



A Call to Stand Against White Nationalism And What *is* White Nationalism Anyway?

by Kamron Graham
Immediate Past Chair, OGALLA: LGBT Bar Association of Oregon

Let's just clarify this. White supremacy and white nationalism are not the same, though are often used interchangeably in the media.

White supremacy is defined as a belief that white people are superior to other races

and therefore should dominate others. It is a philosophy based on pseudoscience. The term was used as early as 1882, the same year Congress passed the 1882 Immigration Act.

White nationalists want the white race to prevail and to keep what is perceived as white culture, in an economical and politically dominant position. It is a social movement. White nationalism started appearing around 1925. It's been around for most of our lifetimes. It is the product of contempt for immigrants, refugees and people foreign-born.

Those who subscribe to white nationalist mantras go to great lengths to say they are not white supremacists, they are not racist (or sexist, homophobic, transphobic, or abelist), but rather focused on conserving white culture and pride. They are opposed to multiculturalism. They argue against birthright to citizenship.

Modern white nationalism has been carefully crafted to provide this distinction and still hold the value that whites should hold dominance over all other races. The movement is going through a makeover of sorts, acknowledging that mainstream America does not want to think of itself as hateful or wearing hoods. White nationalists have well thought out social media campaigns, present at conferences, publish articles in journals, and carefully craft language that germinates fear and distrust. However, mainstream media portrays most white nationalists as tattooed, t-shirt wearing, big-truck-driving men at hate rallies.

White nationalists are also suit-wearing professionals, driving sedans and conducting business meetings and are not just men. In our current climate, there are new opportunities to normalize and build strategic victories for white nationalists. They use extensively researched marketing techniques, such as subtle and repetitive messaging that, heard often enough, becomes believable.

White nationalism is a political movement fielding political issues. White nationalism comes from a place of conviction that is then turned into policy. It is seeping into our national laws through the areas of immigration, civil rights, voting rights, travel restrictions, and safety net limitations or elimination. They blame crime on people of color and lobby for the implementation of more stringent sentencing to keep "us" all safe. They develop immigration laws that are not neutral in application, but focused on specific racial, ethnic or religious identities.

White nationalism can be combatted through the law and in the judiciary. White nationalists challenge the Fourteenth Amendment. Legal cases are being brought against leaders of white nationalist groups such as Unite the Right. Cities such as Charlottesville are filing lawsuits against white nationalist groups. Lawyers and organizations

such as the ACLU are fighting against newly formed laws that disparately affect racial and ethnic groups.

Meanwhile, white nationalism continues to grow and spread, adapting in response to legal actions.

When asked to write this article and provide a perspective from someone in the margins, I struggled as there are so many issues to choose from in this day and age. White nationalism is something that can be addressed by the leadership of our legal community.

The OSB and MBA are well-positioned to provide education and leadership. We have the tools and responsibility to train the legal community and build the skills to provide an analysis of white nationalism as it continues to seep into the mainstream and into our laws and policies.

There is no doubt that white nationalism is a growing presence in Oregon. The movement is hosting rallies in our streets and in our parks. We can stand against white nationalism. We can fight this movement with the law.

As a queer, white woman in a leadership position, I feel the responsibility to use what privilege and power I have to personally speak up.

One request I have of my colleagues in the bar is to understand what white nationalism is and to not be deceived by the movement's strategies and rhetoric.

I am confident that no one reading this article identifies as a white nationalist. With that, I would ask you to ensure that you apply a critical lens and analysis to information in the media, political campaigns, policy debates and even professional conversations.

This issue deserves our prioritized attention as the impact is so far and wide and deep. We are all affected by white nationalism as it has been part of our social and political fabric for decades. Unfortunately, now it is becoming normalized. Some are being criticized or threatened for standing up.

If we remember that, at stake for many, is the loss of their families, their jobs, their security, their citizenship, maybe even their lives, then we can continue to find our motivation to abundantly give our attention, action and vigilance in the legal community.

This issue deserves our prioritized attention as the impact is so far and wide and deep.

It is the product of contempt for immigrants, refugees and people foreign-born.

mba|EVENT

Multnomah Bar Association Absolutely Social

The Grape Escape
Featuring Wine Tasting

Wednesday, October 17
The University Club
5-7 p.m.

Drop in after work and catch up with friends and colleagues.

Register at www.mbar.org.

mba|CLE

To register for a CLE, please see p. 4 or visit www.mbar.org and log in as a member to register at the member rate.

SEPTEMBER

9.5 Wednesday

Annual Probate Update

Judge Patrick Henry
Judge Katherine Tennyson
Judge Katherine Weber
Sibylle Baer
Parmie VanDyke

9.13 Thursday

Cryptocurrency and Blockchain Technology in Your Daily Legal Practice

Nathan DiNiro
Olivia Grabacki
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Mindy Montgomery

9.19 Wednesday

Working Effectively with In-House Counsel

Lisa Kaner
Sid Khanijou
Chad Paulson
Heidee Stoller
Tom Karnes, moderator

9.19 Wednesday

Presenting Expert Witnesses at Trial

Judge Karin Immergut
Bonnie Richardson
Julie Vacura

9.27 Thursday

Winning on Dispositive Motions

Judge Danielle Hunsaker
Cody Hoesly

OCTOBER

10.3 Wednesday

#Trending Ethics in a Digital Age: Exploring Social Media and Data Security

Hong Dao
David Elkanich
Thomas Howe

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2018 Battle of the Lawyer Bands a Great Success

The McMenamens Kennedy School gymnasium was rockin' on August 9 when six bands competed for the title of "Best Oregon Lawyer Band 2018."

1. **The Soul Searchers** - Sheldon Aronson, Adam Greenman, Tom Talbott, Matt Miali and Howard Deitch
2. **Rock Judicata** - Tim O'Donnell, Mike O'Donnell, Chris O'Donnell and George O'Donnell
3. **The Catbird Seats** - Zack Mazer, Erik Eklund, Max Wall and Josh Mathis
4. **Hollowdog** - Jon Martz, Christopher Widenhofer, Rich Norkunas and James Kosek
5. **Habeas Corpse** - Tim DeJong, Tony Kullen, Houston Bolles and Mack Hagin
6. **Bunny Lebowski & the Nihilists** - Bradley Dixon, P.K. Runkles-Pearson, Steve Galloway and Dennis Westlind

The judges and crowd enjoyed all the bands, and in the end The Catbird Seats was named Best Oregon Lawyer Band 2018. The Soul Searchers received the Audience Choice Award. P.K. Runkles-Pearson of Bunny Lebowski & the Nihilists received the James Britt Award for Best Individual Performer.

Thank you to Stoll Berne PC, Farleigh Wada Witt, McKean Smith, Miller Nash Graham & Dunn LLP, Aldrich Benefits and Bruce F. Howell, JD, MS for sponsoring the event.

We would also like to thank our event judges: Judge Amy Holmes Hehn, John Bachofner, Steve Berman, Tom Sand and Trish Walsh; and Simon Whang, who served as M.C. The event was planned by the 2017-18 MBA Events Committee, chaired by Kevin Parks, with members Rebecca Cambreleng, Tony

Kullen, Calon Russell and Mindy Stannard. Thank you to everyone who attended and helped raise over \$2,000 for Multnomah CourtCare.



Best Individual Performer, P.K. Runkles-Pearson with Simon Whang



The Catbird Seats band members take home the Best Oregon Lawyer 2018 trophy



The Soul Searchers band members receive the Audience Choice Award

Calendar

SEPTEMBER

1 Saturday

Arab American Cultural Center of Oregon - 8th Annual Arab Festival
www.araboregon.org

13 Thursday

Immigration Counseling Service 40th Anniversary Celebration

17 Monday

CEJ Party Under the Stars
www.cej-oregon.org

26 Wednesday

OSB PLF Technology Fair PLUS CLEs
www.osbplf.org

27 Thursday

YLS Blackbird Wine Event
Details on p. 13

OCTOBER

5 Friday

Oregon Filipino American Lawyers Association Gala Dinner
www.oregonfala.org

8 Monday

21st Annual Golf Championship to Benefit the Volunteer Lawyers Project
See insert to register or sponsor

17 Wednesday

MBA Absolutely Social
www.mbabar.org

NOVEMBER

8 Thursday

Bench Bar & Bagels
www.mbabar.org

15 Thursday

Youth, Rights & Justice 10th Anniversary "Justice is Sweet" Gala
www.youthrightsjustice.org

Join Us for the 21st Annual MBA Golf Championship Monday, October 8 Willamette Valley Country Club

Play or sponsor and help raise \$15,000 for the Volunteer Lawyers Project (VLP) at Legal Aid Services of Oregon! Registration includes golf, cart, range, lunch, dinner, contests and door prizes. \$250 for MBA members and non-lawyers through September 28; All others \$275. Teams compete in a Gross and Net Best Ball. Casual players may opt to play a scramble.

