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How to make Zoom more user-friendly for elderly clients

By Rachel Edwards, PLF Practice Management Attorney

The pandemic arguably created a time machine that sent us about ten years into the future. It forced elderly clients—many of whom had never used videoconferencing software before—to adopt technology like Zoom. Three years have since passed, and although these clients may be more comfortable using videoconferencing software, steps can be taken to make the process easier and prevent misunderstandings. Below is a list of suggestions for how to make Zoom more user-friendly for elderly clients.

Explain to your clients how Zoom will be used

If you will only be using Zoom for a meeting between you and your client or other third parties, be sure to explain that. If you and your client will be participating in a remote hearing using Zoom, more explanation will be needed based on the court administration’s protocol. Refer to the court’s rules for more information generally about remote hearings, and specifically the use of videoconferencing software.

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You can find helpful information about remote hearings in the Oregon circuit courts on the Oregon Judicial Department website at <https://www.courts.oregon.gov/services/online/Pages/RemoteHearings.aspx> and click on “Documents” or “Videos.”

Zoom vs. phone

If Zoom is not being used for a remote hearing, some elderly clients may wonder why they should go through the hassle of understanding and using videoconferencing software when a phone call would suffice? Many of us are so used to the program that we have forgotten the benefits of using Zoom. Think about why a videoconference is preferable to a phone call. Depending on the interaction, the ability to see your client’s face can be helpful. Generally, people are more engaged and process information better when there is visual communication in addition to audio. Zoom also includes features that enable more interaction than a phone call, including screen sharing, file sharing, and messaging. For example, if you want your client to review a draft document, you could share your screen during the meeting.

Determine the most suitable device

Not everyone has a device with a built-in camera and microphone. Ask your client beforehand if they have access to a device with these capabilities. If they aren’t sure, send them a meeting link and tell them to click on it. This should prompt a test and will tell them if their device has a camera and

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Zoom *Continued from page 1*



Rachel Edwards was in private practice for four years before joining the Professional Liability Fund in 2016. Her areas of practice included Social Security disability, family law, adoption, and estate planning cases.

In her role as a practice management attorney for the PLF, she 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.

Ms. Edwards writes for the PLF's [inPractice blog](#) and tweets technology and practice management tips on [Twitter](#).

microphone.

If they do not have access to this type of device, determine whether they have possible access through a friend or family member, but keep in mind the importance of confidentiality.

Most newer laptops, tablets, and smartphones contain a camera and microphone. Mac desktop computers do as well. However, most PC monitors do not. Clients may want to consider using headphones equipped with a microphone, which allows them to hear better and lets others hear them better. Also remind clients to ensure the device they are using is fully charged and has a reliable internet connection. They should check the device's operating system to see if there are any pending updates and run those on the device before the meeting.

Let the client know beforehand if you will be sharing documents during the meeting. If they plan to use a smartphone or tablet, the screen may be too small to view the document easily, and they may want to consider using a different device.

Let clients know that Zoom does not allow them to be simultaneously logged into the application on more than one device of the same type. You can be logged in to Zoom on one computer, one tablet, and one phone all at the same time. But if you log in to Zoom on an additional device of the same type, you will automatically be logged out of the meeting on that first device.

Zoom application or browser

A client can enter a Zoom meeting through the Zoom application or their website browser. If clients will be using the Zoom application, encourage them to download the application to their device before the meeting if they haven't already done so. If clients will be entering the information into the Zoom website, be sure as the host that you have the "Join From Your Browser" link enabled in your Zoom account. Once they click on the link, a pop-up window will prompt them to open or download the application. If they hit cancel, at the bottom of the page they then click "Join From Your Browser."

Zoom link or meeting ID

Find out whether your client would prefer to click on the Zoom link, or enter the meeting ID.

Zoom link. Once you create a Zoom link, you will provide them with the link and they will click on it. This will immediately take them to the meeting room. Clients do not need a Zoom account to join a meeting as a participant. If the client prefers to use the Zoom link, determine how best to send it to them beforehand.

Zoom links are usually quite lengthy and contain a collection of numbers, upper and lowercase letters, and symbols. I would discourage you from allowing your client to write it down because it is likely a mistake will be made. Best practice is to send the link to their email. When clicked on, it takes them directly to the meeting. Ideally, if they use a digital calendar like Outlook or Google, they will be able to add the meeting information to their calendar.

Zoom meeting ID. A client can enter the Zoom meeting ID (and password if necessary) directly into the Zoom application or Zoom website at <https://zoom.us/join>. The meeting ID is much shorter, usually about the length of a phone number, so writing it down is feasible. Just be sure they don't lose the information beforehand, and that they understand the importance of keeping it confidential so others are not allowed into the meeting.

Ideal location and etiquette

Clients should find a private, quiet location to participate in a Zoom meeting. It is easy for background noise to be heard through a microphone, so they should be alone in a room.

This includes privacy not only from people, but pets as well. Pets in the background or on people's laps can create a distraction.

Also discourage your clients from using virtual backgrounds if possible. They can be distracting, depending on the type of background being used, especially if it causes blurring around the outline of the participant. This is usually caused by lack of light

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Zoom *Continued from page 2*



A Zoom tip sheet you can give to your clients can be downloaded from the Elder Law Section website at https://elderlaw.osbar.org/files/2023/05/Zoom_Tips_for-clients_3.pdf

in the room and the application is unable to distinguish between the person and the background.

If a virtual background is necessary, for example if they are not able to find a location with lack of clutter or a blank wall, advise the client to use a plain virtual background with minimal clutter to avoid distraction, and increase light in the room if possible to lessen the chances of blurred outlines.

Also remind clients to position the camera at eye level and look into the camera as much as possible. It can be easy to look at the screen where the other participants are located, but looking into the camera is ideal so that you are making eye contact.

Internet connection

Remind clients that a Zoom call can take up a lot of bandwidth on an internet connection. Encourage them to close any other programs or browser windows open on the device while on the call to prevent it from freezing. If they are using a WiFi router, they may consider moving as close to the router as possible or using a hardwired device through the modem. Older devices may have more difficulty in general, so suggest they use a newer device if possible.

