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WCBA Newsletter

Washington County Bar Association
PO Box 912
Hillsboro, Oregon 97124
Phone: 503.648.0300
Fax: 503.693.9304
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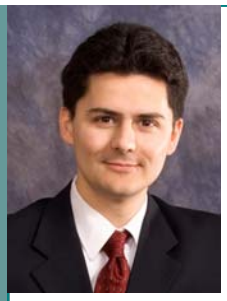

President's Note

Lawyers associated for justice, service, professionalism, education, mentoring, social interaction and leadership for our members and our community

Winter is here, and on behalf of the WCBA I am excited to announce two new exciting events! Mark your calendars:

November 11th (Veterans Day): Evaluating Small Businesses (1 General Credit CLE)

December 9: The WCBA Winter Social!

I want to say a huge THANK YOU to our renewing members - your support helps makes these events possible. For those of you who are not yet members of the WCBA, we encourage you to sign up - there are no dues for the first year of membership.

I also would like to thank Kathy Proctor and Zoe Smith for their successful and interesting CLE - Elder Abuse reporting. It was informative! Kathy and Zoe very thoroughly discussed important issues such as what constitutes elder abuse, how to recognize it, what are the limitation on your reporting obligation versus confidentiality and so on. Accreditation for this CLE for 1 Elder Abuse Reporting credit is pending. In the meantime I also want to thank those of you attended and participated in this CLE by sharing your valuable experiences and insights.

This month's CLE will focus on evaluating small businesses. Thank you in advance to our speaker Dan Gilbert and to Arthur Saito of Stahancyk, Kent & Hook for arranging this CLE. Mr. Gilbert is one of the most experienced business valuation professionals in the Pacific Northwest, having performed more than 600 business valuations since 2002. This CLE will be extremely valuable for family law practitioners as well as anyone with cases involving business valuation, complex commercial litigation, intellectual property valuation, and forensic accounting. The CLE is anticipated to be approved for 1 general credit.

Lastly, I have an announcement for our criminal law practitioners - this month the WCBA received notice from the Washington County District Attorney's office that the Forensic Services Division of the Department of State police are revising their calculations regarding the accuracy of DNA testing. Specifically the lab is revising their calculations regarding the rarity of a DNA match. The original notice letter from the Forensic Services Division is attached to this month's newsletter. In closing I again want to thank the board, the WCBA membership, and our county bar at large for your help and support in making this a great year. You continue to share your insights and ideas, and I am extremely grateful for that. Keep those comments and suggestions coming by contacting me at nick@sunsetlegal.com.

Please Save the Date

Washington County Bar Association 2015 Winter Social

Wednesday December 9, 2015
Appetizers and Cocktails at 6pm
Dinner at 6:30pm

Glenn & Viola Walters Cultural Arts Center
527 E Main Street, Hillsboro OR 97123
Catered by Claeys Catering

The WCBA uses email to promote its programs and services to members only and does not share its email list with third parties. If you would like to be removed from our email list, please reply to this message with the word "remove" in the subject line.

An ASCLD/LAB - International Accredited Testing Laboratory since 2006

Oregon
Kate Brown, Governor

Department of State Police
Forensic Services Division
255 Capitol Street NE, 4th Floor
Salem, OR 97310
(503) 378-3720

September 3, 2015

All Oregon District Attorneys,

The Oregon State Police Forensic Services Division (OSP FSD) was recently notified by the Federal Bureau of Investigation (FBI) Laboratory of discrepancies in the allele frequency data published in the Journal of Forensic Sciences 1999;44(6):1277-1286 and in Forensic Science Communications 2001;3(3). Since 1999, this allele frequency data has been used by OSP FSD (as well as the majority of forensic DNA laboratories across the US) to calculate the rarity of DNA profiles obtained through the analysis of evidence in forensic casework. Corrected allele frequency data was published in the Journal of Forensic Science in July 2015.

Our laboratory evaluated the impact of the discrepancies and has determined that the changes to the allele frequency data have a minimal effect on the calculated rarity of a DNA profile. OSP will begin using this corrected allele frequency data for all statistical calculations beginning September 3, 2015. Recalculation of the rarity of a DNA profile performed prior to this date will automatically be done prior to trial on all cases for which discovery requests or subpoenas are received. An amended report will be issued documenting the use of the corrected allele frequency data. Any other requests for recalculation should be forwarded to the DNA Supervisor.

Please note that these changes have no bearing on the inclusion or exclusion of an individual to a DNA profile.