This event offers excellent opportunities for visibility, sponsorship and time spent with clients or colleagues away from the office. With the growing need for legal services for the poor, your support is needed now more than ever. See the insert in this issue for details or contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).



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The MBA will apply for 2 hours of general OSB MCLE credit unless otherwise noted; Washington credit may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

Annual Probate Update
Wednesday, September 5 3-5 p.m.
World Trade Center, Auditorium
 Members \$60/Non-Members \$95

The MBA presents the 2018 Annual Probate Update, featuring **Judge Katherine Tennyson** and **Judge Patrick Henry**, Multnomah County; **Judge Katherine Weber**, Clackamas County; **Parmie VanDyke**, Washington County Probate Commissioner; and **Sibylle Baer**, Cartwright Baer Johansson PC. Ms. Baer will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the metro area. This CLE seminar is a must for all probate practitioners and/or their staff.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.542.3107. For registration questions, contact the MBA at 503.222.3275.

Cryptocurrency and Blockchain Technology in Your Daily Legal Practice
Thursday, September 13 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Did you miss the blockchain boat? It seems like everyone is talking about blockchain technology and cryptocurrency these days; you may even have clients asking you about it. This CLE seminar is designed to start at square one. Our panel of speakers **Nathan DiNiro**, Co-Founder and VP Marketing at YouBase; **Mindy Montgomery**, Product Manager for Moovel; and Miller Nash Graham & Dunn attorneys **Julianne Henley**, **Olivia Grabacki** and **Jacob Hasler** will:

- Explain what a blockchain is and how it's used to power digital currencies like Bitcoin.
- Talk about how blockchain technology can be used in other settings.
- Talk about specific case studies where blockchain technology intersects with the daily legal practice.

Have you ever wondered how to transfer cryptocurrency assets in a family law or estate planning dispute? Has a business client asked you about raising capital with digital tokens? Do you need to advise a client on how their Bitcoins will be taxed? We're going to cover it all. Sign up today, and don't let this boat leave without you!

For more information: Contact Shannon Hall, Gevurtz Menashe at 503.227.1515. For registration questions, contact the MBA at 503.222.3275.

Working Effectively with In-House Counsel
Wednesday, September 19 12-1 p.m.
World Trade Center, Mezzanine
 Members \$30/Non-Members \$50

Note: One hour of general MCLE credit will be applied for.

Unlike law firms, companies do not revolve around their lawyers. In-house counsel often wear multiple hats and are working on important business decisions as well as legal tasks. **Tom Karnes**, Partner at Ater Wynne LLP, will moderate a panel discussion with **Lisa Kaner**, Vice President, General Counsel & Corporate Compliance for Portland General Electric, **Sid Khanijou**, Associate General Counsel for Cambia Health Solutions, **Chad Paulson**, General Counsel for Blount, and **Heidee Stoller**, Counsel at Perkins Coie, touching on unique strategies for how to create and maintain effective working relationships with in-house counsel.

Our panel will discuss the role of the legal department as part of the larger organization, strategies for building an efficient outside counsel/in-house team, and how to create value for the in-house legal department.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.542.3107. For registration questions, contact the MBA at 503.222.3275.

Presenting Expert Witnesses at Trial
Wednesday, September 19 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

The MBA presents a two-hour "how-to" program on expert witnesses at trial. Our panelists will discuss how to prepare an expert for trial, how to effectively present expert testimony to a jury, and how to cross-examine even the most experienced expert. All trial attorneys should attend this program, which will feature both plaintiff and defense perspectives as well as judicial views and pointers. The program will cover both federal and state-court practice and rules. Our dynamic speakers are **Judge Karin Immergut**, Multnomah County Circuit Court; **Julie R. Vacura**, Larkins Vacura Kayser; and **Bonnie Richardson**, Richardson Wright.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.542.3107. For registration questions, contact the MBA at 503.222.3275.

Winning on Dispositive Motions
Thursday, September 27 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Join Washington County **Judge Danielle Hunsaker** and **Cody Hoesly**, Larkins Vacura Kayser LLP, for a discussion about how to win on a dispositive motion - either by succeeding on your own motion or by defeating your opponent's motion. This goes beyond the substance of key procedural rules to embrace practical considerations as well, such as how to decide which arguments to save for reply, and how to win both the heart and mind of the judge. This CLE seminar is designed to benefit both new and experienced practitioners.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.542.3107. For registration questions, contact the MBA at 503.222.3275.

#Trending Ethics in a Digital Age: Exploring Social Media and Data Security
Wednesday, October 3 3-5 p.m.
World Trade Center, Sky Bridge
 Members \$60/Non-Members \$95

Note: Two hours of ethics MCLE credit will be applied for.

Today's electronic world moves fast. On one hand, using technology comes with undeniable benefits; on the other, there are ever-increasing risks. **David Elkanich**, Holland & Knight LLP; **Thomas Howe**, Howe & Associates; and **Hong Dao**, Professional Liability Fund will help lawyers explore some of the benefits and risks in social media and data security. First, this panel will analyze how lawyers are, and should be, using social media in their practices. Second, this panel will help you identify potential data risks at your firm, understand the ethical obligations that arise out of data management and storage, create risk-minimizing policies and procedures, and develop action strategies in case of a potential data breach.

For more information: Contact Garrett Garfield, Holland & Knight LLP at 503.243.2300. For registration questions, contact the MBA at 503.222.3275.

Seeking and Defending Abuse Prevention Orders
Thursday, October 4 3-5 p.m.
World Trade Center, Sky Bridge
 Members \$60/Non-Members \$95

Nathan C. Holtey, Holtey Law LLC and **Grace Y. Lee**, Grace Family Law will offer a step-by-step analysis, review of best practices, and "tips from the trenches" about domestic relations protective orders (FAPAs, EPDAPAs, and Stalking Protective Orders). The class will cover topics ranging from the initial application to discovery to witness preparation and trial presentation. This class will be moderated by **Michael T. McGrath**, Gearing Rackner & McGrath LLP.

For more information: Contact Michael McGrath, Gearing Rackner & McGrath LLP at 503.222.9116. For registration questions, contact the MBA at 503.222.3275.

Drafting Employment Agreements: Tips and Tricks for Employment Lawyers
Tuesday, October 16 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Natalie Horwitz, Attorney at Law and **Megan Vaniman**, Harris Bricken McVay Sliwoski LLP will discuss how to draft Employment Agreements to ensure the at-will nature of the employment is not compromised. Further, the CLE seminar will discuss drafting terms such as non-solicitation, non-competition, confidentiality and severance agreements that are in compliance with Oregon laws and administrative rules.

For more information: Contact Nicole Elgin, Barran Liebman LLP at 503.276.2109. For registration questions, contact the MBA at 503.222.3275.

I Object! Tips for Preserving Issues for Appeal
Wednesday, October 17 3-5 p.m.
World Trade Center, Plaza
 Members \$60/Non-Members \$95

Trials move quickly and can sometimes feel chaotic. This CLE seminar will help you be prepared to protect your client and any judgment you obtain on their behalf in the event of any future appellate review. **Nadia Dahab**, Stoll Berne and **Sara Kobak**, Schwabe Williamson & Wyatt will share the important rules and some go-to practical tips for making sure you're thinking ahead and on your feet! This program will focus primarily on preservation rules in Oregon state court, and Nadia and Sara will share their federal court experiences as well.

For more information: Contact the MBA at 503.222.3275.

To register for these classes, see page 4.

Sexual Assault Claims: Issue Spotting for the General Practitioner

Tuesday, November 6 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This program will provide a basic primer on several of the key issues when attorneys are faced with potential clients who have been sexually assaulted, including:

- safety planning for survivors;
- how to appropriately interview a trauma survivor;
- pros and cons of reporting to law enforcement;
- an overview of civil remedies available to survivors; and
- the effect of a sexual assault claim on a client's other legal matters.

This CLE seminar is intended as an introductory guide to help general practitioner attorneys feel more comfortable issue spotting and responding appropriately when approached by a potential client or inquiry from someone who has suffered a sexual assault. Our panelists are **McKenzie Harker**, staff attorney at Victims Rights Law Center; **Barbara C. Long**, partner at Vogt & Long PC; and **Ashley Vaughn**, attorney at the Dumas Law Group.

For more information: Contact Jovanna Patrick, Hollander Lebenbaum et al at 503.222.2408. For registration questions, contact the MBA at 503.222.3275.

Mandatory Elder and Child Abuse Reporting

Wednesday, November 28 12-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Note: One hour of abuse reporting MCLE credit will be applied for.

This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. **Mark Johnson Roberts**, Deputy General Counsel to the OSB and a former family law practitioner will present a lively and practical discussion:

- Recognizing elder and child abuse
- Mandatory reporting requirements
- Protecting privilege and confidentiality

For more information: Contact the MBA at 503.222.3275.



