Building Resilience to End Racial Injustice

by Valerie Colas
MBA President

The last few months have been challenging - without much notice, we had to drastically change our lives due to COVID-19. The coronavirus has magnified the prior inequities that existed as a result of another pandemic: racism. Unfortunately, coronavirus and racism are dangerously too similar, and together they are a lethal combination to Black and brown people. Coronavirus, just like racism, (1) allows those who have not experienced it or been affected by it to ignore and disbelief its existence; (2) vilifies the victim and further blames them for being a victim; and (3) discharges any sense of collective responsibility to address it, but instead punishes the victim, often with no power or support, to seek redress on their own.

However, Black, indigenous, and communities of color are bearing the brunt of the COVID-19 pandemic’s health and economic impact. The coronavirus has magnified the prior inequities that existed as a result of another pandemic: racism. Unfortunately, coronavirus and racism are dangerously too similar, and together they are a lethal combination to Black and brown people. Coronavirus, just like racism, (1) allows those who have not experienced it or been affected by it to ignore and disbelief its existence; (2) vilifies the victim and further blames them for being a victim; and (3) discharges any sense of collective responsibility to address it, but instead punishes the victim, often with no power or support, to seek redress on their own.

...amidst the sudden and drastic changes to our lives due to COVID-19, we were horrifically reminded of how deadly and evil the pandemic of racism was. In dread and dismay, we watched the life of George Floyd, a Black man, being taken from him without any regard. While a white police officer knelt on his neck for eight minutes and forty-six seconds, George Floyd pled and cried, “I can’t breathe.”

Yet, there is still more to do. Statements of solidarity are important gestures, but they are only the first steps. As MBA President, I commit to amplifying the voices of those who are marginalized and are unheard. I am committed to creating an environment of belonging where the differences of individuals are valued. As a member of this legal community, I ask for your help in fighting against racial and other injustices. We do not know how long COVID-19 will be with us, but we know that institutional and structural racism have existed for decades. The movement to end them will be long and arduous. And the fight for equality, inclusion, and belonging require resilience.

We must listen to and center the experiences of Black, indigenous, and oppressed people. I am also hopeful that transformative change is possible. Today’s demonstrations are markedly interracial. Public opinions about the need for police accountability are changing. There is a re-examination of statues in the lives of Joy, and buildings named after, individuals with racist pasts to determine whether they truly exemplify our values and ideals. In some cases, the statues have been removed or the buildings have been renamed. In other cases, where the statues and building names remain, the full story of the individual is included to provide the proper context. Our racial and cultural history is complex and, oftentimes, contradictory. But we must grasp with it if we are to stand for equality for all.

I am also hopeful that transformative change is possible... Our racial and cultural history is complex and, oftentimes, contradictory. But we must grasp with it if we are to stand for equality for all.

1 The term BIPOC stands for Black, Indigenous, People of Color. It is used to acknowledge that not all people of color face the same level of injustice and oppression. By specifically naming Black and Indigenous communities it highlights that these communities face different, and often more severe, forms of oppression and erasure.

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The Carmen M. Sylvester PCC Criminal Justice Scholarship

by Kelly Zisman

Carmena Maria Sylvester was the first African American woman hired by the Portland Police Bureau (PPB) in 1973. Sylvester withstood both racism and sexism from the public and a few of her fellow officers. Sylvester’s response: “I just told them I wasn’t going anywhere. I had babies to take care of, and I made clear to them that they couldn’t embarrass me or force me out.”

Sylvester worked patrol and did stunts as a District Officer in the North and East precincts. She took a year’s leave to complete her Associate Degree with Portland Community College (PCC). When she returned to work, she was assigned to the Traffic Division and she eventually joined the “Officer Friendly” program. She worked with kindergarten through sixth grade students. Sylvester believes that the best police officers are people who have had actual life experiences. “It helps, when dealing with members of the public, to know what it feels like to have a past — due utility bill,” she says. She recounted several instances in which citizens called the police for help — not because they were crime victims but simply because they didn’t know who else to call.