If you have any questions about this change, please contact the DNA Unit Supervisor, Stephenie Winter Sermeno at 971-673-8261 or Stephenie.Winter_Sermeno@state.or.us

Sincerely,

Susan Hormann

Susan Hormann, Lieutenant
Acting Division Director

Cc: Major Andy Heider, GHQ
Tom Barnes, Laboratory Director
Stephenie Winter-Sermeno, Supervisor

LAWC Working Parents Meeting

Tuesday, November 3, 12pm

Working Parents Brown Bag Lunch

PRESENTED BY: LAWC Working Parents Committee

Please join us for the first Working Parents brown bag lunch on Tuesday, November 3, in the conference room of the Harris Law Firm, brought to you by Lawyers of Washington County, a division of OWLs. We are excited to bring together parents, with children of all ages, to offer support to lawyers who are parents and those contemplating parenthood. Each brown bag lunch hour, we will discuss topics such as work/life balance, child care, lactation support, parenting skills, and family leave. Whether your children have left the nest or you have just embarked on your parenting journey, all are welcome to share your parenting trials and triumphs.

For more information, contact Laura Burgee-Soran at lburgee@harrislawsite.com.

ORCP 68 Attorney Fees—When, Why, and How to Seek Them [1]

By Hon. Deanne L. Darling [2]

Please know that while your trial is going on it has all my attention. But, when it is over, I am off to the next issue. By the time your attorney fee application rolls in, I likely have dealt with as many as 100 other cases and yours is a memory -- maybe a dim one. If you had a theme in your case, you would be well-served to remind the judge of it in your application. It would also serve you well to spend some time discussing the issues in the case. If fees are discretionary in the granting (not the amount which is always discretionary), I suggest you at least discuss it at the end of the case and see if the judge indicates the direction he/she is going. I do not think the trial judge can deny a party the right to file a Rule 68 statement, but you need to discuss with your client the value of incurring the expense to prepare it.

As always, reading the rule is a good place to start. There have been changes in the past few years. This article is not intended to cover everything about the process but, rather, to remind you of the critical phases. These are pleadings and there are nondiscretionary time lines. If a hearing is desired, it must be requested in the heading. It is helpful if an estimate of time is included. Even though the rule implies that only an objector can request a hearing, I believe most judges would grant a hearing to anyone who requests it. But if you do request a hearing, it is imperative to have a good reason for doing so.

The facts, statute or rule that provides the basis for attorney fees must be pled. It is also a good idea to check that the ORS citation is still accurate. A failure to state the above cannot be cured once the hearing or trial has commenced. No denial of the right to fees is needed as the rule says the claim is deemed denied. File the original statement with the court (i.e., DELIVER it to the clerk's office) along with the proper certificate of service within 14 days of the entry of the judgment that forms the basis for the fee request. Submitting a copy of the statement and an original form of judgment to the trial judge is recommended. If objections are filed, they need to be specific. If findings are required, a request for findings must appear in the title of the statement (on the right side in caps or bolded is a good idea) or the court is not obligated to make findings. Declarations are a good idea and are a wonderful place to do more than just restate the factors, as evidence of the factors is needed. If you request findings, submit them to the court. Judges do not have to create them; we just have to find them. If they are submitted, it will speed up the process, and the judge can accept whichever ones apply to the evidence presented.

When submitting your claim for fees, be sure to be specific about the time spent on each claim if there is more than one. This is especially important if no right to fees exists on some of the claims. Do not be greedy or overstate the time spent. If you had a fee agreement, attach a copy so there is no question about the hourly rates. Odds are very good that the judge or the clerk will actually go thru your statement and review the time spent and the tasks performed.

When handling a personal injury case with low economic damages under $15 or $20K, think about not collecting the medicals (or be realistic about the unpaid ones), omitting the insurance paid sums, and using ORS 20.080. In settlement conferences, insurance companies worry more about attorney fees on small dollar cases than they do verdicts. Everyone is aware of the high cost of experts (doctors) and the economics of trying a case. It can be a great settlement technique.

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1 A version of this article was published earlier this year on the "Judge's Corner," located on the website of the Oregon State Bar Litigation Section. With the permission and thanks of the author, the article was edited by **James Taylor**, law clerk with the Washington County District Attorney's Office.

2 Deanne L. Darling has been a circuit court judge in Clackamas County for approximately 20 years. She is a former trial lawyer and the first female judge to serve in Clackamas County.

Save the Date

NAMI's 3rd Annual Art Gala
Tickets Available ~ Reserve Today!
Join us for fine art, food, and music!
Table Sponsorship opportunities available!

Saturday, November 14, 2015, Doors open 5pm

Glenn Walters Cultural Arts Center
527 E Main, Hillsboro OR 97123

Individual tickets: $100
Contact Victoria Milbank at
503.356.6835, namidirector@gmail.com

Classifieds

Space Available

Downtown Portland - 2 Offices - Class A Space - River & Mountain View

$1,500 & $1,300/Monthly: Class A office space, 18th floor of Umpqua Bank Building, at One SW Columbia. Both exterior office's with panoramic view of mountains, riverfront and downtown. AV family law practice will share two conference rooms, receptionist services, and kitchen. Copier, fax, telephones and email provided at cost. Building amenities include conference rooms, private gym and bank in building. Approximate room sizes 17 x 14 and 10 x 15. Call Cecelia Connolly 503.224.7077.

