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Buying and Selling a Business: What to Prepare For

Erich Merrill, Miller Nash LLP and Justin Monahan, Otak

The overall volume and valuations in merger and acquisition activity in the U.S. have increased in 2024 from some lower activity in 2022 and 2023. We have seen industry publications reporting that in the architecture and engineering industry, for example, target firms are achieving valuations at EBITDA multiples of 11.4x, 13.8x, and higher—well above historical medians in the 6x–7x range. Mergers and acquisitions that generate inorganic growth remain a key maneuver for firms looking to incorporate specific resources from smaller firms, augment specific capabilities, scale new growth platforms through geographic and capability expansion, and in some cases transform both firms by reshaping service offerings with transactions of scale. In this article, we are going to review several issues that have been significant deal and drafting points in recent transactions to flag approaches for buyers and sellers alike.

Considerations for potential buyers

We will begin by looking at preparations for a potential acquisition from the perspective of potential buyers.

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1. Intellectual property

Based on transactions with which the authors have recently been involved, intellectual property of the target business continues to be of major interest to buyers. Buyers typically are looking for one of two opportunities in an acquisition: the ability to extend an already successful or potentially successful business platform into a new area or onto a larger scale, or the addition of operations that expand the sectors in which the buyer's business operates. In each case, obtaining the ability to offer a product or service that others cannot is a key factor to a successful acquisition.

Intellectual property can provide this exclusivity. Buyers should spend significant time reviewing intellectual property assets of the seller's operations in the due diligence phase of acquisitions. Diligence should go well beyond confirming that the seller holds patents, registered trademarks, or trade secrets that appear to offer value to the buyer. Buyers need to verify that key employees have assigned rights to the seller, that trade secrets have been protected in practice, and that third parties do not hold patents or other intellectual property rights that pose a risk of infringement claims against the seller (and, after the transaction, against the buyer). In addition, buyers need to assess the degree of competitive protection actually provided by the intellectual property held by the seller. Analysis of patent scope and possible invalidity are critical as part of the diligence process.

2. Non-competition agreements between parties and with employees

Much has been written about the FTC's April 23, 2024, rule potentially affecting non-compete agreements. (See the most recent coverage from the *Oregon Business Lawyer* in this issue's article, "Federal Trade Commission Non-Compete Ban: December 2024 Update.") However, that rule is in limbo following the August 20, 2024, ruling by

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Judge Ada Brown of the Northern District of Texas that blocked it, pending potential appeal. At the state level, ORS 653.295 and applicable case law have set criteria for the enforceability of non-compete agreements between employers and employees. It is generally clear that non-competes are permissible in the bona fide sale of a business. These are important tools for acquiring firms: target

"For any transaction to be successful, it is critical that risks are assessed and valued appropriately."

firms may have valuable relationships with clients, customers, suppliers, and subconsultants. The economic benefit of a successful transaction generally provides reasonable consideration to make an owner's non-competes enforceable. There are additional requirements on non-competes under state law which are worthy of addressing in a future article; anyone needing guidance on this should seek experienced transaction counsel.

In the context of professional services, protection against seller competition may also take the form of non-solicitation provisions for clients and staff. When considering mid-level management, federal and state rules are trending toward invalidating and limiting non-competes. Non-solicitation agreements may continue to be enforceable, although there are circumstances where certain clients may effectively hold a "monopoly" over a business sector, and affected employees may argue that a non-solicitation agreement is effectively a non-compete that frustrates their ability to earn a living. This may be true of, for example, certain government clients such as Departments of Transportation that simply govern an entire field of work. In these cases, counsel should pay careful attention to other restrictive details, such as the duration of the non-solicitation following an employee's exit, to improve the likelihood that a court might enforce the agreement.

3. Larger deals: HSR reporting and clearance—new FTC rules

Buyers in larger transactions need to consider whether a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 will be required. When such a filing is required, both parties must spend significant time and money gathering and submitting detailed information about their operations, the proposed transaction, competitive overlap, the market in which the companies compete, and other required information. The parties submit the required information and must then wait for agency review and clearance to proceed. Not only can the process significantly delay the transaction, but the filing fees alone constitute a major expense.