Practice session

Consider a practice session with your client before the meeting or hearing so they feel more comfortable with using the program, such as how to mute and unmute, or start and stop the video. This also allows you to verify they have the correct Zoom information. It also gives you the opportunity to see their location and possibly provide suggestions for improvement, such as testing a virtual background.

The key to making Zoom easier for elderly clients is to explain and practice beforehand and understand their preferences. They will appreciate the time you have taken to explain the process and for tailoring your practice to their needs. ■

ZOOM Resources

Zoom Training

Zoom Meetings Training Guide

<https://assets.zoom.us/docs/user-guides/Zoom-Meetings-Training-Reference-Guide.pdf>

Zoom How-To Video Tutorials

<https://learn-zoom.us/show-me>

Zoom FAQs

<https://support.zoom.us/hc/en-us/articles/206175806>

Top 20 Zoom Resources

<https://support.zoom.us/hc/en-us/articles/360042982391-Top-20-Zoom-resources>

Articles for attorneys

Zoom Best Practices for Lawyers

<https://www.masslomap.org/zoom-best-practices-for-lawyers-on-demand-program/>

Getting Started With Zoom – and Using It Securely: Some Advice

<https://www.attorneyatwork.com/getting-started-with-zoom-security/>

Video Conferencing for Lawyers: How to Video Conference Like a Pro

<https://www.clio.com/blog/video-conferencing-for-lawyers/>

Working and Meeting in the Age of Social Distancing

<https://www.osbplf.org/blog/inpractice/working-and-meeting-in-the-age-of-social-distancing-/>

Working with spoken-language interpreters in the law office

By Ivonne Saed, Court Certified Interpreter



Ivonne Saed has more than a decade of experience as a court certified interpreter in Oregon. As an author, translator, graphic designer, and photographer, she navigates between the visual and the textual. She has written and co-written several books. Her book reviews, short fiction, and photos have appeared in *Reforma*, *Crónica* (Mexico), *Literal Magazine* (US), and *Arquivo Maaravi* (Brazil). Her work has been discussed by academics in a number of publications, and has been staged by Jewish Theatre Collaborative (Portland) and *The Braid* (Los Angeles).

When an attorney has a client who speaks a language other than English as a first language, many adjustments must be made in order to have successful communication and to provide fair access to justice for the client. Good intentions are not enough. For instance, using a language telephonic line, a bilingual family member, or an onsite non-certified interpreter is inadequate, as these choices can lead to serious legal issues.

Court-certified interpreters are familiar with the legal system, how it works, and the characteristics of court hearings. They also abide by a code of ethics and understand the specialized language of law. As all professionals in the various areas of the legal system know, judicial English differs from the colloquial English we use in our everyday lives, and the same term may mean something completely different depending on context. Interpreters who are not court certified, even if they are seasoned professionals with years of experience, may incur false cognates and other mistranslations because they do not have the knowledge and skills necessary to provide a limited English proficiency (LEP) person with full understanding of a legal proceeding.

When you work with people from other countries who do not speak English—or who do speak the language, but not fluently enough to feel confident in a legal setting where so much is at stake—it is critical for the attorney to make sure the client not only understands the words, but the system as a whole, and how any decision may have an effect on his or her life. It is also important for attorneys to be aware that the legal system in the United States will not necessarily be the same legal system in the place where their client grew up (e.g., civil vs. common law) and this may lead to significant misunderstandings beyond language.

In Oregon, sworn interpreters abide by the Code of Professional Responsibility for Interpreters in the Oregon Courts (<https://www.courts.oregon.gov/programs/interpreters/policies/Documents/EthicsCode.pdf>). It would be useful for attorneys to become familiar with the interpreter's code and to understand the differences between it and

their own code of ethics as lawyers. When the client appears in court, an interpreter will be provided by the court and not by the attorney, and the role of the interpreter will be strictly limited by the code of ethics, including the rule on impartiality. Therefore, it is the attorney's job to provide their client with a prior understanding of how things work before the hearing, and to make sure the client is not making assumptions for any reason, including because they may be relating to a system that does not correspond with the Oregon legal system.

During an attorney-client meeting the interpreter may notice a misunderstanding and bring the issue to the attorney's attention because the session is not a legal proceeding—as opposed to when the client appears in court, where the interpreter will have no authority to intervene and talk about cultural misunderstandings, linguistic equivalences, or any other issues.

A number of issues must be considered when interpretation is needed. Cultural differences, physical positioning in the office, and perceptions of authority are just a few of them.

Tips for a successful attorney-client meeting

Schedule the interpreter a few minutes early

Sit with the interpreter and talk about the case. This will give the interpreter the opportunity to identify possible situations where the client may need further explanation and bring that to the attorney's attention.

Schedule enough time

Consecutive interpretation means you will need at least double the time you would usually require for a meeting in English. Besides the fact that everything will be said twice, you will need a longer time for introductions; and chances are high that, at some point, clarifications will be needed.

Greet the client together with the interpreter

Your client will feel welcome, more comfortable and understood from the beginning.

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Interpreters

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Never leave the interpreter alone with your client

As a trainer said in one of the first sessions I took to become an interpreter: “It takes two to tango, it takes three to interpret.” People naturally tend to feel an affinity with others who speak their own language, and it is very common for clients to start talking about their case with an interpreter if the two of them are left alone in the room. But being a linguist and not a legal expert, the interpreter cannot and must not provide legal advice or opinions about the case. Giving such a response to the client may sound evasive or rude in the perception of the latter, therefore creating a tense situation where the client may feel intimidated or uncomfortable with that interpreter.

Position yourself in front of your client and address the client in the second person

Have the interpreter and the client sit next to each other in front of you and speak directly to the client, making eye contact at all times and using the pronoun “you.” Do not ask the interpreter to relay a message—for example, “Tell client that he should call me next week.”)

This physical positioning and addressing the client in the second person will encourage a more natural connection between attorney and client, making the interpreter a participant whose only task is to voice their words.

Speak one sentence at a time

Interpretation in the office is usually consecutive, not simultaneous. This means both attorney and client should preferably speak one sentence at a time, so that everything said may be interpreted accurately.

Perception of authority

Some LEP individuals, particularly when they have not had enough education and have had entry-level jobs in their countries of origin, may be afraid of any person they see as authority. Often that person will be the one sitting in an office, speaking English, and telling them about their case. It is very useful to create a welcoming environment, where clients feel the people in the law office are on their side, and communicate in an understandable language.

