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

President's Note

By Kathy Proctor
WCBA President



Thank you to everyone who came to the last meeting of the Washington County Bar Association on October 12, 2016. The CLE covered client relations and was proposed for 1 general education credit, but we will be applying for 1 ethics credit for the CLE for those who attended.

We had a somewhat small group for dinner although we had James Geringer, partner at Karquist, an intellectual property firm, give a dinner presentation with a football theme for our guests. Personally, intellectual property is not something I think about very often, but after listening to Jim I was reminded about the many interesting ways in which this issue can touch all of us and our clients in one way or another. One tip I particularly remember is that if you have someone develop a website for you, you should make sure you get ownership rights to the content. He had some other interesting tips and stories too.

This month we will be having a timely CLE for those of you who are reporting MCLE credits this year. Our CLE for November will be on child abuse reporting. For dinner, which will come just one day after the election, we will be treated to some much needed comic relief from Senior Judge Steven L Price. No matter who is elected, most of us will be happy to have this election season done and be ready to cry some tears of relief and, hopefully, laughter. Please join us; we'll have a lot to talk about.

Those of us who practice family law know

WCBA Newsletter

November 2016

Washington County Bar Association
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Hillsboro, Oregon 97124
Phone: (971) 238-2595
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or have heard of Lawrence Gorin an absolute treasure to the family law community. Many referred to him as Professor Gorin because he was so generous with his advice and willingness to put it all out there and share his wisdom on our family law listserve. Though he was on the listserve a little less often lately, he shared his legal knowledge on his website with what he called his monographs. I myself have read some of his monographs to help steer me in the right direction when trying to get a handle on social security issues or contempt issues in family law. Although Professor Gorin had his monographs, I think he would be the first one to say to new lawyers and experienced lawyers alike, do your own research and figure things out. His monographs could be the first prong of your research to get you started or a place to affirm whether your thinking was on the right track. I know his monographs were read by pro se litigants too since I had them cited by at least one pro se litigant in one of my cases. Larry passed away in Sunriver on October 14, 2016, where he was attending the Family Law Section CLE. I've had the pleasure of sitting with him for lunch at the same event a year or two ago and I could have talked with him all day. I did not know him well but after reading (and saving) many of his emails, and then visiting with him, it seems like I did know him and got the sense that he was pleasant, funny, supportive, and knowledgeable. If you have not seen his obituary in the Oregonian, it can be found here: <http://obits.oregonlive.com/obituaries/oregon/obituary.aspx?page=lifestory&pid=181988480>. The family has a suggested remembrance for those who wish to remember him. I know I will follow at least one of the suggestions. If you have not seen his monographs, I suggest taking a look at them. <http://ldgorin.justia.net/articles-1503132.html>. Larry was a treasure and there is no doubt that we will miss him.

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Washington County Contact Information for File & Serve Questions

If you have questions about a specific filing or a local File and Serve business process, you may contact the court directly at one of the numbers below.

Criminal: (503) 846-6060
 Probate: (503) 846-2366
 Civil: (503) 846-2355
 Family Law: (503) 846-2367
 Juvenile: (503) 846-4701

For technical issues you will need to contact Tyler Technologies directly at 1-800-297-5377



~ Invitation ~



The Washington County
 Circuit Court Judges
 cordially invite you to attend
 The Investiture of
 Ramón A. Pagán
 as a Circuit Court Judge
 on Thursday, November 3rd, 2016
 at 3:30 PM

Shirley Huffman Auditorium
 Civic Center Building
 150 East Main Street
 Hillsboro, Oregon 97123

Reception Following



Stock photo by Joshua Smith.



Meet Our Newest Judge: The Honorable Ramón Pagán

In August, Governor Kate Brown appointed Ramón Pagán to the Washington County Circuit Court. Judge Pagán takes the place of retired Senior Judge Rick Knapp. Recently, I sat down with our newest Judge to learn a little more about him.

Judge Pagán was born in the Bronx to parents of Puerto Rican descent. Judge Pagán's father is a criminal defense attorney and his mother is a school teacher. Judge Pagán spent his childhood in New York City but was inspired to move to the desert after a high school road trip with friends. Intent on becoming a professor, he earned a degree in History at Arizona State University.