The Federal Trade Commission recently adopted a final rule, which is estimated to triple the time and effort needed to complete the required filings. The good news is that filings are generally not required for transactions having a value of less than $119.5 million. If you are involved with a transaction above that amount, it is always wise to consult with experienced counsel who can help guide you through the HSR process.

4. Diligence process

Once some basic concepts and intents begin to be shared and agreed between the parties, due diligence can begin in earnest. The overall assessment of strengths and weaknesses of a business or business line will take many forms: financial condition, succession planning, contract rights and restrictions, and intellectual property that will be part of the deal all need to be evaluated.

A critical piece of due diligence will be the risk assessment associated with potential claims against the target that the buyer will need to evaluate. These include employment-related claims, tax underpayment/reporting, participation in multi-employer pension/welfare plans, and claims related to privacy and data security. The risk profile of each business will be different, and subject matter experts should be used within given market sectors to inform the decision making of the buyer. Although parties this far along in the process may be less and less likely to find true "no-go" risks, the sum of risks and items requiring workouts and attention may start to affect the deal valuation. If the buyer is interested in the transaction because they are picking up a piece of intellectual property or a specific customer base, the due diligence process may become particularly focused. A broad acquisition of a large performing firm, on the other hand, may span out across a broad range of potential topics and risks.

For any transaction to be successful—something the parties look back on after the dust settles to see the acquired assets performing well in the context of the buyer's business—it is critical that risks are assessed and valued appropriately at this stage of the process. Most practitioners will maintain a detailed log and checklist of items that will be evaluated as part of their process.

Considerations for potential sellers

The process of selling a business is frequently completely new to sellers. We list below several key considerations that sellers should be aware of when preparing to sell a business.

1. Orderly records; due diligence production

Although orderly records by themselves may not define the success or failure of a transaction, it is wise for sellers to insulate themselves from claims by having orderly records that support the buyer's due diligence. If there are unwelcome surprises for the buyer after due diligence, a buyer may insist that the very format of the due diligence production from the target thwarted proper due diligence and that the buyer is entitled to (a) a reduction of the purchase price prior to closing or (b) a remedy or indemnification after closing. Attractive acquisition targets can also demonstrate orderly record-keeping and the consistent use of best practices throughout their business.

2. Protection of intellectual property

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As noted above, patents, strong trademarks, and trade secrets are usually ascribed significant value by buyers. Sellers considering a business sale should therefore spend the time and resources to ensure that any intellectual property they may have is appropriately protected and documented.

Potential sellers should expect that buyers will require extensive warranties regarding intellectual property in the acquisition agreement. These warranties virtually always place the risk of infringement claims on the seller. Potential sellers should therefore obtain freedom-to-operate opinions or other advice from intellectual property counsel to assure themselves that infringement risk is minimized or can be accurately disclosed to the extent it exists.

Sellers sometimes believe that it is helpful to obtain a valuation of their intellectual property assets. Our experience is that such valuations do not facilitate the sale of the business and are not worth obtaining. Most buyers put little stock in valuations of intellectual property. Their lack of faith in valuations appears to be well placed. With the exception of valuations of patents or other intellectual property that has a history of earning royalties, valuations of intellectual property vary widely, appear to have little correlation to business advantage, and are often highly speculative.

3. Transition process during and after sale

Attractive acquisition targets can demonstrate a focus on succession and transition planning within their organizations. Too often, acquiring firms find themselves disappointed when they pay significant amounts to current company leaders, only to find those leaders promptly transitioning out of the company business and handing the reins, along with all the accompanying learning curves, to emerging leaders.

Another thing an acquiring firm does *not* want is to be the savior to a company whose leadership is looking to exit amid a floundering, late-stage effort. Rather, attractive acquisition targets can demonstrate both immediate and durable value-add propositions for acquiring firms that mirror the motivations of the acquiring firms in the first place: adding specific capabilities while giving the target firm access to broader platforms and resources. There are many transition-planning strategies available to companies wishing to make themselves attractive targets, which we may explore further in a subsequent article.