Remember: the interpreter will keep the spoken style or register of speech at all

times, so if you use a highly specialized jargon in English, a similar specialized jargon will get to the clients’ ears in their own language.

Cultural misunderstandings and other linguistic barriers

In the attorney’s office an interpreter may notice a cultural misunderstanding or some linguistic barrier of another kind. The interpreter should bring this to the attorney’s attention, speaking as “the interpreter,” and beginning the sentence in the third person. For example, “The interpreter believes client may not understand what the word beneficiary means.” That way, the attorney will know this was not something said by the client, but by the interpreter. At that point, they can have a normal conversation about what the issue is, so the attorney can decide if they need to clarify something for the client. Once this short conversation between interpreter and attorney ends, the interpreter will briefly relate to the client what just happened and go back to translation as before.

Sight translation of documents

When the attorney needs to have a client read and sign a document that has not been translated, the interpreter can sight-translate it for client. The attorney must stay in the room during the entire reading, and it is highly advisable to have the attorney follow the interpretation one paragraph at a time in order to summarize the difficult or more critical sections to the client, to make sure the latter is completely aware of what he or she will be signing or agreeing to.

Do not ask the interpreter to act as your legal assistant.

It is very easy to trust a court interpreter with assisting the client when they both speak the same language, but interpreters are not legal experts, and they are there exclusively to interpret everything that is said, so clients have a clear understanding of their legal situation and the attorney a clear knowledge of the facts of the case and the client’s needs. ■

Glossary of relevant terms

A **translator** converts written materials from one language to another.

An **Interpreter** translates orally for people who speak different languages.

Consecutive interpreters listen to what the speaker is saying, and convey the message into another language after the speaker has paused. Typically, the speaker will pause after each complete thought to give the interpreter time to deliver the message.

Simultaneous interpreting is a mode of interpreting in which the speaker makes a speech and the interpreter reformulates the speech into a language his audience understands at the same time (or simultaneously).

Sight translation involves reading a text silently in the source language, and then speaking it in the target language.

Source language is the language from which a text or speech is to be translated into another language.

Target language is the language into which a text, document, or speech is translated.

Register is the way a speaker uses language differently in different circumstances. Registers are marked by a variety of specialized vocabulary and turns of phrases, colloquialisms, the use of jargon, and a difference in intonation and pace.

Limited English Proficiency (LEP). Applies to Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

How to interact with grieving clients

By Katherine Hatch, MSW, LCSW, LICSW, LCSW-C



Katherine Hatch is a grief and trauma psychotherapist, advocate, and educator. She owns *Grounded Grief*, a grief-focused psychotherapy practice that serves individuals and groups in Portland, Oregon, and Washington, D.C.

Katherine served as a clinical social worker in palliative care and hospice settings in Colorado, Oregon, and Maryland. She oversaw the Bereavement Program for Holy Cross Hospice in Maryland, and then worked as a grief and trauma psychotherapist for the Wendt Center for Loss and Healing in Washington, DC.

Elder law attorneys interact with grieving clients on an almost daily basis. Being in the presence of grief can feel frightening. Grief can show up as raw and unfiltered, big and ominous, unpredictable and confusing. Without conscious awareness, witnessing grief enacts an empathy response, which is a limbic system connection to another being, eliciting a pain within ourselves that seeks to mirror the pain that we see. Empathy is a human superpower that allows us to connect intimately with others, yet it can also be exhausting and unsettling. No matter how brief this empathy connection is, it is common to seek distance from this pain, as well as the uncomfortable feeling of helplessness that often accompanies this interaction.

There are so many methods we use to distance ourselves from this pain. When coming in contact with deep grief, it is common to blame or pity, as well as to rationalize the reason for someone's death, even if you do not know any details. These distancing acts are not inherently malevolent, and often not conscious. Rather, they are methods of protection from feeling our own fears about grief, loss, and death.

Much of my work as a grief therapist is to help individuals and groups build tolerance for the emotional terrain of grief, which includes much more than just pain and mire and desolation. Grief is larger and more complex than that. Grief is not a mental health disorder. Rather, it is a wise and adaptive human response to the experience of loss and change. Grief is our biological imperative and tool to navigate the events and experiences in our lives that are not fair, that cannot be fixed, that will never be reversed, and that cannot be controlled. Experiencing and welcoming grief can be an act of survival amidst immense loss and change.

With all this said, it still can be scary, and perhaps even frustrating and intense, to work with those who are grieving. Here are some thoughts on how to approach grief in your work.

Create containers

Container is a word used in the mental health sector to refer to offering structure and safety to a client. Providing information

about what is about to happen, how it will begin, and how it will end, is an effective and efficient container that can provide relief to someone navigating stress, grief, and trauma.

Let the client know what is about to happen and how much time it usually takes. Please keep this succinct. Many people navigating legal matters often experience a trauma response to the financial aspects (such as monthly billing statements), a hesitancy to email or call in an effort to save money, an attunement to the running clock, and the sight of their reality written down in such formal language. Containers in the form of expectations and timelines help.

Create opportunity for connection

Try to understand the differences between empathy, compassion, and sympathy or pity. Pity is an emotion that creates distance between ourselves and another person. Empathy is a limbic system connection with another person's pain that is powerful and yet can be exhausting and trigger helplessness if we remain in it for long periods of time. Compassion is a feeling of warmth and care toward another being that does not deplete. Notice when you are in each of these experiences with your clients.

In addition, speaking about the loss or impending loss will not make it worse. The client is already thinking about this all of the time. Our fear of mentioning the topic is mostly a fear of our own emotions around how the person might react. Emotions are not bad. They just are. Asking about the person for whom your client is grieving will help. Even a simple question such as, "What was she like?" can create an opening and connection with your client and pave the way for your work with them.

Manage your own helplessness

Fear is normal in the face of deep pain and emotion. People experiencing grief sense fear and "tiptoeing." One way to manage your own helplessness is to acknowledge it.

