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Malpractice Prevention Education for Oregon Lawyers

In Memoriam – Steven Carpenter 1955 – 2016

It is with great sadness that we announce that PLF Claims Attorney Steven Carpenter died on July 16, 2016. He worked at the PLF from 2000 to 2016.

Steve joined the PLF as a claims attorney in 2000. He spoke and wrote widely on lawyer liability issues, but he will be most remembered for his compassion for lawyers facing malpractice claims. Steve had empathy for lawyers encountering particularly challenging situations, and over the years he developed a specialty of assisting that segment of our profession. Many of the lawyers he served remarked about Steve’s insight, professionalism, patience, and support, noting they felt in good hands with Steve during a challenging and stressful experience.

Steve’s kindness and warmth were not limited to the lawyers he served. His colleagues remember he was genuinely interested in others and always eager to help and share. He had a unique ability to connect with all kinds of people. A loyal friend and thoughtful coworker, he spread cheer in the halls and had a way of using humor to put people at ease.

Steve enjoyed sharing with others many of his diverse interests, including music, food, cooking, gardening, and travel. He had a lifelong interest in French culture, having studied in Paris as part of his undergraduate degree in French. He relished acting as tour guide to the friends who



accompanied him on some of his many trips to his beloved country. An avid supporter of the arts, Steve was a member of the Portland Gay Men’s Chorus. He had a beautiful voice and a great memory for lyrics. He also treasured his Wittrock Dobermans – Moxie, the last “red girl” to claim his affections, even visited him in the hospital.

A friend and valued colleague to those who were fortunate to know him, Steve’s death is a tremendous loss for the PLF and for Oregon lawyers. He leaves a legacy of service and friendship, and we are grateful for his many contributions. He will be greatly missed.



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Amendments to Uniform Trial Court Rules – Effective August 1, 2016

UTCR 5.100 – Submission of Proposed Orders or Judgments: The amendments, adopted by Chief Justice Order 16-029, make the following changes to UTCR 5.100:

- **Service Requirement:** In paragraph (1)(c), the amendment replaces the current requirement that a proposed order or judgment be “mailed to” a self-represented party at the party’s last known address with a requirement that the document must be “served on” such a party. Service is generally governed by the Oregon Rules of Civil Procedure (ORCP).

- **Certificates of Service and Readiness, Placement:** In paragraph (2), the amendment clarifies that the required certificates of service and readiness should be included in the proposed order or judgment document (not as an attachment).

- **Certificate of Readiness, Reasons:** In paragraph (2)(b), the amendment clarifies that the purpose of the certificate of readiness is to identify the reason that the proposed order or judgment is ready for judicial action. The amendment also eliminates the “default” reasons from the model certificate, which had been based on concepts of ex parte service and are subsumed by the “service not required” reason. The amendment also adds a new reason (“other”) why the proposed order or judgment is ready for judicial action.

- **Service Requirement, Exceptions:** In paragraph (3), the amendment rewords the current service exception for proposed orders or judgments submitted “ex parte by law or rule” to state that the service requirement does not apply when “service is not required by statute, rule, or otherwise.”

Help New Admittees?

Are you interested in helping new lawyers by answering questions about your practice area? If so, share your experience practicing law by leading a roundtable discussion with new admittees at the PLF’s Learning the Ropes luncheon on Thursday, November 3, 2016. Call Barbara Fishleder at 503.639.6911 or email barbaraf@osbplf.org if you are interested. For more information, call DeAnna Z. Shields at 503.639.6911 or 1.800.452.1639.

- **Service Requirement, Exceptions:** In paragraph (3)(e) (renumbered from (3)(f)), there is an exception to the service requirement under paragraph (1) for certain support and paternity proceedings where a mostly blank template order or judgment is submitted to the court in anticipation of a certification hearing attended by the parties. The amendment is meant to clarify that the service exception does not apply to a proposed order or judgment that is ready for judicial signature without a hearing.

- **Certificate of Readiness Requirement, Exceptions:** In paragraph (4), the amendment creates an exception to the certificate of readiness requirement for a proposed order or judgment that is both submitted and signed in open court with the parties present. The punitive damages provision was renumbered to paragraph (5) but is otherwise unchanged.

- **New Reporter’s Note:** The proposed amendment adds a Reporter’s Note that clarifies the types of cases to which the rule does not apply and further notes that the computation of UTCR time requirements is subject to ORCP 10.

UTCR 21.040 – Format of Documents to Be Filed Electronically: The amendments were approved out-of-cycle by CJO 16-027, effective August 1, 2016. They were part of a number of UTCR Chapter 21 changes meant to provide clarification and to respond to issues and questions that have arisen in connection with eFiling and eService.

