

**Oregon State Bar  
Meeting of the Board of Governors  
November 10, 2012  
Surfsand Resort  
148 W. Gower Street  
Cannon Beach, OR 97110**

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on November 10, 2012.

- 1. Call to Order/Finalization of the Agenda**
- 2. BOG Officer Elections [Ms. Naucler]**
  - A. President Action
  - B. President-elect and Vice-Presidents Action
- 3. Reports**
  - A. Report of the President [Ms. Naucler] Written
  - B. Report of the President-elect [Mr. Haglund] Written
    1. Adopt 2013 Plan Action
  - C. Report of the Executive Director [Ms. Stevens] Inform Exhibit
    1. Sponsorship Events Attendance Inform Exhibit
  - D. Board Members' Reports Inform
  - E. Director of Diversity & Inclusion [Ms. Hyland] Inform
  - F. MBA Liaison Report [Ms. Kohlhoff and Mr. Spier] Inform
  - G. Oregon New Lawyers Division Report [Mr. Hirshon] Inform Exhibit
- 4. Professional Liability Fund [Mr. Zarov]**
  - A. General Update Inform
  - B. Approval of PLF Assessments and Budget Action Exhibit
  - C. Approval of Changes to PLF Coverage Plan Action Exhibit
  - D. Various Changes to PLF Policies Action Exhibit
  - E. PLF Board of Directors Appointments [Ms. Dilaconi] Discussion

**5. Emerging Issues**

- |           |  |        |         |
|-----------|--|--------|---------|
| <b>A.</b> | Memorandum of Understanding with ONPA      | Action | Handout |
| <b>B.</b> | Decline in Section Membership [Mr. Larson] | Inform | Exhibit |

**6. BOG Committees, Special Committees, Task Forces and Study Groups**

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | New Lawyer Mentoring Program [Ms. Walsh]                |        |         |
| <b>1.</b> | Review and Approve List of Potential Mentors            | Action | Exhibit |
| <b>2.</b> | Approve Revisions to Program Rules                      | Action | Exhibit |
| <b>B.</b> | Affirmative Action Committee Name Change Recommendation | Action | Exhibit |
| <b>C.</b> | Budget and Finance Committee [Mr. Haglund]              |        |         |
| <b>1.</b> | OSB September 30, 2012 Financial Report                 | Inform | Exhibit |
| <b>2.</b> | Approve 2013 Budget                                     | Action | Exhibit |
| <b>D.</b> | Member Services Committee [Mr. Kehoe]                   |        |         |
| <b>1.</b> | 2013 Election Dates                                     | Action | Exhibit |
| <b>E.</b> | Policy and Governance Committee [Ms. Fisher]            |        |         |
| <b>1.</b> | Revision of Appellate Selection Rules                   | Action | Exhibit |
| <b>2.</b> | CSF Rule Changes  | Action | Exhibit |
| <b>3.</b> | Bylaw 6.101(c) Revision                                 | Action | Exhibit |
| <b>a.</b> | Relieve Active Pro Bono Members of CSF Assessment       |        |         |
| <b>4.</b> | Amend Fee Arbitration Rules                             | Action | Exhibit |
| <b>5.</b> | Creation of Military and Veterans Law Section           | Action | Handout |
| <b>F.</b> | Public Affairs Committee [Mr. Larson]                   |        |         |
| <b>1.</b> | Preview of 2013 Legislative Session and Election Update | Inform | Handout |
| <b>2.</b> | Court Funding Resolution                                | Action | Exhibit |

## 7. Other Action / Discussion Items

### A. Client Security Fund

- |    |  |        |         |
|----|--|--------|---------|
| 1. | Claims Recommended for Payment                       | Action | Exhibit |
| 2. | No. 2011-18 DICKERSON (Morning Star) Req. for Review | Action | Exhibit |
| 3. | No. 2012-41 NICHOLS (Kruger) Request for Review      | Action | Exhibit |

### B. Legal Ethics Committee Recommendation re: RPC 4.4(b)

Action Handout

### C. ABA Agenda Items for Mid-Year Meeting (Feb. 2013)

Inform Exhibit

## 8. Closed Sessions – CLOSED Agenda ([click here](#))

### A. Judicial Session (pursuant to ORS 192.690(1)) – Reinstatements

### B. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report

## 9. Consent Agenda

### A. Approve Minutes of Prior BOG Meetings

- |    |   |        |         |
|----|---|--------|---------|
| 1. | Regular Session – August 24 , 2012        | Action | Exhibit |
| 2. | Special Open Session – September 28, 2012 | Action | Exhibit |
| 3. | Special Open Session – October 12, 2012   | Action | Exhibit |

### B. Appointments Committee

- |    |  |        |         |
|----|--|--------|---------|
| 1. | Appointments to Various Bar Committees,<br>Boards and Councils | Action | Handout |
|----|--|--------|---------|

## 10. Default Agenda

### A. Minutes of Interim Committee Meetings

- |    |                              |  |         |
|----|------------------------------|--|---------|
| 1. | Access to Justice Committee  |  |         |
| a. | August 24, 2012              |  | Exhibit |
| b. | October 12, 2012             |  | Exhibit |
| 2. | Budget and Finance Committee |  |         |
| a. | August 24, 2012              |  | Exhibit |
| b. | September 28, 2012           |  | Exhibit |
| c. | October 12, 2012             |  | Exhibit |
| 3. | Member Services Committee    |  |         |
| a. | October 12, 2012             |  | Exhibit |

- 4. Policy and Governance Committee
  - a. August 24, 2012 Exhibit
  - b. October 12, 2012 Exhibit
- 5. Public Affairs Committee
  - a. August 24, 2012 Exhibit
  - b. October 12, 2012 Exhibit
- 6. Public Member Selection Special Committee
  - a. August 24, 2012 Exhibit

**B.** CSF Financial Report Exhibit

**11. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

**A.** Correspondence

**B.** Articles of Interest

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Operations and Activities Report

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### OSB Programs and Operations

Department	Developments
<b>Accounting &amp; Finance/Facilities (Rod Wegener)</b>	<ul style="list-style-type: none"> <li>▪ A lease has been signed with Professional Practices Group, a 2-person firm offering small business financial and consulting services. They will occupy the space formerly occupied by the Admission Department on the first floor beginning December 1. An agreement also was signed with Pacific Crest Structures to perform the tenant improvements. Those improvements offer long-term lease value for the space. Remaining vacant are two other spaces on the first floor occupying about 3,000 s.f.</li> <li>▪ Accounting staff is working with IDT and other affected departments to develop and promulgate a combined regulatory notice that will replace the three or four separate (and confusing) notices that go out near the beginning of each year.</li> </ul>
<b>Admissions</b>	<ul style="list-style-type: none"> <li>▪ As of October 1, 2012, the Board of Bar Examiners has new officers (the BBX operates on a October through September year). Lane County Circuit Court Judge Mustafa Kasubhai is the BBX Chairperson and Portland lawyer Renee Starr is the vice-chair..</li> <li>▪ The admissions ceremony took place in Salem on October 4, 2012. Approximately 240 applicants who passed the July 2012 bar exam were sworn in as new OSB members.</li> <li>▪ The recruitment effort for a new admissions director has begun. Position announcements have been posted and a committee has been appointed to begin reviewing the qualifications of candidates.</li> <li>▪ As noted earlier, a significant drop in the number of applicants for admission in Oregon has led to a comparable drop in BBX revenues. The board projects a deficit budget for 2013. Jurisdictions nationwide are reporting a similar drop in admission applicants.</li> </ul>
<b>Communications (Kay Pulju)</b>	<ul style="list-style-type: none"> <li>▪ The Communications Department has been focused on several ongoing projects, including implementation of LRS percentage fees and development of the new OSB website.</li> <li>▪ The Bulletin has featured bar priorities such as judicial independence, technology and professionalism, as well as current issues such as the status of the Client Security Fund.</li> <li>▪ Staff are preparing for the annual Awards Luncheon on November 29 in Portland, the all-member survey of bar programs and services, and communications on annual reports and deadlines.</li> </ul>

<p><b>CLE Seminars (Karen Lee)</b></p>	<ul style="list-style-type: none"><li>▪ After a soft launch in August, marketing of the revamped CLE membership plan, the OSB CLEasy Pass, began in earnest in September. The CLEasy Pass replaced the OSB Season Ticket. While a few members complained about losing the unlimited attendance feature of the Season Ticket, there were positive comments about the increased discounts and tuition-free registration for CLE events that previously were not eligible for these benefits. The rolling term of the Easy Pass (the pass expires one year from the date of purchase rather than being valid for a fixed term) has been a strong selling point, as well as access to an online library of current CLE materials. 71% of the purchases were made by attorneys and firms who previously had a Season Ticket.</li><li>▪ In October, the department cosponsored a CLE speaker training workshop with the Diversity &amp; Inclusion Department. The goal was to offer attorneys the skills to become strong presenters so they feel comfortable speaking for the bar and other groups in the Oregon legal community. Another speaker workshop is scheduled for November.</li><li>▪ In addition to the department’s roster of fall seminars, CLE Seminars staff handled pre-and on-site registration for what was probably the largest section sponsored CLE event to date – the family law annual meeting and CLE at Salishan. More than 460 people pre-registered for the event and almost two dozen registered at-door.</li></ul>
<p><b>Diversity &amp; Inclusion (Mariann Hyland)</b></p>	<ul style="list-style-type: none"><li>▪ BOWLIO, a fundraising event for OLIO, is scheduled for November 3, 2012. Tom Kranovich will serve as the master of ceremonies.</li><li>▪ Mariann Hyland was a guest of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) at the Pendleton Round-Up in September. While there she met with CTUIR Board of Trustees Treasurer, Rosenda Shippentower, and General Counsel, Naomi Stacey. Ms. Stacey and tribal officials responsible for education and outreach will meet with OSB leaders in Tigard in mid November. On behalf of the Board of Trustees, Ms. Shippentower thanked the Board for visiting the CTUIR’s leaders in 2011. She extended an invitation for the Board to return for another visit.</li><li>▪ In collaboration with CLE Seminars, the OSB Diversity Section, and the Oregon Gay and Lesbian Legal Association, D&amp;I is marketing the bullying CLE seminar taped in August 2012 at OLIO as a fundraiser for OLIO.</li><li>▪ In collaboration with PSU and the Multnomah Bar Association, D&amp;I launched the second annual Explore the Law Program in October. Explore the Law is a pipeline program for PSU students who are interested in law as a career. Twenty students are participating in this year’s program.</li><li>▪ In collaboration with the Legal Heritage Interest group, D&amp;I is leading a project to create a diversity timeline (“Diversity Story Wall”) which will be displayed at the bar center in Tigard. We are interviewing consultants for the project in November as well as launching a fundraising campaign. We have raised \$6,000 thus far and have a \$30,000 fundraising goal.</li><li>▪ Mariann Hyland and Toni Kelich met with representatives of the Washington State Bar in October to discuss respective diversity and inclusion initiatives.</li></ul>

<p><b>General Counsel (Helen Hirschbiel)</b></p>	<ul style="list-style-type: none"> <li>▪ It’s MCLE reporting time again, which means that we have been doing an increased number of CLE presentations on ethics and child abuse reporting. To name a few, we have done CLE presentations for the Multnomah, Lane, Linn-Benton, Yamhill, and Washington County Bar Associations, as well as for the Oregon New Lawyers Division, the Oregon Women Lawyers, and of course, for the OSB CLE Seminars Department.</li> <li>▪ We are gearing up for appointments for the Disciplinary Board.</li> <li>▪ We continue to provide legal advice and assistance to the Executive Director, Human Resources Director and other departments of the bar in support of their work and projects.</li> <li>▪ CAO is further modifying its processes in order to facilitate more electronic communication with complainants and lawyers. The ultimate goal is to make all the CAO working files “paperless” (i.e. electronic).</li> </ul>
<p><b>Human Resources (Christine Kennedy)</b></p>	<ul style="list-style-type: none"> <li>▪ Recruiting for the following positions: Disciplinary Counsel and Director of Regulatory Services, Board of Bar Examiners Executive and Admissions Director, Referral and Information Services Assistant (2 part-time positions), and Technical Support Specialist.</li> <li>▪ Sergio Hernandez and Alysha Rogers were hired as part-time Referral and Information Services Assistants – Bilingual and Laurel Edwards was hired as a part-time MCLE Program Assistant.</li> <li>▪ We received a \$3,655 dividend from SAIF Corporation based on our low incidence of work-related claims.</li> </ul>
<p><b>Information Design &amp; Technology (Anna Zanolli)</b></p>	<ul style="list-style-type: none"> <li>▪ <b>Technology:</b> We are preparing for the upcoming annual compliance cycle to ensure that the online member dashboard is ready with notifications and links for completing compliance items. We are coordinating our efforts with the PLF, making the transition between the websites more seamless for members and reducing the logins required between the sites. A new contract was signed with Fastcase and work has started on linking it to BarBooks with a completion goal of Jan 1, 2013.</li> <li>▪ <b>Programming:</b> We expanded the membership database to include the new demographic fields of data, which is now being entered with the data received from the most recent group of admittees. An online form is being developed so existing members can update their demographic data behind the member login.</li> <li>▪ <b>Website:</b> The bar’s new website was launched today after a two-month preview by members and the public, which gave us the opportunity to fine tune the site to the needs of our audience. The carousel adds color and links to headline data and the event calendar makes it easy to find and register for events right from the home page.</li> <li>▪ <b>Design:</b> new logos and materials were designed for BOWLIO, the annual awards dinner, and the NABE Communications Conference that will be held in Portland in September 2013.</li> </ul>

<p><b>Legal Publications (Linda Kruschke)</b></p> <p>○</p>	<ul style="list-style-type: none"><li>▪ The following have been posted to BarBooks™ since August:<ul style="list-style-type: none"><li>✓ Ten chapters of <i>Administering Oregon Estates</i> 2012 revision</li><li>✓ Five more chapters of <i>Family Law</i> 2013 revision</li><li>✓ Three chapters of <i>Consumer Law</i> in Oregon 2013 revision</li><li>✓ One revised <i>Uniform Criminal Jury Instruction</i></li></ul></li><li>▪ <i>Torts</i> went to the printer on August 30. Pre-order sales have already exceeded budget with another email promotion to be sent next week:<ul style="list-style-type: none"><li>✓ 2012 Budget = \$14,400; Actual to date = \$44,298</li><li>✓ Based on number of copies sold, current sales of the 2012 edition of this book are 28% of the sales of the last edition released in 2006 (before BarBooks was launched)</li></ul></li><li>▪ <i>Administering Oregon Estates</i> is scheduled to go to the printer on December 10. Our pre-order marketing campaign began on October 15.<ul style="list-style-type: none"><li>✓ 2012 Budget = \$13,500; Actual to date = \$10,368</li></ul></li><li>▪ Bloomberg Financial LLP<ul style="list-style-type: none"><li>✓ On September 26, we reached an agreement with Bloomberg to license our Uniform Civil and Criminal Jury Instructions to them for inclusion in their Bloomberg Law online product at a license fee of \$6,500 per year. The first license fee is due by November 15.</li><li>✓ We are negotiating with Bloomberg to license some or all of our other books and hope to reach a final agreement before the 2013 budget is finalized.</li></ul></li><li>▪ In September we eliminated the Assistant Editor position in the department and began outsourcing our copyediting at a substantial savings. The process is going well. Job descriptions have been modified to transfer non-outsourced job duties previously under the Assistant Editor to other members of the department.</li><li>▪ The published page count for 2012 is anticipated to be 7,136, exceeding the 2,000 count by more than 2011. This is due largely to implementing new software and onscreen editing.</li></ul>
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<b>Legal Services/OLF (Judith Baker)</b>	<p><i>Legal Services Program:</i></p> <ul style="list-style-type: none"><li>▪ October is the reporting month for abandoned client money in lawyer trust accounts. These funds are forwarded to and managed by the bar’s Legal Services Program. For the last two years the bar has received approximately \$100,000 each year in abandoned client money. The amount received as of October 26 is only \$14,800.</li><li>▪ October 22 is National Celebrate Pro Bono Week. In celebration the University of Oregon law school had a free CLE event which was well-attended. The 8<sup>th</sup> Annual Pro Bono Fair and Celebration was held on October 25. Twenty-one organizations participated in the Fair (the most ever). Three CLEs were conducted instead of two and there were far more attendees than in previous years. It was a highly successful event.</li><li>▪ LRAP: The Committee will be meeting on November 17 to review and make any changes to the LRAP Policy and Guidelines. No major changes are expected.</li></ul> <p><i>Oregon Law Foundation:</i></p> <ul style="list-style-type: none"><li>▪ The OLF continues to work with banks to maintain the highest possible interest rates on IOLTA accounts and educate lawyers to understand the importance of keeping IOLTA accounts at Leadership Banks.</li><li>▪ The OLF’s Grant Committee met on October 24 and granted \$922,700 in funds to organizations that provide civil legal services to low income Oregonians.</li><li>▪ The OLF continues to explore other avenues of revenue and has on the bar’s legislative agenda the concept of receiving interest from title company escrow accounts.</li></ul>
<b>Member Services (Dani Edwards)</b>	<ul style="list-style-type: none"><li>▪ New bar members were welcomed during an ONLD-sponsored reception following the October 4 Swearing-in Ceremony at Willamette University. The ONLD invited sections to participate in the reception this year in an effort to help increase section membership and provide new members the opportunity to learn more about bar groups.</li><li>▪ October 15 concluded this year’s BOG election where a 12% vote return was seen. The new BOG members are Timothy L. Williams, region 1; R. Ray Heysell, region 3; Caitlin J. Mitchel-Markley, region 4; and Joshua L. Ross, region 5.</li><li>▪ The Section annual meeting season is coming to an end with only 9 meetings remaining this year.</li><li>▪ Member Services helped to coordinate the Pro Bono Fair and Awards Ceremony held October 25 at the World Trade Center. (See Legal Services Report for more information.)</li></ul>

<p><b>Minimum Continuing Legal Education (Denise Cline)</b></p>	<ul style="list-style-type: none"> <li>▪ Laurel Edwards, MCLE Program Assistant (.75 FTE), was hired October 1, 2012. She will work 40 hours per week October 1 through March 31 and 20 hours per week April 1 through September 30.</li> <li>▪ The MCLE Committee will meet on Friday, December 14.</li> <li>▪ Processed 5,913 program accreditation applications and 1,022 applications for other types of CLE credit (teaching, legal research, etc.) since the first of the year.</li> <li>▪ 4,676 compliance reports were sent on October 15. All but 111 were sent via email. 206 members have already filed their 2012 report.</li> </ul>
<p><b>New Lawyer Mentoring/Media Relations (Kateri Walsh)</b></p>	<p><i>New Lawyer Mentoring Program</i></p> <ul style="list-style-type: none"> <li>▪ We currently have roughly 370 matched pairs in progress.</li> <li>▪ We are getting increasing Certificates of Completion from 2011 participants. We've received 30 so far, and expect those to continue to come in at a steady pace.</li> <li>▪ We begin employing our evaluation tool this week, with surveys of both mentors and new lawyers who have completed the program. We also plan to conduct focus groups in February/March.</li> <li>▪ We've submitted some minor changes in the curriculum to the BOG for approval, all aimed at increasing the flexibility of the program. We've also submitted a change in mentor eligibility criteria from seven to five years of experience.</li> <li>▪ We launch publication of a monthly e-newsletter this week to keep participants informed of program developments, as well as events that may be particularly suited to mentor/new lawyer participation, or that address specific curriculum components.</li> <li>▪ We are creating a Mentor Training and Orientation program to supplement the written training materials and the video. It hope to offer it in at least three locations, and then make it available online. It will remain optional.</li> </ul> <p><i>Media Relations</i></p> <ul style="list-style-type: none"> <li>▪ We've got a program scheduled this month at KPTV to discuss coverage of high profile cases. The Washington County Court, DA, and defense bar are participating.</li> <li>▪ We assisted Classroom Law Project with some press outreach this month for their program on hate speech/free speech.</li> <li>▪ The Bar Press Broadcasters Council submitted a change to the UTCR that allows a victim in a sex crime to limit coverage (i.e. limit recording equipment) of his/her likeness or testimony, but not an entire judicial proceeding. The UTCR committee approved the change, and it is scheduled for public hearing at Supreme Court this month.</li> <li>▪ We continue to have coverage of numerous discipline cases. Many are routine. A few have potential for some higher-profile coverage. The would include prosecution of Washington County District Attorney Bob Hermann, and prosecution of Stoel Rives attorneys Barnes Ellis and Lois Rosenbaum.</li> </ul>

<p><b>Public Affairs (Susan Grabe)</b></p>	<ul style="list-style-type: none"> <li>▪ Public Affairs is working with the court and the Multnomah Bar Association to establish and energize a court funding coalition for the 2013 session. The first few meetings will be held in early November.</li> <li>▪ The bar’s 19 Law Improvement proposals are working through the system. Staff continues to reach out to bar groups and stakeholders to address concerns regarding law improvement legislation.</li> <li>▪ The Public Affairs staff has finished the 2012 Session edition of the Legislation Highlights Notebook which is now available on Bar Books.</li> <li>▪ The Public Affairs Department had its Staff Retreat on September 17<sup>th</sup> and the discussion topics included planning for 2013.</li> <li>▪ In the face of a bleak revenue forecast, the judiciary committee focused its September hearings on best practices in the public safety/law enforcement arena.</li> <li>▪ Staff continues to monitor and engage on issues of interest to the bar in the legislative arena including numerous task forces underway: the Appellate Judicial Selection workgroup, the Public Safety Commission and its work on sentencing reform, the Council on Court Procedures and ORCP changes, law library services and court funding.</li> </ul>
<p><b>Referral &amp; Information Services (George Wolff)</b></p>	<ul style="list-style-type: none"> <li>▪ Referral &amp; Information Services continues to implement the new Lawyer Referral Service (LRS) model. Due to software development issues LRS delayed implementation of the percentage fee component until September, exempting all referrals made in July and August. Panelists began reporting in October, and preliminary figures indicate that LRS has generated invoices of \$5,399 with actual payments received of \$2,902. This represents nearly \$45,000 of business generated for participating LRS attorneys in the month of September.</li> <li>▪ Staff continue to work with the software developers on remaining enhancements, working as quickly as possible while allowing time for testing and panelist feedback. At this point the software is functional, including new access for panelists that has been well received.</li> <li>▪ RIS recently hired two bilingual staff members and continues to recruit for positions open due to attrition.</li> </ul>
<p><b>Regulatory Services (Jeff Sapiro)</b></p>	<ul style="list-style-type: none"> <li>▪ The SPRB continues to meet monthly to review the results of disciplinary investigations and make probable cause decisions in those matters. The board met on October 19, 2012, and took action on approximately 20 separate matters. The SPRB meets next on November 17, 2012.</li> <li>▪ The next session of Ethics School (titled, “Ethics Best Practices”) is scheduled for November 16, 2012, at the Bar Center. We anticipate roughly 40 attendees.</li> <li>▪ Job announcements have been posted for the position of Disciplinary Counsel. That position becomes vacant in mid February 2013, when Jeff Sapiro leaves the OSB staff.</li> <li>▪ Disciplinary Counsel staff are presenting at a number CLE programs this fall, as providers offer a variety of legal ethics courses before the year ends.</li> <li>▪ Regulatory Services staff continue to process the usual number of membership status transfers, reinstatements, <i>pro hac vice</i> applications and public records requests.</li> </ul>

**Executive Director's Activities June 23 to August 23, 2012**

<b>Date</b>	<b>Event</b>
9/5	CEJ Board Meeting
9/7	Chief Justice Meeting
9/8	Client Security Fund Committee Meeting
9/10	PLF Finance Committee meeting
9/11	Legal Opportunities Task Force
9/13-10/6	Vacation
10/9	Region 4 HOD Meeting
10/9	K&L Gates Global Practice Event
10/10	Region 5 HOD Meeting
10/11	Region 6 HOD Meeting
10/11	Legal Opportunities Task Force
10/11	Markewitz Herbold Campaign Event for Ellen Rosenblum
10/13	Wine & Chocolate Fundraiser for Youth, Rights & Justice
10/15	CLE on Human Trafficking
10/17	ED's Breakfast Group
10/17	Lunch@Kell Alterman
10/18	New Employee Orientation
10/19	Lawyers Without Rights (US Courthouse)
10/20	Legal Ethics Committee Meeting
10/23-24	Eastern Oregon Tour with Mitzi Naucler (The Dalles, Pendleton, LaGrande, Baker City)
10/25	OAJC Dinner Honoring Jeff Merkley
10/26	OWLs Fall CLE
10/27	CSF Committee Meeting
10/27	OGALLA Dinner
10/30	Legal Opportunities Summit
10/31	Lunch@Landye Bennett
11/1	Dinner with Jordan Furlong
11/2	HOD Meeting

Board of Governors Sponsorship Events Comparison 2011 v. 2012  
 Prepared for BOG Meeting November 10, 2012 by Camille Greene

SPONSORSHIP EXPENSE		2011			2012		
Event	Date	Participants	Each	Paid	Participants	Each	Paid
<i>2012 Dr. MLK, Jr. Breakfast</i>	<i>Jan. 16</i>				10	\$ 89.50	\$ 895.00
<i>2011 Marion County Awards Dinner</i>	<i>Jan. 20</i>	5	\$ 35.00	\$ 105.00			
<i>2012 Celebration of Business - Eugene</i>	<i>Jan. 25</i>				2	\$ 75.00	\$ 150.00
<i>CEJ Annual Awards Lunch</i>	<i>Feb. 22 / Feb. 8</i>	9	\$ 35.00	\$ 315.00	10	\$ 35.00	\$ 350.00
<i>2012 Partners in Diversity - Say Hey</i>	<i>Feb. 16</i>				2	\$2K pd by Diversity	
<i>OHBA Annual Awards Dinner</i>	<i>Feb. 11 / Feb. 24</i>	7	\$ 100.00	\$ 700.00	8	\$ 100.00	\$ 800.00
<i>OWLs Roberts-Deiz Awards Dinner</i>	<i>Mar. 11 / Mar. 9</i>	8	\$ 85.00	\$ 850.00	8	\$ 85.00	\$ 850.00
<i>2012 HNBA Legal Education Fund Lunch</i>	<i>Apr. 12</i>				6	\$500 pd by Diversity	
<i>CLP Legal Citizen of the Year Awards Dinner</i>	<i>Apr. 20 / Apr. 24</i>	10	\$ 150.00	\$ 1,500.00	10	\$ 150.00	\$ 1,500.00
<i>Hispanic Metro Chamber Lunch</i>	<i>May. 3 / May 1</i>	2	\$ 30.00	\$ 90.00	2	\$80 pd by Diversity	
<i>Multnomah Bar Association Dinner</i>	<i>May 17 / May 21</i>	9	\$ 80.00	\$ 800.00	9	\$ 80.00	\$ 720.00
<i>Asian American Youth Leadership Conference</i>	<i>May 18</i>				2	\$ 75.00	\$ 150.00
<i>OLMV Hope &amp; Liberty Awards Dinner</i>	<i>May 31</i>				2	pd by Diversity	
<i>OR Minority Lawyer Assoc. Auction</i>	<i>Jun 13</i>				3	\$ 75.00	\$ 225.00
<i>OR Minority Lawyer Assoc. Auction</i>	<i>July 21 / Aug 2</i>	2	\$ 10.00	\$ 20.00	1	\$ 10.00	\$ 10.00
<i>Bridging Rivers of Change</i>	<i>Aug 19</i>	3	pd by Diversity				
<i>Hispanic Heritage Celebration Dinner</i>	<i>Sep 8 / Sept 6</i>	1	\$ 135.00	\$ 135.00	3	\$ 130.00	\$ 390.00
<i>Hispanic Heritage Month Breakfast 2011</i>	<i>Sep 15</i>	4		\$ 250.00	4	\$ 250.00	\$ 250.00
<i>Classroom Law Project Golf Tournament</i>	<i>Sep 26</i>	4		\$ 900.00			
<i>Urban League Equal Opp Day Award Dinner</i>	<i>Oct 2</i>				1	\$250 pd by Diversity	
<i>OR Native American Chamber Dinner/Auction</i>	<i>Oct. 7 / Oct. 5</i>	7	\$ 75.00	\$ 750.00	6	\$ 85.00	\$ 510.00
<i>YRJ Wine &amp; Chocolate Extravaganza</i>	<i>Oct. 13</i>				2	\$ 150.00	\$ 300.00
<i>Night for Networking II</i>	<i>Oct. 13</i>	1	pd by Diversity				
<i>OWLs Workplace Leader Award Reception</i>	<i>Oct. 14 / Oct 26</i>	4	no cost	\$ -	3	vary	\$ 230.00
<i>Oregon League of Minority Voters</i>	<i>Oct. 19</i>	5	pd by Diversity				
<i>OGALLA Annual Dinner &amp; Auction</i>	<i>Oct. 22 / Oct 27</i>	4	\$ 95.00	\$ 380.00	9	\$ 95.00	\$ 855.00
<i>OAJC Human Relations Award Dinner</i>	<i>Oct 13</i>				2	\$ 200.00	\$ 400.00
<i>CEJ Laugh-Off</i>	<i>Oct .28</i>	4	\$ 10.00	\$ 40.00			
<i>OSB C.O.E.</i>	<i>Nov. 4</i>	6	pd by Diversity				
<i>Urban League EOD Dinner</i>	<i>Nov. 17</i>	1	\$ 250.00	\$ 750.00			
				<u>\$ 7,585.00</u>			<u>\$ 8,585.00</u>

## Attendance Loss Report

Close Report

Tuesday, October 23, 2012

8:39:38 AM

<u>EventName</u>	<u>Tickets Purchased</u>	<u>Attended</u>	<u>Loss</u>
OAJC 2012 Human Relations Award Dinner	2	2	\$0.00
Multnomah Bar Association Annual Meeting and Dinner	9	7	\$160.00
Oregon League of Minority Voters Annual Hope and Liberty Awards Dinner	2	2	\$0.00
Oregon Area Jewish Committee 2012 Judge Learned Hand Lifetime Achievement Award	3	3	\$0.00
Asian American Youth Leadership Conference	2	2	\$0.00
Hispanice Metro Chamber of Commerce Scholarship Awards Luncheon	2	2	\$0.00
Classroom Law Project Legal Citizen of the Year Awards Dinner	10	10	\$0.00
Hispanic National Bar Association Legal Education Fund Scholarship Luncheon	10	7	\$0.00
Dr. MLK, Jr. Breakfast	10	10	\$0.00
Eugene Chamber Celebration of Business	3	3	\$0.00
Campaign for Equal Justice Annual Awards Lunch	10	10	\$0.00
Partners in Diversity Say Hey	2	2	\$0.00
Oregon Hispanic Bar Association Annual Awards Dinner	8	7	\$100.00
Oregon Women Lawyers Roberts-Deiz Awards Dinner	10	8	\$170.00
Hispanic Heritage Celebration Dinner	3	3	\$0.00
NAYA Family Center 9th Annual Auction & Gala	0	0	\$0.00
Urban League of Portland Equal Opportunity Day Awards Dinner	1	1	\$0.00
Oregon Minority Lawyers Association Social and Auction	1	1	\$0.00
Oregon Native American Chamber Gathering Dinner and Auction	6	6	\$0.00
Oregon Women Lawyers Workplace Leader Award Reception	3	3	\$0.00
Oregon Gay & Lesbian Law Association Annual Dinner and Auction	9	9	\$0.00
Hispanic Heritage Month Breakfast	4	4	\$0.00
Youth, Rights & Justice Wine & Chocolate Extravaganza	2	2	\$0.00

Loss due to "no shows"

\$430.00

## Attendance Loss Report

[Close Report](#)

Tuesday, October 23, 2012

8:44:37 AM

<u>EventName</u>	<u>Tickets Purchased</u>	<u>Attended</u>	<u>Loss</u>
Classroom Law Project Golf Tournament	4	4	\$0.00
Oregon Native American Chamber Gathering Dinner and Auction	10	7	\$225.00
Oregon Women Lawyers Workplace Leader Award Reception	4	4	\$0.00
Oregon League of Minority Voters	10	7	\$0.00
Oregon Gay & Lesbian Law Association Annual Dinner and Auction	4	4	\$0.00
Campaign for Equal Justice Laugh-Off	4	4	\$0.00
Urban League of Portland Equal Opportunity Day Awards Dinner	3	3	\$0.00
Night for Networking	0	0	\$0.00
OSB Convocation on Equality	0	0	\$0.00
Marion County Bar Awards Dinner	3	3	\$0.00
Oregon Hispanic Bar Association Annual Awards Dinner	7	7	\$0.00
Campaign for Equal Justice Annual Awards Lunch	9	9	\$0.00
Oregon Women Lawyers Roberts-Deiz Awards Dinner	10	7	\$255.00
Classroom Law Project Legal Citizen of the Year Awards Dinner	10	10	\$0.00
Hispanice Metro Chamber of Commerce Scholarship Awards Luncheon	3	2	\$30.00
Multnomah Bar Association Annual Meeting and Dinner	10	7	\$240.00
Oregon Minority Lawyers Association Social and Auction	2	2	\$0.00
Asian Reporter Bridging Rivers of Change	4	4	\$0.00
Hispanic Heritage Celebration Dinner	1	1	\$0.00
Hispanic Heritage Month Breakfast	4	4	\$0.00
<b>Loss due to "no shows"</b>			<b>\$750.00</b>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** October 25, 2012  
**From:** Jason Hirshon, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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As usual, September and October have been busy months for the ONLD. Since the last BOG report the Executive Committee and Subcommittees have provided their members and the public with the following services:

- In September the board met in Lincoln City and conducted a live child abuse reporting CLE program for local attorneys and assisted the community by repainting the outside of a small nonprofit theater.
- Appointed a new region 3 member, Jennifer Nicholls of the Brophy, Schmor, Gerking firm in Medford.
- Executed the Pro Bono Fair, Awards Ceremony, and three free CLE programs. This year's event resulted in 20 provider "fair booth" tables and more than 125 event attendees. New this year, the Pro Bono Celebration event was expanded to a Eugene event which included more than 40 CLE program attendees.
- Launched ONLD Practice Drive, a project for new lawyers starting their own practice. This resource includes forms and other materials to help new lawyers open and operate their own law firm. The ONLD created several new forms and utilized many of the Professional Liability Funds existing materials for this project.
- Hosted a presentation at each of the law schools focusing on employment searches after passing the bar exam.
- Conducted the third round opening of Practical Skills through Public Service Program which resulted in 40 applicants. A welcome social was held in October and volunteer placements will be made by early November.
- Organized nearly a dozen middle school classroom presentations educating students on candidate selection and the Electoral College as it relates to the elections process. A number of schools outside the metro area participated in the event including schools in Bend, Medford, and Salem.
- Held four brown bag lunch CLE programs in Portland including two diversity accredited programs. Conducted Super Saturday, a full-day CLE program with 15 separate program sessions and two showings of a new lawyer mandatory introduction to access to justice CLE recording.
- Welcomed new bar members during a reception following the swearing in ceremony. This year the ONLD invited sections to participate in this event which was well received by attendees and section representatives.
- Sponsored monthly after-work socials in Portland including a joint networking event with the Multnomah Bar Association Young Lawyers Section. A social event was also sponsored in Bend and Eugene.