ELDER ABUSE REPORTING

By Kathy Proctor

The CLE at the Old Spaghetti Factory on October 14 covered the new mandatory Elder Abuse Reporting requirements for Lawyers in Oregon. 1 Elder Abuse Reporting Credit is requested.

As of January 1, 2015, all Oregon attorneys are mandatory reporters of elder abuse. For those of you who attended the CLE live, this will be a review and for those of you who weren't there this will serve as a brief summary. The Oregon State Bar was kind enough to share their materials on Elder Abuse Reporting. Although I am no expert on the subject, I didn't mind presenting the material provided by the OSB with co-presenter Zoe Smith of the Washington County District Attorney's office. Zoe's perspective on the reporting requirements, particularly the exceptions, made for interesting conversation with attendees. She added some information regarding criminal statutes that the district attorney's office might apply in elder abuse cases.

Oregonians are getting older. In In 2013, an estimated 15 percent of Oregonians were 65 or older. In 2030, an estimated 20 percent of Oregonians will be 65 or older. The Centers for Disease Control (CDC) estimates Oregonians can expect on average 15 "healthy" years beyond age 65. Meanwhile, the average Oregonian's life expectancy is 84.3 years. The materials provided by the OSB notes that the legislature has determined that with the increasing numbers of elderly citizens it has become important and necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons.

In our personal lives as well as in our practices, it is likely that many lawyers will be faced with having reasonable cause to report elder abuse. This is because the majority of abuse happens in the elderly person's own home and most often the abuse is by a family member. The next largest number of reported abuse occurs in elderly care facilities.

Pursuant to ORS 124.060 lawyers have a duty to report elder abuse if we have reasonable cause to believe that abuse has occurred and we have had contact with the elderly person. The definition of abuse may be found at OAR 411-020-0002. It includes a description of physical abuse which is described more completely in the rule, but essentially includes the use of physical force that may result in bodily injury, physical pain, or impairment; or any physical injury caused by other than accidental means. Abuse can also include neglect, abandonment, verbal or emotional abuse, financial exploitation, sexual abuse, and wrongful use of a physical or chemical restraint of an adult.

If a lawyer has had contact with an elderly citizen and has reasonable cause to believe that abuse has occurred, the lawyer must report the abuse. It should be noted here that contact does not have to be in the context of the abuse. So, what are the exceptions? Attorney/client privilege pursuant to ORS 40.225 may apply which may relieve you of the obligation to report abuse; see also, RPC 1.6 which provides that a lawyer may not reveal information relating to the representation of a client unless the client gives informed consent. Of course there is an exception here as well; the lawyer *may* report if the client consents, or if reporting is necessary to prevent reasonably certain death or substantial bodily harm or to prevent a client's future crime.

If you do have reasonable cause to believe that elder abuse has occurred or is occurring, and if an exception does not apply, you must report without delay to either DHS or law enforcement. The report required is an oral report, and you must give as much information as possible and explain the allegation of abuse.

The Elder Abuse Reporting Hotline number is 1.855.503.SAFE (7233).

WCBA Contacts

President Nicholas Heydenrych
President Elect Kathy Proctor
Immediate Past President Rebecca Guptill
Secretary Amy Velázquez
Treasurer Arthur Saito
Director Ben Evans
Director Meghan Bishop
Director Matthew McKean
Director Jennifer Peckham
Director Simeon Rapoport
Director Zoe Smith
Director Rachel Twenge
WCBA Email
wcba.association@frontier.com
Newsletter Editor: Carol Hawkins,
washingtoncountybarnews@gmail.com

ARBITRATION TIPS FOR LAWYERS

By Chuck Corrigan*

PRIVATE ARBITRATION VS. COURT ARBITRATION

Arbitration called for by the parties' agreement is known as "private arbitration." Arbitration pursuant to ORS 36.400-.425, mandated for circuit court cases for $50,000 and under, is known as "court arbitration." A decision in private arbitration is, practically speaking, binding and final, unlike an award in court arbitration, which can be appealed to circuit court for a trial de novo. For that reason, and because of the greater sums often involved in private arbitration, the discovery, hearing preparation and hearing presentation in private arbitration is usually more extensive than in court arbitration. The following topic headings indicate the type of arbitration to which the corresponding discussion usually applies.

These observations touch on only select issues. Even an introductory overview of private arbitration requires a review of the parties' agreement to arbitrate, the rules of the entity administering the arbitration and Oregon's Uniform Arbitration Act, ORS 36.600-.740. The authorities for court arbitration are ORS 36.400-.425, UTCR Chapter 13 and any applicable supplementary local rules of the circuit court where the case was filed.

ONE VS. THREE ARBITRATORS (PRIVATE)

The bigger the case, and the trickier the legal issues, the more likely the expense of three arbitrators will be justified. Three arbitrators mulling the issues reduces the risk of an aberrant (and unappealable) decision.