4. Earnout terms

Frequently, sellers and buyers resolve disagreement over acquisition price by agreeing that part of the price will be paid after closing based on how the business performs—commonly called an "earn-out." Sellers can find earn-outs attractive because they potentially increase the purchase price.

Sellers should know several things about earn-outs. First, the buyer, not the seller, will be in control of the business after closing, which is the period during which performance of the business will be measured for the earn-out. Second, it is critical that the earn-out criteria be carefully and completely defined in the purchase agreement. Close coordination between the seller's financial teams and legal teams is critical in this regard to avoid disagreements over whether an earn-out has been earned and how much the seller is entitled to receive. Third, sellers need to assess whether they will continue to work for the buyer for the time that is often required in order to earn the earn-out. We often see sellers decide that they are ready to move on, leave the business before the end of the earn-out period, and negotiate a compromise amount to be paid rather than the full potential earn-out.

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5. Rollover equity—liquidity; control over the process

Buyers will often insist that sellers take part of the purchase price in the form of stock issued by the buyer, rather than being paid the entire purchase price in cash. Sellers need to consider these facts when faced with such an offer:

• Unless publicly traded, stock in the buyer is not liquid. Sellers must consider whether they are willing to hold the buyer's stock indefinitely, without the ability to convert it to cash, or what alternative exit mechanisms may be available under the relevant stock plan.

• A seller willing to take buyer's stock as part payment of the purchase price should usually negotiate a right to require the buyer to purchase the stock from the seller on a future date. Such a right will often involve a formula price since there is no market price for the buyer's stock. Sellers should make sure that the formula is reasonably predictable and verifiable, and that the seller retains a reasonable right to challenge a calculated price that the seller believes to be incorrect.

• As with an earn-out, sellers who agree to take buyer stock as part of the purchase price should attempt to negotiate some degree of control over the buyer's operations post-closing. For example, the buyer should not be able to sell key components of its business or incur unreasonable levels of debt without the seller's consent.

• A seller willing to take buyer's stock as partial consideration should also insist that a tag-along clause be included in the acquisition documents. This clause gives the seller a right to sell a proportional amount of stock, if the buyer's major shareholders in the future sell a significant portion of their stock to a third party. A buyer will likely impose a companion clause—the drag-along clause—on the seller, so that the buyer is able to require that the seller sell stock if the buyer or its major shareholders want to sell the whole company.

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6. Areas of focus for buyers

As mentioned above in the discussion of the due diligence process, buyers are likely to spend significant time on evaluating possible employment-related claims, tax underpayment/reporting, participation in multi-employer pension/welfare plans, and claims related to privacy and data security. Sellers should keep these areas in mind well prior to a proposed sale of the business and adopt business practices meant to minimize the potential for claims or liability in these areas. In recent transactions the authors have handled, some of the most contentious negotiations of transaction terms have focused on these areas.

7. Involving an investment banker/broker

Sellers should give serious consideration to retaining an investment banker or business broker to assist with the sale of their business. Potential sellers are sometimes tempted to sell their businesses on their own, wanting to avoid the expense of a banker's or broker's commission.

Our experience is that retaining a skilled business broker or banker is worth the expense. These professionals typically bring a larger number of potential buyers to the table, resulting in a higher price for the business. In addition, we have been involved in numerous acquisitions where a skilled banker or broker is able to effectively act as a mediator when the parties seem unable to agree on a crucial transaction term. In these situations, the deal often proceeds toward closing with the help of the broker or banker's shuttle diplomacy to keep the parties at the bargaining table and resolve the key issue.

8. Involving M&A counsel

As with retaining a business broker or investment banker, potential sellers sometimes question the benefit of hiring counsel experienced in merger and acquisition transactions. Just as physicians have different specialties, attorneys have varying levels of expertise in different areas of law and business. Counsel that has served well for routine contract, corporate, and litigation matters may or may not also have the experience to provide efficient representation for a sale of the client's business. Potential sellers should consider contacting and interviewing counsel with significant merger and acquisition experience. Such counsel can work in full cooperation with existing company general counsel, if requested to do so, so that the background knowledge and experience of the company's general counsel is available for the seller's benefit in the sale transaction.