- The ONLD sent three members to Charleston to participate in the ABA Young Lawyers Division fall meeting and program showcase event.
- Participate in the bar's Summit Conference of OSB legal Job Opportunities Task Force.

In November the ONLD plans to:

- Conduct its annual meeting and elect board members for 2013 including new region 2 member, Cassie Jones of the Gleaves Swearingen firm of Eugene.
- Sponsor the Affirmative Action Program's fundraiser event- BOWLIO.
- Support ONLD and OSB award winners by attending the bar's Award Luncheon

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012  
**Memo Date:** October 29, 2012  
**From:** Ira Zarov – CEO PLF  
**Re:** 2013 Assessment and Budget

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### **Action Recommended**

Approve the 2013 Assessment of \$3,500 per covered party. Approve the PLF 2013 Budget.

### **Background**

The PLF Board of Directors approved the proposed assessment and budget at its October 5, 2012 meeting. Pursuant to PLF and OSB policies, the BOG also must approve the budget and assessment for the coming year. *This year, the recommendation is to maintain the assessment at the 2012 amount of \$3,500.*

The assessment is based on predicted claim liabilities and the PLF operating budget.

The budget includes a new claims attorney position to begin in the middle of 2013, an additional support position, and a paralegal position. The staff additions reflect both a substantial increase in claims over the last three years as well as succession planning. The budget also includes a proposed 2% salary pool and an increase in benefits as a result of PERS requirements. It also includes an additional \$100,000 contribution (for a total of \$200,000) to the cost of OSB BarBooks.

Attachments



# Professional Liability Fund

Ira R. Zarov  
Chief Executive Officer

October 6, 2012

To: Professional Liability Fund Board of Directors

From: Ira Zarov, Chief Executive Officer  
R. Thomas Cave, Chief Financial Officer

Re: 2013 PLF Budget and 2013 PLF Primary Assessment

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## **I. Recommended Action**

We recommend that the Finance Committee make the following recommendations to the PLF Board of Directors:

1. Approve the 2013 PLF budget as attached. This budget uses a 2013 salary pool recommendation of 2.0 percent. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2013 PLF Primary Program assessment. We recommend that the 2013 assessment be \$3,500, which is unchanged from the 2012 and 2011 assessments.

## **II. Executive Summary**

1. Besides the two percent salary pool, this budget includes increased costs for PERS and medical insurance. It includes a \$200,000 PLF contribution for the OSB Bar Books. Because of rising costs of defending claims, this budget includes three additions to the claims department. One position (claims attorney) was previously included in the 2012 budget but was not filled. The budget for contingency has been increased to cover succession planning and possible retirements of senior staff.
2. The PLF has experienced increased claim frequency and severity in recent years. The actuarial rate study estimates a cost of \$2,768 per lawyer for new 2013 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.

### **III. 2012 PLF Budget**

#### **Number of Covered Attorneys**

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. (The figures are found on pages 1 and 8 of the budget document.) These statistics illustrate the growth in the number of lawyers covered by each program and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,034 full-pay attorneys for 2012. For most of the past ten years, there has been annual growth of 1.5 percent or higher. However, there has been slower growth during 2011 and 2012 to date. Accordingly, we have assumed growth of 1 percent for the 2013 budget which translates to 7,104 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the 2011 Excess Program declined because of competition from commercial insurance companies. We anticipated an additional decline of 2 percent for the 2012 budget. Contrary to those expectations, we now expect the number of 2012 participants to be slightly higher than 2011. The PLF has plans for education programs later this year to promote the need for excess insurance. Our current budget expectations are for 2013 participation to increase by 3 percent. If you include the other providers of excess insurance, more than 50% of the practicing lawyers in Oregon have excess insurance.

#### **Full-time Employee Statistics (Staff Positions)**

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

	<b><u>2012 Projections</u></b>	<b><u>2013 Budget</u></b>
Administration	8.00 FTE	8.00 FTE
Claims	18.00 FTE	20.33 FTE
Loss Prevention (includes OAAP)	11.83 FTE	11.83 FTE
Accounting	6.90 FTE	6.90 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
<b>Total</b>	<b>45.73 FTE</b>	<b>48.06 FTE</b>

We continue to have some permanent positions staffed at less than full-time levels for both 2012 and 2013. Some staff members work from 33 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

The amount of money spent on outside counsel per claim has grown significantly in recent years. At this point, the PLF spends more on claims expense than it does on indemnity payments. Because of the increases in outside expense, we feel that it is appropriate to continue to expand the claims department. The 2012 budget included a new claims attorney position with anticipated hire date of April, 2012. For a variety of reasons, we did not fill that position. The reasons included the supervisory workload connected to the replacement of retiring claims attorneys, the need to consider whether changes in the supervisory and the support staff structure should be made with the addition of a new claims attorney, and finally, the demands of directing the ongoing project of moving the claims department to a paperless environment. We have added the new claims attorney position back to the 2013 budget with an expected hire date of April 1, 2013. We have included an additional claims secretary position with a similar expected hire date. Finally, the budget also has a new paralegal position which would start on March 1, 2013.

While no definite plans have been made, several members of the PLF management team and some claims attorneys are expected to retire in the next few years. We have increased the budget for contingency to cover succession planning and possible expenses relating to replacing these positions.

#### **Allocation of Costs between the Excess and Primary Programs**

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program.

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2013 allocation of salary, benefits and overhead is about 14.45 percent of total administrative operating expense.

The 2012 Excess Program allocation was 15.15 percent. The 2013 allocation was reduced after careful review of each staff member's work with the Excess Program.

#### **Primary Program Revenue**

Projected assessment revenue for 2012 is based upon the \$3,500 basic assessment paid by an estimated 7,034 attorneys. The budget for assessment revenue for 2013 is based upon a \$3,500

assessment and 7,104 full-pay attorneys. Primary Program revenue also includes our forecast for SUA collections of \$185,000 for 2013 and \$196,000 for 2012. The 2013 budget assumes that there is no major change in the current SUA policies.

Investment returns were better than expected for the first six months of 2012. In doing the 2012 projections and 2013 budget, we used the rates of return for the different asset categories recently recommended by R. V. Kuhns & Associates, Inc. These rates are lower than those used during the 2012 budget preparations. While the percentages chosen are significantly lower than historical rates of return achieved over long periods, they reflect the current reduced expectations of our investment consultants. Our calculation of investment return projections for the remainder of 2012 and for 2013 began with the June 30, 2012 market value of all current investments. Investment revenue was calculated from July forward using 2.5 percent for the short-term cash flow bond fund, 4.25 percent for intermediate bonds, 7.9 percent for domestic equities, 8.65 percent for foreign equities, 7.00 percent for hedge fund of funds, 7 percent for real estate, and 6.75 percent for absolute return. The overall combined expected rate of return for 2013 is about 6.61 percent. (The overall rate combined rate of return used in prepared the 2012 budget was 7.21 percent.)

### **Primary Program Claims Expense**

By far, the largest cost category for the PLF is claim costs for indemnity or defense. Since claims often don't resolve quickly, these costs are paid over several years after the claim is first made. The calculation of claim costs is the largest factor in determining Primary Program profit or loss.

For any given year, claim expense includes two factors – (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of costs for claims pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2. However, problems would develop if the effects of factor 2 were never considered, particularly if there were consistent patterns of adjustments. The “indicated average claim cost” in the actuarial report calculates an amount for factor 1. The report also discusses the possibility of adding a margin to the indicated costs. Adding a margin could cover additional claims costs from adverse development of pending claims (factor 2) or other possible negative economic events such as poor investment returns. We have included margins in the past several years to good effect.

The PLF experienced a significant increase in the frequency of new claims during 2008 and 2009. The frequency level declined during 2010 (13.6 percent) and 2011 (13.2 percent). Claims frequency for the first six months of 2012 was 13.6 percent, which is close to budget expectations. Claim frequency for the second half of 2012 will be distorted by a very large number of claims made against one lawyer. To date, 99 claims have been made against a single lawyer. The most these claims will cost of is one coverage limit. Accordingly, it is appropriate to make an adjustment to the projected claim frequency. If the 99 claims were considered to be 15 (about one coverage limit), the current projected claim count would be 935 which is less than 13.5 percent frequency. We feel that the actuaries will agree with the need for an adjustment and will modify their calculation of the December 31, 2012 in a similar manner. The 2012 projections of claim costs assume 935 claims at \$20,000 per claim.

The 2012 budget included \$2,118,900 (approximately \$300 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. At the time the 2012 budget was prepared, there had been four straight actuarial reports that recommended substantial increases in claim liabilities. The adjustment recommended in the June 30, 2011 actuarial review of claim liabilities alone was greater than this budget amount (\$2.4 million). Most of the adverse development came from claims involving activity just prior or during the economic downturn. The last two actuarial reports have brought much better news. There was a slight decrease in the liability estimate in December 31, 2011 followed by a decrease of nearly \$1.3 million in the June 30, 2012 report. This actuarial report did find that defense (expense) costs continued to rise but decreases in indemnity estimates more than offset the increases in expense costs.

Primary Program new claims expense for 2013 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13.5 percent, 7,104 covered attorneys and an average claim cost of \$20,500. Multiplying these three numbers together gets a 2013 budget for claims expense of \$19.7 million. This would also translate to about 959 claims at \$20,500 for 2013.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2013. If pending claims do not develop adversely, this margin could offset higher 2013 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,065,600 (\$150 times the estimated 7,104 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2013 assessment.

### **Salary Pool for 2013**

The total dollar amount that is available for staff salary increases in a given year is calculated by multiplying the salary pool percentage increase by the current employee salary levels. The salary pool is the only source available for cost of living *and* merit increases. Although there is no policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Sylvia Stevens, a two percent salary pool increase is recommended for 2013. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$39,318 in PLF salary expense and \$14,113 in PLF benefit costs. The total cost of the two percent salary pool is less than one half of one percent of total expenses (0.39 percent).

Because all salary reclassifications cannot be accomplished within the two percent salary pool allocation, we are also requesting \$13,283 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects

either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires for exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

### **Benefit Expense**

The employer cost of PERS and Medical / Dental insurance are the two major benefit costs for the PLF.

The specific employer contribution rate for PERS varies depending upon how long an employee has participated in PERS. The rates are changed periodically based upon actuarial studies of the PERS pension liability. Prior to July 1, 2009, the PLF paid between 12.49 percent and 13.98 percent of employee salary to PERS. As of July 1, 2009, the rates changed to 8.01 percent and 8.79 percent which was a drop of nearly 5 percent of salary. The PERS rates increased substantially as of July 1, 2011 to between 14 percent and 15.9 percent. The 2012 budget calculations were made using those rates. The employer contribution rates for PERS are expected to increase again as of July 1, 2013. The rates will not be announced until next year and are somewhat dependent upon investment performance for the remainder of 2012. However, some preliminary estimates from PERS indicate that the increase may be slightly more than 3 percent. Since the possible increase will come half way through 2013, the rate of the employer contribution for PERS was increased by slightly more than 1 and one half percent for the 2013 budget.

Unlike many state employers, the PLF does not “pick up” the employee contribution to PERS. PLF employees have their six percent employee contribution to PERS deducted from their salaries.

PLF employees pay for a portion of the cost of providing medical and dental insurance to dependents. Although the rate of increases in medical insurance is slowing somewhat, the cost of medical insurance continues to rise faster than salary levels. Although medical insurance rates are difficult to predict, we have included about a 7 percent increase for the cost of medical and dental insurance.

### **Capital Budget Items**

The OAAP has been in the same location for more than eleven years. A second ten-year lease was negotiated late in 2011. As part of the lease renewal, a tenant improvement allowance was received from the landlord. This allowance was used to remodel and update the space this year. We are near the completion of the remodel and anticipate replacing some furniture. Most of the 2012 projected furniture purchases will be made for the OAAP.



The PLF copiers / scanners were recently replaced. There should not be additional purchases for several years.

The PLF replaced all personal computer units and upgraded software in the fall of 2011. We do not expect to replace these units until 2014. Several servers were replaced during 2011 and 2012. We only expect one significant server upgrade during 2013. The capital budget also includes some funds for the purchase of tablet computers to be used to electronically distribute Board of Director materials.

### **Other Primary Operating Expenses**

Because of successful litigation, the budget no longer includes the external costs related to Medicare reporting. The judicial decision to exempt the PLF from reporting also significantly simplifies claim handling.

Insurance expense in the 2012 projections and the 2013 budget was increased because of a large increase in the cost of E&O insurance. The E&O insurers increased the cost of renewing the policy because they are currently covering a significant claim made against the PLF.

The Information Services 2012 projection was over budget because the costs of developing a new website for the PLF defense panel. The 2013 budget for this item was increased because of anticipated major changes to the current PLF website.

The PLF has traditionally had defense panel meetings every other year. The 2013 budget includes estimates of costs for the scheduled 2013 meeting. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers.

PLF Policies require an outside claims department audit at least every five years. (The PLF has a financial audit every year.) A claims audit was performed in 2011 and we do not expect to have another claims audit for several years.

The 2012 budget included a \$200,000 contribution to the OSB Bar Books. This contribution was made pursuant to a vote by the PLF Board of Directors at the request of the Oregon State Bar Board of Governors. The BOD believed there was substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims. The \$200,000 contribution was part of an agreement that provided the PLF contribute \$300,000 for 2011, \$200,000 in 2012 and another \$100,000 in 2013. The 2013 PLF budget includes the \$100,000 contribution.

For many years, the PLF Primary Program has included a contingency budget item. In the past, the contingency items was been used for items such as CEO recruitment expense, the costs of a focus group on SUA, and the Medicare reporting litigation expense. For 2012, we included a contingency budget of equal to 2 percent of operating costs (\$145,541). The costs of the Medicare reporting

litigation (\$41,000) have been charged against contingency in the 2012 projections.

As discussed earlier, we have raised the 2013 contingency budget to 4 percent of operating costs (\$302,172).

### **Total Operating Expenses and the Assessment Contribution to Operating Expenses**

Page one of the budget shows projected 2012 Primary Program operating costs to be about 1.9 percent lower than the budget amount.

The 2012 Primary Program operating budget is 4.5% higher than the 2012 budget and 6.5% greater than the 2012 projections. The main reasons for the increase from projections are the new positions in the claims department, the 2 percent salary increase, and the higher costs of PERS and medical insurance.

### **Excess Program Budget**

The major focus of this process is on the Primary Program and the effects of the budget on the 2013 Primary Program assessment. We do include a budget for the Excess Program (page 8). After a couple of years of small declines in participation in the Excess Program, we expected further declines for 2012. However, we now project a small increase in Excess participant for 2012. We are increasing promotional efforts and will have some educational programs regarding the need for excess insurance. We have budgeted for an increase of 3 percent in Excess Program participation for 2013.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$725,000 for 2012. The 2013 budget estimates ceding commissions to increase 3 percent from the 2012 projections.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2012 projections or 2013 budget.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section. As was mentioned earlier, the allocation of

Primary Program costs was reduced for the 2013 budget. These allocations will again be reviewed in future budgets.

#### **IV. Actuarial Rate Study for 2013**

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2013 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2012. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2013 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2013 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2013 claims frequency rate of 13.5 percent and \$20,500 as the average cost per claim (severity). The average cost figure has increase by \$500 from last years' study. We feel the \$20,500 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is unchanged from last years' figure of 13.5 percent. We feel that this rate is appropriate given experience in recent years. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,768 per attorney. This amount would only cover the estimated funds needed for 2013 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2013 shortfall is about \$562 per lawyer assuming 7,104 full-pay lawyers.

The actuaries discuss the possibility of having a margin (additional amount) in the calculated assessment. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

### **V. Staff Recommendations**

If you add the operating expense portion of \$562 per lawyer to the actuaries' indicated claim cost of \$2,768, you would have an assessment of \$3,330. We feel that it is appropriate to include a margin of \$150 per attorney for adverse development of pending claims. This allows for a budget of about \$1 million for adverse development of pending claims. An assessment of \$3,500 would allow a projected budget profit of about \$132,000.

We were happy to have a favorable adjustment in the latest actuarial review of claim liabilities. We hope that most of the claims coming out of the economic downturn have been made at this point. We are concerned about the rising costs to defend claims. We feel that it is prudent to continue to provide for negative development in 2012 and 2013. However, because of the favorable current liability review, we have reduced the margin for adverse development from \$300 to \$150 per lawyer.

Because of good financial results for the first six months of 2012, the PLF currently has positive combined retained earnings of about \$2.3 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2013 assessment with some margin makes it more likely that some small progress will be made toward that retained earnings goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2012. Accordingly, we recommend setting the 2012 Primary Program assessment at \$3,500.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b>Revenue</b>					
Assessments including SUA	\$22,244,406	\$24,465,415	\$24,907,500	\$24,815,676	\$25,049,000
Installment Service Charge	350,469	385,593	401,000	394,571	390,000
Investments and Other	3,530,073	(544,650)	2,628,331	2,917,524	2,462,823
Total Revenue	<u>\$26,124,948</u>	<u>\$24,306,358</u>	<u>\$27,936,831</u>	<u>\$28,127,771</u>	<u>\$27,901,823</u>
<b>Expenses</b>					
Provision for Claims					
New Claims	\$18,461,583	\$18,538,608	\$19,070,100	\$18,700,000	\$19,660,320
Pending Claims	\$1,481,000	\$2,398,105	\$2,118,900	\$200,000	\$1,065,600
Total Provision for Claims	<u>\$19,942,583</u>	<u>\$20,936,713</u>	<u>\$21,189,000</u>	<u>\$18,900,000</u>	<u>\$20,725,920</u>
Expense from Operations					
Administration	\$2,014,918	\$2,234,384	\$2,201,774	\$2,220,757	\$2,283,201
Accounting	530,396	635,730	789,960	760,565	786,223
Loss Prevention	1,682,064	1,700,518	1,867,930	1,804,736	1,902,969
Claims	<u>2,219,444</u>	<u>2,305,033</u>	<u>2,466,873</u>	<u>2,404,686</u>	<u>2,681,914</u>
Total Operating Expense	\$6,446,822	\$6,875,665	\$7,326,537	\$7,190,745	\$7,654,307
Contingency	22,660	53,523	145,541	41,000	306,172
Depreciation	214,377	209,326	237,600	187,000	208,000
Allocated to Excess Program	(1,257,082)	(1,393,740)	(1,135,822)	(1,135,822)	(1,135,160)
Total Expenses	<u>\$25,369,360</u>	<u>\$26,681,487</u>	<u>\$27,762,856</u>	<u>\$25,182,923</u>	<u>\$27,759,239</u>
Net Income (Loss)	<u>\$755,588</u>	<u>(\$2,375,129)</u>	<u>\$173,975</u>	<u>\$2,944,848</u>	<u>\$142,584</u>
Number of Full Pay Attorneys	6,894	6,937	7,063	7,034	7,104

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget	4.47%
Increase from 2012 Projections	6.45%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b>Expenses</b>					
Salaries	\$3,748,818	\$3,858,800	\$4,016,426	\$3,961,785	\$4,148,175
Benefits and Payroll Taxes	1,019,242	1,194,430	1,441,243	1,412,924	1,576,202
Professional Services	379,245	270,489	309,000	301,390	314,000
Auto, Travel & Training	83,908	76,029	84,250	80,850	94,450
Office Rent	482,840	491,884	498,267	511,782	520,741
Office Expense	181,393	153,163	177,750	152,750	151,950
Telephone (Administration)	32,126	34,329	35,000	38,000	43,000
L P Programs	409,406	359,385	447,136	385,202	433,560
OSB Bar Books	0	300,000	200,000	200,000	200,000
Defense Panel Program	89	20,706	200	200	23,100
Insurance	60,806	60,081	61,265	88,362	90,129
Library	26,465	32,928	31,000	32,000	33,000
Memberships & Subscriptions	18,465	18,244	20,000	19,800	19,800
Interest & Bank Charges	4,019	5,197	5,000	5,700	6,200
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$6,446,822</u>	 <u>\$6,875,665</u>	 <u>\$7,326,537</u>	 <u>\$7,190,745</u>	 <u>\$7,654,307</u>
 Allocated to Excess Program	 <u>(\$1,221,441)</u>	 <u>(\$1,350,104)</u>	 <u>(\$1,099,826)</u>	 <u>(\$1,099,826)</u>	 <u>(\$1,105,104)</u>
 <b>Full Time Employees</b> (See Explanation)	 44.33	 44.56	 45.73	 44.73	 47.06
 <b>Number of Full Pay Attorneys</b>	 6,894	 6,937	 7,063	 7,034	 7,104
 <b>Non-personnel Expenses</b>	 \$1,678,762	 \$1,822,435	 \$1,868,868	 \$1,816,036	 \$1,929,930
Allocated to Excess Program	(\$317,976)	(\$388,938)	(\$275,635)	(\$275,635)	(\$278,874)
Total Non-personnel Expenses	<u>1,360,786</u>	<u>1,433,497</u>	<u>1,593,233</u>	<u>1,540,401</u>	<u>1,651,056</u>

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget            4.47%

Increase from 2012 Projections       6.45%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**

Modified by PLF Board of Directors on October 6, 2012

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$632,499	\$647,912	\$624,175	\$632,345	\$642,627
Benefits and Payroll Taxes	173,709	209,493	222,967	222,928	242,304
Staff Travel	16,344	13,759	17,550	17,100	17,550
Board of Directors Travel	41,374	29,994	41,300	36,800	39,000
Training	6,167	843	4,000	5,000	8,000
Investment Services	26,966	27,304	27,000	27,500	28,000
Legal Services	23,963	7,931	15,000	16,000	16,000
Actuarial Services	18,904	18,564	19,000	19,000	19,000
Information Services	116,560	82,863	74,000	87,000	96,000
Offsite System Backup	23,203	1,138	0	0	0
Electronic Record Scanning	72,391	21,879	75,000	75,000	75,000
Other Professional Services	62,258	73,601	62,000	51,340	57,400
Pro Services - Medicare Reporting	11,200	11,400	12,000	3,850	0
OSB Bar Books	0	300,000	200,000	200,000	200,000
Office Rent	482,840	491,884	498,267	511,782	520,741
Equipment Rent & Maint.	52,910	42,345	54,000	37,000	35,200
Dues and Memberships	18,465	18,244	20,000	19,800	19,800
Office Supplies	80,975	64,615	75,000	67,000	68,000
Insurance	60,806	60,081	61,265	88,362	90,129
Telephone	32,126	34,329	35,000	38,000	43,000
Printing	9,643	10,966	10,000	11,000	11,000
Postage & Delivery	36,992	34,350	37,750	36,750	36,750
NABRICO - Assoc. of Bar Co.s	9,731	24,805	10,500	10,500	10,500
Bank Charges & Interest	4,019	5,197	5,000	5,700	6,200
Repairs	873	887	1,000	1,000	1,000
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$2,014,918</u>	<u>\$2,234,384</u>	<u>\$2,201,774</u>	<u>\$2,220,757</u>	<u>\$2,283,201</u>
 Allocated to Excess Program	 <u>(\$472,598)</u>	 <u>(\$559,903)</u>	 <u>(\$430,118)</u>	 <u>(\$430,118)</u>	 <u>(\$430,857)</u>
 <b>Administration Full Time Employees</b>	 9.10	 8.75	 8.00	 8.00	 8.00
 <b>CHANGE IN OPERATING EXPENSES:</b>					
Decrease from 2012 Budget		3.70%			
Decrease from 2012 Projections		2.81%			

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
ACCOUNTING

Modified by PLF Board of Directors on October 6, 2012

	2010 <u>ACTUAL</u>	2011 <u>ACTUAL</u>	2012 <u>BUDGET</u>	2012 <u>PROJECTIONS</u>	2013 <u>BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$400,066	\$473,136	\$561,912	\$543,517	\$548,750
Benefits and Payroll Taxes	105,843	141,635	201,648	193,898	210,973
Travel	127	207	400	250	400
Financial Audit	23,800	20,200	25,000	21,700	22,600
Training	<u>560</u>	<u>552</u>	<u>1,000</u>	<u>1,200</u>	<u>3,500</u>
Total Operating Expenses	<u>\$530,396</u>	<u>\$635,730</u>	<u>\$789,960</u>	<u>\$760,565</u>	<u>\$786,223</u>
Allocated to Excess Program	<u>(\$120,166)</u>	<u>(\$144,052)</u>	<u>(\$128,721)</u>	<u>(\$128,721)</u>	<u>(\$111,674)</u>
Accounting Full Time Employees	4.90	6.10	7.15	6.90	6.90

CHANGE IN OPERATING EXPENSES:

Decrease from 2012 Budget	-0.47%
Increase from 2012 Projections	3.37%



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$991,252	\$1,015,169	\$1,039,587	\$1,041,004	\$1,059,579
Benefits and Payroll Taxes	281,406	325,964	381,207	378,530	409,830
In Brief	45,575	54,370	62,000	45,000	62,000
PLF Handbooks	48,835	7,320	5,000	6,000	6,000
Library	248	102	200	200	150
Videotape	13,470	22,487	20,000	20,000	22,000
Audiotapes	19,883	19,998	20,000	20,000	20,200
Mail Distribution of Video and Audiotape	9,391	12,871	9,500	11,000	12,000
Web Distribution of Programs	13,710	9,165	14,000	18,000	18,000
Program Promotion	17,263	20,596	35,000	25,000	30,000
Expense of Closing Offices	7,707	4,800	14,000	14,000	14,500
Facilities	47,487	33,591	55,000	40,000	45,000
Speaker Expense	(144)	1,018	10,000	500	5,000
Accreditation Fees	1,307	1,071	1,400	1,400	1,400
Beepers & Confidential Phone	4,019	3,377	4,000	4,000	4,000
Expert Assistance	1,500	6,414	5,000	2,000	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	9,773	10,832	10,250	11,000	11,000
Travel	34,266	31,708	36,300	33,850	36,950
Training	23,972	22,883	40,150	34,100	40,250
Downtown Office	111,144	96,782	105,336	99,152	100,110
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$1,682,064</u>	 <u>\$1,700,518</u>	 <u>\$1,867,930</u>	 <u>\$1,804,736</u>	 <u>\$1,902,969</u>
 Allocated to Excess Program	 <u>(\$248,096)</u>	 <u>(\$246,921)</u>	 <u>(\$202,122)</u>	 <u>(\$202,122)</u>	 <u>(\$209,540)</u>
 <b>L P Depart Full Time Employees (Includes OAAP)</b>	 11.83	 11.83	 11.83	 11.83	 11.83

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget	1.88%
Increase from 2012 Projections	5.44%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$1,725,001	\$1,722,583	\$1,790,752	\$1,744,919	\$1,897,219
Benefits and Payroll Taxes	458,284	517,338	635,421	617,567	713,095
Claims Audit	0	5,609	0	0	0
Training	7,061	4,335	7,000	7,500	13,000
Travel	2,544	1,534	2,500	2,500	2,500
Library & Information Systems	26,465	32,928	31,000	32,000	33,000
Defense Panel Program	<u>89</u>	<u>20,706</u>	<u>200</u>	<u>200</u>	<u>23,100</u>
Total Operating Expenses	<u>\$2,219,444</u>	<u>\$2,305,033</u>	<u>\$2,466,873</u>	<u>\$2,404,686</u>	<u>\$2,681,914</u>
Allocated to Excess Program	<u>(\$380,581)</u>	<u>(\$399,228)</u>	<u>(\$338,865)</u>	<u>(\$338,865)</u>	<u>(\$353,033)</u>
Claims Depart Full Time Employees	18.50	17.88	18.75	18.00	20.33
<b>CHANGE IN OPERATING EXPENSES:</b>					
Increase from 2012 Budget		8.72%			
Increase from 2012 Projections		11.53%			

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET**

**Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Capital Items</u></b>					
Furniture and Equipment	\$3,158	\$19,595	\$10,000	\$21,000	\$10,000
Telephone	0	0	2,000	1,000	1,000
Copiers / Scanners	0	0	5,000	66,000	5,000
Document Management & Scanning	0	0	2,000	5,253	5,000
Data Processing					
Hardware	29,995	22,832	25,000	15,367	13,000
Software	1,234	22,179	10,000	1,200	10,000
Personal Computers and Printers	13,928	57,751	10,000	3,500	13,500
Leasehold Improvements	<u>2,993</u>	<u>1,783</u>	<u>2,000</u>	<u>3,000</u>	<u>3,000</u>
 Total Capital Budget	 <u>\$51,308</u>	 <u>\$124,140</u>	 <u>\$66,000</u>	 <u>\$116,320</u>	 <u>\$60,500</u>

Decrease from 2012 Budget           -8.33%

Decrease from 2012 Projections       -47.99%


**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2012 EXCESS PROGRAM BUDGET  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Revenue</u></b>					
Ceding Commission	755,096	720,039	705,600	725,000	746,750
Profit Commission	13,508	21,684	0	0	0
Installment Service Charge	41,655	37,322	38,000	37,200	38,000
Other	424	703	1,500	1,400	1,500
Investment Earnings	<u>427,932</u>	<u>22,315</u>	<u>228,551</u>	<u>341,093</u>	<u>185,374</u>
Total Revenue	<u>\$1,238,615</u>	<u>\$802,063</u>	<u>\$973,651</u>	<u>\$1,104,693</u>	<u>\$971,624</u>
<b><u>Expenses</u></b>					
Allocated Salaries	\$707,500	\$732,877	\$608,431	\$608,431	\$599,356
Direct Salaries	57,918	65,615	66,304	66,950	70,298
Allocated Benefits	195,965	228,289	215,760	215,760	226,874
Direct Benefits	17,224	15,938	23,812	23,942	26,657
Program Promotion	500	1,596	1,000	4,000	5,000
Investment Services	3,034	2,696	3,200	3,000	3,000
Allocation of Primary Overhead	317,976	388,938	275,635	275,635	278,874
Reinsurance Placement Travel	5,498	5,733	12,000	5,000	5,000
Training	0	0	1,000	500	500
Printing and Mailing	4,872	4,283	5,000	5,000	5,000
Other Professional Services	0	6,290	2,500	2,000	2,000
Software Development	0	0	0	0	0
Total Expense	<u>\$1,310,487</u>	<u>\$1,452,255</u>	<u>\$1,214,642</u>	<u>\$1,210,218</u>	<u>\$1,222,559</u>
<b>Allocated Depreciation</b>	<u>\$35,641</u>	<u>\$43,636</u>	<u>\$35,996</u>	<u>\$35,996</u>	<u>\$30,056</u>
<b>Net Income</b>	<u>(\$107,513)</u>	<u>(\$693,828)</u>	<u>(\$276,987)</u>	<u>(\$141,521)</u>	<u>(\$280,991)</u>
<b>Full Time Employees</b>	1.00	1.00	1.00	1.00	1.00
<b>Number of Covered Attorneys</b>	2,642	2,317	2,279	2,325	2,395
<b>CHANGE IN OPERATING EXPENSES:</b>					
Decrease from 2012 Budget		0.65%			
Decrease from 2012 Projections		1.02%			

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: November 9, 2012  
Memo Date: October 30, 2012  
From: Ira Zarov – CEO PLF   
Re: PLF Claims Made Plan

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### Action Recommended

Approve changes to the PLF Claims Made Plan, specifically, Section I(11) – Definitions, Section V(4)(b) – Exclusions From Coverage; Section VII – Notice of Claims.