What does law enforcement need today? Sylvester believes there are two broad categories: First, Oregonians need to understand this state’s history. The anger and protests are not just about recent events, but instead reflect 400 years of history and a lot of unresolved injustices. Next, we need good people “with real life experiences” in law enforcement. Young people contemplating a career in law enforcement today should do so, Sylvester believes, if they have “a desire to help people.” That’s because being a police officer is not just about investigating crime; it’s about being a civil servant and helping people, often during their darkest hours.

Forty-six years after she began her work with PPB, Sylvester is still on the job protecting federal courthouses in downtown Portland. In 2017, Sylvester was tapped for a special assignment: she was asked to swear in Danielle Outlaw, PPB’s first female African American Police Chief.

The Carmen M. Sylvester PCC Criminal Justice Scholarship was named to honor Sylvester’s courage in blazing a trail with PPB, both as an African American and a woman. It also reflects her belief that the best officers are those who, like many PCC students, have real-life experiences and who are committed to helping their communities. A donation to this fund will directly help defray tuition expenses for criminal justice students committed to supporting diversity in the criminal justice system. Our goal is to raise enough money to endow the fund so that it will exist in perpetuity. This is a positive way to help support the next generation, to improve our criminal justice system, and to begin to heal the wounds of the past. Contributions may be mailed to: PCC Foundation, P.O. Box 19000, Portland, OR, 97280 (in the memo, please include “Carmen M. Sylvester Scholarship”), or online at www.pcc.edu/give (choose “Carmen M. Sylvester Scholarship”).

For more information, visit www.pcc.edu/give (choose “Carmen M. Sylvester Scholarship”).

The Multnomah Lawyer
Estate and Gift Tax Planning in an Environment Without a One Size Fits All Approach

Wednesday, August 19  3-4 p.m.
Online Participation Only

Members $60/Non-Members $95

Incorporating novel materials into a construction project can present significant risk. Contractors and tradespeople are routinely required to use unfamiliar products and techniques. Cross-laminated timber, zip panel siding, and MgO boards are just a few novel materials that have experienced challenges. Whether the end goal is to improve environmental performance or simply to save costs, in some instances, things can go terribly wrong. By reference to case studies, Jamie Fender, MacMillan Scholz & Marks PC, Jacob Zahniser, Miller Nash Graham & Dunn LLP and Jack Levy, Gilbert Levy Bennett will overview what and how things can go wrong with novel materials. Part A of the program will help the construction law practitioner guide their clients on how to build a better mousetrap by following a nationally recognized vetting process for new building materials. Part B will focus the audience on key decisional law on how to craft effective liability waivers.

For more information: Contact Ian Christy, Miller Nash Graham & Dunn LLP, at 503.205.2416. For registration questions, contact the MBA at mba@mbabar.org.

Build Better Mousetraps, or at Least Effective Limitations of Liability

Thursday, September 24  3-5 p.m.
Online Participation Only

Members $60/Non-Members $95

The federal lifetime exemption amount is at an all-time high and individuals can currently transfer, either during life or at death, $11.58 million of value and not pay any federal transfer taxes. However, Oregon has an estate tax that allows for an individual to transfer only $1 million at death without paying Oregon estate taxes. The difference between federal and Oregon specific planning is important and many clients who think they don’t have to worry about federal estate taxes are surprised to learn about Oregon estate taxes. Attorneys must know how Oregon estate tax planning impacts their clients and how to plan for their clients’ total tax situation, including income tax planning. Join our speakers, Jonathan Cavanagh, partner at Cable Huston LLP, for this informative class.

For more information: Contact Justice Brooks, Cable Huston LLP, at 503.973.0653. For registration questions, contact the MBA at mba@mbabar.org.
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mla ANNOUNCEMENTS

Late last year, the OSB Professional Liability Fund’sribofnews included some
eye-catching statistics.

“For claims closed between July 1, 2018, and October 1, 2019, the PLF paid almost $3.5 million to plaintiffs who had a malpractice claim caused by a missed deadline. That represents 34% of PLF money paid to claimants.”