Conclusion

Signs suggest that mergers and acquisitions will continue at a significant pace in 2025 and beyond. As is clear from the issues raised in this article, the topic touches many different areas of the law, implicating intellectual property, employment law, corporate law, and regulatory schemes. Careful preparation before an acquisition occurs will be beneficial to both buyers and sellers in the transaction and the operation of the ongoing business. ◆

The Lawyer's Role in the Pac-12 Rebuild

Tim Crippen, Black Helterline LLP

Tim Crippen is a partner at Black Helterline. He represents family and closely held businesses with a focus on mergers and acquisitions, contract matters, and trademarks.

Disputes in 2023 arising out of ten members' departure from the Pac-12 illustrated the ways a business attorney can augment a litigation team in complex disputes. In 2023, Oregon State University (OSU) retained my firm, Black Helterline LLP, and me to serve as business counsel, augmenting the team at the OSU Office of General Counsel. OSU also retained special litigation counsel Keker, Van Nest & Peters LLP of San Francisco. I was effectively embedded with OSU's Office of General Counsel for a number of months, providing a variety of business legal services as these disputes played out.

The background of the case is well-known to college sports fans but may be unfamiliar to others. The Pac-12 is an NCAA Division 1 college athletics conference founded over a hundred years ago. Until August 1, 2024, members had for decades included OSU, Washington State University (WSU), University of Oregon (UO), and University of Washington (UW) among other premier western U.S. athletics programs.

College athletics conferences provide competitive opportunities for college student-athletes in numerous sports by coordinating competition among their members. As businesses, the conferences typically acquire member universities' media rights and license them to media partners such as Fox, ESPN, CBS, or the CW Network. The premier conferences' media rights will sell for hundreds of millions of dollars, or more, per year and are usually licensed under multi-year contracts. The conferences also make money from the NCAA based on their members' performance in men's and women's college basketball tournaments in March and from the College Football Playoff (CFP). For the Pac-12, its longstanding relationship with the Rose Bowl is another source of revenue. The conferences' net revenues are distributed to the member schools, and the schools use those distributions as major sources of funding for their athletic departments.

In exchange for the schools' grant of media rights, the conferences provide numerous services to member schools, including coordination of competitions and championships for multiple sports as well as support for student-athlete mental and physical health and growth. In the Pac-12's case, the conference also operated the Pac-12 Networks and produced media content from all of the member schools. (Until 2024, the Pac-12 employed nearly two hundred people.)

The Pac-12 is an unincorporated nonprofit association under California law. The Pac-12 is governed by the terms of the Pac-12 Handbook, which includes its Constitution and Bylaws. The business of the Pac-12 is governed by the Pac-12 Board of Directors, which, prior to the departure announcements, consisted of the president or chancellor of every member institution.

In 2022, UCLA and USC announced they would leave the Pac-12 and join the Big Ten conference in the summer of 2024. After they announced their departure, they were excluded from Pac-12 board meetings and votes. None of the parties exactly went to the mat on figuring out their precise status as members who had announced departure, but they were generally excluded, including from numerous discussions in 2023 concerning the Pac-12's next media rights deal.

Numerous factors could have driven UCLA and USC to leave the Pac-12 but ultimately, one can infer that they made the decision to leave because they expected to make more money in another conference. And presumably they believed more money would help them stay competitive or improve the strength of their athletic programs, which ultimately should inure to the benefit of their student-athletes and the universities at large.

On July 27, 2023, the University of Colorado announced its intention to depart the Pac-12 for the Big 12. Then, on August 4, 2023, in a bombshell, just as Pac-12 members believed they were about to sign a new multi-year media deal, UO, UW, and three other universities announced they would leave for the Big Ten and Big 12 conferences.

That left the Pac-12 with OSU, WSU, UC Berkeley (Cal), and Stanford University (Stanford). Cal and Stanford elected to join the Atlantic Coast Conference and announced as much on September 1, 2023.

On August 29, 2023, two days before Cal and Stanford announced their departure, the Pac-12 commissioner called a board meeting for September 13, 2023, and intended to include all twelve members—including those who had announced plans to withdraw—to discuss an employee retention plan and go-forward governance approach.

