.

With that in mind, this month's Bar Counsel column considers some of the ethics issues at play when working remotely.<sup>1</sup>

#### Finding the Right Rules

Whenever Oregon lawyers venture out of state, they should be aware of the basic principle that they must not "practice law in

a jurisdiction in violation of the regulation of the legal profession in that jurisdiction." Oregon RPC 5.5(a).

The Oregon Rules of Professional Conduct, in essence, direct lawyers to comply with the underlying rules of the jurisdiction in which they land. So a lawyer flying to Kauai should take a hard look at Hawaii's Rule of Professional Conduct 5.5 before setting up shop; the lawyer heading to Miami for an extended trip should look at Florida's Rule of Professional Conduct 5.5, and so on.

Unsurprisingly, states differ both on the black letter of the rule itself and the rule's interpretation.

Almost all states follow ABA Model Rule 5.5's prohibition on "establish(ing) an office or other systematic or continuous presence" or "hold(ing) out to the public or otherwise represent(ing) that the lawyer is admitted to practice law" in a jurisdiction where they are not admitted. See ABA Model Rule 5.5(b). Most states have also adopted some version of a temporary practice exception for lawyers licensed elsewhere who are seeking to practice temporarily, akin to ABA Model Rule 5.5(c), but not all have done so. (Spoiler Alert: To date, Hawai'i has not adopted a temporary practice exception; Florida has, but its rule comes with nearly five pages of detailed commentary.)

Even after locating the jurisdiction's rules on point, lawyers often have many questions because what might at first seem like a simple rule analysis quickly becomes complicated. Is working out of a hotel room really establishing an office for the practice of law in another jurisdiction? If clients and colleagues cannot tell that you are out of state because your mailing address, phone number and email address remain the same, does it really count as working remotely?

May lawyers "appear" by videoconference in a jurisdiction where they are licensed if they are physically located in another state? If a lawyer does not advertise to or retain clients in the new jurisdiction, does that help matters? And finally, what does the word "temporary" really mean?

A newly published American Bar Association Formal Opinion 495, titled "Lawyers Working Remotely," attempts to answer some of these questions.<sup>2</sup>

#### New Guidance

The ABA opinion begins with an important caveat, because under ABA Model Rule 5.5(a), each state's lawyers must not engage in any practice prohibited by a local jurisdiction in which they are not licensed.

With that in mind, the committee provides specific guidance, stating the boundaries for lawyers to abide by while practicing outside of the jurisdiction where they are licensed ("licensing jurisdiction") and from a jurisdiction in which they are not admitted ("local jurisdiction"). The opinion acknowledges the rise in remote lawyering and the reality that, during the COVID-19 pandemic, lawyers who reside in a jurisdiction where they are not admitted may have had little choice but to sustain their practice remotely.

If a lawyer's conduct does not constitute the unlawful practice of law in the specific jurisdiction at issue, then the lawyer may ethically practice remotely as long as the lawyer is authorized to practice in the licensing jurisdiction, either by the highest court of a state or by a federal court.

If a lawyer is so authorized, then — under Model Rule 5.5(b)(1) — the lawyer must not "establish an office or other systematic and continuous presence in (the) jurisdiction (in which the lawyer is not licensed) for the practice of law." (Note that





*is pleased to announce*

**CHARLES D. SARKISS**

**HAS JOINED THE FIRM AS AN ASSOCIATE**

Born and raised in Dallas, Texas, Mr. Sarkiss graduated from the University of Oregon School of Law, cum laude, in 2020.

Prior to joining the firm, he spent a year as a Law Clerk at the Oregon Department of Justice and eight months as a Court-Certified Law Clerk at the Jackson County District Attorney's Office. Charles' background in trial work and civil litigation compliments his new practice areas which include general civil litigation, domestic relations disputes, and land use disputes.

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### **Resources for Working Remotely**

- "New Guidance for Lawyers to Navigate Model Rules While Working Remotely," American Bar Association Standing Committee on Ethics and Professional Responsibility (Jan. 18, 2021): <https://tinyurl.com/yy8n36tu>
- "No Free Lunch: The Global Privacy Expectations of Video Teleconference Providers," by Lisa R Lifshitz (ABA Business Law Today, August 2020): <https://tinyurl.com/yxk28cwq>
- "What Law Firms Can Learn from the Remote Work Experience," by Brad Peterson (ABA Law Technology Today, Sept. 30, 2020): <https://tinyurl.com/y64yp6ag>
- "Roundtable Discussion on Working Remotely" (ABA Legal Technology Resource Center): <https://tinyurl.com/y3gfo78r>
- "Thriving, Not Just Surviving, While Working Remotely," by Ann Marie Wittgraf (ABA Law Practice Today, Aug. 14, 2020): <https://tinyurl.com/yxmukuty>
- "Resources for Working Remotely in the Age of Covid-19" (OSB Professional Liability Fund forms): <https://tinyurl.com/y62lb3k5>
- "PLF Recorded Webinars on Working Remotely" (PLF inBrief newsletter, May 2020): <https://tinyurl.com/y4xmcchy>
- "Working Remotely: The Takeaway," by Tanya Hanson (PLF inPractice blog, June 18, 2020): <https://tinyurl.com/y3sfejz3>

— Sheila Blackford, PLF practice management attorney

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the opinion explains that "(t)he lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law.") To avoid a prohibited presence, a lawyer should not use a local address on office letterhead, business cards or websites, and refrain from providing or offering to provide legal services in the local jurisdiction.

Lawyers should also be aware of conditions that may constitute the ethical temporary practice of law. Model Rule 5.5(c)(4) provides that lawyers admitted in another

jurisdiction who are not disbarred or suspended may practice on a temporary basis in a local jurisdiction so long as their legal services arise out of, or reasonably relate to, the lawyer's practice in their licensing jurisdiction. While the opinion notes that there is no single definition for the term "temporary," it may include services provided on a recurring basis or over an extended period of time.

### Persuasive Authority

Of course, while ABA opinions provide useful guidance, they are not binding in any jurisdiction. Opinion 495 is especially helpful in jurisdictions that have adopted the ABA's Model Rule 5.5. Nevertheless, lawyers should still check on the rules of the specific jurisdiction in which they plan to practice before embarking, and consider contacting that jurisdiction's ethics helpline if one is available.

A few states draw a noticeably strict line on remote practice, even when it is temporary, just based on the fact a lawyer is physically located within their geographic boundaries. What is universal is that the purpose of Model Rule 5.5 is to protect the public from unlicensed and incompetent lawyers.

The rise in the remote practice of law means that lawyers must consider the ethics of the multi-jurisdictional practice of law, such as RPC 5.5. Lawyers with ethical concerns in a changing legal world are always welcome to contact the Legal Ethics Helpline at (503) 431-6475 or turn to legal ethics resources on BarBooks (online at [osbar.org/legalpubs](http://osbar.org/legalpubs)) for answers. Together, we can manage hard ethical questions that may arise during the practice of law. ■

*Amber Hollister is general counsel for the Oregon State Bar; reach her at [ahollister@osbar.org](mailto:ahollister@osbar.org). Nik Chourey is deputy general counsel for the OSB; reach him at [nchourey@osbar.org](mailto:nchourey@osbar.org).*

### ENDNOTES

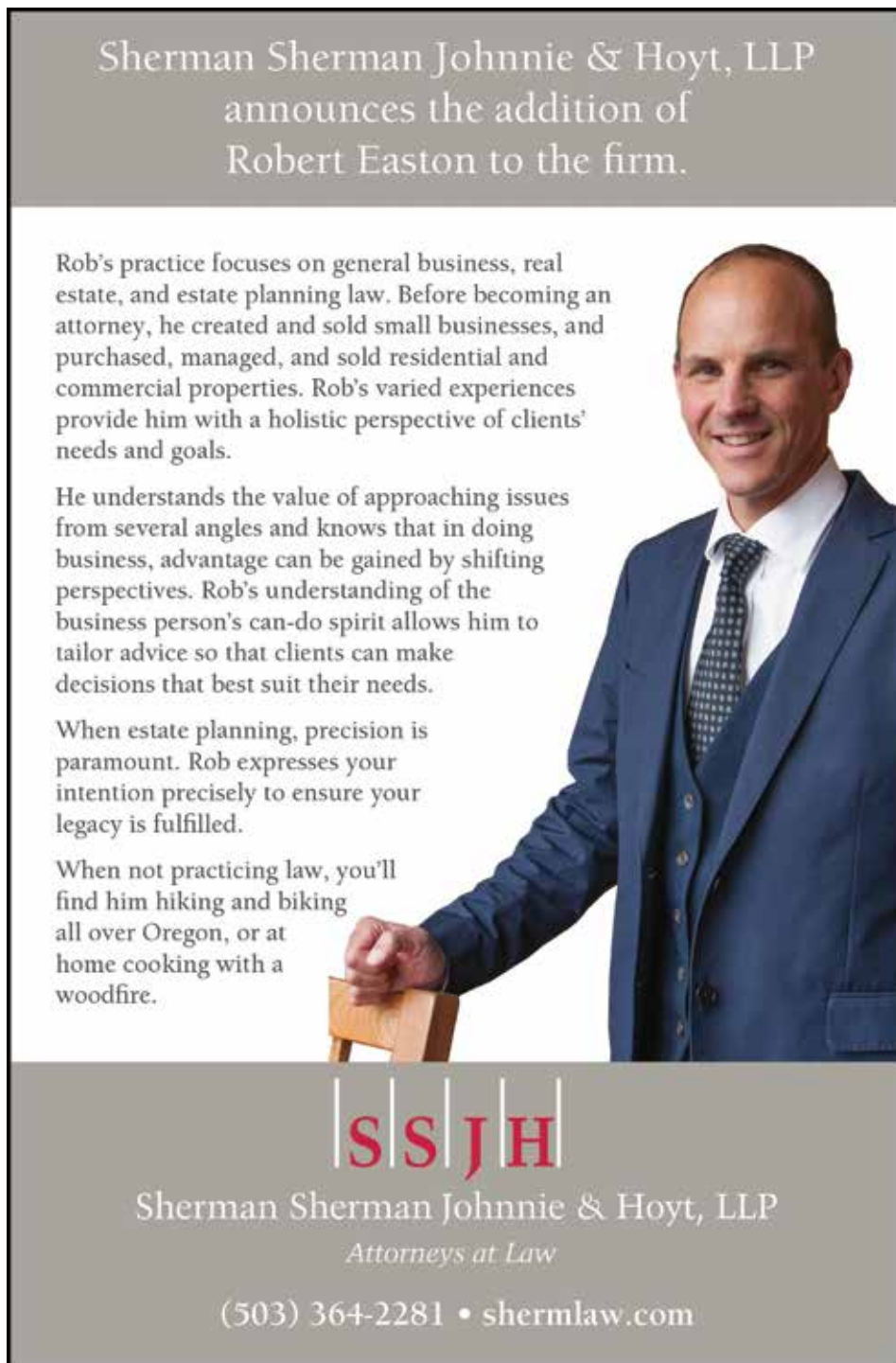
1. Questions regarding whether and when a lawyer licensed in another jurisdiction may practice law in Oregon are outside the scope of this article.
2. See [americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba-formal-opinion-495.pdf](http://americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-495.pdf).



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## *Finding Motivation to Write While Working From Home*

### Beat the Slump

By Elizabeth Ruiz Frost



Elizabeth Ruiz Frost

If I were to ask 100 Oregonians to name their favorite time of year, I'll bet none of them would say February and March. Not one. This final stretch into spring can be particularly challenging in Oregon, and perhaps exceptionally so this year.

The mornings are dark and the days are still short. Three-day weekends are few and far between. Everything is wet all the time. And this year, many still find themselves working from home in permasweats, maybe harried with kids homeschooling underfoot, maybe worried about the health of friends and family. And we've been doing it for a year!

Writing is hard even in the best of times; for some, it's harder than ever right now. That's why I've compiled some ideas below to keep us all moving forward, to keep us putting pen to paper. And yes, I confess that I wrote this in large part because I needed the list for myself.

#### Identify the Value of the Work

Identifying and focusing on the value of your work can be motivating. That's

because recognizing the meaning behind our work creates an intrinsic reward for the work and we are more motivated to do intrinsically rewarding work.

Sometimes legal work that feels like drudgery is, in fact, quite meaningful when we stop to think about it. So when you find yourself thinking, "Not this again," think about what you're writing and why it matters. Will the estate plan you draft bring someone peace of mind? Will the BarBooks chapter you're updating help a new lawyer find her footing and represent clients more effectively? Your work most likely matters very much to an individual or to the community.

Admittedly, there were times in my practice when I couldn't have said that with a straight face, so I might have focused instead on the stability that the work lent my own family.

#### Gamify Your Work

Yeah, yeah — deeper meaning. Whatever. Sometimes extrinsic rewards are more motivating than intrinsic ones, and people simply prefer to do things that are fun.

If you're having trouble motivating yourself, gamifying your writing is one way to make it a little more fun. Gamifying means infusing elements of gaming into a non-game application. The idea is that adding gaming elements — keeping score, competing against others, beating a buzzer — creates greater engagement.

Gyms gamify exercise by posting participants' heart rates; the competition drives participants to work harder. Starbucks connects points and challenges to its purchases to drive sales. Workplaces use gamification to increase productivity, too; some post sales leaderboards so the whole room can see who's "winning" that day.

A writer can gamify writing in all sorts of ways — by creating deadlines and reward systems, for example.

For a person who feels tired or unmotivated, nothing is worse than a distant deadline. A distant deadline is basically an invitation to binge a new show on Netflix. So if you find yourself with work to do and not a lot of urgency to do it, create urgency with a game clock. Vow to finish a section of writing before dinner. If you need more accountability, calendar a meeting that will require you to have finished the work.

If artificial pressure isn't your thing, try rewards. Make a deal with yourself that if you finish a project, you can watch the next episode of *The Great Show Everyone is Talking About* or indulge in your very favorite take-out. Smaller rewards can work, too. How about for every 50 minutes of work at the keyboard, you earn one piece of chocolate or one 10-minute walk around the block with your favorite podcast? Of course, that all requires the discipline not to watch the show or steal the chocolate without having done the work.

#### Add to Your Workload

Wait, say what?

For those of you who can hardly find time in your day for a shower, skip this section. This won't apply to you. But the truth is that much like a distant deadline, an empty schedule can lead to inertia. I write from experience. In times when I have not had enough to do, I have had a harder time doing anything at all.

If that sounds familiar, consider lengthening your to-do list to work through it. Perhaps you can find an organization that could use a volunteer with legal experience. Or find a non-legal cause that you feel passionate about and commit time to that. Besides the obvious benefit to the organization, you might find yourself inspired by the work, and the jolt to your schedule could create momentum to tackle the rest of your work.

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## Create New Rituals That Spark Productivity

To regain momentum or build it, consider the rituals in your day. Think about the daily rituals that spark productivity and those you may have created recently that inhibit it.

What do I mean by rituals? If losing weight was one of your resolutions this year — or the year before, or the year before (talking to myself here) — you might have read about creating rituals to support your goals. One way I've heard this explained is that rituals, which are deliberate behavioral choices, spark a behavior beyond the ritual itself. When the rituals become engrained habits, the behaviors they prompt are somewhat automated.

Here's an example: Every night, a person reads a few pages of a book in bed to help get to sleep quickly; in time, the ritual of reading triggers a sleep response. The same theory can apply to creating productive work habits.

You might already have work rituals and habits — maybe filling up a cup of coffee before sitting down to work or checking the day's calendar before starting a new project. For many, changes over the past year to our work schedule and environment disrupted those rituals. That disruption can throw a person for a loop.

I've heard some clever ideas for new, productive rituals. My favorite is the fake commute. One Oregon law student I know takes a walk around the block in the morning to signify the start of the workday, and he takes a walk around the block in the evening to signify the day's end. You can signal the start of a workday in small ways: Put your coffee in a travel mug; wear a suit and heels. Shoes at all, really. Adding back in the rituals you've been missing or creating new ones can signal that it's time to be productive.

Of course, some rituals inhibit productivity. Here's an example from my own life. Throughout my adulthood, I have reserved sweatpants solely for cold and flu season. Sweatpants mean sleeping on the couch and eating soup. My sweatpants had never once overlapped with my professional life. But suddenly, in the stay-at-home era, I found myself wearing sweatpants every day and fighting off real sleep-on-the-couch vibes. What I learned is that I felt more prepared for work meetings when I dressed as if I might leave my house.



Take stock of your new daily rituals and the behaviors they're triggering or inhibiting.

### Ask for Help

Maybe you've bitten off more than you can chew. Just admitting that and asking for help can be a huge relief that could get you back up and running. Maybe someone could help with a round of editing or take on a small chunk of research from a large project. Or maybe the person you're scheduled to meet tomorrow would happily postpone the meeting, giving you more time to work on the thing that's really stressing you out.

Help can come in different shapes and forms. On a typical day in my house, I can't come up with long chunks of time, which makes writing a real challenge. The help I need is in creating that time, not with the work itself. So I ask my partner to deal with dinner or ask a grandparent to host an extended FaceTime with my kids.

Asking for help doesn't come naturally to everyone. Fortunately, sometimes you don't even have to ask. When someone offers to help and you need it, accept the help. Then remember to return the favor when your tank is full and they're depleted.

### Conclusion

Most importantly, take it easy on yourself. You might be capable of doing extraordinary things, but that doesn't mean everything you do must be extraordinary.

Perhaps simply finishing a task is extraordinary enough. I mean, Stanley Kubrick made "Eyes Wide Shut," but that doesn't make "Dr. Strangelove" any less excellent.<sup>1</sup> Give up perfectionism, and allow yourself the grace you'd allow others.

Longer, brighter days are ahead for us. Spring in Oregon can be tough, but a glorious Oregon summer is right around the corner. Look around and each day you'll see new buds on trees and spring flowers emerging. Hang in there. ■

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*Elizabeth Ruiz Frost teaches Legal Research and Writing and other courses at the University of Oregon School of Law.*

### ENDNOTE

1. Please send your strongly worded letters about the art and beauty of "Eyes Wide Shut" to [efrost@YouWillNeverConvinceMeThatIsAGoodMovie.com](mailto:efrost@YouWillNeverConvinceMeThatIsAGoodMovie.com).

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# Is There a Place for Us?



**On Being a Muslim American in  
Oregon's Legal Community**

By Sarah Malik and  
Hon. Mustafa T. Kasubhai





**Editor’s Note:** *In courtrooms and across conference tables, interactions between lawyers tend to be adversarial. But in informal and sometimes difficult conversations with colleagues, the need to be right often transforms into a desire simply to be heard. There’s a recognition of differences, to be sure, but also an understanding of shared values and a desire to nurture dialogue that moves us forward as a profession and as a community.*

*Toward that end, the Bulletin introduces a new, occasional feature this month called “Conversations,” a place where lawyers and judges can engage in open, honest discussions about topics that are germane to the law, lawyers, the practice of law, the courts and the judicial system. This month: Lawyer Sarah Malik and United States Magistrate Judge Mustafa T. Kasubhai talk about their experiences as Muslim Americans in Oregon’s legal profession.*

**We** are both of South Asian descent. We both identify as Muslim American. We are also the first generation of children born to immigrants. And while we differ in gender and age — we came to Oregon almost a quarter of a century apart — we both have faced similar stereotypes, often and variously recast by gender, age and the color of our skin, and the same “othering” of Muslims that is more commonly known as Islamophobia.<sup>1</sup>

Like racism, sexism and homophobia, this discrimination based on the intersection of religion, race and ethnicity often manifests itself in varied forms of exclusion and violence. On a personal level, Islamophobia has caused both of us to experience the frustrating disconnect between how we see ourselves and how others see and interact with us.

Why should you care, and what can you expect to learn from reading this?

The legal profession is based on an ideal of fairness informed by a rigorous scrutiny of the evidence, and driven by a commitment to the rule of law. As Oregon lawyers, we share an ethical obligation to provide competent representation to our clients. Our rules of conduct, under direction of the Oregon Supreme Court, further require us to educate ourselves about barriers to law practice and access to justice arising from biases against people based on certain characteristics, including race and religion.<sup>2</sup>

At some point, we are all likely to represent a Muslim American client, work with a Muslim American colleague or appear in front of a Muslim American jurist. This essay may provide a lens through which you might understand the experiences of Muslim Americans; it might also serve as a prism through which you can consider the intersectional and varied experiences of race, gender, sexual identity and ethnicity in our legal profession more generally.

In addition, law firms and legal employers interested in retaining diverse attorneys may gain insight into the type of experiences that might cause Muslim American lawyers to change jobs or even leave our legal community altogether for somewhere that might seem a “better fit.”

So in that context, we recently interviewed each other about our experiences as law students and legal professionals. We offer that conversation to you here with the hope that these experiences can be included in the stream of dialogue on diversity, equity and inclusion in our legal profession — a dialogue that will help create a place for more of us in Oregon.

**Kasubhai:** *Sarah, what do you mean when you identify as a Muslim American, and how does that intersect with your identity as a lawyer?*

**Malik:** The canned answer I have is that being Muslim is part of my heritage, and to me, it is as much a culture as it is a religion. But it’s more complicated than that.

My parents are Pakistani immigrants who came to California’s Silicon Valley for my father’s career in the newly burgeoning tech industry. Because they immigrated without any family on the West Coast, the local Muslim community became a big part of my childhood and my parents’ social life. Some of my earliest memories are of going to the masjid<sup>3</sup> with them and attending Sunday school — until I begged them to stop making me go after the 9/11 attacks.

This essay may provide a lens through which you might understand the experiences of Muslim Americans; it might also serve as a prism through which you can consider the intersectional and varied experiences of race, gender, sexual identity and ethnicity in our legal profession more generally.





U.S. Magistrate Judge Mustafa T. Kasubhai says there is a strong and deeply articulated commitment to social justice in Islamic traditions and democratic institutions. “And it is on this common ground,” he says, “that I discovered my passion for the law and ultimately my calling to public service in the judiciary.” Photo by Jonathan House

So being Muslim American to me is really a tug-of-war between identities — between the culture my parents left behind but still wanted to instill in me, and the dominant culture I tried to assimilate into in a country that didn’t seem to accept me. And that tug-of-war continued well into my education.