Oregon is not unique in this regard. Since 1985, the ABA has periodically published a “Profile of Legal Malpractice Claims” reflecting statistics compiled from insurance carriers nationally. Calendarizing and related administrative errors have remained stubbornly persistent throughout. No doubt that at is at least in part because many practice areas - litigation in particular - are weighed heavily with deadlines. Although some deadlines are soft and can be stipulated away through agreement with opposing counsel, many are hard and unyielding. Furthermore, the Oregon Supreme Court in Vindemay v. Clayton,

328 Or 646, 984 P2d 272 (1999), held that expert testimony may not even be necessary when a lawyer’s error is inherently within a lay jury’s understanding. It is not difficult to imagine a trial judge in a given case ruling that a jury could readily understand the import of, for example, a missed statute of limitation.

The Oregon Supreme Court noted in In re Snyder, 348 Or


Nonetheless, missed deadlines can present risks beyond malpractice claims. In re Olbert, 336 Or 640, 89 P3d 1173 (2004), for example, involved a lawyer who filed an appeal three days late, resulting in its dismissal. The lawyer was so chagrined by his error that he waited five days before telling his client. He was disciplined for the delay in informing the client.

Because deadlines are a fact of life for many practice areas, calendarizing is also an essential part of law firm risk management. Although calendarizing systems vary by firm size and practice, they typically include two central elements: inputting and monitoring dates. In this column, we’ll briefly survey both.

Inputting Dates

Technology has made calendarizing both easier and more difficult at the same time. It has made it easier in the sense that the general off the shelf software programs now typically include a variety of calendar features that allow lawyers to enter dates for both individual and work team or central calendars along with “reminders.”

Even the best calendarizing system can fail as a risk management tool if an incorrect deadline is calculated on the front end.

It has made it more difficult in the sense that electronic tools, like spam filters, may need to be adjusted to ensure that email or court notices are not inadvertently blocked. Similarly, if a particular court only sends notices to an attorney of record rather than, for example, a “service” address including all work team members, the firm should set up an internal forwarding mechanism to make sure that notices and other time-sensitive correspondence are shared with the entire work team and docketing staff so that they are appropriately calendared.

Throughout the inputting process, it can also be critical to have “more than one set of eyes” double-check the accuracy of the dates entered. Even the best calendarizing system can fail as a risk management tool if an incorrect deadline is calculated on the front end. If court rules are ambiguous - for example, rules stating an action is due “before” a particular event and not

Making clear whether the day of the event is included or excluded - they should be discussed within the work team and the most conservative date entered.

Monitoring Dates

An event approaches, the deadline must also be monitored to make sure that the action is required to take place by the date. Calendar “reminders” should be set so that there is adequate time to complete the task. Simply because electronic docketing systems in many venues now permit filing up to 11:59:59 p.m. does not mean that should be a regular deadline.

“Human” reminders are equally important. In an era when we can suffer from electronic “information overload,” having a member of a work team remind the responsible lawyer in person of an impending due date and monitoring progress can be essential. Staff members should feel empowered to speak to other firm lawyers if a particular lawyer appears to be ignoring or losing track of a looming deadline despite earlier reminders.

Again, having “more than one set of eyes” on an impending deadline can be critical. If the lead lawyer on a case, for example, is ill or in trial, another member of the team may need to step in and handle preparing and filing the brief, motion or notice of appeal involved in the other lawyer’s absence.

Summing Up

Most lawyers didn’t go to law school so they could calendar a never-ending stream of deadlines. The most brilliant legal argument may never be made, however, if the lawyer missed the filing deadline.

As long as there are deadlines in law practice, calendar management will remain one of the most mundane but essential tools of law firm risk management.

Ethics Focus

Keeping Track: Calendarizing in Law Firm Risk Management

by Mark J. Fucile

Fucile & Reising LLP

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CLE Speakers!

The MBA would like to thank everyone who has volunteered their time to speak at CLE seminars since the COVID-19 situation changed the way we conduct classes. Starting with the March 19 Addressing Debtor-Creditor Issues YLS seminar, all MBA CLE classes have been held online. In addition to the MBA’s usual programming, the CLE Committee added special COVID-19 classes, which began April 7 and are free to members. We appreciate the Committee also added special COVID-19 classes, which began April 7 and are free to members. We appreciate the

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lawyers deemed by their peers and judges to be "outstanding in the field of advocacy." One of the principal goals of the society is the preservation of the adversary system and jury trial. Membership is by invitation only, and nominees are considered for their ability, experience, accomplishments, and ethical standards.