As with many types of business organizations, board control is a major fulcrum on which power is balanced. In the Pac-12's case, allocation of the hundreds of millions of dollars of revenue the

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conference would receive, and even the continuation or dissolution of the conference, could have been on the table. Had the conference member institutions voted to dissolve effective August 1, 2024, when the ten members departed, OSU and WSU would have found themselves scrambling to find a conference to join—or would be independently scheduling hundreds of sporting events—for the 2024–2025 academic year, with perhaps none of the revenue usually derived from the Pac-12 to support their athletic programs.

On September 8, 2023, OSU and WSU filed a Complaint and Motion for Temporary Restraining Order (TRO) in Whitman County Superior Court in Washington, the home of WSU. The TRO requested, in effect, that the Court prohibit the Pac-12 from holding a board meeting that included, or permitted the votes of, the departing ten member schools' presidents and chancellors. The Bylaws provided that if a member delivers a notice of withdrawal prior to August 1, 2024, "the member's representative to the Pac-12 Board of Directors automatically shall cease to be a member of the Pac-12 Board of Directors and shall cease to have the right to vote on any matter." (Complaint for Breach of Bylaws, Declaratory Judgment, and Injunctive Relief.)

The departing ten members had arguments against the plain interpretation of this language espoused by OSU and WSU, but the Bylaws plus the precedent that UCLA and USC had been excluded since their announcement, allowed OSU and WSU to prevail. The matter was appealed to the Washington Supreme Court, which denied review, letting the trial court's grant of a preliminary injunction stand. The matter was settled in principle in December 2023 and a final settlement agreement was inked in March 2024. Among other things, the departing members left the conference intact with OSU and WSU as its sole members and left funds in the conference (including future expected revenues) for OSU and WSU to use to rebuild and support their athletics programs as they set the course for their futures.

As a business lawyer embedded in a project like this, skills from other types of business work become useful. This was a membership dispute over control of a business; it resolved, as they often do, in a deal that resembled a buyout. In any buyout transaction, the value of the target needs to be ascertained, which involves legal due diligence.

In the case of the Pac-12, many key contracts are significant sources of value for the conference and its members. For example, the Pac-12's relationships with the Rose Bowl and the CFP provide significant revenue. Because the member universities were mostly public bodies, however, and therefore subject to public records laws, many of these highly sensitive and confidential contracts were never previously put into the possession of the member universities out of reasonable concern that providing them to the universities would make them subject to public disclosure, which could undermine the conference's negotiation positioning in the future and potentially violate confidentiality provisions in these agreements. Said another way, the members had never seen the Rose Bowl or CFP contracts, which is a customary practice amongst conferences in college sports. As part of informal discovery in the dispute, we reviewed a number of these contracts to verify our understanding of the obligations of the parties and the benefits that the conference could expect from them.

The control dispute related to a unique business type: the California unincorporated association. Case law on fiduciary duties for these types of organizations is limited. Whether members owe each other fiduciary duties and the extent of any such duties, of course, were on the parties' minds. Being able to draw analogies from and research other fiduciary duties in closely held business entities helped analyze these issues.

Likewise, the economics of the conference are somewhat like a cooperative or even more so like a law firm or other professional services firm. Familiarity with these types of business helped client and counsel understand the business model quickly, which helped with valuation, among other issues.

Broad dealmaking experience also came into play in numerous ways. The Settlement Agreement among the Pac-12, the ten departing members, OSU, and WSU involved control of the organization but also a compromise where OSU and WSU would allow the departing members to have a vote on certain matters. Additionally, allocation of future revenue, responsibility for conference liabilities, and responsibility for allocation of intellectual property assets were decided. These types of issues are constantly at play in business break-up, buyout, and merger and acquisition deals, and the experience of a business lawyer can help expedite negotiations.

Likewise, there were ancillary deals to be made while OSU and WSU were in control of the Pac-12, including scheduling competitions for the two conference members for the 2024–2025 and 2025–2026 seasons. Because these needed to be negotiated while in active litigation against the Pac-12 and departing schools, OSU and WSU counsel took the lead in negotiating these deals with third parties but obtained conference support and buy-in when needed.

