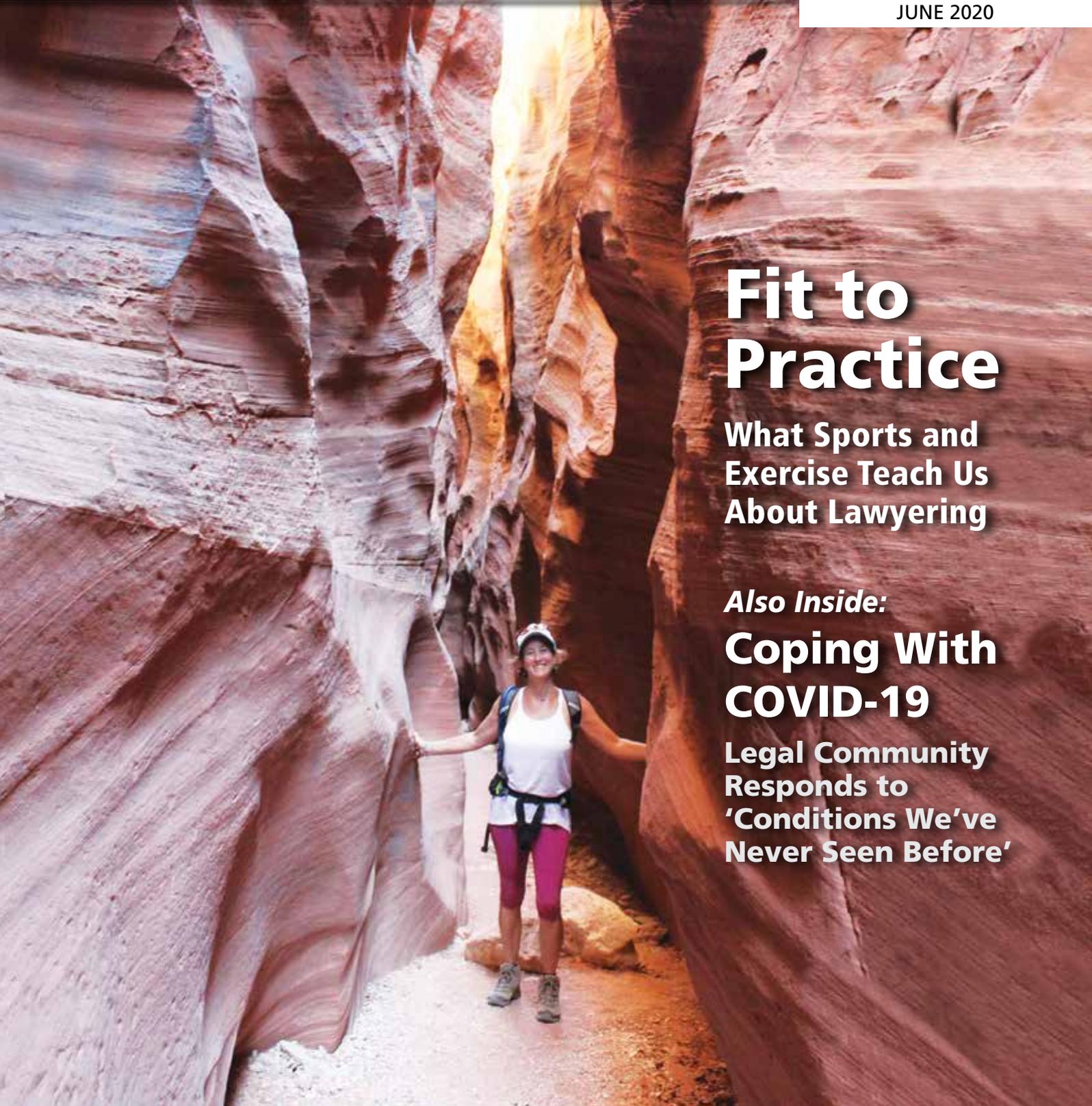


# OREGON STATE BAR BULLETIN

JUNE 2020



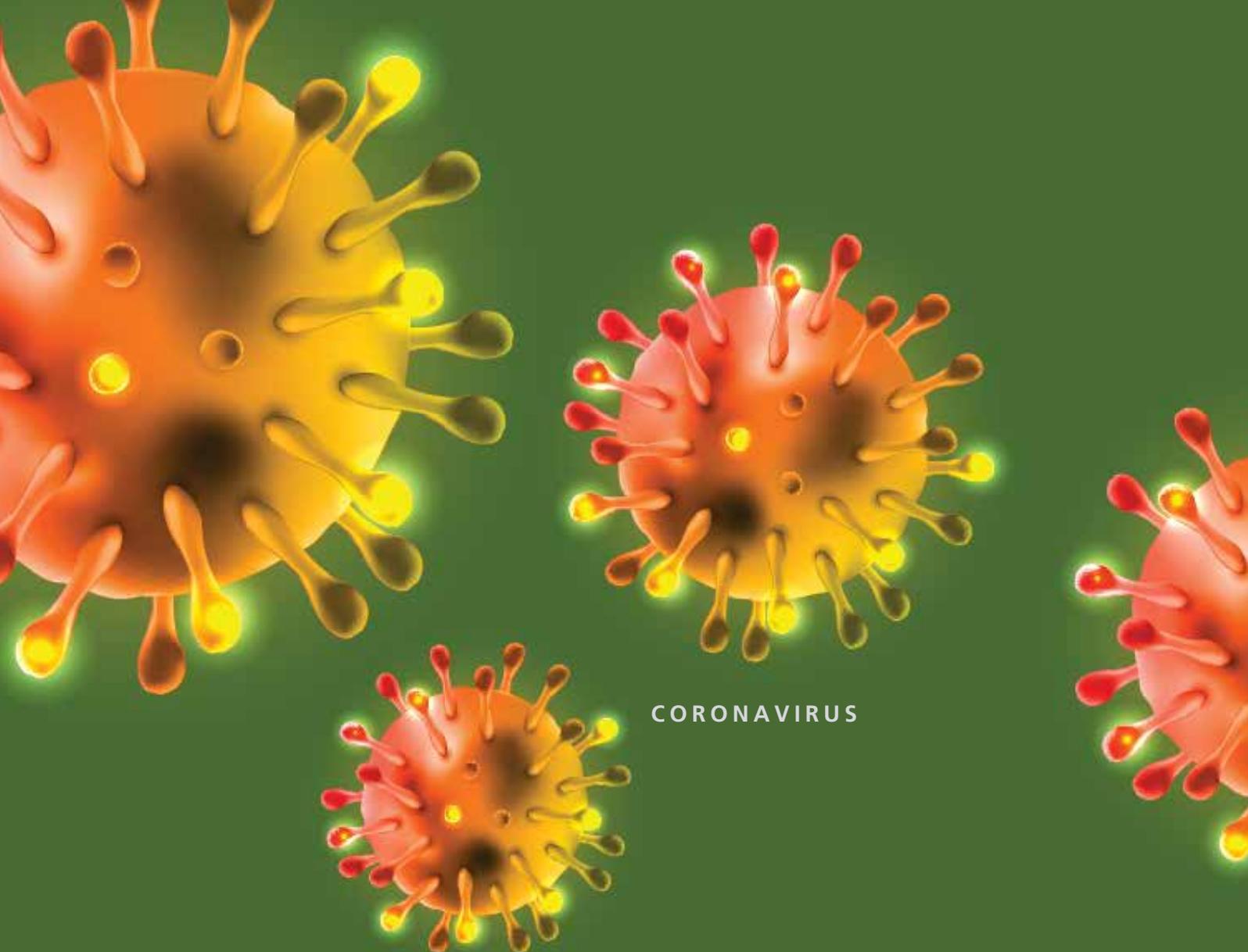
## Fit to Practice

What Sports and Exercise Teach Us About Lawyering

*Also Inside:*

## Coping With COVID-19

Legal Community Responds to 'Conditions We've Never Seen Before'



CORONAVIRUS

# COPING *with* COVID-19

Legal Community Responds to 'Conditions  
We've Never Really Seen Before'

————— By Cliff Collins —————

**A**s the COVID-19 pandemic rapidly began taking its toll on the nation's collective health and psyche in the spring, Oregon lawyers and law firms quickly pivoted from reacting to being proactive.