Paragraph (2) removes the reference to attachments but retains the general requirement that a lead document, together with “incorporated” other documents, must be eFiled as a single PDF. Certificate of service is added to the list of incorporated documents.

Paragraph (2)(b) clarifies the procedures for filing nonconfidential and confidential documents. This



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change is meant to reduce confusion in adoption case filings and otherwise clarify how to file documents with confidential attachments.

UTCR 21.060 – Files of the Court: The changes are meant to reduce confusion for parties in determining the “filed” date and the “entry” date for orders and judgments filed and entered in the Oregon eCourt system.

UTCR 21.070 – Special Filing Requirements:

The change to paragraph (5) (expedited filings) allows a party to notify the court by email or telephone that an expedited filing has been eFiled.

The changes to paragraphs (6) and (7) are meant to reduce confusion in determining when to designate a document for filing as confidential (this has been problematic in adoption cases).

The changes to paragraph (7) also address unified PDF filings in adoption cases.

UTCR 21.100 – Electronic Service: The changes to paragraph (6) clarify the information that must be included in the certificate describing proof of service, based on the method of service employed.

The comment period for these amendments closes at 5:00 p.m. on September 1, 2016. You may submit comments by email (utcr@ojd.state.or.us), by mail (UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, OR 97301-2563), or on the website (<http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx>). Comments will be reviewed by the UTCR committee at its next meeting, currently scheduled for October 14, 2016.

Resources – UTCR 5.100

Frequently Asked Questions Re UTCR 5.100 in Multnomah County Family Court, courtesy of Family Court Judge Maureen McKnight. www.osbplf.org>Practice Management>Publications>In Brief>August 2016

Errata

In the April 2016 issue of *In Brief*, in “2016 Oregon Legislative Session,” the legislative summary for House Bill 4143 was for the bill as introduced rather than for the bill as enacted. Specifically, the notice period for terminating a residential tenancy of longer than a year in duration is still 60 days, not 90 days as stated.

Welcome, Rachel!

We are pleased to welcome a new practice management advisor to the PLF staff. Rachel Edwards joined the PLF on July 11, 2016.



Rachel received her BA from the University of Washington in Seattle and her JD from Willamette University College of Law. She is a member of the Oregon State Bar, Oregon Women Lawyers, Multnomah Bar Association, an elected board member of the Washington County Bar Association (WCBA), and a founding subcommittee member of the New Lawyers Division of the WCBA. She has served as a Classroom Law Project Mock Trial Volunteer Judge, an Oregon Department of Human Services Adoption Contract Vendor Attorney, and a volunteer for the Convocation on Equality and for St. Andrew Legal Clinic.

Prior to joining the PLF, Rachel was in private practice for four years. Her areas of practice included Social Security disability, family law, adoption, and estate planning cases.

In her role as a practice management advisor for the PLF, Rachel provides practice management assistance to Oregon attorneys to reduce their risk of malpractice claims and enhance their enjoyment of practicing law. Her assistance is free and confidential.

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Beware Ransomware: Data-Encrypting Software Continues to Extort Money

Imagine the stress of turning on your computer tomorrow to find a pop-up window stating that your personal files are encrypted and the date and time your private encryption key will be destroyed. To get your adrenaline pumping, the countdown-to-destruction timer is activated as soon as you open the computer: “Any attempt to remove or damage this software will lead to the immediate destruction of the private key by server.”

Beware: Cyber criminals continue to use data-encrypting ransomware to extort money. Ransomware is malicious software that sneaks onto your computer and holds your data hostage in an encrypted format until you pay the ransom to obtain the private encryption key to decrypt it. A few computer files or your entire computer may be held for ransom. The ransom payment is typically \$100 to \$500 or more paid in the untraceable form of Internet currency known as Bitcoin, delivered to an anonymous site.

Stories of ransomware are NOT the latest urban legend. Some of your colleagues here in Oregon have been victimized by this scary form of malware – short for “malevolent software” – which includes nasty computer viruses, Trojan horses, worms, spyware, and key loggers. (See accompanying Malware Glossary posted on the website under Practice Management>Publications>In Brief.)

Are You at Risk for Malware?