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Grief

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Some simple ways to do this might include:

- *I'm not exactly sure what to say. But I am here.*
- *Even though my job is _____, I am human and want to be with you right now in that.*
- *Sometimes, there are no right words.*
- *How brutal this all is/this has been.*
- *I am just going to sit here with you. I am not afraid of your grief. This is a lot.*

Be familiar with normal acute grief symptoms

Grief affects us humans globally—meaning it will show up in our physical bodies, our minds, and in our emotions. Grief is relational. It is an expression of love and connection. How we humans experience our grief is in direct relation to the nature of attachment to the person we are grieving. If the relationship was big and important and daily, our grief will show up as such. If the relationship was complex and confusing, our grief might also feel that way.

Be aware of assumptions: not all grievers are mentally impaired

Emotional attunement and connection, even if you are a stranger, provides an opportunity for the client to regulate their nervous system and gain greater access to clarity. Acute grief, which is the initial phase of bereavement, is often stereotyped as a time when clients cannot make any rational decisions. I disagree. While acute grief can impart a benevolent fog and surreal quality to life, grievers experience waves of the fullness of reality and clarity, and are often more mentally functional than others judge them to be.

Know what *not* to say

It is so tempting to connect by sharing our own experiences. While this comes from a benevolent place, I urge you to pause before sharing your own grief history with a client navigating acute grief, unless those stories are solicited. Some phrases to avoid include:

- *I cannot imagine*
When we say this, we are actually imagining, and then we stop ourselves. Instead, you can offer: *This is all so much* or *How brutal*
- *I understand.*
Instead, you can offer: *I hear you.*

- *They are in a better place.*

Those who have just experienced a loss are not grieving because their person is in heaven—or somewhere that you or they find comforting. They are grieving because their person is not physically present. Know that this phrase is more about the comfort of the person offering it, than it is about the person hearing it.

Know that grievers do not need fixing

More often than not, people experiencing grief do not remember the exact words spoken in interactions about their situation, yet they do remember what it felt like to be in the presence of someone who tried to connect. Was the space warm and welcoming, no matter the topics discussed? Did the person tiptoe around me? Did the person seem afraid of my situation or my grief? Did the person try to connect with me, even if they stumbled over their words or said something that didn't land?

Grievers are not inherently broken. Their world is shattered, and it can look messy and uncomfortable, yet they are just humans navigating something each of us will one day face. They ache for someone to witness where they are and not turn away from their pain. They need being with, not fixing. And sometimes, that being with on a particularly raw day could come from a momentary kindness with you. ■

NORMAL GRIEF SYMPTOMS

Physical

- Fatigue, low energy
- Change in eating habits
- Change in sleeping habits
- Weight gain or loss
- Physical symptoms: headaches, upset stomach, body aches, etc.
- Tightness in chest

Emotional

- Feeling overwhelmed
- Crying easily ... often
- Feeling numb ... angry ... sad ... lonely ... withdrawn
- Yearning for your loved one
- Feeling irritable, impatient
- Feeling as though you are going crazy
- Feeling as though you can't go on or a part of you has died
- Feeling that life will never be happy again

Mental

- Being forgetful ... in a fog
- Having difficulty concentrating... focusing
- Being indecisive
- Having a short attention span ... being easily distracted
- Being disorganized
- Procrastinating

Spiritual

- Questioning life ... relationships ... philosophy of living
- Anger at God or your Higher Being
- Inner conflicts
- Lack of meaning or purpose in life

Court-appointed attorneys and applying for publicly funded fees in protective proceedings

By Daniela Holgate, Attorney at Law



Daniela Holgate is an associate attorney with the law firm of Samuels Yoelin Kantor. Daniela's practice focuses on guardianships and conservatorships, as well as probate litigation, and estate administration matters. She also assists elders and their families with elder abuse restraining orders (EPPDAPA) and elder financial abuse matters.

Oregon Senate Bill 578 has opened a pathway for court-appointed attorneys for respondents/protected persons in protective proceedings to be paid for their services from public funds. Most court appointments were taken on a pro bono basis before this bill, which changes ORS 125.080 and makes the appointment of counsel mandatory in some situations.

On March 2, 2023, Multnomah County Chief Probate Judge Patrick W. Henry and I presented at a CLE seminar on the statutory changes to ORS 125.080, how attorneys are appointed for respondents/protected persons, and how they get paid for their services. This article will review those topics, provide a how-to guide on applying for publicly funded fees in a protective proceeding, and explain how members of the Oregon State Bar can get on the court lists for appointments.

Background

Senate Bill 578 changes the language in ORS 125.080 from the court having discretionary authority to appoint counsel for a respondent or protected person to a mandatory requirement in particular situations. Under the new statutory language—which is currently in effect in several counties—if the court requires that a hearing be held:

The court shall appoint counsel for the respondent or protected person when:

(A) *The respondent or protected person requests that counsel be appointed;*

(B) *An objection is made or filed to the petition or motion by any person;*

(C) *The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor recommends appointment of counsel for the respondent or protected person; or*

(D) *The court determines that the respondent or protected person is in need of legal counsel.*

In addition, the changes to ORS 125.080(6)(b) provide that “the court may determine that a respondent or protected person is financially eligible for appointed counsel at state expense and, if so, the compensation for legal counsel and costs

and expenses necessary for representation of the respondent or protected person shall be determined and paid by the public defense services executive director as provided under ORS 135.055.” So, any formerly pro bono appointments can now be paid appointments at the current public rate of \$75 an hour.

The changes to ORS 125.080 will take effect statewide starting January 2, 2024.

How can I get added to the court's list?

The number of required court appointments is expected to rise based on the expanded conditions for appointment, and the mandatory language now in ORS 125.080. In Multnomah County, Judge Henry has extended an invitation for qualified attorneys to apply to be added to the court's appointment list. The following are the qualifications for appointment in Multnomah County:

- Have a license to practice law in Oregon and be in good standing with the Oregon State Bar
- Have experience representing clients with cognitive impairments and demonstrate insight into how such impairments may impact the person's ability to communicate with the attorney
- Have experience representing clients in guardianship proceedings, with special consideration for individuals who have represented respondents
- Demonstrate a working knowledge and proficiency with the Oregon statutory criteria for protective proceedings as outlined in ORS Chapter 125, the Uniform Trial Court Rules, and the Multnomah County Supplemental Local Rules governing protective proceedings

New practitioners may also qualify by partnering with an experienced probate practitioner. (The court can help new attorneys find a mentor.) As a brand-new practitioner, I joined the court-appointed list under the mentorship of an experienced attorney. Being a court-appointed attorney gave me the opportunity to serve my community by advocating for vulnerable clients and making sure their voices were heard

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Publicly funded fees *Continued from page 8*

in an often-confusing court process. It also afforded me the opportunity to gain courtroom experience and become familiar with my local probate judges.