Part of my desire to enter the legal profession stemmed from how I viewed the concept of “justice” as a woman of color. Having grown up in the United States, I heard the phrase “we the people” touted with pride as the foundation for America’s form of government and its legal system. But my own experiences of growing up in a post-9/11 America — whether it was being told to “go back where I came from” without rebuke or watching officers harass my parents

at airports because of the names on their passports — led me to the impression that the phrase actually meant “not all the people.” In my evolving worldview, justice involved the exercise of power by people who did not look like me. Still, I was optimistic that by becoming a part of the legal system, I could take part in changing it.

That has not been an easy path to follow. In the traditional and legal workplace, being perceived as the “diversity hire” or the “token” and receiving offhand remarks about “being one of the good ones” are judgments I’ve been told to politely grin and bear because my reputation is considered more fragile than that of my white counterparts — and because not doing so would limit my career options.

Of course, comments about the way I present myself are something I have gotten used to from both sides of my identity. Having my actions, activities or personal life questioned not only by law students and lawyers but also by my American and Pakistani friends and family because “it doesn’t seem Muslim-like” are reminders that I am constantly fighting an idea of what people perceive Muslims to be.

Perhaps that’s why I find questions like “What does it mean to be Muslim American?” so difficult and why they automatically trigger an internal defensive response. Am I being asked this question

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**On Page 18:** Even though they came to Oregon a quarter of a century apart, U.S. Magistrate Judge Mustafa T. Kasubhai and lawyer Sarah Malik say the Islamophobia they’ve faced as legal professionals has caused both of them to experience a frustrating disconnect between how they see themselves and how others see and interact with them. Photo by Jonathan House



Sarah Malik, who graduated from Lewis & Clark Law School in 2020, now clerks for U.S. Magistrate Judge Mustafa T. Kasubhai in Eugene. She says she wants to stay in Oregon, “but even just a few months after being sworn in as an attorney and a clerk, I am exhausted from the amount of work that it has taken to make a space for myself.” Photo by Jonathan House

to be the spokesperson for all Muslims? Is the person asking this question looking for something to critique about my identity? Is the person also asking non-Muslims this kind of question?

When I do feel comfortable enough to answer, I find myself getting frustrated that people assume my experiences are extremely alien from their own — as if people are not expecting Muslims to be just as human as them. Is it surprising that being Muslim for me isn’t always praying five times a day, or having a marriage arranged by my family, or being covered from head to toe? The answer I wish I gave more often is that my identity as a Muslim woman of color is something that never lets me feel safe — both physically and mentally.

**Malik: Same question to you, judge. What does it mean to you to identify as a Muslim American lawyer and judge?**

You’re right. It is terribly complicated. I have always associated being Muslim American with a rich spiritual and cultural tradition. But I’ve also experienced a deep sense of its unattainability. As a child of immigrants, there was a constant tension between my parents’ ideal of not losing a sense of who we are as cultural Indians and Muslims with the very real experience of also growing up

in America. I’ve struggled with the dilemma that if I can’t unify my experiences, then I fear that I belong nowhere.

My experience included the dueling accusations that I was not Indian (or Muslim) enough by the family and not American (or white) enough by the rest of society. But in my search for balance between these tensions, I discovered a powerful common theme with which I could identify: There is a strong and deeply articulated commitment to social justice in Islamic traditions and democratic institutions. And it is on this common ground that I discovered my passion for the law and ultimately my calling to public service in the judiciary. Of course, there is an awkwardness with identifying so openly as a Muslim American and serving as a jurist. For example, there is the obvious proscription of any religious test for public service in our Constitution. Still, I was shocked to learn that when I joined the federal bench, I had become the first Muslim American federal judge in the country, ever.

I thought that over the centuries in which Muslims were also Americans in this country, I surely couldn’t be the first. But I had failed until that moment, I think, to fully appreciate how Islamophobic our nation is. I give credit and have much gratitude to my colleagues in the Oregon District Court for giving me a chance.

That said, I think it's important to note that being a Muslim American is far from a simple religious identity. It includes ethnicity and race, and in many ways, I really don't have a choice but to identify as Muslim American.<sup>4</sup> For example, I can't change the color of my dark brown skin. Though people have tried to make an Americanized nickname stick ("Moose" just doesn't work for me), I recoil at the idea of erasing myself. And even if I weren't born a Muslim, for many who are neurotically driven to categorize and classify, I'd be close enough in their eyes to put me in that box.

I've come to realize that my identity is a dynamic negotiation between how I see myself and how others see me and, in turn, interact with me. Even though I have always been a private person, I have now become driven to make sure people know I'm here. I feel responsible to others to normalize my presence in the judiciary, and the only way I can do that is to also openly acknowledge my identity as a Muslim American.

Sarah, by way of example, if you or I were to just say the word "Muslim" out loud, could we say it comfortably? Could we say it without conjuring an image of an angry and violent-looking brown man? I think it's hard to do — even for me, and I'm the brown Muslim American man. I think many people in our communities also share that unconscious bias. So I'd like to think that if I'm here long enough and you get to see me on the bench often enough, my presence might help to disassemble images that serve to demonize millions of people.

My Muslim American identity is rooted in a spiritual tradition, informed by an Indian ethnicity, shaped by identity politics, is very much American, and interplays with the perceptions of others whether I like it or not. It is exhausting when I stop to think about it.

**Kasubhai: I came to Oregon for law school in 1993. I fell in love with the Pacific Northwest after I discovered that blackberries grew wild and you could pick them to your heart's content. But it wasn't until after I arrived and fully appreciated how racially homogenous the state was, and how little diversity existed in our legal profession, that I learned about Oregon's history of racial exclusion and its founders' intent to form a white-only**

**state. So, what brought you to Oregon for law school? Did you find that law school supported diversity and equity as you would have imagined it?**

**Malik:** I came to Oregon for law school, quite honestly, because it was my cheapest option. Like many of my peers, I had to pay for law school myself, and I was hyper-aware of the costs that come with the degree. My career before law school was in the NGO/nonprofit field, and I had colleagues and friends tell me their debt-to-income ratio before I even applied. Many public-interest programs for law school don't seem to advertise that your starting salary can be as low as \$35,000, while your average debt can be \$150,000. For me, knowing that I could have a professional degree with manageable debt was what I deemed most important.

Only a few weeks after I submitted my intent to enroll, the Portland MAX stabbings happened. The event, in which a white supremacist stabbed two men after shouting Islamophobic slurs at two Black girls, made me wonder what I had just signed up for. Just like you, it wasn't until I stepped foot in Oregon and on my campus that I realized how white the space actually was. I was not quite prepared for how uncomfortable that would make me feel.

As to your second question, I wish I could tell you that my law school supported diversity and equity the way I had hoped. I was very aware of the fact that I could only count about five South Asian students, and even fewer Muslims, in my class. Coming from a place as diverse as the San Francisco Bay area, the culture shock coming to Oregon was numbing. Despite this, I was eager to make an "impact" on campus, in whatever form that meant. I did it all: I joined affinity bar associations and student groups, attended my law school's Diversity & Inclusion committee meetings and participated in a number of conversations that centered on allyship and anti-racism.

But what continued to dumbfound me was the narrative I encountered in classes — one that involved the historical erasure of communities of color. It was not in my textbooks that I learned conquest and slavery as the foundation of certain areas of the law, but from discussions that only happened because of one-off questions usually asked

by students of color. Very little context was provided with certain cases, and I felt frustrated that I was supposed to read these opinions and detach any emotion so that I could keep finishing the rest of my work — even though I knew we would not discuss the horrors of those cases in class.

I can count only one time in law school that I experienced safety. Early on, one of my 1L professors emailed me and another Muslim student after the announcement of a federal executive order that targeted Muslim-majority countries; she offered her office to us as a space to process this objectively difficult headline and speak freely about it. But again, I was met with silence a few months later when "Punish a Muslim Day" flyers were circulated at masjids in Oregon. No one reached out then, even when I forwarded the news along.

“My Muslim American identity is rooted in a spiritual tradition, informed by an Indian ethnicity, shaped by identity politics, is very much American, and interplays with the perceptions of others whether I like it or not.”

The year after, when a terrorist targeting Muslims killed 51 people and injured 40 more during Friday prayer at two masjids in Christchurch, New Zealand, neither the Oregon State Bar nor my law school ever addressed the incident. When I asked an affinity bar association that I was a part of to condemn the attack, I was asked to be the one to write the statement — and it still took two weeks to have it published. At a



time when I needed support from my legal mentors, I was and continue to be reminded of how isolating my own experiences could be.

It feels difficult to explain what a threat to your physical safety does to your mental health. For all the attempts to fit in over the years, I'm not sure if there will ever be a time that I won't feel on guard. But what I have come to realize is that the only way to have leaders advocate for your community is if you take on the extra work of advocating for yourself.

“Once we can accept someone else's experience as valid, then we can have an uncomfortable and hopefully productive conversation that might start breaking down barriers.”

During law school, I often found myself wondering why so many of my white classmates stayed silent when so many of us had to take on this work. But perhaps the most disappointing conclusion was realizing how silence and compliance was rewarded over advocacy. And it tired me out. By 2L year, I stopped showing up to affinity group meetings on campus. I went to law school purely to attend class and get my work done. I knew I should have done more to show up for my BIPOC classmates, but I couldn't even show up for myself.

**Malik: With all of that said, how different was your experience at law school than what I just described?**

**Kasubhai:** I agree with the themes you described. Just different specific experiences.

In 1993, I was the only South Asian or Muslim American in my law school class. There were only a handful of students of color. I know that several white classmates considered many of us to be affirmative action beneficiaries. The sentiment was conveyed pejoratively, and it was stigmatizing. I would say that whatever good trouble the students caused would eventually be met with some faculty objecting to our extra-curricular resistance. But for the most part, I couldn't tell you if it was just good old-fashioned academic paternalism at play or something else.

The most demoralizing experience for me came when it was time for bar preparation. The OSB's diversity representative had often met with the students of color at the University of Oregon School of Law and made available some financial support for the non-traditional students of color. But when I asked about applying for some assistance, she told me I would not get any because I didn't qualify as an eligible person of color. I was shell-shocked.

My experience as a Muslim American of South Asian descent is often filled with this kind of divergent experience. To some, I'm too alien if not also dangerous. To others, I'm not enough of a person of color. It took a while after that, and many years of practicing law, before I felt comfortable trusting and working with the Oregon State Bar on diversity and equity issues.

**Malik: Was it any different when you entered the legal profession, including becoming a judge?**

**Kasubhai:** I won't enumerate the countless macro and micro aggressions I've experienced. I'd like this conversation to be more than that. I will say, though, that I know I'm certainly not the only one who experiences these kinds of aggressions.

That said, it's important to acknowledge that for most of my adult life — including in law school, private practice and as a judge — I have had a recurrent experience whenever a tragic act of terrorist violence occurs anywhere in the world. While mourning the senseless loss of life in the 1995 Oklahoma bombing that killed hundreds of people, for example, I concurrently felt the dread of not knowing whether the perpetrator might be a brown person with an Arab name. Because when that happens,

as it did on 9/11, I brace for the backlash of hate crimes directed at anyone who might look like a Muslim, including family members, friends and me.

More specifically to the point of racism in our legal profession (and in Oregon), it quickly became apparent to me that we must meet the challenge of becoming comfortable with being uncomfortable about talking about race. Oregon is predominantly a white state because of past practices and official policies that excluded Black, Indigenous and other people of color. That fact leaves very little opportunity for white Oregonians to confront their own racism face to face with people of color in real time.

I have met many legal professionals who purportedly hold the ideals of diversity and equity close to their hearts, but who also become very defensive when talking about racism. The truth is, white privilege in Oregon insulates so many in our state from ever having to deal with the issue. Some lawyers and judges have told me over the years that they just don't see racism in Oregon, and when examples and experiences are shared, they still won't believe it. This kind of denial makes real conversations nearly impossible and allows racism to go unchecked.

I'll share one regularly occurring experience of mine that embodies a kind of pernicious racism that feeds off this denial. As a lawyer and judge, I have experienced many times that when I speak passionately about something — either one-on-one or in groups — the reaction among some people is a kind of shutting down and defensiveness that seems out of proportion to the subject matter. I've shared this observation with other people of color, and almost universally, they experience the same thing.

I've come to realize that my audience sees an angry brown man when I speak expressively. I've been forced to be acutely aware how the stereotype of the Middle Eastern terrorist is a trope that informs how people interpret my presence in their lives. In turn, I find myself remaining silent when I otherwise would have participated. It is no secret to me that this pernicious stereotype has been used by others to foreclose significant professional opportunities as well. This is a form of Islamophobia.



U.S. Magistrate Judge Mustafa T. Kasubhai and lawyer Sarah Malik say they hope that their experiences as Muslim Americans can be part of a stream of dialogue on diversity, equity and inclusion in the legal profession that “will help create a place for more of us in Oregon.” Photo by Jonathan House

**Malik: It is a frustrating problem to deal with. How do you overcome the need to offer proof when talking about these experiences?**

**Kasubhai:** We have to set aside conventional ideas of proof when we are dealing with the personal and interpersonal work of equity, diversity and inclusion.

As a judge, I can appreciate the challenge of employing a different mode for understanding truth than that which most lawyers are accustomed to in our work. But I’d ask anyone whose first response is to doubt that racism is real to consider that disbelief comes from a place of privilege and the luxury of not having to chronically suffer the diminishment of one’s identity. I’d ask that person to acknowledge the vulnerability of anyone willing to share a discriminating experience, and then accept the disclosure as true. I would also ask that person (myself included) to do so anytime someone describes an aggression because of race, gender, LGBTQIA+ identity or ability.

Once we can accept someone else’s experience as valid, then we can have an uncomfortable and hopefully productive conversation that might start breaking down barriers. Then, and only then, can we include more voices that are not our own in our profession.

**Kasubhai: In the middle of the civil rights movement of our time, do you think the legal profession is addressing racism adequately? What can the profession be doing differently?**

**Malik:** This question alone could be a book, but to be succinct: No, the legal profession is not addressing racism adequately.

I know I’m not the first person to say this, but I feel like it bears repeating: Change is not going to come from a Diversity & Inclusion committee, survey or task force. While the legal profession continues to operate under that assumption, we will never see adequacy in equity.

What we need to see is a change in the number of lawyers of color, increased funds to support these lawyers and the removal of barriers to access that prevent lawyers of color from securing employment. While certainly useful as a foundational and educational tool for institutions, Diversity & Inclusion committees and task forces will be insufficient on their own if actual hiring is not prioritized.

There are so many suggestions I could make, but I have one that feels personal to me: Get rid of diversity statements. For those not familiar, the stated purpose of a diversity statement (which can be found in most scholarship, higher education and job applications) is to identify candidates who have professional skills, experience and/

or a willingness to engage in activities that would enhance diversity and equity efforts. But many new lawyers can tell you that what these statements actually require is an exhibition of one's suffering.

One of the first impressions I had about the legal profession came from having a professor recommend I submit applications for a 1L Diversity Fellowship (a position available for minority law students with a hefty stipend) with the major law firms in the Portland metro area. While my interest primarily lied within the public interest field, it was hard to ignore the desire for financial stability.

“Yes, there is a place for us in Oregon. But ... it isn't so much that I stayed because a place was made for me in Oregon. I stayed, and so there came to be a place for me in Oregon. It's my Oregon now, too.”

Every one of these applications required a diversity statement. Many firms required statements that demonstrated “achievement in diversity,” implying that being diverse in a dominant white profession is not enough. When I started writing my statement, I felt nothing but stress from trying to articulate how I overcame my “obstacles,” guilt that I was using these traumatic experiences in order to get ahead, and sadness that I had to compete with classmates who also shared this burden and deserved this access. I ended up not submitting.

**Malik: What do you think the profession could be doing better?**

**Kasubhai:** There are so many ways to improve, but I'll keep it simple and give you two recommendations.

First, on the employment front, everyone with hiring authority in our legal profession should dedicate significant resources to retention. Recruitment is necessary but is insufficient without a robust retention plan.

Law students of color regularly plan to leave Oregon after graduating. Or they move to Portland, leaving the rest of the state far less diverse. Firms spend a lot of money recruiting and training an associate; this significant investment should be fortified with a commitment to keep associates for the long term. There are plenty of studies that show a diverse law firm is good for business. Many corporate clients now require proof of diversity before they will retain a law firm. There are quite a few good models for retention available, so I'll leave it to the professional personnel specialists to find them and implement them.

Second, both our profession and specifically the courts need to acknowledge the significant impact of unconscious bias in litigation and our decision-making. Jury instructions admonish jurors from employing bias in their deliberations; these instructions have generally referred to explicit biases. But there is a large body of research on the existence and impact of unconscious bias relating to race, sex, gender and gender identity, sexual orientation, ability, socio-economic status and body type that drive decisions. This research should be applied to educating jurors, attorneys and judges on the effects of unconscious bias in decision-making.

If we describe and validate the phenomenon of unconscious bias, then we can then bring this bias to the surface of our awareness. This in turn gives us the capacity to correct for it, and then leads to better and informed decisions.

I am relieved that the Oregon legal profession is now taking a lead in this area. A federal/state committee has worked for years to develop jury educational materials on unconscious bias.<sup>5</sup> Several state circuit courts have agreed to make the committee's video a part of jury orientation. The next step is to help lawyers and judges learn how to be comfortable with the uncomfortable task of talking about this kind of bias with jurors in voir dire. Unconscious bias work in the courtroom will also help our profession improve equity, diversity and inclusion in our ranks.

**Kasubhai: So, the \$64,000 question: Are you going to stay in Oregon? Is there a place for you here?**

**Malik:** Honestly, I just don't know. Your question is something that I have been contemplating since that first month I moved to Oregon and started law school. I can tell you that I want to stay here. But I have to admit that even just a few months after being sworn in as an attorney and a clerk, I am exhausted from the amount of work that it has taken to make a space for myself.

I hope whoever reads this might take into account how they can make a place not just for me, but for all of us. Without accountability and support from the majority of the legal profession, myself and others will continue to be exhausted. Many of us do eventually leave because of that. And the profession will continue to repeat the same mistakes and perpetuate the cycle of fatigue for the next generation of lawyers of color. Lawyers can and should do more.

**Malik: Your work as a judge isn't particularly transferrable. So maybe your answer to the same question is obvious: Is there a place for you in Oregon?**

**Kasubhai:** The short answer is, “Yes.” But it is not easy.

Sarah, your answer to this same question breaks my heart. As I reflect on this conversation, I note a common theme of intense and chronic exhaustion. It seems like for there to be a place for us here, we have to break through the gravitational forces of racism in general and Islamophobia specifically.

I've been here since 1993. I made the commitment early on to set my roots down in Eugene and grow them deep. It is isolating to be a Muslim American lawyer or judge in Oregon, and to be clear, there is prejudice and discrimination. But I look out across the country, especially now, and I ask myself, how better is it for someone like me anywhere else? I'm certain there will be a need for difficult conversations about Islamophobia and race, gender and homophobia anywhere I go.

By having stayed in Oregon long enough, I've been able to create a space in which I can have those kinds of difficult conversations and help move the needle. I suspect I could have done that anywhere else, given enough time. But I also have



little confidence that I might have had the same opportunities to first practice law and then become a judge anywhere else.

When I think about it, why wasn't the first Muslim American federal judge in Michigan, New York or New Jersey? There are substantially larger populations of Muslim Americans in those states. Yet it happened here first.

In my observations of state leaders over the years, I have noted the presence of an independent and maverick-like quality in our Oregon leadership. Many have been willing to move outside of conventional and rigid political boundaries. The state and legal populations are still small enough such that there are very few degrees of separation between these populations and decision-makers. There is simply more access to our leaders in Oregon than in much larger states. And access is opportunity.

We now have a robust group of affinity bar organizations with energetic leadership. The dearth of these kinds of legal communities 25 years ago was a parched desert compared to today's modest spring-fed wells that give non-traditional lawyers safe and supportive rest stops along our professional journeys. Some criticize the existence of so many affinity bars. I say we should have as many as there is a will to create. The foundation of good equity work is to make room for many voices, not just the ones some of us might value today.

The fact this interview is being published in the Oregon State Bar *Bulletin* is a sign that our OSB is willing to embrace this ideal.

So yes, there is a place for us in Oregon. But it might be better to understand that cause and effect is reversed. It isn't so much that I stayed because a place was made for me in Oregon. I stayed, and so there came to be a place for me in Oregon. It's my Oregon now, too. ■

*Hon. Mustafa T. Kasubhai is a U.S. Magistrate Judge in the U.S. District Court for the District of Oregon in Eugene; Sarah Malik is a 2020 graduate of Lewis & Clark Law School who now clerks for Judge Kasubhai. Reach them at [chambers\\_kasubhai@ord.uscourts.gov](mailto:chambers_kasubhai@ord.uscourts.gov).*

#### ENDNOTES

1. Islamophobia is defined as an outlook or worldview involving the fear and/or hatred of Islam, Muslims or Islamic culture and history that results in practices of exclusion and discrimination. For a deeper understanding of how Islamophobia plays itself out, see "American Islamophobia: Understanding the Roots and Rise of Fear," by Khaled Beydoun (University of California Press; May 2019).
2. See [osbar.org/\\_docs/rulesregs/mclerules.pdf](https://osbar.org/_docs/rulesregs/mclerules.pdf).
3. "Masjid" is the preferred Arabic word for place of worship, rather than "mosque." It literally means "place where one prostrates."
4. The intersection of race and Islam conjures an "otherness" that further affects Muslims. Globally, Islam is associated with Middle Eastern countries, the Arab world, African countries and generally dark-skinned people. In the United States, more than 24 percent of the Muslim population is also Black, while South Asian and Arab Americans follow close behind. The Latinx American Muslim community comprises 6 percent of the total Muslim-American population.
5. To see Oregon's new implicit bias training video for jurors, go to [tinyurl.com/OregonBiasVideo](https://tinyurl.com/OregonBiasVideo).

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# Responding a Disaster

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Legal Community Moves Quickly to Help Victims of Devastation

— By Phil Favorite —



to

## ating Wildfires

By any measure, the wildfires that raged in western and southern Oregon in late 2020 were the largest and most destructive on record in the state.