When Judge Pagán moved back to New York, his father suggested a law degree might be more versatile and he enrolled at Fordham University School of Law in New York City. While there, Judge Pagán discovered both a love and a talent for trial work. He worked for the Affirmative Litigation Division that sues entities on behalf of the City; and as a clerk for then- Second Circuit Judge (now Supreme Court Justice) Sonia Sotomayor. Following law school, Judge Pagán gained experience in a variety of practices including working as a staff attorney for the Second Circuit and doing federal employment litigation for a small firm. After several years, Judge Pagán decided to go into business with his father and thus began his career in criminal defense.

In 2011, Judge Pagán and his wife began dreaming of a more affordable lifestyle and of Oregon Pinot Noir, which had made its way to New York City. Judge Pagán worked with Janet Hoffman & Associates in Portland before finally landing in Washington County. Prior to taking the bench, Judge Pagán practiced with the Oregon Defense Attorney Consortium.

In addition to his work, Judge Pagán enjoys his family and has two children, ages 2 and 4. He is also a cyclist and plays the guitar. When I asked why he wanted to be a Judge, Judge Pagán said it was the challenge of embarking on a whole new lifestyle, of running a courtroom, and the personal and intellectual growth that would come from it. When I asked him how he would like to be remembered at the end of his judicial career, he said "as prepared and patient" - definitely qualities those of us practitioners can certainly appreciate. Judge Pagán is in his new courtroom in Room 111 C and assigned to the Family Law Team. Make sure to say hello when you see Judge Ramón Pagán around the courthouse!



Enjoy Writing?

Interested in submitting a newsletter article? We welcome inquiries. Please contact WCBA President Kathy Proctor by emailing kproctor@proctorlawpc.com

Washington County Lawyers Support The Campaign for Equal Justice

By Larry Brisbee

It is that time of year again when The Lawyers' Campaign for Equal Justice begins its annual fundraising efforts within the Oregon legal community. Washington County lawyers have a long history of supporting legal aid and I encourage all lawyers in our region to be generous and give back to meet the needs of those unable to pay for critical legal services. As we hear and read about such things as shortages of affordable housing, domestic violence, and the myriad of problems encountered by the poor, lawyers might wonder, "What can I do to help?" One of the best ways for Oregon lawyers to get involved is to support the work of legal aid through the Campaign for Equal Justice.



Legal aid client Joan, with her son Matty

One example of legal aid's good work is the story of "Joan" (pictured with her son "Matty"). When Joan's ex came to her home, violent and paranoid, she got Matty to safety and filed for a restraining order. When he kept returning and tormenting her and her neighbors, Joan's landlord tried to evict her with only 24 hours' notice. With nowhere to go, she felt like the world was falling down around her. She went to the legal aid of-

fice, where a lawyer calmly picked up the phone to explain to the landlord that victims of domestic violence cannot be evicted because of the actions of their abusers. Joan has a right to stay safe in her home. The landlord immediately withdrew the eviction and Joan and her neighbors remain vigilant as she continues to build a stable and safe life with the legal protections that are rightfully hers.

The legal aid staff and volunteers spread thinly throughout the state work very hard to provide civil legal services to people like Joan and her family. In the Hillsboro Region, which includes Washington, Columbia, Clatsop, Tillamook and Yamhill Counties, there are now more than 126,000 low income Oregonians who qualify for legal aid's services. In the entire state 850,000 qualify for legal aid's services. Despite those numbers, there are only 100 legal aid lawyers statewide to serve this low-income population.

Current data indicates that within the Hillsboro region, there are 1,541 lawyers. Those receiving the Washington County Bar Bulletin are likely to be among that number. Last year, the Campaign received contributions from those in the Hillsboro region amounting to \$39,000. Collectively that represents the cost of less than one legal aid lawyer per year to address the growing need for legal services. Surely we can do better.

Many of the lawyers in the Hillsboro region come from one-lawyer offices and small law firms. The costs to do business are no doubt growing, like everything else, and many charitable organizations will pass their flyers and promotional material around for very good causes. The Campaign for Equal Justice is unique—it is directed at meeting the needs of people confronted with a legal system foreign to them and very well known to lawyers. We lawyers know what it means to be without legal help to deal with the fundamental needs of life.

