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## Washington County Circuit Court Update

By Amy N. Velázquez  
WCBA Director

Below are recent changes/moves of note at the courthouse. This is a repeat of information contained in our January Newsletter:

Judge Letourneau has a new clerk: Debbie Marvin. It is best to contact her via email at [Debbie.K.Marvin@ojd.state.or.us](mailto:Debbie.K.Marvin@ojd.state.or.us). You may contact her via phone at [503.846.8340](tel:503.846.8340), exclusively for wedding scheduling purposes.

Judge Garcia remains at the Law Enforcement Center (LEC). All early case resolution (ECR) set over matters are now being heard by Judge Garcia over at LEC, rather than at the main courthouse by Judge Knapp. ECR set-overs are being scheduled at 8:15am, rather than at 10am.

Judge Roberts has relocated to Courtroom 304C, Judge Kohl's former courtroom. She will now be presiding over Drug Court on Mondays. Judge Roberts also has new full time staff: Marcela Moenne-Loccoz is her judicial assistant and may be reached at [Marcela.L.Moenne-Loccoz@ojd.state.or.us](mailto:Marcela.L.Moenne-Loccoz@ojd.state.or.us) or [503.846.8642](tel:503.846.8642). Jessica Intrieri is her Clerk and may be reached at [Jessica.L.Intrieri@ojd.state.or.us](mailto:Jessica.L.Intrieri@ojd.state.or.us) or [503.846.8643](tel:503.846.8643).

Judge Erwin is now handling the post-conviction relief motion docket which will continue to be handled on Mondays with his regular civil motion docket. Judge Thompson will be presiding over the Violation of Restraining Order docket and will continue her hybrid criminal/domestic relations docket. However, she will be hearing domestic relations matters every Monday afternoon, regardless of monthly rotation. Judge Fun will be hearing have domestic relations matters every Friday morning, also regardless of the monthly rotation. Our visiting senior judges will be sitting in Courtroom 426J.

**Criminal Caseflow Changes:** Felony cases that enter a waiver at preliminary hearing will be set for arraignment on the District Attorney's information on the same date as is scheduled for the case management conferences. Preliminary hearings that

# WCBA Newsletter

Washington County Bar Association  
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February 2016, Page 1 of 8  
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Deadline: 20th of preceding month

are waived by phone will continue to have an 8:15am arraignment appearance at LEC the week following the scheduled preliminary hearing.

**Odyssey Update:** Court staff will be in a month long training starting the end of January 2016 and most offices will be at half-staff due to training schedule. All court offices and counters will close from 12 noon to 1pm for lunch. Staff has been directed to keep the dockets light during both the training and go-live time period but no specific planning is available to share presently. We will make an effort to share information via Newsletter and our Facebook page as it becomes available. *Note - Please feel free to contact me or any member of the board with additional information or changes you believe are important to our members.*

### PLEASE NOTE:

Major changes are proposed for the Oregon State Bar discipline program. The deadline to give input is March 2<sup>nd</sup>. Information is available at [www.osbar.org](http://www.osbar.org).

## WCBA Contacts

President Nicholas Heydenrych  
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### WCBA Email

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## LAW LIBRARY NEWS



Washington County Law Library

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Email: [lawlibrary@co.washington.or.us](mailto:lawlibrary@co.washington.or.us)

Website: <http://www.co.washington.or.us/LawLibrary/>

### Notice: Law Library Conference Room Unavailable Feb. 8 through 26

The Washington County Circuit Court will be using our conference room to increase training capacity for Odyssey. We are pleased to be able to help in this small way and ask members of the bar who frequently use our conference room to plan accordingly.

If this is the first you've heard of us having a conference room, we do indeed! And attorneys can reserve it (after Feb. 26).

### After Hours Access

Attorneys who live or work in Washington County may apply for after-hours access to the Law Library. The application is filed with the Circuit Court (same form as a court bypass card) and requires a nominal fee. The access is valid for one year and can be renewed. Subject to terms and conditions; more information is available on request.