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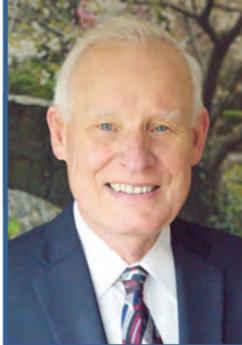
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CLE Registration Form

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PHONE	
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- MBA Member
 Non-Member

Payment Options:

- Check VISA MasterCard
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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

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620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
503.222.3275 ■ Fax to: 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.

Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available.

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- 10/4 Seeking and Defending Abuse Prevention Orders**
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- 10/16 Drafting Employment Agreements: Tips and Tricks for Employment Lawyers**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 10/17 I Object! Tips for Preserving Issues for Appeal**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 11/6 Sexual Assault Claims: Issue Spotting for the General Practitioner**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 11/28 Mandatory Elder and Child Abuse Reporting**
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mba | ANNOUNCEMENTS

Juvenile Justice Panel Discussion - September 11

Are we improving outcomes for youth? Be informed about Oregon's Measure 11 impact on our youth caught up in the juvenile justice system. Partially funded by a 2018 grant from the MBF, the League of Women Voters of Portland offers a panel discussion that is free and open to the public. Tuesday, September 11 from 7-9 p.m. in the Multnomah County Board Room, 501 SE Hawthorne Blvd, Portland. For more information contact Marion McNamara, civiced@lwpvpx.org.

National Voter Registration Day - September 25

The Bus Project is holding events all day long to encourage people to register to vote for the first time, update their voter registration, or help others to do so. To volunteer or learn more, contact Maddie Immel, Maddie@busproject.org.

OSB PLF Technology Fair and CLE Seminars - September 26

On Wednesday, September 26, from 8 a.m.-5 p.m., the OSB PLF is offering a Technology Fair plus product demonstrations and CLE seminars. The program, *Efficiency and Productivity Solutions for Your Law Practice*, is dedicated to simplifying your life and answering your questions about technology. Learn more and register at www.osbplf.org.

Conference Room Available for Reservation

Conveniently located downtown, the MBA conference room is available for reservation by members for client meetings, depositions and other practice-related uses. Contact the MBA for details and availability at 503.222.3275 or mba@mbabar.org.

Free CLE Webcast for MBA Members

The video webcast of the seminar "What Every Attorney Needs to Know About Workers' Compensation" is now available in the Members Center at www.mbabar.org. The seminar was accredited for two hours of general OSB MCLE credit.

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Ethics Focus

What Lawyers Should Know About Judicial Ethics

by Mark J. Fucile
Fucile & Reising LLP



Although lawyers are keenly aware of the Rules of Professional Conduct governing their own conduct, many lawyers are less familiar with the Code of Judicial Conduct applicable to state court judges. The current Oregon CJC, which was adopted in 2013 by the Supreme Court, is patterned generally on the ABA Model Code of Judicial Conduct, which, in turn, was last comprehensively revised in 2007. As public officials, judges are also regulated by state statutory and Constitutional law. The CJC is enforced as a regulatory code by the Supreme Court through the Commission on Judicial Fitness and Disability. Sanctions can range from public censure to removal.

Because the roles of judges and lawyers are different, the CJC is not simply a "judges' version" of the lawyer RPCs. The first 18 RPCs, for example, deal with various aspects of the attorney-client relationship. Given that full-

time judges do not have clients, there are no corresponding provisions in the CJC. In fact, the CJC is comprised of only six basic rules (each of which has subparts). Reflecting that numerical disparity, the CJC is in many respects more general than the RPCs.

Despite their variations reflecting the different roles and duties of judges and lawyers, there are several key points where the respective professional rules and related statutory law intersect relatively often. In this column, we'll look at three: (1) judicial disqualification; (2) *ex parte* contacts; and (3) campaign finance.

Judicial Disqualification

Judges can be disciplined for failing to disqualify themselves under CJC 3.10(A), which generally requires recusal "in any proceeding in which a reasonable person would question the judge's impartiality[.]" In *In re Schenck*, 318 Or 402, 870 P2d 185 (1994), for example, a judge was disciplined under a predecessor to CJC 3.10(A) for failing to disqualify himself in a series of cases following a very public dispute with a local lawyer in a small county in Eastern Oregon.

More commonly, however, lawyers encounter judicial disqualification in its statutory form: ORS 14.210 and ORS 14.250.

The former is "for cause" and in many respects mirrors CJC 3.10(A). It permits the judge both

...the CJC is not simply a "judges' version" of the lawyer RPCs.

to recuse him or herself *sua sponte* and provides parties with grounds for a motion to disqualify.

The latter is "for prejudice" and is typically used as a procedural mechanism to change the judge assigned to hear a matter. Although ORS 14.250 requires a party or the party's attorney to certify that they believe "that such party or attorney cannot have a fair and impartial trial or hearing before such judge," the practical bar is very low and these motions are usually granted routinely. In fact, the Oregon Supreme Court in *State v. Pena*, 345 Or 198, 203, 191 P3d 659 (2008), described ORS 14.250 as "an exercise of legislative grace" because "it is not necessary for a party to show that some source of law (such as the state or federal constitution) requires removal of the judge." ORS 14.270 does, however, require that motions under ORS 14.250 "be made at the time of the assignment of the case to a judge for trial or for hearing" and the Supreme Court in *Pena* emphasized the "use it or lose it" character of this remedy.

Ex Parte Contacts

CJC 3.9(A) generally prohibits judges from initiating *ex parte* contacts with parties or their lawyers on the merits. In the *Schenck* case noted earlier, the judge was also disciplined for violating the predecessor of CJC 3.9(A) by initiating a private *ex parte* conversation with the local district attorney about the merits of a pending proceeding. CJC 3.9(B), in turn, requires a judge receiving an unauthorized *ex parte* contact to "promptly notify the parties of the substance

The key with both is that their interactions cannot involve pending matters that would trigger the respective ex parte prohibitions.

of the communication and provide them with a reasonable opportunity to respond."

RPC 3.5(b) mirrors its CJC counterpart by prohibiting lawyers from contacting a judge *ex parte* "on the merits of a cause...during the proceeding unless authorized to do by law or court order[.]" UTCR 5.060 provides a ready example of the "by law or court order" exception by addressing formal *ex parte* proceedings in civil litigation.

Neither CJC 3.9(A) nor RPC 3.5(b) prohibits judges and lawyers from interacting beyond their pending dockets at events ranging from CLE panels to private social events. The key with both is that their interactions cannot involve pending matters that would trigger the respective *ex parte* prohibitions. The ABA in Formal Opinion 462 (2013), which is available on the ABA web site, provides guidance under the *ex parte* rule for judges using electronic social media in particular.

Campaign Finance

CJC 5.1(E) generally prohibits a judge from personally soliciting campaign contributions - while allowing judges to use campaign committees to handle fundraising activities. In *re Gallagher*, 326 Or 267, 951 P2d 705 (1998), illustrates this distinction, with a judge disciplined under CJC 5.1(E)'s predecessor for including a personal note along with a re-election campaign committee flyer for a fundraising golf tournament.

RPC 3.5(a) parallels CJC 5.1(E) by prohibiting a lawyer from "seek[ing] to influence a judge...by means prohibited by law." OSB Formal Opinion 2005-38 (2005) emphasizes, however, that lawyers may participate fully in judicial campaign activities. This includes fundraising through the judge's campaign committee as long as the fundraising complies with applicable law.

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Document Review Strategies for Streamlining Your Discovery and Trial Process

by Marsha J. Naegeli
NAEGELI Deposition & Trial



electronic communication has become the preferred method of exchanging information and documents for many people and organizations. Therefore, attorneys and other legal professionals find themselves searching through hundreds or thousands of pieces of electronically stored information (ESI) in addition to paper documents.

ESI includes, but is not limited to, video files, voicemail, text messages, emails, documents, websites, presentations, databases, and audio files. Any document, photograph, message, video, or audio clip that can be stored electronically, related to a case, must be included in the document review process.

The purpose of reviewing ESI is the same as it is with traditional document review. Attorneys and paralegals must determine which documents are relevant to the case, are privileged material, or may be subject to a production of documents requested by another party.

One advantage of ESI is that you can use a variety of tools and techniques to make document review less time-consuming and costly. Therefore, converting paper documents to digital documents can often save your law firm money and manpower by making it easier to conduct document review for a case. In addition, the software available for reviewing digital documents allows the user to create charts, lists, graphs, and other visual tools that can help the legal team

analyze documents in ways that are impossible when dealing with stacks of paper documents.

What is Your Process for Reviewing and Preserving Documents?