If your computer is connected to the Internet or is part of a computer network that is connected to the Internet, you are at risk. There are two chief ways that cyber criminals can get ransomware onto your computer: (1) by exploiting software vulnerabilities to install ransomware onto your computer or (2) by exploiting social engineering techniques, counting on your being too trusting of websites, pop-up windows, or emails (containing hyperlinks or attachments) that appear to come from someone you know. To protect against the first method, you need a good anti-virus, anti-malware protection program you keep up to date. You need to check for updates for all computer programs and install these updates as soon as possible. To protect against the second delivery method, you need to become savvier and less trusting, and train your staff to be the same!

Awareness and Training

Awareness and staff training are imperative. Ask yourself these questions:

1. Do you have current anti-virus, anti-malware protection on any computer connected to the Internet? Does your staff?
2. Do you perform regularly scheduled computer scans? Does your staff?
3. Do you check for current updates and install them as soon as possible? Does your staff?
4. Do you have a firewall installed on any computer connected to the Internet? Does your staff?
5. Do you avoid clicking pop-up windows when visiting various sites on the Internet? Does your staff?
6. Do you verify an email is legitimate before opening an attachment or clicking on a hyperlink? Does your staff?
7. Do you know how to spot a dangerous email? Does your staff?

Email Vulnerabilities

Unfortunately, it is too easy for your email address to get tied up in a malware scheme. Your address may be in several address books, and one of these books may be on an infected computer. The malware sends emails to all these contacts, hoping the recipient will see the familiar sender and open it. When the unsuspecting recipient opens the email and then opens the attachment or the hyperlink inside the email, malware is unleashed into your computer. If your computer is set up with a pathway to your server, the ransomware can also lock up your entire server.

How to Spot a Dangerous Email

Given that emails are one of the primary methods for effecting ransomware attacks, it is crucial to know what to look for. Beware of these red flags when reading emails:

1. Look at the sender’s name and email address. The email message claims to be from one name, but if you click on the name, this name does not match the actual email address. For example, the email states it is from Sheila Blackford, but instead of seeing my expected email address sheilab@osbplf.org, you see it is from petrovich.bx1547@zoho.com.
2. Watch out when a pop-up window appears when you visit a website, for example, offers to claim a prize or get help from live customer service reps.
3. Watch out if you get an email from the IRS or from the U.S. Postal Service. They don’t send emails.
4. Watch out if any email has a hyperlink for verifying personal identifying information, such as your Social Security number, driver’s license number, or passport

Resources – Cybersecurity

- Practice Aid: Information Security Checklist for Small Businesses, courtesy of Sunsei Enterprises, Inc. www.osbplf.org>Practice Management>Forms>Technology
- FYI Cyber Alert: www.osbplf.org>Practice Management>Publications>In Brief>August 2016
- Malware Glossary: Sheila Blackford: www.osbplf.org>Practice Management>Publications>In Brief>August 2016

number. Move your mouse over the link to view the actual URL address.

5. Watch out if your bank requests your personal or account information, such as your account number, Social Security number, or PIN, via text or email – banks rarely do this.
6. Watch out for an email from a bank or credit card company, especially if you don't have an account there.
7. Before doing online banking, be sure your computer has been scanned for malware and your protection is up to date. The URL window should show a lock icon in front of the company name and a URL address that starts with "https," with the "s" indicating secure socket.
8. Don't panic if you get a message from the FBI or police that your computer has been locked due to being tracked by law enforcement for downloading pirated software, pirated music or movies, or child pornography. The cyber criminals are hoping you are sufficiently horrified at being accused of illegal activities and will pay to avoid further embarrassment and a ruined reputation! This ransomware has been so popular that it is known as a "cop trojan" or "police trojan."
9. Pay close attention to company logos to spot some detail amiss. An important word in the name that you normally would expect to see may be missing.
10. Pay attention to spelling errors or clumsy sentence structure that does not reflect the expected level of professionalism.

Prevention Practices

Prevention is the best way to protect yourself from a ransomware attack. Follow these steps to help thwart would-be cyber thieves:

1. Back up your computer daily. Disconnect your computer from the Internet before backing up data to a local server. Close your browser and disconnect your Ethernet cable from your router if you have a wired connection. If you have a wireless connection, disconnect according to the instructions from your owner's manual. You can also disable and enable your wireless connection through Windows.
2. Verify you have a clean backup copy of your data.
3. Store backups in locations inaccessible to your computer, such as on an external drive you unplug from your computer's USB port after you have backed up data to it. Disconnect anything that may be or may become infected, for example a USB backup or automatic uploads to DropBox. Ask your IT support services to help you if you are unsure how to implement any protective actions.
4. Encrypt your entire hard drive so confidential information cannot fall into the wrong hands.
5. Do not keep your decryption key on your computer so it will be safe from being discovered. See "Encryption Made Easy: The Basics of Keeping Your Data Secure," Sharon D. Nelson and John W. Simek, *OSB Bulletin* (April 2016).
6. Disconnect your computer from the Internet when you are not using it. Follow the steps in number 1. above.
7. Purchase intrusion detection software or anti-malware software or both. Intrusion detection software sends an alarm when intrusions are detected. Anti-malware software contains an alert or alarm feature to notify you something has been discovered.
8. Follow instructions provided by your anti-malware program. "You get what you pay for" applies to technology more times than not.
9. Contact IT support services who are knowledgeable about setting up safeguards to protect your computers and servers.

