



## Erich W. Merrill, Jr. Partner

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**“My goal is to provide business owners with easy-to-read contracts that are roadmaps—that answer the question, ‘What do I do in this situation?’ My clients value legal documents that accomplish their business and legal objectives and, equally as important, are written to be comprehensible and practical.”**

Erich Merrill works with company management and founders in acquiring or selling businesses, raising funds from investors, negotiating and writing contracts, protecting their intellectual property, and obtaining or granting licenses. His practice also frequently involves collaborating on corporate policy and strategy, advising on entity choice and formation, working with start-ups to create an appropriate ownership structure and cap table, and preparing executive compensation documents, including stock option and bonus plans. He has represented clients in a variety of private securities transactions, including offerings, mergers, and private tender offers.

Before going to law school, Erich received an electrical engineering degree and worked for Bell Laboratories in Whippany, New Jersey. He enjoys working with companies where understanding the technology is an important aspect of deciding on appropriate legal strategy.

Clients that turn to Erich provide a variety of products and services. He has represented or currently represents companies in the medical products, diagnostic technology, biotech, software, virtual reality, hospitality, consumer products, cannabis, transportation and trucking, logistics, silicon chip manufacturing and support, and heavy equipment manufacturing industries.

Erich knows that emerging and mature businesses often encounter opportunities in which appropriate legal documents can mean the difference between a successful venture and exposure to liability. One size doesn't fit all and attention to detail is key. At the same time, too much detail can make legal documents incomprehensible. Erich's clients say he balances these concerns to produce documents they can understand and use.

### Education

J.D., Harvard Law School, 1983

B.E., Vanderbilt University, *summa cum laude*, electrical engineering, computer science, and mathematics

### Bar Admissions

Oregon, 1983

U.S. Patent and Trademark Office, 1985

## Professional Activities

- Oregon State Bar, member
  - Business Law Section, past chair
  - Computer Law Section, past executive committee member
  - Limited Liability Company Legislation Task Force, member
- TechAmerica (Oregon Chapter), past chair of emerging business committee
- Technology Association of Oregon (fka Software Association of Oregon), past program committee member
- Organization for Corporate Governance, Washington, D.C., steering committee member

## Civic Activities

- Free Geek, board member
- Portland Venture Group, associate member
- Volunteer Lawyers Project
- Senior Law Project
- Campaign for Equal Justice
- First Presbyterian Church, member and trustee
- Friends of Menucha Foundation, past president, director
- United Way, past firm campaign leader
- Habitat for Humanity, Miller Nash team, past organizer

## Representative Experience

### Mergers & Acquisitions

- Formation and sale of packaging logistics business. Erich worked with two founders to form and within two years complete the successful exit sale of a software and AI-driven packaging logistics business. The transaction involved supervising and coordinating the efforts of more than twenty attorneys.
- Long-term representation and exit sale of transportation data company. Erich served as lead counsel in the sale of this software company to a strategic acquiror for a mix of cash, acquiror stock, and a multi-stage earn-out.
- Acquisition of established businesses. Erich has recently led transactions for buyers acquiring established businesses in the manufacturing, produce distribution, and fuels industries.

### Private Securities Offerings

- McMenamins Series A offering. Erich served as lead counsel for this \$20 million offering of nonvoting preferred stock being undertaken to provide equity funding to a family-owned pub, restaurant, and hotel business located in Oregon and Washington. The offering was conducted under Rule 506(c), which allows for public solicitation.
- Cannabis industry company convertible note offering. Erich was the lead attorney on this \$4 million note offering, completed in July 2019. He has been the lead attorney on prior preferred stock and convertible note offerings for this company, which raised a total of \$12 million prior to the convertible note offering.
- Private placements for diagnostics company. Erich is the outside general counsel for this California-based diagnostics company. He has worked with the company on a number of preferred stock and convertible note private placements, raising approximately \$5 million.

### Business Contracts

- Cancer therapy start-up license agreement. Erich has long been outside general counsel for this cancer therapy start-up. He recently assisted the company with a major international license transaction in which the company's therapeutic drug will be used in clinical trials in the U.S. and overseas.

- Key supplier contract. Erich guided the drafting of a contract to be used by a client nationwide in procuring qualified mechanical and electrical maintenance services for its customers' installed products.
- Consulting contracts; NDAs. Erich routinely assists clients with NDAs, consulting agreements, technology and IP licenses, services contracts, and standard terms of sale.