The numbers alone are staggering. Fueled by an explosive mix of hot temperatures, dry landscapes and powerful winds, the historic combination of wildfires torched more than 1 million acres, killed at least 11 people and destroyed more than 4,000 homes.<sup>1</sup>

Needless to say, the images of those events have been lasting: the thick smoke that turned the daytime sky to an apocalyptic orange and made the outside air nearly impossible to breathe; the daily reports of ravaged rural communities and the advancing threats on more populated areas; and the video footage of evacuees fleeing the flames with their families, pets, livestock and the few possessions they could fit into caravans of vehicles.

Making matters worse, all of that occurred during a worldwide health pandemic, in the wake of a summer of national social unrest and in the days leading up to a contentious fall election season, adding yet more fuel to the anxiety that was already tearing at the very fabric of daily life.

In the midst of the mayhem, though, leaders in the state's legal community recognized the myriad problems that wildfire victims — thousands of their fellow Oregonians — would be facing in the days, months and years ahead. Almost immediately, action began to marshal across-the-board resources to help in pro bono relief efforts.

The response was appropriately massive.

Members of the Oregon State Bar, the Oregon Trial Lawyers Association, Legal Aid Services of Oregon, the Oregon Law Center and many other statewide organizations rallied to set up informational websites, organize boots-on-the-ground volunteers and provide pro bono legal services for displaced families, many of whom lost everything they owned to the fires.

“The sum total of the effort was extremely large and extremely quick. And that was the key, that it was quick,” says OSB President David Wade. “The usual sort of processes that you go through to organize something like this were streamlined, and the effort just came together immediately and very effectively.”

In October, the OSB launched a Disaster Legal Services program in conjunction with the Federal Emergency Management Agency, the Oregon New Lawyers Division and the ABA Young Lawyers Division. The program provided legal training to members and pro bono legal services to victims in eight counties that were given Individual Assistance designations.<sup>2</sup> More than 200 lawyers statewide volunteered to help, and about 100 signed up for a pro bono panel organized through the bar's Referral & Information Services team.<sup>3</sup>



One of the key areas of need involved assisting FEMA applicants who faced ineligibility because of lost documentation (lease agreements; deeds, photo IDs, etc.). Other areas included contracts for housing repairs; power of attorney/ estate administration; insurance claims (life, medical, property, etc.); mortgage foreclosure; guardianship and conservatorships; consumer protection; and housing challenges.

FEMA alone received more than 24,000 applications for assistance from wildfire survivors, according to Nicolas Granum, a spokesperson for the Region 10 Recovery Division. Although a portion of those applicants faced ineligibility challenges, he says, more than \$35 million in financial assistance was provided directly to eligible individuals and households.

Working alongside members of the Red Cross, the Oregon Governor's Office of Emergency Management, the Small Business Association and other agencies, lawyers and other legal professionals stepped up to help in nearly every way possible — some even putting their professional practice on hold while volunteering their services within their own communities.

"Not only did you have organized efforts like the bar's, but you had individual attorneys who jumped into fire relief with no promise of being paid," Wade says. "In fact, all of these people jumped in with no promise of being paid."

Urgency keyed the first efforts by the team at Legal Aid Services of Oregon (LASO), whose initial response centered on getting important information to families freshly traumatized by the wildfires. While gathering information on legal topics such as tenant's rights, unemployment benefits and how to replace destroyed documents, LASO worked to set up a website ([oregondisasterlegalservices.org](http://oregondisasterlegalservices.org)) designed for immediate and long-term relief.

The site also featured training sessions designed to help legal volunteers get up to speed on matters specific to FEMA-related cases, which were relatively foreign to Oregon in comparison to other parts of the U.S.



Jill Mallery

"In the initial months following a disaster, the focus is really on the immediate needs of the survivors," says Jill Mallery, LASO's statewide pro bono coordinator. "We focused the efforts on the website and making it available to view from wherever people were located, gathering good information and making it accessible in multiple languages so it was available to people when they needed it."

LASO continues to work with the OSB, the Oregon Law Center, the Center for Nonprofit Legal Services, FEMA, the Red Cross and others in building a unified disaster-response organization that can help fire victims now while preparing for future disasters.

"It's been a remarkable effort by the state as a whole," Mallery says. "It's just been a really strong, coordinated effort. It's been great to see our community come together like this. I think so much has been accomplished because so many groups and agencies worked so well together."

Like their colleagues at LASO, the Oregon Trial Lawyers Association (OTLA) quickly assembled assets for a comprehensive fire relief website ([tinyurl.com/OTLAFireRelief](http://tinyurl.com/OTLAFireRelief)) with links to resources, downloadable intake forms for relief registration and a hotline for questions about pro bono legal assistance. Eighteen attorneys and

legal staff covered 58 half-day hotline shifts, answering questions and pointing fire victims to statewide regional directors who could answer questions more specific to their respective areas.

OTLA volunteers also produced a series of informative videos addressing specific topics such as renter's insurance, smoke damage and additional incurred living expenses. The videos were quickly uploaded for viewing on the organization's website.

With those key pieces set in place, OTLA volunteers fanned out across fire-ravaged areas of the state, hosting 11 in-person events over several weeks in locations as varied as Lincoln City, Eugene, Springfield, Molalla, Estacada and Redmond. Volunteers also hosted three different events in Mill City, a small town decimated by the convergence of the Lionshead and Beachie Creek fires east of Salem.

And more than 25 families attended an event hosted in Talent, a Southern Oregon community that suffered horrible damage in the devastating Almeda fire.

### Boots on the Ground

By the time attorney Faith Morse volunteered for the OTLA event at Talent Elementary School, she already had spent weeks at the center of recovery efforts in Jackson County.

Morse had been monitoring the deadly path of the Almeda fire that erupted in Ashland on Sept. 8 and — driven by 40 mile-per-hour winds — quickly swept northward, carving a path of destruction that left thousands of people homeless in just a few hours. The



An massive air tanker drops fire retardant south of Medford in early September 2020 to prevent the Almeda fire, which devastated the communities of Talent and Phoenix, from advancing on more populated areas. Photo by Kelly Anderson





Former OSB President Vanessa Nordyke, a senior assistant attorney general at the Oregon Department of Justice who also serves as a Salem city councilor, tours the remains of homes destroyed by wildfires in the Santiam Canyon area with homeowners Woody Jackson, Jay Hennigan and Scott Bassett. Jackson and Hennigan live in Gates; Bassett's home overlooked the Santiam River in Mehama. Photo by Miranda Crowell Seble/Factor Kites Photography



Faith Morse

fire destroyed major sections of the towns of Phoenix and Talent as it made a beeline for the more heavily populated city of Medford, where Morse makes her home and practices law.

Morse would soon be advised to evacuate her own family. But even before then, she had sprung into action, volunteering to help area residents move their livestock to safety. She says she quickly came to realize the magnitude of the human toll of the fire damage.

"I was evacuating other people's horses for several days," she says, "and by the weekend I was helping people with their insurance claims."

Morse's expertise as a personal injury attorney — handling elder abuse and automobile injury cases almost exclusively — and her previous volunteer efforts on behalf of low-income families made

her a perfect candidate for the job. She met with surviving families, helped train other volunteer lawyers in matters related to fire insurance and taped a training video about renter's rights that was quickly posted on OTLA's fire relief website.

"The vast majority of the homes that were destroyed in the Alameda fire were low-income houses," Morse says, noting that the fire ripped through multiple mobile home parks. "Many were minority families with multiple generations living together, and suddenly they're homeless with grandma and a new baby. What do you do?"

Many evacuees found shelter at the Jackson County Fairgrounds in Central Point, where Morse met with families seeking help with insurance claims. Many had lost some or all of their insurance paperwork in the fire, adding to their difficulties.

"One of the main problems was insurance companies telling people, 'We want you to pay out of pocket for your hotel room, your food, whatever, then send us the receipts and we'll reimburse you at some point in the future,'" she says. "These are people who had just lost everything, and insurance companies were telling them to pull money out of their pocket. There were also a fair number of people who came in and said their insurance company was saying they would pay X amount — a number well below their policy limit — and they could either say 'yes' now or the amount would not be offered in the future."

Morse says she took a measured approach when advising folks who were just beginning to piece their lives back together.

**On Page 28:** Flames consume parts of Talent and Phoenix in an image taken while looking south from Medford on Sept. 8, 2020. Fueled by an explosive mix of hot temperatures, dry landscapes and powerful winds, an historic combination of wildfires torched more than 1 million acres across the state, killing at least 11 people and destroying more than 4,000 homes. Photo by Kelly Anderson





Attorney Damien Hall worked behind the scenes to help the Oregon Internet Response team erect signal towers on hilltops and structures above the McKenzie River Valley east of Eugene. The towers relayed phone and Wi-Fi signals after wildfires cut off service to the area. Photo courtesy of Matt Sayre

“Part of what we do as lawyers is set our emotions aside and realize we’re using very complicated and detailed, nuanced words,” she says. “The people who we’re talking to are in shock and may not be processing what we’re saying. Personally, I did a lot of handwritten instruction, saying, ‘Here are the steps you need to take, here is the phone number you need to call, here’s what needs to happen next.’ Saying it to them, but also sending them with a piece of paper with the information because they’re not going to remember a word you are saying. They’re just not.”

All the while, Morse was managing her own emotions in the wake of a fire that had devastated her community and directly affected her own family. Her home was not damaged by the flames and “we’re fine,” she says, “but a lot of people down here are not.”

“Everybody who I work with professionally is hurt, so I already have a pretty good system in place for dealing with the emotional burden of that,” she says. “There was a lot of shock and panic and fear, and this incredible sense of loss and exhausted resignation in people’s faces. It was heartbreaking.”

As Morse returned to her work with Medford-based Andersen Morse & Linthorst, she says she had the stark realization that it would be years before her community would heal. But she never had a second thought about jumping in to help.

“Yes, it was very stressful and I lost a lot of sleep. I didn’t do anything but work or volunteer for a long time,” she says. “But I guess my perspective is if I could help one family make it through in better

shape than they could without me, it’s worth the time, effort and emotional energy to get there.”

### Remote Control

While some lawyers volunteered because their local communities were affected directly, some found themselves serving in ways they never could have imagined when the fires exploded in early September.

Responding to a request from a client, for example, Ball Janik partner Damien Hall volunteered his legal expertise from Portland to help a loosely formed group of technology experts called Oregon Internet Response (OIR). Its mission: restore phone, internet and emergency communication services lost in the wake of the Holiday Farm fire that ripped through the McKenzie River Valley east of Eugene.

“Much like the rest of the year, I did it from my house,” Hall says. “There were communications issues because my clients would go into areas for days at a time that had zero communications. But that’s just logistics, and everybody was pretty motivated on achieving the same thing, so over time we got them there.”

The fire destroyed more than 27 miles of fiber optic cable that provided connectivity to residents of the valley, where satellite coverage is difficult. Local communities did not have any redundant internet coverage to fall back on when the fiber lines were burned; as a result, all forms of communications, including critical services like 911 emergency calling, were wiped out.



The OIR team had a plan for a much-needed, temporary fix: The volunteers would erect a network of signal towers on hilltops and structures above the valley that could relay phone and Wi-Fi signals, restoring service to the area. But the plan came with a few roadblocks to navigate, many of them legal.



Damien Hall

“They needed to figure out what legal permissions were needed, and then we had to figure out how to get this loose group of professional do-gooders some sort of protections themselves,” Hall says. “It’s just a group of individuals, not some established legal entity. They don’t have insurance, but they have a solution. So everybody agreed they should do it. That’s sort of where my role came into play — protecting the volunteers and getting permission to do this without it devolving into a bunch of fighting and lawsuits.”

By phone and email, Hall worked with officials from Lane County to have OIR members formally recognized as county-sponsored volunteers, allowing the group to acquire emergency permits and avoiding the usual hassles involved with land-use and building regulations. That also provided liability protections under federal and state law — the same law, according to Hall, that says, “If a hiker comes along and trips on a trail, they can’t sue the volunteer who built the trail five years ago.”

Hall credits local government officials — as well as the Eugene Water & Electric Board and the U.S. Forest Service — for being “really good partners” in the process, helping to find a straightforward solution for a problem that didn’t involve standardized forms or institutional memory.

“When you have elected officials on board and everybody pulling in the same direction, it’s a lot easier to get folks to agree,” Hall says.

The entire process — with volunteers mapping out a strategy, acquiring permits and protections, securing equipment and installing the network — took a little more than a month, starting while the fire was still blazing.



The small town of Gates was devastated when the Beachie Creek and Lionshead wildfires converged on the Santiam Canyon area with ruinous power in September 2020, leaving behind little but charred remains. Photo by Miranda Crowell Seble/Factor Kites Photography

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“(As of January), we’re currently in month three of being the primary connectivity source in the area,” says OIR volunteer Geoff Turner, whose company, Elevate Technology Group, works with Ball Janik on the firm’s communications network. “We’re hoping the regular providers come back soon so we can start pulling gear and decommissioning.”

Having been part of the group that planned and installed the gear, Turner says he recognizes the crucial role that Hall played in helping the plan come together.

“I think Damien plays it down a little bit,” he says. “But knowing this group and all the puzzle pieces that came together — what he put in place was something that allowed us to move even quicker in helping that community. It really allowed us to move past some of the political boundaries and barriers that existed. We needed to coordinate with everybody, and he got us a seat at the table and put that umbrella over us.

“What he did was absolutely critical,” Turner adds, “and specifically with how quickly he was able to do it.”

### Paradise Lost

Former OSB President Vanessa Nordyke felt that same sense of urgency.

Born and raised in Salem and a longtime community activist and presence there, she says she has always viewed the nearby Santiam River Canyon as a gateway to the good life provided by Oregon’s

never realized how much my memories are attached to a sense of place. And when you see that place burn down, it’s devastating.”

Driving up the canyon in the days that followed and witnessing the fire damage firsthand, Nordyke says she experienced a flood of memories. She says she saw a bend in the river and a favorite fishing hole that was shockingly exposed and possibly forever changed by the fires. It reminded her of outings with a family dog that had long since passed away.

But the emotional toll of the fires truly settled in when Nordyke volunteered to deliver food and other supplies to fire victims in the small town of Gates, which was all but wiped out when the two wildfires — the Beachie Creek Fire that started near Opal Creek to the west and the Lionshead Fire that spread from the slopes of Mount Jefferson to the east — converged with ruinous power.

Working at a resource hub at the Gates Community Church of Christ, Nordyke came face to face with victims just days after the fires had ripped through town.

“This was so fresh in terms of timing that folks hadn’t really come to the realization that everything was gone,” she says. “You could tell pretty quickly who was there as a volunteer and who was walking in as a survivor of the wildfires, because the survivors looked shell-shocked. It’s very emotional. It was really hard watching these families put on a brave face for their kids.”

At that point, Nordyke’s volunteer work had just begun. She returned to Salem and soon undertook a series of efforts to provide relief for fire victims, serving in both of her roles as a Salem city councilor and a member of the Oregon State Bar. She used her social media platforms to create urgency and awareness about the need for donations and volunteer support. She pointed volunteers to the state fairgrounds in Salem, where evacuated livestock were being temporarily housed in pens that needed tending.

And she signed on to OTLA’s efforts to provide pro bono legal expertise to help victims with the many problems they would face in the coming months. Specifically, she created a question-and-answer video on the legal remedies available to folks who had lost their homes and belongings in the fires.

Nordyke says she knew a lawyer’s training could help in areas where a solution might not be so obvious at first glance.

“It’s issue spotting, which we’re all trained to do in law school,” she says. “Lawyers are uniquely qualified for identifying inequities in the system. You have to look through the red tape to help people find what relief is available to them.”

Emotional management is another lawyerly skill that attorneys bring as volunteers in a time of crisis, Nordyke says.

“Lawyers are expected to have complete mastery of their emotions and to not be impacted by their work, which is an absurd standard when you think about it,” says Nordyke, who currently serves as senior assistant attorney general in the trial division of the Oregon Department of Justice. “Finding ways to help clients feel safe, supported and not judged is something that I teach other lawyers and something I practice in my day job. And that’s exactly how I approached these survivors of the wildfires.

“How you approach anyone who’s been through hell,” she adds, “can impact that person’s ability to heal, move on and begin to rebuild.”

Experiencing countless interactions with wildfire victims and evacuees during the recovery process, Nordyke says she was struck by the humility and ruggedness of the canyon residents.



Volunteers John Schmidt, Casey Kopcho (a City of Salem planning commissioner) and Vanessa Nordyke unload donations of food and water at the Gates Community Church of Christ, where they also helped sort clothes and other supplies for wildfire victims. Photo by Nathan Schmidt

natural wonders. But when twin wildfires at opposite ends of the Santiam Highway exploded with terrifying and devastating force around Labor Day 2020, Nordyke realized that life in the canyon would be changed forever.

“Growing up, the canyon was my playground,” Nordyke says. “My family and I have fished, hunted, hiked, gone boating and done much more in the canyon. I spent many of my formative years swimming in Detroit Lake and visiting the local businesses up there. I



“Many of them are not proud of asking for help,” she says. “It’s endemic. It’s a part of their life philosophy, being self-reliant and never having to ask for help. That’s why it was so important to be diplomatic in approaching them with compassion and a genuine desire to help, making sure that they felt that even if it was something simple like shopping for clothes and picking up other donated supplies, they could do so with dignity.”

### Moving Forward

Having helped fire victims with some of their immediate legal needs — such as mitigating insurance claims, replacing documents and applying for government assistance — attorneys statewide continue to put more pieces in place to help with long-term needs and to respond with pro bono legal help in future disasters.

In LASO’s Salem regional office, Marianne C. Ober has moved into the newly created position of statewide disaster relief attorney. She will be working alongside bilingual outreach coordinator Cristian Amador to respond to hotline calls and other issues expected to arise in the coming weeks, months and years.



Angelica Vega

Already in place to provide free civil legal services to low-income and elderly Oregonians, LASO now has the ability to respond to issues related to wildfires and other future disasters.

“Our goal is to make it easier for people who are survivors of the wildfires to seek our help,” says Angelica R. Vega, LASO regional director in the Salem office. “We want to get the word out that we’re here and we’re willing to talk with anybody who has been affected by the fires. If you hear the word ‘fire,’ contact us and we’ll help figure out what legal needs there might be and help in any way we can.”

Ober points to the website [oregondisasterlegalservices.org](http://oregondisasterlegalservices.org) as a great place for attorneys to gather more information.

“So many attorneys across the state rallied to help in the aftermath of the wildfires,” she says. “Now we’re educating our legal aid attorneys and creating protocols within our own organization so that we can respond even more quickly, with something in place that will be ready for the next disaster.” ■

*Phil Favorite is a Portland-area freelance writer. Reach him at [philfavorite@gmail.com](mailto:philfavorite@gmail.com).*

### ENDNOTES

1. The Holiday Farm fire burned just outside of Eugene; the Beachie Creek, Riverside and Lionshead fires burned between Clackamas County and Salem and were centered around the Mount Hood National Forest; the Echo Mountain fire burned near Lincoln City; and several fires burned in Southern Oregon, including the devastating Almeda and South Oben-chain blazes.
2. Counties given Individual Assistance designations: Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn and Marion.
3. Wildfire victims who need help with a FEMA appeal or other legal issues caused by the disaster are urged to call the OSB Lawyer Referral Service to see if they qualify for free legal assistance through the bar’s wildfire response panel. The numbers: (503) 684-3763 or (800) 452-7636.

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# Shelter *from the* Storm

## Uncertainty Continues to Haunt Residential Tenants, Landlords

By Janay Haas

When COVID-19 became a worldwide pandemic in early 2020, many Oregonians hoped the deadly disease would go away after a couple of months. People were supposed to be able to resume their normal activities, go back to work and pay their bills.

Instead, the pandemic continued to grow and hopes of quickly returning to any sense of “normal” faded. Many sectors of the economy, such as retail and hospitality, were devastated. And by the end of February 2021, more than 155,000 Oregonians had been diagnosed with the virus and more than 2,200 had died — grim numbers that are still rising even as the rollout of vaccines gets underway.<sup>1</sup>

No one, it seems, has been immune to the impact of COVID-19. But for one subset of the population, the pandemic has literally hit

them where they live: the 38 percent of Oregonians who are residential tenants. Until federal and state governments imposed a series of moratoriums on evictions for nonpayment or no cause, many of these people and their families found themselves at risk of losing their homes because they no longer had incomes that permitted them to pay rent.

The possibility of mass evictions raised the specter of homelessness for many, a “super-spreader” event with the potential to affect thousands more lives. The resulting legal cases have also prompted concern about a deluge in the courts as property owners push for the eviction of non-payers. “We anticipate that there’s going to be a drastic increase in housing instability,” says Emily Rena-Dozier, statewide housing support attorney for the Oregon Law Center, who told attendees at the January 2021 kickoff event

for the Oregon Lawyers' Campaign for Equal Justice that "the level of uncertainty is extreme."

That uncertainty no doubt arose from a series of eviction moratoriums put in place by federal, state and local governments to help tenants "shelter in place," including an executive order signed by President Joe Biden within hours of his inauguration. It asks the Centers for Disease Control and Prevention to extend the federal eviction moratorium, which was set to expire on Jan. 31, through at least March 31.

But state and local measures have come with different end dates and criteria for eligibility. As some ended, others began. And at the end of the day, legal experts say, neither landlords nor their tenants have had a clear understanding of what the next week might bring.

For Rena-Dozier, that has meant frequent updates to online COVID-19 materials at [oregonrentersrights.org](http://oregonrentersrights.org) and [oregonlawhelp.org](http://oregonlawhelp.org). Those updates have also been supplemented by frequent training memos for the 112 lawyers who serve legal aid clients around the state. The goal: to educate both tenants and property owners about Oregon's state-legislated moratorium, whose third iteration is set to end on June 30, 2021.

For the Albany legal aid office that serves Linn and Benton counties, the mission has meant working with community partners such as the public library, local food banks and housing authorities, the Department of Human Services and community action agencies to provide online trainings.

"The most recent presentation I gave was through the Corvallis Public Library in partnership with the city," says Steven Crawford, a staff attorney at Legal Aid Services of Oregon (LASO). "The library advertised the presentation through its news bulletin and by posting fliers at places like food banks or the DHS office."

In Roseburg, another LASO office focused on one-on-one advice.

"Low-tech solutions work well here," says staff attorney Patrick Chaney, describing the wide distribution of posters with tear-off contact information. He adds that the office coordinates community education with the Oregon Health Authority, local governments and other partners.