Human review can be exhaustive and near-impossible when dealing with thousands of ESI items. Therefore, most firms utilize software tools that combine analytics and search functions to identify potentially relevant data that should be subject to human review.

Filtering and Removing Junk or Irrelevant Data

Using metadata and keywords can be one of the most efficient ways to filter and cull ESI for items that can be coded for removal from the review set. However, if you are not working with an e-discovery specialist or using high-tech software, there are other ways to filter and remove items that are not relevant or material to the case.

For example, you can cut through thousands of emails quickly by filtering and culling the emails by the email domain. If the email domains are not present in the dataset, you can use clustering to group the emails by category. Emails related to company newsletters may be one category, while emails related to Project XYZ are another category. Once the emails are clustered by category, you can mass code the emails that are not relevant for removal from the documents for review.

The second step to filter and cull ESI data is to perform an initial search for privileged documents. By identifying privileged documents, you can pre-code the items to help reviewers focus on the privileged aspect of the document to improve speed and results. It helps to have as much

information as possible to use for search fields to narrow results.

Using the email example again from above, you would need the client to provide each name and email address for all attorneys the client has corresponded with during the search period to speed up the identification of potentially privileged data. You do not want to forget to check for attachments to emails because if the email itself is privileged, the attachment is likely privileged as well. There are a host of software applications that can speed up this process by allowing you to apply the privileged tag and the reason determination to a mass list of documents.

Determining a Hierarchy of Review

After filtering for privileged information, you need to identify a hierarchy for the reviewers to divide the data and documents into batches. After the ESI has been de-duped (removal of duplicate documents or data), the hierarchy of document custodians can avoid questions of proportionality because the key custodian reviews the document, possibly avoiding the need for review by a person who is lower in the hierarchy of reviewers.

Use of Analytics and Data Visualization in E-Discovery

Data must be classified and processed so that reviewers can easily understand the documents and items for review. Data visualization is the process of representing the data in visual form, such as using lists, charts, graphs, or maps. Data analytics is the process of examining the data sets. Because we are limited in how much information we can interpret at once, representing the data in a form other than in a tabular format or typical list allows us to gain more insights

from the data and speed review of ESI by document custodians.

By using data visualization and analytics to represent the various groups of documents or data, review teams can prioritize groups of documents to review, assess the topics covered in a certain document set, assist in developing a more detailed plan for review of documents, or discard documents or entire groups from the review. In addition, data visualization allows review teams to cull irrelevant groups of ESI based on content. By quickly reviewing the clusters, an attorney or senior member of the review team can often identify entire sets of documents that are not relevant, thereby eliminating the need for review to save time and expense.

It is also helpful to identify key concepts for reviewers. When reviewers can focus on one concept when reviewing batches of data, the review is generally faster and more accurate.

Attempting to review ESI based on several concepts at the same time causes reviewers to switch from one concept to another for the same document. Switching from multiple concepts requires the reviewer to spend additional time reviewing the document and could result in documents being skipped for a concept because the document was not relevant for the other concepts.

Organizing and Producing Data and Information

Once all reviews are completed, you must export and organize the data and information for use by the legal team. If you are using a service provider to identify and cull ESI, you must determine whether an in-house litigation team or the service provider will perform this task. Dividing the duty between in-house teams

Continued on page 15



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Around the Bar



Paul Berg

Cosgrave Vergeer Kester

Managing Partner **Paul Berg** of Cosgrave Vergeer Kester LLP has been elected to the Classroom Law Project (CLP) Board of Directors. CLP is a nonprofit organization bringing vital, engaging civic education programs to schools across Oregon. In the 2017-18 school year, these programs provided nearly 1,300 teachers with quality professional development and curriculum to help over 101,000 students develop the skills and understanding to become active members of their communities.



Riley Lagesen

Davis Wright Tremaine

Firm partner **Riley Lagesen** recently had the honor of giving the address to students graduating from the Culinary Institute of America in Hyde Park, NY, the top culinary institution in the United States.

Riley, based in Portland, is chair of the national restaurant industry practice group at DWT, and has represented restaurants such as Pok Pok and Salt & Straw, and built a national reputation with his annual meet-up for industry leaders called "Restaurant High." He first worked in the industry back in 1993 as food runner at the LA beach hangout Baja Sharkeez. In his speech, his advice to graduates was "focus on one concept and scale it successfully."

Tonkon Torp

The firm has appointed partner **Parna Mehrbani** as co-chair of its Information Privacy & Security Practice Group. Mehrbani has a well-regarded practice that focuses on protecting and enforcing intellectual property. She also has experience advising businesses on the management and security of personal data and the laws that regulate the collection, use, and protection of personal data.

Mehrbani joined the firm in 2018 as a partner. She plays an active role in the local, national,



Parna Mehrbani



Sarah Einowski

and international legal and trademark communities.

Sarah Einowski has joined the Board of Directors for the Oregon League of Minority Voters. The nonprofit organization works to advance minority voters' rights within the electoral process. Its programs are focused on education, empowerment, and bringing a voice to the issues that are unique to communities of color.

Einowski is a member of Tonkon Torp's Estate Planning Practice Group. After working as a litigation attorney on trust and fiduciary disputes for several years, she now applies her business litigation law background to helping clients with wills, trusts, and succession planning.



Anastasia Yu Meisner

Samuels Yoelin Kantor

The firm is proud to announce the Oregon Supreme Court approved attorney **Anastasia Yu Meisner** to serve as Judge Pro Tempore in the circuit court for the State of Oregon. Her three year term expires March 2021. The approval came after recommendation by the Washington County Bar screening committee and Washington County Presiding Judge Charles Bailey. Her appointment as a Circuit Pro Tempore for Washington County began June 20 and runs through December 31. Meisner is serving in the probate department, specifically evaluating Conservatorship accountings.



Jessie Minger

Cable Huston

Jessie Minger has joined Cable Huston as an equity partner in the firm's estate planning and litigation groups. Minger brings over 15 years of experience in litigation, including three years as a prosecutor at the Multnomah County District Attorney's office. She focuses her practice in probate and protective proceeding administration and litigation as well as representing clients in personal injury lawsuits and general litigation.

Hart Wagner

Hart Wagner LLP welcomes **Ryan Jennings Ashby, Mitchell Howell** and **William Stewart** as the firm's newest associates in the Portland office.

Ashby's practice focuses on the defense of legal, medical, and financial professionals, as well as insurance defense and general liability. Prior to joining Hart Wagner, Ashby worked for a national insurance provider, litigating personal injury cases as in-house counsel. He also spent four years as an



Ryan Ashby



Mitchell Howell

insurance defense attorney at a Philadelphia-based law firm, in their Workers' Compensation litigation department.

Howell's practice emphasizes commercial litigation, professional liability, legal and medical malpractice defense, as well as product liability and appellate law. Prior to joining Hart Wagner, Howell clerked for the Honorable Judge David F. Rees at the Multnomah County Circuit Court where he facilitated over 20 jury trials and handled hundreds of other civil and criminal matters.



William Stewart

Stewart's practice focuses on the defense of medical professionals, businesses, insurers, drivers, and service providers in tort, products liability, contract, and general liability cases. Before joining Hart Wagner, Stewart worked for a large national litigation firm, a litigation boutique in Portland, and a plaintiff's firm. His litigation experience has ranged from large financial class actions to construction defect cases to catastrophic vehicle accidents, premises liability, and general liability.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to mba@mbabar.org.

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Learn more and register at www.osbplf.org.

Tips From the Bench

Keeping Up with Changes

by Judge Leslie Roberts
Multnomah County Circuit Court

“Intelligence is the ability to adapt to change.”

-Stephen Hawking

The typical procedural errors of new lawyers come from failing to learn and carefully follow the existing rules and standards of court - ORCP, UTCR, local rules, and consensus statements in Multnomah County. The typical procedural errors of more experienced lawyers come from a belief that known rules are not capable of change. In either case, frequent careful review of current rules is necessary, even for familiar “we’ve done it this way before” procedures.

New Consensus Statements

The Multnomah County Circuit Court is in the process, shortly to be completed, of promulgating a new edition of the civil consensus statements, which describe the manner in which the judges of the court have ruled on recurrent issues in discovery, venue, and other matters which are frequent subjects of motions in our court. All lawyers who appear in civil matters should be aware of these consensus positions. While no judge is bound by the statement of how colleagues have ruled in the past in similar motions, by definition, the consensus is reflected in these positions. A firm understanding of these positions help you predict the likely result of controversies and aid in judging the value of a contemplated motion.

In addition, when involved in mortgage or trust deed judicial foreclosures, lawyers ought to consult the foreclosure consensus statements found on Judge Litzenberger’s and my individual websites, which you may reach through the Multnomah County Circuit Court website. (Some notes on this consensus statement are relevant beyond the resident mortgage foreclosure setting, of course, and could be particularly helpful to less experienced civil litigators.)