Many members of a service profession accustomed to personal interactions and handshakes found themselves becoming conversant virtually overnight with technologies such as Zoom, FaceTime and Skype just to continue operating and meeting their clients' needs. Varying by size and type of practice, firms across the state moved either to working from home or adjusting their offices to accommodate both safety and efficiency.

Needless to say, flexibility became increasingly essential to the practice of law. Depending on their areas of emphasis or expertise, many attorneys saw their business volume decrease as the disease spread. Others — especially those working in employment law, landlord-tenant law or health care law — were suddenly busier than ever.

Regardless, the legal community's overall response to a novel challenge has been a renewed willingness to pitch in, with a wide variety of programs and policy changes designed to help those hit the hardest economically.

### Continuing Operations

Garrett Hemann Robertson, a Salem firm of 18 attorneys and 30 staff members, "was in a good position to move to remote operation" when the pandemic struck, in part because of its pre-existing disaster plan, says Jennifer DiSenso, the firm's administrator. The firm's objective was to have everything ready "so that our clients didn't experience an interruption in service during a time they needed immediate support," she says.

Several days before Gov. Kate Brown issued stay-at-home orders in mid-March, the firm's attorneys and staff began working remotely by transitioning in phases. "If anything, we are more available now," DiSenso says, "because of restrictions on court activities and mobility."



Ryan Hunt

Ryan P. Hunt, a partner with Garrett Hemann Robertson who handles family law, estate planning and personal injury cases, agrees. Hunt, who is also a member of the Oregon State Bar's Board of Governors, says that "from our attorneys' perspective, it seemed pretty seamless, basically because our staff has been so great about it."

Landye Bennett Blumstein's conversion to nearly all remote work also took place at an early stage. After management of the Wells Fargo Center where the firm is located notified its tenants on March 13 that someone in the building had tested positive for the novel coronavirus, the firm decided the next day to turn to working remotely, says partner Elliot P. Dale. Except for "a skeleton crew" in the office, all members now work from home, a move that was made easier because many in the firm had already been set up to — and sometimes did — work remotely, he says.

Davis Wright Tremaine, another tenant in the Wells Fargo Center in downtown Portland, made the same move "within days" of receiving the news, according to spokeswoman Haley Fox. That allowed everyone to work away from the office, "with the exception of a select few who are performing essential in-office support that cannot be done remotely," she says.

What followed was "a herculean effort on the part of the firm's IT department and office manager, getting everybody set up for access from home," says DWT partner Jenna Mooney. The firm also ceased all nonessential travel, meetings and conferences, and put response plans in place for personnel potentially exposed to COVID-19 or in the event someone contracts the virus.



Kasandra Van

By contrast, most attorneys are continuing to work on-site at the Jefferson County District Attorney's Office in Madras, says Deputy District Attorney Kasandra Van. "We all have separate offices," she says. "We have tape marked out at 6 feet."

Van is responsible for carrying the office's misdemeanor load, and her normal daily duties of court appearances and talking with defense attorneys have slowed considerably. "All of my closest next court appearances, barring in-custodies," were postponed for weeks, she says. "I have cases that were supposed to go to trial booted until August or September," but no firm dates are set because of the uncertainty.

She sounds a common chord: "The personal cost of the pandemic" has been hard to accept because it has kept her from seeing her family and friends, most of whom live in towns several hours away. But, Van adds, "I appreciate that my office is trying to be upbeat and keep us working."



Eric Foster

Foster Denman, a boutique law firm in Medford that focuses its practice on real estate, business, estate planning and commercial litigation, has adopted a "hybrid" approach to operating, says partner Eric R. Foster, with most support staff working remotely and lawyers remaining in the office. Its six partners work in a building that allows enough physical space for appropriate social distancing, he says; the public cannot enter the building, so lawyers hold required in-person meetings with clients on the back patio.