LASO also has assembled and trained a group of pro bono attorneys to explain to tenants their rights and duties and to confer with landlords who don't know about moratorium requirements. Numerous lawyers now serve on the panel, says Jill Mallery, the statewide pro bono coordinator for LASO, but more will be needed in the months ahead as the end of Oregon's moratorium nears.

### Questions from Landlords

Attorneys for landlords have also reported an uptick in appointments with clients trying to figure out the evolving landscape, and at least one court case has been filed seeking to overturn the moratoriums. It claims that the restrictions now in place amount to the government's "taking" of property without proper compensation, and that they violate the Fourth, Fifth and 14th Amendments to the U.S. Constitution (See "Challenging the Eviction Ban," Page 38.)

**Opposite Page:** Until federal and state governments imposed a series of moratoriums on evictions for nonpayment or no cause in the wake of COVID-19, many residential tenants found themselves at risk of losing their homes because they no longer had incomes that permitted them to pay rent. Many of those moratoriums are set to expire this spring or summer.



Rance Shaw

"I'm getting more calls asking on what bases are landlords allowed to terminate tenancies during the eviction moratorium," says Rance Shaw, an attorney with the Reynolds Law Firm in Corvallis. Shaw represents large and small property management firms, as well as small property owners with one or two rentals.



Mohamed Workicho

Mohamed Workicho, an associate with Lane Powell who represents residential property owners, says he tells his clients about the consequences of violating the moratorium.

"Given the protections provided to tenants under the temporary measures," he says, "many residential landlords look to work with their tenants because moving forward with eviction proceedings solely for nonpayment of rent appears largely fruitless at the moment and may expose the landlord to the risk of fees."

Meanwhile, the Oregon State Bar's lawyer-referral program reports receiving "a fair number of calls on landlord/tenant issues, and the rent moratorium is right up there," according to Eric McClendon, referral and information services manager for the bar. "The main concerns are when will it end and what will happen if the tenant does not have the funds to pay the back rent they owe."

The bar's lawyer-referral service includes a COVID-19 pro bono panel standing by to answer questions. "If my staff identify a legal issue as being directly related to COVID-19, they offer the caller the option for a free, 30-minute consultation," McClendon explains. "So far, about 85 to 90 percent of these referrals are for landlord/tenant cases."

### Colliding Crises

The arrival of the deadly pandemic brought a large and more chronic problem into stark relief: Oregon's lack of affordable housing. Portland, Grants Pass, Bend, Medford, Ashland and several other local governments had been talking for at least two decades about the problem without coming close to a solution.

In 2019, the National Low-Income Housing Coalition reported that for every 100 very-low-income households in the state, there were only 28 affordable housing units. That represented the fifth-worst housing shortage in the country, more than 96,000 units short of what it would take for Oregon's low-income families to be able to find a home.

Scarcity has also meant higher and higher rents — an increase of some 30 percent over the past five years in the Portland metro area. As a result, many tenants have been priced out of habitable housing, and an increasing number have been priced out of housing altogether. Homelessness rates have crept relentlessly upward, and experts say that trend is likely to get worse in the wake of COVID-19 as eviction moratoriums expire.

Who could be affected first?

Not surprisingly, Oregonians who worked in retail and hospitality industries and childcare were the first to experience unemployment and become unable to pay their rent. This group, with higher numbers of Latinx and Black employees, was also the most likely to depend on low wages and thus have little in the way of financial reserves to survive even a brief emergency.





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## Challenging the Eviction Ban

As federal and state rent moratoriums rolled out in recent months, many property owners turned to their lawyers for advice on implementing their new duties toward tenants. A few sought to challenge the moratoriums themselves.

Cases filed in state and federal courts have alleged that rent moratoriums are ultra vires — or beyond the scope of the authority or power granted by law — and amount to the government's "taking" of property without proper compensation, among other claims. For example, two California lawsuits — one against the City of Los Angeles and another against the California Judicial Council — are now on appeal after requests to invalidate eviction bans were denied. A similar case in Georgia was rejected by a federal district court in Atlanta and is expected to be appealed.

In Oregon, two landlords who together own about 1,200 residential units filed an inverse condemnation case in December 2020 for a declaratory judgment against Gov. Kate Brown, the state Legislature, the City of Portland and Multnomah County, alleging violations of the Fourth, Fifth and 14th Amendments to the U.S. Constitution. They are asking a federal district court judge to either invalidate the eviction moratoriums or require the state, city and county to create a plan that "adequately compensates all private housing providers for their losses incurred in addressing the consequences of the governments' response to COVID-19."



John DiLorenzo Jr.

John DiLorenzo Jr., a partner with Davis, Wright, Tremaine, co-chairs the firm's government relations practice and is lead counsel for the landlords. According to the complaint, his clients are owed more than \$254,000 in rent payments as of December 2020 and have been deprived of any of the remedies normally available to them to enforce their right to collect rent or to evict non-paying tenants. (Multifamily NW, a group representing property owners throughout the state, estimated in December that Oregon renters owe between \$800 million and \$900 million.)

The Oregon case, *Farhoud v. Brown* (D. Or. #3:20-CV-02226-JR), pits the right of the government to exercise its police power to protect health and safety against the right of private property owners to the use of and control over their property. If the court concludes that preventing some kinds of evictions is a legitimate

*Continued on Page 39*

As the economy shifted, some of these workers became gig workers — shoppers or drivers, or take-out cooks and servers — but their incomes were erratic as lockdown measures came and went. Some jobs ended altogether as businesses closed and jobs became scarcer.

Wildfires that torched more than 1 million acres across the state last fall only exacerbated the problem, destroying more than 4,000 homes and leaving many low-income people homeless. Walter Fonseca, a housing specialist with the Oregon Law Center in Grants Pass, says some of those displaced people moved in with friends or relatives; the latter are now getting "unauthorized occupant" notices, he says — collateral victims of the housing shortage.

Fonseca worries too that many of the seniors who had lived in mobile home parks are now more vulnerable to the virus as they move in with family. He suggests that it is a mistake for governments to allow housing to be treated as a commodity, and that the pandemic shows why that's true. Recent studies back him up:

- Nationally, requiring tenants to move out has caused a spike in the transmission of COVID-19. Data from 43 states and the District of Columbia that instituted moratoriums showed that ending an eviction ban was associated with a COVID-19 mortality rate that was 1.4 percent higher after seven weeks and 2.1 percent higher after 18 weeks;
- A modeling project based in Atlanta found that an eviction-rate increase of .25 percent per month would result in a .06 percent increase in the infection rate; a 2 percent eviction rate would produce an 8 percent increase in deaths. The actual pre-pandemic eviction rate for Georgia averaged 4.6 percent, according to the study — a rate that would result in a staggering swath of illness and fatalities if the virus took off in the community;
- Across the country, evictions during the pandemic led to 434,000 COVID-19 cases and nearly 11,000 deaths, according to a study by the University of California, Berkeley Turner Center for Housing Innovation; and
- Evictions will result in more than increased virus transmission, says The National Low-Income Housing Coalition; they also will generate costs for taxpayers. If 25 percent of those who are evicted end up in homeless shelters, the coalition says, the tab could be \$130 billion in costs for emergency medical treatment, foster care, shelter and juvenile delinquency services

### Economic Impact in Oregon

The impact of Oregon's moratorium is still unfolding.

House Bill 4401, which was passed by the Legislature in late December 2020, extended the ban on most evictions through June 30, 2021, but it makes clear that not all tenants will qualify for protections and that those who do must pay back all the rent they owe by July 1, 2021, to avoid eviction after that date.<sup>2</sup>

The bill also funded a \$150 million landlord compensation program. And it allocated an additional \$50 million to expedite the distribution of funds through an existing rental assistance program for tenants, which requires a sworn declaration of financial hardship. Renters can apply for funds to pay their landlords (who will get the money directly); landlords can apply for funds on behalf of all their eligible tenants, but they must agree to forgive 20 percent of the rents they are owed.<sup>3</sup>

How much money are we talking about?



No one is certain. The National Council of State Housing Agencies commissioned a study in 2020 that analyzed the question. It estimated that by January 2021, the rent shortfall would be between \$249 million and \$378 million, the result of 100,000 to 150,000 Oregon renters' inability to pay in full. Oregon has well over 600,000 residential tenancies.

How many of those renters have not paid?

The Oregon Department of Housing and Community Services projected in November that more than 82 percent of tenants were continuing to pay rent. That estimate is in line with the findings of Multifamily NW, a statewide landlord group, which reported that from May to October 2020, between 12 percent and 15 percent of tenants were behind in their rent. That percentage was still holding in December, according to Sybil Hebb, director of legislative advocacy for the Oregon Law Center, a program that serves low-income Oregonians with legal needs.<sup>4</sup>

Shaw says he would encourage property owners to look into the state fund for the 80 percent compensation, although he cautions there is no guarantee that all landlords will be compensated. And Hebb seconds Shaw's advice. While the 80 percent compensation doesn't make up for all rent lost during the moratorium, she says, it does save landlords the cost of going to court to evict (especially if a lawyer is needed) and then following up with a small claims court action for unpaid rent.



Sybil Hebb

Besides, many small claims judgments go uncollected, according to retired Multnomah County Pro Tem Judge Steve Todd. It's better for landlords to get partial payment and forgive the balance owed by the tenant, the reasoning goes, than to have to push their tenant into bankruptcy and get nothing.

It's also likely that the state will receive supplemental federal funding geared to aid both tenants and landlords, Hebb says, and while the moratorium isn't perfect, she believes Oregon's plan will leave most property owners and tenants in fairly good shape.

"Landlords should get paid," Hebb says.

Still, a few professional property owners have turned to the courts to challenge the validity of the moratoriums.

"The government has not ordered grocery stores to give away food for free. It has not required utilities to provide water, gas and electricity for free," argues Portland attorney John DiLorenzo of Davis, Wright, Tremaine, who is representing two property owners who recently filed suit in federal court challenging the authority of the state to impose this burden on housing providers. (See "*Challenging the Eviction Ban*," Page 38.) "So why must private property owners do so without compensation?"

In DiLorenzo's opinion, the Legislature should provide future Oregon income tax credits to landlords who forgive unpaid rent and then establish a state equivalent of a federal housing subsidy to help tenants who lost their jobs because of the COVID shutdown. He supports Senate Bill 330, a landlord-proposed bill sponsored by Sen. Betsey Johnson (D-Scappoose), which would establish such tax credits.

### Good Guys and Bad Actors

Despite the funding question, Gresham tenant Erin Meehan reports that her landlord "has been wonderful to work with." And some mom-and-pop landlords, like retired Oregon lawyer

*Continued from Page 38*

use of state power to reduce the lethality of the COVID-19 pandemic, DiLorenzo says, then the interference with landlords' normal use of the property may take place — provided the government compensates owners for the value of their forgone rents.

"Such a case," DiLorenzo says, "constitutes a taking per se, as opposed to a regulatory taking, because the government's orders eliminate the property owner's 'right to exclude' those who otherwise have no right to possession." The taking can be accomplished for a public purpose, he concludes, "but the government must do so by exercising its power of eminent domain and compensate owners accordingly."

In conjunction with the state's moratorium, the Oregon Legislature has established a \$150 million landlord compensation program and allocated an additional \$50 million to expedite the distribution of funds through an existing rental assistance program for tenants. Renters can apply for money that would go directly to their landlords or landlords can apply for the funds themselves, but in either case, the property owners would have to agree to forgive 20 percent of unpaid rent.

Property owners who don't participate would instead have the option to sue tenants for back rent in small claims court once the eviction ban expires.

"But even with regard to the rent and other expenses that landlords could, eventually, sue to recover, the practical reality is that tenants who cannot afford to pay one month's rent now will be highly unlikely to afford the total past-due rent that will continue to accrue each month" until the end of the statewide emergency, DiLorenzo says. "The landlord's 'right' to unpaid rent is little more than an illusion."



Bruce Cahn

Bruce Cahn, a shareholder with Lane Powell who specializes in condemnation law, examined the issues in the case in light of both the freeze on some evictions and the state funding formula.

"The takings claims present some significant inverse condemnation issues, but also may face a number of conceptual legal hurdles," he posits. One of those hurdles is "whether the court will find that the delay in contract enforcement constitutes a physical taking under these circumstances, on the theory that the landlords could otherwise recover their property."

Cahn also wonders "whether the court will view the voluntary 80 percent payment program as having the requisite economic impact, rather than an option for the landlord that might defeat a regulatory taking."

Sybil Hebb, director of legislative advocacy for the Oregon Law Center, says she hopes landlords take advantage of the state's compensation fund. She also expects additional funding from the federal government to help property owners mitigate their potential damages.

The plaintiffs' complaint does not address alternative sources of payment. The district court has set April 21, 2021 as the deadline for discovery.

— Janay Haas



COVID-19 and last fall's devastating wildfires have exacerbated a chronic problem: Oregon's lack of affordable housing. More and more tenants have been priced out of a place to live, and experts say that trend is likely to get worse as eviction moratoriums expire. Photo by Janay Haas

Molly Weinstein in Portland, say they've kept an open line of communication with their tenants.

Weinstein owns three rental units, with two tenants paying in full every month and the third tenant paying in instalments as his income fluctuates. "I think the moratorium idea is a reasonable one," she says, adding that her tenants are all acting in good faith. As for the landlord compensation fund, she believes it should be limited to people who depend on rent as their only income. "That money shouldn't go to corporations," she concludes.

Shaw, the Corvallis attorney, says he too has been "fortunate to work with well-meaning landlords."

"I have not been contacted by tenants or attorneys representing tenants regarding harassment by my clients," he says. "Most of my clients who hired me pre-pandemic have not had many issues collecting rent during the pandemic. Tenants generally seem to understand that paying rent when due (if they are able) is a good idea, since the moratorium delays the due date of rent but does not excuse unpaid rent."

Legal aid lawyer Crawford agrees.

"I've found that the more landlords and tenants know about the moratorium, the less likely they are to violate any of its terms," he says. "Education has been a great tool for keeping roofs over people's heads during hard times, because most landlords won't intentionally violate the law."

That has generally been the experience of tenants' lawyer Fonseca, too. "Most (property owners) have backed down as soon as they understand the penalties for going forward right now," he says.

But not all landlords and tenants have been sanguine. Fonseca says he is suddenly seeing "more 'for-cause' notices — questionable ones" for reasons other than nonpayment. In addition, not every property owner is turning to the courts to evict. Several legal aid attorneys say they've seen instances where landlords have stopped trash service or turned off heat and electricity in an effort to encourage tenants to leave.

"You probably have heard about the landlord in Medford who cut a hole through her tenant's wall when the tenant told her she wouldn't be able to pay," Fonseca says.<sup>5</sup>

And at least one landlord in Klamath County has already attempted to use small claims court to obtain a judgment for back rent, says John Powell, the trial court administrator there.

In a survey it undertook with Portland State University during summer 2020, the Community Alliance of Tenants found that of 460 renters who responded, 22 percent reported hostile or threatening behavior from property owners. For tenants who identified as BI-POC, the rate was 10 points higher.

Of course, there also have been examples of tenants who are able to pay but do not, or who look for ways to skirt the rules. Ashland landlord Bethany Metcalf says she recently learned that a non-paying tenant had sublet a part of her rental, called herself the landlord and collected first and last months' rent and hefty security deposits. None of it went to Metcalf.

### After the Moratorium



Patrick Chaney

Regardless of how landlords and tenants have treated each other so far, though, Fonseca says he does expect to see a tidal wave of evictions for nonpayment at the end of the state moratorium if tenants are not able to get enough rental assistance. Chaney and DiLorenzo agree.

Similarly, the Oregon Judicial Department says case volume will likely be influenced by the availability and use of relief programs.

"We realize there are many different perspectives on this," says OJD spokesperson Todd Sprague. "But the Legislature has created funded relief programs for both landlords and tenants. The more those programs are used and the more effective they are in addressing these issues, the fewer 'pent-up' cases we would expect to see filed."



Marc Friedman

Sprague says OJD will monitor usage of the programs and encourage courts to have conversations locally and plan accordingly. "The Legislature continues to have active work groups on the topic," he notes, "so it's possible there's more still to come from there as well."

That said, lawyers for both tenants and property owners say that nothing can completely stop evictions — with potentially grim outcomes for renters.

"Any eviction on a tenant's rental history can be highly problematic," says Marc Friedman of Access the Law in Eugene. "Even prior to the pandemic, landlords would often reject a tenant based on a

prior eviction, no matter the basis. It is a real possibility that tenants will continue to be denied a rental based on any eviction history.”

Friedman says he hopes tenants see some sort of legislative relief if they are evicted because of COVID-19’s economic impact, an issue that’s still on the table for lawmakers in Salem. But bankruptcy is probably on the horizon for some tenants, according to Lars Olsen, managing partner of OlsenDaines in Salem.



Lars Olsen

Olsen notes that in the past several weeks he has seen moratorium tenants for the first time — one in Coos Bay who owed \$9,000 in December and another who owed \$7,000. The firm hasn’t seen landlords yet, he says, but it will.



Rex Daines

“Foreclosures are coming, along with a flood of consumer cases coming down the road,” asserts attorney Rex Daines, although neither he nor Olsen expects a wave of bankruptcies and foreclosures on a scale similar to that of 2009-2010.

In the meantime, legal aid lawyers say, tenants who submit to their landlords a declaration of being negatively impacted by COVID-19 or the September wildfires should be safe from eviction. And as vaccines become available and the state’s economy reboots, they say, renters and property owners should have a much better sense of what the future holds. ■

*Janay Haas is a frequent contributor to the Bulletin. Reach her at [wordprefect@yahoo.com](mailto:wordprefect@yahoo.com).*

#### ENDNOTES

1. Nationwide, more than 28 million people had been infected and more than 500,000 had died by the end of February 2021, according to the World Health Organization and local government agencies.
2. House Bill 4401 was passed in December 2020 during the Oregon Legislature’s Third Special Session of the year. Learn more at <https://bit.ly/3amyCqm>.
3. The Oregon Judicial Department (OJD) has posted links to new “Notice of Eviction Protection” and “Declaration of Financial Hardship” forms on its website at [courts.oregon.gov/forms/Pages/landlord-tenant.aspx](https://courts.oregon.gov/forms/Pages/landlord-tenant.aspx) to help implement the Legislature’s recent extension of eviction protections for non-payment of rent. Under the new law, tenants can use the declaration form to avoid evictions for non-payment of rent before June 30, 2021. Landlords also are required to provide certain forms before proceeding with certain evictions. Translated versions are available in Spanish, Russian, Vietnamese, Korean and Chinese.
4. A six-page report released in mid-February by Portland State University suggests that 89,000 families statewide owe back rent and that plugging the hole could cost as much as \$378 million. The report also lists a variety of related social costs that could occur if significant numbers of those families are evicted, including as much as \$3.3 billion for shelter expenses, medical care, foster care, legal needs and child delinquency services. Read the report online at [tinyurl.com/33xrovog](https://tinyurl.com/33xrovog).
5. See [fox26medford.com/medford-woman-claims-landlord-evicting-her-violating-state-moratorium](https://fox26medford.com/medford-woman-claims-landlord-evicting-her-violating-state-moratorium).

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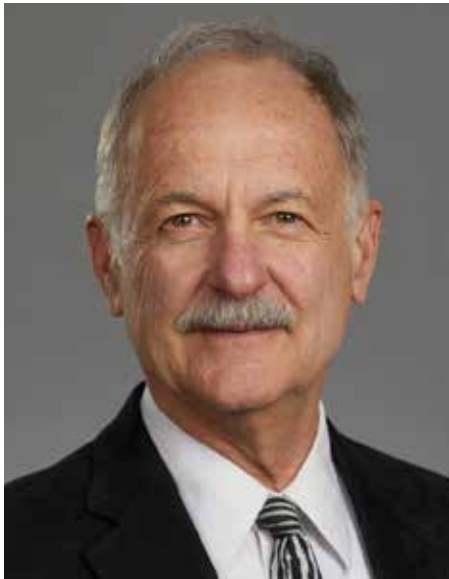


# PRESIDENT'S MESSAGE

## *Principles of Good Governance Will Define Agenda for 2021*

### Building a 'Very Bright Future'

By David Wade



David Wade

**A**s we begin 2021 and I begin my year as Oregon State Bar president, I intend to approach this work under a singular theme of good governance.

In an organization so replete with smart and passionate members, we are fortunate to entertain a regular stream of input and ideas. There are, however, limits to what both our resources and our mission will allow, and an essential element of leadership is knowing the difference between what we'd like to do and what we can do. Principles of good governance should always lead our analysis.

Good governance begins, first and foremost, with a responsibility to develop a solid understanding of an organization's budget and finances. While mission-oriented leaders can find this a necessary but distracting element of the job, it is in fact foundational to our fiduciary duty.

From there, a key pillar of leadership is ensuring that an organization is culturally

competent, equitable and inclusive. The mission of the Oregon State Bar is to serve justice and the public interest by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice. Each of these elements relies on our ability to see, understand and build trust across Oregon's diverse communities. My almost six years on the Board of Governors have magnified my recognition of just how complex — and essential — this work is. As an organization and as individuals, we will prioritize our work in this arena.

the harm done on the rare occasion that a lawyer's dishonesty results in loss of client money. Last year presented over \$1 million in claims against the fund, but we met our responsibility through use of reserves and positive investment gains accumulated over the years and still managed to reduce members' CSF assessment for 2021. Very few professions have a mechanism for all members to compensate for the misdeeds of a few. It is a pillar of our public-facing work.

Finally, our mission calls us to improve the quality of legal services and our gover-

*"An essential element of leadership is knowing the difference between what we'd like to do and what we can do."*

To serve the public interest, we must reflect and seek to understand the public we serve.

Good governance further rests on our commitment to serve the law and the public in accordance with our mission. This translates to a steadfast focus on access to justice — striving for a system where all Oregonians feel served by their justice system. As an example, last year the Oregon State Bar's Legal Services Program administered additional funding for legal aid programs across the state from unclaimed class action settlement funds. It was a welcome addition at this time of crisis for so many Oregonians, but funding remains wholly insufficient for a system that currently meets roughly 15 percent of the need for low-income civil legal services. We can and must continue efforts to create a system that does more for the underserved and marginalized, and those most in need.