SHEILA M. BLACKFORD
PLF PRACTICE MANAGEMENT ADVISOR

2015 PLF Annual Report

The 2015 PLF Annual Report is available on the PLF's website. Log in at www.osbplf.org, find the About the PLF tab, then select Annual Reports. If you have questions, call Tanya Hanson at the PLF at 503.639.6911 or 1.800.452.1639.

Uniform Fiduciary Access to Digital Assets Act

The term “digital assets” incorporates both a person’s digital property and his or her electronic communications. This can include Facebook accounts, online banking, email accounts, photos stored on the “cloud,” Instagram and Twitter feeds, just to name a few. Access to these assets is generally controlled by a terms-of-service agreement as opposed to traditional property law, which has proven troublesome once the user dies. Companies that store these assets, referred to as “custodians,” are often hesitant to give access to the personal representative of the deceased and frequently only grant access pursuant to a court order. This can draw out the probate process and increase the overall costs, not to mention add frustration to an already emotional time in someone’s life.

House Bill 1554 (2016) adopted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) to address this problem. Under the Act, users can now dictate what they want to happen to their accounts once they die or become incapacitated. Users can do this in two ways, either by using an online tool provided by the custodian, or by will, trust, power of attorney, or another similar written document. The online tool must

PLF CFO Honored

The PLF is very pleased to announce that Betty Lou Morrow, PLF Chief Financial Officer, was named as a finalist in the Portland Business Journal’s CFO of the Year awards in the nonprofit category. The awards honor the region’s financial officers who have proven innovation in their fields, outstanding performance in their businesses, and a demonstrated track record of meaningful community involvement. PLF CEO Carol Bernick commented, “Betty Lou’s diligence and dedication to the fiscal health of the Fund is of value not only to the organization but to the lawyers of Oregon.” The 2016 awards luncheon was held on Thursday, May 19, 2016, at the Hilton Hotel in Portland.

Practice Aid – Digital Assets

A sample “Digital Asset Instruction Sheet” is available on the PLF website, courtesy of Beate Weiss-Krull. Go to www.osbplf.org, select Forms under Practice Management, then Estate Planning category.

be separate from the terms of service and requires the user to affirmatively state his or her wishes. For example, Facebook now has a function in its settings called “legacy contact.” This allows the user to name someone to manage his or her account after the user passes away. There is also a box the user can check if he or she wants the Facebook account permanently deleted after the user passes away.

If the custodian does not provide an online tool, or if the user does not use the one provided, then the user can include his or her wishes in the user’s estate planning documents. The online tool trumps what is expressed in the written document, and they both override any contrary provisions in the terms of service. If the terms of service do not provide anything related to fiduciary access, then the default rules of RUFADAA apply. This law does not limit a fiduciary’s ability to obtain a court order granting the same level of access. In fact, the law expressly provides for such judicial relief and gives fiduciaries alternative means to reach the same end.

HB 1554 does not grant fiduciaries unfettered access to the user’s digital assets. Custodians have discretion when it comes to what information they provide. If they choose, custodians may give a fiduciary full access to the account, or they may choose to grant only partial access so that a fiduciary may perform its duties. Custodians may also choose to give a fiduciary a copy of the record, like bank statements, without allowing the fiduciary any online access. For example, Facebook only lets a legacy contact respond to friend requests, update profile and cover photos, and write a post to the profile. The legacy contact cannot log in to the account as the user or read private messages. However, if the user consents to disclosure of more information or the court orders it, then the custodian must comply. At the bare minimum, the RUFADAA requires disclosure of digital assets, but fiduciaries may be granted access or even control, depending on the user’s wishes.

This statute will become effective on January 1, 2017. However, it will retroactively apply to wills, trusts, pow-

ers of attorney, and other documents created before the effective date. In addition, custodians can choose to honor the legislation before the January 1, 2017, effective date. Therefore, if any user passes away or becomes incapacitated between now and the effective date, the custodian may choose to follow the terms in the user's estate planning documents.