"Our main focus is to make sure that our staff members are well taken care of," says Foster, an OSB Board of Governors member, "while doing all we can to continue to serve our clients."

### Up and Down

By late April, some of the state's law firms announced they were cutting pay, staff or both as the economic impact of the COVID-19 pandemic took hold. Stoel Rives planned to initiate a long list of cost-saving measures, for example, including salary reductions, staff furloughs, reduced partner draws and the implementation of hiring and spending freezes.

Davis Wright Tremaine said it would trim staff pay by 6-10 percent for those making more than \$60,000; reduce contract partner and top executives' pay by 15 percent and associate pay by 12 percent; and cut quarterly equity partner distributions, among other measures. At the same time, though, DWT created a program funded by firm partners to help staff experiencing financial hardship, and put together a vacation bank to which employees could donate vacation time.

Still, some specific areas of practice began to experience increased demand as the pandemic wore on.

"What we're seeing is an uptick in employment law," Foster says. "A lot of people are asking questions about federal Paycheck Protection Program loans and sick leave. It takes a lot to digest what's coming from congressional action and to then adjust to what comes out from agency guidelines. Having to do that within a matter of days poses challenges."

Mooney, who chairs Davis Wright Tremaine's Portland employment practice group, concurs. "This has been an incredibly busy time," she says.

Stay-at-home and shutdown orders had an immediate impact on clients, Mooney explains, causing furloughs, severances and queries about complying with existing and new laws related to these subjects. The fact that unemployment compensation and much of worker protection laws are handled by the state adds complexities to helping clients navigate it all, she says, and fielding questions and finding answers was like "drinking from a fire hose" in the first few weeks.

However, Mooney found "heartening" the fact that people in different industries showed concerns about laying off their employees and are helping them by providing food and ways to supplement their incomes, while at the same time endeavoring to keep those still working safe at work.

Ingrid Brydolf, co-chair of DWT's health care practice group, says her hospital and medical group clients focused initially on legal questions surrounding the delivery of care, including seeking waivers from regulations so that providers could move as much as possible to telemedicine. She has been encouraged by federal, state and commercial insurers' willingness to be flexible, for the safety of both patients and caregivers.

"It's so important that we don't lose that momentum," Brydolf says. "Providers have been pushing for this" to be more widely covered by insurance, and the pandemic has resulted in "moving that forward."

Family law attorneys are dealing with the obstacle of closed courts and trial delays for most cases, notes Garrett Hemann Robertson's Hunt. One result has been that his firm's lawyers are using mediation more, he says.

Ralph Gzik, a family attorney with the four-lawyer firm Kroll & Johnson in Hillsboro, says the volume of cases has been steady but slow to advance because of court closures. He hasn't received as many inquiries as usual from potential clients, he says, but he's been pleased with the overall performance of the judicial system.

"The courts have been really helpful, in Washington and Multnomah counties especially," in disseminating information to lawyers and keeping "attorneys updated about what's going on," he says. "Judges are sending out updates so that we can keep our clients informed."

Domestic violence cases and landlord-tenant issues increased rapidly after the pandemic hit, posing challenges for legal aid attorneys who already were strapped with demand, says Janice Morgan, executive director of Legal Aid Services of Oregon. And the need will only increase if a recession is prolonged, she adds.



Janice Morgan

Immigration law also has been impacted significantly by the COVID-19 outbreak — in both negative and positive ways, says Chanpone Sinlapasai of the five-attorney Lake Oswego immigration firm Marandas Sinlapasai Garcia. Flight cancellations and changing travel bans both to and from different countries make a complex practice area even more difficult, she says, and petitions for family-based matters — including people who want to leave or enter the U.S. or other nations — have been held up even more than normal. But one upside is a much greater responsiveness from U.S. Citizenship and Immigration Services as cases are adjudicated electronically, she says.