## Publications

- "Supreme Court Expands Rights to Register Domain Names as Trademarks," Miller Nash Graham & Dunn, *IP Law Trends* (July 2020)
- "Amendment of Articles & Bylaws" and "Redemption or Purchase of Corporate Shares," Advising Oregon Business, OSB CLE (1989, 2001, 2007, 2017)
- "Startup Tip: New Crowdfunding Regulations," *Oregon Business Magazine* (Jan. 2017)
- "Building a Better Board of Directors," *Daily Journal of Commerce*, Law Focus Section (July 2012)
- "Top Three Things to Know Before Hiring a Finance Lawyer," Miller Nash, *News You Can Use* (Nov. 2011)
- "Ten Traps for Entrepreneurs to Avoid," Miller Nash (Jan. 2009)
- "How to Know What You Owe: Sorting Out Disclaimed Damages," Miller Nash, *News You Can Use* (July 2007)
- "Selling It: Supreme Court Gives Manufacturers New Pricing Rights," Miller Nash, *News You Can Use* (July 2007)
- "Companies Find Alternative Ways to Attract Investors," *Portland Business Journal* (June 2006)
- "Federal Government Attempts to Can The SPAM," Miller Nash, *News You Can Use* (Jan. 2004)
- "IP Protection on a Shoestring," Miller Nash (Sept. 2002)
- "The Internet Meets the ADA," Miller Nash (Aug. 2001)
- "Treatment of Oregon Limited Liability Companies in States Without Limited Liability Statutes," *Oregon Law Review* (Spring 1994)
- "'Hardware Agreements,'" Oregon State Bar, *Computer Law*, Chapter 5 author (1992)

## Presentations

- "Buyer's Representations and Warranties in a Business Sale," Lorman Education Services, webinar (Aug. 2020)
- "Seller's Representations and Warranties in a Business Sale," Lorman Education Services, webinar (May 2020)
- "Nonbinding Legal Documentation in Commercial Transactions," Lorman Education Services (June 2019)
- "Legal Issues When Raising Money," The Initiative, 2019 Accelerator Program (Jan. 2019)
- "Drafting and Negotiating Effective Letters of Intent for M&A Transactions," Lorman Education Services (Jan. 2018)
- "Negotiation Exercise," Oregon State Bar, Business Law—The Life of a Deal (Nov. 2017)
- "Contract Review & Administration—Tips to Avoid Risk and Effectively Manage Your Contracts," Miller Nash Graham & Dunn, July Breakfast Roundtable (July 2016)
- "'Public' Real Estate Securities Offerings - Rule 506(c) and the McMenamins Offering," Oregon State Bar, Real Estate and Land Use Luncheon Program (June 2014)
- "A Primer: What Corporate Lawyers Should Know About The America Invents Act," Seattle University School of Law, CLE (Apr. 2012)
- "Contract Review and Administration," Miller Nash, Breakfast Roundtable (Feb. 2012)
- "Ten Traps for Entrepreneurs to Avoid," Willamette Management Associates Insights (Dec. 2009)
- "Protecting Your Intellectual Property - Legal Dos, Dont's, and Tips," Miller Nash, Roundtable (Oct. 2009)
- "Joined at the IP—A Practical Guide to Joint Development/Collaboration Deals," Oregon Chapter of the Association of Corporate Counsel (Feb. 2008)
- "Protecting Your Intellectual Capital: Noncompetition and Nonsolicitation Agreements," panelist (May 2007)
- "Venture Capital Investments and Exits Before and After the Internet Bubble," Willamette Law Review College of Law, Program in Law & Business (Jan. 2004)

- “Closing the Deal,” Miller Nash, panelist (Jan. 2004)
- “Whom Do You Represent?” Oregon State Bar (May 2003)
- “Keeping and Disclosing Electronic Records,” panelist (Dec. 2002)
- “Intellectual Property Issues” The Seminar Group, Mergers and Acquisitions: Acquiring and Selling the Privately Held Company (May 2000)

### Recognition & Honors

- Selected for inclusion in *The Best Lawyers in America*® in Corporate Law and Mergers and Acquisitions Law, 2005-present
  - Named “Lawyer of the Year” in Corporate Law (Portland), 2021
- Selected for inclusion as an Oregon Super Lawyer, 2006-present
- Recognized as a “Leader in Their Field” by *Chambers USA* for Corporate/M&A
- Rated AV® Preeminent™ by Martindale-Hubbell®

### Personal Activities

Erich is an avid runner, though not very fast. He has completed six Portland marathons and been on seven Hood-to-Coast relay teams. He and his family actively support and participate in the oversight of Menucha, an ecumenical retreat center in the Columbia Gorge serving only not-for-profit groups, such as arts, education, 12-step recovery, and cancer care groups.