Around the Bar

Kyle Rohrer

Cosgrave Vergeer Kester LLP
Kyle Rohrer has joined the firm. Rohrer's practice focuses on premises liability, products liability, professional liability, personal injury, and disapproved shop law.

Rohrer has also represented general contractors and subcontractors in construction cases. He has both arbitration and trial experience, and achieved a defense verdict in a Washington tribunal on behalf of a general contractor after a four-day trial. Furthermore, he achieved early dismissal for his clients through summary judgment motions on premises liability, product liability, and common law negligence claims in Oregon Circuit Court.

Anna Sortun

Hart Wagner LLP

Rachel Wagner has joined the firm's preeminent medical malpractice and general liability defense teams. Her work on these teams will include personal injury and wrongful death defense, premises and product liability defense, and regulatory agencies representation. Before joining Hart Wagner, Wagner worked as a certified law clerk at the US Attorney's Office, and a law clerk at the Oregon Law Center.

Iván Resendiz Gutierrez

Miller Nash Graham & Dunn LLP

Iván Resendiz Gutierrez was recently elected to serve as co-chair of the Board of Directors of the Oregon Minority Lawyers Association (OMLA). OMLA is committed to developing a legal community in Oregon that provides a welcoming environment where people of all colors, races and ethnic backgrounds can excel academically, professionally and personally. Resendiz Gutierrez has served as a board member since 2016.

Graham Sweitzer

Harrang Long Gary Rudnick PC

Graham Sweitzer has joined the firm as a shareholder based in our Portland office. Sweitzer is a trial lawyer whose practice focuses on the defense of complex civil litigation claims, with an emphasis in the areas of professional malpractice, product liability and personal injury. In an era when civil jury trials are increasingly rare, Sweitzer has successfully tried more than 15 cases in state and federal courts, and has briefed and argued a number of reported appellate cases.

Ryan Bledsoe

Tonkon Torp LLP

Litigation partners Ryan Bledsoe and Anna Sortun have been admitted as Fellows to the International Society of Barristers.

The organization is an honor society that maintains a worldwide membership of less than 750 trial attorneys deemed by their peers and judges to be "outstanding in the field of advocacy." One of the principal goals of the society is the preservation of the adversary system and jury trial. Membership is by invitation only, and nominees are considered for their ability, experience, accomplishments, and ethical standards.

Leaver Web Technologies to Grow Your Firm

by Ben McKinley

Cascade Web Development

Few people argue the importance of a well-designed and organized website to promote a law firm in this day and age. For many prospective clients, a website is their first tangible connection with a law firm. You know what they say about first impressions. During the pandemic, a firm website has often been the only tangible connection available. My team has been designing and building websites and robust portals for law firms and bar associations for over 20 years. I wanted to share some key tools that have proven to help law firms provide top-tier service online.

While we are talking about technology tools to support firm needs, I can't overstressed the importance of selecting the right team of people with whom you partner on the web solution. Technology is only as good as the people harnessing the power to identify needs, build tools to achieve stated goals and the ability to track analytics and optimize the site over time.

There are endless platform options that warrant consideration depending upon a firm's needs. Some are open source while others are not. All have strengths and weaknesses. Like any customized solution, the right technology depends upon the needs of the firm. If you want something that is lightweight with minimal feature needs, low cost and quick to deploy, I check the box when it comes to online marketing, Wordpress, Squarespace or Wix are worth looking into. On the other hand, if you want to differentiate your brand, accept online bill pay, or offer secure operational tools to your team and/or clients, I'd suggest you explore those needs with more robust platforms.

In terms of tools that firms make available to their clients, we are seeing three main offerings:

1. Firm Website: This is the content hub for your organization. It's vitally important that it properly positions your firm amongst the competition. The typical law firm website includes attorney biographies, practice areas, office location(s), firm history, community involvement and a blog. Creation of fresh content around evolving legislation, case law, events, news, etc. is a powerful way to inform your site users and improve your search engine rankings.

2. Online Bill Pay: Online bill pay is available in many shapes and sizes. This might simply be a link to a third-party system that processes payments, like PayPal. Others are part of a secure portal and allow clients to enter their credit card numbers into custom-built forms tied to invoices. Demand for this is increasing and it just makes sense to make it as easy as possible for clients to pay for services.