### What Do You Want?

The Law Library Committee is working on a five-year strategic plan for the Law Library. We want to know what needs, wants, and wild ideas! In addition, the Law Library always welcomes suggestions for specific titles to purchase, resources we should have available, or subject areas in the collection that could be enhanced. Keep in mind, we have a limited budget, and sometimes there just isn't much out there, but your feedback is significantly helpful with our decision-making.

Email or call using our contact information above, or contact your Law Library Committee members: Eric Buchér (Chair), Nick Heydenrych, Rebecca Guptill, Matthew McKean, Kathy Hall, Peter Tovey, Jessica Witt, Javier Spyker, and Judge Suzanne Upton.



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## Positions

<https://www.governmentjobs.com/careers/oregon/jobs/1344571/assistant-legal-counsel> - focus on in-depth research and writing

<https://www.governmentjobs.com/careers/oregon/jobs/1346750/assistant-legal-counsel> - focus on business transactions



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## State of the Court Recap

By Amy N. Velázquez



Thank you to Judge Bailey for providing the membership with his State of the Court address at our January dinner.

We have had many positive changes over the past year, and the court thanks all those involved for the level of cooperation needed to facilitate these changes. Our county had a very high number of trials per year, perhaps the highest in the state, and we needed to lighten that load on our court.

Case management conferences (CMC) on criminal matters have been helpful in resolving cases early in the process, thereby freeing up court and staff time for other matters. The overall goal of the new CMC system is to reduce the number of trials on the docket. From March 2015 to the present, using raw data, we have seen a slight decrease in the number of felony trials. The system was completely revamped and the approach was changed to give more opportunity for the Defense Bar and Prosecution to get together and resolve matters.

Discovery is now being disseminated more efficiently, including plea offers, which lends to earlier resolution of cases. CMCs are scheduled within three weeks of arraignment and many pleas are taking place on the first CMC setting due to the earlier dissemination of discovery and pre-trial offers. If discovery or a plea offer is not received by the first CMC setting, attorneys are able to set a second CMC. Overall, the defense bar and prosecutors are communicating more and the judiciary can see that this level of professional communication is assisting in getting our cases settled prior to trial. The Court commends both sides for putting forth this effort and cooperation. The result is that more time is available for all to spend on cases that will actually go to trial.

The criminal case assignment and call back system have been revamped as well. For call back matters, cases were stacked in the hopes that a case would resolve and free up a judge for a matter that actually would proceed to trial. The goal is to reduce trial resets to prevent the trial judges from sitting idly by, awaiting a trial. Case assignment has become more efficient. In prior years it would routinely last until 11 am and sometimes until noon. Now, the goal is to be done between 9:45am and 10am, allowing attorneys and clients to be in an out much quicker. Part of that improvement is having a designated judge set and available at 9am to take pleas the morning of case assignment. These changes have shown a reduction in the number of call back cases.

There were over 200 criminal jury trials heard in our county in 2015. 135 of those were misdemeanor matters and 91 were felony matters. The court has a

stated goal to reduce the number of court resets and call back matters for criminal trials. In 2015, there were 44 court resets, 26 of which took place January 2015 - June 2015. There have only been 18 court resets from July 2015 to the present.

There has also been a noticeable change for civil practitioners. Previously, our county had an unfortunate reputation, that one would never receive a civil trial date. Presently, the civil department is receiving more reset requests because civil trials are in fact getting set in a timely fashion. Raw data from January 2015 to the present reflects 10 civil trials were reset by the court due to judicial unavailability. From January 2015 - June 2015, 9 court resets took place. From July 2015 through the present, there has only been 1 court reset. In 2015, there were approximately 80 civil bench trials. There were 15 civil jury trials which, consistent with the 2014 number, 5 of which took place from January 2015 - June 2015. That number has doubled since July 2015, and the court has heard 10 civil bench trials from July 2015 to the present. A local civil attorney commented that he had not had a civil trial in back to back months in our county since the days of Judge McElligot.