All lawyers in the Hillsboro region will be receiving invitations to give to The Lawyers' Campaign for Equal Justice. It is an opportunity for lawyers to step up and to give back something that we know will have a positive and meaningful impact. Be generous.



Stock photo by Loren Kerns

October CLE - “The Client-Lawyer Relationship: How the Ethics Rules and Common Sense Can Guide You from a Good Beginning to an Even Better Ending”

By Rachel Edwards

Thank you to everyone who attended the October CLE presented by Sheila Blackford, a practice management advisor with the PLF. Ms. Blackford discussed the many stages of the client-lawyer relationship, from establishment of the relationship through disengagement, and provided advice for how to create and maintain a good relationship with your clients at all stages. The first step is determining whether or not an attorney-client relationship has been established in accordance with the reasonable expectations of the client. Ms. Blackford advised that attorneys always put it in writing immediately after consulting with a potential client, whether it be in the form of a nonengagement or engagement letter. The terms must be clear and specify such things as whether or not you’re taking the case, the scope of representation, and possibly additional information such as proposed strategy, general timeframe, and upcoming deadlines. The PLF provides several sample letters on their website which can be easily customized to meet your needs. As for when it is appropriate to send a letter, she recommended that attorneys always send a letter after an in-person meeting, but decide on a case-by-case basis if a letter should be sent after a phone consultation or some sort of email or website communication. It really depends on the amount of information disclosed and whether the potential client has upcoming deadlines, in which case it would be a good idea to send a letter. And be careful when discussing cases with potential clients. Avoid giving legal advice, as this can be an easy way to commit malpractice if a potential client mistakenly believes that you are now their attorney after an initial consultation. The PLF’s practice aid titled “Checklist for Avoiding Phantom Clients” is a great resource to prevent these types of misunderstandings.

And if you decide not to take the case, you must still uphold your duty of confidentiality to prospective clients in accordance with ORPC 1.18. You must also maintain a proper conflict system containing not only the names of potential clients, opposing parties, and known third parties, but also notes from the consultation to help refresh your

memory if a conflict arises in the future. Unfortunately, many attorneys meet with potential clients and input only the name of the potential client in their conflict system but no other information. It is important to document additional facts, because a name may not be sufficient to determine if there is a conflict. But keep in mind the importance of limiting your exposure only to information that is necessary for deciding whether to represent a prospective client.

After an attorney-client relationship has been established, be realistic in setting expectations for your client. And more importantly, don’t let your emotions take over. No matter how much compassion you may feel for your client’s situation, you are doing more harm than good by establishing unrealistic expectations that are not attainable, such as inflating the value of your client’s case. It is better to under-promise and over-deliver rather than the other way around. And again, as soon as the relationship has been established, discuss the details of your representation with the client, have them repeat the information back to you to confirm understanding, and put it in writing in the form of an engagement letter discussing what you will do, for how much, and when you will do it. Too often clients only hear what they want to hear, or convince themselves that an attorney is now their attorney in all aspects of their life rather than particular matter(s). Thus the importance of memorializing not only what you intend to do for the client, but also what you will not be doing. This becomes especially important when limiting the scope of representation. But be careful to make sure you aren’t lowering your standards of representation. You have a duty to avoid limiting the scope of representation if it is not in the client’s best interest. If you have concerns that ‘unbundled’ legal services may not be in your client’s best interests, prior to taking the case call a private ethics attorney for advice to determine if your representation is proper. You may also inquire with general counsel at the bar, but be aware that the discussions are not confidential, and you can potentially be implicated for a possible ethics violation based on the information disclosed.

The next step after establishment of representation is to immediately calendar all deadlines and ticklers. It can be easy to set a new client folder to the side and forget to properly open the file and establish upcoming deadlines. If necessary, also establish deadlines for your client, such as provid-

Continued on page 6...

...October CLE, from page 5.

ing discovery documents or gathering contact information for potential witnesses. Clients often do not understand their role in the representation and the fact that you need their full cooperation in order to properly represent them.

Also stay current with Oregon ethics rules and opinions. The BarBooks section titled “The Ethical Oregon Lawyer” is a great resource with helpful discussions about the major areas and issues that pose the greatest ethical dilemmas.