3. Document Storage and Management: While many law firms have been reluctant to transfer or store sensitive information online, it's become the standard more recently. While we are certainly not recommending that clients share any personal identifiable information via email, there are many viable options to transfer and store sensitive information online. The spectrum runs from Google and Dropbox to third-party document management systems that allow for tiered user access and rights. It's a powerful and efficient tool that can be a strong differentiator.

I hope you find this helpful as you consider the right online presence for your law firm. Again, be sure to find a good match with knowledgeable, committed people to help you make informed decisions.

Learn more about the services provided by Cascade Web Development at cascadewebdev.com or contact Ben McKinley at bmckinley@cascadewebdev.com, 503.260.2021.
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Multnomah County has now moved into Phase One reopening, which means that Multnomah County Circuit Court is operating under Level 2 restrictions. Level 2 restrictions means that we can now hear Category 2 and 3 essential proceedings in the Family Law Department, which are:

- Immediate Danger motions and hearings
- Writ of Assistance motions
- Protective Orders motions and hearings
- Pre- and Post-Judgment Status Quo (motions and hearings)
- Enforcement of Parenting Time motions and hearings
- Temporary Relief motions and hearings

If you want to have any other matters heard while Level 2 restrictions are in place, you must file a motion electronically to request the matter be heard, explaining the urgency and necessity of the matter being heard now. Those motions go to Chief Family Law Judge Svetkey, who will sign such a motion only if she can determine that the proceeding is urgent, can be conducted remotely (or with sufficient social distancing if in person), reasonable precautions are available to protect the health of the participants (including court staff and interpreters), and there is sufficient court staff and judges available to conduct the hearing.

Under Level 2 restrictions, the Family Law Department will continue to have two judges available each day for Protective Order applications and hearings. Those judges will also serve as ex parte judges to sign orders for the types of cases set forth above. Please note that an Order to Show Cause for a modification proceeding can be signed ex parte, but the hearing date will be after January 1, 2021. Similarly, all dissolution trials will not resume until after January 1, 2021. If your case is retained, the retained judge's staff will contact you to reset your trial.

If the case is on Trial Assignment, you will be given a trial date that is at least three months after the Trial Assignment resumed June 1, and hearings on Category 2 and 3 essential proceedings will be sent out for hearing on the next day. Motions for Special Set will be filed electronically and will have to be heard by Judge Svetkey or the retained judge for signature. Stipulated Orders and Judgments may be submitted for processing. Adoptions will be processed. Finally, Motions for Appointment of an Attorney for the Child will be routed to either Judge Svetkey or the retained judge for signature.

If you began a trial prior to the imposition of Level 3 restrictions, and your trial can be completed remotely in one day (or less), motions can be scheduled before January 1, 2021. If any party objects to finishing the trial remotely, that party has the burden of proving to the trial judge that the prejudice of the remote appearance outweighs the compelling health and safety reasons to finish the trial remotely. Of course, the parties can always stipulate to finishing the matter after January 1, 2021. While the Family Law Department is excited to be able to hear cases remotely, please remember that we are nowhere close to normal operations. Nor do we require multiple staff to process and enter documents into the court file, but both social distancing and capacity limitations to budget reductions/furloughs will prevent us from being fully staffed for the near future. Social distancing requirements also mean that it is likely that all cases will continue to be heard remotely via telephone.
The COVID-19 pandemic has required counsel and parties to mediate using videoconference. While in-person mediations are ideal, video mediation has the advantage of allowing the participants to share documents via a virtual waiting room to caucus and then return confer directly, the mediator can confer with counsel for each party by telephone or even video from the virtual waiting room in the hallway of an office. Of course for every advantage that video mediation presents, there are some disadvantages that should be kept in mind.

The basic video mediation format is that each participant clicks a link to join the video conference hosted by the mediator, one of the lawyers or a third party. As a Zoom security feature, the host admits each participant from the virtual waiting room and assigns them to their side’s breakout room. Video mediation can occur in a hybrid format in which some of the participants meet in person and then jointly participate in the video mediation. Many video platforms exist and include Zoom, WebEx, BlueJeans, GoToMeeting, Google Hangouts, and others. Video mediation can augment our traditional practice as we adjust to the new facility.