Law firms that handle estate planning are doubly challenged by the effects of the pestilence because many of their clients are older and at higher risk, and many documents require witnesses or must be completed in front of a notary or signed in person. Anne Vilella, owner and attorney at Pariani Vilella in King City, doesn't consider remote video meetings ideal for her clientele; she prefers face-to-face meetings to establish trust and because the attorney can better assess qualities such as client capacity. But she says video meetings can offer a necessary compromise during this time of uncertainty.



Chanpone Sinlapasai

"It's super important that our clients feel safe and comfortable with the process," she says. "Unfortunately, video meetings won't work for all clients for a number of reasons, including the challenges for some in using technology or because they lack access to this technology."

Vilella approaches document signings requiring in-person meetings on "a case-by-case basis," she says. For example, to maintain social distancing she has conducted signings from clients' decks, front porches and backyards, where she can keep watch through a partially open sliding-glass door. Home visits where she remains outside help provide peace of mind, she adds.

Laura L. Donaldson of Kuni Donaldson, the chair of the OSB's Debtor-Creditor Section, says that as of late April, she had not seen a jump in her specialty practice of bankruptcy cases. "We are still in that weird lull where there hasn't been a notable impact on bankruptcies," she says. "It is coming, but it hasn't happened yet. We had an uptick at the beginning of the year; then (from) March through the present, filings have been less than last year."

She attributes the slowdown in part to federal, state and local stimulus programs, including Paycheck Protection Program loans. "It is difficult to determine if a bankruptcy is the proper route without a little more time to see if the distancing order will be lifted and if businesses will be able to recover and restructure rather than liquidate," Donaldson explains. "The impact to bankruptcy is yet to occur in force. May the Force be with all of us when it does."

CONTINUED ON PAGE 29 | COPING with COVID-19

# MANAGING IN UNCERTAIN TIMES

## Chief Justice Responds to Pandemic With the Help of Her Legal 'Family'

By Chief Justice Martha Walters

**H**ow to “manage” the courts in the time of COVID? It’s a rollicking ride. My advice: Take it as it comes, and seek help at every turn.

Before I joined the courts, I helped manage a small law firm — about a dozen lawyers and staff. The firm was family to me. The Oregon courts are composed of some 200 judges and 1,600 staff. By statute, I am the administrative head of the Judicial Department, but I rely on the leadership and skills of a fantastic state court administrator and her staff of professionals. I have an advisory committee of five circuit court presiding judges and I chair and report to the Judicial Conference — all the judges in the state. As a result of the pandemic, I have worked more closely than ever with so many of those judges and professionals. I am getting to know their inner strengths, and they are becoming like family to me.



Chief Justice  
Martha Walters

Our response to COVID began in late February — before the first reported case in Oregon and before the Legislature had formally adjourned. By then, we already were thinking about the right way to respond to the virus, and we directed courts to update their existing emergency operations plans to address a possible pandemic. We started scheduling weekly COVID-related conference calls with our presiding judges and trial court administrators and sending weekly updates to all judges and staff.

That planning was, it turned out, insufficient. I did not anticipate that the virus would catapult us into the unimaginable changes we have witnessed in our personal and professional lives, and I think that inability to really comprehend the full scope and implications of what was hitting us is one of the biggest management challenges that I, and I imagine many others, faced and continue to face.

Within a week after Gov. Kate Brown declared a statewide COVID-19 emergency on March 8, I issued guidelines to courts asking that they postpone jury trials, limit large-group gatherings in courts and establish social distancing, protect jurors in high-risk categories, and start scaling back court operations.

I realized almost immediately that guidelines alone would be inadequate. I worked with a small team throughout the weekend to prepare a Chief Justice Order, and we issued it on March 16. CJO 20-006 was relatively brief — six pages directing that most jury trials be postponed, outlining what courts must or should continue to do, and prioritizing those proceedings. Our purpose was to immediately restrict the number of people who would come into our courts, including parties, counsel, jurors, interpreters, judges and staff. It was doing our part to protect people and “flatten the curve.”

