

# Willamette Valley American Inn of Court

September 23, 2021





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## Agenda

5:30 Informal networking

6:15 Welcome, updates & announcements

6:30 Team Tingleaf presentation: *Inns of Court and Professional Responsibility*

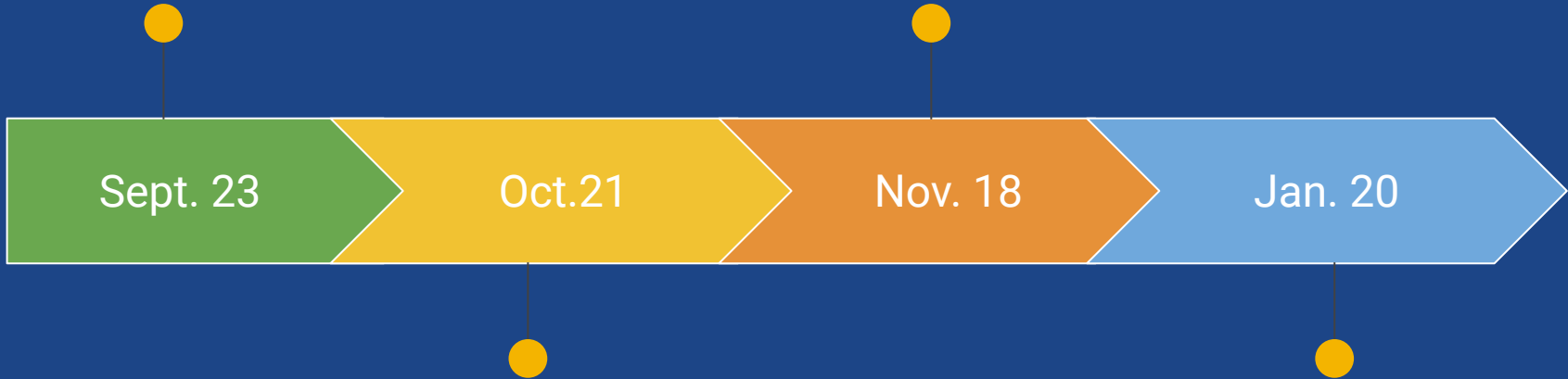
7:30 Close

# 2021-2022 Program Plan

Program Chair, Kirsten Parsons

Team Tingleaf:  
Professional Responsibility

Team Bureta & Perez:  
Access to Justice

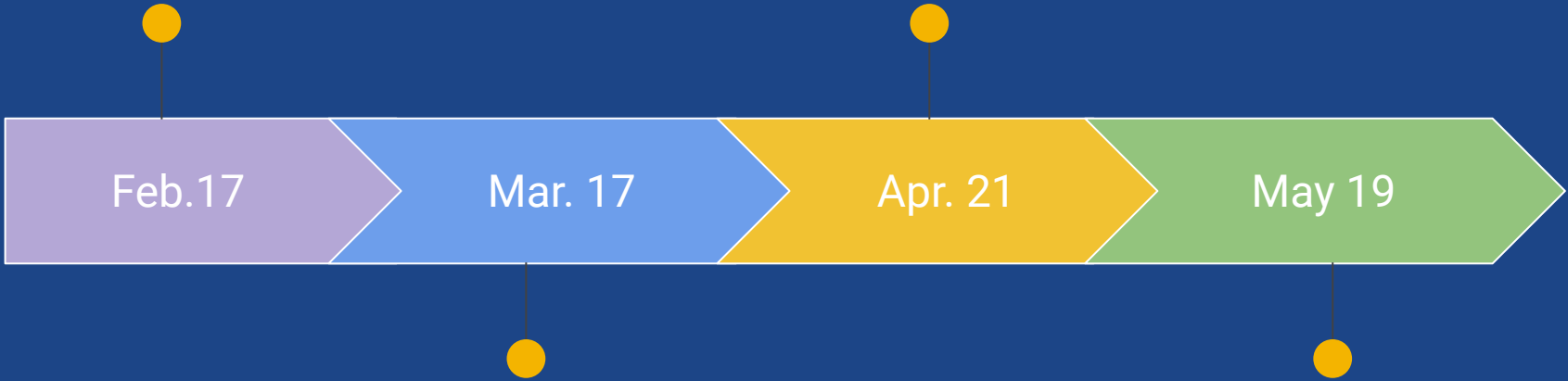


Team Dickey & Dickey:  
Mental Health, Substance Abuse

Team Gardiner & Tracey:  
Practice Skills Before the Courts

Team Wilson & Kidd:  
Diversity & Inclusion

Team Hirsch & Vlach-Ing:  
Technology, Legal Ethics & Competence



Team Denning & Zimmerman:  
Practice Management

Team Sinks & Kim:  
Revels Social Event

# WVAIC online at:

<https://inns.innsocourt.org/for-members/inns/the-willamette-valley-american-inn-of-court.aspx>

- ❖ Main webpage:
  - Schedule, handbook, registration, survey, etc.
- ❖ Detail webpages:
  - Officers (Exec. Committee)
  - Members (look-up directory)
  - Meetings (detailed schedule)
  - Teams (rosters)
  - Program Materials (agendas, presentations, h/outs)
- ❖ Email: [WillametteValleyAIC@gmail.com](mailto:WillametteValleyAIC@gmail.com)
  - Questions, comments, announcements to share, request guest invitations
- ❖ AIC resources: <https://www.innsocourt.org>
  - IMS, Member Profile, Directory, The Bencher, Program Library, etc.



Team Tingleaf presents:  
Professional Responsibility  
Overview

- Inns of Court & Professional Responsibility
- Oregon Rules of Professional Conduct
- Case Summaries, Hypotheticals & Discussion
- Resources

What does professional  
responsibility mean to you?



# AIC Vision, Mission, and Strategic Goals

## The Vision of the American Inns of Court

A legal profession and judiciary **dedicated to professionalism, ethics, civility, and excellence.**