To apply for Multnomah County, send an email to Judge Henry directly at Patrick.w.henry@ojd.state.or.us. An email detailing your experience or your plan for attaining the knowledge and skills described above is sufficient.

For Clackamas County, send an email to Probate Commissioner Brian Thomas at brian.d.thomas@ojd.state.or.us. If the attorney is new to protective proceedings (fewer than three years), they should be working under the supervision of a senior attorney.

For Washington County, send an email to Probate Commissioner Marianne Mickela with a letter of interest to Marianne.A.Mickela@ojd.state.or.us.

For Clatsop County, send an email to Loretta Breedlove at Loretta.Breedlove@ojd.state.or.us.

I'm on the list. Now what?

In Multnomah County, when an appointment is needed, court staff will reach out to an attorney from the court appointment list and request that the attorney accept an appointment. Staff will provide some basic information about the case, which usually includes whether the case may qualify as an Oregon Public Defense Services (OPDS) eligible case for payment. If the attorney agrees to accept a referral, the court will enter an order appointing counsel.

Once the reason for appointment has been resolved, the appointed attorney may file a motion to withdraw from representation.

Steps for payment

The court will provide a form entitled *Declaration of Eligibility for OPDS Payment of Attorney Fees and Costs* which will be completed and filed in the protective proceeding case. The form is typically provided by the court when they request acceptance of an appointment. If a guardian or conservator is appointed, ask the petitioner or appointed fiduciary to fill out this form for you as they will likely have access to the information needed. The form should be submitted to the court confidentially since it will include the protected person's birthdate, Social Security number, and possibly bank account numbers. A cover sheet should be used to alert the court that a filing is confidential.

Based on the Declaration of Eligibility, the court will generate and enter an order on whether or not the protected person is eligible for fees and costs of representation to be paid at OPDS expense.

Next, you will file a motion for approval of attorney fees and costs and a declaration in support of OPDS payment of attorney fees and costs. For the most part, this looks like what you typically would submit if you were applying to have the protected person's funds used to pay your fees and costs under ORS 125.095. Include with your declaration an invoice with your fees, any staff fees, and costs. The invoice must show the hourly rate of \$75/hour. The invoice is where you will list the breakdown of services provided. You must list individual dates of service, hours worked, and brief service descriptions. In your prayers and on the proposed order, you will request approval of the fees and costs, and to authorize and direct the public defense executive director to pay the amount from OPDS funds.

After you have your signed order approving fees and costs, you will prepare for your submission to the Public Defense Services Commission (PDSC). Items you will need for submission:

- Signed order approving fees/costs
- Declaration of attorney in support of OPDS payment of fees and costs with invoice attached. You must be sure the invoice also includes your vendor number, address, client name/case number, and a grand total
- If you are requesting mileage, PDSC provides a worksheet called "Mileage and Travel Expense Worksheet" on their website: <https://www.oregon.gov/opds/provider/Pages/forms.aspx>
- If you are requesting other routine expenses, PDSC provides a worksheet called "Contract Counsel Routine Expense Worksheet" as well
- Using the payment portal requires a vendor number issued by Oregon's Department of Administrative Services. New vendors must send an email to accountspayable@opds.state.or.us to request set up for a new vendor prior to submitting their first invoice. This will allow accounts payable staff to complete vendor set up.

Once you've gathered your items needed for submission, you will go to the "invoice submission" tab on PDSC's website at <https://www.oregon.gov/opds/provider/Pages/invoice-submission.aspx>. Be sure to review the training video and the invoicing procedures prior to submitting your first billing. When your submission is approved you will receive an email with the subject line "Transferred for Payment—Invoice #AP" and your payment should arrive shortly thereafter.

Conclusion

Columbia, Multnomah, and Lane counties already have a dire need for attorneys to accept court appointments in protective proceedings. Beginning January 2, 2024, every county court in Oregon will need willing attorneys to call upon when a court appointment is required. There will be an overall increase in demand for court-appointed attorneys. In consideration of this demand, cases that were previously taken on a pro bono basis due to lack of available personal funds can now be paid by public funds. Please consider applying to be a court-appointed attorney at your local county court. ■

Long term care insurance: claims

By Cynthia Barrett, Attorney at Law



Cynthia Barrett is a retired Portland elder law attorney. She is a volunteer with Oregon's SHIBA program, which provides health insurance counseling statewide on Medicare, health insurance issues, and long-term care.

Some people actually review their long term care insurance (LTCI) policy before a decline, to understand when and how claims should be filed.

Most holders of LTCI policies are early planners, or they would not have purchased policies. However, few of these early planners understand the benefit triggers in the policy or the mechanics of filing claims.

The lawyer can help these LTCI early planners, by identifying those with policies and suggesting they fill out a claims instructions form.

Planning ahead to file a LTCI claim

Questions to ask and documents to collect

Set up your intake process to inquire about LTCI. Obtain a copy of the policy for your file. If the client accepted a reduced benefit option to lower premium costs, obtain that paperwork also.

Suggest that clients prepare LTCI claims filing instructions

During planning engagements, the lawyer can give the client a model form of LTCI claims instructions and ask the clients to complete the instructions for the file. A model form is available on the Elder Law Section website at https://elderlaw.osbar.org/files/2023/05/ModelFormLTCI_3.docx.

Preparing LTCI claims instructions is tedious, but has two benefits:

- The client becomes familiar with the steps involved to access policy benefits
- The risk of delayed or denied claims is reduced

Many long term care insurers have exited the market. Their closed book of business is handled by a third party administrator. To reduce costs, most claims matters are handled online. Check the website for CNA, the largest LTCI third party administrator, <https://ltcpolicyhub.com/cna/>, to see the forms suggested for management of a claim. Your client will be dealing with this kind of claims filing requirement someday, and might as well get familiar with the process.

If the client prepares LTCI claims instructions, the relatives or fiduciaries who later file and manage the LTCI claims will appreciate the groundwork done by the lawyer and client.