The video mediation can occur in the hallway of an office. Of course for every advantage that video mediation presents, there are some disadvantages that should be kept in mind. For example, video mediation does not allow us to conduct a hearing in a full courtroom. The combination of the above restrictions will, however, allow us to conduct a hearing in a smaller courtroom. The combination of two or more video courtrooms will be required for all court proceedings under Level 3 restrictions. Our court is one of the few courts in the nation to conduct jury trials during the COVID-19 pandemic. Under Oregon’s Civil Practice Act, the party deciding whether to try or settle a case must be brought to trial within 60 days of the final decision. There is no automatic stay of that period that can be extended twice for good cause, but after that, the defendant must be brought to trial or released. Some defendants are released, but we’re held trials where the defendant remained released that delay puts the victim or the public at risk. It takes us several courtrooms to conduct jury selection and trial while complying with social distancing requirements.

The combination of the above factors makes it impossible for this court to conduct all of its jury trials and some of the special proceedings that might be allowed under the CJO. Please be patient. We cannot expect to do anything right away. Instead, Foghat suggests, “just take it easy.”

Endnote. The English rock band Foghat formed in 1971. Its hit song “Slow Ride” is on the band’s 1975 album Fool for Rock & Roll released as its first “major” rock concert, a teenager named Steve Buschong saw Foghat perform the song live at the Civic Center in Saginaw, Michigan in the mid-1970s.
Dear Expert,

My workplace asked us to “work from home” because of the current COVID-19 situation. I’ve never tried to work from home before and I find myself working a much longer extended period of time and I’m struggling to be efficient. Can you provide some tips and suggestions for this potentially prolonged work arrangement?

- Quarantined at Home

Dear Quarantined at Home,

You’re not alone. Many legal professionals are accustomed to coming into an in-person office environment where they diligently assist clients. For better or worse, the customary “commute” in today’s world is often a short walk to an adjacent room or a basement office. For many this reduced commute time has been a joy. However, working from home also presents challenges: home-schooling children, caring for babies and toddlers, pets that insist on your full attention at all times, and frequent trips to the kitchen for snacks are some challenges people face on a daily basis. The solution for each challenge will differ from person to person. And a solution for a challenge one day may not work the next day (your toddler loving watching PAW Patrol yesterday but now it is over) . Although there isn’t enough space in this column to address every week from home challenge, here are some general tips and suggestions for a more productive work from home life.

Have a Routine

In a prior working life, you likely had a general routine. Perhaps you grabbed a cup of coffee from your neighborhood café and then ran after the bus (being careful not to spill your hot coffee) before slipping into the office restroom to fix your wind-swept hair just in time to catch your daily team conference call. That routine of yours, whatever it was, helped prepare you for the day and set your intentions for the day. Now that you are working from home, you need a new routine. Maybe it includes getting dressed as if you were going into the office. Maybe having a routine will help you be better prepared for the day, be better organized throughout the day, and lead to less anxiety, increasing productivity.

Take Breaks

When developing a routine to structure your day, make sure to build in breaks. The breaks may just be a bit different than in the past. Instead of chatting with colleagues in the office hallway, you might instead take a walk around the neighborhood to give your eyes a break from the screen. Or take a break to play with your child. You could also have a daily or weekly call with a friend or family member. Breaks give you a mental (and sometimes physical) respite from your work, allowing you to be newly energized upon returning from the break.

Set Boundaries

While working from home, it can be difficult to separate personal matters from your work life. However, it is important to set boundaries. Talk with your partner about what work is available when you are available to help with childcare during the workday. Talk about when you will be unavailable. For example, if you have an important call at a certain time, you can let your partner know that for the next hour you shouldn’t be disturbed unless it’s an emergency.

In addition, having a dedicated work area or workspace can be helpful, allowing you to have all of your work materials and papers in one place. A dedicated work area or workspace also communicates to you and your brain that you are moving to work mode and also communicates to others that you are “at work.” This means, once you move away from your work area or workspace, you are at home or personal time. One challenge that new-from-homers encounter is being able to separate themselves from their work, as it is very easy to slip into work mode again. Accordingly, I’d urge you to be conscious and deliberate about disconnecting from work. This is important for your own mental health and well-being, as well as for those around you.