ARBITRATORS' FEES (PRIVATE)

Initial deposits. The initial arbitrator's fee deposit often turns out to be insufficient. You and your client should anticipate the arbitrator later calling for additional fee deposits.

If one side does not pay. If your client is more interested than the opposing party in seeing the case through to conclusion, your client might end up having to advance the opponent's arbitrator's fees. Advanced fees can be included in the arbitration award, but when the award is confirmed as a judgment, that judgment is as collectible, or uncollectible, as any other.

STATEMENT OF CLAIM (PRIVATE)

Drafting. In drafting the statement of claim, consider how the arbitration award that you're hoping for will read. The remedies portion of the statement should not necessarily be as specific as the hoped-for award, but it should be drafted so that it encompasses all sought-after relief. If you may end up asking for equitable relief as well as damages, say so. If you are not yet sure if or how to allocate damages among several potential respondents, and you have a good faith basis for doing so, name them all and ask for maximum damages against each. The requested relief can be tailored as discovery proceeds, either by agreement with opposing counsel or a formal amendment of the statement of claim (with arbitrator approval, if required).

Amendments. As the case progresses, be as mindful of amending the statement of claim as you would be of amending a complaint. In most cases, that can be done by stipulation, but make sure the rules do not require the arbitrator's permission as well. File a motion if you cannot get opposing counsel's agreement. Do not assume that because arbitration is generally less formal than litigation that you will be allowed to expand or re-state your initial statement of claim on the eve of the hearing.

Note: In court arbitration, the issues are framed by the pleadings. If what is in, or is missing from, the pleadings, is important to your case, make sure to comply with UTCR 13.170 by providing the arbitrator copies of the pleadings. The arbitrator does not get the court file.

THE ANSWER (PRIVATE)

The rules in private arbitration often do not require the respondent to file an answer. Some practitioners prefer to delay identifying their affirmative defenses until submitting the respondent's hearing memorandum on the eve of the hearing.

A claimant faced with the lack of an answer might explain to the respondent that the applicable rules should be read to allow the respondent to forego the filing of a denial only, not affirmative defenses, and that if not filed timely claimant will argue at the hearing that any affirmative defenses have been waived.

Hiding the ball is antithetical to a basic premise of arbitration. Most arbitrators, if asked, will be inclined to require that the issues be framed by the parties earlier rather than later.

THE ARBITRATOR'S PRE-HEARING INVOLVEMENT (BOTH)

Depending on the applicable rules, in some cases there is no need for the arbitrator to be involved, after establishing the hearing date, until the morning of the hearing. But in both private and court arbitration, counsel should not be shy about seeking the arbitrator's assistance. Try to anticipate scheduling issues, possible discovery disputes, etc. If counsel cannot readily reach agreement, a quick email exchange or phone conference with the arbitrator can often keep pre-hearing proceedings on track.

Stipulations limiting discovery, *e.g.*, the number and length of depositions, are an excellent idea. If opposing counsel rejects a proposed stipulation, consider asking the arbitrator to establish limits. But as with all pre-hearing matters, do not make the issue into a case within a case. Keep your requests short and to the point, accept the ruling and move on. Subject to the arbitrator's direction, the more expeditious the commu-

nications/submissions the better- *e.g.*, email vs. paper. Note: In cases where the prevailing party is entitled to an award of attorney fees, maintain a record of a rejected stipulation to limit discovery. If your client prevails, one factor for the arbitrator to consider in calculating the fee award will be the additional time that was spent, and thus the additional fees incurred, because the stipulation was rejected.

WITNESS AND EXHIBIT LISTS (BOTH)

Witnesses who will not appear in person. If a witness might not appear in person at the hearing, make that clear in your pre-hearing witness list (in court arbitration, the prehearing statement of proof). Although most arbitrators would allow a motion made the morning of hearing to present a witness by telephone or Skype, it is better to flush out any objections via the pre-hearing witness list than to take a chance that an objection made the morning of hearing might be sustained.

Expert witnesses and their reports. Keeping an expert witness's identity or an expert's report confidential until the hearing is authorized only if allowed by the applicable rules, Oregon's civil practice and procedure notwithstanding. Any rule subject to interpretation will likely be read by the arbitrator to mandate full and timely disclosure.

Declarations. Consider presenting witnesses by affidavit or declaration, consistent with the applicable rules. Doing so is a good time and money saver, and does not reduce the effectiveness of a presentation if the declaration is used to present non-controversial evidence. (It's best to have the signed declaration in hand when you identify it in your witness list, just like it's a good idea to have the witnesses pinned down before you put their name on the witness list.)

Perpetuation depositions. An option to consider.

SITE VIEW (PRIVATE)

Where physical conditions or spatial relationships are an issue, consider requesting a site view. A brief visit to the site with the arbitrator can make the presentation of evidence much more understandable and efficient.