Thank you again Sheila for providing these wonderful tips and resources. If you have any additional questions or need clarification, please contact Sheila Blackford or any of the other practice management advisors at the PLF, either by phone (503) 639-6911 or through the PLF website (www.osbplf.org).



Classified advertising rates

\$20 for 50 or fewer words; \$40 for 51-100 words; \$60 for 101-150 words; \$80 for 151-200 words. If over 200 words, a quote will be provided upon request. Classified ads must be prepaid.

Please submit your classified ad via email to: wcba.association@frontier.com.

Pay for your ad here:

www.wcbabar.org/newsletter-advertising.asp

Display advertising rates

Business card size (2" x 3.5")	\$30
1/4 page	\$50
1/2 page	\$90

Please submit your ad in JPEG format to: wcba.association@frontier.com.

Musings from the Probate Department

By Probate Commissioner Parmie Vandyke

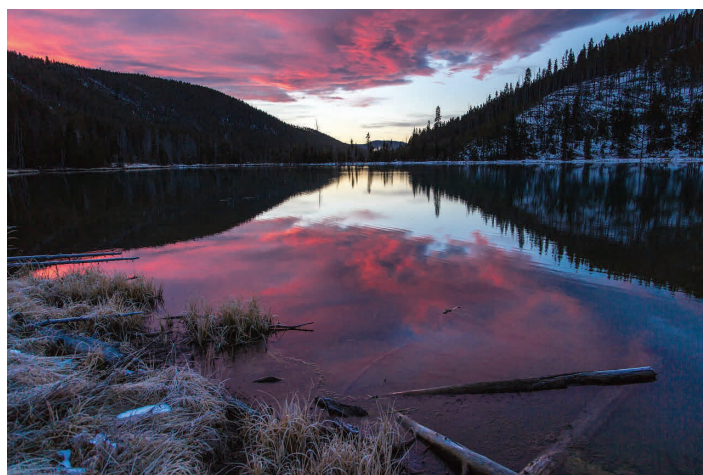
Many of you know our probate auditor, Anna Orbe, resigned and moved back to Guam last August. We have now hired a new Probate Auditor, Marianne Mickela. Marianne joins us from Superior Court in Santa Clara where she has 10 years court experience as well as recent Odyssey experience. We hope to have the delays as a result of staff shortages and probate commissioner training minimized within the next 30 days. Please make a point to introduce yourself to Marianne if your dealings bring you to our department!

Some short reminders:

Please do not resubmit orders/judgments via File & Serve if you aren't sure the court received the original. Proposed orders and judgments are not viewable in Odyssey/OECI until they are signed. It doesn't mean the court doesn't have them. Contact the clerks if in question.

Probate will continue to enforce the submission of text searchable documents. Please contact your IT person if you don't understand how your system works to make documents text searchable.

All probate inquiries should be initiated through the probate department, not chambers. The clerks and probate commissioner are possibly able to best handle your issue before it reaches chambers. This includes discussion of ex parte matters, questions regarding cases, resetting/scheduling of hearings.



Stock photo.

Law Library 90th Anniversary

We celebrated our 90th anniversary by receiving a proclamation from the Washington County Board of Commissioners (see below), and hosting a reception in the Law Library.

Thank you to all who support the Law Library and helped celebrate this milestone!

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/
 Facebook: www.facebook.com/WC.LawLib

Law Library Staff and supporters after the Board Proclamation. Left to right: Paula Simon, Sue Ludington, Lee Van Duzer, Matt McKean, Laura Orr, Jessica Witt.



Washington County Board of Commissioners watch the Law Library History Video.

Photographs by Kathy Proctor.

Proclamation

Board of Commissioners for Washington County

A PROCLAMATION IN HONOR OF Washington County Law Library's 90th Anniversary

WHEREAS, Washington County recognizes that access to legal information and resources by the community served by the Circuit Court are crucial to assure equal access to justice and civic participation; and

WHEREAS, the Washington County Court first established a Law Library in 1926 by order of Judge E. J. Ward and Commissioners F. W. Livermore and J. M. Hiatt; and

WHEREAS, it remains true now, as in 1926, that “a great and substantial benefit to the courts, lawyers, litigants, taxpayers, and inhabitants of the county of Washington may be derived from... a law library [near] the courthouse”; and

WHEREAS, in 1993, the Washington County Board of Commissioners partnered with the Law Library adopting Resolution No. 93-163 to construct and locate the current Law Library in close proximity to the courthouse thereby preserving meaningful access for those in need; and

WHEREAS, the Law Library is an extraordinary legal resource, with essential legal materials, professional staff, and a committed steering committee that serve the community well; and

WHEREAS, Washington County supports the Law Library's continuing efforts to ensure equal access to justice for all residents.