This article was originally published in the 2016 Oregon Legislation Highlights, authored by Susan Gary, University of Oregon School of Law; Eric Wieland, Samuels Yoelin Kantor LLP; and Walker Clark, Samuels Yoelin Kantor LLP and published by the Oregon State Bar Public Affairs Department. Reprinted with permission.

Coverage Corner

Q: Do I have coverage for a data breach or cyber extortion event under my PLF Coverage Plan?

A: Under your individual PLF Primary Coverage Plan, you do not have coverage for data breaches or cyber extortion events that may occur in your law firm. These breaches are excluded under the "Confidential or Private Data Exclusion" of Section V.22 of the 2016 PLF Claims Made Plan. However, if your law firm carries excess coverage with the PLF, then there is coverage for these types of data breach events. This coverage is provided by separate endorsement and is included with all coverage issued through the PLF Excess Program. Limits for the excess Cyber Liability and Breach Response Endorsement are \$100,000 for law firms of 1 to 10 attorneys and \$250,000 for law firms of 11+ attorneys. Beginning in 2016, the Endorsement now also includes coverage for cyber extortion events (also known as ransomware attacks). These events are covered up to \$10,000 with a \$2,000 deductible.

The Excess Program does have the ability to underwrite cyber limits above those automatically included with the Endorsement by separate application. To learn more about the cyber coverage offered by the PLF Excess Program, please visit www.osbplf.org/excess-coverage/cyber-endorsement.html.

If you have questions about PLF coverage, call Emilee Preble or Jeff Crawford at 503.639.6911.

Oregon eCourt Update

Mandatory eFiling Schedule/Updated Mandatory eFiling Brochure: The OJD Mandatory eFiling Brochure has been updated to reflect the latest 2016 implementation schedule. Morrow, Umatilla, Wallowa, Union, Grant, Harney, Baker, and Malheur are the last counties to go live with mandatory eFiling on August 29, 2016. The brochure contains steps to get ready for eFiling, including information about online training, Uniform Trial Court Rules, and computer system requirements.

Email from the Courts: Your email address listed with the Oregon State Bar is the email address the circuit courts will send attorney notifications to, so make sure the Bar has your current email address. Set your email program and computer system security settings to allow links from the following OJD email addresses to come through:

Court_Notification@ojd.state.or.us

Hearing_Rescheduled@ojd.state.or.us

Hearing_CANCELED@ojd.state.or.us

Hearing_scheduled@ojd.state.or.us

Judgment@ojd.state.or.us

efilingmail@tylerhost.net

New Interactive iForms: The OJD has made interactive forms (iForms) available through its new online service, OJD iForms. Filers using OJD iForms will answer questions contained in an online interview process, which then generates court forms based on the filer's answers. Once a form is completed, filers can (depending on the form) either eFile the form in courts that currently have eFiling or print the form and file it themselves at any Oregon circuit court. The first group of iForms will be available on the OJD website starting on September 21, 2016, and can be filed in all OJD circuit courts. There is no fee to use the OJD iForms; filers will only be required to pay the normal circuit court filing fees when their forms are eFiled or submitted in person to the court.

Repeal of SLR Chapter 24: Chief Justice Balmer has signed CJO 16-031, which repeals Supplementary Local Rules (SLR) Chapter 24 in all judicial districts, effective August 1, 2016. In light of statewide implementation of the Oregon eCourt Program, the 2016 Uniform Trial Court Rules have been amended, effective August 1, 2016, to include provisions equivalent to those contained in SLR Chapter 24. The changes to the UTCR render SLR Chapter 24 redundant.

More information about Oregon eCourt can be found at: <http://courts.oregon.gov/Oregonecourt/pages/index.aspx>.

Adjusted Public Body Tort Liability Limits, Effective July 1, 2016

The Office of the State Court Administrator has completed the annual adjustment of the limitations on liability of state and local public bodies for personal injury, death, and property damage or destruction. The limitations are adjusted as shown in this table:

PUBLIC BODY	CLAIMANT(S)	CLAIM	ADJUSTED LIMIT
state	single	injury or death	\$ 2,073,600
state	multiple	injury or death	\$ 4,147,100
local	single	injury or death	\$ 691,200
local	multiple	injury or death	\$ 1,382,300
state or local	single	property damage or destruction	\$ 113,400
state or local	multiple	property damage or destruction	\$ 566,900

These new limitations became effective July 1, 2016, and apply to all causes of action arising on or after July 1, 2016, and before July 1, 2017.