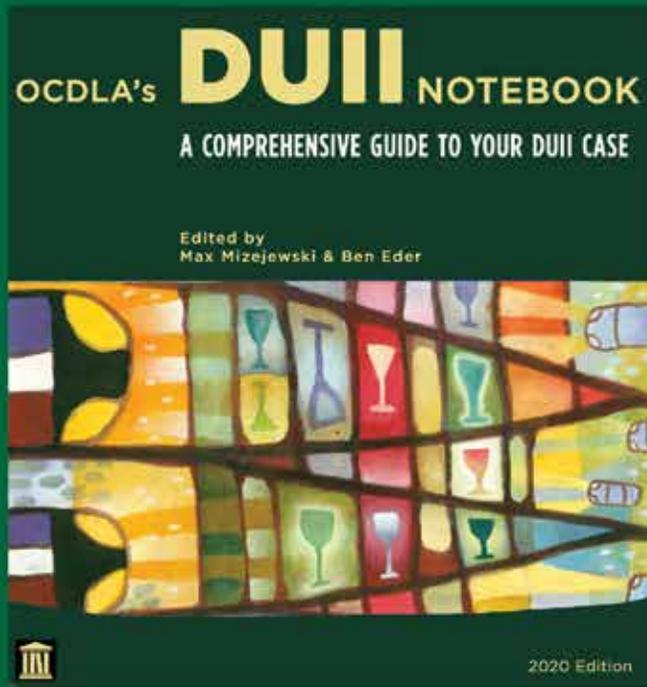


I knew, though, that the initial CJO would not answer all questions and that I would need to consult more widely and do further work, including responding to practitioner concerns about their ability to meet statutory deadlines during the crisis. I think that one of the best things we did in “managing” the consequences of COVID was to work with the Oregon State Bar to convene work groups and examine the CJO more closely, and more carefully describe the proceedings that courts must and should continue to conduct. We also created an email address — [cjofeedback@ojd.state.or.us](mailto:cjofeedback@ojd.state.or.us) — to solicit feedback on how the order was working so that we could quickly identify and address issues raised by practitioners. That email is still available, and feedback is helpful.

In responding to suggestions from practitioners and judges, I realized that I might need additional statutory authority to take further action. Our team worked with the special COVID-19 committee appointed by legislative leaders to develop state-level responses to the pandemic. We proposed legislation for temporary authority to extend or suspend certain statutory timelines where compelled by the public health emergency, expand our ability to conduct remote hearings and extend appearance timelines. Now, after nine weeks of restricted court operations, we have found ways to conduct most of our court business. That said, challenges remain. I continue to work with the Legislature, the bench and bar to tailor the proposed legislation to our lessons learned, so that we can continue to provide justice services.

By late March, our courts — trial and appellate — were hard at work restricting our operations. In addition to prioritizing cases, we moved hundreds of judges and court staff to work-at-home or leave status. We started purchasing the first of several hundred laptops and cellphones to allow work to continue off-site. We upgraded our technology systems to handle the increase in remote meetings, hearings and interpretation services that we knew would be coming. That was complicated by the fact that we must comply with our constitutional “open courts” clause; the public must have access to proceedings conducted by remote means.

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Max Mizejewski & Ben Eder, Editors

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We were working fast and furiously when I realized, again, that I had not anticipated changing conditions. We were still in the process of restricting court operations when lawyers began pushing, not for an extension of deadlines and court appearances, but for the assistance of the courts in moving their cases forward. There was a need to open as well as to close.

Depending on who you ask — and when you ask them — Oregon's restrictions on in-person court proceedings and activities have been either too little and too slow, too fast and too severe, or about right. Either we are not doing enough to protect the lawyers and people who appear in court, are too limited in the work we do, or are appropriately protecting both public health and the needs of those who use our courts.