Service of Process

Oregon Rule of Civil Procedure 7 will include some minor changes after the effective date of amendments presented by the Oregon Council of Court Procedures, to the Legislature, this coming year. Of greatest interest will be proposed details regarding alternative service through electronic resources, such as social networking sites. It must be noted, emphatically, that the exhaustion of primary methods of service (e.g. personal service, office service) remains necessary before the court can be asked to approve an alternative service method. However, these alternative avenues may be found more likely to achieve actual notice of a pending action after



primary methods have been tried and found futile. Electronic methods of service of process are not and will not be effective without a court order allowing them as an alternative method.

Service of process is often delegated to service firms that may not be sensitive to the legal issues regarding effective service. Among certificates I have seen submitted are those that claim substitute service on unknown parties “wherever located.” Substitute service involves leaving summons with a responsible person at the “home” or office of the party served. This cannot be accomplished without knowing the party who is to be served (unless the defendant is an unknown occupant of a particular address, as in certain foreclosure and FED matters).

Similarly, substitute service has been claimed on a dead person - again an impossibility. A dead person does not live anywhere, nor have a place of business. Service on people who are dead - or rather their estates, since death is a jurisdictional limitation on the court’s reach - is regulated by statute, within the provisions for probate code. The appropriate defendant is the personal representative of the estate, in the role of administrator.

If you cannot find that an estate has been opened, do not seek alternative service by publication (or other method). The creditor should file a petition in probate court to open the estate and name the personal representative, who is then amenable to service. Opening an estate for the purpose of naming the personal representative as a defendant is an easy and quick process, requiring only a few days in Multnomah County.

On the subject of service of dead people, there exists a particularly vicious trap for the unwary plaintiff, at the conjunction of the statute of limitations and the inability to sue a dead person (as opposed to the estate). If the plaintiff files the complaint at, or just before, the statute of limitations runs out and unknowingly names a dead defendant, plaintiff is in peril of this snare. You have only sixty days within which to effect good service and thereby preserve the date of filing for the purpose of satisfying the statute of limitations; however, if the complaint only names the dead person, subsequent service on the personal representative will not satisfy the statute. Even if the plaintiff learns of the death and of the personal representative, the complaint (unless and until

The Honorable Melvin Oden-Orr Multnomah County Circuit Court Judge

by Steffan Alexander
Court Liaison Committee

On December 27, 2017, Governor Kate Brown appointed Melvin Oden-Orr to the Multnomah County Circuit Court, effective January 1, 2018.

Judge Oden-Orr’s path to the bench has been guided by a calling to serve others. Judge Oden-Orr was born in South Central Los Angeles, and was raised by his mother and stepfather. He has four younger siblings. Throughout high school, Judge Oden-Orr worked at a drive-in movie theater. After high school, he joined the United States Marine Corps as a non-commissioned officer. For two years, he was stationed in the Republic of Panama and later served with the 1st Battalion 4th Marine Regiment at Camp Pendleton in California. Judge Oden-Orr served in the military for approximately three years before being honorably discharged.

Judge Oden-Orr earned his undergraduate degree in political science from the University of California, Los Angeles, and was the first person in his family to graduate from college. Following graduation, he attended law school at the University of Illinois College of Law. At the time, he did not want to become a lawyer. Instead, his goal was to “gain knowledge of the law to help people from socioeconomically disadvantaged backgrounds gain financial independence through entrepreneurship.” During law school, he interned at the United Nations Environment Programme (UNEP) and also participated in an international legal studies program at the University of Nairobi, where he met a law student who was attending school in Oregon. That law student inspired him to later move to Oregon.

After graduating from law school, Judge Oden-Orr moved to Oregon with a duffle bag, a boom box, and a 24-inch television. Over the next two decades, he worked as a lawyer, handling a wide variety of civil disputes. Judge Oden-Orr started his legal career in 1996 as an associate attorney with Lane Powell Spears

Lubersky LLP, and focused on business transactions and litigation. From 2000-2004, he was an Assistant General Counsel for TriMet where he litigated its tort, labor and employment disputes, and was primary legal counsel for certain capital projects that involved construction, real estate, and land use matters. Next, he formed his own law firm and spent over 10 years advising individuals and companies on a variety of business matters and disputes.

Before joining the court, Judge Oden-Orr had multiple experiences that have assisted with his transition to being a judge. He served on the OSB’s Fee Arbitration Panel. He also gained valuable experience as a volunteer mediator for the Multnomah County Circuit Court Small Claims Mediation Program, in which he handled over 40 mediations. In 2016, Judge Oden-Orr honed his skills as a neutral by serving as a Hearings Officer for the City of Portland Hearings Office. He presided over 80 hearings, rendering decisions on land use disputes, city code violations, and other municipal matters.

Judge Oden-Orr’s legal career also entailed robust community involvement. He served as a board member of several nonprofits, including an organization dedicated to affordable housing for low-income families; an organization focused on education and training services for at-risk youth; and an organization providing micro-lending and other business services to small business owners from underserved communities. He participated on a committee for City Club of Portland that provided research and recommendations for improving state and local support to help young adults obtain General Education Development (GED) credentials. He also served as a board member of the Multnomah Bar Foundation and helped implement its CourtConnect civic outreach program, in which a judge and an attorney visit



Hon. Melvin Oden-Orr

a community organization to provide education on the justice system, procedural fairness and the rule of law.

Judge Oden-Orr has also been an advocate for making the legal and business professions more diverse and inclusive. He was President of the Oregon Chapter of the National Bar Association, a member of the MBA committee to advance equality in the profession and justice system, and the founding chair of the OSB’s Diversity Section.

At his investiture, speakers noted that Judge Oden-Orr was the 11th African American to ever serve as a judge in Oregon. He is one of seven African Americans currently serving as a judge in Oregon, six of whom were appointed by Governor Brown to various courts throughout the state. Justice Adrienne Nelson (who is the first African American justice to serve on the Oregon Supreme Court) swore Judge Oden-Orr into office on January 15 - Martin Luther King Day.

Judge Oden-Orr has three tips for lawyers who appear before him: “(1) be on time, (2) be professional, and (3) be prepared to support your positions with legal authority.” So far, some of his most enjoyable moments serving as a judge have included the opportunities to connect with students who tour the courthouse to learn about the justice system.

Judge Oden-Orr’s road to the bench was nurtured with the support of numerous colleagues, friends, and family members. The law student he met during the international legal studies program would later become his wife, who is also a practicing attorney in Oregon. They have two sons, one in college at Oregon State University, and the other a high school junior. All of them have contributed significantly to Judge Oden-Orr’s journey, and we are fortunate he has answered the call to serve.

amended) does not name a defendant amenable to suit. If the complaint is appropriately amended, it may not relate back to the date of filing of the complaint unless the personal representative actually knew that the complaint meant the personal representative, when it named and service was attempted on the dead person. If you have relied on substitute service, not knowing that the dead person no longer lives anywhere, much less at his or her last known address, you may not learn the true state of affairs until long after you have time to correct it. The moral is to know of the trap, and be sure that you

cannot fall in. See *Worthington v. Estate of Davis*, 250 Ore. App. 755, 282 P.3d 895, (2012).

No Setting Aside Rule 7 Dismissals Without Full ORCP 71 Compliance

It used to be a practice in Multnomah County that cases dismissed under UTCR 7 for failure to prosecute could be reinstated at *ex parte* by a simple motion. Little was required other than the request. It has now become understood that a judgment of dismissal - for *any* reason - is still a judgment and that judgment can only be set aside under the procedures provided in

ORCP 71 and upon the grounds referred to in that rule (typically, in this instance, based on excusable neglect by the plaintiff, or error of the court if the Rule 7 dismissal was not merited). It is particularly important to note that service of an ORCP 71 motion is required on “all parties” - and not just on all parties not in default or all parties that have appeared. Thus, the motion must be served even on parties who have been defaulted, and cannot be set at *ex parte* without stipulation. The motion cannot be granted without time for response by the parties served.

MBA Committees

Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee charge follows with contact information for the committee chair. If you have ideas or concerns about a particular area, please contact the chair, MBA President Rima Ghandour, rima@ghandourlaw.com, or the MBA staff at mba@mbabar.org.



Cody Elliott

Continuing Legal Education

Chair: **Cody Elliott**, Miller Nash Graham & Dunn, cody.elliott@millernash.com, 503.542.3107

Plan, conduct and evaluate approximately 40 CLE seminars, focusing on members' primary areas of practice.



Amity Girt

Court Liaison

Chair: **Amity Girt**, Multnomah County DA's Office, amity.girt@mcda.us, 503.988.6698

Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.



Maya Crawford Peacock

Equity, Diversity & Inclusion

Chair: **Maya Crawford Peacock**, Campaign for Equal Justice, maya@cej-oregon.org, 503.295.8442

Promotes equality in the profession, identifies ways in which the MBA can promote a diverse bar, and carries out the diversity award process.