A list of past and current limitations on liability of public bodies can be found on the Oregon Judicial Department website at http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.aspx.

BRUCE C. MILLER
SENIOR STAFF COUNSEL TO STATE COURT ADMINISTRATOR
OREGON JUDICIAL DEPARTMENT

A Step Ahead of Disaster

In 2008, Scott Adams's law office and home, located a few miles north of Banks, were ravaged by a home fire. Like many rural lawyers who practice out of their home, Scott's office was attached to his house. The fire started while Scott was at home, and he was able to quickly get his family out. Scott has also been a firefighter for almost 20 years. When he first noticed smoke, he began investigating. As he traced the smoke, the utility room adjacent to his office flashed over and exploded in flames. The flames came down three feet from the ceiling in the utility room, the hallway, and his office.

Scott knew it was time to get out of the area. He grabbed his computer from his office and threw it into the backyard – ripping all the cords from it. He then scooped all loose papers that he could manage off his desk and carried them out. These papers included client files, client mail, phone notes, personal mail, Christmas cards, and receipts from his wallet. He could not return to the office to retrieve more documents as the flames were now too low. Every loose piece of paper left in his office was burned or charred. Closed and open client files as well as other papers and media contained in his metal file cabinets were damaged from the smoke but still recoverable. This personal brush with disaster taught Scott a valuable lesson in planning ahead.

Scott does many things differently now than he did eight years ago. First, he now scans contemporaneously. He scanned in the past, but not to the current extent. He has a policy where no piece of paper leaves his desk and gets acted on unless it has been immediately scanned. Having his files digitized allows him to store them at a location not affected by local disasters.

Second, Scott uses a cloud data storage service to store and sync his data. This allows him to access and retrieve his files anywhere and anytime. Even when he has no Internet connection, Scott can still view his files offline. (This is made possible because the service provider automatically caches or saves a version of the files so they can be accessed offline.) Scott's concern about data loss is minimized by not having to store his data on a physical device that could be destroyed or fail. Before the fire, Scott backed up the data on his laptop to the hard drive of his desktop.

Third, Scott has two working laptops with mirror-image contents ready to go. His essential law office programs – email, practice management, accounting, and Adobe Acrobat – are installed on both computers. Using his cloud storage and syncing service, he's able to access the most current version of his files on either computer. He uses one laptop for

his day-to-day work and the other as a backup in case the first one fails or is destroyed. He has his backup computer close to him so he can just take it and leave in the event of a disaster. This will enable Scott to continue serving his clients without much interruption even if his office is completely destroyed by a disaster.

Finally, Scott's disaster plan includes a transition plan. He made arrangements with two local lawyers to assist him in the event of his death or incapacity. One attorney would have access to his computers and files, and the other would take over his cases. He manages his practice with this transition plan in mind. For example, Scott takes time to enter sufficient notes in a matter so the assisting attorneys would accurately know the status of any file. Scott has communicated his transition plans to his family members so they know whom to call when necessary. To create your own plan, see "Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death," available at www.osbplf.org.

Scott asks a question that every lawyer should ask herself or himself: If I can't go back to my office, can I still practice tomorrow? If your answer is no, then now is the time to plan for a disaster. Don't put off planning just because you don't live in a danger or disaster zone. Disasters are not limited to natural catastrophes like wildfire, flooding, and earthquake. They include technological meltdown, localized incidents such as a burst pipe, structure fire, industrial accident, or anything that causes a major disruption in services and the operation of a business. Oregon is expecting a major earthquake that will devastate much of the state. Take steps to protect yourself, your law practice, and your clients before it happens. The better prepared you are, the faster you will have your law office up and running again.

Here are some tips to help you prepare for and recover from a disaster:

Inventory Your Office

If you store files in multiple locations – some in filing cabinets, some in cloud file storage providers like

Resources – Disaster Recovery

- Practice Aids: Disaster Recovery
www.osbplf.org>Forms> Disaster Recovery
- Article, "Act Now to Avoid Disaster," Scott Adams
www.osbplf.org>Practice Management> Publications>In Brief>May 2008

DropBox, and some emailed to yourself – make a list of what files are stored where. Without knowing where your files are stored, recreating or accessing your complete files will be challenging after a disaster. Inventory all equipment, software, furniture, and anything of value. You may realize you don't need much to practice law: possibly just your computer, a few programs, and your data. This will help you decide how best to protect those things. If you practice out of your home, be sure to inventory all your personal belongings, too. It's easier to assess post-disaster damage with this list. You can provide the inventory list to your insurance claim adjuster later on.