But that is as it should be. We have different and changing needs. As a manager, I needed to understand that there would be misunderstandings and mistakes that would require correction, and that there would be good suggestions that should be adopted. I am pleased that we were able to ride the waves and rise to the occasion. We issued additional Chief Justice Orders to ensure that habeas corpus cases would continue to be heard, expanded authority to use electronic signatures in court filings, amended bar admission processes and reduced the imposition of collection fees on people unable to pay their court-imposed fines and other financial obligations.

There were myriad other issues that needed decisions. How to address situations where counties close their doors and thereby the doors to the courtrooms they house? Should courts accept cash payments? What actions should courts take when the Oregon State Hospital suspends admissions? Should the courts notify landlords seeking to file eviction complaints that the governor's Executive Order might subject them to criminal penalties? Thankfully, I did not have to make any of those decisions alone. Hundreds of people gave hundreds of hours and provided detailed scrutiny before I acted. And thousands more added untold effort to implement those decisions.

Regardless of how you feel about their merits, the decisions we made reflected a concern for both people's health and their need for access to justice. I know that criticism of those decisions reflects those same concerns.

There is still a lot to do.

The pandemic has forced business closures and the resulting high levels of unemployment likely will reduce state general fund resources. Consequently, the governor and legislative leaders have requested that we identify potential budget reductions.

In thinking about what we can do during these unprecedented times, it is important to keep in mind the critical work in which our courts are engaged. We must continue to hold trials and proceedings required by constitution and statute, as well as oversee children in foster care, decide protective orders and generally ensure that the rule of law continues. In addition, we expect hundreds of cases to be affected by the U.S. Supreme Court's recent decision in *Ramos v. Louisiana*, regarding non-unanimous jury verdicts. And as the governor eases restrictions, we will need to address the backlog of postponed civil and criminal cases, as well as the expected surge of new landlord-tenant, contract-enforcement and debt-collection cases. I issued an additional Chief Justice Order in mid-May to guide that transition.

It is one thing to manage the judicial system as a pandemic enters our state. It is yet another to do so while anticipating both budget reductions and a large volume of postponed and new litigation. By the time you read this, the May 20 revenue forecast for state government will have been issued and we may know more about what will be expected of us. If we are being asked to make significant reductions that will affect our ability to fulfill our constitutional and statutory responsibilities and do our part to assist in Oregon's recovery, we may well again ask for your help to support the courts and access to justice.

I know that all of you have your own work and lives to manage and that we all face daunting challenges. Change, of any sort, requires courage. Take heart, and thank you for your understanding and support for our courts. ■

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*Hon. Martha Walters is chief justice of the Oregon Supreme Court. She continues to gather feedback from the state's legal community via email at [cjofeedback@ojd.state.or.us](mailto:cjofeedback@ojd.state.or.us).*

## For the Greater Good

Some law firms are expanding or changing what they do to serve the broader community, sometimes through pro bono service or by means of their regular focus areas. Gevurtz Menashe announced in mid-April, for example, that it would provide complimentary estate planning services — including wills, powers of attorney and advance directives — to active front-line first responders in Oregon and Southwest Washington.



Riley Lagesen

“As the world continues to cope with the impact of COVID-19, we are incredibly grateful for our heroes on the front lines, who make a critical difference in our lives,” says Managing Shareholder Shawn Menashe. “Our deepest hope with this program is to take care of them and their families so they can continue caring for our community.”

Sometimes, firms have responded by thinking outside the box. For instance, Riley Lagesen, the founder and chair of Davis Wright Tremaine's national restaurant industry practice group, contacted one of his clients — celebrity chef and Food Network host Guy Fieri — to see what the two could do to help a sector of the economy that has been hit particularly hard by the pandemic.

“He wanted to do something to help raise money to support those who lost their jobs,” Lagesen says, so lawyer and client worked together to obtain corporate sponsorship and formed the Restaurant Employee Relief Fund. As of late April, they had raised \$15 million for grants that will go to underemployed and unemployed workers in the food service industry.

“Guy is our ambassador on it,” Lagesen says.