## The Mission of the American Inns of Court

The American Inns of Court **inspire** the legal community to advance the rule of law by achieving the **highest level of professionalism** through **example, education, and mentoring.**

## 3 AIC Strategic Goals that Promote Professional Responsibility

- To have a greater impact on the profession
- To be a primary resource for mentoring and education focused on professionalism, which includes ethics, civility, and excellence
- To be widely recognized as a leader in promoting professionalism, which includes ethics, civility, and excellence

# Oregon Rules of Professional Conduct (ORPC)

1.1 – Competence

1.3 – Diligence

3.3 – Candor Toward the Tribunal

3.4 – Fairness to Opposing Party and Counsel

8.3 – Reporting Professional Misconduct

# What does professional responsibility look like when . . . ?

- You're new to practice or to an area of law?
- Your client falls behind in payments?
- Your interests and your employer-client's interests conflict?
- You're too busy with work to keep up with all of your clients?
- You observe that another lawyer appears to be impaired while engaged in legal work?
- Your personal obligations interfere with meeting client obligations?
- Your health interferes with meeting client obligations?
- You know your client or witness has lied on the stand?

# Competence

## ORCP 1.1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

# Case Summary: *Inexperienced incompetence*

***In re Sterner, 34 DB Rptr 7 (2020)*** (stipulated 30-day suspension—for multiple rule violations).

Respondent undertook to represent client in a toxic-mold exposure case. After filing and serving the complaint, he took no substantive action, did not perform investigation, did not make efforts to acquire the necessary expertise to pursue the case, and ultimately allowed the claims to be dismissed for want of prosecution. Respondent took no steps to reinstate the claims that were time-barred because he was unaware of Oregon's Saving Statute.

# Diligence

## ORCP 1.3

A lawyer shall not neglect a legal matter entrusted to the lawyer.