Determine whether the policy is a "partnership policy"

After a 2005 federal law permitted Medicaid estate recovery protection for those with certain long term care policies, Oregon set up a Long-Term Care Qualified Partnership Program. <https://dfr.oregon.gov/insure/health/long-term-care/Pages/qualified-partnership-program.aspx> and OAR 836-052-0531.

A partnership policy must have been issued after 2008, and must contain an inflation rider. The particular inflation rider depends on the age of the insured at time of purchase. See [OAR 836-052-0531\(d\)](#), which sets out the required inflation protection:

"(A) If the policy is sold to an individual who has not attained age 61 as of the date of purchase, the policy shall provide a compound annual inflation protection that is at least equivalent to the option for inflation protection in [OAR 836-052-0616](#) (Requirement to Offer Inflation Protection) (1)(a)

(B) If the policy is sold to an individual who has attained age 61 but has not attained age 76 as of the date of purchase, the policy shall provide an inflation protection that is at least equivalent to an option for inflation protection in [OAR 836-052-0616](#) (Requirement to Offer Inflation Protection).

(C) If the policy is sold to an individual who has attained age 76 as of the date of purchase, the policy may provide inflation protection, but must at least comply with the provisions for inflation protections in [OAR 836-052-0616](#) (Requirement to Offer Inflation Protection)."

If those insured by a partnership policy need Medicaid in the future, they can protect from both spend-down and estate recovery a sum equal to what the policy paid out for care before Medicaid commenced.

How the partnership policy would work with Medicaid

The elder law attorney can help the insured and the family plan. First, collect on the partnership policy, then determine when to apply for Medicaid. Pre-eligibility LTCI benefits can be preserved from spend-down and estate recovery. Sometimes the LTCI

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daily or monthly benefit is not enough to pay the full cost of care, so the insured may need to file for Medicaid before exhausting policy benefits. Unfortunately, the protected sum does NOT include LTCI payout after Medicaid begins.

NOTE: In my years of private practice, I never saw a partnership policy, so I did not have to integrate a protected LTCI benefits-paid sum in planning. Likewise, none of my contacts in Oregon's estate recovery had seen a partnership policy. Perhaps someone reading this article has worked with partnership policies in planning and can provide an article for a future newsletter.

Filing LTCI claims

Involvement by a law office may be simple delegation to a responsible family member or fiduciary, or it may be active management of the claim filing.

Delayed LTCI claim filing

The most common problem in LTCI claims filing is DELAY—delay caused by both the fraught situation as an insured declines, and by the opaque nature of the claims filing process itself. Often a declining individual is reluctant to admit a growing need for care or loss of focus and executive ability. In these situations, the helpers (family members or fiduciaries) may have trouble locating the policy, determining terms/coverage, and filing a claim. Delay in recognizing the need for care results in delay in initial LTCI claim filing.

Role of the elder law attorney

Whenever a lawyer learns that a declining elder needs care, they should ask whether an LTCI policy exists. Giving the client (or informal helpers) a copy of the Model LTCI Claims Instructions may be all that they need to move the claims process along.

However, sometimes there is no one to take responsibility for managing the claim filing. Perhaps family members or friends who are informal caregivers are burned out. The law office may then have to take a leading role in filing claims.

Who is the client?

The lawyer might represent the declining policyholder, family members, or hired fiduciaries—whoever is taking the lead in handling the LTCI claims matters. Someone must determine if an LTCI policy is in force, and search for the company's claim process. That person might need to be the client.

Sometimes a family member or fiduciary has the time and background to act effectively, and the lawyer's involvement is minimal. If the declining individual has good records and has prepared LTCI claims instructions, then moving the claim along will be straightforward.

If the records are scattered and no one has taken control of the situation, the lawyer who wants to be helpful must first decide who is the client: the declining elder or the helper (family or fiduciary).

More active handling of LTCI claims

When the law firm needs to be more actively involved in the LTCI claims filing, there are a series of steps that the lawyer can take to push a claim along.

Get authorizations. Typically, the law firm and other helpers lack written authorization to deal with the claim. If the declining elder can still sign authorizations, the law office can find the right forms on the insurer's claims website and arrange signing. A fiduciary can be activated. Is there a power of attorney and medical advance directive? Perhaps the lawyer must help get a court-appointed fiduciary in place.

Hire a care manager. To reduce delays, suggest the client hire a professional care manager to assess the insured's needs, arrange care, and help to obtain providers' signed verification of need for the policy services. If the declining elder is already in a licensed facility, the facility staff should be able to take care of these tasks, but a care manager may still be a wise investment.

Monitor communications. The insurer's claims handler will require information from several different sources: doctors, direct care providers, and the professional hired by the insurer to review the claims materials. Monitor the insurer/provider communications, to be sure the providers respond timely with the right information. Each provider and the insurer will require separate signed releases of medical information, naming the persons who monitor the communications: law firm, family member, friend, or fiduciary. LTCI claims can take a minimum of three weeks, and up to several months, to process. One discussion-list member recommended PERSISTENCE and a full neurological workup of the insured.

Often, claims are initially denied because the required documentation was not submitted in a timely fashion. If the insured files a "clean claim," the insurer is supposed to pay within 30 days. When the insurer denies an incomplete claim, it must disclose what additional information is necessary to determine if all or any part of the claim is payable. OAR 836-052-0770(2)(b). Failure to meet the deadline of thirty days subjects the insurer to an interest penalty.

To take advantage of Oregon's LTCI consumer protection rule, the insured must submit a clean claim. See ORS 743.665, and OAR 836-052-0770(1)(b):

"Clean claim means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstance requiring special treatment that

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prevents timely payment from being made on the claim.”

Submit second or other policy benefit claims separately.

If you get caught in a cycle of repeated denial or delay, consider submitting a second, more robust set of claim documents as a separate claim, carefully documenting when the insured first met policy requirements to run out the contract waiting period (the 30 to 180 days before the company starts paying for care). The insured might lose an appeal of the first claim’s denial and should have a more robust second claim running concurrently.

Consider filing a claim for other LTCI policy benefits such as caregiver training or an emergency alert system. Do not let a first denial stall any other claims for contract benefits. Success with a subsidiary claim might help convince the company of eligibility for the monthly or daily care benefit as well.