### Background

Generally, we present proposed changes to the PLF Primary Claims Made Plan. When those changes are adopted, we make the corresponding changes (if any) to the PLF Excess Claims Made Plan and the PLF Pro Bono Claims Made Plan. Proposed changes to those plans are presented to the Board only if they do not arise from changes to the Primary Claims Made Plan.

The PLF Board of Directors recommends the following changes to the PLF Primary Claims Made Plan for 2013.

#### 1. Section I(11) – DEFINITIONS

The Claims Made Plan provides coverage both to the individual lawyer and the lawyer's firm, a LAW ENTITY as defined in the Plan. Prior to 1995 the term "OREGON LAW ENTITY" was used and the Plan could be construed as providing coverage only to Oregon based law firms. At that time, the PLF Board decided to drop "OREGON" from the title and recognize that non-Oregon firms with PLF covered attorneys are covered as well.

In discussions about a recent claim involving multiple law firms, many of which have no Oregon presence at all, the question was raised as to whether the PLF covered lawyer and firm might have coverage under the PLF Plan for vicarious liability for those other non-Oregon law firms. While this possibility is quite remote, and we do have additional protection in Section II – WHO IS A COVERED PARTY and Section III – WHAT IS A COVERED ACTIVITY, it is worth modifying the definition of LAW ENTITY to make it clear that coverage is intended to benefit firms that are engaged in the practice of law in Oregon. We propose adding the following to the definition of LAW ENTITY:

\*\*\*\*\*

11. "LAW ENTITY" refers to a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship engaged in the private practice of law *in Oregon*.

## 2. Section V(4)(b) – EXCLUSIONS FROM COVERAGE

Exclusion 4 addresses coverage for punitive damages and sanctions. Subsection (b) bars coverage for sanctions and penalties levied against covered attorneys and "others." The intent of the use of "others" is to bar coverage for clients and parties who might seek indemnity from the lawyer for sanctions or penalties imposed on them for their own conduct. The use of the term "others" in this way is not entirely self-evident and could give rise to confusion about who and what is excluded from coverage under Exclusion 4. We propose that the phrase be removed from Subsection (b) as follows:

\*\*\*\*\*

4. This Plan does not apply to:
  - a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or
  - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions ~~on the COVERED PARTY or others~~ imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PATY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

## 3. Section VII – Notice of Claims

The PLF Claims Made Plan addresses the issue of when and how a claim is made and coverage triggered in two separate places: SECTION VII-NOTICE OF CLAIMS and SECTION IV-GRANT OF COVERAGE.

After discussing possible inconsistencies between the two sections with coverage counsel and PLF claims staff, we proposed changing Section VII to reconcile the two sections. Note that Section IV.1.b has been included for reference only, no changes are proposed. The inconsistency was between Section IV (1) (c) which stated the date of a claim was when "the PLF first became aware of facts...." and the requirement in Section VII that the PLF have written notice of the claim from the Covered Party before the PLF sets a date for the claim. The new Section VII cures the inconsistency.

The date a claim is made is important because it determines the claim year expenditures on behalf of a Covered Party for a Claim are charged against.

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#### SECTION IV — GRANT OF COVERAGE

##### 1. Indemnity.

a. The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 - Defense.

b. This Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.

(1) The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

(a) When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or

(b) When notice of a CLAIM is received by any COVERED PARTY or by the PLF; or

(c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or

(d) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

(2) Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. This provision will apply to YOU only if YOU have coverage from any source applicable to the earliest such SAME OR RELATED CLAIM (whether or not the available limits of liability of such prior policy or plan are sufficient to pay any

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#### SECTION VII — NOTICE OF CLAIMS

1. The COVERED PARTY must, as a condition precedent to the right of protection afforded by this coverage, give the PLF, at the address shown in the Declarations, as soon as practicable, written notice of any CLAIM made against the COVERED PARTY. In the event a SUIT is brought against the COVERED PARTY, the COVERED PARTY must immediately notify and deliver to the PLF, at the address shown in

the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.

2. If the COVERED PARTY becomes aware of a ~~specific act, error, or omission~~ **facts or circumstances that reasonably could be expected to be the basis of a CLAIM** for which coverage is **may be** provided under this Plan ~~during the COVERAGE PERIOD~~, the COVERED PARTY must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:

- a. The specific act, error, or omission;
- b. DAMAGES and any other injury that has resulted or may result; and
- c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.

~~then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.~~

~~3. If, during the COVERAGE PERIOD, a potential claimant requests that the PLF agree to toll or suspend the running of a time limitation applicable to a potential CLAIM against a COVERED PARTY based on a specific act, error, or omission for which coverage is provided under this Plan, and if the PLF agrees in writing to do so with the consent of the COVERED PARTY, then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.~~

3. **If the PLF opens a suspense or claim file involving a CLAIM or potential CLAIM which otherwise would require notice from the COVERED PARTY under subsection 1. or 2. above, the COVERED PARTY'S obligations under those subsections will be considered satisfied for that CLAIM or potential CLAIM.**

#### COMMENTS

**This is a Claims Made Plan. Section IV.1.b. determines when a CLAIM is first made for the purpose of triggering coverage under this Plan. Section VII states the COVERED PARTY's obligation to provide the PLF with prompt notice of CLAIMS, SUITS, and potential CLAIMS.**

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012  
**Memo Date:** October 29, 2012  
**From:** Ira Zarov – CEO PLF  
**Re:** PLF Policies 3.500 and 3.550

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### **Action Recommended**

Approve changes to PLF Policy 3.500 and 3.550 relating to the Special Underwriting Assessment (SUA). The change allows a \$75,000 safe-harbor for all claims including “same and related” claims.

### **Background**

The PLF Board has been grappling with the Special Underwriting Assessment for several years. The SUA is a set amount in addition to the base assessment and is charged to Covered Parties who have claims for which more than \$75,000 (the safe-harbor amount) is expended to defend or settle the claim. The impetus for the discussions was the perception that the current SUA rules have deficiencies and do not achieve programmatic goals and the BOG’s grant of a SUA appeal several years ago was a factor in the SUA review.

The substantive aspect of this policy change addresses the situation when Covered Parties are involved in claims that are “the same or related” and for which a primary limit is shared. Under current policies, when the primary limit is shared, the safe-harbor is shared as well. A result of the former policy was that a Covered Party on whose behalf a small amount was paid might be assessed a SUA if the combined defense or settlement of the related claims exceeds \$75,000. The proposed change gives each Covered Party a \$75,000 safe-harbor. (Had this been the rule, the Covered Party who made the successful appeal to the BOG would not have had a SUA.)

There are also a number of purely editorial changes to the SUA Policies. These changes are redlined in the attachment.

It should be noted that this change is a temporary measure to alleviate a perceived unfairness in the SUA. The change is temporary because the PLF BOD has voted to discontinue the SUA program in its entirety after 2013. The rationale for this decision will be presented to the BOG during 2013 with a request to approve the removal of SUA from PLF policies.

ATTACHMENT



3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(A) Plan for Special Underwriting Assessment: Lawyers will be subject to a Special Underwriting Assessment (SUA) to be assessed under the following terms and conditions. This Plan for Special Underwriting Assessment may be changed or amended in the future.

(B) Special Underwriting Assessment:



(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim. If a claim is part of a group of related claims for which responsibility is allocated pursuant to 3.500(D), the SUA will be based on the amount in excess of \$75,000 of the indemnity and expense allocated to each Covered Party or group of related claims (the "Base Amount"). ~~SUA will be assessed for all claims which are settled or closed by the PLF during the five-year period ending by September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.~~

(2) All present and former Covered Parties will be assessed according to these provisions, but a Covered Party will be required to pay the SUA only if the Covered Party maintains current coverage with the PLF at the time of the SUA assessment.

{BOD 6/20/03; BOG 9/18/03}

(C) (1) Reductions to Indemnity and Expense:

For the purposes of SUA, the value of outstanding amounts owed by another but not yet collected will be determined by the PLF staff at the time the SUA is allocated. The PLF will set the value of such potential sources of reimbursement for claims expenses based on the likelihood of collection. The PLF may discount the value of the source of offset, allow full value of the source of offset, or decline to provide any discount. The amount of the credit determined by the PLF will be treated as reductions to the indemnity and expense paid by the PLF on behalf of a Covered Party and will be deducted in determining the Base Amount. Reinsurance payments will not be treated as reductions to indemnity.

(2) Covered parties will be notified of the PLF's decision as to the amount allowed for any third party source of repayment and can appeal that decision by letter submitted to the PLF CEO within 14 days of receiving notification of the PLF action. The PLF CEO will notify the covered party of a final decision prior to the final computation of any SUA assessment.

(BOD 08/06/09; BOG 08/28/09)

(D) Allocation and Vicarious Liability:

(1) The Covered Party causing or responsible for the claim or group of related claims will be assessed. When more than one PLF-covered attorney is involved, SUA will be allocated in proportion to each PLF-covered attorney's degree of responsibility or fault. The SUA allocation will be based on any indemnity payments made and defense costs expended, except that a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses. SUA may be allocated to a Covered Party even though no claim was made against the Covered Party if it appears that a claim would or could have been made but for the final disposition of the claim giving rise to the SUA under consideration.

However, the SUA allocated to such Covered Party will be waived if the Covered Party was not informed by the PLF prior to the final disposition of the claim:

(a) of the claim giving rise to the SUA,

(b) of the possibility of a claim from the claimant or another party or of a cross-claim from another Covered Party, and

(c) of the potential of a SUA allocation from the claim.

In such cases, a separate PLF file will be opened in the name of each Covered Party facing a potential SUA allocation.

(BOD 6/20/03; BOG 9/18/03)

(2) Initial Allocation of Responsibility: The ~~Chief Executive Officer~~ CEO of the PLF will make an initial allocation of responsibility among the PLF-covered attorneys involved upon settlement or closing of the claim or group of related claims. Where responsibility is equal or no reasonable basis is available to determine the appropriate percentage of responsibility, responsibility will be allocated equally among the PLF-covered attorneys.



(BOD 6/20/03; BOG 9/18/03)

(3) SUA will not be assessed against a Covered Party if the Covered Party's liability was purely vicarious. However, notwithstanding that the basis of the Covered Party's liability is purely vicarious, a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses unless the assignment of a separate defense counsel is legally required (e.g. conflict of interest). For this purpose, pure vicarious liability means liability imposed solely by law, (e.g., partnership liability) on a claim in which the Covered Party had no involvement whatsoever. SUA relief for pure vicarious liability will not be allowed when the

Covered Party had some involvement in the legal matter, even if other attorneys in the Covered Party's firm (partners, associates, or employees) or outside the firm were also involved and committed greater potential error. Likewise, SUA relief for pure vicarious liability will not be granted when the alleged error was made by a secretary, paralegal, or other attorney working under the Covered Party's direction or control or who provided research, documents, or other materials to the Covered Party in connection with the claim.

(BOD 10/21/05; BOG 11/19/05)

(E) Billing: The ~~special underwriting assessment~~ SUA will be added to the regular billing for the basic assessment.

(F) Petition for Review:

(1) The Covered Party may petition the Board of Directors in writing for review of the ~~special underwriting assessment~~ SUA only upon the basis that:

(a) The allocation made under 3.500(D)(1), (2), or (3) was incorrect  
or

(b) The claim was handled by the PLF or its employees and agents (including assigned defense counsel) in a negligent or improper manner which resulted in an increased ~~special underwriting assessment~~ SUA to the Covered Party  
or

(c) The assignment of separate counsel pursuant to 3.500(D)(3) was necessary.

(BOD 6/20/03; BOG 9/18/03; BOD 10/21/05; BOG 11/19/05)

A SUA arising from a claim will not be reassigned to the attorney for the claimant who brought the claim if the reason given for the reassignment by the appealing attorney is that the claimant's attorney should not have asserted the claim, should have asserted the claim in a more economical fashion, should have asserted the claim against someone else, or other similar reason.

(2) The basis for review will be set forth in the petition, and the PLF-covered attorney, or attorneys if more than one, to whom the Covered Party seeks to reassign responsibility for the claim will be requested to participate and submit a response. A SUA appeal must be filed in the first year during which the SUA is assessed and paid. Other details of the review process will be provided to attorneys at the time of SUA assessment. The Board of Directors or its representative will review each petition and response and make such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process), that could result in assessment of a SUA against the attorney. In the event a refund is made, it will include statutory interest. A pending Petition for Review will not relieve the Covered Party from compliance with the assessment notice.

(BOD 12/6/91, BOG 3/13/92; BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 8/14/98; BOG 9/25/98; BOD 6/20/03; BOG 9/18/03; BOD 10/5/12; BOG ???)

### 3.550 PROCEDURE FOR REVIEW OF SPECIAL UNDERWRITING ASSESSMENT

(A) Procedure for SUA Appeal: The following procedures will apply to the appeal of any Special Underwriting Assessment assessed against a covered party under PLF Policy 3.500.

(B) Basis for Appeal:

(1) The Covered Party may petition the Board of Directors in writing for review of the Special Underwriting Assessment only upon the bases stated at PLF Policy 3.500(F)(1).

(BOD 6/20/03; BOG 9/18/03)

(2) A Petition for Review of a SUA must be delivered to the office of the Professional Liability Fund (PLF), postmarked no later than January 10 of the year in which the

SUA was first imposed. Failure to file a petition by this date means no SUA relief will be granted.

(C) General Schedule for Appeals: The schedule for SUA appeals will be as follows:

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<u>Activity</u>	<u>Time Allowed</u>
Submission of SUA Petition by Covered Party.....	January 10
Development of claim summary by PLF staff (optional).....	30 days
Covered Party's reply to PLF claim analysis (optional).....	7 days
Submission of Response by Responding Attorney.....	30 days
Submission of Reply.....	14 days
Decision by PLF Board of Directors.....	30-60 days
Further appeal to Board of Governors from decision of PLF Board of Directors .....	30 days
Decision of Board of Governors.....	30-60 days

Deadlines may be extended, modified, or supplemented by the PLF or the Board of Governors as appropriate.

(D) Form of SUA Petition:

(1) A Covered Party who seeks to reassign responsibility for a claim will set forth in detail the reasons why responsibility should be reassigned, the other PLF-covered attorney or attorneys who should be held responsible, and the percentage of responsibility for the claim (totaling 100 percent) which the Covered Party and each other PLF-covered attorney so named should bear. A Covered Party who seeks a reduction or waiver of the SUA due to mishandling of the claim by the PLF or its employees or agents will set forth in detail the reasons why the SUA should be reduced or waived, and what amount of SUA (if any) the Covered Party should be assessed.

(2) The petition for relief from SUA submitted by the Covered Party may be in any form the Covered Party chooses. The Covered Party is responsible for attaching to the SUA petition or submitting therewith all correspondence, documents, and other written materials from the PLF claim file or other sources which the Covered Party wishes the Board of Directors or Board of Governors to consider. The Covered Party is required to provide 10 copies of the SUA petition and all supporting documents for an appeal to the ~~Professional Liability Fund~~ Board of Directors, and is required to provide 16 copies of the SUA petition and all supporting documents for an appeal to the Board of Governors. In addition, the Covered Party will provide an additional copy of the SUA petition and all supporting documents for each other PLF-covered attorney to whom the Covered Party seeks to reassign responsibility for a claim in whole or in part.

(E) Claim Summary: The PLF may prepare a staff summary of the claims relating to the SUA appeal at its option. The claim summary will be presented to the SUA committee and the PLF Board of Directors, and to the Board of Governors upon further appeal. If a claim summary is prepared, a copy will be provided to the Covered

Party, and the Covered Party may submit a reply if desired within seven days.

(F) Response of Other Attorneys:

(1) The PLF will forward a copy of (a) the Covered Party's SUA petition and all supporting documents; (b) any staff summary prepared by the PLF; and (c) any reply of the Covered Party to any PLF staff summary to the other PLF-covered attorney named in the petition (the "Responding Attorney").

(2) The Responding Attorney may submit a written Response to the petition in any form the Responding Attorney chooses and may file a cross-appeal as to any SUA which has been allocated to the Responding Attorney. The cross-appeal may seek to reallocate SUA to the original appealing attorney or to another PLF-covered attorney, or may seek review of the SUA due to negligent or improper handling of the claim by the PLF or its employees and agents, in the same manner as an original SUA appeal may be filed under these policies. The Responding Attorney is responsible for attaching to the Response or submitting therewith all correspondence, documents, and other written materials from the PLF claim file or other sources which the Responding Attorney wishes the Board of Directors or Board of Governors to consider. The Responding Attorney is required to provide 10 copies of the Response and all supporting documents for an appeal to the ~~Professional Liability Fund~~ PLF Board of Directors, and is required to provide 16 copies of the Response and all supporting documents for an appeal to the Board of Governors. In addition, the Responding Attorney will provide an additional copy of the Response and all supporting documents for each other PLF-covered attorney involved in the SUA appeal.

(G) Reply: The PLF will forward a copy of the Response of the Responding Attorney to each of the other PLF-covered attorneys involved in the appeal, and each attorney may submit a written Reply to the PLF within 14 days. The Reply may

address only issues raised in the Responding Attorney's Response, and may not raise new issues or arguments. The form of the Reply and number of copies to be provided will be the same as stated above for the original SUA petition and the Responding Attorney's Response.

(H) Review of Records:

(1) Each attorney involved in the SUA appeal may review his or her entire PLF file relating to the claim in question. Coverage opinions and other documents relating to coverage questions, reservations of rights, and other matters confidential to the PLF are not available for examination. File documents which are protected by attorney-client or other privilege are not available for inspection unless the attorney holding the privilege consents to inspection. However, review of claims files by the Board of Directors or the Board of Governors will not be deemed a waiver of attorney-client or other privilege.

(2) Records may be examined at the offices of the ~~Professional Liability Fund~~ PLF through prior arrangement. The PLF will provide up to 100 pages of photocopies from the relevant case file at no charge. Additional copies requested by the Covered Party will be provided at \$.15 per page.

(I) Decision of SUA Appeals by PLF:

(1) SUA appeals to the PLF Board of Directors will initially be reviewed by the SUA Committee. The committee will consider all materials provided by the attorneys involved in the appeal, the claim summary prepared by the PLF staff (if any), and such additional portions of the relevant claim files as the committee chooses. The committee may seek additional information from the attorneys involved in the appeal and from other persons which will be disclosed to the parties to the appeal. The SUA Committee will present a recommendation to the PLF Board of Directors. The Board of Directors will consider the same written materials

considered by the SUA Committee, and will make a final decision concerning the SUA appeal. A full written explanation of the determination of the SUA appeal, including findings of fact, if there are any factual determinations, conclusions, and reasons for the conclusions will be forwarded to the attorneys involved in the appeal.

(2) Decision of a SUA appeal will result in such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another PLF-covered attorney (whether or not the attorney responds to the request to participate in the SUA review process), which could result in assessment of a SUA against the attorney.

(3) If the decision of the Board of Directors decreases or eliminates the Covered Party's ~~special underwriting assessment~~ SUA, an appropriate refund will be made by the ~~Professional Liability Fund~~ PLF together with statutory interest thereon.

(4) If the decision of the Board of Directors serves to impose all or part of the subject ~~special underwriting assessment~~ SUA on another PLF-covered attorney, the SUA reallocated to the attorney is due and payable 30 days after written notice to the attorney. Any SUA not paid when due will accrue interest at the legal rate until paid, and will be included as part of the attorney's PLF assessment in the following year.

(5) Any decision as to responsibility will be binding on the parties in future years according to the terms of any applicable future SUA plans.

(J) BOG Change In SUA Allocation

(1) Any attorney involved in a SUA appeal who after properly and timely filing a petition or other response, is dissatisfied by the decision of the Board of Directors will have a right to request the Board of Governors to review the

action of the Board of Directors. In order to be entitled to such review, a written request for such review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written decision from the PLF to such attorney. Review by the Board of Governors upon a timely filed request will be a de novo review on the record. In making the determination whether or not the action of the Board of Directors should be affirmed, only the grounds asserted in the petition or other response and written materials which were available to the Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, will request additional materials from the attorney and from the PLF.

(2) The President of the Oregon State Bar will appoint a committee of not less than three of the members of the Board of Governors which will meet and conduct a review of the appropriate materials and which will make a recommendation to the Board of Governors as to whether or not the action of the PLF Board of Directors should be affirmed. The Board of Governors will make a determination and will notify the attorney in writing of its decision, including any adjustment to the assessment, and the decision of the Board of Governors will be final.

(3) A request for Board of Governors review will constitute and evidence the consent of the Covered Party for the Board of Governors and others designated by them to review all pertinent files of the PLF relating to the Covered Party. In relation to such review, the members of the Board of Governors are subject to compliance with Rule 8.3 of the Oregon Rules of Professional Conduct (ORPC).

(4) Review of a SUA appeal by the Board of Governors will result in such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process),

which could result in assessment of a SUA against the attorney.

(5) If the review of the Board of Governors decreases or eliminates the Covered Party's ~~special underwriting assessment~~ SUA, appropriate refund will be made by the ~~Professional Liability Fund~~ PLF together with statutory interest thereon.

(6) If the review of the Board of Governors serves to impose all or part of the subject ~~special underwriting assessment~~ SUA on another PLF-covered attorney, the SUA reallocated to the attorney is due and payable 30 days after written notice to the attorney. Any SUA not paid when due will accrue interest at the legal rate until paid, and will be included as part of the attorney's PLF assessment in the following year.

(K) Questions Regarding Appeal Procedure: Any questions regarding SUA appeal procedures should be forwarded in writing to the Chief Executive Officer/CEO of the ~~Professional Liability Fund~~ PLF or the Executive Director of the Oregon State Bar, as appropriate. The PLF Board of Directors and the Board of Governors reserve the right to amend these rules at a future date.

(BOD 8/23/91, 10/2/91, BOG 12/13/91; BOD 12/6/91, BOG 3/13/92; BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 10/5/12; BOG ???)

**3.620 EXTENDED REPORTING COVERAGE  
(1996 AND LATER YEARS)**

**PLAN FOR EXTENDED REPORTING COVERAGE  
FOR PLAN YEAR 1996 AND LATER YEARS  
(For Attorneys Leaving Private Practice in 1995  
and Later Years)**

The Board of Directors of the Professional Liability Fund adopts the following Plan for Extended Reporting Coverage for Claims Made Plan Year 1996 and subsequent years. This Plan for Extended Reporting Coverage is subject to amendment or termination by the Board of Directors at any time. No rights are vested as to





# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012

**Memo Date:** October 29, 2012

**From:** Ira Zarov – CEO PLF

**Re:** PLF Policy 2.250

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### **Action Recommended**

Approve changes to PLF Policy 2.250(E) relating to reimbursements for the PLF CEO.

### **Background**

PLF Policy 2.250 (regarding business travel) currently provides for reimbursement of expenses of the spouse or domestic partner of the PLF CEO. The PLF Board has elected to discontinue this policy as inconsistent with the status of the PLF and OSB as quasi-governmental agencies. (There have been no expenses charged under the policy since 2000.)

Attachment – PLF Policy 2.250(E)

(C) The results of the evaluation will be provided to the members of the BOD and to the BOG liaisons to the PLF. A confidential written summary of the results will be placed in the CEO's personnel file.

(BOD 2/7/03; BOG N/A)


## **2.200 REPORTING TO BOARD OF GOVERNORS AND MEMBERSHIP**

(A) The Professional Liability Fund will report on its financial position at least quarterly to the Board of Governors. Such financial reporting will include budget reports, balance sheets, and statements of operations. Where applicable, such financial reports will include comparative statements for the corresponding previous period of time.

(B) The Professional Liability Fund will furnish to the Board of Governors all audited or unaudited statements as may be prepared by its auditors and any comments furnished to the Professional Liability Fund by its auditors.

(C) Investment reports will be submitted to such members of the Board of Governors as are designated by the Board of Governors immediately after submission to the Board of Directors.

(D) Status reports of activities of the Fund will be made to the Board of Governors by the Chairperson or Chief Executive Officer upon request.



## **2.250 TRAVEL, EXPENSE, AND REIMBURSEMENT POLICY**

(A) Board members and the Chief Executive Officer are encouraged to promote the aims of the Professional Liability Fund, whether by meeting with interested individuals (whether or not they are members of the Oregon State Bar) or by attending national meetings on the subject

of professional errors and omissions coverage so long as attendance at the meetings does not involve undue time or expense or hinder the Chief Executive Officer's ability to manage the Fund. If Board members or the Chief Executive Officer attend a meeting at the request of another bar association or other group, reimbursement from the meeting sponsor should be obtained if possible.

(B) Board members (as designated by the Chairperson of the Board of the Professional Liability Fund) may attend meetings of the National Association of Bar Related Insurance Companies (NABRICO) or relevant American Bar Association committees on legal malpractice. Generally, Board members attend the NABRICO meeting in the second and fourth years of their terms.

(C) Board and committee members (as designated by the Chairperson) may be requested to accompany the Chief Executive Officer to meet with representatives of the national insurance market to arrange excess coverage in following form to Oregon's plan or to assist in negotiations with any reinsurance carrier for the Professional Liability Fund.

(D) Board members are required to attend Board meetings in various locations throughout the state of Oregon and to attend Oregon State Bar Board of Governors meetings when acting as liaisons between the two Boards (see PLF Bylaws 6.3). The Chief Executive Officer will attend all such meetings.

(E) Current policies provide for reimbursement for travel, meals, lodging, and business connected miscellaneous expenses when they are on approved travel or business. Spousal/Domestic Partner expenses are included for Board members. Reimbursement for the spouse/domestic partner of the Chief Executive Officer is not included. Supporting documentation is required for air, bus, train and rental car transportation, lodging, and certain miscellaneous expenditures. Personal expense


# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012

**Memo Date:** October 29, 2012

**From:** Ira Zarov – CEO PLF 

**Re:** PLF Policy 3.150 Government Activity Exemption

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### **Action Recommended**

Approve changes to PLF Policy 3.150(G)(10) relating to exemptions for lawyers employed by government entities.

### **Background**

Under the current interpretation of Exclusion 14 of the PLF Claims Made Plan and Section 3.150 of the PLF Bylaws & Policies, only public officials and government employees qualify for the government exemption. Contract lawyers working for government entities are non-exempt. However, frequently the contract attorneys hired by government entities are covered by the statutory defense and indemnity requirements found in ORS 30.285 – 30.287. This change broadens the exemption to lawyers who have these defenses available. Broadening the exemption will make it easier for lawyers with limited practices to accept government employment of this nature.

ATTACHMENT

CHAPTER 3 – PRIMARY PLAN COVERAGE AND ASSESSMENT

**3.100 CLAIMS MADE PLAN AND RETROACTIVE DATE**

(A) Primary coverage will be provided to active members of the Oregon State Bar engaged in the private practice of law whose principal offices are in Oregon in accordance with the applicable Claims Made Plan adopted by the Board of Directors in each year.