Rebecca Cambreleng

Events

Chair: **Rebecca Cambreleng**, Cambreleng Law LLC, rebecca@cambrelenglaw.com, 503.308.1481

Conducts member outreach activities. Plans Bench Bar & Bagels, Battle of the Lawyer Bands and WinterSmash, which benefits Multnomah CourtCare.



Alison Kean

Judicial Screening

Chair: **Alison Kean**, Prosper Portland, keana@prosperportland.us, 503.823.3200

Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.



Daniel Simon

Membership

Chair: **Daniel Simon**, Portland Office of City Attorney, dan.simon@portlandoregon.gov, 503.823.4047

Works on member recruitment and retention efforts, and evaluates current and potential member benefit programs.



Nellie Barnard

Professionalism

Chair: **Nellie Barnard**, Holland & Knight LLP, nellie.barnard@hkllaw.com, 503.243.2300

Implements activities that promote professionalism and carries out the professionalism award process.



Andrew Schpak

Public Service

Chair: **Andrew Schpak**, Barran Liebman LLP, aschpak@barran.com, 503.276.2156

Explores new ways for lawyers to assist those in need in the community, in partnership with the court, pro bono, social service providers and other stakeholders.



Ashley Vaughn

Solo/Small Firm

Chair: **Ashley Vaughn**, Dumas Law Group LLC, ashley@dumaslawgroup.com, 931.206.0090

Plans workshops and socials tailored specifically for solo and small firm attorneys.

VLP Golf

Staff Liaison: **Pamela Hubbs**, pamela@mbabar.org, 503.222.3275

Organizes golf outings, including the MBA Championship, which annually raises \$15,000-20,000 for the Volunteer Lawyers Project at LASO.

2019 MBA Professionalism and Diversity Awards Nominations Due November 2

Professionalism Award

The MBA Professionalism Award is one of the most highly-regarded honors an attorney in our area can receive. Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, regularly goes well beyond minimum ethical and professionalism standards, and constantly mentors others and works to improve the quality of our practice as a whole?

We strongly encourage you to nominate them for the 2019 MBA Professionalism Award. Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Esteemed award recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O'Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunk, Edwin A. Harnden, Thomas W. Brown, Mark Johnson Roberts, Robin J. Selig, Bonnie Richardson, Jane Paulson and Carolyn Walker.

Diversity Award

The MBA Diversity Award honors individual attorneys, legal employers, or other legal organizations that have made a longstanding commitment to furthering diversity and inclusion in the MBA and Multnomah County legal community. The award spotlights the various efforts of individuals, legal employers, or legal organizations in fostering a

culture of diversity and inclusion, and encourages others in their own efforts.

Do you know of an individual attorney, legal employer, or other legal organization that has shown a long-term commitment to fostering diversity and inclusion in the MBA and Multnomah County legal community? If so, please complete a nomination form for the MBA Diversity Award. The nomination should include the efforts made, the impact of those efforts, and how the individual, legal employer, or legal organization exemplifies the principles set forth in the MBA Statement of Diversity.

Esteemed award recipients include Aruna Masih and Ernest Warren.

The concept of "diversity" is made up of many dimensions that make it difficult to define. To the MBA, diversity is "an inclusive concept" that "encompasses, without limitation, race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status." The MBA also recognizes that "achieving diversity is an evolutionary process that requires a continued renewal of our commitment to strategies of inclusion." (*MBA Statement of Diversity Principles.*)

Former nominees may be re-nominated. To propose a nominee for one or both of this year's award selection processes, please complete and return the nomination form(s) available at www.mbabar.org or contact Kathy Modie at kathy@mbabar.org for more information.

Nomination forms are due November 2 to the MBA. The MBA will present the recipients of the Professionalism and Diversity awards at the MBA Annual Meeting on May 14, 2019.

mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, comprised of any MBA member in practice less than six years or under the age of 36. The YLS provides leadership, networking, professional development and service opportunities. And we have fun!

Pro Bono Pour Fundraiser Recap



Thank you to everyone who supported the fundraiser on August 16. The event raised more than \$1,000 to benefit the Volunteer Lawyers Project at Legal Aid Services of Oregon. Attendees enjoyed good company and refreshments while bidding on silent auction items.

Thank you to the following firms for supporting the event:

- Barran Liebman**
- Davis Wright Tremaine**
- Markowitz Herbold**
- Clarke Balcom PC**

Also, thank you to silent auction item donors **Baird & Dewar**, **Farmhouse Cider**, **OMSI** and **Yoga Pearl** for their generous contributions.



Chris Morgan, Troy Pickard and Maggie Davis



Hard cider and a handcrafted wood bottle stand, available at auction during the event.



Jill Mallery and Holly Hayman

ABA Annual Meeting Highlights and Upcoming Programs

by Shayda Zaerpoor Le
YLS President



As the President of the YLS Board and our Board's Delegate to the American Bar Association Young Lawyers Division, I had the opportunity to attend this year's Annual Meeting in Chicago.

YLD: The Young Lawyers Division (YLD) of the ABA offered some fantastic specialty programming. Attendees benefited from targeted programming on "being relational" and excelling in professional development through improving the quality of their interactions with others. There was also a special plenary event with Brian Cuban, on lessons from "The Addicted Lawyer," as well as a program on planting the seed for a judicial career, which was co-sponsored by the ABA Judicial Division and which provided an opportunity for young lawyers to meet directly with judges from around the country to ask questions and discuss career paths to the bench. Other sessions included topics such as coding for lawyers, IP protection and enforcement, trial skills, ethics, and advanced approaches to tightening legal writing.

YLD Assembly: The YLD Assembly undertook voting on a broad range of proposed

resolutions. The Assembly, which includes three delegates from the State of Oregon (not including Oregon lawyers with separately-appointed positions), considered proposals on: redistricting to provide direct representation for Puerto Rico, law school transparency, alternatives to criminal prosecution and arraignment, voluntary submission of individuals to gun databases, and law school admissions.

YLD Presentations: Outgoing ABA President Hilarie Bass spoke to the YLD members and thanked them for their work and support. In particular, a point of significant emphasis this year was on the Disaster Legal Services provided nationwide to those impacted by FEMA-declared national disasters. This was a particularly disaster-heavy bar year, and the YLD's Disaster Legal Services Coordinator, District Representatives, and members nationwide rose to the challenge of supporting those in need.

In addition, the ABA approved and is rolling out a new membership model which is focused on content curation, the majority of which will now be available more broadly as part of all ABA memberships. Rates have also been reduced and significantly simplified, with rates mostly dependent on years of practice, set at tiers of \$75, \$150, \$250, \$350, and \$450. For those who have been ABA members, this dues structure is both lower and easier to manage, and for those who are not existing members, this is an excellent opportunity to join the association for a lower price and with access to broader content than has been previously available.

The passing of the gavel took place from outgoing YLD Chair Dana Hrelac to incoming Chair Tommy Preston, Jr. This year's focus is "driving innovation and defining our future," and the projects and programming include a Men of Color Initiative, which will serve as a resource for men of color both during law school and in the pivotal first years of practice, as well as to facilitate an intergenerational support system and encourage opportunities for community service and civic engagement; a Seat at the Table Initiative, which will focus on getting young lawyers engaged in civic work such as running for office, advocacy, and policy work; and a No Limits Initiative, which will focus on women's empowerment and access to resources to navigate the profession and overcome challenges. This year will also see the continuation of a two-year public service initiative called Home Safe Home, which focuses on addressing different types of home violence.

The MBA and YLS offer numerous opportunities to meaningfully participate in similar types of programs, and membership in our organization connects lawyers with not only the opportunities and the means of bettering our community, but the chance to collaborate on these goals with other members of our local and national bar associations. In addition, the fall YLD conference will be in Charleston, South Carolina from October 25-27. I personally encourage the young lawyers in our area to consider attending, and I invite you to reach out to me if you have questions about opportunities to get more involved with the YLS or the ABA YLD.

Contact Shayda at sle@barran.com, 503.276.2193.

YLS Community Service Day Recap

by Drew Eyman
YLS Service to the Public Committee

On June 23, the YLS Service to the Public Committee held a volunteer day at Urban Gleaners in SE Portland. Urban Gleaners is a volunteer-powered organization that collects fresh, unsold food to feed over 6,000 people per week in our community. Drew Eyman, Samantha Sondag, Steven Crawford, and Lindsay Bregante Myers spent the morning packaging donated food from grocery stores and corporate cafeterias for distribution to food pantries around the city.