Of course, public protection lies at the core of our work and points also to our work through the Client Security Fund to repair

nance work requires that we create a bar that is ready to meet the needs of the public we serve. This includes being one of just three bars nationally that provides mandatory mentoring to every new lawyer upon admission. We've moved recently to provide discounted member fees based on income, regardless of years of service. And we begin the year with forward movement on several bold innovations such as paraprofessional licensing and a writing-for-the-bar program.

Thank you to 2020 OSB President Li-ani Reeves and bar CEO Helen Hierschbiel for leading us through the first year of a terrible pandemic. I look forward to working with Helen and her supremely capable staff through the end of this terrible time, which is now in sight, and into what I believe will be a very bright future for the Oregon State Bar. ■

*David Wade is president of the Oregon State Bar. Reach him at [dwade@osbar.org](mailto:dwade@osbar.org).*

# 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

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The Oregon Bench & Bar Commission on Professionalism's

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Oregon  State Bar

# PROFILES IN THE LAW

## *Kirk Maag Advocates for LGBTQ+ Inclusion in Agriculture and Beyond*

### Cultivating Change

By Jillian Daley



Stoel Rives partner Kirk Maag promotes diversity, equity and inclusion not only within his own firm but also through his leadership of the Cultivating Change Foundation and the Oregon FFA Foundation and his role as an ambassador for the Move The Needle Fund. Photo by Jillian Daley

As a gay man who grew up on a farm in rural Oregon, Kirk Maag says he's well aware of the misguided notion that there is no place for members of the LGBTQ+ community in the agriculture industry. But as a partner in the Portland office of Stoel Rives, he says, he now finds himself in a position to help bury that stereotype.

"Had you asked me 10 years ago, 'Could you see yourself doing work related to LGBTQ+ diversity and inclusion?' I would have thought you were crazy," says Maag, whose legal practice focuses on environmental and natural resources law. "When I graduated from law school, I was not out. When I interned at Stoel Rives, I was not out. When I started as an associate at Stoel

Rives, I was not out. So not only was I not out, I was not expecting to do work on diversity and inclusion."

It was thinking of others that sparked his interest, he says.

"What helped me find a passion for doing this work is just a recognition and a desire to make sure that every young person who has a passion for agriculture knows that there is a place for them within the ag industry," he says, "regardless of their sexual orientation or gender identity."

It's work that has garnered him national attention.

In 2019, Maag joined 13 other lawyers shortlisted for the LGBTQ+ Equality Lawyer of the Year honor as part of the Chambers Diversity and Inclusion Awards. The

annual program spotlights attorneys and law firms that advance diversity and inclusion, with specific laurels designated to different regions of the world. Maag earned the distinction for his devotion to the LGBTQ+ community in the United States as an outspoken legal professional and an engaged community leader.

"I am very passionate about rural communities and farms," Maag says. "There are fewer LGBTQ+ people coming back to rural communities because they have this misconception that because of an identity they carry with them, they can't be themselves and work in the agricultural industry. The work I do is to change that perception and to make sure that every young person who wants to pursue a career in agriculture feels welcome and celebrated in doing so."

#### Speaking out for LGBTQ+ Inclusion

Maag's efforts to support diversity and inclusion are extensive and wide-ranging. At Stoel Rives, he leads the firm's LGBTQ+ affinity group in the Portland office and serves as an ambassador for its participation in a national, collaborative initiative called Move The Needle (MTN).

MTN unites four law firms — Stoel Rives, Eversheds Sutherland, Nixon Peabody and Orrick — with Diversity Lab, a San Francisco-based organization dedicated to cultivating diversity and inclusion in top-tier law firms and legal departments. The \$5 million initiative works to establish diversity goals and employ data-driven tools to achieve them.

Being involved in initiatives like MTN re-energizes him, says Maag, who co-leads his firm's Agribusiness, Food, Beverage and Timber Industry Group.

"That's part of how I do it," he says. "It's finding a balance. I could bill more hours at work if I wasn't on so many boards, but I wouldn't be as good a lawyer or as energized





Cultivating Change Foundation Board President Kirk Maag addresses colleagues who are working to improve LGBTQ+ inclusion in the agriculture industry during an event in February 2020, just weeks before the disproportionate impact of COVID-19 on the industry's workers became widely known. Photo courtesy of the Cultivating Change Foundation



Kirk Maag may now be a partner at Stoel Rives, but he's been a leader in the legal field for many years. Maag earned his J.D. at Georgetown University Law Center in Washington, D.C., where he was also editor-in-chief of *The Georgetown Law Journal's Annual Review of Criminal Procedure*. He later clerked for Judge Carlos Bea on the 9th Circuit Court of Appeals. Photo by Jillian Daley

at work if I wasn't doing these things outside of the firm that bring joy and energy to me."

People notice that and value his energy. Stoel Rives partner Geoff Tichenor, who also participates in MTN, says Maag has been an outspoken and influential figure since the firm joined the initiative in 2020.

Tichenor has known Maag since Stoel Rives hired him as a summer associate and later as a new associate who'd just been honored with a clerkship with Judge Carlos Bea on the 9th Circuit Court of Appeals.

"I had the good fortune to be Kirk's mentor when he was our summer law clerk

and knew right away that he was going to be something special, and we have only seen special things from Kirk in his time with the firm," says Tichenor, an environmental lawyer who co-leads the Stoel Rives Consumer Products, Manufacturing & Transportation Industry Group. "He's shepherded many inexperienced and new attorneys through the firm. He has also done a great deal of work to contribute to the firm's appreciation for diversity and inclusion."

Tichenor says he has seen Maag's work make a direct impact on the community, especially through his work leading the board of the Cultivating Change Foundation, a national nonprofit whose mission is to value and elevate LGBTQ+ individuals in the agricultural industry.



Geoff Tichenor

The nonprofit organization, which was founded in 2016, accomplishes that goal through initiatives including the Cultivating Change Summit, which involves networking and professional development; regional caucuses to reach agricultural experts all over the country; and industry events that offer networking opportunities.

Maag is also president of the Oregon FFA Foundation, a nonprofit that supports Oregon FFA (formerly Future Farmers of America), a state branch of the national organization that fosters leadership and offers career development in agriculture-related fields.

"Kirk's work has caused influential people within the agricultural business community in Oregon — including top bureaucrats, highly successful agribusiness folks and elected officials — to recognize that there is an LGBTQ+ community in the agricultural industry and to nurture that community," Tichenor says.

Melisa Augusto, who serves as secretary of the Cultivating Change Foundation board, says that in the five years that she's known Maag, she's witnessed a vibrant leader tirelessly and adeptly strive for LGBTQ+ inclusion in the agricultural industry.

"He's just a strong leader who helps to keep us on task and helps us to continue to pursue the mission, and as a volunteer organization it's really easy to veer off topic if you're not careful," says Augusto, director of communications and marketing at



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Agricultural Retailers Association. “He makes sure we’re able to fulfill the work that we need to do in a systematic way and are able to continue to work toward our strategic goals.”



Melisa Augusto

Maag says that he views the Cultivating Change Foundation as critical not only to helping the LGBTQ+ community, but also to altering the “perception of the agricultural industry” so that the opportunity to reach talented young professionals isn’t lost.

“I use the word ‘perception’ very intentionally, because I don’t think that the agricultural industry as a whole is necessarily unwelcoming to diverse groups of people,” Maag explains. “You could certainly find examples in which the agricultural industry is not super welcoming to outsiders. But you could also find heartwarming examples from agricultural communities where they do embrace people who are different. I don’t think all of it is about changing the ag industry. I think some of it is about changing the perception.”

Inspiring people to see the industry differently, he says, will catalyze that change.

“Cultivating Change can help shape the future of the LGBTQ+ community by opening doors to future career opportunities that some LGBTQ+ youth might have thought were shut to them,” he notes. “I think our organization can help them consider the possibility that those doors are open to them, and that there is a place for them within the agricultural industry.”

### Staying True to His Pastoral Past

There was, after all, a place in the ag industry for Maag, who grew up on a family farm and feedlot 15 minutes outside of Vale that was bustling with corn, wheat and cattle. His work and his community service continue to demonstrate what he calls a “deep connection to the agriculture industry and community” — a commitment that began in his formative years.

Throughout high school, Maag participated in 4-H and FFA. After graduation, he was elected as one of six Oregon FFA state officers. He took a gap year, traveling throughout Oregon to support and encourage young people interested in agriculture.

After a year as a state officer, Maag continued on part-time for the National FFA Organization as a leadership conference facilitator, traveling the country on weekends while he pursued a Bachelor of Science in environmental economics at Oregon State University. He spent the next three summers at FFA’s Washington Leadership Conference in Washington, D.C., an experience that contributed to his desire to become a lawyer and to attend law school in the nation’s capital.

He earned his J.D. from Georgetown University Law Center, where he was also editor-in-chief of *The Georgetown Law Journal’s Annual Review of Criminal Procedure*, and his work with FFA continues to this day.



Joe Matteo

FFA Foundation board member Joe Matteo, who also was an FFA state officer, first met Maag five years ago while the Stoel Rives partner was leading a public speaking workshop at an FFA event. Matteo,

now a law student at the University of Oregon School of Law, says Maag is a humble and highly effective leader who values the opinions of young people.

“Growing up in rural Oregon, Kirk is a great example of someone who doesn’t forget his roots,” Matteo says. “Kirk’s involvement in the Cultivating Change Foundation speaks to his passion to create more inclusion within rural communities, and his legal work is proof that he has not forgotten where he came from.”

There’s a reason why Maag’s work is focused on agriculture and natural resource industries, Matteo says.

“These industries are important to rural Oregon communities and the Oregonians who work in food and natural resource production,” he notes. “As the Oregon FFA Foundation president, Kirk is an important role model for FFA students and teachers, showing them everyone has a place in agriculture and the FFA.”

Maag says he is proud of being a finalist for the U.S. LGBTQ+ Equality Lawyer of the Year honor, but explains that it is comments like Matteo’s that truly inspire him. Spurring change is an important part of his daily endeavors, he says, but he does the work not for his own benefit but for



the legacy it will create for the agricultural community — his community — for many years to come.

“I have benefited tremendously from many mentors over the course of my life,” Maag says. “I would not be a lawyer if it weren’t for a professor that I had at Oregon State, who inspired a passion for natural resources and environmental law in me. I sat in on one of his classes the year before I started college and was immediately hooked. It changed what college I was going to go to, what I was going to major in. It made a significant difference in my trajectory. I certainly appreciate the benefit of and the value that mentors bring.”

He’s quick to say that he couldn’t do what he does without support. A key reason why he can be so involved, Maag says, is the understanding and accepting culture at Stael Rives.

“I am so fortunate to work at a firm that encourages its employees to be engaged in their communities,” Maag says. “I have never once in the 10 years I have been engaged in the firm felt like there was pressure for me to not be engaged in the community.” ■

*Jillian Daley is a Portland-area freelance writer. Reach her at [jillian@pdx.edu](mailto:jillian@pdx.edu).*

## Be an Author

The *Bulletin* is always on the lookout for quality manuscripts for publication on these pages.

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

The editorial staff welcomes inquiries and is happy to discuss requirements for publication. If you have a manuscript, suggestion or idea, contact Editor Gary M. Stein at (503) 431-6391. He can also be reached by email at [editor@osbar.org](mailto:editor@osbar.org).

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## Sherman Sherman Johnnie & Hoyt, LLP announces the retirement of Ken Sherman, Jr.



It is with heavy hearts, but the best of wishes, that we announce that our partner, friend, and mentor Ken Sherman, Jr. is retiring. For 46 years Ken set the bar high with his dedication to his clients, uncanny problem-solving skills, and ability to listen astutely to his clients. Ken’s departure leaves shoes too large to fill.

Ken was deservedly and particularly proud of his long-term representation of the Oregon Bankers Association, playing a significant role in drafting multiple pieces of legislation that continue to shape and guide commercial banking practices throughout the state.

Ken’s influence extended well beyond the walls of our firm and the legal field. One of the youngest to be awarded Salem’s prestigious First Citizen Award, Ken was an active member of the Salem Rotary Club, Willamette Valley Estate Planning Council, City of Salem Downtown Advisory Board, Salem Chamber of Commerce, YMCA of Marion & Polk Counties, and too many other organizations to name.

Perhaps Ken’s greatest pride is his long running and continuing service on the Salem Hospital Board of Trustees. Ken followed his father as a member of the board; the Shermans’ leadership was and is a lasting legacy. So much so, Salem Health recognized their service by naming the board room at the hospital the Sherman Board Room.

Ken’s legacy and leadership inside and outside our firm left us and our community better than how he found them. We thank him for it, and pledge to do our best to carry on his legacy.

We wish Ken all the best in his retirement and hope he has many years of traveling, fishing, and enjoying life with his wife Betsy, their adult daughters and husbands, and 7 grandchildren.

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## Consider These Factors for a Successful Mediation

### The A·E·I·O·U·Y Checklist

By Richard J. Vangelisti



Richard J. Vangelisti

Many lawyers often experience the thrill of a successful mediation — an enjoyable process, a smart settlement agreement and a happy client. But from time to time, the mediation process can suddenly go off the tracks and devolve into a blame game.

Why are some mediations successful and others not?

That's an important question to ask, especially now as mediations start to increase in the wake of the COVID-19 pandemic. But a thorough analysis can reveal the critical factors that often play a role — factors that can be organized into six areas of concern: authority, expectations, information, obstacles, urgency and yokefellows.

A mnemonic for ready reference is the list of vowels: A, E, I, O, U and sometimes Y.

These areas of concern can provide a checklist to ensure that *both* parties are prepared for a successful mediation session. After all, lawyers have checklists for trial,

and the same care should be applied to the mediation process.

This article addresses each of the factors, which typically overlap and affect one another. As with nearly every approach in legal practice, specific strategies need to be calibrated to the unique circumstances of each case.

#### Authority

Authority concerns the participants needed to enter into a settlement agreement *and* the extent of their power to agree to certain terms. Without the necessary authority, the mediation process freezes up.

The necessary participants include the parties or their representatives with the power to bind the party, as well as third parties who have legal control over whether an agreement can be reached. These participants may include an insurance carrier, board of directors, public body or other entity that may have control over a settlement, such as a lien holder.

A third layer of necessary participants includes anyone that may have *de facto* “veto power” over any settlement. These people may not be readily apparent to a lawyer. They often include a family member, a close friend or someone who is providing “legal advice” to a party. These “shadow” participants must be identified and evaluated as to whether they would be a constructive participant. Then the lawyer can engage in the delicate task of determining what — if any — role these people should have in the mediation process.

Necessary authority also concerns a participant's ability to agree to certain terms, especially monetary decisions. A common illustration is an insurance carrier that sets limits on an adjuster's power to offer anything beyond a certain amount of money. Usually, the set limits are determined by the

case evaluation, rather than some artificial limit imposed on the adjuster. But even this straightforward example can become complicated if a deductible or insured's consent to any settlement is in play. If insurance has been disclosed (*e.g.*, under ORCP 36 B(2)), the nature and extent of authority should be assessed before the mediation.

#### Expectations

Expectations concern the assumptions of both the parties and their respective counsel. These expectations pertain to what would be an acceptable settlement and appropriate process for the mediation itself.

Recently, mediators have begun to make efforts to assess the lawyers' expectations *before* the mediation session.

The critical task at hand for the lawyers is to strive to evaluate and influence the expectations of all the participants. A wide gulf in expectations between the parties can put a resolution out of reach.

A starting point is the expectations of and between the lawyer and client. The client's interests and goals are solely the domain of the client. Oregon Rule of Professional Conduct 1.4(b) requires that a lawyer provide a reasonable case evaluation: A “lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

This case evaluation should include the costs and benefits of various options, such as a range of potential settlements vis-à-vis a range of outcomes to be determined by the judge and jury. This analysis should include probabilities of outcomes, net gain/loss and the client's unique risk tolerance. These elements should be supported by data and the lawyer's own judgment. Considering the pernicious effect of advocacy biases, the lawyer also should consult a variety of colleagues on the “value of the case.”

Mediation is more likely to be successful if the client has reasonable expectations that are flexible in light of new information. Moreover, a secret to a thriving law practice is happy clients who had their “sober” expectations exceeded by their lawyer.

A case will not settle unless expectations are reasonable on both sides. Obviously, it’s more difficult to determine the expectations of the opposing lawyer and client. Nevertheless, a lawyer should strive to assess those opposing expectations and advocate on behalf of their client to influence the other party’s expectations.

Lastly, attention should be focused on the expectations for the mediation process itself. The process is largely controlled by the mediator. After careful selection of the mediator, the lawyers should reach out to the mediator to ensure a mediation process is crafted to meet the expectations of the parties.

### Information

Information concerns a variety of data: evidence from formal or informal discovery, expert opinions, legal standards, objective criteria and arguments of counsel. Information shapes everyone’s expectations and, in turn, authority. Like evidence curated for a jury, information is essential for negotiation during the mediation process.

For example, in nearly every case the information supporting a damages calculation is essential.

To increase the probability of a successful mediation, the lawyer should ask: “Have I ensured that the other side readily has the information it needs to set its authority and accept my offer?” In other words, does the other party have the information to act in their self-interest and in turn agree to a settlement that is mutually satisfactory to both sides?

Despite the lack of expert discovery in Oregon state court, parties in some catastrophic injury cases may make partial exchanges of expert opinions to be used for mediation purposes only. Likewise, in employment cases, declarations obtained by an investigator may be shared if progress is being made in mediation. In business cases where damages may not be readily apparent, parties may exchange damages calculations supported by data and expert opinions. If depositions have not been taken, a party or key witness may be interviewed off-the-record within the mediation privilege.

As with most things in life, timing is everything with information. One of the most important considerations is that the opposing party must have *and* understand the significance of the information when setting its expectations and authority. Disclosure of new “bombshell” information at a mediation session may be dramatic, but it usually does not give the other party sufficient time to evaluate the information and change its authority. A collateral cost of such surprises often is anger by the opposing lawyer and client, which is not conducive to settlement.

### Obstacles

Obstacles concern anything or anyone that could interfere with a settlement. Problems with authority, expectations and information can be the most obvious obstacles. Yet other obstacles may not be as evident but nonetheless can cause a mediation to stall out, e.g. not meeting the emotional needs of the parties.

Every participant has emotional needs. Take for example a hypothetical employment discrimination case in which a long-term employee was terminated from a family-owned-and-operated business. The former employee asserts that the termination was retaliation for taking family medical leave, and the employer responds that the termination was motivated solely by performance deficiencies. The claims are not covered by insurance.

Emotions may run very high on both sides. The employee, who loyally wore the company uniform for years, may feel betrayed for having been terminated and replaced by a co-worker. The employer likewise may feel betrayed because they express that they had delayed termination for years in an effort to coach the employee.

Even if the lawyers for each party could arrive at a reasonable monetary amount to recommend to their respective clients, an obstacle to settlement may be that one or both of the parties feel that they were not heard. The employee may say, “They didn’t even acknowledge what they did to me and my loss of health insurance.” The employer may say, “They are ungrateful for what we did, and we’re not giving in to extortion.”

To address these important emotional needs, each party will need to be heard, understood and acknowledged. Usually in an emotionally charged case, the mediator can be the third-party listener. In some instances, the mediator may convey in

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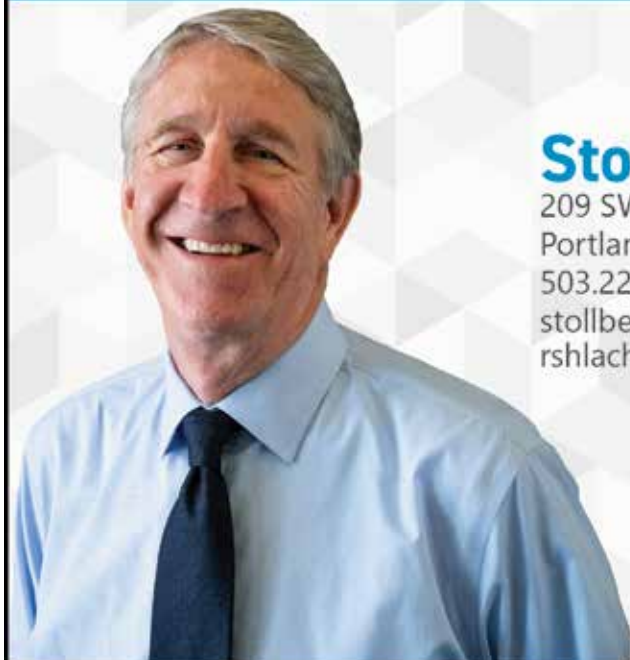
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shuttle mediation that one or both parties can acknowledge the opposing party's perspective.

Whatever the nature of the emotion, a party often will need to tell their story, which is their "day in court." Otherwise, the absence of being heard may interfere with what may be a resolution in their best interest.

### Urgency

Urgency concerns whether the parties are sufficiently motivated at a certain point in time to settle a case. To resolve a case, the parties must be sufficiently motivated at the same time to enter into a settlement rather than maintain the status quo.

Recently, with jury trials delayed because of the COVID-19 pandemic, lawyers have turned to factors other than a fast-approaching trial date.

Depending on the specific nature of the case and stage of dispute, many other factors may create sufficient urgency: a court deadline, deadline imposed by an expert to pay a non-refundable retainer, discovery, ongoing fees or costs associated with litigation, or the general specter of an adverse ruling or jury verdict.

Under some circumstances, parties may create some urgency to focus on the prospect of settlement. For example, a party may feel urgency to explore settlement if the opposing party has expressed interest in settlement discussions. Urgency may be created by setting a deadline for another party, though this tactic can backfire if there is no real urgency and the other party "calls your bluff."

Be mindful that urgency may wax and wane, and that the commensurate leverage may change for better or worse. For example, a party that is confident that they will prevail on their motion for summary judgment will have lost leverage if the court denies the motion and a jury trial is the next juncture. This consideration of course depends on whether a party or both parties need a pending ruling to create ambiguity or the ruling itself to create clarity.

### Yokefellows

Yokefellows — commonly defined as companions, especially at work — concerns the degree to which the lawyers for each party are working professionally with one another toward a mutually beneficial resolution. A potential resolution in the best interest of each party may rise or fall on the quality of relationship between their lawyers.



A bad relationship between lawyers (and parties) can create unnecessary obstacles to resolution. Personality conflicts between lawyers can distort the advice provided to a client and further fuel the Hegelian conflict that moves parties further away from resolution.