HEARING MEMORANDUMS (PRIVATE, SOMETIMES COURT)

Arbitrators rely on hearing memorandums in preparing for and navigating through the arbitration hearing, and in preparing the arbitration award. If an exhibit is uniquely important, consider including it with the memorandum. If you've prepared a time line for the hearing, incorporate it into the memorandum. If you want to make sure that the arbitrator reads key cases or statutes, attach them. (Underlining important language in the authorities can be helpful, but be careful that your choice of passages isn't misleading, and that any markings on the arbitrator's copy appear identically on opposing counsel's copy.)

The accepted arbitration ethic is that once everyone is gathered for the hearing, it is time to get underway. The arbitrator's working assumption is likely to be that all exhibits submitted in advance of the hearing are admitted unless objected to. If you plan on raising any pre-hearing issues regarding the exhibits or other matters, the arbitrator will likely be more receptive if you have signaled your intentions in the hearing memorandum.

Explain how the arbitration award should read, if that is not evident. If there are multiple respondents, explain how liability should be allocated and damages apportioned among them.

Many cases in court arbitration are not complex enough to warrant a hearing memo.

EXHIBITS (PRIVATE)

Typically, a significant difference between the case presentation in private arbitration and court arbitration is in the organization and use of exhibits. In the former, the documents are usually individually numbered, organized and presented much as they would be in a trial (other than being individually offered into evidence, in that they typically have been pre-admitted at the start of the hearing, subject to objections being raised during the hearing). In court arbitrations large collections of documents, *e.g.*, credit card billing records or medical records, are not usually examined in detail during the hearing, and are marked as a single exhibit.

In private arbitrations involving more than a few documents, put your exhibits in a three-ring binder with an index and numbered tabs. Claimant's exhibits start with Ex. No. 1, respondent's with 101. Multiple respondents should coordinate their exhibit numbers to avoid using the same numbers. Make an exhibit notebook for yourself, one for each opposing lawyer, one for the arbitrator and one for the witness. If you want your client to follow the evidence closely, make one for him or her too.

Unless there is some reason that using the original of an exhibit is important, copies are acceptable. If you do use the original, it goes in the witness notebook (usually better in a plastic sleeve than with punch holes).Whether copies or original, do not add markings to the exhibits, except that underlining key passages in deposition transcripts is the norm. If you want to emphasize a specific portion of a document, blow the document up and put the underlining/highlighting on the blow up.

If a visual aid is evidence, *e.g.*, a video, as opposed to pre-existing evidence presented in a different form, *e.g.*, a blow up of a photo, which photo is already included in your exhibit list, it should be numbered and included in the pre-hearing exhibit list. Err on the side of pre-hearing disclosure.

Delivering the entire set of exhibits to the arbitrator before the hearing is usually not helpful. The ar-

bitrator probably won't review them before the hearing in any event, and might quietly resent having to lug the exhibit notebooks to the hearing. And, arguably, as the fact finder the arbitrator should not review an exhibit until it is admitted into evidence.

While opposing lawyers are always encouraged to coordinate their exhibits so as to avoid duplication, that suggestion sounds better in theory than it works in practice. If it turns out that claimant and respondent have the same exhibit in their notebooks, once the hearing is underway respondent should not be reluctant to use claimant's exhibit, rather than having the same exhibit with two different numbers in play.

FORMALITIES (BOTH)

Don't be shy about asking the arbitrator if she would like to be called "Ms. Arbitrator," or "Ms. [last name]."

Don't hesitate to try interacting with the arbitrator as the hearing proceeds. Invite questions. Ask if a point has been sufficiently made. If you don't invite input you might be losing a key opportunity to find out how you are doing. If the arbitrator doesn't entertain such interaction, he'll let you know.

EXCLUDING WITNESSES (BOTH)

Most arbitrators will exclude witnesses on a party's motion. (Some rules give no discretion.) Consider whether protecting your client's interests requires that witnesses be excluded. Some hearings can be considerably shortened if basic groundwork does not need to be laid anew with each witness.

OPENING STATEMENT (BOTH)

It's the rare arbitration where an opening statement of more than 10 or15 minutes is warranted. Five minutes is often enough.

Claimant should not waive opening argument without getting an agreement that respondent will do the same. Beginning the presentation of evidence after the arbitrator has heard only respondent's opening statement can start claimant out in a little bit of a hole. And it can cause some tension between claimant's lawyer and his client, who might be wondering why only respondent's case was laid out for the arbitrator.

If you have visual aids (see Presentation of Evidence, below), consider using them. If not already disclosed pre-hearing as exhibits, show them to opposing counsel before the hearing begins.

OBJECTIONS (BOTH)

Objections are properly directed to the arbitrator, not opposing counsel. Dialogue between counsel should be no more extensive, and no more confrontational, than would be acceptable in the courtroom. Do not treat the arbitration hearing like you are in a deposition.