Pay premiums. LTCI premiums payments can be overlooked during a protracted claims filing process! The LTCI company can cancel the policy if premiums are not paid on time (and the policy risk then goes off its books). Set up an automatic premium payment arrangement and name a designee to receive lapse notices. Premiums will be waived back to the date payout begins, and you can claim a refund.

After the claim is accepted

The LTCI claim manager must provide ongoing documentation of the need for care in order to continue payment. Having the provider directly bill the LTCI carrier is one way to structure the paperwork flow. Perhaps the insured has a reimbursement LTCI policy and needs in-home care. The insured could enter an assignment of benefits with the caregiver service, enabling it to bill and get paid by the insurer.

Sometimes an insurer/provider direct billing assignment does not make sense. Perhaps the insured has an indemnity (daily benefit) LTCI policy, and the facility care bill is less than the indemnity sum. The family/fiduciary should collect the indemnity check directly, be responsible for all insurer/

provider verification, and pay the facility bill monthly. The excess indemnity sum can then be used for other needs of the insured.

Appealing denied LTCI claims

An initially denied LTCI claim wending its way through appeal is a time suck.

There are two levels of LTCI appeal: first, an appeal under the contract; and second, an external review by an independent company—available if the insurer’s denial was for failure to meet a policy “benefit trigger.”

Most LTCI claim denials are for failure to meet the policy’s defined benefit triggers. Of course, denials can be for other reasons. For example, the insured sought reimbursement for the costs of unlicensed care providers when the policy required licensing for reimbursement. But most denials are because the documentation obtained did not clearly show the insured met the policy’s benefit triggers.

If the insured loses at both appeal levels, then the only remedy is to file a lawsuit.

First level of appeal: under the contract

Review the LTCI policy claims appeal provision carefully. For example, an old Oregon-issued CNA group policy provides:

“Claims Appeal. If the insured contests the denial, we will request from the insured the nature of the dispute in writing, and (if applicable) the amount of money involved. We will then compile all relevant data including evaluations by qualified individuals independent of us, if appropriate. The accumulated data will be reviewed by us. The decision is sent to the insured in writing within 60 days.”

During the extended period of an LTCI claim appeal, the insurer can change its mind at any time and commence the claim as of any date it finds the benefit triggers were met.

Second level of appeal: external review

The LTC insurer’s claim denial letter notifies the insured about Oregon’s second level of appeal, the external review program.

Department of Consumer and Business Services (DCBS) Compliance Coordinator Rhett Stoyer kindly replied to my inquiry about LTCI external review as I prepared this article and he advised:

“Oregon’s Long Term Care (LTC) External Review program is specific to an insurer’s determination that a benefit trigger is not met. The Division of Financial Regulation has a website related to the LTC External Review program located here: <https://dfr.oregon.gov/insure/health/long-term-care/Pages/appeals.aspx>. Additional information related to the program can be found in Oregon Administrative Rule 836-052-0768 <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=204218>.

Oregon’s external review process is a document-only review, by an external review organization the insured selects from entities engaged by Oregon’s Department of Financial Regulation (currently two, one in Seattle and one in Pennsylvania).

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In 2012, the Oregon legislature required an external review appeal step for long term care policies, and defined benefit trigger:

“Benefit trigger” means a contractual provision in a long term care insurance policy that conditions the payment of benefits on an insured’s inability to perform activities of daily living or on an insured’s cognitive impairment. For qualified long term care insurance, the “benefit trigger” is the determination that an insured is a chronically ill individual, as defined in section 7702B(c) of the Internal Revenue Code. ORS 743.652(2)

The LTCI external review requires notice by the insurer and the reviewing entity to the director of the DCBS at several stages in the process, permitting regulators to have a handle on the consumer complaints arising from LTCI benefit trigger denials.

LTCI benefit triggers are usually “chronically ill” status (required for federal tax qualification), plus an inability to perform at least two activities of daily living due to impairment or need for substantial supervision. Examine the policy carefully to determine the precise trigger, who must certify the care plan, and whether the policy only pays if a provider is licensed.

Having a robust claims package already sent to the insurer is ideal, but the claimant is allowed to supplement the record at the external review stage and is best served by doing precisely that.

To push the process along, the insured might consider submitting a series of claims, with newly acquired documentation and circumstance developments, to force the insurer to accept and commence paying. The original appeal, claiming an earlier commencement date, will simply become a dispute about a discrete period—probably several months—when the insurance company failed to make payments (or did not count the time as part of the policy’s waiting period).

Third level: going to court after losing appeals

If the insured loses both LTCI contract and external review appeals, the only remaining remedy is to file a lawsuit. LTCI insurance policies do not contain a mandatory pre-dispute arbitration clause. The Oregon Constitution prohibits mandatory arbitration clauses in insurance policies. <https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2020-01.pdf>

Most elder law attorneys do not venture into consumer litigation with insurers.

Few individual insureds can privately bear the cost of consumer litigation, and ORS 742.061 is a formidable barrier to an award of attorney fees after litigation. A review of insurance claims litigation and recovery of attorney fees for denied LTCI claims is beyond the scope of this article. However, see *Long v. Farmers Insurance Co. of Oregon*, 360 Or. 791, 388 P.3d 312 (2017) and *Bates v. Bankers Life & Cas. Co.*, 362 Or. 337, 408 P3d 1081 (2018).

Some years ago, Chris Cauble filed a federal court lawsuit challenging Bankers Life’s failure to pay a slew of LTCI claims, using a novel theory that the delay and failure to pay constituted elder financial abuse. (ORS 124.110). The Ninth Circuit certified a question on this issue to the Oregon Supreme Court. In *Bates v. Bankers Life*, 362 Or 337, 408 P3d 1081 (2018), the Oregon Supreme Court concluded that rights under the LTCI insurance policy did not constitute “money or property” whose wrongful withholding would constitute elder financial abuse under Oregon’s statute. ■



Make your website more accessible

The W3C Web Accessibility Initiative (WAI) develops standards and support materials to help you make your website accessible to people with disabilities, e.g.:

- Someone who cannot hear well, and uses captions to watch videos
- Someone who cannot see well, and uses a screen reader to read aloud what is on the screen
- Someone with age-related impairments, such as reduced dexterity

The WAI website provides extensive resources, including basic considerations on designing, writing, and developing for accessibility. <https://www.w3.org/WAI/>

Pro bono attorneys help first responders prepare wills

By Natalie Pattison, Attorney at Law



Natalie Pattison is an attorney at Barran Liebman LLP and member of the Multnomah Bar Association Young Lawyers Section Pro Bono Committee and Wills for Heroes Subcommittee. In her professional practice, she counsels and represents employers on a wide range of employment and labor matters, including those involving claims of discrimination, retaliation, wrongful discharge, and wage and hour violations.