Not every case will call for a multi-attorney team and other experts, but even a smaller case involving business interests could benefit from the experiences of a business transactions lawyer familiar with legal due diligence, business entities and fiduciary duties, and contract drafting and negotiation.

The Pac-12 has recently announced that, effective July 1, 2026—at the expiration of a two-year NCAA grace period allowing OSU and WSU to operate a conference with only two members—San Diego State University, Colorado State University, Boise State University, Fresno State University, Utah State University, and Gonzaga University have agreed to join the conference. A new era for OSU, WSU, and the Pac-12 begins. ◆

Federal Trade Commission Non-Compete Ban: December 2024 Update

Tim Resch, Samuels Yoelin Kantor LLP

Tim is the Managing Partner at Samuels Yoelin Kantor LLP, where his practice focuses on employment and healthcare. Tim previously spent almost five years as a Trial Attorney with the United Nations International Criminal Tribunal for the former Yugoslavia.

In August, the U.S. District Court for the Northern District of Texas struck down the FTC's non-compete agreement ban nationally in Ryan, LLC v. Federal Trade Commission. In the ruling, the court held that the FTC exceeded their statutory authority and that the Administrative Procedure Act (APA) required that the regulations be found unlawful and set aside. The original rule banning non-compete agreements was scheduled to become effective September 4, 2024. The FTC will be appealing the District Court's ruling in the U.S. Court of Appeals for the Fifth Circuit. Opponents of the rule view the Fifth Circuit as a favorable venue, and this question may eventually end up at the U.S. Supreme Court.

The FTC is also appealing a preliminary injunction from the U.S. District Court for the Middle District of Florida in Properties of the Villages, Inc. v. Federal Trade Commission. The court held in that case that the new rule is likely barred by the major questions doctrine, which requires clear congressional authorization for agency actions with extraordinary economic and political significance. The major questions doctrine fits squarely into the recent shift away from *Chevron* deference and further limits government agencies acting without explicit congressional approval. The court did not, however, find that the Administrative Procedure Act barred the rule from taking effect and it has not gone so far as to enjoin the rule nationally. The FTC has appealed to the Eleventh Circuit, and briefing is progressing in that appeal.

In contrast to the courts' decisions in *Properties of the Villages* and *Ryan, LLC*, the U.S. District Court for the Eastern District of Pennsylvania held that neither the APA nor the major questions doctrine were likely to bar the final rule in ATS Tree Services, LLC v. Federal Trade Commission. The court refused to issue a preliminary injunction and ATS Tree Services dropped its challenge to the rule.

It is possible that the issue will eventually make it to the Supreme Court, but as my previous articles have explained, I believe it is unlikely that the rule will ultimately survive. The *ATS Tree Services* case from the District of Pennsylvania could have increased the likelihood of conflicting rulings and a circuit split, especially if it had been appealed and ultimately affirmed in the Third Circuit. Of course, it is possible that further litigation could create a conflict between circuit courts of appeals. Given the results of the November presidential election, President-Elect Trump will nominate a new chair of the FTC in January 2025. A new chair could withdraw the pending appeals, and the non-compete rule would never come into effect. ◆

Barrister Banter: Melissa Jaffe

The purpose of the series is to bridge the gap between junior and senior business lawyers in Oregon, fostering understanding and camaraderie. For this article, we interviewed Melissa Jaffe, the owner and principal attorney of the Law Offices of Melissa B. Jaffe, PC and a member of the Business Law Section Executive Committee. Read on to learn more about her path to law, her practice, and her advice for junior and senior lawyers.

1. Tell me about your path to being a lawyer. What inspired you to pursue this career?

I worked at a club in college called the 9:30 Club in Washington, DC. At the time, I mostly did it for the free concerts, but witnessing the amount of behind-the-scenes work that went into each production was inspiring. Eventually I was tasked with reading and even redlining contracts, and I was hooked—I knew I wanted to be a transactional lawyer. I was able to problem-solve, be creative, and interpret different perspectives from different stakeholders, and I was responsible for making sure all the details were tracked and executed. If there was a disagreement, I was routinely called upon to mediate. It was fast-paced, detailed, and incredibly satisfying to witness how many lives were impacted with each event.