Based on all of the raw data, this means all of our collective hard work is paying off! 2016 brings us into the digital age with eCourt. Washington County has a go live date of March 7. The file and serve launch date is April 18, and the mandatory e-file date is May 16. The court is putting out a special request that anything requiring inputting into the system by staff, be forwarded to staff as far in advance as possible. Even including unsigned plea petitions or civil compromise documents. This should be done via email or fax, based on staff preference. The number of matters docketed between now and the go live date will be lower than normal due to mandatory staff and judicial training that will be taking place.

The court is committed to continue to work on case management and flow. Chief Justice has requested that we come up with a plan for continued improvement, no matter how different the plan might be from current procedure. Brainstorming new ideas is encouraged.

Post-odyssey implementation, the hope is to add a .5 position to the family law team. We currently have one full time family law docket and four part time family law dockets, for a total of 3 full time positions, so the goal is to increase that to 3.5 full time positions, but shifting one part time position to allow for a second full time docket.

Our county needs an additional judicial position and it is long overdue. Representatives Susan McLain (Hillsboro) and Jeff Barker (Aloha) have agreed to develop a file for this purpose. The court requests letters of support for adding a local judicial position be sent to these representatives and copied to Presiding Judge Bailey, as he will also be developing a file to assist with momentum at the 2017 legislative session. Currently, Judge Rini is our only paid pro tem judge. Volunteer pro

tems preside over the small claims and family abuse prevention act dockets for the court. We also have volunteer settlement conference judges assisting in civil matters. Anyone interested in a volunteer pro tem position is encouraged to apply.



## Oregon Law Students Public Interest Fund Dinner & Auction

Please join us Friday, February 19, 5-9pm, at the Eugene Hilton for this great annual event that raises support for student stipends for summer legal service.

For more information and registration contact Jennifer Geller, [jgeller@uoregon.edu](mailto:jgeller@uoregon.edu), or visit <https://law.uoregon.edu/explore/OLSPIF>.

## Civil Bench Bar Committee News

By Elizabeth Lemoine

The Washington County Circuit Court is continuing its re-engineering process. Aided by an assessment by the National Center for State Courts, the assessment is a top-to-bottom project that ranges from court management and leadership issues to case management and what the court can do differently to meet the changing needs of the public. In this ongoing re-engineering process, the Washington County Civil Bench/Bar Committee is working to identify changes that could be made to improve the civil litigation process and case management. The committee would appreciate hearing any feedback or suggestions that the bar has on these issues. To contact the committee, please email [WCCBCC5@GMAIL.COM](mailto:WCCBCC5@GMAIL.COM).



## Mock Trials

The Washington County Regional High School Mock Trial Competition will be held on Saturday, February 27<sup>th</sup> at the Washington County

Courthouse and we need judges! The event is a wonderful opportunity for the bar to interact with amazing high school students. There will be three rounds, one in the morning, one mid-morning and one in the early afternoon. PLEASE CONTACT COORDINATOR ELIZABETH LEMOINE at [elizabeth@lemoinelawyer.com](mailto:elizabeth@lemoinelawyer.com) if you are willing and able to participate!



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## Insurance

### An elephant in the jury room?

By The Honorable Josephine Mooney

We all know the rule about insurance.\* Mention it in front of the jury and you risk a mistrial. At the very least, you end up with a limiting instruction and the nagging question of whether the verdict might have been different. In my years as an insurance defense lawyer, I sought to exclude evidence of liability insurance because I did not want my client to be found at fault simply because he or she was insured. I complied with the collateral source rule even though I suspected that a plaintiff might somehow net “double recovery” as a result. I did not question the well-established rule excluding evidence of insurance because I accepted the underlying premise that evidence of insurance would taint the jury’s deliberations and result in a legally insufficient verdict.