A neutral relationship between lawyers is fine, but it may be a missed opportunity for increasing the odds of a resolution. On the other hand, a good relationship between lawyers is a superb foundation of rapport, trust and respect. This foundation in turn promotes efficient problem-solving and a mutually satisfactory settlement.

### Conclusion

As yokefellows, the lawyers for each party should confer with one another or at least the mediator at the outset of the mediation process. They should have candid discussions about the A-E-I-O-U-Y concerns. They should strive to reframe them as tools for efficient negotiation, building blocks of a durable resolution, and opportunities for lasting relationships.

In the end, the clients will have had more control over the outcome of their dispute and, as a result, greater access to justice. ■

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*Richard J. Vangelisti is a mediator based in Portland. He focuses his practice on personal injury and employment cases. Reach him at [richard@vangelisti.com](mailto:richard@vangelisti.com).*



## Diversity matters.



Román D. Hernández  
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# CLE Seminars



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9 a.m.–1 p.m.

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Explore the basics of trust accounting and learn how to reduce liability and avoid sanctions with speakers from the Oregon State Bar and the Professional Liability Fund. Build an understanding of the types of trust accounts, the ethics rules governing them and the role of the Oregon Law Foundation. Delve into replenishing the trust account, disbursements from the account, and managing trust funds from someone other than your client.

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# Legal Publications

Full-book PDFs, some with MS Word forms and some individual chapters with forms, are now available as eBooks from these titles:

*Administering Oregon Estates*

*Administering Trusts in Oregon*

*ADR in Oregon*

*Advising Oregon Businesses, Vols. 1–5*

*Annie and the Octopus*

*Construction Law*

*Criminal Law*

*Damages*

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## BAR NEWS

### Nominate Future Leaders for OSB Leadership Institute

Do you know hardworking and skilled attorneys from diverse backgrounds who have been practicing between three and nine years? Invest in the professional development and abilities of these future rising leaders by nominating them for the OSB Leadership Institute.

Beginning in April, the OSB's Diversity & Inclusion Department will welcome nominations for its Leadership Institute. Over the course of a year, institute participants will develop and refine practical leadership skills and cultivate confidence and resiliency while developing an invaluable network with their peers. The Leadership Institute will also serve the legal profession and the Oregon community by increasing awareness of community service opportunities throughout the state.

Watch for information about nominations and sponsorship opportunities in April on the OSB Diversity & Inclusion home page at [osbar.org/diversity](http://osbar.org/diversity).

### Avoid OSB Suspension by Meeting PLF Deadline

Note the following March 2021 deadline concerning payment of Professional Liability Fund assessments:

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

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

To pay your annual assessment, go to the PLF website ([osbplf.org](http://osbplf.org)) and click the "Pay Your Assessment" button on the home page. If you have questions about paying your assessment or filing an exemption request, contact the PLF accounting department at (503) 924-1771 or email [remind@osbplf.org](mailto:remind@osbplf.org).

### Quality of Life Committee Sets Roster for New Year

Thirteen Oregon lawyers and a public member have been named to the OSB's



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Quality of Life Committee for 2021. Together, they are charged with encouraging and supporting a culture within the legal community that recognizes, accepts and promotes quality-of-life objectives as important to personal and professional development.

This year's committee includes:

**Amrit R. Mann**, an administrative law judge with the Office of Administrative Hearings, who will serve as the group's chair; **Mai-Anh T. Nako**, an attorney in the Staff Counsel's Office at Allstate Insurance Company in Portland, who will serve as the group's informal secretary; **Alyssa Bartholomew**, an attorney with Southern Oregon Public Defenders in Medford; **Carilyn Ellis**, a clinical psychologist and clinical health educator for Autumn Leaf Therapeutic Services, Springfield Family Physicians and Salem Health; and **Kaiti Ferguson**, an associate attorney with Lindsay Hart in Portland.

Also: **Emily S.B. Fullerton**, an associate at Schwabe Williamson & Wyatt in Portland; **Laurie Hoefer**, a lawyer with Legal Aid Services of Oregon in Woodburn; **Hansary Laforest**, an attorney with Sussman Shank in Portland; **Rebecca Lease**, an administrative law judge with the Office of Administrative Hearings; and **Tim Johnson**, assistant general counsel for Bonneville Power Administration.

And: **Yvana L. Mols**, chair-elect for the Oregon New Lawyers Division and ONLD liaison to the Quality of Life committee, who is an associate attorney at Hillsboro Law Group; **Jamie Pruitt**, an attorney with Umpqua Valley Public Defender in Roseburg; **Annie Stephens**, an attorney with DBMA Family Law Group in Portland; and **David Rosen**, founder of High Desert Law in Bend.

For more information about the committee, visit [qualityoflife.osbar.org](http://qualityoflife.osbar.org).

### Loan Repayment Program Now Accepting Applications

Applications are being accepted through April 15 for the Oregon State Bar's Loan Repayment Assistance Program (LRAP), which provides forgivable loans of up to \$7,500 per year per program participant for a maximum of three consecutive years.

LRAP's mission is to attract and retain public service lawyers by helping them pay their educational debt, which can create a

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financial barrier that prevents lawyers from pursuing or continuing careers in public service law. The program annually forgives one year of loans if the participant has been in qualifying employment the prior year and has paid at least the amount of the LRAP loan on student loans.

For more details and to apply, visit [osbar.org/lrap](http://osbar.org/lrap).

### Deadline for Reporting MCLE Credits Is May 31

If this is your MCLE reporting year, the deadline to complete required MCLE credits is April 30, 2021, and the deadline to electronically certify and submit your report is 5 p.m. on May 31.

You can log on to the member dashboard at [hello.osbar.org](http://hello.osbar.org) to view your MCLE requirements and add credits to your transcript. Visit [osbar.org/mcle/index.html](http://osbar.org/mcle/index.html) for FAQs and complete reporting instructions.

### BOG Candidates Filing Deadline Set for 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 member 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.

The board has five regular Friday meetings a year. In a typical year, nearly half of the meetings are in the Portland area and the remainder at locations around the state. Board of Governors' committee meetings take place three to four weeks prior to regular board meetings. Board members also serve as liaisons to the Professional Liability Fund, bar sections and committees, and numerous other groups.

For more information or to print a copy of the candidate statement form, visit [osbar.org/leadership/bog](http://osbar.org/leadership/bog) or contact Danielle Edwards at [dedwards@osbar.org](mailto:dedwards@osbar.org) or (503) 620-0222, ext. 426.

### ONLD Members Invited to Weekly Zoom Meetups

The Oregon New Lawyers Division hosts weekly meetups for ONLD members

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statewide every Wednesday. There is no agenda, no judgment, no roll call and no dress code; the intention of these meetings is to create a space where new OSB members connect with peers.

New Oregon State Bar members, as well as law students and graduates who have not been sworn in yet, are sent a reminder email every week. For more information or to get a meeting link, send an email to [onld@osbar.org](mailto:onld@osbar.org).

### Fee Schedule for CLE Accreditation Updated

The fee schedule for CLE program accreditation applications has changed. For full details, visit [osbar.org/mcle/index.html](http://osbar.org/mcle/index.html).

### PLF Shred Events to Return in 2021

The Professional Liability Fund is planning to hold shred events for attorneys to shred their legal files starting in the late spring of 2021. The events will be held at the Oregon State Bar Center in Tigard and in other areas around the state.

Notifications with specific dates, locations and instructions will be sent out by broadcast email. COVID-19 precautions will be in place for these events. ■

## Legal Ethics Assistance

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

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

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

## Have an Item for the *Bulletin*?

The *Bulletin* welcomes short items about Oregon lawyers and law firms for the Bar People pages of the magazine. Notices are published at no cost. Email notices to: [editor@osbar.org](mailto:editor@osbar.org)

Submissions are subject to editing and published in the order received. The *Bulletin* publishes photographs (single headshots only) in "Moves" and "Among Ourselves" and "In Memoriam." The fee is \$20 for each photograph. The notice itself is free.

Paid professional announcements are also available. Inquire at [advertising@osbar.org](mailto:advertising@osbar.org). **Questions?** Call the *Bulletin*, (503) 431-6356 or (800) 452-8260, ext. 356.



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# BAR ACTIONS

## Discipline

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

### BROOKS F. COOPER

OSB #941772

Lake Oswego

Public reprimand

Effective Nov. 19, 2020, the disciplinary board approved a stipulation for discipline publically reprimanding Lake Oswego lawyer Brooks F. Cooper for violation of RPC 1.15-1(b) (depositing personal funds into the lawyer trust account for reasons other than paying bank service charges or meeting minimum balance requirements).

Cooper deposited his own funds into his IOLTA account to ensure that he would have adequate funds to cover a distribution request and a check he believed he had erroneously drafted in excess of the proper amount. However, Cooper did not review his IOLTA account balance or IOLTA records prior to depositing his own funds into his IOLTA account.

After depositing his funds into the IOLTA account, Cooper then reviewed his account balance and records more closely and realized that the deposit was unnecessary. He subsequently withdrew the same amount of money from his IOLTA account that he deposited.

By depositing his funds into his lawyer trust account for a reason other than paying bank service charges or meeting a minimum account balance, Cooper violated RPC 1.15-1(b).

As aggravating factors, the stipulation recited Cooper's substantial experience in the legal practice. In mitigation, the stipulation said Cooper had no record of prior discipline; made a timely, good-faith effort to rectify the consequences of the misconduct; experienced a delay from when the misconduct occurred to when it was reported; and expressed remorse.

### SARA LYNN ALLEN

OSB #992081

Lake Oswego

6-month suspension

Effective Dec. 19, 2020, the disciplinary board suspended Lake Oswego attorney Sara Lynn Allen for a period of six months for violation RPC 8.1(a)(2) (knowingly failing to respond to a lawful demand for information from a disciplinary authority).

Over a period of months, Allen received but failed to respond to four separate letters from the Disciplinary Counsel's Office (DCO), which inquired into alleged misconduct.

Allen's misconduct was aggravated by a prior record of misconduct, including a previous failure to respond to a disciplinary investigation; engaging in a pattern of misconduct; obstructing the disciplinary process; and refusing to acknowledge the wrongful nature of her conduct.

### RACHEL FRANCES O'NEAL

OSB #114810

Portland

120-day suspension

Effective Dec. 31, 2020, the disciplinary board suspended Portland lawyer Rachel O'Neal for 120 days for violations of RPC 1.7(a)(2) (current client conflict of interest); RPC 3.7(c) (lawyer shall withdraw from representation upon learning she may be called as a witness adverse to lawyer's client); RPC 8.4(a)(2) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law).

In 2018, O'Neal was representing a current boyfriend in divorce proceedings involving his ex-wife. While the case was pending, O'Neal obtained a restraining order against that boyfriend and ended both the personal and lawyer/client relationship. She later agreed to renew her representation of him in the divorce case, first on a limited basis and later to a greater degree after she obtained dismissal of the restraining order.

Renewing the representation created a conflict of interest because her client's interest was to discredit O'Neal's account of the events that led to the imposition of the restraining order, while O'Neal's interest was in confirming the truth of those events. O'Neal failed to obtain her client's informed consent, confirmed in writing, to the representation. This conduct violated RPC 1.7(a)(2).

Subsequently, opposing counsel in the divorce proceeding notified O'Neal of the intention to call O'Neal as a witness in the dissolution trial, adverse to O'Neal's client, regarding the representations she had made in her restraining order petition that would be prejudicial to her client's pursuit of parenting time. O'Neal refused to withdraw from the representation, but the court disqualified her from acting as counsel in the case. Her conduct violated RPC 3.7(c).

In 2019, during the dissolution trial involving the same parties, opposing counsel called O'Neal as a witness. O'Neal's former client appeared at the trial pro se. During her testimony, O'Neal denied helping her former client prepare for the trial and denied consulting with him or communicating with him as an attorney would with a client. The trial panel determined O'Neal's testimony was knowingly false and constituted the crime of false swearing. This conduct violated RPC 8.4(a)(2) and RPC 8.4(a)(3).

O'Neal's conduct was aggravated by a dishonest or selfish motive, a pattern of misconduct and multiple offenses. In mitigation, O'Neal demonstrated a lack of a prior disciplinary record, a cooperative attitude toward the proceedings and, relating to the RPC 3.7(c) violation only, personal or emotional problems.

### THOMAS JOHNSON

OSB #953126

Portland

150-day suspension

Effective Jan. 1, 2021, the disciplinary board approved a stipulation for discipline and suspended Portland lawyer Thomas Johnson for 150 days for violations of RPC



1.3 (neglect) and RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on a lawyer's fitness to practice).

Johnson was retained by a husband and wife to mediate a dissolution of marriage case. Part of Johnson's agreement with the husband and wife required him to retain an attorney to execute a Qualified Domestic Relations Order (QDRO). Johnson received the necessary financial information from the parties and planned to mail it to a QDRO attorney he intended to hire. Johnson then left town and asked a friend to mail the packet of financial information to the proposed QDRO attorney.

Johnson's friend never mailed the packet, and when Johnson returned to his office, he did not check to ensure that the packet was mailed, nor did he communicate with the proposed QDRO attorney. During the next several months, and despite requests from the husband, Johnson did nothing to ensure work was being done on the QDRO, in violation of RPC 1.3.

Despite the fact that Johnson did not actually know the status of the QDRO, Johnson told the husband on multiple occasions that he was in contact with the QDRO attorney and that progress was being made in the matter, in violation of RPC 8.4(a)(3).

The stipulation acknowledged that Johnson's conduct was aggravated by prior discipline, a dishonest or selfish motive, a pattern of misconduct, multiple violations and substantial experience in the practice of law. Johnson's conduct was mitigated by a timely good faith effort to make restitution or rectify the consequences of his misconduct, full and free disclosure to the disciplinary board and a cooperative attitude toward proceedings, and remorse. ■

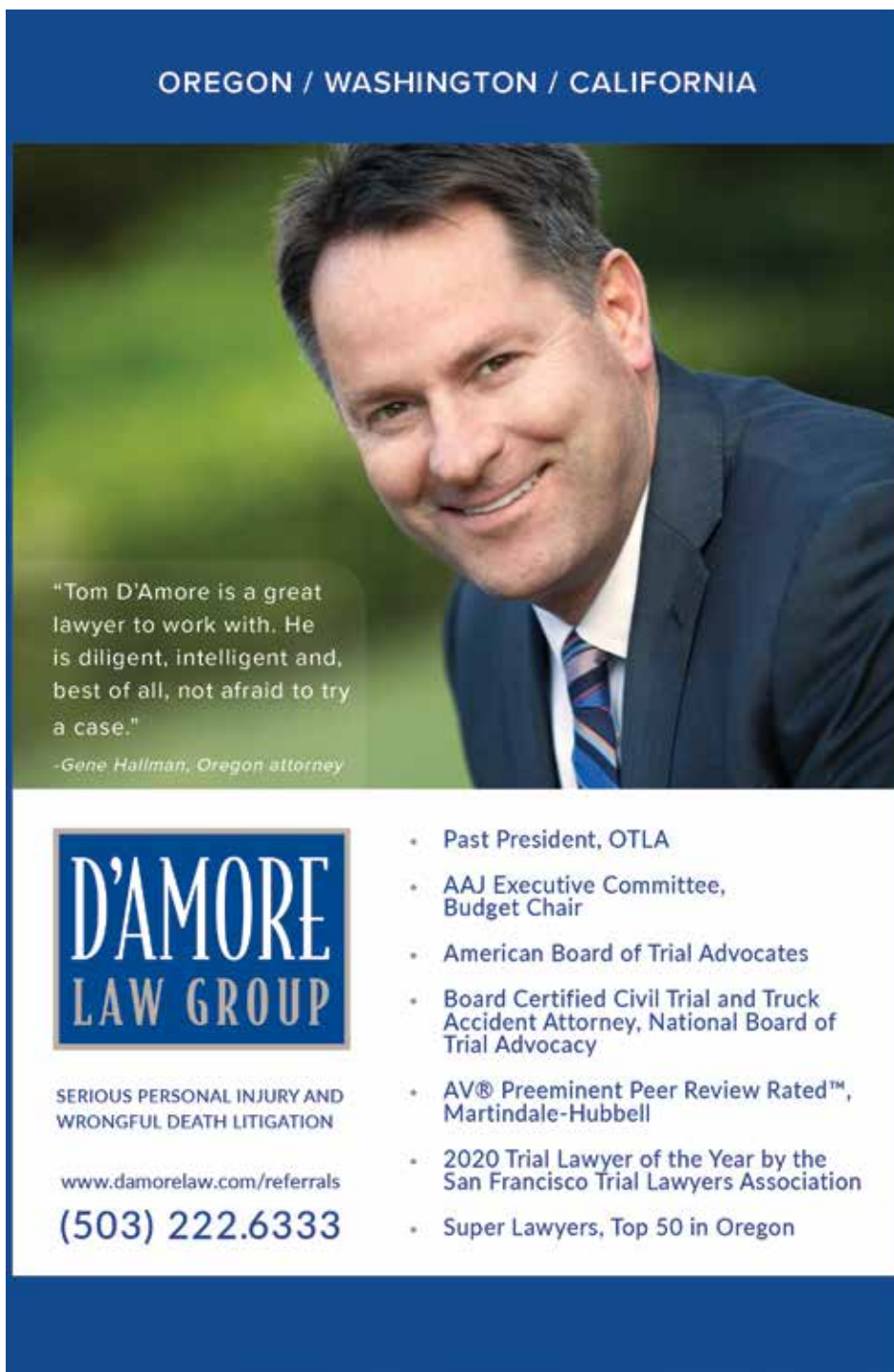


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- Super Lawyers, Top 50 in Oregon

# BAR PEOPLE

## Among Ourselves

**Scott Kerin**, an assistant United States attorney with the U.S. Attorney's Office in Oregon, is currently serving a temporary detail at the U.S. Embassy in Bucharest, Romania, where he was honored twice recently by the former U.S. Ambassador to Romania, Adrian Zuckerman. On Dec. 10, 2020, Kerin was presented with the U.S. Embassy's Achievement Award for his work in helping broker agreements between the Romanian government, the city of Bucharest and the Romanian Orthodox Church to cooperate in combatting human trafficking. On Jan. 20, 2021, Kerin received a U.S. State Department Achievement Award for his contributions to the mission of the U.S. Embassy. While overseas, Kerin is teaching prosecutors and law enforcement agents in Eastern Europe how to investigate and prosecute cybercrime and intellectual property crime.

**Kenji Sugahara**, president and chief executive officer of Drone Service Providers Alliance and CEO of Ariascend, has been named to the Federal Aviation Administration's Drone Advisory Committee. The DAC is a broad-based, long-term federal advisory committee that provides the FAA advice on key unmanned aircraft systems integration issues by helping to identify challenges and prioritizing improvements. Sugahara also recently was awarded a patent for broadcast remote identification of drones.

**Leonard DuBoff**, founder of The DuBoff Law Group, has announced that *Employment Law (in Plain English)*, which he co-authored with Kenneth A. Perea, Christopher Perea and Lauren Barnes, is now available from Allworth Press, an imprint of Skyhorse Publishing. The book joins numerous other books in the "in Plain English" series, all of which have been co-authored by DuBoff and other members of The DuBoff Law Group.

**Karen L. O'Connor** has been appointed chair of the Diversity, Equity and Inclusion Committee at Stoel Rives. As chair, O'Connor oversees implementation of the firm's long-term DEI initiatives. She has been a member of the committee since 2018 and served as vice chair during the past year, working closely with former chair Timothy M. Taylor to ensure a smooth transition. **Dexter J. Pearce**, an associate in the firm's Portland office, serves as the vice chair of the committee.



**Laura Salerno Owens**, shareholder and firm president of Markowitz Herbold, has been recognized as a Women of Achievement honoree by the Oregon Commission for Women. Qualifying candidates are exemplary role models who promote the status of women in society, are committed to diversity and equity, and have earned recognition for success and leadership in their fields. Salerno Owens has been recognized as a Top 100 Legal Influencer in the U.S. by *The Business Journals*, as well as University of Oregon School of Law Outstanding Young Alumnus, Oregon State Bar Young Lawyers Division Volunteer of the Year and a recipient of the National Service to the Bar Award by the American Bar Association Young Lawyers Division. ■

## Moves



**Krista Le Roux** has joined the employment law section at Gilroy, Napoli, Short Law Group. Her practice focuses on employment litigation, including sexual harassment and discrimination litigation. Before joining the firm, her solo employment law practice focused on litigating for workers in state, federal and administrative law settings.



**Jacob Sinclair** has joined Collier Law as an associate attorney. Sinclair graduated from Willamette University College of Law. He will focus on estate planning, probate and trust administration.



**Laura T.Z. Montgomery** is now a partner in the Eugene law firm of Hutchinson Cox. Her practice focuses on employment litigation, business and commercial litigation, real property disputes and trust and estate disputes.



Tonkon Torp has elected four attorneys to the partnership effective Jan. 1, 2021. **Rachel Atchison** joined the business department in 2013 and is a member of the real estate and land use group and the mergers and acquisitions group. She focuses her practice on real es-



tate and mergers and acquisitions transactions, negotiating and drafting various agreements, and corporate governance. **Eric Beach** joined the firm in 2010 and is a member of the intellectual

property and data privacy practice groups. He advises clients on intellectual property matters, creating and negotiating technology and software licenses, and protecting clients' trademark, patent, copyright and trade secret rights through litigation in federal and state court. **Jeff Bradford** joined Tonkon Torp's litigation department



in 2013. He represents clients in state and federal court, as well as in arbitration and mediation. He regularly works with both small, local businesses and national corporations, guiding them through disputes and advising them on preventative best practices. He also represents nonprofit clients in



litigation and private dispute resolution.

**Alex Tinker** joined the firm in 2014 and is part of its litigation department. He also chairs its cannabis industry group. Tinker represents individuals

and companies on claims including contract disputes, business owner disputes and business torts. He has helped Tonkon clients win on motions to dismiss, on summary judgment and at trial. Within the cannabis industry, he defends OLCC license violations and advises clients on industry-specific legal issues.



**Erin O. Sweeney** has joined Lane Powell's Portland office as a shareholder on the firm's labor, employment and benefits team. Sweeney brings significant experience providing strategic

and pragmatic day-to-day advice on employment and labor issues, in both unionized and nonunionized workplaces, and to clients ranging from small startups to Fortune 100 companies. Sweeney's practice also focuses on defending matters in state and federal courts, arbitration and administrative forums such as the EEOC, DOL, NLRB and state agencies.