Maggie Davis YLS Member Spotlight

by Thomas Adams
YLS Board

Maggie Davis' grandmother was one of the first women to attend UCLA School of Law. Her professors were skeptical, to say the least, and called her "Mr." O'Connor. Decades later, Maggie is optimistic about the progress that has been made. When cold-called at University of Washington School of Law, she found some comfort when she was addressed as her preferred Ms. Davis. She describes herself as always trying to move the ball forward. Maggie has zeroed in on gender progress issues, which she confronts daily at Victim Rights Law Center (VRLC), where she provides a number of legal resources to sexual assault victims.

Maggie and VRLC represent individuals in employment discrimination, housing, immigration, restraining orders, and other matters. Maggie sees sexism every day. She hears about police officers who refuse to enforce restraining orders, and other stories from her clients that still startle her and keep her passionate about the work done by the organization. VRLC welcomes pro bono attorney volunteers, including many MBA members. Maggie appreciates all volunteers, including men, who she sees as allies in the struggle.

VRLC does intake and pairs potential clients with a pro

bono attorney. In the event of a stalking or restraining order case, the attorney will likely meet with the client and take over for the client's upcoming hearing. VRLC has training and resources available for newer lawyers or lawyers that need a refresher. Beyond the important work that is being done for the client and holding their assailants accountable, the hearing gives lawyers experience in interviewing witnesses, gathering and presenting evidence in court, examinations, and argument.

Maggie is particularly proud of VRLC and its co-plaintiffs' current lawsuit against Betsy DeVos, the Department of Education, and others in the Trump administration. VRLC contends that the current administration's revocation of certain Title IX protections for sexual assault survivors, such as prompt investigation of complaints, violates the Constitution and federal statutes. The case is ongoing in the US District Court for the Northern District of California.

Maggie's immigration background is also useful in her line of work. In law school she began volunteering at law firms and nonprofits, including Northwest Immigrant Rights Project and Kids in Need of



Maggie Davis

Defense. She primarily defended immigrants who were crime victims or struggled with mental health issues. She grew up in Oregon and attended Clark Honors College at the University of Oregon. She spent two years teaching first grade in Houston for Teach for America and then attended law school in Seattle. She is happy to be back in Oregon with her cat Max, who looks like a horse.

In addition to serving as the Community Presentation Liaison for the Oregon Chapter of the American Immigration Lawyers Association, Maggie has joined the YLS Service to the Public Committee, where she will help organize events such as this year's Poetry Slam and the Imprint Program, which pairs lawyers with local high school students. When not working or volunteering, Maggie practices yoga and runs long distance. She recently participated in a relay race from wine country to the coast, called Barrel to Keg to End Poverty.

Barbara Long YLS Pro Bono Spotlight

by Brooke Ferris
YLS Pro Bono Committee

After graduating from Chicago-Kent College of Law in 2006, Barbara "Barb" Long spent several years litigating Section 1983 police misconduct cases and personal injury matters in Chicago before meeting her husband and moving to Oregon in 2012. Since that time, Barb has dedicated her practice to representing survivors of sexual abuse in civil actions against individuals and institutions responsible for the abuse.

In addition to her responsibilities as a partner at Vogt & Long PC, Barb also finds time to volunteer a considerable amount of her time at Legal Aid Services of Oregon (LASO), working specifically with the Domestic Violence Project.

The Domestic Violence Project matches pro bono attorneys with survivors of domestic violence for representation in contested restraining order hearings. Volunteer attorneys sign up in advance to be available to take a case on specific dates, and provide representation to clients in Clackamas, Multnomah, and Washington counties.

After completing an initial screening, LASO matches each client with a pro bono attorney, like Barb, who is willing to

immediately meet with the client and help prepare for their restraining order hearing. Barb indicates this process typically happens rather quickly, as these cases tend to have short timelines once a hearing has been set.

Barb feels strongly about the program and the services it offers. Over time, she has learned that victims of domestic violence often have difficulty telling their story. Victims regularly do not seek legal representation because their abuser has made them feel that they themselves have done something wrong, leading them to believe that they too will be punished for seeking legal representation.

Through her dedication to helping survivors of abuse and her commitment to the project, Barb is able to help victims of abuse find their voice. By explaining the legal process, and continuing to represent clients of the Domestic Violence Project in court, Barb helps ensure their voices are heard and they are able to seek the justice they deserve.

Since 2012, Barb has volunteered over 100 hours in at least nine cases with the Domestic Violence Project. Erin White, Staff Attorney and Pro Bono Coordinator in the Portland



Barbara Long

Regional Office of LASO, says: "Barb has been a dedicated and reliable volunteer with the Domestic Violence Project, and we appreciate her taking the time to make a difference for low-income survivors who otherwise would have been unrepresented at their hearings."

Besides volunteering with the project, Barb is also a huge advocate for it, urging anyone who is looking for trial experience to volunteer for the Domestic Violence Project, which is a great way to gain court experience for new lawyers, lawyers seeking additional litigation experience, or lawyers who want to volunteer their time but may not be able to commit to taking long-term cases.

Anyone interested in volunteering with LASO's Domestic Violence Project should contact Erin White at 503.224.4086 or erin.white@lasoregon.org for more information.

YLS Committees

YLS members serve on committees designed to address member needs and general issues affecting the profession. A synopsis of each committee charge follows with contact information for the committee chair. If you have any ideas or concerns to share about a particular committee, please contact the chair, YLS President Shayda Zaerpoor Le at sle@barran.com, or the MBA staff at mba@mbabar.org.

coordinating a variety of social activities designed to increase professional and personal interaction.



Jeffery "Jay" Johnston

YLS Pro Bono

Chair: **Jeffery "Jay" Johnston**, Attorney at Law, jeffjayjohnston@gmail.com, 503.226.4181

Encourages involvement in pro bono service and provides support to organizations. Coordinates Wills for Heroes clinics.



Annyika Corbett

YLS Continuing Legal Education

Chair: **Annyika Corbett**, Schwabe Williamson & Wyatt, acorbett@schwabe.com, 503.222.9981

Organizes CLE seminars and career development presentations specifically intended for newer attorneys.



Jesse Jacobs

YLS Membership

Chair: **Jesse Jacobs**, NW Injury Law Center, jesse@nwinjurylawcenter.com, 360.695.1624

Assists in the recruitment and involvement of YLS members by



Peter Tran

YLS Service to the Public Committee

Chair: **Peter Tran**, Immix Law Group, peter.tran@immixlaw.com, 503.802.5551

Provides lawyers with opportunities to become involved in the community, such as Community Law Week, Community Service Days and the Imprint Program.

Upcoming YLS Events

Employment Law Fundamentals CLE Seminar Series

Standard Insurance Building, 900 SW 5th Ave, Portland
Noontime classes begin Monday, September 10

A series of nine weekly seminars focused on employment law. Eight hours of practical skills and one hour of ethics OSB MCLE credit will be applied for in total; only \$135 for members. See the flyer in this newsletter for details.

Wine Tasting Social

Blackbird Wine Shop, NE Fremont & 44th
Thursday, September 27, 5-8 p.m.

Please join the YLS, Financial Planning Association, Oregon Society of Certified Public Accountants and the National Association of Insurance and Financial Advisors for this casual opportunity to network and socialize.

The registration fee of \$25 includes wine tasting and hors d'oeuvres. Space is limited, advance registration required.

Learn more about these events or register to attend today at www.mbabar.org.

Long-Term Care Awareness Month
NOVEMBER 2018
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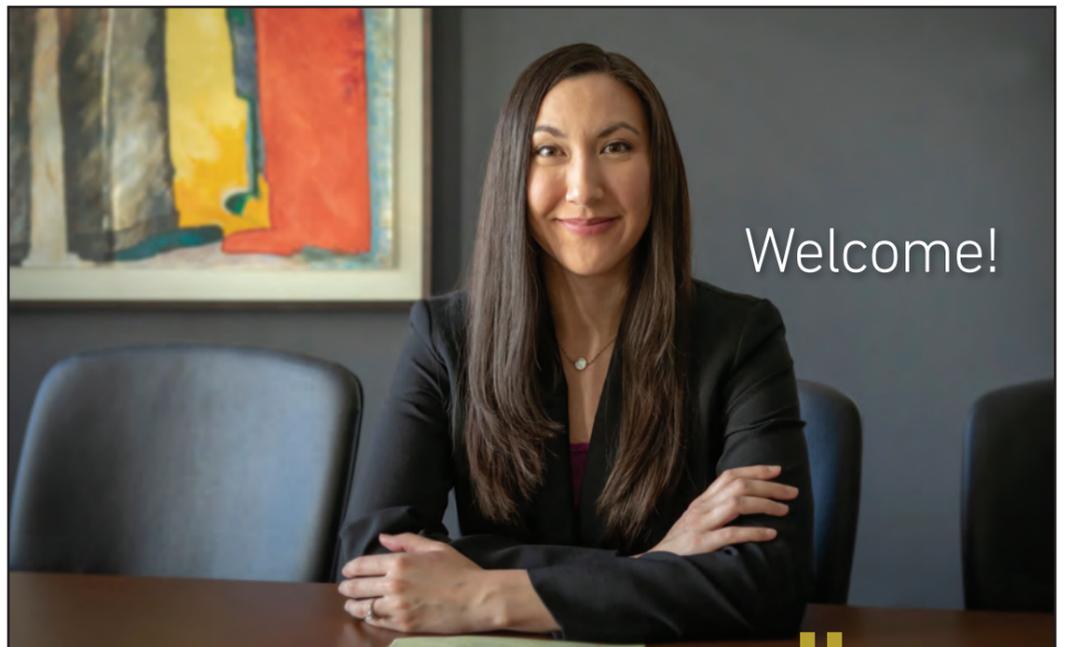
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Contact Marc Kochanski, Program & Volunteer Strategist, marc@guardian-partners.org, 971.409.1358.