Protect and Back Up Data

Going paperless makes it easier to protect and back up your data. Filing cabinets full of active unscanned files make you vulnerable to a complete data loss. Data can be backed up to an external hard drive or a network attached storage. You can back up your entire computer by disk imaging or disk cloning. Just make sure you protect the backup device in the event of a disaster. Cloud data storage and backup ensures your data will be saved even if you lose your computer. With advance notice of a disaster, you may be able to remove all contents off your desk or from the filing cabinets to your car and drive to a safe location. But sometimes there is no notice and little time to do anything other than to evacuate. The peace of mind of knowing that your data is protected will let you focus on other urgent matters related to disaster survival.

Have a Response Plan

A response plan will help you figure out what needs to happen next after disaster strikes. There might be people whom you have to call or contact right away. Prepare a list of emergency contact names and numbers and make it available to family members and lawyers and staff in the firm. Make sure you always have an updated list of all client matters you can access after disaster to determine the proper action to take, such as seeking a continuance or postponement. Phone or Internet services may be limited or unavailable, so make sure you have an alternative way to communicate with clients, staff, the court, and other lawyers. Arrange in advance for a temporary office space where you can work and a temporary storage facility for your physical files. It doesn't hurt to have a list of all vendors and their contact information to cancel or reorder services. Establish a network

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of support you can rely on for temporary shelter, food, and other forms of assistance.

Protect People and Things

A smart way to prepare for disaster is to have adequate insurance. Scott's insurance policy at the time of the fire covered the loss of his papers. His insurer hired a company to go through the damaged papers and wipe down each page with special rags to remove smoke residue. This helped to save a lot of Scott's documents damaged from the smoke.

Many types of insurance are available, from property and content insurance to business interruption insurance to life and disability insurance. Review your insurance policy to see whether the coverage is adequate. You should pay attention to exclusion clauses and limits. Consider getting extra coverage for things like loss of income, replacement value, cleaning/restoring cost, and valuable papers coverage that includes the cost to recreate files. An insurance broker may be able to help you get the right insurance product that will protect you and your practice against a disastrous event.

Conclusion

A few days after the fire, Scott was able to take care of some basic tasks related to his adoption law practice. He

spent the next six months working as much as he could out of a trailer and later a rental house that he and his family were living in while his home and office were being rebuilt. Scott regularly felt the loss of his files, accounting records including checks, and other papers that made up his law practice. It took Scott over a year before he stopped feeling the effects of the damage to his office. Scott feels confident the steps he has taken since the fire will help him better manage and prepare for future disasters.

There are many ways to prepare for a disaster. Scott has come up with one plan that works for him. You, too, should come up with a plan that works for you.

For additional discussion on ways to plan for disaster, please read "Act Now to Avoid Disaster," by Scott Adams, available at www.osbplf.org. Additional resources on disaster planning are available at the PLF website. See the resources box on page 9.

Thank you to Scott Adams, who still practices adoption law in Banks, for sharing his personal experience and lesson in planning ahead with us.

HONG DAO

PLF PRACTICE MANAGEMENT ADVISOR

Changes to PLF Policy on Installment Payments

The PLF Board of Directors and the OSB Board of Governors have approved changes to PLF Policies 3.300 and 3.350, effective in 2017, regarding installment payments of the PLF assessment.

Current PLF policy provides that the deadlines for installment payments are January 10, April 10, July 10, and October 10. If an attorney fails either to pay the full assessment on January 10 or to elect installments and pay the first quarter and service fee by January 10, the attorney is charged a late fee of \$50 provided the attorney pays by January 24 (two weeks after the January 10 deadline). If the attorney pays later than January 24, the late fee is \$100 per month for each full or partial calendar month the attorney is in default. The attorney also loses his or her right to pay in installments. The late fee for the subsequent installment payments is also \$100, and the attorney also loses the right to continue to pay in installments.

Effective in 2017, all late fees will be the same: \$100 for every month or part of a month. If an attorney misses any quarterly deadline, the attorney does not lose the installment privilege provided the attorney pays no later than one month after the due date. (The deadlines and restrictions are slightly different for lawyers who join coverage midyear.) For example, a lawyer who pays the second installment on April 11 owes a \$100 late fee and the second quarterly installment. The lawyer no longer forfeits the ability to pay in installments, provided the \$100 late fee and installment payment are paid no later than one month after the due date. If the payment is not received by then, no installment will be accepted, and the lawyer must pay the remainder of the full assessment to avoid suspension proceedings. The timing and process for suspension are unchanged. A lawyer does not lose coverage for being late in making a payment.