#### Jurors know ... something

At some point, I began to question whether the mention of insurance really would taint the process. After all, jurors know about insurance. They have homeowners and automobile policies. They carry health, life and disability insurance. “State Farm” and “Blue Cross” are practically household names. Medical records that have been received into evidence frequently contain references to insurance that are overlooked by counsel. Sometimes something as simple as an unredacted claim number can alert jurors to the issue. So why engage in the charade of pretending that insurance doesn’t exist? Why not find a way to talk about insurance so that “insurance-savvy” jurors can deliberate on the issues that matter most - like fault and causation - without feeling confused (or insulted) by the obvious gap in information entrusted to them?

As a trial judge, I now have the benefit of speaking with jurors post-verdict and, so far, their comments confirm for me that jurors think about insurance whether it is mentioned at trial or not. When insurance is not part of the evidence or when it is only briefly mentioned, jurors tend to fill in what they have not been told with information supplied by their own experiences with insurance. It is human nature to want to fill in the missing pieces of an incomplete story. The risk is that the blanks will be filled in with incorrect information. For example, jurors make assumptions about

whether health insurance paid for medical services or whether workers’ compensation paid for lost wages. And then they factor those assumptions into their decision about damages: (1) without knowing if their assumptions apply to the case they are deciding; and (2) without understanding that an insurance company might be entitled to repayment from the jury’s award. Consequently, the verdict may not always reflect the jury’s intent.

It is not uncommon for each lawyer to file a motion *in limine* seeking to exclude references to insurance. Both lawyers often request UCJI 16.01. Despite these efforts, insurance does come up. Sometimes through inadvertent testimonial references. Sometimes through exhibits received into evidence. A lawyer then jumps to his or her feet indicating they have “a matter for the court” - a move that highlights the issue of insurance as I direct my Clerk to take the jury out of the courtroom so I might speak with the lawyers. Motions for mistrial are made and argued. The motion may or may not be granted. At that point of the trial, the ultimate impact of insurance on the jury’s verdict remains unknown.

Consider the following case. A motor vehicle accident (MVA) claim alleged damages in excess of \$500,000 with significant medical expenses. Motions in limine were granted excluding evidence of insurance. UCJI 16.01 was requested and given. In the course of her testimony, plaintiff mentioned the “[well-known insurance company] claims person.” There was “a matter for the court.” The jury was taken back to the jury room and the defense counsel moved for a mistrial. The plaintiff’s counsel opposed and the motion was denied. The jury returned a plaintiff’s verdict of less than \$10,000.

After receipt of the verdict and while releasing the jurors from the jury room, they asked me why they had not been given more information about insurance. There was a vague reference to “insurance claim forms” as well as a few other general questions about the process. We finished our brief conversation, I lifted the admonition not to discuss the case with others, and I sent them on their way. I was ready to move on to my next assignment. After the jury was discharged, however, my clerk began assembling the exhibits for return to counsel when he discovered that insurance claim forms were actually contained within a stack of medical records that had been marked and received as jury exhibits. I promptly summoned the lawyers back to court to determine why the forms were in a jury exhibit. We concluded that the forms had been inadvertently includ-

ed in the exhibit and I encouraged counsel to consider next steps (perhaps a motion for new trial or renewed settlement negotiations). Ultimately, the matter was resolved for a much higher figure.

The mention of the “insurance claims person” combined with the inadvertent inclusion of claim forms in the medical records resulted in insurance becoming a significant factor in the jurors’ deliberations. They thought the bills had already been paid. Their award, therefore, did not include money for the medical expenses that had been incurred. The impact of third party lienholder rights had not even crossed their minds. The suggestion of insurance without more information about what that meant in that case resulted in a verdict that did not reflect the decision of the jury. Both lawyers had been opposed to the introduction of insurance information, but it was the party who sought a mistrial that arguably would have “benefitted” from the injection of insurance into the trial. Fortunately, the Court and counsel discovered and corrected the problem. This question of insurance and admissibility cuts both ways.