(B) Attorneys who have maintained continuous PLF coverage since July 1, 1978 will have no retroactive Date for their current primary coverage. Attorneys who have maintained continuous PLF primary coverage since a date after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If an attorney terminates his or her PLF primary coverage, the attorney will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

(BOD 10/9/09; BOG 10/30/09)

(D) Any attorney formerly exempt from PLF participation under Policy 3.150(C) who applies for PLF primary coverage during 2003 or 2004 will receive a Retroactive Date which will be the date on which the attorney's PLF primary coverage first commenced; or, upon provision of satisfactory information to the PLF, the attorney will receive an earlier Retroactive Date which will be the date beginning the continuous period in which the attorney met the primary coverage criteria under PLF Policy 3.100 prior to applying for PLF primary coverage. Any attorney to whom this subsection applies will be assessed under PLF Policies 3.200 and 3.250 as if that attorney had had PLF primary coverage continuously from the date of the attorney's Retroactive Date.

(BOD 8/11/95; BOG 11/12/95; BOD 2/7/03; BOG 2/27/03)

**3.130 SPECIAL COVERAGE SITUATIONS**

(A) Assistance for Impaired or Disabled Attorneys: An attorney who provides assistance to impaired or disabled attorneys at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.3 of the PLF Claims Made Plan.

(BOD 4/10/98; BOG 5/30/98)

**3.150 EXEMPTIONS FROM PLF PARTICIPATION**

★ See pg. 16

(A) (1) Active members of the Oregon State Bar whose principal office is not in Oregon are not eligible to obtain primary coverage from the Professional Liability Fund, and are required to sign a request for exemption from PLF participation at least annually. Attorneys in this category will be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, will be required to provide the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. Attorneys are required to respond to information requests within 30 days.

(2) As used in subsection (1) of this section, an active member of the Oregon State Bar whose principal office is not in Oregon and is not otherwise exempt from the PLF primary coverage requirement is deemed to be engaging in the private practice of law in Oregon if the attorney meets any of the following criteria:

(a) The attorney appears as an attorney for a party in a proceeding before any court or administrative agency in the state of Oregon, or

(b) The attorney meets with current or prospective clients in Oregon, or

(c) The attorney maintains an office in Oregon. The term "office" is defined at PLF Policy 3.180(B).

(B) Attorneys not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and may file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the attorney through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) law clerk/supervised attorney not engaged in the private practice of law;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Claims Made Plan.

(C) [Reserved for future use]

[BOD 7/31/03; BOG 9/18/03]

(D) (1) An "Acceptable Alternative Insurer" is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) The insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$250,000 per claim/\$250,000 aggregate, regardless of the amount of any applicable deductible.

(2) Attorneys claiming exemption under any exemption category which requires the attorney to maintain professional liability coverage for the attorney through an Acceptable Alternative Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any attorney who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. Attorneys requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the attorney's status changes from private practice in accordance with the administrative procedures of the PLF. It remains the obligation of an exempt attorney to notify the PLF of any change in status to private practice status and to pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt attorneys in the following situations:

(1) Non-Active and Out-of-State Attorneys: The Plan covers only those active members of the Oregon State Bar whose principal office is in the state of Oregon. Attorneys who are not active members of the Oregon State Bar or whose principal office is not in Oregon are not entitled to participate in the PLF even if they serve Oregon clients.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: Attorneys who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt attorneys may provide pro bono services through OSB-certified or other volunteer lawyer programs that provide professional liability coverage for the attorney through an acceptable Alternative Insurer or the PLF's pro bono coverage program as defined at Subsection (D).

(5) Family Practice: An exempt attorney may represent his or her spouse, parent, step-parent, child, step-child, sibling, or any member of the attorney's household. An exempt attorney also may represent a business entity owned or controlled by one or more of these listed family members if the representation is

excluded under the terms of the PLF Claims Made Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: Attorneys who serve as student legal advisers at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, and (b) the services they provide to students or clients are within the scope of their employment.

(7) Law Clerks/Supervised Attorneys (Including Retired and "Of Counsel" Attorneys): An attorney may perform legal research and writing without obtaining PLF coverage provided:

(a) the attorney's work is reviewed and supervised by an attorney with PLF coverage (or an attorney who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the attorney makes no strategy or case decisions;

(c) the attorney does not hold himself or herself out to any client as an attorney or represent any party;

(d) the attorney signs no pleadings or briefs;

(e) the attorney attends no depositions as the attorney of record;

(f) the attorney makes no court appearances as the attorney of record;

(g) the attorney does not use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents; and

(h) the attorney is not listed in the firm name or on the firm letterhead as an attorney or firm members (unless specified as retired). If the attorney is retired, the attorney's name may be listed on the firm letterhead as "retired" or "of counsel (retired)," whichever applies.

Attorneys may request exemption from participation in the PLF if they are retired or are "of counsel" to a law firm and will be acting in the same capacity as a law clerk so long as the limitations stated in this subsection are observed. Part-time or "of counsel" attorneys who do not follow these limitations must obtain current PLF coverage.

(8) Arbitration and Mediation: An attorney may serve as an arbitrator without obtaining PLF coverage provided that the attorney's services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the attorney's practice is limited to serving as an arbitrator (or other exempt activity). An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/arbitrator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

An attorney may perform mediation services without obtaining PLF coverage providing that the attorney's practice is exclusively limited to mediation (or other exempt activity) and the attorney complies with Rule 2.4 relating to mediation. An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/mediator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing

forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

(9) Non-Covered Activities: An attorney who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the attorney's activities would be excluded or otherwise not covered by the PLF Claims Made Plan.

(10) Volunteer Activity for Government Entity: An attorney who is otherwise exempt from participation in the PLF may provide unpaid volunteer legal services to a government entity without obtaining PLF coverage. The attorney is required to notify the government entity in writing that the attorney does not maintain PLF coverage, act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

~~Government Entity~~ Government Activity  
Exemption: An attorney who is otherwise exempt from participation in the PLF may provide unpaid volunteer legal services to a government entity without obtaining PLF coverage. The attorney is required to notify the government entity in writing that the attorney does not maintain PLF coverage, act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

BOD 08/10/12: BOG ???

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(11) Active Emeritus and Active Retired Membership Status: Attorneys who maintain Active Emeritus or Active Retired membership status with the Oregon State Bar are limited by the OSB as to their permitted activities. Attorneys in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed Attorneys: Employed attorneys claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the attorney's scope of employment. Examples include

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012  
**Memo Date:** October 29, 2012  
**From:** Ira Zarov – CEO PLF  
**Re:** PLF Policy 3.200 Regular Assessment

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### **Action Recommended**

Approve changes to PLF Policy 3.200 relating to payment of the assessment.

### **Background**

Currently, PLF policies state that the PLF will not accept an assessment payment made by a check drawn on a lawyer trust account. Because there are many instances in which checks drawn on trust accounts are legitimate expenditures, the suggested policy change removes the prohibition.

ATTACHMENT



change during the year and Attorney F is neither required nor permitted to obtain PLF coverage; however, the following January 1 his principal office for the coming year will be determined to be in Oregon.

Example: Attorney G maintains three offices, one in Portland, Oregon, one in Salem, Oregon, and one in Vancouver, Washington. On January 1, he determines that he spent 25 percent of his time at his Portland office, 15 percent of his time at his Salem office, and 60 percent of his time at his Vancouver office during the prior 12 months. Because the Oregon office time (40 percent) is less than the non-Oregon office time (60 percent), Attorney F's principal office is not in Oregon.

Example: Attorney H maintains three offices, one in Medford, Oregon, one in Yreka, California, and one in Denio, Nevada. On January 1, she determines that she spent 45 percent of her time at her Medford office, 20 percent of her time at her Yreka office, and 35 percent of her time at her Denio office during the prior 12 months. Because the Oregon office time (45 percent) is less than the non-Oregon office time (55 percent), Attorney H's principal office is not in Oregon. On July 12, Attorney H closes her Denio, Nevada office. Because she still maintains an office outside of Oregon, the location of Attorney F's principal office for the year does not change even though she spends more time at her Medford office than at her Yreka office during the rest of the year. However, the following January 1 her principal office for the coming year may be in Oregon if her total Oregon office time the previous year exceeded the total non-Oregon office time.

Example: Attorney I is a member of both the Oregon and California State Bars, but maintains only an office in Los Angeles. On September 1, he opens an office in Portland, but he keeps his Los Angeles office as well. During the balance of the year, Attorney I is physically present 80 percent of the time in his Portland office and 20 percent in his Los Angeles office. Attorney I is neither required nor permitted to maintain PLF coverage for the period September 1 through December 31, but he is required and permitted to obtain PLF coverage for the following year as of January 1.

{BOD 7/16/93; BOG 8/13/93; BOD 2/18/94; BOG 3/12/94; BOD 12/1/95; BOG 1/20/96; BOD 8/14/98; BOG 9/25/98}

### 3.200 REGULAR ASSESSMENT



(A) Assessments of the Professional Liability Fund will be established on the basis of the PLF's experience, operating needs, and projections of future claim development. The projected assessment for the following Plan Period will be submitted to the Board of Governors for their approval no later than November 1 of each year.

(B) Payment of the basic assessment is due on or before January 1. Attorneys entering private practice in Oregon after January 1 of any Plan Period will pay a proportionate assessment on the basis of one-twelfth of the total for each full or partial month that the lawyer will be in practice during the year, including the month entering private practice. The default date for all assessments will be 10 days after the due date, or on the first regular business day thereafter.

~~(C) The Professional Liability Fund will not accept any assessment payment made by check drawn on a lawyer trust account.~~

BOD 08/10/12; BOG ???

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(D) If the lawyer is not eligible for exemption as described in section 3.150, the staff of the Professional Liability Fund is not authorized to waive or reduce the assessment amount without



prior approval of the Board of Directors. The assessment amount includes the basic assessment, the Special Underwriting Assessment and any appropriate late payment charge.

{BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96, BOD 10/25/02; BOG 11/16/02, BOD 08/10/12, BOG ???}

**3.250 STEP-RATED ASSESSMENT**

(A) Attorneys will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an attorney’s PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the attorney has maintained in all prior years as of January 1 of the current year (the “Prior Coverage Period Total”). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney’s annual assessment rate as stated in the following table:

<u>Prior Coverage Period Total</u>	<u>Step Rating Credit</u>
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months	0 percent

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any Special Underwriting Assessment, installment service charge, late payment charge, or any other charge.

{BOD 9/25/96; BOG 11/17/96; BOD 9/14/05; BOG 9/30/05}

**3.300 INSTALLMENT PRIVILEGES**

(A) Installment payment of the annual assessment shall be allowed as follows: An attorney may elect to pay the annual assessment (including any Special Underwriting Assessment) in four quarterly installments. The default date for the first installment is January 10 together with full payment of an installment service charge, and the default dates for the remaining installments are April 10, July 10, and October 10 or the first regular business day thereafter. The installment service charge shall be calculated as an administrative charge of \$25 plus a finance charge of 7% on the total assessment due (including any Special Underwriting Assessment). The service charge may be rounded up or down to the nearest whole dollar. Attorneys who fail to pay the first installment and full service charge together with any applicable late payment charges, reinstatement charges, and other amounts due to the Bar or the PLF within two weeks after the applicable default date may not thereafter elect to pay on the installment payment plan for the balance of the year.

(B) If the assessment default date is after January 10, the number of installments available will be fewer than four and will be equal to the number of full quarters left in the year after the default date. No installment payment plan is available if the default date is after June 30.

(C) Attorneys who elect to pay the annual assessment in installments but who fail to make any payment by the applicable installment default date shall be required to pay the entire remaining assessment balance (including any Special Underwriting Assessment) immediately and shall not be entitled to a partial or full refund of any installment service charge previously paid. The attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. The PLF will also begin the notice requirements pursuant to statute.

(D) Attorneys who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining


# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012

**Memo Date:** October 29, 2012

**From:** Ira Zarov – CEO PLF 

**Re:** PLF Policy 3.450

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### **Action Recommended**

Approve changes to PLF Policy 3.450 relating to “Payments Made in Error.”

### **Background**

Currently, refunds of payments made in error are available up to 24 months from the date of the original payment. The 24 month limitation was intended to restrict refunds to two plan years, but in operation, allowed repayment of payments made over three plan years. The proposed changes revise the provision to be consistent with the original policy intent. The changes will also simplify administration of the policy.

Attachment

(E) If an attorney is paying his or her assessment on an installment basis and will be leaving the private practice of law in Oregon prior to the last calendar month of the next installment period, the attorney may simultaneously (1) file an Application for Proration and Request for Exemption indicating the anticipated date of leaving the private practice of law in Oregon, and (2) pay a reduced installment payment as calculated by the PLF based on the anticipated date of leaving the private practice of law in Oregon. The attorney will be responsible for notifying the PLF immediately if the attorney's actual last day of private practice in Oregon is different than the date previously indicated to the PLF, and will be required to pay immediately any additional assessment amounts which may be due based upon the correct date.

(BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96)

### 3.450 PAYMENTS MADE IN ERROR

In the discretion of the Chief Executive Officer, assessments which were inadvertently or erroneously paid to the Professional Liability Fund when an attorney was eligible or required to claim an exemption from participation in the PLF may be refunded upon request. ~~However, no such refunds will be made more than 24 months after the date of payment to the PLF. Refunds are limited to the current plan year and the prior plan year assessments paid in error and will not include service charges or late fees. No more than two plan years shall be included in the refund calculation.~~ As payments are accepted on an individual attorney basis, and not on a firm or partnership basis, the staff of the PLF will inquire as to the party who made the assessment payment, and if payment was made by the attorney's former firm on his or her behalf, the refund check will be made payable to both the individual attorney and to the firm.

(BOD 9/26/94; BOG 11/12/94; BOD 8/9/96; BOG 9/25/96; BOD 08/10/12; BOG ???)

### 3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(A) Plan for Special Underwriting Assessment: Lawyers will be subject to a Special Underwriting Assessment (SUA) to be assessed under the following terms and conditions. This Plan for Special Underwriting Assessment may be changed or amended in the future.

(B) Special Underwriting Assessment:

(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim. If a claim is part of a group of related claims for which responsibility is allocated pursuant to 3.500(D), the SUA will be based on the amount in excess of \$75,000 of the indemnity and expense allocated to each Covered Party or group of related claims (the "Base Amount"). SUA will be assessed for all claims which are settled or closed by the PLF during the five-year period ending by September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.

(2) All present and former Covered Parties will be assessed according to these provisions, but a Covered Party will be required to pay the SUA only if the Covered Party maintains current coverage with the PLF at the time of the SUA assessment.

(BOD 6/20/03; BOG 5/18/03)

# **OREGON STATE BAR**

## **Board of Governors Agenda**

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**Meeting Date:** November 9, 2012

**Memo Date:** October 29, 2012

**From:** Ira Zarov – CEO PLF

**Re:** PLF Policy 6.200

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### **Action Recommended**

Approve editorial changes to PLF Policy 6.200 relating to the Oregon Attorney Assistance Program (OAAP).

### **Background**

The changes here are designed to keep PLF Policies consistent with the language used in the counseling field. There are no substantive changes.

ATTACHMENT

confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(BOD 6/20/03; BOG 9/18/03)

(C) The Committee will meet with the Board of Governors and provide periodic written reports of its activities at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions to applicable bylaws and policies, and such other general information as the Board of Governors may request. However, the identity of any person who has received assistance from the OAAP or the PMAP will not be requested or required to be disclosed, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(D) For the purposes of ORS 9.568, all PLF employees as well as all other persons providing help through, at the request of, or with the approval of the OAAP and PMAP, will be deemed to be agents of the PLF-PPMAC (in addition to all others who fall within the definition of ORS 9.568(8)).

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00)

**6.200 OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)**

The Professional Liability Fund has established an assistance program called the Oregon Attorney Assistance Program (OAAP). The purpose of the OAAP is to provide personal assistance to ~~attorneys~~ lawyers and judges pursuant to ORS 9.568.

(A) The purpose of the OAAP is:

(1) To provide assistance to Oregon lawyers and judges who experience ~~alcoholism, drug addiction, problem alcohol, drug, and/or other substance use,~~ burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a lawyer's or judge's ability to function:

(2) To aid in the curtailment of malpractice claims and disciplinary complaints;

(3) To educate the legal community about sources of distress and/or impairment, such as the diseases of alcoholism, chemical dependency, depression, and other distress that impacts a lawyer's or judge's ability to function effectively ~~problem substance use, anxiety, depression, relationship issues, compulsive disorders, chronic illness, and career transition;~~ and

(4) To educate the legal community and families of Oregon lawyers and judges about the scope of services offered by the OAAP and resources that are available for assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 04/27/12; BOG ???)

(B) The OAAP will be based on the concept of lawyers helping lawyers.

(C) In order to assist Oregon lawyers and judges, the OAAP will be available to all Oregon lawyers and judges. In addition, to the extent permitted by available resources, the OAAP will also be available to law office staff, court staff, families of lawyers and judges, and law students in Oregon law schools.

(D) The OAAP will be conducted in the strictest basis of confidentiality. The OAAP program will use federal and state regulations on confidentiality of alcohol and chemical dependency programs as a basis for all OAAP guidelines and procedures. The confidentiality and privilege provided under ORS 9.080(2), ORS



**From:** Steve Larson [<mailto:SLarson@stollberne.com>]  
**Sent:** Tuesday, September 11, 2012 4:19 PM  
**To:** Mitzi Naucler; 'Matthew H Kehoe'  
**Cc:** Sylvia Stevens; Kay Pulju; 'Michael Haglund'; Christine Kennedy  
**Subject:** Agenda items

Mitzi and Matthew,

I am the BOG liason to the Labor & Employment law section. This is a very successful section. However, their section membership dropped by about 15% in 2012. They were concerned by this fact, and started looking into it and learned that in 2012, section membership in almost every section has dropped quite dramatically. It may just be the economy, but in 2011, section membership actually increased fairly significantly, so the economy may not be the whole explanation. There was an unfortunate suggestion that the electronic payment system we put in place in 2011 may have been a contributing cause (it wasn't) that created a little firestorm that Sylvia, Kay Pulju, Christine (the OSB staff liason), and I have been dealing with.

But the larger issue of declining section membership is something we should be concerned about, I believe. I know that section membership is voluntary and the staff is very busy taking care of responsibilities related to the mandatory bar organization, but sections are one of the most valued member services and they give the Oregon State Bar a lot of its vitality. I think this may be seen as a very important issue by our section executive committees, and I think the BOG needs to be doing something about it.

I attended the Labor & Employment Law section executive committee today and we had a lively discussion. They said they appreciated that the BOG was listening to their concerns. The chair of the section said the sections do not feel they can ask the staff to do anything, so they are asking the BOG to consider whether the OSB staff could help sections in recruiting and retaining members. They would like advice from bar staff about what they should be doing about this issue. One person suggested that if the bar were to have a webinar for section representatives to give them advice on what they can do to recruit and retain members, it would be very helpful. I know Kay Pulju and her group have been studying this issue and have some thoughts. The information may already be there, and we just need to find a way to communicate it to our members.

I told the Labor & Employment law section executive committee that this is an important issue to the BOG and I would ask that this issue be put on the agenda for the next BOG meeting. Matthew, will you put this on the agenda for the next Member Services Committee meeting? I would like to attend to talk about it if it makes the agenda. Mitzi, could we also talk about this at the next BOG meeting to see if BOG members think it is an issue we should address?

Thanks,

Steve Larson  
[slarson@stollberne.com](mailto:slarson@stollberne.com)

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**MENTORS FOR BOG APPROVAL, November 2012 --- New Lawyer Mentoring Program**

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
051860	Mr.	Christopher		Anders	Portland, OR 97214
051892	Mr.	Colin	George	Andries	Portland, OR 97204
020244	Mr.	David		Angeli	Portland, OR 97204
011651	Ms.	Amy		Bilyeu	Portland, OR 97204
980373	Mr.	David		Blankfeld	Portland, OR 97214
992289	Mr.	Jason		Broesder	Medford, OR 97501
030825	Mr.	Marc	D.	Brown	Salem, OR 97301
980406	Mr.	Jeffrey	Howard	Capener	Lake Oswego, OR 97035
052157	Ms.	Kristin		Carveth	Salem, OR 97301
822180	Mr.	Gregory		Chaimov	Portland, OR 97201
883737	Ms.	Patricia		Chapman	Eugene, OR 97440
964888	Ms.	Julia	Anne	Dewitt	Portland, OR 97204
023020	Mr.	Timothy		Felling	Albany, OR 97321
910432	Mr.	George		Fisher	Portland, OR 97239
035211	Mr.	Matthew		Fisher	Portland, OR 97223
782026	Mr.	Edward		Fitch	Redmond, OR 97556
990503	Ms.	Laura		Frikert	Salem, OR 97301
040653	Mr.	Byron		Hadley	Salem, OR 97301
035694	Mr.	Brett	J.	Hall	Portland, OR 97201
913139	Mr.	Thomas	P.E.	Herrmann	Eugene, OR 97440
933089	Ms.	Janice		Hirsch	Portland, OR 97224
052852	Mr.	Jason		Hirshon	Portland, OR 97204
892638	Ms.	Pamala		Holsinger	Portland, OR 97204
060041	Mr.	Daniel	W.	Howard	Eugene, OR 97440
043231	Mr.	David	W.	Jacobson	Salem, OR 97301
013112	Ms.	Anna	Marie	Joyce	Salem, OR 97301
690892	Mr.	Dean		Kaufman	Eugene, OR 97401
820738	Mr.	Stephen	R.	Kelly	Oregon City, OR 97045
963359	Ms.	Julie		Krull	Portland, OR 97205
752175	Mr.	Stephen	O.	Lane	Eugene, OR 97440
742060	Mr.	William	H.	Martin	Eugene, OR 97440
762383	Mr.	Donald		McCann	Salem, OR 97302
934816	Mr.	Scott		Moede	Portland, OR 97204
934665	Ms.	Laura	TZ	Montgomery	Eugene, OR 97440
043722	Mr.	Matthew		Mues	West Linn, OR 97068
963785	Mr.	John	Jay	Nusbaum	Portland, OR 97209
031333	Ms.	Kristin	L.	Olson	Portland, OR 97221
053568	Ms.	Kathy		Proctor	Beaverton, OR 97006
013975	Mr.	Glenn	Wallace	Robles	Portland, OR 97204
773229	Ms.	Martha		Rodman	Eugene, OR 97440
034387	Mr.	Joshua		Ross	Portland, OR 97204
860051	Ms.	Cathryn		Ruckle	Portland, OR 97212
014720	Mr.	Wayne		Rupert	Portland, OR 97204
064933	Mr.	Robert	S.	Russell	Eugene, OR 97440



Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
054660	Mr.	Jeffrey		Sagalewicz	Portland, OR 97204
003781	Ms.	Dana	Shenker	Scheele	Portland, OR 97201
981032	Mr.	Philip	G.	Smith	Portland, OR 97204
081775	Mr.	Benjamin		Souede	Portland, OR 97204
732977	Hon.	Michael	C.	Sullivan	Bend, OR 97701
014254	Mr.	Travis		Sydow	Eugene, OR 97401
904300	Mr.	Douglas		Tookey	Salem, OR 97301
014372	Ms.	Christine		Tracey	Portland, OR 97204
926004	Ms.	Dayna		Underhill	Portland, OR 97205
794257	Ms.	Patricia		Vallerand	Eugene, OR 97405
784167	Mr.	Floyd	C.	Vaughan	Baker City, 97814
964824	Ms.	Diane		Wiscarson	Portland, OR 97204
753902	Mr.	John		Wittwer	Sweet Home, OR 97386
843961	Mr.	Gregory		Zeuthen	Portland, OR 97201

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 8-10, 2012  
**Memo Date:** October 19, 2012  
**From:** Andrew Schpak, Chair, NLMP Committee  
Kateri Walsh, Professionalism & Public Outreach Manager  
**Re:** New Lawyer Mentoring Program Policy Changes

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### Action Recommended

Approve the following changes to the New Lawyer Mentoring Program: 1) revise the NLMP curriculum to include classification of activities as either "required" or "suggested"; 2) change the mentor eligibility criteria from seven years of experience to five years; and 3) revise the Supreme Court Rule to better reflect the operation of the program.

### Background

#### 1. Curriculum Revisions.

The New Lawyer Mentoring Program is nearing the end of its first cycle, and beginning to receive its first Certificates of Completion from participants with a 12/31/12 deadline. This will give us the opportunity to survey participants and we expect to collect valuable feedback about the program's first year. Anecdotally, we have received numerous comments from participants, almost all of which have been extremely positive.

We have heard from two participants who found the curriculum to be overly burdensome and some of the requirements to be irrelevant to the new lawyers in question. Just as importantly, we have heard from several *potential* mentors who were extremely positive about the concept and wanted to be involved but were dissuaded from volunteering because the curriculum looked daunting.

Although the majority of mentors queried about the issue have reported that they have not found the program to be overly burdensome, the Committee remains concerned about the impact on both recruiting new mentors and re-enlisting current mentors if this perception exists, even in a small minority.

Additionally, there are indeed several requirements that simply don't make sense for certain new lawyers. For instance, the requirement that the mentor take the new lawyer on a tour of the courthouse and introduce courthouse staff. While this is an excellent suggestion for many, several mentors report that they never engage with the court, don't know any courthouse staff, and have new lawyers whose career paths are unlikely to bring them to the court.

[enter comm. name]

[enter meeting date]

Finally, the Committee also wanted to defer to the good judgment of both mentors and new lawyers to craft a program specifically-tailored to the unique needs of each participant.

To address these issues, the NLMP Committee recommends several amendments to the curriculum which decrease the requirements and increase the flexibility. In any areas where requirements were eliminated, the revisions do keep those activities in the written curriculum, but identify them simply as suggestions.

In the attached curriculum, the activities which were changed are those currently under the “optional” activities now listed under each of the six core curriculum areas.

## 2. Mentor Eligibility Revision

The NLMP Committee also recommends changing the mentor eligibility requirement from seven years of experience to five years. The primary impetus is to increase the pool of available mentors. This is also in keeping with norms in other states’ legal mentoring programs, which are very much on the rise throughout the nation.

## 3. Minor changes to the Supreme Court Rule

In the early stages of this program, we expected to operate the NLMP in two sessions, based largely on the swearing-in ceremonies. However, we discovered that a large number of new lawyers either delayed admission or, at a minimum, deferred participation in the NLMP as they sought employment. As such, we have been operating on a rolling enrollment basis, rather than in the two sessions originally envisioned.

The attached draft revisions to the Supreme Court Rule reflect that operational reality, as well as the change to a five-year eligibility requirement for mentors.

## MENTORING PLAN

*(to be filed with the Oregon State Bar upon completion)*

Please note: this section is in continuing development. Please feel free to contact the NLMP with recommendations for further activity content.

Set forth in the Mentoring Plan below are the required and elected activities of the NLMP. Please note that while all six of the core curriculum areas are required to be addressed, many of the actual activities for addressing each area are suggestions. Mentors and new lawyers are encouraged to be broad, expansive and creative in how they address each of the six components.

Further, it is not the expectation that the mentor directly lead each and every experience outlined. The mentor assumes the role of “primary care practitioner” in assuring that the new lawyer gains access to the people and professionals that will support the new lawyer’s career goals, and reinforce development of a professional, ethical and competent law practice. Quite frequently, new lawyers may get more value out of exploring key concepts with someone more directly involved or knowledgeable about that area. For example, in a large firm, understanding of billing practices or trust account management may be handled by the accounting department, with the mentor simply confirming that the curriculum element was addressed.

Finally, as this new program continues to develop, we hope that participants will add their own ideas for how they addressed each area. This will help add to the suggestions included in the manual for future participants.

New Lawyer \_\_\_\_\_ Mentor \_\_\_\_\_

<b>A. REQUIRED AND ELECTIVE ACTIVITIES &amp; EXPERIENCES</b>	
<b>1. Introduction to the Legal Community, Public Service and Bar Service</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. The new lawyer is responsible for arranging the initial meeting.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby.</li> </ul>	

<ul style="list-style-type: none"> <li>Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the <b>lawyer's client, punctuality in fulfilling all professional commitments</b>, avoiding offensive tactics, treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices.</li> </ul>	
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**INTRODUCTION TO THE LEGAL COMMUNITY OPTIONAL ACTIVITIES**

*The following are suggestions for other activities to help address this first curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:*

<ul style="list-style-type: none"> <li>Introduce new lawyer to other lawyers and staff members at the mentors office or workplace, or ascertain that such introductions have already occurred.</li> </ul>	
<ul style="list-style-type: none"> <li><b>Discuss a lawyer's professional obligations regarding and the personal rewards</b> arising from community and public service, and supporting and providing legal service to low income clients. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and/or other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services. Alternatively, have the new lawyer report on a visit with someone closely connected to these services.</li> </ul>	
<ul style="list-style-type: none"> <li>Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development.</li> </ul>	
<ul style="list-style-type: none"> <li>Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduce the new lawyer to members of the judiciary, court personnel, and clerks of court. <i>(Encouraged for new lawyers whose practices will take them to the courthouse.)</i></li> </ul>	

**2. Rules of Professional Conduct / Standards of Professionalism**

<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>Review and discuss ethical issues that arise with some regularity in the practice setting and best practices for resolving them, with reference to experience as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for conflicts. Discuss available resources for resolving ethical issues, including consultation with the OSB ethics advice service, private ethics counsel, and in-house ethics counsel or committees.</li> </ul>	

<ul style="list-style-type: none"> <li>Review and discuss the OSB Statement on Professionalism.</li> </ul>	
<ul style="list-style-type: none"> <li>Discuss the importance of cultural competence to effectively represent diverse clients and work in a diverse legal community.</li> </ul>	

**PROFESSIONALISM OPTIONAL ACTIVITIES**

*The following are suggestions for other activities to help address this second curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:*

<ul style="list-style-type: none"> <li>Discuss the lawyer's oath and the practical application of the obligation to protect the laws of the State of Oregon and the United States.</li> </ul>	
<ul style="list-style-type: none"> <li>Discuss the core lawyering values of confidentiality and loyalty with reference to the Oregon Rules of Professional Conduct. <b>Some ORPC's that could be emphasized include:</b> <ul style="list-style-type: none"> <li>1.7 thru 1.11 Conflicts of Interest;</li> <li>3.3. Candor Toward the Tribunal;</li> <li>4.2 Communication with Persons Represented by Counsel; or</li> <li>4.3 Dealing with Unrepresented Persons.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>Discuss how a new lawyer should handle a situation in which it is believed that another lawyer has violated ethical duties, including the duty to report certain kinds of misconduct. Discuss what to do if the new lawyer believes he or she has been instructed to engage in prohibited conduct.</li> </ul>	
<ul style="list-style-type: none"> <li>Discuss and explain the Minimum Continuing Legal Education requirements and ways to fulfill such requirements, including OSB programs.</li> </ul>	

**3. Introduction to Law Office Management**

<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>Discuss the ethics rule most frequently invoked by the OSB – neglect of a legal matter and failure to communicate with client – and the role of good time keeping, time management and communication techniques. <b>Introduce calendar and “tickler” or reminder systems.</b></li> </ul>	
<ul style="list-style-type: none"> <li>Review and discuss malpractice insurance coverage including disclosure requirements.</li> </ul>	

<b>LAW OFFICE MANAGEMENT OPTIONAL ACTIVITIES</b>	
<i>The following are suggestions for other activities to help address this third curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i>	
<ul style="list-style-type: none"> <li>▪ If the new lawyer and the mentor are in the same firm, discuss the new lawyer's role in the billing system. If not in the same firm, review and discuss good billing practices, or arrange for new lawyer to meet with someone knowledgeable about best practices.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review and discuss trust account rules and best practices for handling of client funds, including importance of clearing checks before funds are drawn and authority needed to pay lawyer fees from client funds in trust. Review and discuss OSB and PLF resources.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Introduce the use of information technology systems in law practice.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss resources (publications, seminars, research tools, equipment, etc.) that a new lawyer might find particularly helpful in his or her work.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the roles and responsibilities of paralegals, secretaries, and other office personnel, and how to honor and establish good working relationships with others in the office who are support staff, colleagues, or senior partners.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review and discuss a lawyer's responsibility as a subordinate under RPC 5.2, and as a supervisor of non-lawyers under RPC 5.3.</li> </ul>	

<b>4. Working with Clients</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ Review how to screen for, recognize, and avoid conflicts of interest.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss "DOs and DON'Ts" of maintaining good ongoing client relations, such as returning telephone calls and keeping clients informed about matters.</li> </ul>	

<b>WORKING WITH CLIENTS OPTIONAL ACTIVITIES</b>	
<i>The following are suggestions for other activities to help address this fourth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of knowing whom you represent, particularly when representing corporations, government agencies or other organizations.</li> </ul>	

<ul style="list-style-type: none"> <li>▪ Discuss client interaction, including tips for gathering information about a legal matter and appraising the credibility and trust of a potential client.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss issues that arise regarding the scope of representation.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Participate in or observe at least one client interview or client counseling session.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to decide whether to accept a proffered representation.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to talk about and set the fee for legal services. Review retainers and fee agreements and discuss the importance of written engagement agreements.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to deal with a difficult client and how to decline representation of the unrealistic or “impossible” client.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss terminating the lawyer-client relationship and necessary documentation.</li> </ul>	

<b>5. Career Satisfaction and Work/Life Balance</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ Discuss how to handle challenging relationships in and outside the office, and how to develop a support system of colleagues and others with whom the new lawyer can discuss problems as they arise.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the warning signs of substance abuse and depression and how to address those problems when they are manifested in the new lawyer or others. Review and discuss the support and counseling available to the new lawyer and their family through the Oregon Attorney’s Assistance Program. Review OSB and PLF resources.</li> </ul>	

<b>CAREER SATISFACTION OPTIONAL ACTIVITIES</b>	
<p><i>The following are suggestions for other activities to help address this fifth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i></p>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of having a business plan for developing a practice and meeting both short- and long-term career objectives.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of making time for family, friends, and other personal interests. Discuss how to manage billable hour or other performance requirements to enable an appropriate balance of professional obligations and personal life.</li> </ul>	



## B. ELECTIVE PRACTICE AREA ACTIVITIES

Select and complete at least ten (10) Practice Area Activities in one or more substantive law Practice Areas shown on the following pages. **At least one** of the Activities must be a writing project that the mentor reviews with the new lawyer.