# Case Summary: *Diligent supervision required*

***In re Thomas Johnson*, 34 DB Rptr 190 (2020)** (stipulated 150-day suspension—for multiple rule violations).

Respondent mediated a settlement of a marital dissolution case. He was supposed to retain an attorney to prepare a qualified domestic relations order (QDRO) and he needed to supply certain information to that attorney. He went on vacation and asked a friend to mail the information, but she did not do so. Upon his return, he did not follow up. When he was asked about the status of the QDRO by one of the parties, he falsely told him the matter was being handled without confirming the accuracy of the statement. He did the same in response to another inquiry from the party. The party eventually hired an attorney, who contacted Respondent, at which point Respondent discovered that the information had never been mailed.



# Case Summaries: *Non-payment of fees*

## ***OSB Formal Ethics Op No 2005-33.***

An attorney who is owed fees for handling a pending appeal and who cannot locate the client must either continue with the appeal or seek leave to withdraw. The attorney cannot simply cease work.

## ***OSB Formal Ethics Op No 2005-1.***

Although a client falls behind in making agreed-on payments to an attorney, the attorney must continue to act diligently on the client's case for as long as the attorney represents the client.

# Case Summary: *Balancing conflicting interests*

## ***OSB Formal Ethics Op No 2005-162.***

A public employee attorney does not violate Oregon RPC 1.3 by engaging in a lawful labor strike against the public employer, provided the attorney takes steps in advance of the strike to insure that pending legal matters handled by the attorney are properly tended to in the attorney's absence. When there is a substantial risk of irreparable harm to the public employer because of the attorney's absence, it may be necessary for the attorney to aid the employer during the strike to avoid neglect as to a particular legal matter.

# Case Summary: *Overloaded with work*

## ***OSB Formal Ethics Op No 2007-178.***

Attorneys representing indigent criminal defense clients must refuse to accept an excessive workload that prevents them from rendering competent and diligent legal services to their clients. Attorneys who work in public defense organizations should seek assistance from supervisors and managers in order to achieve manageable workloads. If remedial measures are not then approved, attorneys should continue up the chain of command and may have to file, without firm approval, motions to withdraw.

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;
- (4) conceal or fail to disclose to a tribunal that which the lawyer is required by law to reveal; or
- (5) engage in other illegal conduct or conduct contrary to these Rules.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, but in no event require disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

# Case Summary: *Failing to correct the record*

***In re Famulary, 34 DB Rptr 85 (2020)*** (stipulated 30-day suspension—for multiple rule violations).

Respondent filed a probate petition stating that the decedent had died intestate and that Respondent had made reasonable efforts to locate all of decedent's heirs. The representations were knowing, material, and false. Respondent became aware that the decedent had a will and had heirs, but refused to correct the misstatements claiming he had no duty to do so because the named personal representative could submit the will at any time.

# Case Summary: *Lack of competence and candor*

***In re Mercer*, 33 DB Rptr 82 (2019)** (stipulated 30-day suspension).

Respondent submitted a declaration to the court that was incomplete and inaccurate because she represented that the parties in a matter had reached certain agreements without explaining that some of the agreements were subject to conditions. She subsequently failed to correct the record.

# Case Summaries: *Client and witness candor*

## ***OSB Formal Ethics Op No 2005-53.***

An attorney who is told by a potential client that he or she intends to defraud the court, should inform the potential client that the potential client should not do so. If the individual persists in expressing this intent, the attorney may not represent the potential client.



# Fairness to Opposing Party and Counsel ORCP 3.4

A lawyer shall not:

(a) knowingly and unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence; counsel or assist a witness to testify falsely; offer an inducement to a witness that is prohibited by law; or pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; except that a lawyer may advance, guarantee or acquiesce in the payment of:

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for the witness's loss of time in attending or testifying; or
- (3) a reasonable fee for the professional services of an expert witness.

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

# Fairness to Opposing Party and Counsel ORCP 3.4, cont.

- (d) in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;
- (f) advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for purposes of making the person unavailable as a witness therein; or
- (g) threaten to present criminal charges to obtain an advantage in a civil matter unless the lawyer reasonably believes the charge to be true and if the purpose of the lawyer is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge.