For questions about coverage, call Emilee Preble or Jeff Crawford at 503.639.6911.

Tips, Traps, and Resources

ECOURT EMAIL SCAMS: The PLF is aware of a recent situation involving an Oregon lawyer who received a fake court email notice from the domain name of @dulichdongtrang. The attorney had a hearing in a particular county on a certain date, and the fake court reminder contained the exact date and an attachment of “Court Notice.” The attorney’s virus scanner was able to detect a problem and flagged the email. Now that many Oregon circuit courts are on the Oregon eCourt system, attorneys will likely see more phishing emails that look like the real thing, with the court domain name in the sender’s email address. It is a good reminder for attorneys to guard against emails that appear to be from the eCourt system, and, in particular, to watch for the actual domain name, not just the sender’s name.

EMAIL MANAGEMENT: Use Quick Steps in Outlook 2010 and newer versions to automate repetitive tasks to better manage your emails. Instead of copying and pasting the content of an email or dragging and dropping that email to the “Calendar” to make a new appointment, use Quick Steps. Instead of dragging an email to its appropriate folder, use Quick Steps. Learn how to use Quick Steps through Lynda.com at <https://www.youtube.com>.

PRODUCTIVITY: Follow the three-email rule: If it has already taken three emails to discuss something (such as scheduling a meeting or explaining/resolving an issue), then pick up the phone and talk. It’s more efficient and productive. You can choose to inform the recipient of your three-email rule in your signature block.

EMPLOYMENT LAW: The Department of Labor issued its long-awaited revised overtime regulations to the Fair Labor Standards Act (FLSA). The last major revisions to the FLSA were in 2004, and employers have been operating under these standards since then. The revisions reflect a significant change in how employers can determine which employees are exempt and which employees will now be entitled to overtime. One thing that won’t change, however, is that failure to be in compliance with the new requirements when they are implemented can result in significant liability for an employer. The effective date of the final rule is December 1, 2016. Visit <https://www.dol.gov/whd/overtime/final2016/> for more information.

Thanks to Sheila Blackford and Hong Dao, PLF Practice Management Advisors, for these tips and traps.

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Cases of Note

ARBITRATION / DAMAGES: The September 2015 issue of *In Brief* featured an article, “Arbitrator’s Discretion to Consider Issues,” by Gary Berne of Stoll Stoll Berne Lokting Shlachter P.C. Lawyers. The article discusses the court of appeals decision in *Couch Investments, LLC v. Peverieri*, 270 Or App 233 (April 1, 2015). The lower court held that ORS 36.610(1) provides that ORS 36.695(3) (permitting an arbitrator to order just and appropriate remedies) is limited only if there is a specific agreement to waive or vary the effect of ORS 36.695(3). On appeal, the parties argued over the scope of what was submitted for arbitration. The Oregon Supreme Court, at 359 Or 125 (April 21, 2016), affirmed and held that because the stipulation to arbitrate was ambiguous, the trial court was entitled to consider evidence to determine the parties’ intent. The court also held that the evidence was sufficient to support the trial court’s conclusion and that the arbitrator acted within his authority in ordering remedies. www.publications.ojd.state.or.us/docs/S063209.pdf

CONSTRUCTION DEFECT / STATUTE OF LIMITATIONS: In *Goodwin v. Kingsmen Plastering, Inc.*, 359 Or 694 (June 16, 2016), on appeal from 267 Or App 506 (2014), the Oregon Supreme Court held that a construction defect claim under ORS 12.135(1)(a) for damage to the property itself is subject to the two-year limitation period of ORS 12.110(1) – not the six-year statute of limitations in ORS 12.080(3) for interference with or injury to an interest in real property. The court held that the two-year period of ORS 12.110 applies unless another limitation period “especially enumerated” in ORS chapter 12 applies. In this case, the court said no other limitation period applied. Because there was a factual question about when plaintiffs discovered the damage to their property, triggering the limitations period, the court reversed and remanded. www.publications.ojd.state.or.us/docs/S062925.pdf

WORKERS’ COMPENSATION: In *Department of Consumer and Business Services v. Muliro*, 359 Or 736 (June 16, 2016), the Oregon Supreme Court held that ORS 656.210(2)(b)(A) (awarding supplemental temporary disability benefits) requires a claimant to prove that the insurer received actual notice of the claimant’s secondary employment within 30 days of the insurer’s receipt of the initial claim. The court said that the employer’s preexisting knowledge of that employment could not be imputed to the insurer to satisfy the notice requirement. www.publications.ojd.state.or.us/docs/S062922.pdf