Three new associates have joined Schwabe, Williamson & Wyatt. **Patrick Cleary** is working in the real estate and construction industry group. Cleary represents



clients on a wide variety of real estate and business transactions. **Audrey Davis** is joining the firm's litigation team. Her passion for problem-solving drives her to

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## McGaughey Erickson

is pleased to announce **Alex Hutchinson**  
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Alex will focus on partnership disputes, employment matters, and securities & Finra litigation. She graduated from Willamette University School of Law, and previously worked in the securities industry and taught in the AmeriCorps program.

Welcome, Alex!

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find creative solutions for her clients' needs throughout all stages of litigation. **Annie White** is now part of the firm's intellectual property group. She helps her clients through the full gamut of intellectual property issues, including trademark, copyright and patent matters.



Lane Powell has announced that two attorneys in its Portland office have been elected shareholders. **Christine Thelen** provides advice to employers and human resources professionals

on an array of HR policy, compliance, employee relations and workplace issues, as well as training on topics such as cultivating a respectful workplace and effective management practices that mitigate risk. She also has represented employers in state



and federal court, as well as before the EEOC and state fair labor practices agencies. **Cozette Tran-Caffee** works with her clients on the land use entitlement process.

She advises clients at every stage — from pre-development due diligence through local approval and, where necessary, upon appeal to LUBA and the courts. Tran-Caffee also counsels clients on real estate transactions, including commercial leasing and real estate finance. She co-chairs Lane Powell's Women's Initiative and was recently appointed to Urban Land Institute Northwest's Women's Leadership Initiative.



Lane Powell has announced that attorney **Rishi Puri** has been promoted to counsel to the firm. He provides counsel on a broad scope of issues, ranging from top-down corporate

policy to advice regarding individual employment decisions, and also has significant experience in class actions. In addition, Puri defends clients involved in unfair labor

## 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  
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practice charges filed by the National Labor Relations Board, regularly practices before the Equal Employment Opportunity Commission and assists with DOL audits and investigations. He serves on the board of directors for Basic Rights Oregon and was a 2018 Leadership Council on Legal Diversity Fellow.



**James A. Underwood** has reopened his firm Underwood Law, servicing clients in the Portland metro area. Underwood's practice focuses on providing a wide range of legal services for businesses

and individuals in Oregon and Washington, including outside general counsel, entity formation, contractual matters, transactions, residential and commercial leasing, regulatory compliance, civil litigation and dispute resolution, collections, real estate, and arbitration and mediation services.

Stoel Rives has announced that three attorneys in its Portland office have been promoted to partner. **Susan Beckert Bock** helps clients plan for the succession of their wealth during life and at death in a tax-efficient manner. Her practice includes advising clients on income, estate and gift tax issues, charitable planning, international estate planning, and the administration of estates and trusts. She also works with families and closely held businesses to promote business succession planning and the creation of small family businesses. Bock is based in Portland but spends time in the firm's Boise office assisting Idaho clients.

**Crystal Chase** focuses on environmental and natural resources litigation, condemnation and real property litigation, and appellate matters for clients in the manufacturing, natural resource, agribusiness and energy industries. She also has significant experience litigating matters under Oregon's Administrative Procedures Act. She helps clients navigate all phases of litigation, from motions practice through trial and, if necessary, appeal. **Heather Stewart** is a member of the corporate practice group and the energy and natural resources industry group. She advises sponsors and developers in the financing of renewable energy projects, including the structuring and negotiation of construction and term debt facilities, mezzanine debt facilities, letter of credit facilities, and cash and tax

## Who is following in your client's footsteps?



Photo by Jay Sickler, Dec. 2017  
Amboseli National Park, Kenya

African elephants live 60 – 70 years, about the same lifespan as baby boomers in the work force. As business owners retire, many want to sell their business to a younger member of their herd. Cogence Group has recently helped numerous owners structure and model multi-year transitions.

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## GILROY | NAPOLI | SHORT LAW GROUP



We are pleased to announce **Krista Le Roux** as our new associate. Krista joins Gilroy, Napoli, Short Law Group as an associate, focusing on employment litigation. She brings depth and experience to our busy employment law section. She has worked in employee advocacy for over a decade. Before joining us, her solo employment law practice thrived as she litigated for workers in state, federal, and administrative law settings.

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## OMLA's 21st Annual Summer Social & Fundraising Auction

We sadly weren't able to hold an in person event in 2020 due to COVID-19, but we were still able to raise \$13,750!

We put ALL of those funds (and more) right back into the community by distributing 11 bar exam grants to diverse candidates taking the February 2021 bar exam.

### Special Thanks To Our Event Sponsor



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equity investments. She has been involved in the financing of scores of solar projects throughout the U.S., and regularly advises clients in connection with the acquisition of operating- and development-stage renewable energy projects.



**Zachary Kelton** has been named associate director and chief of staff of the Federal Bureau of Prisons, United States Department of Justice. In this role, he serves as a liaison between the director

and internal and external stakeholders, and provides advice and assistance in the management and resolution of complex and sensitive management and operational issues facing the agency and department.



Foster Garvey announces the addition of two new associates in the Portland office. **Justice Brooks** has joined the firm's litigation group. His practice focuses on business, commercial

and employment litigation, as well as insolvency and bankruptcy matters. Brooks has a broad range of trial and appellate



experience in state and federal court. He also provides advice and training to clients on business and employment matters.

**Erin Milos White** has joined the firm's trusts, estates and charitable organizations group. White advises in estate planning and administration matters, and assists clients with designing full taxable and nontaxable estate plans, strategizing and implementing business succession plans, and administering trusts and probate estates.



Associate attorney **Blake Fry** has joined Hart Wagner. Fry's practice focuses on civil litigation in state and federal trial and appellate courts. His practice includes defending public enti-



ties, public officials and employers in civil rights and tort claims, and attorneys and other professionals in malpractice and related claims. He is a member of the Oregon Association of Defense Counsel, where he currently serves as the chair of the Governmental Liability Section.

Phillips, Moore & Traylor has announced that **John Michael Myers** has joined the firm as a partner. The full-service family law firm specializes in litigating, mediating and negotiating complex divorces throughout Oregon.



**Megan Beshai** has joined the Bend-based law firm Karnopp Petersen as an associate attorney specializing in civil litigation. Since joining the firm, Beshai has worked with several attorneys

on litigation matters relating to their practice areas, including Indian law and natural resources, employment law, business litigation and land use.



**Lisa Andrach** has joined Fitch & Neary. Her practice focuses on estate planning, probate and trust administration, real estate, and land use law.



Davis Wright Tremaine has announced the promotion of three attorneys to partner in its Portland office. **Elaine Albrich** teams with clients to offer practical, strategic solutions for navigating

and resolving complex situations involving use of land, impacts to natural resources




and resource lands, discretionary permits and licenses, and other government-imposed hurdles. **Kaley Fendall** focuses her practice on all aspects of antitrust law, including litigation,

counseling, and mergers and acquisitions. Her experience spans industries that in-



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Thank you to the OSB members who made our 2020 CLE seminars possible. Their commitment to supporting the bar's CLE programming during this extraordinary year is greatly appreciated.

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Honorable Wells B. Ashby	Corey P. Driscoll
David E. Atkin	Lea Ann Easton
Daniel P. Atkinson	Gina K. Eiben
Jan L. Atwill	Julieanna Elegant
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Rebecca M. Babarsky	Christopher D. Erickson
Jessica Baumgarten Baggenstos	Nicole B. Erickson
Joe D. Bailey	Maura C. Fahey
Justin Michael Baxter	David E. Filippi
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Sheila Maloney Blackford	Brian C. Free
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Anthony Blake	Kathryn Gapinski
Ralph O. Bloemers	Kathleen Gargan
Susan B. Bock	Susan N. Gary
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Christine R. Costantino	Steve Johansen
Susan R. Cournoyer	Thomas Russell Johnson
Conde Thompson Cox	Leslie S. Johnson
Maya R. Crawford Peacock	Kelly Donovan Jones
Sally Anne Curey	Philip N. Jones
Rex Kyle Daines	Jason Llewellyn Kafoury
Thomas D'Amore	Kathryn L. Kammer
Linn D. Davis	Mark B. Kantor
Hope A. Del Carlo	Benjamin M. Kearney
Maria Francesca Di Miceli	Chris Keefer
Courtney C. Dippel	Myah Osher Kehoe
Nikki E. Dobay	Spencer D. Kelly
William H. Dolan	G. Kevin Kiely

*continues on opposite page...*



clude financial services, food and beverage, hospitality and health care. **Meghan Moran** advises clients on supply chain matters, acts as principal outside counsel and assists with mergers and acquisitions for clients in the food, beverage, agribusiness, manufacturing, outdoor/apparel and distribution industries.



**Natalie Thorp** has joined Landerholm Family Law as an associate attorney in the Portland office, where she couples her professional and personal understanding of the divorce process to deliver effective and compassionate legal representation.



**Jacquelyn Bunick** has been elevated to partner at Jarvis, Dreyer, Glatte & Larsen. Bunick is a litigator whose practice focuses on business, real property and trust disputes. She also counsels clients on elder law matters, including establishing, contesting and administering guardianships and conservatorships.



**Taylor Stichauff** has joined Gilroy Napoli Short Law Group's Bend office. While the firm also specializes in personal injury and sexual harassment/discrimination litigation, Stichauff will focus on criminal/DUII defense in Deschutes, Jackson, Klamath, Jefferson and Crook counties. Stichauff previously worked at the Oregon Department of Justice where she gained extensive trial preparation skills. Contact her at [taylor@gnsllawgroup.com](mailto:taylor@gnsllawgroup.com) or (541) 306-2990.

**Brenna K. Legaard** has joined K&L Gates as a partner in its intellectual property practice in Portland. Legaard focuses her practice on both transactional and litigation matters. She asserts patents, trade-



marks and other IP against infringers, as well as defends clients accused of infringement. Legaard also assists clients with protecting innovations, licensing or acquiring technology, and developing intellectual property positions. She advises both established and emerging companies in the medical, software, high-tech manufacturing and sporting goods industries on intellectual property strategies.

**Annie L. Robertson** has joined Oksenholt Capital as chief legal officer and director of public affairs. Robertson joins the company's leadership team to helm the internal legal and public affairs efforts — as well as business transactional efforts — for Oksenholt Capital and other companies under the Oksenholt umbrella. In her role as chief legal officer, Robertson is responsible for overseeing and providing leadership and strategic direction, as well as the management of legal affairs, public policy, charitable giving and long-term business planning.



**Amy J. Cross** has been named a shareholder of Gevurtz Menashe. She has spent more than 20 years in the practice of law, with 15 years of experience practicing estate planning and family law

in Portland. She will continue her practice handling wills and revocable trusts, special needs planning, estate and gift taxes, probate, trust administration, guardianships and conservatorships, and beneficiary representation for clients with legal matters in Oregon and Washington.



**Amy Robinson** has been promoted to partner at Miller Nash Graham & Dunn. Based in the firm's Vancouver, Washington, office, and licensed to practice in Washington, Oregon

and Alaska, Robinson joined the firm in 2019 as senior counsel. At that time, she brought with her more than 18 years of experience advising Pacific Northwest employers on employment-related issues.

**Eden Vasquez** has joined Miller Nash Graham & Dunn in the Portland office.

Kate M. H. Kilberg  
Genevieve AuYeung Kiley  
Amber Kinney  
Robert S. Kinney  
Matthew S. Kirkpatrick  
Shanna Knight  
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Geoffrey G. Wren  
Arnold H. Wuhrman  
Honorable Youlee Yim You  
Kelly Alexandre Zusman

**Thank you from OSB CLE Seminars**



Vasquez joins the firm's prominent education team, assisting education institutions through the Pacific Northwest. Vasquez began at Miller Nash Graham & Dunn as a summer associate in

2019 where she gained experience in general litigation, education, employment and business.



**Emily Johnson** has joined the law office of Stoll Berne as an associate attorney. Her practice will focus on complex litigation matters. She previously has worked as an associate at another

Portland firm practicing personal injury litigation. She's also served as a law clerk in the Civil Enforcement Division — Financial Fraud & Consumer Protection for the Oregon Department of Justice.



**Nicole C. Hancock** has been appointed to the executive committee of Stoel Rives. Hancock initially joined the firm in 2003. She is a partner in Stoel Rives' litigation practice group

and will continue her practice as a trial attorney, in addition to her new role on the executive committee. Hancock has successfully first-chaired trials in federal and state courts, arbitration and regulatory actions, as well as serving as outside general counsel for companies. She served as the managing partner in the Boise office of Stoel Rives from 2015-20.



Bullard Law announces three new hires. **John Stellwagen** has worked as a litigator and advice attorney, as both in-house and outside counsel, and in the public and private sectors. His

practice will focus on the areas of labor and employment including, collective bargaining, labor contract administration, labor arbitrations, employee relations, discipline

and discharge, representation before state and federal agencies, and policy review and implementation for both public sector and private clients. **Heather Van Meter** brings



more than two decades of education and legal experience to the firm, including time at major law firms, serving the Oregon Department of Justice and teaching. Her practice will focus on

employment law advice and litigation, public sector and administrative law, arbitration and mediation. **Marc E. Alifanz** arrives with extensive experience in litigation and legal counseling. For more



than 17 years, Alifanz has helped businesses as a litigator, corporate in-house counsel and nonprofit executive. His practice will focus on employment law and counseling, pre-

ventative employment practices, wage and hour, and FMLA/OFLA.



Multnomah Defendants Inc. has named **Jessica Kampfe** executive director. Kampfe is the first woman to lead a public defense organization in Multnomah County that

represents people in both juvenile and adult courts. Kampfe is a statewide leader in public defense, having worked closely with the judiciary and legislature on numerous committees, including Governor Kate Brown's screening panel for judicial vacancies, the Oregon Criminal Defense Lawyers Association legislative committee, the Criminal Justice Commission and the Prison Forecast Advisory committee. She previously had served as executive director and assistant executive director with Public Defender of Marion County from 2012-2021.



**Sandy Chung** has been selected by the ACLU of Oregon as its next executive director. Chung previously was the vice president for human resources and Title IX coordi-

nator at the University of Portland, where she led the university's efforts in the areas of civil rights, equity and sexual assault. Her organizing and legal activism include worker's right campaigns, especially those involving BIPOC, immigrant and farm-worker communities; representation of minors in immigration proceedings; and domestic and sexual violence prevention and advocacy. ■

## In Memoriam

**Todd Westmoreland** was born on Sept. 17, 1942, in Los Angeles. He passed away peacefully on Dec. 18, 2020, at his Central Oregon home with his dog and sister by his side.

Westmoreland grew up Southern California at the beach — surfing, scuba diving, playing volleyball and finding adventures in Mexico. He earned his undergraduate degree from Oregon State University and then received his juris doctor degree from Lewis & Clark Law School in 1977.

Westmoreland's work throughout his life was notable for its variety. He dove commercially for abalone and lobster in Southern California. While in law enforcement, he worked the first Watts riots in Los Angeles while with the sheriff's office and then served as an officer with the California Highway Patrol in Malibu and Central California.

After becoming a member of the Oregon State Bar, he joined Al and Rick Roll in their labor law practice on the Oregon coast. His practice later expanded to include worker's compensation, social security and personal injury cases. The many thank-you cards found after his death are a testament to his commitment to helping others, clients and strangers, wherever he found them.

Westmoreland loved travel, Duck football and his three German shorthair pointers. His travels took him to Africa, to the Big Island of Hawaii each year and then to Kodiak Island where he so enjoyed fishing. Another highlight was his time in Washington, D.C., and seeing a case argued before the U.S. Supreme Court.

After his retirement to Central Oregon, Westmoreland became very involved with the 3 Sister's Equine Refuge, where he worked with abused and neglected horses.



He had a true gift for instilling trust and connecting with these animals, who had suffered so much.

Westmoreland is survived by his wife, two children, five grandchildren and three great-grandchildren. He also leaves behind many others who call him their friend and colleague.

Remembrances may be made to the 3 Sisters Equine Refuge in Bend in his memory. ■

### Additional Notices

**Lewis B. Hampton**

86, Hillsboro, Feb. 19, 2020

**Carol Lynn Brassey**

68, Boise, Idaho, June 1, 2020

**James P. Martin**

64, Portland, Aug. 1, 2020

**Peter S. Leichtfuss**

51, Lake Oswego, Aug. 4, 2020

**Michael K. Kelley**

61, Portland, Oct. 11, 2020

**Kerry Bleskan**

46, Portland, Oct. 20, 2020

**Clifford G. Collard**

68, Newport, Oct. 31, 2020

**Alice M. Plymell**

82, Eugene, Nov. 12, 2020

**Gregory Bunnell**

55, Portland, Nov. 22, 2020

**Don A. Larsen**

63, Tucson, Ariz., Nov. 18, 2020

**James E. Leuenberger**

63, Lake Oswego, Dec. 2, 2020

### Have an Item for the *Bulletin*?

The *Bulletin* welcomes short items about Oregon lawyers and law firms for the Bar People pages of the magazine.

Submissions are subject to editing and published in the order received. Text-only notices are published at no cost; email them to [editor@osbar.org](mailto:editor@osbar.org).

The *Bulletin* also publishes photographs (single headshots only) in "Moves," "Among Ourselves" and "In Memoriam." The fee is \$20 for each photograph.

Paid professional announcements are also available. Inquire at [advertising@osbar.org](mailto:advertising@osbar.org). Questions? Call the *Bulletin* at (503) 431-6356 or (800) 452-8260, ext. 356.

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## POSITIONS AVAILABLE

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

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



**ASSOCIATE ATTORNEY—EUGENE, OREGON** – Growing partnership in downtown Eugene is seeking an associate attorney to support its criminal defense and family law practice. The position includes opportunities to grow a personal injury and estate planning practice as well. Ideal candidates will have two years full-time employment experience prior to entering college or law school, with legal experience preferred. Traditional graduates are also encouraged to apply. This opportunity may also be ideal for the newer lawyer with a small book of business or the recent graduate with an entrepreneurial mind. Compensation is negotiable and performance based with an expected annual range of \$50,000 to \$80,000. Benefits include bar dues, PLF coverage, CLE allowance, and health care plan. Please submit your cover letter, resume, writing sample and three professional references to [info@oregonattys.com](mailto:info@oregonattys.com).

**BROWNSTEIN RASK, A PROMINENT, MID-SIZED PORTLAND LAW FIRM IN DOWNTOWN PORTLAND**, is seeking an associate with 3-5 years' experience in litigation and/or business. Some experience with family law is a plus, but not necessary. Candidate must have excellent verbal and written communication skills, analytical and organization skills, and strong commitment to providing quality client service. Competitive salary and benefits. Interested candidates should submit a cover letter and resume to [jobs@brownsteinrask.com](mailto:jobs@brownsteinrask.com), to be considered for the position.

**BUSINESS ASSOCIATE ATTORNEY (2+ YEARS EXPERIENCE)** – Engrav Law Office LLP is a boutique business and litigation firm looking to hire an associate with 2+ years of business transactional and/or business litigation experience. Experience in real estate is a plus. Interested individuals please contact [grant@engravlawoffice.com](mailto:grant@engravlawoffice.com).

**BUSINESS/ESTATE PLANNING/REAL ESTATE ASSOCIATE** – Bend's oldest law firm is seeking an associate attorney with 1-5 years of experience to work in its thriving and sophisticated business, real estate, and estate planning practice.

Qualified candidates must possess an attention to detail, will be top one-third (1/3) of his or her law school class, have an interest in business, real estate, and/or estate planning demonstrated through law school course work or relevant experience. We offer competitive salary and benefits, and the opportunity to work on challenging projects in a collegial work environment. To apply, please submit cover letter, resume, and transcript with class rank to Laura Toftdahl, Bryant, Lovlien & Jarvis, 591 SW Millview Way, Bend, OR 97702 or [laura@bljlawyers.com](mailto:laura@bljlawyers.com).

**BUSINESS & LITIGATION ASSOCIATE (3-5 YEARS EXPERIENCE)** – Moomaw Mesirow & Godfrey, LLP is seeking an associate attorney with three or more years of substantive litigation and business experience to join its Beaverton office. The ideal candidate will have familiarity providing general business counseling to small and medium sized businesses as well as managing civil litigation, including consulting with clients as to a variety of pre-dispute and dispute resolution matters. Strong academic credentials and analytical ability required. If you are interested in working in a team environment that promotes work/life balance, please submit a cover letter, résumé, writing sample, and law school transcript (unofficial is acceptable) by e-mail to Sarah Fantazia at [sarah@mmgattorneys.com](mailto:sarah@mmgattorneys.com). For recordkeeping, please include the ad source in the subject line of your e-mail (e.g., state bar ad, firm website, etc.). MM&G is an equal opportunity employer committed to diversity in the workplace.

**EASTERN OREGON FIRM SEEKING CRIMINAL DEFENSE ATTORNEY** – David R. Carlson, Attorney at Law, is a sole practitioner in Vale, Oregon, with an immediate opening for a full-time attorney position. The firm specializes in criminal defense law and is looking for an attorney with a strong legal ability and work ethic. The ideal candidate will have a strong commitment to defend the Constitution and people accused of all levels of crimes. Preference for candidates who speak Spanish, though not required. Candidates

should also display strong social skills and an ability to work well with others as frequent interaction with clients, opposing counsel, and court personnel is required. Compensation is DOE. Recent graduates are invited to apply but must be a member of the Oregon State Bar. Please mail resumes and any accompanying materials to David R. Carlson, Attorney at Law, 449 Washington St, E., Vale, Oregon 97918 or electronically to [manager@DavidCarlson.Law](mailto:manager@DavidCarlson.Law).

**ESTABLISHED CENTRAL OREGON LAW FIRM** looking for a family law associate attorney to join our team. Ideal qualifications include at least 2-3 years of experience in family law, a competitive spirit, strong work ethic, and superior oral and written skills. Annual base salary \$60,000-\$72,000 depending on experience and qualifications. Compensation includes performance-based component. Benefits include health insurance and 401(k) with employer match. Please submit a cover letter, resume, references and writing sample to [resume@redmond-lawyers.com](mailto:resume@redmond-lawyers.com).