Nationally, more than 8 million restaurant employees have been laid off or furloughed, according to the National Restaurant Association. Lagesen points to a survey showing that 80 percent of restaurant owners are not certain they can survive, and the association estimated in late April that more than 90 percent of Oregon restaurants had laid off or furloughed staff. As a firm, Lagesen says, “our goal is to help our clients come out of this as well as possible. We're dealing with conditions we've never really seen before.”

Daniel Kalish, the managing partner of HKM Employment Attorneys, concurs. His firm created an online resource center where displaced or worried employees could turn for information. Through that, he says, the firm can pass along tips about “a lot of protections they have but don't realize.”

HKM's motivation came from firm members who observed other companies offering free or reduced services, Kalish says, but the firm also saw it as a way to explain what employees' rights entail — such as whether they have to report for work if they're afraid of exposure, or whether their bosses are required to notify them if a co-worker tests positive for the coronavirus.

“The response has been great,” Kalish says. The most common question: “Am I entitled to unemployment benefits?”

Given that concern, Salem sole practitioner Stefyni Allen thinks lawyers should consider reducing their rates so they could obtain more work and benefit people who have lost their jobs. About four years ago, Allen — who practices family law and advises parents about special education law — posted a notice for attorneys willing to be placed on an informal list she compiled of lawyers who would accept low-income clients. About 40 lawyers agreed to be on the list.

“Anything I can do to facilitate services for people who cannot afford a lawyer, then I would like to do that,” Allen says. “Where my passion lies is helping people who feel they don't have a voice.”

## Above and Beyond

Two attorneys whose practices don't always lend themselves to working remotely say they're willing to accept hazardous duty, at potential sacrifice to themselves, if it means they

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can help clients in need. One is Kamron L. Graham, deputy public guardian and conservator for Multnomah County, who is responsible for overseeing clients in hospitals, adult care homes and group homes.

The county's program obtains and implements court-appointed guardianship and conservatorship for people who are profoundly mentally incapacitated, unable to care for themselves and at high risk of abuse, exploitation or extreme self-neglect. Especially because many clients are elderly, Graham and her colleagues have implemented remote visits when appropriate, using tablets and laptops provided by care facilities. "But for some clients, this is just not feasible or devices are not available and in-person visits are needed," she says. "An example could be someone who does not have the cognitive ability to have a virtual conversation, or their mental health is a barrier to using technology."

Graham, who is also a member of the OSB Board of Governors, says that despite the personal risk, she stays with the work because she wants to help people who need it. "I think protecting vulnerable people is the greater good in this situation," she says. "And I am super safe and take precautions for my sake and theirs."

An attorney who follows a similar ethic is Amanda J. Marshall, who handles juvenile dependency and delinquency cases and civil commitments in Oregon City for Clackamas County. She works with Clackamas Indigent Defense Corp., a state-contracted consortium of independent criminal defense lawyers.



Amanda Marshall

In normal times, "the entire court" is held in hospitals for civil commitment cases, she explains. "After the virus struck, we tried to figure out how to do hearings with restrictions, be compliant with hospital rules and keep safe. Civil commitments are one of the few types of cases still going during the coronavirus."

When Marshall and the other attorney in the county who accepts civil commitment cases proposed that hearings be moved to remote video, the presiding judge approved it the next day. However, Marshall must be in the same hospital room with the client during the hearing and use a laptop to connect with the court's video system.

Marshall's civil commitment clients haven't committed a crime but are deemed to be both suffering from a behavioral health issue and a danger to themselves or others. She doesn't believe hearings held by phone are sufficient to protect their constitutional rights, so she says she's willing to risk her health to be with the client in person. A doctor also is usually present in the hospital room, "so the more people you get in a room, the harder it is to keep social distancing," she acknowledges.

Marshall admits she "thought really hard about" the personal health risks, but resigned herself to them.

"I definitely agonized over whether I wanted to offer and to do video in hospitals," she says, "but I felt no other way to do it would be fair to clients. Civil commitments are my passion." ■

*Cliff Collins is a Portland-area freelance writer. Reach him at [tundra95877@mypacks.net](mailto:tundra95877@mypacks.net).*



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