NOW, THEREFORE, BE IT RESOLVED, that on this 18th day of October, 2016, the Washington County Board of Commissioners recognizes the Washington County Law Library for 90 years of distinguished service.

Spousal Support As Income For Home Loans

By Arthur Saito

Many clients come to us with questions regarding the purchase or refinance of a residential home. This is particularly true in the area of family law. Often, one spouse wants to retain the marital home, perhaps to keep the children in a stable environment or because it is a good investment. Sometimes they simply love the home. If spouses come to an agreement that one spouse will “buy out” the other spouse’s interest in the home, the spouse who receives the home must more often than not refinance the home in order to pay the other spouse his or her interest and remove the other spouse’s name from the title to the home and/or the existing mortgage.

A party’s income is one of the critical factors in determining whether or not a person can refinance his or her home. The principles of refinancing a home are also applicable to the purchase of a new home. The purpose of this article is to provide you with the basic lender guidelines for income for a conforming home loan and a non-conforming home loan, with particular attention paid to spousal support as a source of qualifying income.

A non-conforming loan, commonly referred to as a “jumbo loan”, is any home loan that exceeds \$417,000. A conforming home loan, on the other hand, is any home loan less than this amount, underwritten to specific guidelines provided by Federal National Mortgage Association (“Fannie Mae”) or Federal Home Loan Mortgage Corporation (“Freddie Mac”).

Conforming Loans

Conforming home loan lenders underwrite to industry standards provided by Fannie Mae or Freddie Mac. The Federal Housing Administration (“FHA”) provides another commonly used set of guidelines with potential benefits for individual situations. There are other entities with differing guidelines, such as the U.S. Department of Veterans Affairs and U.S. Department of Agriculture. However, because these loans make up a very small percentage of loans that are generated, their guidelines will not be covered in this article.

Fannie Mae and Freddie Mac look to a variety of sources to determine a borrower’s income. Many

borrowers earn a regular salary, or work a set number of hours per week. This income is easy to calculate. Other borrowers have variable incomes, often through bonuses, commissions, or variable hourly rates. These types of income require an average over time to “normalize” the variability. Either way, these lenders look at two years of the borrower’s work history. If you do not have to account for variability, this work history need not be at the same job, the same employer, or even cover two consecutive years. The two years of work history must be documented in the borrower’s federal tax returns. If you have to account for potential variability in income, there needs to be data from the borrower’s specific job, with lenders using an average of the borrower’s income over these two years. The rules differ slightly for a borrower that is self-employed, but it’s easiest to think of self-employed income as variable income with the added component of expense. These situations may warrant a loan on less than two years of history, dependent upon computer-based underwriting results, but this is rare. Demonstrating at least one year of work history is a strict minimum requirement for Fannie Mae and Freddie Mac.

Fannie Mae and Freddie Mac may consider spousal support in a borrower’s income if payments have been received for 6-12 consecutive months following completion of the divorce or separation proceedings and if the spousal support award will continue at the same amount for at least 36 months following the close of the loan. Recording a spousal support award with the county recorder’s office is a strict timeline requirement. A recorded temporary spousal support award that states the amount of spousal support to be paid and 6-12 months of consecutive payments received by the borrower may be considered in a borrower’s income. Even if a borrower has not received 6-12 months of temporary spousal support payments (before a final award of spousal support is made) the number of months temporary spousal support was received count towards the 6-12 month period if the temporary spousal support award was recorded and the amount of temporary spousal support at least matches the final spousal support amount. All spousal support payments received by the borrower must be documented.

The FHA looks at most of a borrower’s income in the same manner as Fannie Mae and Freddie Mac. However, the spousal support treatment is more beneficial in the sense that only 3 months of con-

Continued on page 9...