2. What is your practice area?

I am a transactional business lawyer with a focus on intellectual property and privacy law. My skill set is called upon regarding artists, producers, entrepreneurs, new business technology (such as cryptocurrency), and new endeavors of all kinds.

3. How long have you been in your current role?

I became a lawyer nearly twenty years ago. I have owned my own practice for the last seventeen years.

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BB: Melissa Jaffe

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Melissa Jaffe
Law Offices of Melissa B. Jaffe, PC

4. How have you seen the practice change since you started practicing?

Technology has changed everything in my practice. I literally think everything has been updated—my staff is all remote, I use AI to assist with scheduling and managing calendars across different time zones, and all my clients have some internet component, which has caused privacy issues to increase exponentially. From a business ownership perspective, when I started my practice, I would use Yellow Pages ads. Now I have marketing strategy sessions that include social media, apps, and video presentations. I own a multi-jurisdictional practice; I'm licensed in CA, OR, and WA and will sit for the HI bar shortly. Almost all my meetings are remote through Teams or Zoom.

5. What do you wish you had known before you started working as a new lawyer?

I really wish I would have invested in a joint MBA/JD. Running your own firm is so much more than just billing and emails. There are aspects of accounting, management, marketing and PR, and feeling responsible for staff that add additional layers of stress I wasn't necessarily prepared to encounter. Luckily, I enjoy learning and was able to grow along with my practice. Honestly, I remember thinking I was finished with classwork once I graduated from law school, but it turned out I wasn't, not by a long shot!

6. What are your career highlights?

There have been so many. When I started my career in Portland, I would give free talks to artists on the basics of intellectual property. About ten years later, I was called on to write a brief on copyright law in a very high-stakes litigation. Based on my talk, the artist was able to deftly negotiate a derivative rights clause to his contract that ultimately won him a lot of money. I think the particular nuance escaped many of the corporate lawyers when drafting the agreement. He contacted me after the judgment was rendered to thank me. I truly changed his life for the better. That was very gratifying.

Another person who joined my office as an assistant went on to run her own incredibly successful creative business. We are still in touch, and I know many of her business decisions were based on the talks we had had years prior.

When I am able to get my clients, staff, or audience members to understand the importance of legal theories or intellectual property issues—when I see the light bulb turn on—that is intensely gratifying for me.

7. What is your favorite part of the job?

My favorite part of my job is making the world a better place for my colleagues, clients, and their clients. There is such an impact we get to make, and I believe it's an impact that deeply enriches others in the long term. Watching business grow, multiply, and even sell has a certain magic to it. It is an honor to assist clients turn an idea or a small venture into something that can support their families and even generations into the future.

8. What parts of the job do you wish you could outsource to AI?

I am learning to love marketing. Promoting myself and my business is a tough thing for me because my name is also my law firm name. As a solo practitioner it can feel uncomfortable to talk about myself. At times, I wish I could avoid it entirely and hand it off to AI.

9. What advice would you give a new business lawyer?

My biggest advice to new business lawyers is to turn your devices off while with family, especially if you have children. I understand we are a competitive group, but it makes a big difference for mental and ultimately physical wellness to just be present with loved ones.

My second piece of advice is to engage in service. My community service through the Business Law Section, Intellectual Property Law Section, Oregon Women Lawyers, House of Delegates of the Oregon State Bar, and state bar taskforces has allowed me to meet others who are passionate about the practice of law. The pro bono work I'm engaged in is some of the most impactful.

10. What advice would you give a senior lawyer who is charged with mentoring a new lawyer?

I recommend senior lawyers remain vulnerable and open with their mentees. I have made great friendships with my mentees and discovered some pretty serious circumstances that truly needed attention. I'm grateful I was able to help in sometimes profound ways. Other times, just remaining available means a lot to a brand-new lawyer. ◆

Oregon State Bar Business Law Section

The mission of the Oregon State Bar Business Law Section is to provide excellent service to the diverse group of business law practitioners throughout the State of Oregon by providing regular, timely, and useful information about the practice of business law, promoting good business lawyering and professionalism, fostering communication and networking among our members, advocating improvement of business law, and supporting Oregon's business infrastructure and business community.

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