While the rules of evidence are relaxed, if existent, during an arbitration hearing, that does not mean all objections are futile. Those arbitrators who are reluctant to interrupt the presentation of evidence are sometimes grateful for, and gladly sustain, objections to sloppy or improper questioning. The arbitrator's reaction to such objections should be sufficient to indicate if they are appreciated.

PRESENTATION OF EVIDENCE (BOTH)

An arbitration hearing is basically a court trial held in a conference room. Most trial practice tips and "how to" guides are equally applicable.

The arbitrator is new to the facts that you've been internalizing for months. Without shortcutting what you need to prove, simplify, summarize and show (as opposed to tell). In addition to photographs, consider supplementing the testimony with a time line, an organizational chart, blow ups with key language highlighted, videos of the scene, summaries (with supporting back up at hand), and whatever else helps transport the key information from your banker's box of documents and the witnesses' testimony into the arbitrator's mind and memory.

REMEDIES (PRIVATE)

In fashioning and presenting the claimant's requested remedies, be it in the statement of claim, as flushed out in the pre-hearing memorandum, or at the hearing itself, claimant's counsel should be mindful that remedies available in private arbitration are not limited to those available in the trial court:

- Rule 30 of the Arbitration Service of Portland Arbitration Rules provides that "the arbitrator(s) may grant any relief or remedy deemed by the arbitrator(s) to be just and equitable and which is within the scope of the agreement of the parties, …."

-American Arbitration Association Commercial Arbitration Rule R-43(a) provides "The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, …"

-The Uniform Arbitration Act provides that "As to all remedies [other than punitive damages and attorney fees], an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award … or for vacating an award …." ORS 36.695(3).

Point: Be careful how you go about suggesting that the arbitrator need not abide by authorities that would be binding on a trial judge. That might be interpreted as a concession as to the merits of your case.

Counter point: Whatever the theory of the case, don't be reluctant to put some (justified) emotion into it. Arbitrators approach cases more like jurors than many think.

CLOSING ARGUMENT (PRIVATE)

As the hearing progresses, get a reading as best you can

from the arbitrator as to whether closing arguments will be presented orally or in writing, and make your preference known. Unless you sense that the arbitrator needs to be turned around on a make or break issue, and you can accomplish that only in writing, oral arguments bring the arbitration presentation to conclusion more efficiently, economically and timely.

FORM OF AWARD (PRIVATE)
A simple case might not call for an award that sets out the arbitrator's reasoning. In most cases, counsel and their clients seem to be willing to absorb the increased cost associated with a written (also known as a "reasoned") award, in which the arbitrator explains the bases for his or her conclusions. One school of thought is that the arbitrator is more apt to reach the correct conclusion if he or she has to work through the evidence and law in the process of writing a reasoned decision. If you have a preference, make it known.

ATTORNEY FEES (BOTH)
As has long been the case in federal court, and is now seen more frequently in circuit court, parties objecting to attorney fee applications in arbitration are sometimes challenging fee petitions that are supported by time sheets that use "block billing," *i.e.*, one time entry ascribed to multiple tasks collected into one "block" on the time sheet. The argument is that the arbitrator cannot tell if the time spent on a specific task was reasonable if that task is lumped together with others, all of which are assigned just one amount of time. The solution is to write down the amount of time devoted to each task.

APPEAL (PRIVATE)
In private arbitration, practically speaking, there is no appeal. Make sure your client appreciates that going in.

About the author:* ***Chuck Corrigan* *is a full-time mediator and arbitrator. In addition to private engagements, he has mediated cases for the Arbitration Service of Portland, the US District Court Volunteer Mediation Program, the Multnomah County Court Mediation Program and the Oregon Appellate Settlement Conference Program. He is an approved mediator for the Oregon Patient Safety Commission's Early Discussion and Resolution Program and a facilitator with the Oregon Foreclosure Avoidance Program. He is an approved arbitrator for the American Arbitration Association, the Financial Industry Regulatory Authority (Finra), the Arbitration Service of Portland, and the Multnomah, Clackamas and Washington County Circuit Court arbitration programs.*

LAW LIBRARY NEWS

Washington County Law Library
111 NE Lincoln
Hillsboro OR 97124
Phone: 503.846.8880
Email: lawlibrary@co.washington.or.us
Website: www.co.washington.or.us/LawLibrary/

Measure 34-235: Levy for Countywide Library Services on Nov. 3rd Ballot
For 39 years, Washington County Cooperative Library Services (WCCLS) has provided funding for public library operations, central support and outreach programs linking together city and community libraries.

Measure 34-235 replaces a five-year levy expiring June 2016 and would provide five years of support – through June 2021.

*Note: WCCLS does not fund or operate the Washington County Law Library; we are a separate county service funded through state appropriations.

What does WCCLS do for attorneys?