...Spousal Support, from page 8.

secutive spousal support payments need to be received by the borrower after the divorce or separation is final. The borrower must show that the spousal support award will continue at the same amount for at least 36 months following the close of the loan. With regard to temporary spousal support, the FHA's beneficial treatment continues. A temporary spousal support award that states the amount of spousal support to be paid and 3 months of consecutive payments received by the borrower may be considered in a borrower's income. Again, even if a borrower has not received 3 months of temporary spousal support payments (before a final award of spousal support is made) the number of months temporary spousal support was received count towards the 3 month period if the temporary spousal support award was recorded and the amount of temporary spousal support at least matches the final spousal support amount. As mentioned above, immediately recording spousal support awards is a strict timeline requirement. All spousal support payments received by the borrower must be documented.

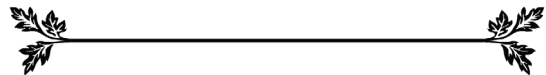
Non-conforming Loans

Lenders providing non-conforming loans look at a borrower's income in the same manner as Fannie Mae, Freddie Mac, and the FHA, albeit with one major restriction: A borrower must document a two year work history by providing two years of federal tax returns. There is no one-year minimum under any set of circumstances. In addition, the provisions regarding spousal support are more stringent: A borrower must have received spousal support for 12 consecutive months after the divorce or separation is final. Again, the borrower must show that the spousal support award will continue at the same amount for at least 36 months following the close of the loan. In addition, temporary spousal support is typically not considered in a borrower's income. If temporary spousal support is counted, a recorded temporary spousal support award stating the amount of spousal support to be paid and 12 months of consecutive payments received by the borrower are required. Even if a borrower has not received 12 months of temporary spousal support payments (before a final award of spousal support is made) the number of months temporary spousal support was received count towards the 12 month period if the temporary spousal support award was recorded and the amount of temporary spousal support at least matches the final spousal support

amount. Again, immediately recording spousal support awards and documenting all spousal support payments received are crucial to the loan process.

Special Thanks

I would like to thank mortgage specialist, Curtis Aimonetto of Mortgage Advocates, Inc. for providing the information for this article. This article would not have been possible without his assistance.



Lecture: "The Chinese Exclusion Act Case Files"

Speaker: Patricia Hackett Nicola

Date: Saturday, November 5

Time: 1 p.m.

Location: [Washington County Museum](#)

120 E Main Street
Hillsboro, OR 97124

Cost: Free for all!



The Chinese Exclusion Act restricted Chinese from immigrating to the United States from 1882-1943. The National Archives branch in Seattle holds thousands of Chinese Exclusion Act files on the Chinese living in Oregon. Patricia Hackett Nicola, who has been working as a volunteer with the Chinese Exclusion Act files in Seattle since 2001, will present documents found in select files, the history of the Act, and how to access the files. This program is made possible by the Oregon Historical Society, which hosted two exhibits on Chinese history in the United States and Oregon earlier this year. Visit www.ohs.org for more information.



**THE WCBA NOVEMBER CLE & DINNER MEETING
ON WEDNESDAY, NOVEMBER 9, 2016**

**CLE
Child Abuse Reporting: A Practical Discussion**

PRESENTED BY Morgan Wren Long

.....

Dinner Guest – Honorable Steven Price

Date: Wednesday, November 9, 2016

Time: CLE - 5:15 p.m. Cocktails & Dinner 6:30 p.m.

Place: The Old Spaghetti Factory, 18925 NW Tanasbourne Drive, Hillsboro, OR 97124

CLE Credit (Pending approval): 1 Child Abuse Reporting

PLEASE NOTE: To pre-register, please check the appropriate box below and email or send via regular mail with the name of the attendee.

Payment will be taken at the door unless you would like to pre-pay on our website via the Square.

We now accept all major credit cards at the door.

PRE-REGISTER:

WEBSITE: www.wcbabar.org

Email: wcbassociation@frontier.com

MAIL: PO BOX 912, Hillsboro OR 97123

NAME: _____

- Dinner + CLE = \$30 (member)
- Dinner + CLE+\$40 (non-member)
- Dinner only = \$15 (member and non-member)
- CLE only = \$15 (member)
- CLE only = \$25 (non-member)