### The impact

Ultimately, insurance does matter and it does play a role in the deliberations and verdict. There is a dynamic tension between: (1) the established rules prohibiting evidence of insurance in our fault-based justice system and, (2) the pervasive presence of insurance in the everyday lives of jurors. The impact of this tension in any given case is unpredictable -- but the tension is there and we should address it. I am not suggesting that we completely abandon the rules of evidence concerning insurance. And, I do not mean to suggest that the long-established principles behind OEC 411 and ORS 31.580 (2) no longer make sense. I have discussed the role of insurance in 21st century trial practice with a few of my colleagues. Those in favor of the traditional view (complete exclusion) have legitimate concerns that evidence of insurance will result in jurors “finding liability” and “adjusting” damages based primarily on the presence or absence of insurance. But this view assumes jurors will not follow directions on how to use the information correctly - either because jurors do not (and cannot) fully understand the complex role of insurance in our tort system or because they would choose not to do so. I am shifting from the traditional view to one that assumes jurors are both capable of, and willing to, follow directions. My discussions with jurors lead me to believe that given accurate information and clear direction, they will do the right thing.

I think this may be a good time to revisit the way in which we think about and handle insurance in jury cases (perhaps discussion among lawyers in their professional groups or other gatherings might be a good start). Automobile insurance has been compulsory for years and we are now quickly moving toward compulsory health insurance. Jurors are already thinking about insurance and how it fits into the cases before them. Insurance is so pervasive that no matter how diligent the lawyers are in removing insurance information from their trial exhibits there is a high likelihood that they will miss something that the jury will see. Even if the parties manage to avoid insurance altogether, there is the risk that the jury will make assumptions about insurance even when not supported by the evidence. UCJI 16.01 is not an adequate solution because it provides specific direction without explanation. Insurance should be put into its proper context to (1) facilitate overall juror perspective, (2) assure jurors that neither the lawyers nor the court are keeping important information from them, and (3) to gain juror commitment to focus on the issues properly before them for decision -- fault, causation and damages.

*About the author: Judge Josephine Mooney serves on the Lane County Circuit Court. Her office is located at 125 E 8<sup>th</sup> Ave., Eugene, OR 97401. She can be reached at 541.682.3601 or [josephine.h.mooney@ojd.state.or.us](mailto:josephine.h.mooney@ojd.state.or.us). Her article was also published by the Oregon Trial Lawyers Association.*

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*\*OEC 411 limits the admissibility of evidence concerning liability insurance. The reason is “concern . . . over unfair prejudice - that if a jury were to learn of the party’s coverage or lack of coverage by liability insurance, it would relax its standards in determining both fault and damages.” David P. Leonard, *The New Wigmore: A Treatise on Evidence: Selected Rules of Limited Admissibility*, § 6.1 (rev. ed. 2002). The unnecessary injection of insurance information is prejudicial. *Johnson v. Hansen*, 237 Or 1, 389 P.2d. 330 (1964).*

*Similarly, ORS 31.580(2) excludes pre-verdict evidence of insurance or other third party payments for damages sustained by the plaintiff. While the collateral source rule probably reflects other policy considerations such as deterrence and unjust enrichment, it is also intended to address the potential for jury prejudice. Ann S. Levin, *The Fate of the Collateral Source Rule After Healthcare Reform*, 60 *UCLA L. Rev.* 736 (2013).*

*UCJI 16.01: “The jury is not to consider whether any of the parties in this action has insurance or the ability to pay for any liability, loss, damage, or injury. Whether any party has insurance or the ability to pay has no bearing on the issues that you are to decide.”*

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**PRESENTED BY:**

The Honorable John L. Collins of the Yamhill County Circuit Court  
& OETO Spokesperson

**Dinner Speakers:**

Richard Moellmer, Trial Court Administrator & Trina Swaja, Court Operations Supervisor, will both discuss the transition to eCourt in our county.

**Date:** Wednesday February 10, 2016

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

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

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