If the new lawyer is interested in a practice area not included here, the new lawyer and mentor may identify basic skill activities in that practice area to include in the mentoring plan.

The activities and experiences suggested on the following pages may be adjusted to the new lawyer's particular practice setting and individual needs.

<i>ACTIVITY</i>	<i>DATE COMPLETED</i>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

## **New Lawyer Mentoring Program Rule**

*(adopted by the Oregon Supreme Court December 6, 2010)*

**1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.

**2. Administration of the NLMP; MCLE Credit.**

2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.

2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.

2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.

**3. New Lawyer's Responsibilities.**

~~3.1. The NLMP shall be operated in two sessions each year, one beginning on May 15 and the other on October 15. Unless deferred or exempt under this rule, new lawyers must enroll, in the manner prescribed by the OSB, in the first NLMP session after their admission to the bar.~~

~~3.2.~~ 3.1. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.

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**4. Appointment of Mentors.** The Supreme Court will appoint mentors recommended by the OSB Board of Governors. To qualify for appointment, the mentor must be a member of the OSB in good standing, with at least ~~seven~~ five years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct. ~~All appointed mentors must complete the NLMP mentor training before participating in the program.~~

**5. Deferrals.**

5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:

5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and

5.1.2. New lawyers serving as judicial clerks; and

5.1.3. New lawyers who are not engaged in the practice of law.

5.2. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must enroll in the ~~next~~-NLMP ~~session~~ following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

**6. Exemptions.** New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.

**7. Certificate of Completion; Noncompliance.**

7.1. Each new lawyer is expected to complete the NLMP within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar, ~~unless the new lawyer has been granted an extension of time by the OSB~~. The Certificate of Completion must be filed with the bar on or before that date.

7.2. A new lawyer who fails to file a Certificate of Completion by December 31 of the first full year of admission shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If ~~the~~ noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended from membership in the bar.

**8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** OSB Diversity & Inclusion Department  
**Re:** Recommendation to Change the Name of the Affirmative Action Committee

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### Action Recommended

The Diversity & Inclusion Department and the Affirmative Action Committee recommend that the Board change the name of the Affirmative Action Committee to the "Advisory Committee on Diversity & Inclusion."

### Background

In 1975, the OSB approved the recommendation of the Civil Rights Committee to establish an affirmative action program with the goal of "achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance...." The program was funded by an assessment of \$10 for bar members as part of the annual bar dues.<sup>1</sup> The Affirmative Action Plan Steering Committee was created in 1976 to assist with developing the OSB's Affirmative Action Plan and hiring a director to implement the plan. Subsequently, the Affirmative Action Plan became the OSB's Affirmative Action Program (AAP), and the OSB established an Affirmative Action Committee to serve in an advisory capacity concerning the AAP. For over 30 years the AAC and AAP dedicated most of its time, attention and resources to creating a diverse pipeline of law students, supporting them through law school, taking the bar exam, and finding employment in Oregon.

The AAC's current charge is to: 1) advise and assist the program by providing input, analysis and evaluation of program activities to the program manager and/or BOG; 2) make recommendations to the program manager regarding how the program can be improved; and 3) serve as volunteers for program elements and activities.

In recognition of the evolution of Affirmative Action over time to include the concepts of diversity and inclusion, the OSB established the Diversity & Inclusion Department (D&I) in 2011, and the AAP and its programs were subsequently referred to as D&I and the D&I programs.

Given the evolution of the concept of affirmative action, and the desire to focus on diversity with a broader lens, the AAC and D&I recommend that the Board change the AAC's name to the

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<sup>1</sup> The current assessment per OSB member to support the OSB's diversity & Inclusion initiatives is \$30.

Advisory Committee on Diversity & Inclusion. The OSB Diversity Section has weighed in on the recommendation and has no objection to the name change.<sup>2</sup>

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<sup>2</sup> The Diversity Section is interested in exploring an expanded role to serve in an advisory capacity to the Board, which the Section and AAC will continue to discuss and explore before presenting any recommendations to the Board.

## Narrative Summary

For the first time this year, the Net Operating Revenue has fallen below the Seasonal Budget. A good part of the drop is the larger-than-usual *Direct Program* expenses, with many of the costs for the second bar exam grading coming due. Even though *Total Expense* is shown as greater than the Seasonal Budget, by year end the actual expenses should be below budget.

The Net Operating Revenue is only \$178,692 heading into some of the highest expense months. All this leads to looking like a net expense for the year unless *Program Fee* revenue picks up.

## Executive Summary

	Actual 9/30/2012	Seasonal Budget 9/30/2012	Budget Variance	% of Budget	Actual 9/30/2011
<b>Revenue</b>					
Member Fees	\$ 5,244,616	\$5,209,660	\$34,956	0.7%	\$ 5,126,213
Program Fees	2,481,792	2,584,355	(102,563)	-4.0%	2,585,967
Other Income	377,529	357,974	19,555	5.5%	604,004
Total Revenue	8,103,937	8,151,989	(48,052)	-0.6%	8,316,184
<b>Expenses</b>					
Salaries & Benefits	5,749,104	5,810,128	(61,024)	-1.1%	5,412,438
Direct Program, G & A	2,164,349	2,016,977	147,372	7.3%	2,138,125
Contingency	11,791	18,750	(6,959)	-37.1%	0
Total Expense	7,925,244	7,845,855	79,389	1.0%	7,550,563
<b>Net Operating Rev (Exp)</b>	<b>178,692</b>	<b>\$ 306,134</b>	<b>(127,442)</b>		<b>765,621</b>
Fanno Creek Place	(548,472)	(536,223)			(383,751)
Net Rev Bef Mkt Adj	(369,780)	(230,089)			381,870
Unrealized Investment Gains/(Losses)	235,611				(277,946)
Realized Investment Gains/(Losses)	33,802				63,950
Publ Inventory Increase/Decrease (COGS)	(45,458)				(185,856)
Reserve Reallocation	(150,003)	(150,000)			(299,997)
Net Revenue	\$ (295,829)	\$ (380,089)			\$ (317,979)

↑  
Negative Budget  
Variance

## Revenue Notes

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- ◆ Sales of **print legal publications** have far exceeded the budget. Apparently the best marketing tool for print book sales is access to all books on line and the print value is seen by the user. Print sales year-to date are \$181,926, which is \$51,700 more than the same period a year ago. The biggest sellers have been *Civil Pleading & Practice* and *Torts* (the cause for the large sales in September) both of which exceed \$40,000 in sales.
- ◆ With the good news for legal print book sales, the other key revenue programs – *Admissions, CLE Seminars, Production Services (Directory sales and advertising), and Lawyer Referral* – all are down from last year.
- ◆ Revenue from **Reinstatements** is more than last year as some reinstatement fees were raised \$50 and IOLTA non-compliance caused an administrative suspension for 87 members creating a fee for those to return to active status.

## Client Security Fund

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**Claims Paid** during September were \$239,890 bringing the amount year-to-date to \$440,151 – clearly the highest amount paid by the fund in any one year.

The fund balance now stands at \$351,627 – the first time the fund has been less than the target reserve of \$500,000 in memory. With more claims coming to the board at its November meeting, the fund balance will decline even more.

## Third Quarter – Reserves vs. Funds Available

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### ■ Investment Portfolio Performance

The portfolio gained 3.3% during the third quarter. The difference in the two managers' portfolio balances is only \$606. The total portfolio value is \$650,557 more than the value of the funds transferred to the two firms in late 2009.

### ■ Third Quarter Reserve Requirements vs Funds Available *(see chart on next page.)*

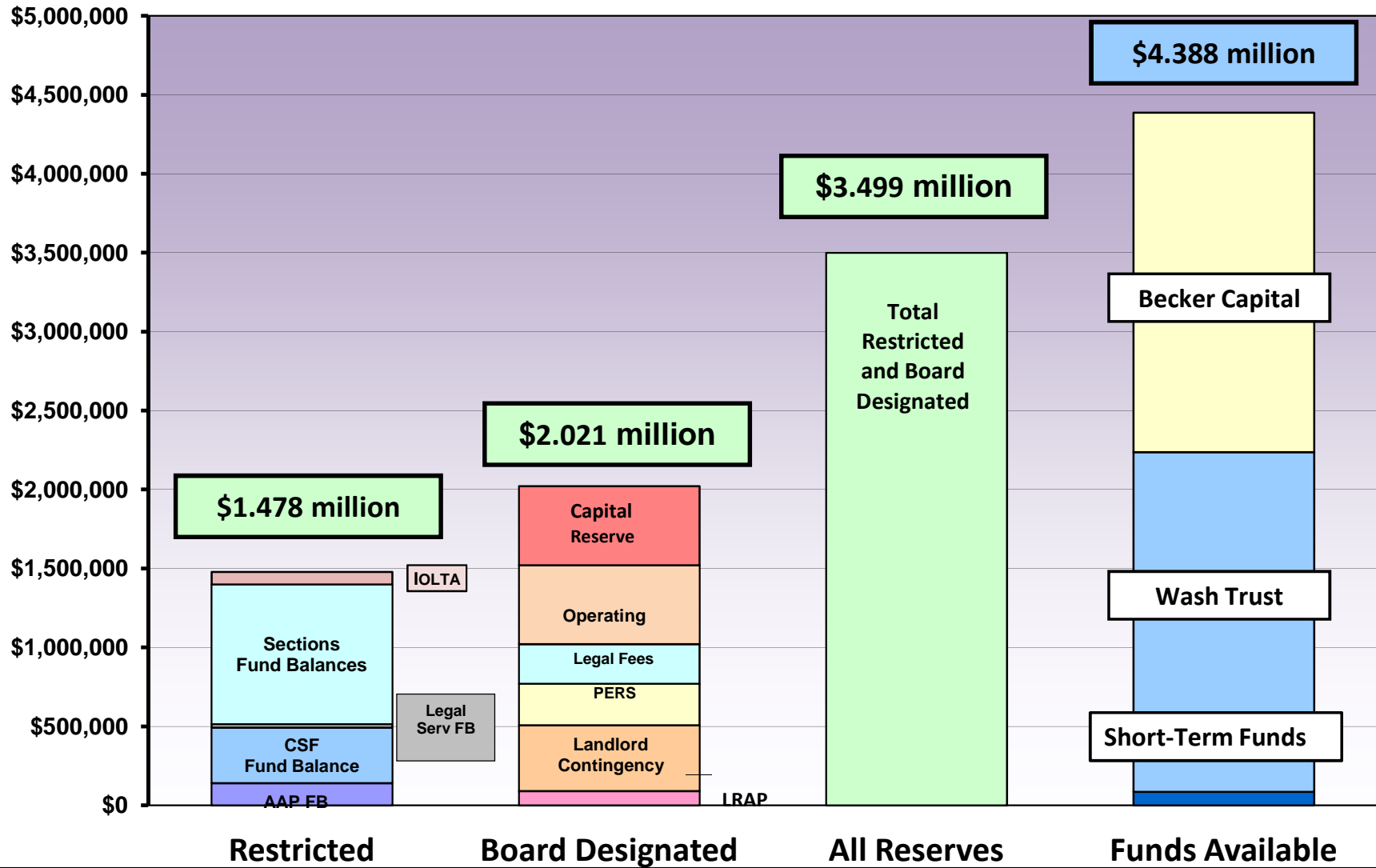
The bar's Reserves continue to remain well funded at the end of the third quarter. The funds managed by the investment managers and short-term funds exceed the needed amount in all reserves and contingencies by \$889,000. This difference was \$727,000 at the end of the second quarter and \$769,000 at the end of the first quarter.

There was **a big change** in this chart from 2<sup>nd</sup> to 3<sup>rd</sup> quarter. The increase in excess funds available was due to the Client Security Fund declining \$447,000 and the Diversity & Inclusion expending its program dollars. At the same time the managed portfolio grew \$137,000. Note that the short-term funds are all but expended and during the fourth quarter the bar will likely dip into the managed portfolio to fund the expected claims paid for the Client Security Fund.



## OSB Reserves and Funds Available

September 30, 2012



## Purpose of this Report

This is the report for the 2013 budget of the Oregon State Bar. This report is subject to one more review by the Budget & Finance Committee and final action by the Board of Governors.

The Budget & Finance Committee reviewed reports as the budget developed at three previous meetings and at the September 28 meeting made recommendations to the Board of Governors on the active and inactive fees, the Client Security Fund assessment, and certain expenditures for 2013.

The budget is developed from the line item budgets prepared by the bar program and department managers and this report is a summary of those budgets. Those detail budgets are not included with this report, but are available by request and will be available at the meetings. Once the 2013 budget is approved by the BOG, there may be minor adjustments to certain accounts if more relevant data becomes available. Any major changes will be reported to the Committee and the BOG.

## Overview of the 2013 Budget

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The 2013 budget projects a **Net Operating Revenue of \$27,258**. This positive “bottom line” was reached after expenditure adjustments to several departments when revenue projections, especially Membership Fee revenue, came in well-below initial projections.

Here are key points in the 2013 budget:

- There is no change in the active membership fee.
- The inactive membership fee is raised by \$15.00 to \$125.00. (This fee change is subject to approval by the House of Delegates at its November 2 meeting.)
- One hundred thousand dollars (\$100,000) from the Contract Legal Fees Contingency (part of the Board Designated reserves) is transferred to revenue.
- The PLF commits to increasing its grant for BarBooks to \$200,000 from the \$100,000 that was committed for the third year of the three-year grant.
- The Client Security Fund assessment is increased by \$30.00 to \$45.00.
- The program activity is essentially the same as 2012.
- Non-personnel expenses are lower than the 2012 budget.

- The salary pool of 2% for personnel is included as is the larger increase in the employer's cost for PERS.
- The Fanno Creek Place budget is similar to the 2012 budget.
- All reserves, contingencies and fund balances will remain fully funded in 2013 as the amount of funds available in the investment portfolio exceed the balance of all the restricted and board designated reserves.

### Three Year Budget Comparisons

Category	2011	2012	2013	\$ Change	% Change
Member Fees	\$6,778,300	\$6,959,700	\$7,011,000	\$51,300	0.7%
Program Fees	3,434,197	3,379,467	3,376,117	(3,350)	-1.2%
PLF Grant	300,000	200,000	200,000	0	0.0%
Reserve Allocation	400,000	200,000	100,000	(100,000)	-50.0%
Other Income	128,700	144,300	129,612	(14,688)	-10.2%
Total Revenue	11,041,197	10,883,467	10,816,729	(66,738)	-0.6%
Salaries, Taxes, Benefits	7,318,480	7,553,166	7,757,582	204,416	2.7%
Direct Program, G&A	3,359,733	3,272,095	3,006,889	(265,206)	-8.1%
Contingency	25,000	25,000	25,000	0	0.0%
Total Expenditures	10,703,213	10,850,261	10,789,471	(\$60,790)	-0.6%
Net Revenue/(Expense)	\$337,984	\$ 33,206	\$27,258		

Exhibit A is a summary of all department and program 2013 budgets.

## A Trend or a Blip?

From the chart to the right, you will note that revenue from membership fees increased on average \$154,000, or almost 2-1/2% a year, since the last active member fee increase in 2006. That revenue increase came from new members to the bar outpacing the number that retired, resigned, or status changed for numerous reasons. That made part of the budget process predictable.

Unfortunately (as far as that applies to revenue), that has changed for 2013.

Note how the chart changes when the projected ("P") Member Fee Revenue for 2013 is included.

Member Fee Revenue History			
Year	Actual	\$ Chg YOY	% YOY
2012 B	\$6,959,700	<b>\$145,657</b>	2.14%
2011	\$6,814,043	<b>\$183,588</b>	2.77%
2010	\$6,630,455	<b>\$153,872</b>	2.38%
2009	\$6,476,583	<b>\$159,808</b>	2.53%
2008	\$6,316,775	<b>\$127,911</b>	2.07%
2007	\$6,188,864	<b>\$156,947</b>	2.60%
2006	\$6,031,917		
	6-yr Avg	<b>\$154,631</b>	2.41%

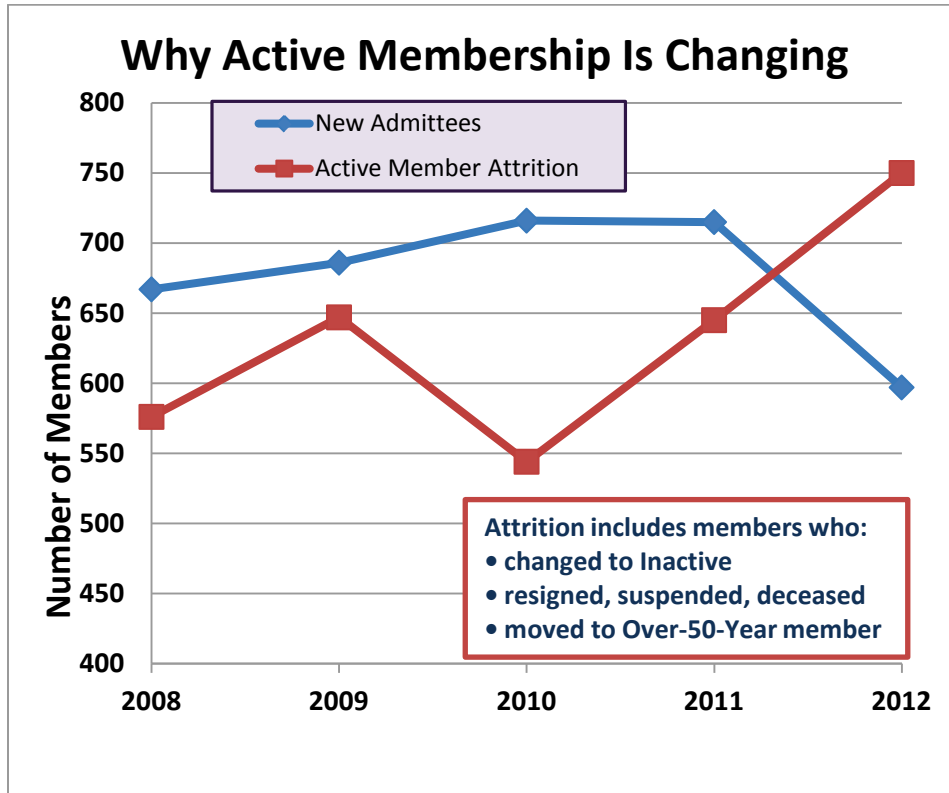
### Member Fee Revenue History

Year	Actual	\$ Chg YOY	% YOY
<b>2013 P</b>	<b>\$7,011,000</b>	<b>\$51,300</b>	<b>0.74%</b>
2012 B	\$6,959,700	\$145,657	2.14%
2011	\$6,814,043	\$183,588	2.77%
2010	\$6,630,455	\$153,872	2.38%
2009	\$6,476,583	\$159,808	2.53%
2008	\$6,316,775	\$127,911	2.07%
2007	\$6,188,864	\$156,947	2.60%
2006	\$6,031,917		
		7-yr Avg	<u>2.17%</u>

Member fee revenue is projected to increase less than 1% next year with only \$51,300 in additional revenue. And this increase is primarily due to the increase in the inactive member fee by \$15.00 (assuming this increase is approved by the House of Delegates).

Why the dramatic change in Membership Fee Revenue in 2013? The change is easily explained in the next chart.

For the first time in memory, the number of members leaving the active membership of the bar exceeds the number of members entering the bar. The blue bar is the estimated number of candidates passing the bar exam or entering via reciprocity. This trend is expected to continue in 2013; how long remains uncertain.



## Summary of Revenue Categories

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The 2013 budget and the forecasts for bar revenue are prepared with these conditions:

### ■ ■ Member Fee Revenue

The best news that can be said about the 2013 budget is that the active membership fee (excluding the CSF assessment) is the same as it has been for eight consecutive years. Never in the bar's history has the active membership fee remained unchanged for eight consecutive years.

The inactive membership fee is increased by \$15.00. This fee has changed infrequently:

- from \$60.00 to \$80.00 in 1989
- from \$80.00 to \$110.00 in 2002.

Arizona	<b>\$265</b>	The OSB inactive fee still is lower than most neighboring state bars.
California	<b>\$125</b>	
Idaho (affiliate)	<b>\$150</b>	
Utah	<b>\$105</b>	
Washington	<b>\$200</b>	

• • •  
*Never in the bar's history has the active membership fee remained unchanged for eight consecutive years.*

### ■ ■ Program Fee Revenue

There are dramatic revenue changes for some bar programs and activities in 2013. Overall, this source of revenue is 1.2% lower than last year's budget (which was lower than the 2011 budget).

- **Admissions** revenue is \$95,000 less than the 2012 budget. Bar exam and reciprocity applications are projected to be 150 fewer than 2012.
- **CLE Seminars** revenue is projected \$54,000 lower as it changes some of its format for programming, including the new CLEeasy Pass program replacing the Season Ticket.
- Sales of printed **Legal Publications** are trending in the other direction. Sales are projected \$117,000 more than the 2012 budget. Through nine months of 2012, sales already are \$82,000 more than the budget. A number of books available in 2013 – *Family Law*, *Consumer Law*, and *Criminal Law* – are expected to be popular sellers. **BarBooks** available online appears to be the best marketing piece for the print book.
- Even though participation is expected to decline 7% from 2012, the new funding model for **Lawyer Referral** is projected to generate \$55,000 in fee revenue. This amount is based on early-year experiences of other bar association's lawyer referral programs.

## ■ Other Revenue

*Investment* and *interest income* is derived from the short-term investments (less than 12 month CDs, money market, and the LGIP) and the interest and dividends on the reserve funds managed by Becker Capital and Washington Trust Bank. With interest rates projected to remain low through mid 2015, these line items will change little.

- The PLF has agreed to retain its *grant for BarBooks* at \$200,000 after the grant initially was intended at drop to \$100,000 in 2013, the third and final year.
- The 2011 and 2012 budgets included \$400,000 and \$200,000 respectively, as transfers from reserves to the operating budget. The 2013 budget includes a *transfer of \$100,000*, which is deducted from the Contract Legal Fees Contingency. This contingency has a balance of \$250,642 before the transfer.

## Summary of Expense Categories

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Expenditures for 2013 are only 0.6% lower than the 2012 budget, but there are opposite variances in personnel and non-personnel expenditures.

## ■ Salaries, Taxes & Benefits

A salary pool of 2% is included in the 2013 budget.

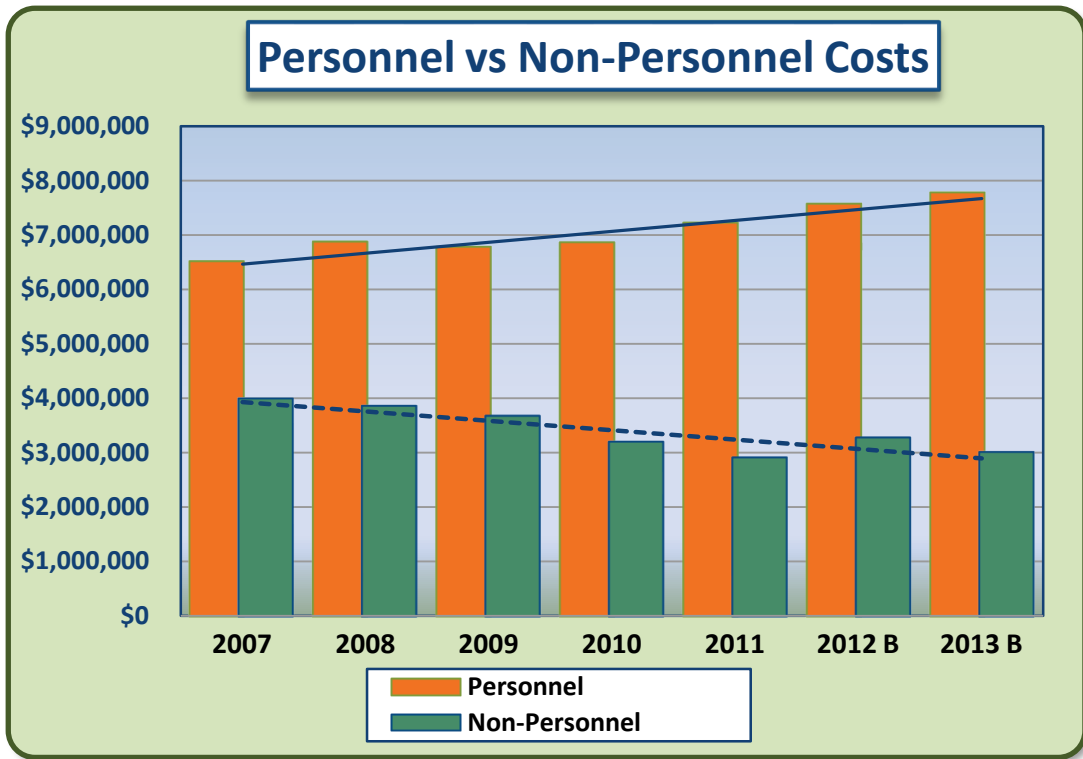
The overall increase in salaries, taxes, and benefits over the 2012 budget is \$265,206, or 2.7%. Of that amount \$29,200 is salary increases and \$186,000 is for taxes and benefits. Of the taxes and benefits increase, virtually all is attributable to the increase in the bar's PERS rate.

Beginning July 1/Rate	Tier 1&2	OPSRP
2005	12.30%	8.04%
2007	4.33%	5.82%
2009	2.06%	2.84%
2011	9.55%	8.05%
2013	14.26%	12.54%

*If there is any good news in this chart, salaries applicable to Tier 1&2 decline from \$3.224 million in 2012 to \$3.160 million in 2013 – a small decline, but one which will continue in the future.*

If there were no increase in the salary pool in 2013, personnel costs for the 2013 budget would be \$78,100 less. This number is smaller than the initial projection as the FTE from 2012 to 2013 has decreased by 1.8 with the elimination of a full FTE in Legal Publications and one-half FTE in CLE Seminars.

The chart below shows the trend in the cost of operations in the bar’s budget. Not surprising, personnel costs have consistently risen (an average of 3.2% over six years), whereas non-personnel costs have consistently declined.



### ■ Direct Program and General & Administrative Expenses

Non-personnel costs drop \$302,057 from the 2012 budget. The two columns on the right on the chart above compare budgets to actual costs for the previous years, so the real change is not known yet.

The largest one-line account decline is the non-cash expense of depreciation which is one-third of the total decline. Every department except *Legal Publications* and *Public Affairs* saw their costs decline for 2013. Those departments’ costs did not decline since book sales are projected to increase substantially and costs will increase accordingly, and 2013 is the year of the longer legislative session during which costs have always been higher.

Another large decline are the costs for *CLE Seminars*. Operational costs decline \$114,153 as the course material no longer will be printed (those who want print course material will be charged for the printing cost), marketing material for paper and postage decline since it also is no longer printed, and the course material format shifts from traditional CDs and DVDs to online access.

Indirect Costs (ICA, aka overhead) remained stable at 22.2% of all costs. The rate was 22.4% in 2012.

## Program and Operational Matters in the 2013 Budget

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The following is a list of continuation of funding or changes to the 2013 budget. There are no new substantial programs or activities in the 2013 budget.

### ■ ■ Carryover Activities from Prior Budgets

These items have been in the budget in recent years. The dollar amounts for the first three are no change from the 2012 budget.

1. *Grant to Campaign for Equal Justice - \$45,000*
2. *Grant to Classroom Law Project - \$20,000*
3. *Council on Court Procedures - \$4,000*
4. *Online Legal Research Library - \$110,970*
5. *Senior Lawyer Task Force – Placeholder amount of \$10,000*

The Budget & Finance Committee recommended the \$10,000 placeholder remain in the 2013 budget. It was included in the 2011 and 2012 budgets, but no funds have been expended. The President-elect expressed his intentions to develop the task force's charge in 2013.

6. *Remote Communications Task Force – No funds allocated*

The 2011 and 2012 budgets included a placeholder amount of \$10,000. The Committee recommended no funding for this activity in 2013.