The Wills for Heroes Program helps first responders and their spouses or domestic partners prepare wills and consider other essential estate-planning issues. Volunteer attorneys, notaries, and witnesses participate in clinics to help eligible first responders plan ahead by preparing free wills and other basic estate-planning documents.

The National Wills for Heroes Foundation is a 501(c)(3) charitable nonprofit organization which provides basic estate planning documents free of charge to first responders across the United States. The goal is to help first responders plan for the unexpected and help ensure their legal affairs are in order for their families in case of a tragedy. Since its founding, Wills for Heroes programs have provided more than 7,000 free estate-planning documents. The foundation explains the need for its program on its website (<http://www.willsforheroes.org/need.htm>):

Preparing a will is an uncomfortable reminder of our mortality and surrendering to the inevitable. ... A Harris Interactive survey done for lawyers.com found that 55% of the general population had no will.

Paradoxically, those numbers are even lower for the first-responder community. Despite the inherently dangerous nature of their jobs, an overwhelmingly large number of first responders—approximately 80-90%—do not have even simple wills.

First responders selflessly devote their lives to serving their communities and are prepared to pay the ultimate price in the line of duty. The relatively low number of first responders with wills also speaks to the selflessness of first responders; the very nature of their profession is to think of others first, to put the good of the community before themselves. Avoiding the thought of “what happens if I die” is, for many first responders, an occupational necessity.

How does it work?

Qualified first responders include firefighters, police officers, paramedics, and corrections and probation officers from federal, state, county, city, and town departments and agencies. Full-time, part-time, reserve, volunteer, and retired first responders are eligible for the Wills for Heroes Program in Oregon locally through the Multnomah Bar Association (MBA).

The MBA Young Lawyers Section Pro Bono Committee provides leadership and professional development opportunities for young lawyers and has a Wills for Heroes subcommittee dedicated to planning and administering the local Wills for Heroes Foundation clinic once or twice a year. The subcommittee recruits volunteer attorneys, notaries, and witnesses to participate in a one-day clinic. The subcommittee provides training, as well as the forms and equipment the volunteers need to participate in the clinic.

On the day of the Wills for Heroes event, first responders meet with a volunteer who assists them in filling out several forms. A volunteer estate-planning attorney then meets with them to review the draft documents and answer questions. Once the documents are finalized, they are signed, witnessed, and notarized at the clinic. The entire process usually takes no more than an hour and first responders can walk out of the clinic that day with the benefit of a free will and other estate-planning documents.

The benefits of the clinic extend not only to the first responders, but also to the volunteer attorneys, law students, and notaries who enjoy getting to meet, work with, and help the first responders in a hands-on way. Last year, the Wills for Heroes clinic took place on a Saturday in November at the offices of the Oregon State Bar in Tigard. Many of the first responders brought their families with them, and it was an energetic and uplifting event.

How to get involved

Although the Wills For Heroes clinic welcomes volunteer attorneys from all practice areas, attorneys with estate-planning experience are especially helpful, because they can provide area-specific knowledge and expertise that is beneficial for both the clinic and first responders.

The next Wills for Heroes clinic in Oregon will take place in the fall of 2023. Estate planning attorneys and other interested attorneys and notaries are encouraged to contact Ryan Mosier, ryan@mbabar.com, or Natalie Pattison, npattison@barran.com if they are interested in volunteering. ■

Important elder law numbers

as of
January 1, 2023

Supplemental Security Income (SSI) Benefit Standards	Eligible individual.....\$914/month Eligible couple\$1,371/month
Medicaid (Oregon)	Asset limit for Medicaid recipient.....\$2,000 Burial account limit\$1,500 Long term care income cap.....\$2,742/month Community spouse minimum resource standard..... \$29,724 Community spouse maximum resource standard\$148,620 Community spouse minimum and maximum monthly allowance standards\$2,288.75/month; \$3,715.50/month Excess shelter allowance Amount above \$686.63/month SNAP utility allowance used to figure excess shelter allowance\$452/month Personal needs allowance in nursing home.....\$74.75/month Personal needs allowance in community-based care\$203/month Room & board rate for community-based care facilities..... \$711/month OSIP maintenance standard for person receiving in-home services..... \$1,414/month; SSI only \$936/month Average private pay rate for calculating ineligibility for applications made on or after October 1, 2020\$10,342/month Home equity limit for an individual.....\$688,000
Oregon ABLE Savings Plan	ABLE account contributions for 2023 are capped at \$17,000. The beneficiary can also contribute an additional amount that is the lesser of the beneficiary's compensation for the tax year OR \$13,590 (continental US).
Medicare	Part B premium \$164.90/month* Part D premiumVaries according to plan chosen Part A hospital deductible per spell of illness\$1,600 Part B deductible \$226/year Skilled nursing facility co-insurance for days 21–100..... \$200/day * Premiums are higher if annual income is more than \$97,000 (single filer) or \$194,000 (married couple filing jointly).



Elder Law Section

Newsletter Committee

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Editor:

Carole Barkley carole424@aol.com; 503.224.0098

Committee Members:

- Julie Nimnicht, Chair..... julie@elderlawpdx.com; 503.548.4000
- Jacek Berka jacek@whitneysmithlawfirm.com; 541.885.9669
- Darin Dooley darin@draneaslaw.com; 503.496.5500
- Brian Haggerty bhaggerty@newportlaw.com; 541.265.8888
- Alana Hawkins alana@kuenylaw.com; 503.949.6703
- Theresa Hollis TheresaH@Fitzwaterlaw.com; 503.786.8191
- Leslie Kay leskayvida@gmail.com; 503.333.3005
- Laura Nelson lnelson@samuelslaw.com; 503.226.2966
- Nathan Rudolph..... nrudolph@smvllp.com; 503.248.9535