1. Host HeinOnline: While the Law Library pays for HeinOnline, WCCLS allows us to provide this comprehensive historical legal database to all county residents through their website. For attorneys, it is worth noting that Fastcase links to HeinOnline articles and resources.

2. Red Bag service: WCCLS provides delivery to the law library from any WCCLS library via our Red Bag service. This allows our attorney patrons to return books they checked out from the Law Library by dropping them off 24/7 at a Washington County public library that's more convenient.

3. Provide LegalTrac: WCCLS provides access to LegalTrac, a database comprised of major law reviews, legal newspapers, bar association journals and international legal journals, for all county residents.

Measure 34-235 would begin July 2016 at a rate of 22 cents per $1,000 of assessed property value, an increase of 5 cents over the expiring rate. A typical homeowner would pay about $56, or $14 more than in 2015. If approved, this would be the first rate increase since 2006. If the levy does not pass, services would be maintained as funding allows. Libraries would weigh reduction choices based on local priorities. For more information, and to view the detailed proposal see WCCLS.org/levy.

Washington County has also put a Public Safety levy on the ballot; you can find the proposal and more information on affected services and costs at: www.co.washington.or.us/levies.

Recognizing & Representing Clients With Mental Health Impairments

(September 9, 2015 WCBA CLE)
By Rachel Twenge

Thank you to the Oregon Attorney Assistance Program (OAAP), and in particular, OAAP staff members **Kyra M. Hazilla** and **Bryan R. Welch** for presenting the September CLE about representing clients with mental health impairments. The majority of the presentation consisted of gathering feedback from the audience as to proposed responses to hypothetical situations. But the handout included some very interesting information. First, it has been shown that mental health diagnoses are more common in adults in the United States than heart disease, lung disease, and cancer combined. This equates to approximately 57.4% of adults meeting the criteria for a diagnosis of a mental health disorder at some point in their lives. Also many people struggle with symptoms of a mental health disorder but do not meet the criteria for a formal diagnosis. Some of the more common types of mental health impairments include anxiety, substance abuse, depression, and bipolar disorder.

Stress can cause mental health impairments, and can certainly exacerbate existing mental health impairments. The stress of a legal matter is often a recipe for disaster for clients with previously existing mental health impairments. Certain fields of practice, such as family law and criminal defense, obviously create more challenges for lawyers with regards to encountering clients with mental health impairments than other types of law. Specifically, stress can cause us to 'flip our lids,' meaning the part of the brain responsible for regulating communication, emotional balance, morality and insight goes 'off-line', making it almost impossible to think clearly and make informed decisions. And when this happens the person is not aware of it, making it that much more difficult to communicate with them.

For example, the first hypothetical involved an angry client who had 'flipped his lid' and refused to listen to his attorney's suggestions about strategy in his divorce proceeding. He proceeded to yell and interrupt his attorney and insisted on calling opposing counsel himself to 'give that liar lawyer a piece of his mind.' In dealing with a client like this, the presenters and the audience came up with a helpful list of suggestions:

1) Identify early on in the case possible supportive people in your client's life who may be able to assist in difficult times, such as family members or friends. But keep in mind ethical obligations regarding confidentiality. Also maintain a list of professional contacts, such as counselors and psychologists, and suggest they seek help.

2) Leave a paper trail of communication with the client not only to cover your bases with regards to potential liability, but also to make it easier for the client to understand the facts and circumstances of their case. Determine your client's 'triggers' and education level and tailor language accordingly.

3) Empathize and make sure they know you're listening to them, but set boundaries so it's clear that you will not tolerate that type of behavior. You may need to tell them that you won't speak to them if they continue to yell, but that they can call or come back later when they calm down.

4) Explain to the client the importance of 'perception' by the judge, opposing counsel, and other parties in the case. Listen to their narrative, and once they have calmed down make it clear that their actions can have a negative impact on the outcome of their case.

Substance abuse is an especially complicated sub-category of mental health impairments.

The second hypothetical involved a female client who showed up to a meeting in her attorney's office smelling of alcohol. The feedback about suggested approaches varied significantly. Some attorneys suggested approaching it head on, and asking the client if they are intoxicated. Others suggested a more tactical approach, such as asking them questions like "what types of issues could come up in your case that could be used against you?" or "are you on any medications or do you have any mental health problems that could affect your judgment?" The OAAP suggests the more direct approach when dealing with clients with substance abuse issues, as they are often in denial and highly ambivalent about changing their pattern of behavior. Listen to the client, determine some of their triggers, and suggest counseling, treatment, and support groups. Self-awareness is the first step towards recovery.

The third hypothetical involved a client who made statements in her attorney's office suggesting that he was contemplating suicide. The OAAP again suggests approaching this situation head on. Ask them if they're having thoughts of suicide. If the answer is yes, ask them if they've thought of how and when, if they've been using alcohol or drugs (which can make someone more susceptible to impulse), and if they've attempted suicide in the past. If possible do not leave them alone if they have a plan and a means to carry it out. Immediately inform a family member or friend, but also keep in mind confidentiality issues. Refer them to the suicide hotline, and possibly call the hotline together. Call their doctor or therapist, and possibly call 911 or take them to the emergency room.