### ■ ■ Comments on Select Programs or Departments

The activity of the following programs may have been addressed with changes in revenue or costs for 2013, and here is a summary of key programs overall activity or changes.

#### **Admissions**

With the decline of \$95,000 in revenue due to fewer bar exam and reciprocity applicants in 2013, the program projects a \$68,000 net expense. Costs drop only minimally as the bar exam grading costs are expected to increase. A net expense also is projected for 2012; thus creating two consecutive years of a net expense when historically the program has generated a net revenue.

#### **Bulletin**

The *Attorney's Guide to Products & Services*, which replaced the *Membership Directory*, will not be printed in 2013. The content about advertisers will be included in the back of each issue of the Bulletin and titled *Attorney Market Place*. Other content in the current *Guide* will be added to the bar's web site if not already there. Most of the Production Services Department costs eventually are integrated into the Bulletin. The overall savings of this change is a conservative \$5,000, but the final amount will be determined by the success of marketing to advertisers.



### **CLE Seminars**

Even though Seminars revenue is projected to be lower by \$54,000 in 2013 with the changes to course and marketing material costs drop \$114,000. The net effect of these changes is a \$25,000 net revenue. If achieved it will be the activity's first net revenue in many years.

### **Legal Publications**

Print book sales are exceeding all expectations in 2012 and expected to do even better in 2013. This is one activity where costs are higher in 2013, but with much higher revenue, this is to be expected. The program's net expense is projected to decline \$140,000 for 2013.

### **Referral & Information Services**

Although small amounts of percentage fee revenue has been received this year, this new source is projected to raise \$55,000 in 2013. This projection is based on start-up experiences of lawyer referral programs at other bar associations. Registration fee revenue is expected to be lower by 7% from this year, but again, experience from other bar associations indicate participation will rise over time.

## **Fanno Creek Place**

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The 2013 budget for Fanno Creek Place is similar to the 2012 budget. The 2013 projected net expense is \$702,111; in 2012 the budgeted net expense was \$714,964.

- The bar receives a full year's rent from the PLF, Joffe Medi-Center, Zip Realty, and Professional Practices Group.
- Approximately 3,000 s.f. on the first floor remains vacant. The projected annual rent from that space is \$66,000 and tenants are projected in place by July 1.
- Total rental income (assuming the vacant space is rented) is \$21,500 more than 2012. Meeting room rental also is expected to increase.
- Operating expenses including depreciation are expected to be only \$9,000 more than 2012. Depreciation remains the largest operational cost – 47% of operational costs.

## **Reserves, Fund Balances, and Other Contingency Funds**

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On the next page is a chart of the various Board Designated and Restricted Reserves, Fund Balances, and Contingencies. Typically these funds do not change much from the beginning to the end of the year. However, 2012 is an exception with notable changes in the PERS contingency, operations of Diversity & Inclusion, and the Client Security Fund.

The balance at "Beginning of 2013" is an estimate based on anticipated operations through the rest of 2012.

Reserve, Fund Balance, Contingencies/ Balance at	Beginning of 2012	Beginning of 2013
<b>Reserves for Operations</b>		
■ Operating	\$ 500,000	\$ 500,000
■ Capital	500,000	500,000
<b>Contingencies Established by the BOG</b>		
■ Contract legal fees	250,642	150,642
■ Landlord	415,333	415,333
■ PERS	326,590	241,000
<b>Total Board Designated</b>	<b>\$ 1,992,565</b>	<b>\$ 1,806,975</b>
<b>Restricted Fund Balances</b>		
■ Diversity & Inclusion Program	155,712	93,000
■ Client Security Fund (CSF)	607,132	64,000
■ IOLTA Reserve for Unclaimed Assets	1,090	75,000
<b>BOG Controlled Fund Balances</b>		
■ Legal Services	25,478	0
■ LRAP	59,781	52,000
■ Sections	694,092	694,000
<b>Total Restricted</b>	<b>\$ 1,543,285</b>	<b>\$ 978,000</b>
<b>Total - All</b>	<b>\$ 3,542,850</b>	<b>\$ 2,784,975</b>

### Diversity & Inclusion

The latest phase of this program's budget indicates a \$93,000 net expense. This deficit will bring the program fund balance to zero and adjustments are being made to reduce that deficit. Even with those adjustments, the program will need further scrutiny as without changes to the program budget, the program will be using general operation funds to function in 2014.

### Client Security Fund

*Exhibit B* is a projection of the fund's activity through the end of 2014. The \$45.00 assessment is included in 2013 revenue. Without any other extraordinary claims the fund could function with a \$40.00 assessment in 2014 and cross the \$500,000 reserve again by the end of the year.

## Financial Issues to Face in 2014 and Beyond

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How you view the Five-Year Forecast of *Exhibit C* depends on what is decided about an active member fee increase. The exhibit includes a \$70.00 member fee increase in 2014 and with the additional revenue from that increase, the bar can operate with a positive bottom line for five years assuming no major program changes.

Without a fee increase the deficit in 2014 is an estimated \$370,000 assuming the conditions in the forecast take place. Another assumption is that member fee growth will be lower than the recent past.

However, there are many variables to determine when a fee increase is needed and how much it should be. Here are points for the Budget & Finance Committee and the Board of Governors to mull in 2013 when developing the budget for the next five years.

1. When should there be an **active member fee** increase? in 2014? In 2015? If so, how much? \$50.00? \$60.00? \$70.00?
2. Is the 2013 condition that **membership is declining** (or at least not growing) the trend for the next five years?
3. Does the board risk **using more reserves** to balance future budgets?
4. Can the new **Lawyer Referral funding model** generate a growing sum of revenue and create enough revenue that it breaks even by 2016?
5. Should the **Diversity & Inclusion** (formerly Affirmative Action) **Program assessment be increased** in 2014 or later, or should the program be incorporated into the bar's general fund?
6. Can the **Client Security Fund assessment be reduced** in 2014 or 2015?
7. Will the **investment portfolio** continue to show steady growth in income and market value?
8. Will the **PLF grant** continue, and if so, how long and how much?
9. Can **print Legal Publications** remain as popular as they currently are?
10. Should access to **BarBooks** be available only to members who purchase an annual subscription?
11. Can **CLE Seminars** revenue grow, or at least not decline, with its new approach to providing continuing legal education?
12. Can a positive bottom-line budget be maintained **to cover salary increases** and the consistently higher cost for PERS?
13. Can **program and administrative** costs continue to be reduced without affecting the quality of a program or services to members?

## Action on the 2013 Budget

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The following decisions related to the 2013 budget have been made by the Budget & Finance Committee or the Board of Governors at previous meetings:

- a. There is no change to the active member fee.
- b. The inactive member fee is raised by \$15.00 to \$125.00. This action must be approved by the House of Delegates at the November 2 meeting.
- c. The Client Security Fund assessment is raised by \$30.00 to \$45.00.
- d. Funding for the Senior Lawyers Task Force remains at \$10,000.
- e. Funding for the Remote Communication Task Force is discontinued.

**Action:** Decision on the 2013 budget as presented in this report.

# OREGON STATE BAR

## 2013 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$721,998	\$339,032	\$290,850	\$18,201	\$648,083	\$142,518	(\$68,604)
Bulletin	\$656,374	\$191,100	\$346,833	\$2,670	\$540,603	\$90,628	\$25,143
CLE Seminars	\$1,313,455	\$469,900	\$424,025	\$25,390	\$919,315	\$369,448	\$24,692
Client Assistance Office	\$0	\$530,800	\$500	\$20,149	\$551,449	\$138,453	(\$689,902)
Communications	\$14,400	\$391,000	\$21,550	\$8,022	\$420,572	\$94,693	(\$500,865)
Disciplinary Counsel	\$76,250	\$1,685,112	\$112,600	\$69,314	\$1,867,026	\$429,467	(\$2,220,243)
General Counsel	\$2,500	\$363,300	\$53,250	\$15,681	\$432,231	\$82,976	(\$512,707)
Governance (BOG)	\$0	\$310,200	\$146,300	\$26,178	\$482,678	\$70,063	(\$552,741)
Legal Publications	\$246,040	\$575,600	\$100,313	\$21,548	\$697,461	\$270,210	(\$721,631)
Loan Repayment Assistance Prog	\$73,800	\$0	\$84,000	\$0	\$84,000	\$0	(\$10,200)
MCLE	\$304,600	\$158,088	\$1,500	\$13,561	\$173,149	\$70,303	\$61,148
Member Services	\$0	\$198,174	\$21,875	\$13,975	\$234,024	\$96,845	(\$330,869)
New Lawyer Mentoring Program	\$40,000	\$139,500	\$2,150	\$2,448	\$144,098	\$41,129	(\$145,227)
New Lawyers Division	\$4,000	\$59,900	\$70,300	\$7,880	\$138,080	\$39,216	(\$173,296)
Production Services	\$13,500	\$70,000	\$700	\$2,500	\$73,200	\$65,281	(\$124,981)
Public Affairs	\$0	\$454,900	\$30,400	\$32,855	\$518,155	\$102,106	(\$620,261)
Referral & Information Services	\$170,500	\$330,656	\$32,680	\$10,367	\$373,703	\$148,257	(\$351,460)
Special Projects	\$300,000	\$15,900	\$198,800	\$350	\$215,050	\$0	\$84,950
<b>TOTAL PROGRAMS</b>	<b>\$3,937,417</b>	<b>\$6,283,162</b>	<b>\$1,938,626</b>	<b>\$291,089</b>	<b>\$8,512,877</b>	<b>\$2,251,593</b>	<b>(\$6,827,054)</b>
<b>ALLOCATIONS:</b>							
Finance & Operations	\$6,879,312	\$1,474,420	\$925,550	\$70,253	\$2,470,223	(\$2,197,423)	\$6,606,512
Less: Dept Charges/Offsets			(\$272,800)		(\$272,800)		\$272,800
Oregon State Bar Center	\$0	\$0	\$32,510	\$850	\$33,360	(\$33,360)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
<b>TOTAL OPERATIONS</b>	<b>\$10,816,729</b>	<b>\$7,757,582</b>	<b>\$2,648,886</b>	<b>\$362,192</b>	<b>\$10,768,660</b>	<b>\$20,810</b>	<b>\$27,258</b>
Fanno Creek Place	\$801,871	\$119,800	\$1,528,341	\$16,300	\$1,664,441	(\$160,459)	(\$702,111)
<b>TOTAL GENERAL FUND</b>	<b>\$11,618,600</b>	<b>\$7,877,382</b>	<b>\$4,177,227</b>	<b>\$378,492</b>	<b>\$12,433,101</b>	<b>(\$139,649)</b>	<b>(\$674,853)</b>
<b>DESIGNATED FUNDS:</b>							
Diversity Inclusion	\$478,200	\$302,700	\$175,900	\$18,125	\$496,725	\$74,607	(\$93,132)
Client Security Fund	\$682,100	\$39,400	\$202,800	\$2,674	\$244,874	\$13,152	\$424,074
Legal Services	\$6,055,000	\$95,300	\$5,935,000	\$2,710	\$6,033,010	\$51,890	(\$29,900)
<b>TOTAL ALL FUNDS</b>	<b>\$18,833,900</b>	<b>\$8,314,782</b>	<b>\$10,490,927</b>	<b>\$402,001</b>	<b>\$19,207,710</b>	<b>\$0</b>	<b>(\$373,811)</b>

Exhibit A

## Client Security Fund

### Projected Summary of Activity August 2012 to End of 2014

Description	Claims Paid	Operation Costs	Revenue	Fund Balance
<b>2012</b>				
<b>Fund Balance 8/31/2012</b>				<b>\$591,711</b>
Sept Activity	\$239,890	\$4,900	(\$800)	
<b>Fund Balance 9/30/2012</b>				<b>\$347,721</b>
Oct-Dec 2012		\$14,700	(\$2,400)	
Gruetter 1/2	\$221,826			
Other	\$50,000			
	\$271,826	\$14,700	(\$2,400)	
<b>Fund Balance 12/31/2012</b>				<b>\$63,595</b>
			<div style="border: 1px solid black; padding: 2px; display: inline-block;">\$45.00 assessment</div>	
<b>2013</b>				
Activity		\$61,200	(\$670,000)	
Gruetter 1/2	\$221,826			
McBride	\$110,000			
Other	\$100,000			
Totals 2013	\$431,826	\$61,200	(\$670,000)	
<b>Fund Balance 12/31/2013</b>				<b>\$240,569</b>
				<div style="border: 1px solid black; padding: 2px; display: inline-block;">\$40.00 assessment</div>
<b>2014</b>				
Activity		\$63,600	(\$597,400)	
Claims	\$200,000			
Totals 2014	\$200,000	\$63,600	(\$597,400)	
<b>Fund Balance 12/31/2014</b>				<b>\$574,369</b>

## Operations

November-12

Proposed Fee increase for Year		\$0	\$70	\$0	\$0	\$0	\$0
Operations	BUDGET	BUDGET	F O R E C A S T				
	2012	2013	2014	2015	2016	2017	2018
<b>REVENUE</b>							
MEMBER FEES							
General Fund	\$6,959,700	\$7,011,000	\$7,081,000	\$8,203,000	\$8,367,000	\$8,555,000	\$8,769,000
Active Member Fee Increase			1,001,000				
% of Total Revenue	63.9%	64.8%	68.2%	69.1%	68.1%	68.2%	68.4%
PROGRAM FEES:							
CLE Seminars	1,367,840	1,313,455	1,313,455	1,326,590	1,339,855	1,353,254	1,373,553
Legal Publications	122,700	246,040	150,000	100,000	100,000	100,000	100,000
Reallocation of Reserves	200,000	100,000	0	0	0	0	0
PLF Contribution	200,000	200,000	200,000	0	0	0	0
All Other Programs	1,902,427	1,761,622	1,796,900	1,832,800	1,869,500	1,906,900	1,929,800
New RIS Model		55,000	125,000	170,000	330,000	330,000	330,000
Total Program Fees	3,792,967	3,676,117	3,585,355	3,429,390	3,639,355	3,690,154	3,733,353
OTHER INCOME							
Investment & Other Income	107,700	129,612	158,400	218,200	265,700	284,100	304,200
Other	36,100	0	17,100	17,800	18,500	19,200	20,000
TOTAL REVENUE	10,896,467	10,816,729	11,842,855	11,868,390	12,290,555	12,548,454	12,826,553
<b>EXPENDITURES</b>							
SALARIES & BENEFITS							
Salaries - Regular (2% Pool)	5,504,500	5,532,000	5,689,800	5,852,100	6,019,000	6,190,600	6,367,000
Benefits - Regular	2,012,500	2,195,200	2,384,000	2,539,800	2,702,500	2,903,400	3,049,800
Salaries - Temp	33,424	27,865	30,000	50,000	30,000	50,000	40,000
Taxes - Temp	2,742	2,517	2,700	4,500	2,700	4,500	3,600
Total Salaries & Benefits	7,553,166	7,757,582	8,106,500	8,446,400	8,754,200	9,148,500	9,460,400
% of Total Revenue	69.3%	71.7%	68.5%	71.2%	71.2%	72.9%	73.8%
DIRECT PROGRAM:							
CLE Seminars	539,155	424,025	428,265	432,548	439,036	443,426	450,078
Legal Publications	53,165	100,313	100,000	75,000	77,000	79,000	81,000
All Other Programs	2,272,445	2,120,359	2,173,400	2,216,900	2,272,300	2,340,500	2,410,700
Total Direct Program	2,864,765	2,644,697	2,701,665	2,724,448	2,788,336	2,862,926	2,941,778
GENERAL & ADMIN	420,330	362,192	371,200	380,500	391,900	403,700	415,800
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENSES	10,863,261	10,789,471	11,204,365	11,576,348	11,959,436	12,440,126	12,842,978
NET REVENUE/(EXPENSE) - OPERATIONS	\$33,206	\$27,258	\$638,490	\$292,042	\$331,119	\$108,328	(\$16,425)

Fanno Creek Place

Fanno Creek Place	BUDGET	BUDGET	F O R E C A S T				
	2012	2013	2014	2015	2016	2017	2018
<b>REVENUE</b>							
RENTAL INCOME							
PLF	\$497,346	\$504,807	\$512,379	\$520,065	\$527,865	\$535,783	\$543,820
First Floor Tenant - Zip Realty	50,640	52,160	53,203	54,267	55,353	56,460	57,589
First Floor Tenant - Joffe	126,789	128,683	130,600	132,580	100,549	72,000	144,000
New Tenants (three)	44,895	55,585	89,000	91,700	94,500	70,600	94,500
OLF	27,711	28,536	29,400	30,300	31,200	32,100	33,100
Meeting Rooms	25,000	30,000	21,000	21,000	24,000	24,000	24,000
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400
INTEREST	2,800	2,100	2,500	2,800	3,000	3,200	4,000
TOTAL REVENUE	775,181	801,871	841,082	855,812	839,667	797,443	904,409
<b>EXPENDITURES</b>							
OPERATING EXPENSE							
Salaries & Benefits	114,800	119,800	123,400	127,100	130,900	134,800	138,800
Operations	293,819	308,560	317,800	327,300	337,100	347,200	357,600
Depreciation	505,800	510,100	515,100	515,100	515,100	525,100	525,100
Other	3,000	5,180	6,000	6,000	6,000	6,000	6,000
DEBT SERVICE							
Interest	733,185	720,801	707,655	693,699	678,884	663,158	646,462
ICA to Operations	(160,459)	(160,459)	(160,459)	(164,500)	(164,500)	(164,500)	(164,500)
TOTAL EXPENSES	1,490,145	1,503,982	1,509,496	1,504,699	1,503,484	1,511,758	1,509,462
NET REVENUE/(EXPENSE) - FC Place	(\$714,964)	(\$702,111)	(\$668,414)	(\$648,887)	(\$663,817)	(\$714,315)	(\$605,053)
<b>ACCRUAL TO CASH ADJUSTMENT</b>							
SOURCES OF FUNDS							
Depreciation Expense	505,800	510,100	515,100	515,100	515,100	525,100	525,100
Landlord Contingency Fund		30,000				200,000	
Loan Proceeds							
USES OF FUNDS							
Assign PLF Subtenants' Leases (Net)							
TI's - First and Third Floors		(30,000)					
Principal Pmts - Mortgage	(201,123)	(213,507)	(226,653)	(240,609)	(255,424)	(271,150)	(287,846)
NET CASH FLOW - FC Place	(\$410,287)	(\$405,518)	(\$379,967)	(\$374,396)	(\$404,141)	(\$260,365)	(\$367,799)

Funds Available/Reserve Requirement

	BUDGET	BUDGET	F O R E C A S T				
	2012	2013	2014	2015	2016	2017	2018
<b>FUNDS AVAILABLE</b>							
Funds Available - Beginning of Year	\$ 1,537,351	\$1,496,210	\$1,289,420	\$1,574,743	\$1,618,489	\$1,683,067	\$1,468,329
<b>SOURCES OF FUNDS</b>							
Net Revenue/(Expense) from operations	33,206	27,258	638,490	292,042	331,119	108,328	(16,425)
Depreciation Expense	283,700	176,800	180,300	183,900	187,600	189,500	191,400
Provision for Bad Debts	25,000	21,000	25,000	25,000	25,000	25,000	25,000
Increase in Investment Portfolio MV	71,000	71,000	77,000	90,000	0	117,000	140,000
Allocation of PERS Reserve	222,000	111,000		54,000	108,000	54,000	
Projected HIGHER Net Operating Revenue							
<b>USES OF FUNDS</b>							
Capital Expenditures	(62,700)	(56,850)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Reserve Expenditures	(21,500)	(21,000)	(25,000)	(40,000)	(50,000)	(75,000)	(50,000)
Capital Expenditures - New Building	(50,000)	(10,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Capital Reserve Expenditures - New Building						(200,000)	
Landlord Contingency Interest	(2,800)	(2,100)	(2,500)	(2,800)	(3,000)	(3,200)	(4,000)
Net Cash Flow - Fanno Creek Place	(410,287)	(405,518)	(379,967)	(374,396)	(404,141)	(260,365)	(367,799)
Addition to PERS Reserve	(128,760)	(118,380)	(108,000)	(54,000)			
Projected LOWER Net Operating Revenue	0						
<b>CHANGE IN FUNDS AVAILABLE</b>	<b>(41,141)</b>	<b>(206,790)</b>	<b>285,323</b>	<b>43,746</b>	<b>64,578</b>	<b>(214,738)</b>	<b>(211,824)</b>
<b>Funds Available - End of Year</b>	<b>\$1,496,210</b>	<b>\$1,289,420</b>	<b>\$1,574,743</b>	<b>\$1,618,489</b>	<b>\$1,683,067</b>	<b>\$1,468,329</b>	<b>\$1,256,505</b>
<b>RESERVE REQUIREMENT</b>							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	525,000	550,000	575,000	600,000
<b>Total - Reserve Requirement</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,025,000</b>	<b>\$1,050,000</b>	<b>\$1,075,000</b>	<b>\$1,100,000</b>
<b>RESERVE VARIANCE</b>							
Over/(Under) Reserve Requirement	\$496,210	\$289,420	\$574,743	\$593,489	\$633,067	\$393,329	\$156,505
<b>RECONCILIATION CASH to ACCRUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>	<b>F O R E C A S T</b>				
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>NET REVENUE/(EXPENSE) - Operations</b>	33,206	27,258	638,490	292,042	331,119	108,328	(16,425)
<b>NET REVENUE/(EXPENSE) - FC Place</b>	(714,964)	(702,111)	(668,414)	(648,887)	(663,817)	(714,315)	(605,053)
<b>NET REVENUE/(EXPENSE) - OSB</b>	(\$681,758)	(\$674,853)	(\$29,924)	(\$356,845)	(\$332,698)	(\$605,988)	(\$621,478)



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** October 18, 2012  
**From:** Matt Kehoe, Member Services Committee Chair  
**Re:** 2013 BOG and HOD Election Dates

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### Action Recommended

Approve the following proposed election dates as required by ORS 9.040 and 9.152 and recommended by the Member Services Committee.

### Background

ORS 9.040, 9.042 and 9.152 as well as OSB Bylaw 9.1 and 5.1 outline the following dates for bar elections.

#### OSB and ABA HOD Election

Candidate statements due	Friday, March 15, 2013
Ballots sent	Thursday, March 28, 2013
Election (ballots due)	Monday, April 15, 2013 (3 <sup>rd</sup> Monday in April)
Delegates assume office	Tuesday, April 16, 2013

#### BOG Election

Candidate statements due	Tuesday, May 14, 2013 <i>(160 days before election)</i>
Challenges due	Thursday, June 13, 2013 <i>(30 days from 5/14)</i>
BOG decision on challenges	Thursday, June 27, 2013 <i>(14 days from 6/13)</i>
Petition for SC review	Friday, July 12, 2013 <i>(15 days from 6/27)</i>
Final SC decision	Friday, September 27, 2013 <i>(10 days before ballots are sent)</i>
Ballots sent	October 7, 2013 <i>(1<sup>st</sup> Monday in October)</i>
Election	October 21, 2013 <i>(3<sup>rd</sup> Monday in October)</i>
Board Members Assume Office	January 1, 2014

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Ann Fisher, Chair, Policy & Governance Committee  
**Re:** Amending Appellate Selection Bylaws

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### Action Recommended

Approve the P&G Committee's recommendations for amending the OSB Bylaws to reflect the BOG's decision to return to the pre-2005 practice of ranking its recommendations to the Governor for appellate court appointments.

### Background

At its August 24, 2012 meeting, the BOG approved the Policy and Governance Committee's recommendation to return to the practice of ranking the BOG's recommendations for appellate judicial appointments.

For many years prior to 2005, the BOG identified the candidates it believed were "highly qualified" for the Governor's appellate court appointments.<sup>1</sup> Although the record is scant as to why the process was changed, it appears it was done to be "congruent with the Governor's desires."

Under the current procedure, the Bar recommends those candidates it considers "suitable for consideration by the Governor." In practice, this has meant that all candidate names are forwarded to the Governor:

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<sup>1</sup> The pre-2005 version of Bylaw 2.703 provided in pertinent part:

\* \* \*

(b) The Board may make recommendations to the Governor from the pool of candidates who submit information to the Bar for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. *The Board will recommend at least three people* for the Supreme Court and Court of Appeals, and not less than five names for the Oregon Tax Court, each of *whom the Board believes to be highly qualified*, based upon the information obtained in the review process and the following criteria: Integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service as defined in the ABA Guidelines for Reviewing Qualifications of Candidates. A lawyer who seeks appointment to the same position within two years of first having received a "highly qualified" rating by the Board, may ask the Board to submit his or her name to the Governor with a "highly qualified" rating without the need to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor as "highly qualified." In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request of the Governor whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.

***Subsection 2.703 Statewide Judicial Appointments***

(a) For judicial appointments to a statewide court, no bar poll will be taken, but bar members will be notified of the impending appointment and will be asked to inform the Board of their interest. If an appellate selection process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified<sup>2</sup> candidates to the Governor without notification to members.

(b) The Governor's Office will deliver copies of the completed applications to the bar. *The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor's Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. Upon completion of the due diligence review, the Board's Committee on the Judiciary will recommend a list of candidates suitable for consideration by the Governor to the Board, based on the statutory requirements of ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court, as well as information obtained in the review process, and as screened in using, at a minimum, the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor. A lawyer who seeks appointment to the same position within two years of first having received a "suitable for consideration by the Governor status" will not be required to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor. The chair of the Board's Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee's information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.*

(c) The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar's Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section. Meetings of the committee, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. The committee will discuss reference reports in executive session pursuant to ORS 192.660(1)(f). The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.

(Emphasis added)

The practice described in the bylaw differs slightly from actual practice. For one thing, the name "Committee on the Judiciary" appears to have been used only briefly (between late

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<sup>2</sup> Given the changes in 2005, deletion or amendment of this phrase was apparently overlooked.

2003 and 2006). By early 2007, all mention in the BOG agendas and minutes refers to the “Appellate Selection Committee.” On a substantive level, the “oral summary” of the committee’s information is generally conveyed at the conclusion of the interviews and candidate review, which the Governor’s counsel attends. In essence, the Governor’s counsel sits through the interviews and listens to the selection committee’s discussion of the relative merits of the candidates. No additional report is provided, either orally or in writing.

To implement the BOG’s decision to return to its prior practice, Bylaw 2.703 could be amended as follows:

**[Proposed]**

***Subsection 2.703 Statewide Judicial Appointments***

(a) For judicial appointments to a statewide court, *[no bar poll will be taken, but]* bar members will be notified of the impending appointment and will be *[asked to inform]* **invited to participate in the Board’s *[of their interest]* appellate recommendation process.**<sup>3</sup> If an appellate *[selection]* **recommendation** process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified candidates to the Governor without notification to members.

(b) *[The Governor’s Office will deliver copies of the completed applications to the bar. The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor’s Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor]* **In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request of the Governor whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.**<sup>4</sup>

(c) **The bar’s review process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; reports from judges or hearings officers before whom the candidate has appeared; reports from opposing counsel in recent cases or other matters; reports from references supplied by the candidate; and review of writing samples.**

(d) Upon completion of the due diligence review, the Board’s **Appellate Selection Committee *[on the Judiciary]* will recommend to the Board at least three *[a list of]* candidates *[suitable for consideration by the Governor to the Board]* **it believes to be highly qualified**, based on the statutory requirements of *[ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court]* **the position**, as well as information obtained in the review process, *and as screened in using, at a minimum,* **and** the following criteria: integrity, legal knowledge and ability,**

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<sup>3</sup> It isn’t clear that the Governor’s office will continue to provide applications to us if they are displeased with the change in our process. Prior to August 2005, applicants completed two forms, one for the Bar and one for the Governor. One benefit of the change was to require only one form, which the Governor’s office provided to the Bar.

<sup>4</sup> An alternative would be to rank the candidates as “most highly qualified” and provide additional names that the Board believes are “highly qualified” at the request of the Governor. The remaining candidates are presumptively qualified and the final sentence of this paragraph could be deleted.

professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor.

(e) A lawyer who seeks appointment to the same position within two years of first having received a “[suitable for consideration by the Governor status] **highly qualified**” **rating** will not be required to submit another application or to be re-interviewed. [Candidates in this category must inform the Board of any changes in information previously submitted.] The Board [reserves the right to] **will** request [and receive additional] **those candidates to update the previously submitted** information [from any candidate] prior to deciding whether to resubmit the candidate’s name to the Governor. [The chair of the Board’s Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee’s information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.]

([c] f) [The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar’s Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section.] Meetings of the committee, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and discussed. The term “reference reports,” for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. **Discussion of reference reports by the committee and the Board will be** [The committee will discuss reference reports] in executive session pursuant to ORS 192.660(1)(f). [The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.]

Bylaw 2.700 suggests that the Board will participate in judicial selection only upon request:

#### **Section 2.7 Judicial Selection**

##### ***Subsection 2.700 General***

If requested by the appropriate appointing authority, the Board will participate in a state or federal judicial selection process. Any poll conducted by the Bar will be for informational purposes only and will not constitute the official position of the Bar. Certified election results will be made available as promptly as possible to the press, to the candidates, to the appointing authority and otherwise as the Board may direct.

That language has been in the bar’s regulations for many years. The committee recommends amending it to clarify that the Bar will conduct its own processes regardless of whether the appointing authority wants the Bar’s input. The committee recommends that Bylaw 2.700 be revised as follows:

**The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.**

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 11, 2012  
**From:** Ann Fisher, Chair, Policy and Governance Committee  
**Re:** Updating the CSF Rules

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### **Action Recommended**

Consider the revisions to the Client Security Fund Rules suggested by the CSF Committee and recommended by the Policy and Governance Committee.

### **Discussion**

The proposed revisions to the CSF rules are designed to update the rules and conform them to current practice. Each change is explained briefly below:

Rule 1.1: A new definition for the CSF “Administrator” is created to implement changes in other rules that delegate certain responsibilities to the Administrator.

Rule 1.2: “Bar” is defined, as the term appears in several places in existing rules but isn’t defined.

Rule 3.1: The application for reimbursement has not be drafted by the committee for many years; rather the Administrator develops the form in consultation with the committee.

Rule 4.1: Although our brochures and claim forms have the current OSB address, changing the address in the rules was apparently overlooked.

Rule 4.2: The Administrator assigns new claims, not the committee chair.

Rule 4.4: Investigator reports are sent to the Administrator, not to the committee chair.

Rule 4.7: The BOG and the Committee have long understood that the activities of the CSF are subject to the Public Records and Public Meetings Laws. The application informs claimants of that fact, so it seemed wise to include mention in the rules. The rule retains the proviso that presentations by claimants are at the discretion of the chair.

Rule 4.10: The changes to this rule are to correct the numbering.

Rule 5.3: Neither the BOG or the CSF Committee have been directly in collecting Fund receivables for many years. The Administrator pursues collection as she deems appropriate, and reports periodically to the Committee on the outcome of those activities. The rule changes conforms the rule to actual practice.

Rule 6.2: There is no need to refer to the lower claim cap that has not applied for 19 years.

Rule 6.5: The “annual report” of the CSF is prepared by the Administrator, not the committee. The same is true of the rare press releases, which are prepared in coordination with the Public Outreach Manager. The specific reference is deleted, as job titles and functions are subject to change.

