

Tips from the Bench

By Judge Stephen K. Bushong, Multnomah County Circuit Court.

Using ORCP 45 requests for admission to establish the authenticity/admissibility of trial exhibits

Identify the documents you might want to use as trial exhibits well in advance of trial. Do not wait until the eve of trial to begin assembling your trial exhibits; by then, it is too late. As soon as you can identify your potential trial exhibits, serve a request for admissions asking opposing counsel to admit that (1) each document is authentic, and (2) each document qualifies for admission under an exception to the hearsay rule (as a business record, for example).

If opposing counsel refuses to make the requested admissions, you may need to take one or more depositions to establish the authenticity and admissibility of the document (or subpoena one or more records custodians for trial). And then ask the trial court to award the expenses you incurred in making the necessary proof, as provided in ORCP 46 C. Under that rule, the court "shall" award expenses unless the request was objectionable, the admission sought was not important, the opposing party had reasonable grounds to believe that the records were not authentic/admissible, or there



don't plan on challenging the authenticity or admissibility of the document, you should admit the request. And if your only objection is relevance, you should admit that the document is authentic and qualifies for admission under an exception to the hearsay rule and reserve the relevance objection for trial.

Agreeing to reasonable requests for extension - don't forget the judge!

Most lawyers in this community will grant a reasonable request by opposing counsel for additional time to respond to a pleading, motion or discovery request. Agreeing to such requests is expected under our standards of professionalism. But don't forget to notify the judge. If the extension means that a

Profile – Judge Katherine Weber, Clackamas County Circuit Court

By Andrea Anderly, Gevurtz Menashe et al and Court Liaison Committee member.

When you first encounter Judge Katherine Weber, newly appointed by Governor Kulongoski to the Clackamas County Circuit Court bench in January 2010, you immediately notice her enthusiasm and then the mass of curly red hair that frames her face. She is an avid bicyclist, known to tour the region with her husband, attorney Skip Winters, and her son. Though she works hard to achieve balance between her professional life and her family life, she makes it look easy.

I first met Judge Weber in 1999 when I joined the law firm of at Gevurtz, Menashe, et al. At that time, Judge Weber was an associate attorney diligently tackling the variety of issues that arise in a family law case while balancing the duties caring for the couple's 2-year-old son. Her energy is amazing. Not only did she tackle the demands of a busy law career and family life, she and her husband often spent their weekends, depending on the weather, touring the area by bicycle with their son in tow. As a group, they've completed many local rides and five Cycle Oregon tours.

worked for a couple of years for Linda Friedman Ramirez in Portland. She also worked with Multnomah Defenders, Inc, from 1995-1999 as a misdemeanor staff attorney before she came to work at Gevurtz, Menashe et al for two years, 1999-2001. Her experience at the firm provides her insight to the broad expanse of issues, both legal and emotional, raised in most family cases. Though family law offers many opportunities for courtroom appearances, she soon found she needed and wanted more litigation experiences.

Judge Weber opened up her sole practice in Clackamas County in 2001 focused on representing criminal defendants. Soon, she became a member of the Clackamas Indigent Defense Corporation, handling a sizeable court-appointed indigent caseload in Clackamas County. She also represented defendants in all level of homicide cases. After a few years, she became qualified as lead counsel on death penalty matters, in part, by working as "second chair" to criminal defense attorney, Tim Lyons, now deceased, in an



felony and sexual abuse. She also represented persons involved in stalking protective order and family abuse restraining order cases as well as defendants with serious mental health problems. Weber is quite comfortable and competent in the courtroom. As a litigator she was prepared and knowledgeable on the facts and the laws relevant to her clients.

Judge Weber knows how important it is to listen to others and when to ask a question or two. She is a professional with everyone she is in contact. Her strong negotiating and dispute resolution skills provide the ability to manage her courtroom and assist attorneys and litigants to resolve their issues in the presence of a fair and reasonable jurist.