Clearly Communicate to Others

Because you are no longer working in an in-person office environment, it can be more challenging to clearly communicate with your team, colleagues, and clients. This means you’ll need to be purposeful and proactive about reaching out to your team members, colleagues, and clients. Don’t be shy about picking up the phone to talk with others and when a virtual call is warranted or desired, put on your video. Most people are able to understand others better when they can see each other - this allows people to take in and process non-verbal cues.

Working from home can be challenging. Increasing your working from home efficiency will take time and practice. Keep at it. Be kind and understanding of others. We’re all learning how to work from home together.

Shelby Smith

LASO Staff Attorney and YLS Pro Bono Committee Member
As the YLS CLE programming year wraps up, I want to share the YLS CLE Committee’s deepest appreciation to presenters who volunteered to speak over the past 10 months. Furthermore, to each of you who attended one of our CLE seminars, thank you!

When the COVID-19 pandemic hit, the committee quickly pivoted to a virtual CLE format. The committee worked hard to get up to speed with technology and worked with already scheduled speakers to make sure CLE’s went off without any problems. Committee members conducted test runs and helped facilitate questions and answers during the seminars. Due to the hard work of committee members, there were no CLE cancellations. The YLS was able to continue the seminars. Due to the hard work of committee members, there were no CLE cancellations.

Each year, the YLS CLE Committee hosts three CLE series in addition to a handful of standalone CLE seminars. We kicked the year off with an Advanced Litigation series, which covered topics varying from filing documents under seal to corporate designee depositions. The second series of the year was our annual Young Litigators Forum, designed to introduce attorneys to the fundamentals of litigation. Our third series, Estate Planning, wrapped up in June. The series provided fundamental information about wide-ranging topics estate planning attorneys encounter, from succession planning to spotting capacity and substitution decision making issues.

This year's standalone seminars provided information to practitioners about ex parte protocol and professionalism in Multnomah, Washington, and Clackamas counties. The committee was honored to have Judge Patricia McGuire, Judge Theodore Sims, and Judge Kathie Steele speak about each of their county's varying protocols and professionalism expectations for attorneys appearing at ex parte. We also had standalone seminars on debtor-creditor issues and fundamentals of immigration law.

Next fall, the committee will present a series focusing on advising Oregon businesses. The series will be a valuable resource for any attorney representing an Oregon business, providing information on a broad range of business-related topics such as hiring and firing employees and tax issues.

We welcome and seek member feedback for future CLE topics and speakers. Our committee strives to present quality programming for newer attorneys focusing on fundamental and practical knowledge in a variety of practice areas. The goal is to create a forum where attorneys can meet one another and begin building professional relationships in the Portland metro area.

Over the past few years, the YLS CLE Committee has made efforts to expand and diversify our pool of speakers. It continues to be a priority and is vitally important that the committee seek speakers from non-dominant cultures. If you have any suggestions for topics that you want or wish you had access to, please contact our MBA staff liaison, Lauren Fairshter at lauren@mbabar.org.
Volunteer Monitor are at the heart of our mission to keep vulnerable Oregonians safe and thriving. You'll be given training and ongoing support to be successful. Once assigned a case, you'll meet with the Protected Person as well as their Guardian and furnish a report to the Court, identifying any evidence of abuse or neglect.

- Typical cases require six hours of time.
- Highly flexible—can be scheduled on your time at your convenience.
- Operating in Multnomah, Clackamas, Marion and Lane counties. More counties anticipated soon.
- The difference you make in a Protected Person's life can be profound!

I would love to schedule time to chat with you, your professional group, social group or faith group about our volunteer program. Let's talk!

Contact:
Marc Kochanski, Community Relations Manager
marc@guardian-partners.org | 971-409-1358

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The Corner Office

PROFESSIONALISM

Succession Planning

The first duty of a lawyer, RPC 1.1, is to provide competent representation. One of the elements of competence is providing clients with an orderly transition in the event that a lawyer must stop practicing, whether because of injury, illness, retirement or death. A professional lawyer should likewise plan for a smooth transition for colleagues and staff to the extent it is possible. To provide an orderly transition, plans must be made, and protections put in place. Developing a written succession plan assists a lawyer in covering all the potential issues involved in winding up their practice, and will assist their survivors in carrying out the lawyer’s wishes after death.