As lawyers, especially in fields of practice more likely to cause stress and require interaction with clients with mental health impairments, we must be aware of our own mental health. The presenters referenced what is known as "vicarious trauma". This refers to situations where attorneys take on the stress of their clients, described as "secondary traumatic stress" or "compassion fatigue". Symptoms to keep an eye out for include feelings of hopelessness, anxiety, depression,

nightmares, and exhaustion.

The OAAP is a wonderful resource for attorneys dealing with stress and mental health problems. Whether it be as a result of particular clients or cases, or a personal matter in your life, the counselors at the OAAP are there to help. The OAAP has attorney counselors available 24 hours a day, 7 days a week, and 365 days a year. They can be reached at 503.226.1057.

Other suggestions for avoiding vicarious trauma include creating a 'self-care inventory' to maintain healthy work habits such as exercising, eating well, and meeting with friends and colleagues on a regular basis. A key component of fulfilling our duty to represent our clients to the best of our ability is managing our own stress levels and maintaining a healthy work/life balance.

Thank you again to the OAAP and presenters Kyra Hazilla and Bryan Welch for this extremely helpful and insightful CLE.

This dinner is designed for all lawyers interested in learning strategies and tips for rainmaking from experienced leaders in Portland's legal and business communities

Oregon Women Lawyers

Rainmaking Mentor Dinner

Wednesday, November 4, 2015 at 5pm

Courtyard Marriott, 505 SW Oak St., Portland

Registration $50

Contact linda@oregonwomenlawyers.org regarding scholarships for this event.

Featuring a keynote address by Cindy Tortorici, Founder, The Link. Cindy is a business consultant, executive coach and entrepreneur.

Register at:
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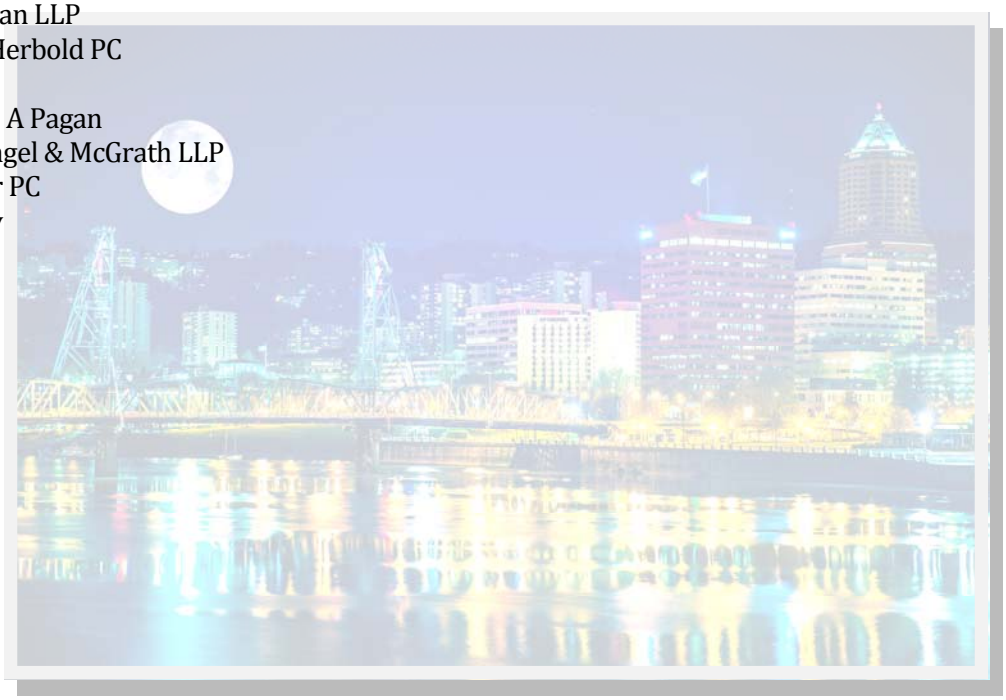

THE WCBA OCTOBER CLE & DINNER MEETING
WEDNESDAY November 11, 2015
"Valuing Small Businesses in Family Law & Transactional Contexts"

PRESENTED BY:

Daniel Gilbert, CPA / ABV, CVA, CFF of Gilbert Valuations—Business Valuations, Litigation Support & Forensic Accounting

In Honor of Veterans' Day, we will have a small token of appreciation for all veterans who attend our CLE and/or dinner*

Date: Wednesday November 11, 2015

Time: CLE - 5:15pm Cocktails & Dinner – 6:30pm

Place: The Old Spaghetti Factory, 18925 NW Tanasbourne Drive, Hillsboro

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