**Client Security Fund Rules**

*(As approved by the Board of Governors through February 19, 2010)*

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### Section 1. Definitions.

For the purpose of these Rules of Procedure, the following definitions shall apply:

1.1 “Administrator” means the person designated by the OSB Executive Director to oversee the operations of the Client Security Fund.

1.2 “Bar” means the Oregon State Bar.

1.3 “Committee” means the Client Security Fund Committee.

1.4 “Fund” means the Client Security Fund.

1.5 “Lawyer” means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.

1.6 “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.

1.7 “Claimant” means one who files a claim with the Fund.

1.8 “Dishonest conduct” means a lawyer’s willful act against a client’s interest by defalcation, by embezzlement, or by other wrongful taking.

### Section 2. Reimbursable Losses.

A loss of money or other property of a lawyer’s client is eligible for reimbursement if:

2.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

2.2 The loss was caused by the lawyer’s dishonest conduct.

2.2.1 In a loss resulting from a lawyer’s refusal or failure to refund an unearned legal fee, “dishonest conduct” shall include (i) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer’s failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee’s judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.3 The loss was not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

2.4 The loss was not to a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.

2.5 The loss arose from, and was because of:

2.5.1 an established lawyer-client relationship; or

2.5.2 the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

2.6 As a result of the dishonest conduct, either:

2.6.1

The lawyer was found guilty of a crime;

2.6.2 A civil judgment was entered against the lawyer, or the lawyer's estate, and that judgment remains unsatisfied; or

2.6.3 In the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

2.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

2.8 The claim was filed with the Bar within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

2.9 A claim approved by the Committee shall not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense incurred for court costs, as awarded by the court.

2.10 No attorney's fees shall be paid directly from the Fund for services rendered by an attorney in preparing or presenting a claim to the Fund. Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and no attorney fee shall be paid in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.11 In cases of extreme hardship or special and unusual circumstances, the Committee, in its sole discretion, may recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.

### **Section 3. Statement of Claim for Reimbursement.**

3.1 ~~The Committee shall prepare a form of~~All claims for reimbursement must be submitted on the form prepared by the Bar.

3.2 The claim form shall require, as minimum information:

3.2.1 The name and address of the lawyer alleged to have engaged in "dishonest conduct."

3.2.2 The amount of the alleged loss.

3.2.3 The date or period of time during which the alleged loss occurred.

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer.

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath.

3.2.6 The name of the attorney, if any who is assisting the claimant in presenting the claim to the Client Security Fund Committee.

3.3 The Statement of Claim shall contain substantially the following statement: ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers.

#### Section 4. Processing Statements of Claim.

4.1 All statements of claim shall be ~~filed with the office of the General Counsel~~ submitted to Client Security Fund, Oregon State Bar, ~~5200 S. W. Meadows Road, 16037 SW Upper Boones Ferry Rd.,~~ P. O. Box 1689, ~~Lake Oswego Tigard,~~ Oregon 97035-0889/281-1935, and shall be forthwith transmitted by such office to the chairperson of the Committee.

4.2 The ~~chairperson of the Committee~~ Administrator shall cause each statement of claim to be sent to a member of the Committee for investigation and report. Such member shall be reimbursed by the State Bar for reasonable out of pocket expenses incurred by said attorney in making such investigation. A copy of the statement of claim shall be sent by regular mail to the lawyer who is the subject of the claim at the lawyer's last known address. Before transmitting a statement of claim for investigation, the ~~chairperson~~ Administrator may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a "reimbursable loss" and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which such claim shall be reimbursed from the Fund.

4.4 Reports with respect to claims shall be submitted by the Committee member to whom the claim is assigned for investigation to the ~~Committee chairperson~~ Administrator within a reasonable time after the referral of the claim to that member, ~~subject to the call of the chairperson of the Committee.~~ Reports submitted shall contain criteria for payment set by these rules and shall include the recommendation of the member for the payment of any amount on such claim from the Fund.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 At any meeting of the Committee, claims may be considered for which a report has been completed. In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 ~~Meetings of the Committee are public meetings within the meaning of the Public Meetings Law. In the discretion of the Chairperson, or as otherwise authorized by the Committee,~~ The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may be allowed to present their respective positions regarding the claim at a meeting called to consider a claim.

4.8 The Committee, in its sole discretion, shall determine the amount of loss, if any, for which any claimant shall be reimbursed from the Fund. The Committee may, in its sole discretion, allow further reimbursement in any year to a claimant who received only a partial payment of a "reimbursable loss" solely because of the balance of the Fund at the time such payment was made.

4.9 No reimbursement shall be made to any claimant if the claim has not been submitted and reviewed pursuant to these rules. No reimbursement shall be made to any claimant unless approved by a majority of a quorum of the Committee. The Committee shall be authorized to accept or reject claims in whole or in part to the extent that funds are available to it, and the Committee shall have the discretion to determine the order and manner of payment of claims.

4.10.1 The denial of a claim by the Committee shall be final unless a claimant's written request for review by the Board of Governors is received by the Executive Director of the Bar within 20 days of the Committee's

decision. The 20 days shall run from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10-2 Claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon. ~~4.10.3~~ Decisions of the Committee which are reviewed by the Board of Governors shall be considered under the criteria stated in these rules. The Board shall approve or deny each claim presented to it for review, or it may refer a claim to the Committee for further investigation prior to making a decision.

4.11 The Committee, in its sole discretion, may make a finding of "dishonest conduct" for the purpose of adjudicating a claim. Such a determination shall not be construed to be a finding of unprofessional conduct for purposes of discipline.

4.12 The Committee may recommend to the Board of Governors that information obtained by the Committee about a lawyer's conduct be provided to the appropriate District Attorney or to the Oregon Department of Justice when, in the Committee's opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.

### **Section 5. Subrogation for Reimbursements Made.**

5.1.1 As a condition of reimbursement, a claimant shall be required to provide the Bar with a pro tanto transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns, and of the claimant's rights against the person or entity who may be liable for the claimant's loss.

5.1.2 Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.3 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

5.1.4 The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.2 A claimant shall not release the lawyer from liability or impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.3 The ~~Committee Administrator~~ shall ~~be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile.~~ ~~from time to time, recommend to the Board that collection efforts be brought and that various claims be assigned to collection agencies or referred to counsel for collection. The Board may authorize such efforts as it deems proper and, upon the recommendation of the Committee, The Administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The Administrator~~ may authorize the expenditure of money from the Client Security Fund for reasonable costs and expenses of collection.

### **Section 6. General Provisions.**

6.1 These Rules may be changed at any time by a majority vote of a quorum of the Committee subject to approval by the Board of Governors of the Oregon State Bar. A quorum is a majority of the entire Committee membership.

6.2 No reimbursement from the Fund on any one claim shall exceed ~~\$25,000 for claims filed on or before July 1, 1993, and \$50,000 for claims filed after that date.~~

6.3 A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or review of a claim involving the claimant or lawyer.

6.4 These Rules shall apply to all claims pending at the time of their enactment.

6.5 The ~~Committee Administrator~~ shall prepare an annual report to the membership and may from time to time issue press releases or other public statements about the Fund and claims that have been paid. The annual report and any ~~press releases and other public statements shall include the name of the lawyer, the amount of reimbursement, the general nature of the claim, the lawyer's status with the bar and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information. All press releases or other public statements shall be coordinated with the Communications Manager and conform to BOG Policy 1.600.~~

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** October 24, 2012  
**From:** Policy and Governance Committee  
**Re:** Change in By-laws regarding Active Pro Bono Members

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### **Action Recommended**

That the Board of Governors waive the one-meeting notice requirement in Article 28 and change By-law 6.101(c) to no longer require Active Pro Bono Members of the Oregon State Bar to pay into the Client Security Fund.

### **Background**

As of July 31, 2012, there were 189 Active Pro Bono Members. Historically, the Oregon State Bar has had a higher per capita number of Active Pro Bono members than any other state with a similar status. Active Pro Bono members are required to provide pro bono services only through one of 16 Certified Programs, and are not allowed to practice on their own. Most of the Active Pro Bono members are retired attorneys who would otherwise be Inactive members. Currently, Active Pro Bono members are required to pay annual fees equivalent to the Inactive membership fee, along with the Client Security Fund assessment.

Active Pro Bono members typically do not handle client funds because they do not charge fees for their services. They may receive money from clients for payment of costs that cannot be waived, but these funds generally are not large sums and are most often paid or made payable directly to the court or individual to whom the costs are owed. Any work they do is through a Certified Pro Bono program, which is required to train and supervise them. The PLF, which provides coverage free-of-charge for Active Pro Bono members, has never had a claim by a client against one of the Active Pro Bono members in the over 14 years that the OSB has had the status. For all these reasons, Active Pro Bono members pose a very small risk of causing financial damage to clients or of misappropriating client money.

The Budget and Finance Committee unanimously supported the concept of relieving Active Pro Bono members from the obligation to pay into the Client Security Fund, as did the Policy and Governance Committee.

The proposed removal of six words from Subsection 6.101(c) is attached.

***Subsection 6.101 Active Pro Bono Status***

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(a) Purpose

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.

(b) Eligibility for Active Pro Bono Status

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a Local Professional Responsibility Committee, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

(c) Membership Fees

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee, ~~plus the Client Security Fund assessment.~~

(d) Procedure

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The Executive Director or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

(e) Reporting Requirement for Active Pro Bono Status

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

(f) Transfer from Active Pro Bono Status

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

# OREGON STATE BAR

## Policy and Governance Committee Agenda

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**Meeting Date:** November 9, 2012  
**Memo Date:** October 22, 2012  
**From:** Amber A. Hollister, Deputy General Counsel  
**Re:** Amendments to Section 8 of Fee Arbitration Rules

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### Action Recommended

The Policy & Governance Committee should recommend that the Board adopt the attached amendments to Section 8 of the Fee Arbitration Rules.

### Background

Section 8 of the Fee Arbitration Rules provides that documents and records submitted by the parties to a fee arbitration proceeding will not be disclosed to the public. This amendment clarifies that General Counsel considers records submitted as part of the program to be confidential submissions, pursuant to ORS 192.502(4). If we are unable to offer confidentiality to participants, they will likely decide not to participate in the program. Because this method of low-cost dispute resolution provides a substantial benefit to the public – by providing an easily accessible forum to determine the reasonableness of a fee – chilling participation in the program would cause real harm to the public.

The amendments also clarify that under certain circumstances General Counsel may be required by law to disclose documents and records submitted by the parties (*e.g.* if a court so orders). In addition, the amendments provide that General Counsel may share documents internally with the Client Assistance Office and/or Disciplinary Counsel's Office to facilitate the investigation of any ethical violations. In circumstances where questions arise as to an attorney's possible misconduct, it is contrary to the bar's mission to resist sharing documents if doing so would impede further investigation.

### Conclusion

The attached proposed amendments should be presented to the Board with a recommendation that they be adopted.

Attachments: Section 8 Proposed Amendments



## OSB Fee Arbitration Rules

### Section 8. Public Records and Meetings

8.1 The arbitration of a fee dispute through General Counsel's Office is a private, contract dispute resolution mechanism, and not the transaction of public business.

8.2 Except as provided in paragraph 8.4 below ~~or as required by law or court order, or unless all parties to an arbitration agree otherwise~~, all electronic and written records, ~~documents, papers, correspondence~~ and other materials submitted by the parties to ~~the~~ General Counsel's Office, or to the arbitrator(s), and any award rendered by the arbitrator(s), shall not be subject to public disclosure, unless all parties to an arbitration agree otherwise. General Counsel considers all electronic and written records and other materials submitted by the parties to General Counsel's Office, or to the arbitrator(s), to be submitted on the condition that they be kept confidential.

8.3 Arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend the hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

8.4 Notwithstanding paragraphs 8.1, 8.2, and 8.3, lawyer arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, 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.

~~8.5~~ Notwithstanding paragraphs 8.1, 8.2, 8.3 and 8.4, aAll electronic and written records, ~~documents, papers, correspondence~~ and other materials submitted to General Counsel or to the arbitrator(s) during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing ~~the any~~ alleged ethical violations in accordance with BR 2.5 and BR 2.6.

~~8.6~~ 5 Notwithstanding paragraphs 8.1, 8.2, ~~8.3 and 8.4, and 8.3~~, General Counsel may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a fee arbitration proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of the proceeding, in whose favor the award was rendered.

~~8.7~~ 6 Notwithstanding paragraphs 8.1, 8.2 and 8.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, General Counsel shall notify the administrator of such program(s).

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** November 5, 2012  
**From:** Ann Fisher, Policy and Governance Committee Chair  
**Re:** Formation of a Military and Veterans Law Section

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### **Action Recommended**

Approve formation of a Military and Veterans Law Section with membership dues set at \$20.00.

### **Background**

In November of last year, the Board of Governors approved creation of the Lawyers for Veterans Special Committee to develop and prioritize recommendations for meeting the legal needs of Oregon veterans. Over the course of the year, the committee has organized two CLE programs, drafted legislative proposals, and discussed the importance of ongoing attention in this area of law. As such, the special committee requests the approval of a Military and Veterans Law Section.

Bar bylaw 15.2 states that the Board will consider creating a section upon receiving a petition from 100 bar members who commit to joining the section. Through an online survey, 113 active bar members indicated their support of the Military and Veterans Law Section and committed to joining the section if formed.

The Lawyers for Veterans Special Committee requests that the section become effective January 1, 2013 and that section dues be collected with 2013 bar membership fees. Dues are proposed at \$20.00.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Steven Larson, Public Affairs Committee Chair  
**Re:** Stable Court Funding Resolution

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### **Action Recommended**

Consider BOG resolution in support of stable funding for the court system.

### **Background**

As Oregon's economy tries to climb out of this recession, Oregonians have endured grinding reductions in state services. State services have been reduced to address the budget deficit, and the legislature has implemented cuts to virtually all government sectors.

At some point, however, further cuts threaten the viability of essential government services. Oregon is approaching that point with the judicial branch.

- Since the close of the 2007-09 biennium, the trial court budget has been reduced by nearly a quarter, from \$243 million to \$183 million in 2011-13. Trial court full time equivalent staff positions have been reduced by 21 percent, from 1594 to 1258.
- The judicial branch maintained open courts five days a week, eight hours a day in the 2009-2011 biennium. This biennium, however, courts are implementing nine furlough days on which the courts are closed.
- Oregon's judges are among the worst paid in the nation, and the legislature has authorized no salary increases since 2007.
- In light of the slow growth in general fund revenue that is forecast for the next several biennia, the prospect for improvements in the judicial department budget is guarded, unless court advocates mount a strong campaign for adequate funding.

Oregon's judicial branch provides a uniquely important government service mandated by Oregon's Constitution.

- Oregon courts stand at the intersection of every important social, political and legal issue in the state.
- Courts decide big questions, such as the validity of the land use system, and small cases that are crucial to those directly involved, like child custody determinations.
- Courts promote public safety and protect vulnerable citizens.
- Viable courts are crucial to the state's business climate: businesses need to know that the courts are available to resolve disputes between businesses, and between businesses and customers.

These are just a few of the reasons why the Oregon Constitution provides that justice is to be administered completely and without delay. (Art. I, Sec. 10)

Given the crucial role of our courts and this constitutional requirement, further decimation of this independent branch of government will lower the quality of life in Oregon for businesses and citizens alike. Further cuts will require courts to rank cases in order of importance.

Constitutionally mandated criminal cases will take precedence. The civil docket, including small claims and probate, will have to take a back seat to cases involving public and individual safety.

A majority of the judicial branch budget is spent on staffing for daily court operations. Cuts in the judicial branch budget directly affect the volume of cases that the courts can handle.

In determining how the state will use its resources, the legislature must recognize that the courts *are* a special case.

## **OSB Board of Governors Resolution in Support of Stable Funding for the Court System**

Whereas, the State of Oregon continues to experience severe revenue shortfalls;

Whereas, courts play an essential constitutional role in society preserving the rule of law, ensuring that government acts within the law, and resolving disputes affecting families in crisis, public safety, and business transactions that support Oregon's economy;

Whereas, Oregonians have a constitutional right to justice administered in state courts "completely and without delay;"

Whereas, in response to revenue shortfalls, the legislature has dramatically reduced the Judicial Department budget, resulting in statewide and local court closures due to staff reductions and mandatory furloughs, delays in case processing and severely reduced public services and access to justice in Oregon;

Whereas, further reductions to the Judicial Department budget may end full service courts in some areas of the state;

Whereas, courts are a core function of government, providing services that are not available otherwise through the private sector or non-governmental organizations;

Whereas, legislators rely on the views of their constituents and public input in setting priorities;

Whereas, effective public input depends upon public awareness of the need for priority funding of the Judicial Department to maintain court operations;

Therefore, be it resolved that the Board of Governors

1. Strongly advocate for adequate funding of the Judicial Department;
2. Actively oppose any additional reductions to the Judicial Department budget;
3. Urge members of the bar to contact their legislators in support of adequate funding for the Judicial Department and in opposition to further cuts to the department's budget; and,
4. Urge members of the bar to educate their clients and the public on the critical need to support adequate funding for state courts to ensure that Oregonians have adequate access to timely justice.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 11, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the following claims recommended for payment by the Client Security Fund at their meetings on September 8 and October 27, 2012:

CONNALL (Johns) .....	\$14,300.00
McBRIDE (Ramos Gonzales).....	5,500.00
McBRIDE (Sayago Saucedo) .....	1,800.00
McBRIDE (Benhumea).....	2,500.00
McBRIDE (Romero Rodriguez) .....	4,000.00
McBRIDE (Vina Cruz) .....	4,500.00
McBRIDE (Cisneros Ponce).....	5,000.00
McBRIDE (Lopez) .....	2,500.00
McBRIDE (Bown) .....	2,700.00
McBRIDE (Jung).....	5,200.00
McBRIDE (Pardo).....	3,000.00
McBRIDE (Perez) .....	2,500.00
McBRIDE (Mejia) .....	4,600.00
McBRIDE (Alvarado).....	4,350.00
McBRIDE (Escobar).....	1,650.00
GRUETTER (Riggs).....	50,000.00
GRUETTER (Ray) .....	50,000.00
GRUETTER (Ferguson).....	7,171.67
GRUETTER (Strohm) .....	16,354.22
GRUETTER (Lyons).....	5,620.79
GRUETTER (Laughlin) .....	3,454.12
GRUETTER (Burk) .....	9277.63
GRUETTER (Mills) .....	3,315.54
GRUETTER (Sare).....	19,000.00
GRUETTER (Alire) .....	31,847.22
DALTON (Miller).....	2,000.00
<b>TOTAL</b>	<b>\$262,141.19</b>

## Discussion

### **CONNALL (Johns) - \$14,300.00**

In December 2009, Frank Johns hired Shannon and Des Connall to represent him in pending criminal charges in Washington County. The Connalls quoted a flat fee of \$15,000 for services through trial and that amount that was paid by Frank's 84-year-old mother, Chongnak. Frank's mother also deposited \$11,000 toward bail if it was needed. Frank and Des Connall had a brief meeting at which they agreed that Frank would turn himself in, the firm would bail him out, and then "figure out where we go from here."

Frank never turned himself in (he remains on "abscond status"), although he is in some kind of contact with his mother. There is some dispute about the extent and value of services provided by the Connalls,<sup>1</sup> but Johns is willing to pay the two-hour minimum required by the fee agreement (\$700), seeking reimbursement only of the remaining \$14,300.

Shortly after Johns deposited money with the Connall firm, Shannon undertook to represent Johns' estranged girlfriend and used the bail money posted for Johns to cover her fees. When Johns discovered what had happened, in June or July 2010, he demanded that the firm withdraw and refund the unearned retainer. Within a few weeks, the firm refunded the \$11,000 bail money. As Shannon and Des Connall's disciplinary issues came to light in late 2010, Johns (via his mother) made another demand on Connall to withdraw and refund the advanced fees. Johns' last communication with Des Connall was in January 2011 after he learned that Shannon had submitted a Form B resignation.<sup>2</sup> Johns again demanded that Des Connall withdraw and refund \$14,300 of the fees he had paid. He got no response.

The Committee recommends an award to Frank Johns of \$14,300. Nothing Des Connall submitted supports a conclusion that he or Shannon spent more than two hours on Johns' case. The Committee also recommends that the requirement for a civil judgment be waived; neither Frank Johns nor his mother are in a position to pursue civil litigation and the Connalls are likely judgment-proof in any event.

### **Jason McBride Common Facts**

Jason McBride was admitted to practice in 2003 and maintained offices in Salem and Beaverton. During all times relevant to these matters, McBride regularly promoted himself on Spanish-language radio as an experienced immigration lawyer with a practice throughout the Northwest and clients from around the world. In late 2011, the bar began to receive complaints from McBride's clients alleging neglect, incompetence and failure to communicate. Some

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<sup>1</sup> Des Connall claims to have sought and reviewed extensive discovery from the DA and analyzed possible defenses based on Johns' criminal record. He also claims to have had numerous contacts with Johns in the next months regarding the need for Johns to turn himself in; the last in-person meeting was in June or July 2010.

<sup>2</sup> Shannon resigned Form B in December 2010 in the face of charges that she had misappropriated several hundred thousand dollars of client funds from trust. The case against Des is pending, with the SPRB considering a stipulated 4-month suspension for Des based on his failure to properly supervise the firm trust account.

clients also claimed that McBride charged excessive fees or failed to refund unearned fees. In February 2012, with seven complaints pending, DCO petitioned for an order suspending McBride during the pendency of the disciplinary proceedings. Complaints continued to come in to DCO and on May 3, 2012 McBride stipulated to the interim suspension, which was effective June 14, 2012. In the face of a formal complaint involving twelve client matters as well as ten pending investigations, McBride tendered his Form B resignation in August and it was effective October 4, 2012.

As of October 27, 2012, the Client Security Fund had received 43 applications for reimbursement from McBride's former clients. From the first, the CSF Committee has agreed with DCO that, while one or two claims might suggest that McBride was merely negligent or incompetent, the pattern of conduct that was revealed as more complaints came in suggested strongly that McBride knowingly offering false hope to vulnerable clients in order to induce them to retain the firm. While the initial formal charges against McBride didn't include dishonesty, DCO was preparing to add them. Moreover, the Committee believes that McBride's decision to resign Form B can reasonably be viewed as an admission of conduct much more serious than the neglect and incompetence that was the basis of the interim suspension cases.

Many claimants have filed complaints with the PLF, but it has denied responsibility.

In addition to recommending payment of the following claims, the Committee recommends that the requirement for a civil judgment in cases where the claim is for more than \$5,000 be waived. Most of the claimants are poor and it would be a hardship to require the claimants to pursue a civil judgment against McBride even if there was a reason to believe he could respond in damages.

Finally, the Committee seeks BOG authority (as required by CSF Rule 4.12) to report McBride's conduct to the Marion County DA's Office:

The Committee may recommend to the Board of Governors that information obtained by the Committee about a lawyer's conduct be provided to the appropriate District Attorney or to the Oregon Department of Justice when, in the Committee's opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.

McBride's conduct has reportedly damaged the image of all immigration lawyers in the Salem area and it is believed that a criminal prosecution of McBride would go a long way toward demonstrating that McBride's conduct is neither common or acceptable.

### **McBRIDE (Ramos Gonzales) \$5,500.00**

Juan Ramos Gonzales hired Jason McBride in 2009 to obtain legal residency and US citizenship. Although he entered the country illegally as a teenager in 1993, Ramos Gonzales completed high school, married, had two children, supported his family and was saving for a down payment on a house. He was desirous of legalizing his status to ensure his ability to stay in the US and care for his family.



The first attorney Ramos Gonzales consulted declined the case because Ramos Gonzales has two illegal entries (the second was a reentry in 1998 after he visited Mexico for a family wedding), which exposed him to a 10-year ban on legal entry. Ramos Gonzales then consulted with McBride. Ramos Gonzales explained his history including the two unlawful entries, and was assured by McBride there would be no problem in obtaining legal residency. Ramos Gonzales advanced \$3,500 as a flat fee for McBride's services. (The fee agreement also provided that if the client terminated the representation, the client would be charged \$300/hour for McBride's services.) McBride gave Ramos Gonzales forms to fill out and advised that, when doing so, he should admit to only his first illegal entry. He claimed to have conducted a search and found no official record of a second entry. On McBride's advice, Ramos Gonzales returned to live in Mexico until his application was approved. His family joined him in early 2011.

Ramos Gonzales's immigration interview in Mexico took place in the spring of 2011. McBride was not present and did not provide Ramos Gonzales with any additional advice or direction. Ramos Gonzales's tattoos and health screening suggested past drug use, so consideration of Ramos Gonzales's application was deferred for one year while he underwent counseling and random drug testing. In February 2012, Ramos Gonzales's family returned to the US, but he continued to work in Mexico pending further consideration of his immigration application. Ramos Gonzales's wife contacted McBride in April 2012 for advice about how to get the process completed. He requested another \$2500 retainer because of the "new information." He refiled the same application and again advised that Ramos Gonzales not disclose his second illegal entry.

Another immigration interview was scheduled for May 2012. Ramos Gonzales again sought direction from McBride, who repeated that Ramos Gonzales shouldn't disclose the second illegal entry of which there was no record. At the interview Ramos Gonzales was asked about illegal entries and he admitted to only one. Nevertheless, not telling the truth bothered Ramos Gonzales and he subsequently admitted his two illegal entries into the US. His application is currently in an administrative review status with a decision due in November 2012. Given his history, compounded by his false statements, his application will likely be denied and he will not be allowed to return legally to his family in the US.

The Committee recommends that Ramos Gonzales be reimbursed \$5,500 from the CSF. He paid a total of \$6000 to McBride, but received minimal services that were of no value. On the contrary, had McBride rejected the case, Ramos Gonzales not only wouldn't have advanced attorney fees, he would never have returned to Mexico and been separated from his family. The Committee concluded that McBride's advice was knowingly false and designed only to induce Ramos Gonzales to hire him. Moreover, when he accepted the second payment in April 2012, McBride knew the bar was seeking his immediate suspension and that he would not be able to complete the representation, but he did not disclose that information to Ramos Gonzales.

**McBRIDE (Sayago Saucedo) \$1,800.00**

Ms. Sayago Saucedo and her husband, Adrian Alejandre, hired Jason McBride in November 2011 to assist Alejandre, a Mexican citizen, in obtaining lawful permanent residency in the US. During meetings with McBride, Alejandre detailed two unlawful entries. McBride advised that would not be a problem. The clients paid McBride \$3,500 for his services. However, when he met with the clients to prepare them Alejandre's appointment with the immigration authorities, he recommended postponing because "the immigration officers were new and in training." When no more postponements could be obtained, the clients again met with McBride, who then suggested that Alejandre might not want to go to Mexico for the appointment because the new immigration officers were denying applications, but he also gave the clients the impression that the immigration officers were new and not likely to notice his two unlawful entries.

Based on McBride's advice, the clients left the US for Alejandre's appointment in Mexico. His application was denied and he was immediately held and processed for deportation.

After Ms. Sayago Saucedo complained to the bar, McBride responded that, while he initially believed there would be no problem with Alejandre's application, he subsequently realized there had been two unlawful entries and that he was ineligible for permanent resident status until he remained outside the US for 10 years. He claims to have offered the clients a full refund of the fees they had paid and to reimburse their prepaid travel expenses, but they wanted to try and left the US against his advice. In August 2012, he refunded \$1700 of the legal fees. In January 2012, in a letter to DCO, McBride said he was willing to refund the remainder of the clients' fee as well as their travel expenses, but that he was unable to do so.

The CSF Committee recommends an award of \$1800, the difference between the fees paid to McBride and the amount he refunded. The Committee did not believe McBride's contention that he changed his mind about Alejandre's chances after learning more facts; rather, the Committee concluded that McBride was aware from the time of the client's first meeting that Alejandre was ineligible for permanent residency and that taking the case and suggesting there were no problems was dishonest. The Committee also found McBride's offer to refund the clients fees and reimburse the travel expenses was a tacit admission of his misleading advice.

**McBRIDE (Benhumea) \$2,500.00**

Eduardo Benhumea hired McBride's firm, Cascade Pacific Law, in August 2010 to help him with several immigration issues. He advanced \$5000 for the firm's services. His case was assigned to an associate who subsequently left the firm, then to another associate who also subsequently left in November 2011. At that time of the second associate's departure, Benhumea understood that about half of his advanced fees had been used (for services relating to a bond hearing, completion of the immigration application, and a request for a work permit), although he never received any accounting and heard nothing more from McBride.

Benhumea has not had a response to his demand for a refund of the remainder of the fees advanced. Benhumea has consulted with another immigration attorney who estimates it will cost \$2500 to finish Benhumea's immigration matters.

The Committee recommends an award of \$2,500 to Benhumea. No fee agreement has been found, so it is unclear whether the \$5000 he advanced was a fixed or hourly fee. Nevertheless, it appears that only about half of the necessary work was performed and the Committee believes the client should be awarded the balance of the unearned fees.

**McBRIDE (Romero Rodriguez) \$4,000.00**

Ms. Romero Rodriguez hired McBride in September 2010 to appeal the denial of her application for permanent residency. She paid him \$5,000. According to the client, McBride helped her get a temporary work permit, attended a court appointment in April 2012, and assisted with filing documents to postpone her deportation prior to his June 2012 interim suspension. McBride has not accounted for or refunded any of the remaining funds she paid. Ms. Romero Rodriguez has hired a new immigration attorney, who estimates the value of McBride's services at \$1,000. No opinion was given about whether the client's appeal has any chance of success.

The Committee recommends awarding Romero Rodriguez \$4,000, the difference between what she deposited with McBride and what the new attorney estimates as the value of McBride's services.

**McBRIDE (Vina Cruz) \$4,500.00**

David Vina-Cruz hired McBride in August 2011 to get him visa (the client is married to a US citizen). He paid a flat fee of \$4,500 (which included \$100 for an initial consultation in April). McBride prepared and submitted the initial I-13- application but there is no evidence of other work, despite several assurances from McBride and his staff that the matter was "on track" and a hearing would be scheduled for summer of 2012. Vina-Cruz attempted to get an accounting and a refund of the unearned fees from McBride, to no avail. Between August 2011 and June 2012, Vina-Cruz paid \$2,000 to McBride for filing fees; the last payment was on June 5, 2012.

The Committee recommends reimbursing the client for all the fees paid on the ground that he got virtually nothing in exchange.

**McBRIDE (Cisneros Ponce) \$5,000.00**

Eduardo Cisneros-Ponce hired McBride in April 2012 to obtain a work visa and permanent residency. He paid \$5,500 on April 5, 2012, followed by \$420 for the filing fee. Other than filing the initial application, McBride did no other work on the client's matter before his June 2012 suspension. The client's many requests for a refund of the unearned fee have gone unanswered.

The Committee recommends a refund of \$5,000, allocating \$500 to the minimal initial work performed by McBride.

**McBRIDE (Lopez) \$2,500.00**

Hipolito Lopez hired McBride in January 2011 on behalf of his parents, who were seeking legal status to stay in the US. Mr. Lopez had filed the initial applications, but got to a point where he needed professional assistance. He paid McBride a flat fee of \$2,500 for both parents' cases. The cases were assigned to an associate, David Mackley, who filed a visa application for Hipolito's mother before leaving the firm in November 2011. No further work was done on the matters and Hipolito got no meaningful response to his calls and visits to McBride's office.