Death, disability and retirement are topics that no one likes talking about, but they are facts of life, and laying a plan for them is preferable to letting nature take its course. Ideally, succession planning takes a part of a lawyer’s annual review of the practice’s status and future goals.

The succession plan should be a written document that treats, for example, issues such as:

- When to retire. (Yes! Set a date! A range of dates is fine at first.)
- Determining the value of the practice, if any, and its disposition.
- Listing referral sources and identifying who will maintain those.
- Identifying the lawyer’s areas of expertise and who will assume those functions as the lawyer transitions to retirement.
- Making a detailed client memo, identifying current and future work for each client and designating successors for those responsibilities; identifying files for transfer, storage and destruction; and providing for the disposition of trust account monies and records.
- Discussing the need and the source for malpractice “tail” coverage.
- Planning what to do after retirement, both continued legal work, if any, the status of bar licensure, and other interests and activities to pursue.

Ideally, the lawyer will make a draft of the plan well in advance of the anticipated retirement, and will revise it over time, making it more specific and detailed. While the early plan may not anticipate all retirement issues, the same plan should cover an unexpected - and sooner - windup of the practice when the lawyer is unable. Second, fixing a retirement date and making plans for after retirement helps to encourage a lawyer’s enthusiasm at the prospect of retirement and helps to ensure that the lawyer actually will retire. Many of us have seen and heard about lawyers who continue in the practice long after their competence can be trusted. A big part of making a succession plan is making sure that a succession, in fact, occurs in a timely way.

In a law firm, the succession plan should be approved by firm management and not revised - other than to supply detail - without the consent of management. This has the effect of fixing the date of retirement so everyone knows it is and can make appropriate plans. Solo practitioners and lawyers in small firms may have to rely more on their own discipline to get this done. Remember both how important it is and that failure to do it is arguably a professional violation.

Formal Opinion No. 2005-129 (rev 2018). If there is to be a continuing relationship with the former attorney - either wrapping up cases or serving as an adviser - those arrangements should be spelled out in detail.

The Arizona Supreme Court has adopted a rule requiring a succession plan. Ariz R S Cts 4910 (“The duties and obligations of members shall be...To protect the interests of current and former clients by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently”). The Arizona Attorney suggests the following options for preparing for retirement:

1. Arranging for another lawyer to take over the practice.
2. Bring in a new experienced partner.
3. Merge with a similarly sized firm.
4. Join a larger firm.
5. Consider selling your practice.

A key piece of the succession plan is identifying a lawyer or lawyers who will assume that lawyer’s client representations. An assisting lawyer can help with the closing and disposal of client files and arranging for the practice in preparation for the lawyer’s retirement or unexpected death or injury. (Unless they are in the retiring lawyer’s firm, client notification and consent are needed for this.) Someone other than the retiring lawyer should be added to the trust account to avoid the bar having to take custody of the trust. The same is true with the files. You or your estate will pay the attorney fees for the custodianship, should one become necessary.

Resources

Lawyer Steven T. Lovett was very helpful in the preparation of this article.

The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@multnomahbar.org and indicate that you would like The Corner Office to answer your question. Questions may be submitted anonymously.

Classifieds

Space Available

Downtown Office Space
Up to five offices available within Disability Rights Oregon’s downtown office. Rent includes reception, internet, kitchen, and shared conference rooms. Rents $650-$1,200 per month. Contact Jake at jcornett@droregon.org.

Two Office Shares in Downtown Portland; 1 Month Free
One is 14x12 for $1,200 per month, and the other is 15x10 for $1,025 per month. Youth floor office in Cascade Building. Two blocks from Pioneer Square and MAX Transit hub. Alder Street Parking Garage across street. Rent includes reception, telephone/internet, office conference room, kitchen, copier & postage machine use. Building amenities: gym, w/shower, tenant lounge. Contact Jamie at 503.243.2733 or jamie@kramer-associates.com.

July/August 2020