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Welcome!

Bodyfelt Mount welcomes associate attorney **Helaina "Laney" Chinn** to the firm. Laney graduated from the University of San Diego School of Law and most recently clerked for the Honorable Kathie F. Steele, Presiding Judge of Clackamas County Circuit Court. We are pleased to welcome Laney to the Bodyfelt team.

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Member Resource Center

Welcome to the member resource center, where you will find information of importance to MBA members and the legal community at large.

Pro Bono Oregon Listserv

Receive a weekly summary of available pro bono volunteer opportunities in your email inbox every Thursday. Listings include the type of case and a brief description of the issue and do not include highly identifying facts or party names. Sign up by sending an email to probonooregon-subscribe@mail.lawhelp.org.

Update Your Directory Listing on the MBA Website

The MBA website includes an online Membership Directory and members may update their photos, include a bio, add links to social networking sites and update practice area information online. To update your listing, login to the Members Center where you may use the email address currently on file in the MBA Directory as your user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

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Document Review

Continued from page 7

and outside services can create confusion. Decisions must be uniform for production formats and timeframes. It is difficult to perform quality control and effective oversight when you have two teams working on the same export of documents for production.

The key to saving time and money when conducting document review for a case is organization. When you are reviewing thousands of documents or data, you must batch the ESI before the review begins. Assigning batches of data to various review teams

decreases duplication of work. In addition, attorneys need an organized and efficient manner of communication during the review process. As the attorneys review documents, additional facts and information about the case come to light. Sharing those insights with the other attorneys and the legal team is essential. Choosing a software review platform that includes communication tools within the software can make communicating more efficient. In addition, the software can track messages to keep all information regarding document review in one location. Some companies that offer the latest technology for filtering, reviewing, and organizing ESI include

OpenText, Exterro, Logikcull, Relativity, and Nextpoint.

Using Technology Assisted Review (TAR)

Finally, for extremely large sets of ESI that must be reviewed, some firms are turning to Predictive Coding or TAR. TAR is a move to using artificial intelligence (AI) processes to review large groups of ESI based on input from reviewers. When using TAR, computer software classifies documents to expedite prioritization and organization of large sets of ESI for human review. However, the use of AI in e-discovery is subject to legal review in many jurisdictions. TAR can be extremely useful; however, firms must be cautious

to ensure quality control measures are in place that prevent documents from being discarded that are actually relevant to the case.

Getting Assistance from E-Discovery Specialists

Attorneys and law firms who have not handled a large e-discovery situation may seek assistance from professionals who have experience utilizing the latest technology to improve efficiency in e-discovery. The ACEDS is an association of e-discovery specialists. If you are searching for an outside company to assist in e-discovery, groups like the ACEDS might be a good place to search for a company that is highly-trained

and certified in e-discovery techniques.

Marsha J. Naegeli has over 40 years of experience in the litigation services industry and is the Founder & CEO of NAEGELI Deposition & Trial, a national full-service court reporting and litigation support firm. NAEGELI provides court reporting, video conferencing, legal videography, legal interpretation, document management services, trial consultation and trial presentation specializing in depositions, trials, complex litigation, aviation and medical litigation. www.naegeliusa.com

Pro Bono Volunteers

Thank you to the following lawyers and law students who recently donated their pro bono services via the Volunteer Lawyers Project, the Senior Law Project, law firm clinics, the Oregon Law Center, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark Small Business Legal Clinic, Children's Representation Project, MBA YLS Wills for Heroes Clinic, and Changing Lives Forever Project. To learn more about pro bono opportunities in Multnomah County, go to www.mbabar.org and click on "About Us" and "Pro Bono."

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- Demonstrates desire and ability to manage lower-level cases without the supervision of another attorney.
- Keeps cases on track with organized files; monitoring calendars; meeting deadlines; documenting actions; confirming case status with legal assistants and communicating regularly with clients and supervising attorneys.
- Prepares for trial proceedings by working with legal assistant and supervising attorney in organizing evidence; preparing exhibits; ensuring that witnesses are ready/prepared when needed.

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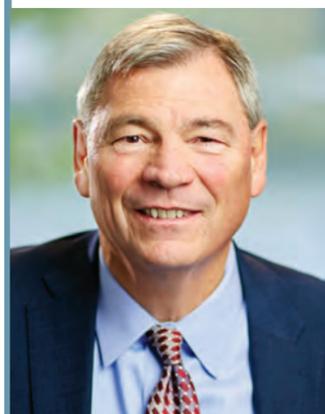
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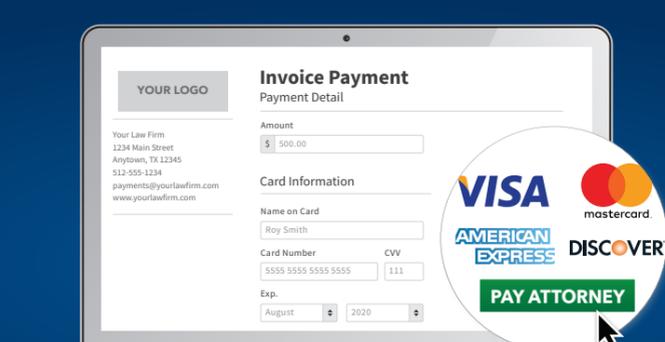
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Protecting Your Most Important Asset: Your Family

by Mary Osborn
Long-Term Care Insurance Consultant



in my family was healthy until the day they died.” My response is that: you may very well be right. The risk of dying at an early age may be high and/or the risk of needing care may be low because of your family history. I ask them “Have you considered the consequence to those you love if you did live a long life and needed care?”

Here’s what causes the need for extended care.

Physical impairment is defined as a chronic medical condition that can be managed by medication or therapy but can’t be cured by either. Those illnesses compromise your ability to get through the most basic daily functions. **Cognitive impairment** is a measurable decline in your intellect making it difficult if not impossible for you to safely interact with your environment. Both conditions require custodial, not medical, care. Either presents two sets of consequences to your family. The first is to the emotional and physical well-being of those you

Living a long life could well be in your future - planning for it now is a necessity. I believe that reasonable people understand they could live a long life and understand it’s possible they could become frail and need care as they age. The question is whether they are willing to consider taking action if they understand that needing care could have serious consequences for their family and retirement.

I’ve had clients tell me “That’s true but, what if I don’t live a long life? Very few in my family made it past their 70’s” or “Even if I do live a long life, what if I don’t need care? Everyone

love because of the nature of extended care. Extended care is a safety issue which means that providing care or supervising movement quickly becomes all-consuming. This 24-hour responsibility has a direct physical impact on the caregiver’s emotional and physical wellbeing which inevitably forces a child to step in, causing them to reorientate their life.

Providing care to chronically ill people can make healthy caregivers chronically ill. It usually forces a child to put aside their life. What choice would they have? Put simply, if you ever need care over a period of years, your life is not going to end; someone else’s life is going to change dramatically.

The second set of consequences impacts your ability to keep financial commitments. Paying for care requires a reallocation of income. This has an immediate impact on your ability to keep financial promises. If the illness lasts long enough it invariably leads to an invasion of the investment portfolio. This could have a direct impact on your ability to secure the financial viability of a surviving spouse and children who may depend on an inheritance.

How can a plan protect those you love? First, it allows you to remain in the community without risking the emotional and physical well-being of those who will provide your care. Second, it preserves your retirement plan so it can execute for the purposes

you intended which generally include: supporting your financial obligations, minimizing taxes, and insuring the financial viability of your surviving spouse.

Successful people who love someone purchase life insurance not because they think they are going to die during their working years; they buy it because of the consequences to those they love if they ever did. Successful people who love someone purchase long-term care insurance not because they expect to need care; they buy it because of the consequences to those they love if care were ever needed.

Contact Mary Osborn, CFBS, CTLC, Long-Term Care Insurance Consultant at 503.998.5902, mary@maryosborn.com.



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