**ESTABLISHED EASTERN OREGON LAWYER** looking for an Associate Attorney interested in criminal defense and trial work. Submit resume and cover letter to [lawyers@rocklawpc.com](mailto:lawyers@rocklawpc.com).

**EXPERIENCED CIVIL LITIGATION ATTORNEY - D'AMORE LAW GROUP – LAKE OSWEGO (PORTLAND), OR** – Seeking an experienced civil litigation attorney to join our AV Preeminent litigation firm. D'Amore Law Group represents plaintiffs in complex civil litigation matters on behalf of individuals and families in catastrophic injury, wrongful death, sexual abuse, and insurance bad faith. We are looking for an attorney that is passionate about plaintiff's work and wants to excel at an established, fast-paced and collegial law firm. The highest integrity and ethics are required. Excellent writing skills and excellent legal research skills are mandatory. The attorney should be looking to work for an established firm and a long-term career opportunity. It is important that attorney has a positive attitude and works well with

others. Candidate will be expected to engage in significant client contact and supervise cases; maintain open communication with clients, counsel, and staff; conduct legal research and draft complaints, motions, and memos; conduct depositions; make court appearances, and prepare cases for trial. Our attorneys must be able to manage cases proactively, multi-task, prioritize workflow to meet competing deadlines, work independently, guide paralegals, associate attorneys, and support staff and enjoy working in a fast-paced environment. Experience arguing motions in court and trial experience are desired. Candidate must be admitted to Oregon State Bar upon hire. Please email cover letter with salary requirements, resume, writing sample (max 5 pages), and three professional references to Shannon Ormsby: [shannon@damorelaw.com](mailto:shannon@damorelaw.com). No phone calls please. Please visit our website for more information about our firm: [www.damorelaw.com](http://www.damorelaw.com).

**FAMILY LAW PRACTICE/MENTORSHIP OPPORTUNITY IN BEND** – A non litigation attorney with 30 years experience is willing to mentor a family law attorney who would like to practice in Bend. This is NOT an associate position. The right person would need to develop their own practice, pay rent (\$650 per month) and bar fees. The founding partner just retired and there is enough work for two attorneys. Please check out [Familylawbend.com](http://Familylawbend.com) and contact Lillian Quinn at (541) 728-1974 or [liquin927@gmail.com](mailto:liquin927@gmail.com).

**LITIGATION ASSOCIATE ATTORNEY – EUGENE LAW FIRM** – Hershner Hunter, LLP, the largest full-service business firm in Eugene, is seeking an associate attorney to work in its busy litigation group, specializing in commercial, employment, construction and real property litigation. This is a partner-track position. Candidates should have at least one year of litigation experience; two years of experience is preferred. Candidates should send materials to Nicholas Frost, at [nfrost@hershnerhunter.com](mailto:nfrost@hershnerhunter.com). Hershner Hunter, LLP is an equal opportunity employer.

**MUNICIPAL LAW ASSOCIATE** – Bend’s oldest law firm is seeking an associate attorney with 3-5 years of experience in municipal law. Qualified candidates must have strong organizational skills, as well as the ability to work independently and as a team member. The ideal candidate will be a self-starter, have strong academic credentials, and outstanding writing and interpersonal skills. We offer competitive salary and benefits, and the opportunity to work on challenging projects in a collegial work environment. To apply, please submit cover letter, resume, and transcript with class rank to Laura Toftdahl, Bryant, Lovlien & Jarvis, 591 SW Millview Way, Bend, OR 97702 or [laura@bljlawyers.com](mailto:laura@bljlawyers.com).

**OPENING AVAILABLE FOR AN ASSOCIATE ATTORNEY AT THE CENTER FOR NONPROFIT LAW** – Our office is a small but busy law firm that specializes in working exclusively with nonprofit organizations, with a focus on helping progressive and humanitarian organizations. We want to hire an attorney with at least 2 to 3 years of experience practicing law in Oregon with an emphasis in the areas of employment law, contract law, and intellectual property law. Prior experience in nonprofit law is a plus, but not required. Excellent writing skills, legal research skills, the ability to manage multiple projects at once, and the ability to work collaboratively as part of a mission-oriented team are all essential. Please address David Atkin in your resume and cover letter and send by email to [sadi@centerfornonprofitlaw.com](mailto:sadi@centerfornonprofitlaw.com).

**OREGON COAST DEFENDERS**, the indigent defense consortium for Lincoln County, is currently accepting applications from attorneys interested in providing contract indigent defense services for Lincoln County. We are seeking an attorney for a full time misdemeanor and felony case load. Applicants should have at least three years of criminal law experience. Please submit resume and cover letter to Oregon Coast Defenders, PO Box 102, Tidewater, Oregon 97390 or you can email the same to [greco@pioneer.net](mailto:greco@pioneer.net).

**SEEKING TO TRANSITION MY HIGHLY REGARDED ESTATE PLANNING PRACTICE IN VANCOUVER, WA** to an estate planning and business attorney with 8+ years’ experience. Must be licensed in both OR and WA, with an LL.M in tax or deep tax background. Looking for a people person, possessing a strong work ethic and capable of leading complex client engagements. Are you looking for a rewarding practice in a great community? If so, e-mail [VancouverWATaxAttorney@gmail.com](mailto:VancouverWATaxAttorney@gmail.com) or call 503-329-6955. All inquiries confidential.

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

**WASHINGTON COUNTY, OREGON COUNTY COUNSEL** – The County Counsel is a key advisor providing public policy and legal advice to elected officials, county management, and affiliations. Known as a highly effective leader, the County Counsel manages the Office of the County Counsel, including a talented and dedicated staff of 14. The County Counsel develops and implements the office strategic plan and collaborates with staff to establish annual work plans identifying goals, objectives, and measurable outcomes. With a commitment to leading the equitable delivery of Washington County’s services and unquestioned integrity and sound ethics, the County Counsel is considered a thought partner dedicated to public service and always works in the best interest of the County. The

County Counsel is apolitical yet politically astute, with a strong history of developing effective relationships with elected officials and providing balanced and sound legal advice. The successful candidate develops positive partnerships throughout the County, establishes high-level trust, and actively collaborates with others to find creative solutions and assist in achieving the public policy objectives established by the Board of County Commissioners. Additionally, the ideal candidate will have a vision for the Office of the County Counsel and the appropriate role the Office has in shaping and implementing public policy consistent with the Board and senior county management. Qualifications: The ideal candidate will be a member of the Oregon State Bar, with at least ten years of increasingly responsible legal experience. A successful track record as a City or County Attorney, Deputy Attorney, or experience in a private law firm advising public sector clients is ideal. Direct leadership experience managing professional and paraprofessional legal personnel is essential. Knowledge of the principles and practices of municipal law, litigation, civil rights, and labor relations law is required, as is expertise in successful negotiation, mediation, and conflict resolution. Federal, State, and local statutes, regulations, rules, and ordinances applicable to County activities and functions, including municipal liability, public meetings, torts, land use, public records, and public financing, is required. Knowledge of civil trial and appellate procedures in state and federal courts and administrative tribunals is ideal. Compensation and Benefits. The contract is at the discretion of the Board of Commissioners, with a salary range of \$169,642 – \$242,042. The County offers a compelling benefits package with full coverage, paid leave, the County Wellness Program, and a free TriMet pass. How to Apply: Washington County is an equal opportunity employer with a commitment to diversity and an inclusive workforce. Women, minorities, veterans, and people with disabilities are encouraged to apply. Applications will be accepted electronically by The Novak Consulting Group at

<https://bit.ly/3bEiZN7>. Applicants complete a brief online form and provide a cover letter and resume. Please direct questions to Heather Gantz at [hgantz@thenovakconsultinggroup.com](mailto:hgantz@thenovakconsultinggroup.com) or (513) 221-0500. 381.

#### PRACTICES FOR SALE

**EAST PIERCE COUNTY PERSONAL INJURY LAW FIRM** that is thriving with 2020 YTD gross revenue over \$625,000 as of November and weighted projected seller’s discretionary earnings (SDE) of over \$485,000. This successful firm has shown incredible YoY growth each of the last three years, is completely turn-key and ready for new ownership. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Email “East Pierce County Personal Injury Law Firm” to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509-9224.

**ESTABLISHED WALLA WALLA WASHINGTON IMMIGRATION LAW FIRM** with consistent YoY growth and 2019 gross revenue over \$420,000. This successful firm has a great reputation in its community, approximately 450-500 active client files, is completely turn-key and ready for new ownership. Email “Established Walla Walla Washington Immigration Law Firm” to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509-9224.

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



transitions.com or call (253) 509-9224.

#### **KING COUNTY PRACTICE SPECIALIZING IN CANNABIS LAW**

with a stellar reputation within the community. In 2019, the Practice brought in over **\$940,000** in gross receipts. The practice/case breakdown by revenue is 85% Cannabis Business Counsel and 15% Personal Injury. The Practice is located in a modern and thoughtfully designed, fully-furnished ~3000SF office space that the Practice leases. The Practice employs seven (7) employees: four (4) attorneys including one licensed patent agent, (2) legal professionals, and (1) front desk person. If you are interested in exploring this opportunity, call or email us to set up a viewing or to learn more about this Practice. Email "King County Practice Specializing in Cannabis Law" to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509-9224.

#### **LONGSTANDING WESTERN OREGON EMPLOYMENT LAW FIRM**

with over 85 active clients with WIP over \$1M and 2019 seller's discretionary earnings (SDE) over \$360,000. Practice is turn-key and ready for new ownership. Email "Longstanding Western Oregon Employment Law Firm" to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509-9224.

#### **THINKING ABOUT BUYING OR SELLING A PRACTICE?**

If you are, we can help you! Guaranteed. Private Practice Transitions, Inc. is the preeminent provider of specialized brokerage services in the Northwest, catered specifically to the owners of professional services businesses – like you! We have countless buyers and sellers waiting for the right opportunity. Take control of your tomorrow by calling us today at (253) 509-9224 or check out our website at [www.privatepracticetransitions.com](http://www.privatepracticetransitions.com).

#### **THRIVING KING COUNTY PI LAW FIRM**

specializing in Personal Injury and Medical Negligence with over 120 active clients and average gross yearly receipts over \$2.1M. The practice offers incredibly high EBITDA as a percentage of sales (~57%). Email "Thriving King County PI Law

Firm" to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509-9224.

#### **WASHINGTON MEDICAL MALPRACTICE LAW FIRM**

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

#### **WELL-ESTABLISHED PIERCE COUNTY PI LAW FIRM**

with over \$1,100,000 in gross revenues in 2020. With weighted projected seller's discretionary earnings (SDE) of over \$550,000 and weighted projected EBITDA of over \$450,000, this is a tremendous opportunity for a solo attorney or existing firm to grow their business. The owner of the firm also owns the building and is willing to sell the real property at FMV, if desired. Call or email us to set up a viewing or to learn more about this Practice. Email "Listing #1133 – Well-Established Pierce County PI Law Firm" to [info@privatepracticetransitions.com](mailto:info@privatepracticetransitions.com) or call (253) 509.9224.

#### **RECREATIONAL RENTALS**

**KIHEI, MAUI, HAWAII** – Large ocean-view 1BR-2BA condo, LR sofasleeper, two pools/spas, tennis, across from beach. Attorney discounts. [mjs@aterwynne.com](mailto:mjs@aterwynne.com) (503) 291-1423; Video: <https://www.youtube.com/watch?v=txEcuMFzELE> - Pictures: [sam.sandmireidaho@gmail.com](mailto:sam.sandmireidaho@gmail.com).

**KONA, HAWAII** – Lovely ocean-front 1 BR condo. Vaulted ceilings, great view. Tennis, oceanside pool and spa, walk to town (503) 780-3139. For photos, email: [nanevin@aol.com](mailto:nanevin@aol.com).

**OCEANSIDE** – Beach house on cliff side overlooking ocean and Netarts Bay. 3 bedrooms and 3 baths, 4

decks, fireplace, spa tub, washer/dryer, and fully equipped kitchen. \$200 per night, \$1200 weekly rate plus \$125.00 cleaning fee. Contact Mary at [mexmary@comcast.net](mailto:mexmary@comcast.net) or (503) 784-5277.

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

**SCOTTSDALE** – North Scottsdale home near Troon and TPC golf courses. Newly furnished. 3BR, 2BA, 52" plasma TV, pool, outdoor barbecue. No smoking, no pets. Tony at (503) 221-2271.

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

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

#### **SERVICES**

**CONSTRUCTION EXPERT WITNESS** – Langford Enterprises 23 years Owner / Operator of The HomeTeam Inspection Service 40 years Const. Background. Seeking court cases in need of an **Expert Witness** for: • Construction Defects • Material Failure • Construction Applications • Opinion on Home Building • Related Home Inspection issues. Greg Langford owner 503 675 7979 [clackamas@hometeam.com](mailto:clackamas@hometeam.com).

**CONTRACT PARALEGAL SERVICE - S&T SUPPORT, LLC** – Seasoned Paralegals available on an as-needed basis. Backgrounds in estate planning, probate/trust administration, business law, and litigation. Will work remotely or on-site serving Salem, Portland and Eugene.

Visit [www.stsupportllc.com](http://www.stsupportllc.com) for services and staff. Call **(503) 967-6023** or email [tammy@stsupportllc.com](mailto:tammy@stsupportllc.com) to discuss your paralegal needs.

#### **DIVORCE/ESTATE PLANNING APPRAISALS**

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

#### **DIVORCE CLIENTS A LITTLE STUCK? PARENTING BEYOND CONFLICT**

Skills, Strategies and Support - Classes and Parent Coaching. Help your clients stay sane and keep the focus on their children. Judith Swinney, J.D. [www.parentingbeyondconflict.com](http://www.parentingbeyondconflict.com) (503) 972-5683.

#### **ESTATE PLANNING TEMPLATES**

Automate your Oregon estate planning practice using HotDocs templates for \$100 per month with no contract. Complete information at: [www.nobleforms.com](http://www.nobleforms.com).

#### **EXPERT WEATHER TESTIMONY**

Weather & climate data research and analysis 25+ years meteorological expertise – AMS Certified – extensive weather database – specializing in ice, snow, wind & atmospheric lighting. Meteorologist Scott Dorval. (208) 690-9464 [sdorval88@gmail.com](mailto:sdorval88@gmail.com).

#### **FORENSIC DOCUMENT EXAMINER**

Trained by the Secret Service and US Postal Crime Lab examiners. Fully equipped laboratory. Qualified in state and federal courts. Retired from the Eugene Police Department. Jim Green, (888) 485-0832, [www.documentexaminer.info](http://www.documentexaminer.info).

#### **FORENSIC HANDWRITING & SIGNATURE EXAMINER**

Find out who wrote it? Providing remote testimony according to Covid-19 safety precautions. Recognized [federal/state] since 1992. Double-board certified. Jacqueline A. Joseph (503) 380-1282 [www.jjhandwriting.com](http://www.jjhandwriting.com).

**HAWAII REAL ESTATE – NEED IT SOLD?** Contact Realtor Lori Kaizawa at (808)352-1664/Lori@TrueREHawaii.com. Experienced in trust, probate, partition sales. Inactive OSB member.

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

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

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

willamettenurseconsultantgroup.com www.willamettenurseconsultantgroup.com.

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

**PSYCHIATRIC EXPERT WITNESS** — Experienced in depositions and court. Board Certified in Forensic Psychiatry since 1994. Currently in clinical practice in Portland, Oregon. References available upon request. Mark Fettman, MD. (614) 769-4177. www.expertpsychiatricwitness.com.

**RESEARCH, MEMOS, BRIEFS**, and appeals from a 25-year trial lawyer in Arizona and in Oregon. \$75 hr. RogerPerry@live.com. (520) 332-0132. For more information, see www.rogerwperry.com.

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

**SUPERCARGE YOUR NEW FIRM** – Seeking 2-3 attorneys who are about to build their firm from the ground up. Let me boost your bandwidth on day one. Office Administrator / Paralegal with over 20 years' experience who has performed every support role in a law office. Willing to fearlessly face the "mundane" tasks while developing and imple-

menting a long-term vision for your law office infrastructure and business operations. Please address correspondence to the Oregon State Bar, Attn: Blind Ad H-18, P.O. Box 231935, Tigard, OR 97281 or email: blindad@osbar.org with the blind ad number in the subject line.

### SUPPORT STAFF POSITIONS

**PROJECT ASSISTANT** – D'Amore Law Group is seeking a highly qualified and motivated project assistant to support attorneys and paralegals in a busy complex plaintiff litigation practice. The firm practice areas include catastrophic personal injury and wrongful death, insurance bad faith practices, and various other practice areas representing plaintiffs. **Overview:** Primary assignment is to support attorneys and paralegals in moving a case through the legal lifecycle. This support function includes organizing, drafting, sending, and maintaining documents in our case management system as well as ordering, compiling, tracking medical, imaging, and billing records and legal documents for review, and case preparation following firm case management policies and procedures. This position includes basic office administrative assistance: back-up on phones, back-up on mail processing, and back-up on hard filing. **Requirements:** The successful candidate will be a flexible, patient, team-oriented individual with excellent attention to detail, time management, and organizational skills. Timely follow through in this position is critical. This individual will be driven, self-directed, and motivated to continue learning and developing new skills relevant to this position. **Application Process:** Send the following to: shannon@damorelaw.com • Cover letter • Resume • References.

### TO SUBMIT A CLASSIFIED

#### POSITIONS AVAILABLE

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

#### SERVICES

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

#### ALL OTHER ADS

\$40 for the first 20 words, 50 cents

each additional word. Oregon State Bar members receive a \$10 discount on these ads.

#### COLOR

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

#### BLIND ADS

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

#### BLIND AD REPLIES

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

#### SUBMIT TO

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

#### DEADLINES

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

# ATTORNEYS' MARKETPLACE

## ACCIDENT RECONSTRUCTION

### Accident Analysis Service

Don Webb

3890 Brush College Rd, Salem, OR 97304

PH 503-931-0670

FX 503-589-1826

donwebb531@msn.com

www.crashspeed.com

## Biomechanics

### Collision Analysis & Research, LLC

Russ Anderson

PO Box 650, Seaside, OR 97138

PH 971-320-4236

FX 503-589-1826

russ@azbiomech.com

www.azbiomech.com

## ACCOUNTANTS

### Cogence Group, PC

Jay Sickler, CPA, CFF, ABV, ASA

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# PARTING THOUGHTS

## A Tribute to Belva Lockwood

By Janay Haas

The pandemic can make you do strange things: wash windows, mend clothing that doesn't fit you anymore, wear flannel pajama bottoms to the grocery store. In my case, it was organizing the junk drawer in my desk.

There, among Post-it notes, canceled checks and dried-up Sharpies, I found a single postage stamp. I had kept the stamp since March 1986, when it was part of a special issue for Women's History Month. It has lived in three states and four countries since then. Belva Lockwood's face is on the stamp.

When I was at the post office back in 1986, I saw her face in the display case, recognizing her name but unable to place her.

"Who is this person?" I asked the postal clerk. He looked at the name on the stamp I was pointing to and shrugged. "Dunno. She must've done something special or she wouldn't be on a stamp."

He was right. Belva Lockwood had done quite a few special things, I remembered later, any one of which could have earned her the honor of appearing on a postage stamp.

I had first heard about her in the spring of 1983 from a student at George Washington University's National Law Center; the campus was preparing that March to celebrate its second annual "Belva Lockwood Day." GW's Law Association for Women had inaugurated the event to serve "both as a celebration of women's achievements in the legal profession and as a reminder of the barrier to women's participation in the profession." Lockwood was the ideal focus for those purposes.

In 1873, Lockwood was more or less an alumna of the Law Center. Officially, she had been denied admission to what was then GW's Columbian College of Law on the grounds that her presence would distract the other students — all male — from their studies. She was admitted in 1871 to the National University Law School, which

Bulletin File Photo



later merged with Columbian to become the National Law Center.

For Lockwood, however, the completion of her legal studies did not make her a graduate; she was denied her diploma because her classmates had objected to being graduated with a woman. And without a diploma, she could not join the District of Columbia Bar. Lockwood took her case to the law school's *ex officio* president, who was also U.S. President Ulysses Grant. With his intervention, she was able to get her diploma, although she was never permitted to participate in a graduation exercise.

Lockwood was admitted without incident to the D.C. bar, but she was denied admission to the Bar of the United States Supreme Court in 1876. Her response was to lobby Congress for passage of a bill enabling women to appear before all federal courts. On March 3, 1879 — now GW's "Belva Lockwood Day" — she became the first woman to be admitted to practice before the U.S. Supreme Court.

There were other roadblocks along the way, though. Lockwood was denied admission to the Maryland bar and, later, the U.S. Court of Claims. She also tried to join the bar in Virginia, where state statute provided

that "any person" admitted to practice in the District of Columbia was also eligible to practice in Virginia — but where "person," the Virginia court had pronounced, meant "male." Lockwood challenged this strained interpretation of the law, but the Supreme Court declined to overturn the Virginia decision. *In re Lockwood*, 154 US 116 (1894).

In 1880, Lockwood became the first woman lawyer to argue a case before the U. S. Supreme Court. In 1906, she achieved her greatest court victory in *U.S. v. Cherokee Nation*, 201 U.S. 101, in which she was able to secure \$5 million in damages for the tribe as the result of a treaty breach by the federal government.

When not fighting her own court battles and those of her clients, Lockwood found time to run for public office — and she aimed high. Women did not yet have the right to vote, but her campaigns in 1884 and 1888 for president of the United States promoted the franchise for every American. In her first campaign, she netted more than 4,000 votes, all from male voters.

Today, Lockwood would no doubt be gratified to see the number of women in American law school classrooms (now regularly hovering around 50 percent of the student population or above) and appearing before and serving on state and federal court benches. As members of the modern bar, we can all be grateful for the vision and courage of this pioneer, a woman who prodded a reluctant justice system a little closer to justice.

My hobbies have never including stamp collecting. But I did go back to the post office for several sheets of the small, stern faces that are a tribute to Belva Lockwood. I gave away every stamp, one by one, to women I knew who entered law school, until I have only a single reminder of this singular person. ■

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Janay Haas is a frequent contributor to the *Bulletin*. Reach her at [wordprefect@yahoo.com](mailto:wordprefect@yahoo.com).





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