# Case Summary: *Fairness may mean withdrawal*

## ***OSB Formal Ethics Op No 2005-167 (rev 2014).***

An attorney acting as a mediator in a domestic-relations matter may not continue on with the mediation if one party discloses to the mediator the existence of hidden assets and instructs the mediator to withhold this information from the other side. To continue with the mediation without disclosure would amount to a participation in a fraud on the other party in violation of Oregon RPC 8.4(a)(3) and (4). On the other hand, disclosing the attempted fraud would be contrary to statutory confidentiality for communications made in mediation. The fact that the mediator is unfamiliar with the substantive law in the area does not excuse continued participation in the mediation. A mediator should serve only in matters in which he or she is competent to recognize significant legal issues.

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:
  - (1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;
  - (2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or
  - (3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.
- (d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

# Case Summary: *Poor health and misconduct*

***In re Logsdon (II)*, 33 DB Rptr 295 (2019)** (disbarment with restitution—for multiple rule violations).

Respondent was hired in a criminal matter, accepted a retainer, did no work, but nonetheless withdrew and spent the retainer amount. The PLF advised some of Respondent's clients that she was closing her practice due to health reasons and would be withdrawing as counsel. Despite this, she accepted a retainer from a new client without disclosing her health situation. She did no work but failed to provide a requested accounting and refund. She was administratively suspended but failed to advise the two clients of this fact. She also misrepresented to the clients that she had performed work, which she had not. She failed to withdraw when impaired, and failed to withdraw when one of the client's terminated her.

# Case Summary: *Candor, competence, diligence*

## ***OSB Formal Ethics Op No 2005-34.***

- (1) An attorney whose client commits what the attorney knows to be perjury must ask the client to correct the perjury and, if the client will not do so, seek leave of court to withdraw. The attorney may not, however, inform the court that withdrawal is sought because of client perjury.
- (2) If the court does not permit the attorney to withdraw, the attorney may ethically continue with the case. If the attorney is denied leave to withdraw, the attorney may not use or rely on perjured testimony or false evidence in arguing the client's case.
- (3) An attorney who is appointed by a court to represent a supposedly indigent defendant in a criminal case and who learns that the defendant is not indigent but simply wishes the benefits of free counsel may ethically reveal client confidences to the extent necessary to prevent the continuation of the continuing crime of theft of services but may also endeavor to withdraw from the representation while saying nothing about the client's wrongdoing.

# Case Summary: *Cognition and Competence*

“If there were no appreciable performance issues . . . monitor the situation as [the attorney] progressed toward retirement,”

-The US Attorney’s office response to employee concerns about a cognitively impaired AUSA.

- The AUSA in question was diagnosed with ALS and Frontal Lobe Dementia around this same time frame

<https://www.bloomberglaw.com/public/desktop/document/IRSvMurphy554BR535DMe2015CourtOpinion?1632290559>

# Hypothetical

A new lawyer accepted an associate position with long-time established lawyer. The new lawyer observed that the practice was quite busy, and during the new lawyer's first week on the job the established lawyer missed a status conference. Two weeks later the new lawyer witnessed the established lawyer accept a settlement on behalf of a client. However, when the opposing counsel notified the court that parties had reached an agreement, the established lawyer denied having reached any agreement. The new lawyer's first paycheck bounced.

<https://news.bloomberglaw.com/us-law-week/a-preventable-mess-how-dementia-takes-toll-on-aging-lawyers>



- American Inns of Court, [Vision, Mission and Strategic Goals](#)
- Oregon State Bar, [Oregon Rules of Professional Conduct](#)
- Oregon State Bar, [Disciplinary Board Reporter](#)
- Bloomberg Law, [‘A Preventable Mess’: How Dementia Takes Toll on Aging Lawyers](#) (May 11, 2021)
- The Alabama Lawyer, Vol. 76, No. 5: [The Emerging Issue of Cognitive Impairment among Attorneys](#), Robert Thornhill, MS, LPC, Director Alabama Lawyer Assistance Program (September 2015, p. 298)

Thank you