Hipolito eventually decided to move the matters to Mackley at his new firm. Mackley has confirmed that nothing was done on the cases after he left.

The Committee recommends a full refund of \$2,500 on the ground that the clients have not received any value for the money paid to McBride.

**McBRIDE (Bown) \$2,700.00**

Candice Bown is an Australian citizen living in Washington who came to the US on a three-month visa waiver in 2009. While here, she married a US citizen and in January 2011 gave birth to a child. Shortly thereafter she was referred to McBride and consulted with him regarding her desire to obtain green card. In April 2011, Bown informed McBride she would hire him when she had the funds together for the fees and costs. She also asked whether she was at risk of deportation and McBride assured her she needn't worry.

Bown re-established contact with McBride at the end of May 2012. On May 30 and 31, Bown and McBride exchanged e-mails agreeing to a fixed fee of \$3,000, which she paid. McBride told Bown the fee would be fully refundable, less \$300/hour for work performed. Over the next few days Bown and McBride had a 30-minute telephone conference and then exchanged e-mails about the documentation needed for her application, about the need for co-sponsors, and other issues.

The last e-mail from McBride was sent on June 12, 2012. At no time did McBride inform Bown that he had agreed to an interim suspension in early May and that it would be effective June 14, 2012. Rather, he just stopped responding to her e-mails. After several weeks, Bown learned from someone in the Beaverton office that McBride had been suspended.

The Committee recommends an award of \$2,700, crediting \$300 to McBride for the minimal services he provided during the days immediately preceding his suspension.

### **McBRIDE (Jung) \$5,200.00**

Dayna Jung retained McBride on April 25, 2012 for help establishing legal residency and eventually citizenship. McBride informed her the process was long and would take about 18 months. McBride quoted a flat fee of \$5,500 and told Jung that he wouldn't begin work until the entire fee was paid. She made three installments, the last on May 7, 2012.<sup>3</sup> The fee agreement provided that the fee was refundable, less \$300/hour for services performed.

McBride provided Jung with blank application forms which they completed in handwriting and delivered to McBride's office with the other required documentation. McBride's office typed and filed the application. Although she left messages inquiring about the status of her application Jung heard nothing from McBride until June 15, when she called to ask whether recent changes in the law would affect her application. McBride told her not to worry; he did not mention that his suspension order had been signed the previous day.

McBride has not returned Jung's file and has not accounted for the fees she paid. The Committee concluded that it was dishonest for McBride to accept advance fees from her when he knew he was subject to an impending interim suspension and would not be able to handle her matter. The Committee recommends a refund of \$5,200, crediting \$300 for McBride's typing and submitting the immigration application.

### **McBRIDE (Pardo) \$3,000.00**

Ramon Pardo entered the US illegally in 2004 and has resided here continuously since that time. He is married and has three children. He hired McBride in July 2010 to petition for a visa and lawful residency. McBride quoted a flat fee of \$5000 and allowed Pardo to pay in installments. To date, Pardo has paid \$3,650.

Pardo provided the necessary information and documents for McBride to file the I-130 petition, which is the first step in securing a visa. Further work on the application was delayed because Pardo's wife doesn't earn much (his income isn't considered) and he needed an additional sponsor. Also, at some point in late 2011, Pardo's wife was hospitalized and they couldn't make the installment payments required by McBride. In the spring of 2012, Pardo resumed making payments. In early June 2012, Pardo spoke with McBride about the difficulty of finding a qualified sponsor. McBride offered to refund \$1000 of what Pardo had been paid and resume work when a sponsor was identified. However, within a couple of weeks, Pardo found a sponsor; unfortunately, he was unable to contact McBride. In late July 2012 McBride contacted Pardo's wife and told her he was no longer practicing. At her request, McBride mailed the file to Pardo, but did not provide the requested accounting or refund of unearned fees. The file doesn't show any work beyond the initial I-130 application.

The Committee recommends an award of \$3,000, which credits McBride with \$650 for the limited services he performed.

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<sup>3</sup> The second installment was paid on May 3, the day that McBride stipulated to his interim suspension.

### **McBRIDE (Perez) \$2,500.00**

Jorge Perez came to the US with his mother when he was about eight years old. His mother eventually established legal residency for herself, but not for Perez or his siblings. Perez is now 30 years old, married to a US citizen, and father of two children.

In 2010, Perez decided to seek legal residency, but he couldn't afford the fees quoted by the lawyers he consulted with. Eventually, he found McBride's advertisements indicating most of the work could be done online or over the phone. In April 2010, Perez met with McBride and paid a \$100 consultation fee. McBride agreed to represent Perez and accomplish his objectives for \$5000, but would commence work only when half of the fee was paid and he had received documents relating to Perez's mother's application.

By June 2012, Perez had saved \$2500 and called McBride's office to see if he would still represent him. McBride indicated that he had raised his fees over the past two years, but would honor his prior quote if the money was paid immediately. On July 2, 2012, Perez called McBride's office and provided a bank card number for charging the fees; he also provided the documents McBride had previously said were necessary. Perez heard nothing more from McBride, but in August they received a letter from the PLF informing them that McBride was suspended and that they would need new counsel for their legal matter.

The Committee concluded that McBride was dishonest in accepting payment after the date of his interim suspension and promising services he couldn't perform. He has not refunded any portion of the money paid by Perez. The Committee recommends that Perez receive a full refund of \$2,500.

### **McBRIDE (Mejia) \$4,600.00**

Marco Mejia entered the US illegally when he was 15. In 2003 he left for a month, then returned illegally. In 2004 he married a US citizen. He now has two children and works at two jobs to support his family. In June 2010 Mejia pleaded guilty to misdemeanor assault (not domestic), was taken into custody and set for deportation based on his illegal entry.

On June 29, 2010, Mejia met with McBride to see about having the deportation order removed and making application for legal residency. He claims to have disclosed his two illegal entries<sup>4</sup> into the US along with his recent conviction. McBride expressed no concern about the second illegal entry or any other issues that might prevent Mejia from obtaining his objectives. He quoted a minimum fee of \$5,000, with half to be paid before work commenced on the matter.

Mejia paid McBride \$2500 on July 2, 2010; the balance was paid in installments through November 2010. According to the fee agreement, McBride's time would be billed at \$200/hour, subject to the minimum of \$5,000.

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<sup>4</sup> Recall that two illegal entries subjects a person to a 10-year bar on legal residency.

Because of the pending deportation order, Mejia was scheduled for a “master hearing,” (a kind of status hearing to determine if the matter is contested) in 2011. McBride assigned the matter to David Mackley, a 2010 admittee. Mackley recalls that he asked that an “individual hearing” be scheduled to address Mejia’s situation. Ordinarily, individual hearings are scheduled a year out to allow time for filing necessary applications and supporting documents; preparation for the hearing also requires substantial time and effort.

After the master hearing, Mejia heard nothing more from McBride or Mackley (who was fired in November 2011) and was not asked to provide the supporting documents for his application. He had no idea what, if anything, was happening on his case and apparently assumed that McBride would let him know if he needed to do anything. Mejia’s first notice that McBride had been suspended was in August 2012 when he received a letter from the PLF. Because Mejia’s individual hearing was scheduled for October 4, 2012, the PLF retained for a lawyer to request a postponement. The hearing is now set for November 28, 2012, but the PLF is not providing any assistance. Mejia has been quoted fees of \$6000 or more, in advance, for other lawyers to take his case; some have declined because of McBride’s involvement and the short time before the hearing.

The Committee concluded that McBride was dishonest in failing to apprise Mejia about his suspension and resignation and in failing to account for or return the unearned fees. The Committee recommends an award of \$4,600, crediting McBride for two hours at \$200/hour for the initial consultation and representation at the master hearing. Nothing else was done on the client’s behalf.

**McBRIDE (Alvarado) \$4,350.00**

Lucy Alvarado came to the US illegally in 1984 and his lived here since then. She is married to a US citizen and they have three children. In 2002 she applied for permanent residency, but her application was denied due to a 1989 drug conviction. She was, however granted a work visa that expired in October 2012. Her drug conviction was expunged in 2004.

Alvarado contacted McBride in May 2010 seeking help to gain legal residency with her husband as her sponsor. She sent him numerous documents, including court records confirming the expungement of her conviction. She never met McBride, but only spoke to him over the phone. Although he took her credit card information for the \$100 consultation fee, McBride told Alvarado there was nothing he could do because of the conviction. Alvarado challenged McBride’s position and faxed him another copy of the documents showing her conviction had been set aside.

In January 2011, McBride wrote to Alvarado telling her he could help after all, quoted a fee of \$5,000 and said he would start work when he had received half of that amount. Alvarado paid McBride the first \$2500 in on January 19, 2011 and then made payments of \$350 from February through June 28, 2012 for a total of \$4,350. In June, a secretary from McBride’s office called and asked Alvarado to come to the office for a meeting with McBride on June 19, 2012. When she arrived she was told that McBride was in court and not available to meet with her.

Alvarado had very limited communication with McBride. In January 2011, McBride sent Alvarado a blank information form, which she completed and returned with supporting documents. She had a few brief telephone conversations with McBride, but most of her calls went unanswered. In May 2012, McBride wrote saying more information was needed, which she provided. There is nothing in her file (which she received from the PLF after being informed of McBride's suspension) to indicate that McBride filed anything, communicated with the immigration authorities, or did anything on her case..

The Committee concluded that McBride was dishonest in continuing to accept funds from Alvarado in 2012 when he knew he was going to be suspended and unable to represent her. Moreover, the services he did provide were of limited or no value. The Committee recommends an award of Alvarado of the entire \$4,350 she paid to McBride. In June, a secretary from McBride's office called and asked Alvarado to come to the office for a meeting with McBride on June 19, 2012. When she arrived she was told that McBride was in court and not available to meet with her.

**McBRIDE (Escobar) \$1,650.00**

Bayron Escobar hired McBride in October 2010 to get permanent residency as the spouse of a citizen. He paid \$1000 toward a \$2000 flat fee at that time, and the balance in five installments, the last in April 2011. McBride assigned the case to his associate David Mackley, who filed out and filed the I-130 application before being fired by McBride. No response was received before Mackley left McBride's firm in November 2011. Escobar heard nothing more from McBride and learned of McBride's suspension only because he stopped by the office after several months and saw a sign indicating it was closed.

Mackley estimates that the work done at McBride's office constitutes 15-20% of what was needed. The PLF was unable to provide Escobar with a file, and there is no evidence that anything happened on Escobar's case after the filing of the application. Mackley is willing to complete the matter for the balance of the unearned fee and Escobar is agreeable to that resolution.

The CSF Committee concluded that McBride was dishonest in failing to refund the unearned fee, which the Committee calculates to be approximately \$1,650 based on Mackley's estimate of the work yet to be done. The Committee recommends an award in that amount.

**GRUETTER (Riggs) \$50,000.00**

Amy Riggs was seriously injured in an auto accident in September 2010 and hired Bryan Gruetter to represent her. He agreed to handle her case on a *pro bono* basis, which he typically did once or twice a year for persons of limited means who are victims of serious accidents.

A full policy limits settlement of \$100,000 was quickly negotiated and Gruetter deposited the proceeds into his trust account. In March 2011, Gruetter wrote to Riggs' physician that he was in the process of negotiating a settlement and requested that Riggs'



account be put on hold for the time being. In June 2011, Gruetter stopped communicating with Riggs and she was unable to get any information about the status of her case from his office.

In January 2012, Riggs retained Don Corson to assist her (also on a *pro bono* basis). Corson made demand on Gruetter on January 26, 2012, to no avail. The client file from Gruetter's office reflects no disbursements from Riggs' settlement, either to her or to her many medical providers.

The Committee found this claim eligible for reimbursement in the amount of \$50,000. As with the other Gruetter claims, the Committee recommends that no civil judgment be required. Gruetter is facing prosecution on federal wire fraud charges and appears to be without assets.

### **GRUETTER (Ray) \$50,000.00**

Michael Ray hired Gruetter in March 2010 to handle a personal injury case. Approximately one year later the case settled for \$100,000, which amount was received by Gruetter and deposited into trust.

Gruetter's office records show he paid medical expenses totaling \$3,518.75 over the next several months. However, he was not responsive to Ray's inquiries and requests for disbursement of his portion of the proceeds. Finally, in December 2011 after Ray sought the assistance of another attorney, Gruetter promised an accounting and a check for \$47,000 within a few days. (It is not clear how Gruetter calculated the \$47,000 amount.) The due date came and went, and after another phone call, Gruetter promised a check for \$37,000. That check also failed to materialize.

After deducting a 1/3 fee and the medical expenses paid, there should have remained \$63,481.25 in Gruetter's trust account for Ray. The Committee recommends an award of \$50,000 and that the requirement for a judgment be waived for the reasons stated above.

### **GRUETTER (Ferguson) \$7,171.67**

Norma Ferguson retained Bryan Gruetter's firm in May 2009 to pursue a personal injury claim against Jackson County. Her case was handled principally by Joe Walsh, an independent contractor in Gruetter's office.

Ferguson's claim was settled in October 2011 for \$30,000. A lien in the amount of \$299.06 was paid directly by the insurer and the balance of \$29,700.94 was delivered to Gruetter's office. After deducting the firm's 1/3 fee of \$10,000 and costs of \$1,707.93, there remained \$17,993.01, from which Gruetter's firm was to resolve to outstanding medical liens and disburse the balance to Ferguson.

Providence Health had agreed to accept \$7,171.67 for its lien and Medicare agreed to accept \$1,351.39, leaving a balance of \$9,469.95 for Ferguson. Gruetter's office paid the Medicare lien but never paid the Providence lien of \$7,171.67.

The Committee recommends an award of \$7,171.67 and that the requirement for a civil judgment be waived for the reasons stated above.

**GRUETTER (Strohm) \$16,354.22**

Mary Jo Strohm hired Bryan Gruetter's firm in May 2011 to represent her in an auto accident claim. The case settled quickly in August 2011 for the other driver's policy limit of \$25,000.

Gruetter deposited the funds into his trust account and told Strohm he was going to hold them pending the resolution of her under-insured motorist claim against her own PIP carrier (resolution of that matter would not have involved application of the settlement funds, but Strohm trusted Gruetter's vague explanation). In January 2012, Strohm read about Gruetter's problems in the local paper and tried to contact his office for an update on the status of her matter. By that time, the office was in disarray and Gruetter was not responding to client calls.

The Committee recommends an award of \$16,354.22, which is Strohm's portion of the settlement after deduction of Gruetter's fee (\$8,333.34) and costs (\$312.44). For the reasons stated above, no judgment should be required.

**GRUETTER (Lyons) \$5,620.79**

Angela Lyons and her six-year old daughter were both injured in an automobile accident in October 2008 and they hired Gruetter to pursue their claims for damages. Joseph Walsh, an independent contractor in Gruetter's firm was principally responsible for the case.

In December 2011, the firm received \$10,000 in full settlement of the Lyons' claims. A "final accounting" letter sent by Walsh indicated that the firm would deduct its fee (\$3,333.33) and costs (\$1,045.88), pay a medical bill of \$1,089.80, and disburse the balance of \$4,530.99 to Angela Lyons.

The medical was never paid and Angela Lyons is making monthly payments against it. The Committee recommends an award of \$5,620.79 (the client balance plus the amount of the unpaid medical bill) and that the requirement for a judgment be waived for the reasons stated above.

**GRUETTER (Laughlin) \$3,454.12**

Kristi Laughlin hired Gruetter after sustaining injuries in a November 2003 motor vehicle accident. She knows that Gruetter obtained a settlement for her, but she cannot recall the date or the amount. She acknowledges that she received her share of the proceeds, but she could not remember the amount. When she learned that Gruetter had resigned from the bar, she filed a claim for \$5,000 because she was unsure of the exact amount owed. All she knew is that she was receiving bills from Regence for unpaid medical bills relating to the accident that Gruetter was to have paid.

The CSF investigation revealed that Regence paid medical bills for Laughlin in excess of \$11,000. Gruetter successfully negotiated the lien to \$3454.12 but never paid Regence. Laughlin recalls getting copies of letters Regence sent to Gruetter asking for payment, but she ignored them because she knew Gruetter was taking care of it for her. The investigator confirmed with Regence that it has not been paid and continues to be willing to settle for the \$3454.12 promised by Gruetter.

The Committee had some initial concern about the length of time between Laughlin's case settled (it was relatively minor and settled without suit, very probably around the time that statute of limitations would have run in November 2005) and the filing of her claim. The Committee ultimately agreed it was possible that it could have taken a long time to resolve the Regence lien and there was no reason for Laughlin to have been aware of a problem with payment. The Committee recommends an award to Laughlin of \$3,454.12.

**GRUETTER (Burk) \$9,277.63**

Alice Burk is the widow of Jerry Burk and personal representative and sole heir of his estate. Gruetter was hired to pursue a wrongful death case for the injuries that led to Mr. Burk's death. Suit was filed in US District Court and the case settled in November 2011 for \$16,000.

After deduction of Gruetter's fees and costs, the firm was to pay a VA lien and distribute the balance to the Estate. When Burk called to inquire about the delay in disbursing her share of the settlement, she was told it would take a couple of months. On December 29, 2011, Troy Wood (Gruetter's associate who worked on the case and tried unsuccessfully to get her funds released) told Mrs. Burk to call the OSB, which she did.

The investigation revealed that the VA lien had been waived. The CSF Committee calculated that after deduction of Gruetter's fees and costs, Burk is entitled to \$9,277.63 and recommends an award in that amount.

**GRUETTER (Mills) \$3,315.54**

Gruetter's firm represented Carolyn Mills to pursue a claim for injuries she sustained in an auto accident. Troy Wood, an associate in the firm, handled the case. It was settled and on September 28, 2010, Allstate Insurance issued a check to Gruetter's firm for \$5,700, which was subsequently deposited into Gruetter's trust account. Gruetter paid himself \$1900 and reimbursed costs of \$109.42. Over the following year, he negotiated a Medicare lien from \$1700 to \$375.04, which was then paid. Thereafter, despite repeated requests from Mills and Wood, Gruetter failed to disburse the balance of funds to Mills.

The CSF recommends an award to Mills of the remaining balance of her settlement, \$3,315.54.

**GRUETTER (Sare) \$19,000.00**

Anna Sare is Gruetter's niece and also worked for him for four year. In April 2009 she was one of several people in car driven by Gruetter's wife that was struck by another vehicle. Gruetter agreed to represent her personal injury claim without a fee. The case was settled in March 2011 for policy limits of \$40,000 and Sare was allocated \$20,000 of the total due to the severity of her injuries.

Shortly after the case settled, Gruetter disbursed \$1000 to Sare but retained the \$19,000 as a "war chest" for pursuing Sare's much larger UIM claim. However, there is no evidence that he did anything on the UIM case and the funds were not in his trust account when he ceased practicing.

The CSF Committee recommends an award to Sare of \$19,000.

**GRUETTER (Alire) \$31,847.22**

Alice Alire retained Gruetter in December 2007 to pursue a claim against Walmart for injuries suffered when some shelving fell on her. Her case settled for \$50,000 in December 2010 and Gruetter deposited the check into his trust account.

For after the settlement, Alire contacted Gruetter's office to determine the status of her matter, and was repeatedly told that the office was negotiating with the medical providers to reduce their liens. In December 2011, she stopped by the office unannounced and was given the same explanation. In January 2012, Gruetter's receptionist called Alire and advised her to contact the OSB because "something fishy" was going on at the office. Upon learning that Gruetter was no longer practicing, Alire discovered that not only had she received nothing, but her medical bills had not been resolved.

The CSF Committee recommends an award to Alire of \$31,847.22, which represents the net amount of her settlement after deduction of Gruetter's fees (\$16,666) and costs (\$1486.78).

**DALTON (Miller) \$2,000.00**

Theresa Miller retained Dalton to pursue her minor child's personal injury claim against Portland Public Schools. The case was settled in January 2011 for \$9,000. Dalton deducted his fee (\$2,500) and disbursed \$4,500 to Miller on her son's behalf. He retained \$2,000 to satisfy a Regence lien of \$1,272.27 and to pay an outstanding ambulance bill of \$881.29. Dalton and Miller agreed that if he could negotiate a reduction in those bills, they would split the remainder equally.

When she was contacted by a collection agency about the unpaid ambulance bill, Miller learned that the bill hadn't been paid and she filed a complaint with the bar. In response to DCO's inquiry, Dalton admitted misappropriating the funds after his wife suffered a stroke that

prevented him from maintaining his practice. Dalton submitted a Form B resignation on October 23, 2012.

The CSF Committee recommends an award to Miller of \$2,000. No judgment is required because the claim is for less than \$5,000 and relates to his disciplinary proceeding.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2011-28 DICKERSON (Morningstar Baptist Church)

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### **Action Recommended**

Consider further the Client Security Fund Committee's recommendation that this claim be paid in the amount of \$50,000.

### **Background**

The CSF Committee's recommendation to pay this claim was presented to the BOG in August. After discussion, the BOG deferred a decision until November. Although the CSF Committee unanimously concluded the loss was attributable to the lawyer's dishonesty, some BOG members questioned why the claimant was also able to secure a settlement from the PLF. In other words, the question was how the loss could be due to both negligence and dishonesty?

The CSF found there was evidence of both. Dickerson was hired to assist the church in rebuilding its sanctuary following a disastrous fire. He received \$20,000 for his legal services, which consisted mainly of advising the client to sign a construction contract that required payment in full to the contractor in advance and did little to protect the church's interest. There was no evidence that Dickerson drafted the agreement; on the contrary, it was a standard AIA form apparently filled in by the contractor, Ernie Bighaus. The dishonesty was in connection with Dickerson's receipt of the \$320,000 construction payment that he and Bighaus absconded with and subsequently used to build a children's facility in Kenya.

The CSF found no inconsistency in the church's PLF claim and are not persuaded that the settlement is conclusive evidence that the loss was due to negligence. Rather, the PLF was vigorously defending the claim and the church felt it had no choice but to settle in order to recover before the policy was exhausted by defense costs. Additionally, even with \$100,000 from the PLF and \$50,000 from the CSF, the church will not come close to being made whole for the loss.

The church's counsel has provided a letter with additional information. It is attached, along with counsel's memo supporting the application for reimbursement and the CSF investigator's report. The entire application file will be available at the meeting.

Attachments: Memorandum in Support Application for Reimbursement  
Investigator's Report  
Additional Information from Miller Nash

## CLIENT SECURITY FUND INVESTIGATION REPORT

DATE: July 11, 2012

RE: CSF Claim No. 2011-28

Attorney: Daniel Dickerson, OSB No. 980491

Status: Disbarred (8/7/2010)

Claimant: Morningstar Missionary Baptist Church

INVESTIGATOR: Jane E. Angus

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### RECOMMENDATION

#### Recommendation:

- waive CSF Rules Sections 2.6.2, 5.1.1 and 5.2, pursuant to Section 2.11; and
- approve claim and pay \$50,000 to Morningstar Missionary Baptist Church.

### SUMMARY OF CLAIM AND INVESTIGATION

Daniel Dickenson is accused of engaging in a dishonest conduct with Ernie Bighaus (a non-lawyer) that resulted in the misappropriation of substantial Morningstar Missionary Baptist Church funds.

Due to the nature of the claim, the memorandum in support of the application for reimbursement submitted by church representatives (omitting exhibits) is attached to this report. The memorandum provides substantial detail concerning Daniel Dickerson's involvement in the dishonest conduct, and the church's loss and its efforts to recover the funds. Investigation findings support Morningstar Missionary Baptist Church's claim.

### FINDINGS AND CONCLUSIONS

1. Dickerson was admitted to practice in Oregon in May 6, 1998. Thereafter, he was an active member of the Bar, maintaining an office in Oregon for the practice of law. He was disbarred in August 2010.
2. The Morningstar Missionary Church facility was destroyed by fire. The church received insurance proceeds totaling about \$925,000 to build a new facility. Ernie Bighaus, a member of the congregation, held himself out as a contractor. He convinced church representatives to hire him to provide construction management and supervision for the

rebuilding project. In March 2007, he was paid \$58,888.46 for these services. Soon thereafter, his company went out of business.

3. Bighaus formed a new company and approached church representatives about serving as the general contractor on the rebuilding project. He offered a substantial price discount - \$330,000 from \$438,000 for these services.
4. Morningstar's representatives realized they needed a qualified construction law attorney to provide counsel concerning construction contracts and other issues involved in the building project. Bighaus recommended Dan Dickerson, who he represented was well known in the field of construction law. Nothing could have been further from the truth. Dickerson had no expertise in the field. Also not disclosed was Dickerson's representation of Bighaus in various matters and also service as registered agent for at least one of Bighaus's companies. Dickerson's fee for providing legal services for the construction project - \$20,000, delivered to Dickerson in advance.
5. Dickerson urged church representatives to sign a contract, a contract that a qualified construction law attorney (or even an attorney without such experience who was trying to protect a client) would recognize as glaringly deficient. Again, Bighaus was not a licensed contractor; his company was not a valid business entity; there was no recognition of the amounts paid (\$330,000) for the rebuilding effort; and the price was far in excess of reasonable charges for management services. The contract also required the church to deliver the entire \$330,000 before any work was performed or completed. There was no provision for progress payments or for the accounting of funds paid. Dickerson never addressed any of these issues. Beyond telling church representatives to sign the contract, Dickerson provided little for the fee paid.
6. Church representatives delivered checks totaling \$340,000 to Dickerson in June and July 2008. These funds included a flat fee of \$20,000 (two \$10,000 installments) for Dickerson and \$320,000 (\$150,000 and \$170,000 installments) for the construction management contract.
7. Dickerson deposited the funds he received in his lawyer trust and business accounts. He did not, however, retain them there. The \$20,000 Dickerson initially deposited in his business account were quickly disbursed. The \$320,000 for the construction management contract was also quickly disbursed to Bighaus and to Dickerson as evidenced by bank records obtained by the Bar.
8. During 2008 and at earlier times, Dickerson's personal and business accounts often held small balances. Overdraft/NSF activity was frequent in both accounts. Later, the bank forced closure of the accounts due to overdraft/NSF activities.
9. Bighaus did not perform required construction project management services. Beyond telling church representatives to sign the contract with Bighaus, Dickerson provided no significant legal services. When the church requested the return of its funds, no progress



had been made to rebuild the church. Dickerson never accounted for, misappropriated, and assisted in the misappropriation of all of the funds delivered to him.

10. Dickerson reportedly left the United States in 2010. He is believed to be in Kenya. Dickerson registered a charity, Journey of Hope, in January 2010. The stated purpose of the charity: to raise funds to sponsor various projects in Kenya. Funds are raised over the internet. Dickerson and Bighaus are also reported to be co-contractors for the construction projects.

11. Section 2.5 requires that the loss arise from, and was because of:

2.5.1 an established lawyer-client relationship; or

2.5.2 the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

Morningstar's loss arose from an established lawyer-client relationship, from the lawyer's failure to account for money entrusted to him in connection with the practice of law, and while acting as a fiduciary related to his practice of law. The loss is the result of Dickerson's and Bighaus' dishonesty and misappropriation of funds.

12. Morningstar's claim was filed within 2 years of the discovery of Dickerson's misappropriation of its funds.

13. Morningstar made a good faith effort to recover some of its funds from Dickerson and Bighaus. They ignored the church's requests. Church representatives also made an effort to recover some of its damages through a PLF claim and suing Dickerson. The matter was eventually settled for \$100,000, substantially less than the claim due to limitations of PLF coverage that would reduce the amount of available funds through "wasting" and defense cost clauses, policy coverage exclusions for intentional, dishonest, fraudulent, criminal and knowingly wrongful/unethical errors or omissions, Dickerson's unavailability affecting discovery issues, as well as the risks generally associated with litigation. Also, Dickerson filed a bankruptcy petition and was reported to have no assets.

14. CSF Section 2.6.2 requires claimants to obtain a judgment (except where the claimed loss is \$5,000 or less. CSF Section 2.6.3). In settlement with the PLF, Morningstar obtained a judgment for \$100,000, substantially less than its losses. The PLF refused to allow the judgment to include an additional \$50,000 for Dickerson's dishonest conduct and to preserve its CSF claim, which was not compensable by the PLF. The PLF also expressly refused to exclude a CSF claim from the form of release and required release of claims of every nature against Dickerson.

15. CSF Rules Section 5.1.1 provides:

“As a condition of reimbursement, a claimant shall be required to provide the Bar with a *pro tanto* transfer of the claimant’s rights against the lawyer, the lawyer’s legal representative, estate or assigns, and of the claimant’s rights against the person or entitle who may be liable for the claimant’s loss.”

CSF Rules Section 2.6 provides: “As a result of the dishonest conduct, either,

- 2.6.1 The lawyer was found guilty of a crime;
- 2.6.2 A civil judgment was entered against the lawyer, or the lawyer’s estate, and that judgment remains unsatisfied; or
- 2.6.3 In the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.”

“CSF Rules Section 5.2 provides:

“A claimant shall not release the lawyer from liability or impair the Bar’ assignment of judgment or subrogated interest without the prior approval of the Board of Governors.”

Morningstar has released Dickerson and others as a condition of its settlement with the PLF and therefore has no remaining claim to assign to the Bar. As a matter of policy, the PLF should not have required Morningstar (or other claimants) to release conduct forming the basis of a CSF claim. The foundation of such a claim is conduct that is expressly excluded from PLF coverage and to insist that a claimant release such claims bars the claimant from seeking recovery for these losses, which further harms the claimant.

16. CSF Rules Section 2.11 provides:

“In cases of extreme hardship or special and unusual circumstances, the Committee, in its sole discretion, may recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.”

Morningstar Missionary Baptist Church’s claim can be denied on multiple grounds. The church does not have a judgment against Dickerson (Section 2.6.2); its representatives executed a PLF required release form releasing Dickerson of all claims of every nature (Section 5.2); and it has no remaining claim to assign to the Bar (Section 5.1.1).

17. There are substantial reasons to waive compliance with Sections 2.6.2, 5.2 and 5.1.1, and to approve and pay Morningstar’s claim for \$50,000. As noted in the memorandum in support of the application:

“The Church found itself between a rock and a hard place. As explained above, the Church’s only reasonable economic option was to settle for \$100,000 with the PLF. Mr. Dickerson’s bankruptcy prevented the Church from even executing against any personal assets of Mr. Dickerson (and he had none). The PLF, for reasons that the Church cannot

explain or control, refused to document the settlement through a judgment for \$150,000, and a release of the PLF, to leave a \$50,000 unsatisfied judgment. The Church truly had no options but to do what it did – take the \$100,000 settlement and pursue this CSF claim.”

18. The CSF Committee should find special and unusual circumstances and waive requirements that Morningstar comply with CSF Rules Sections 2.6.2, 5.1.1 and 5.2. The committee should approve Morningstar’s claim and payment of \$50,000.

JEA/



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December 1, 2011

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Oregon State Bar  
Client Security Fund  
Post Office Box 231935  
Tigard, Oregon 97281-1935

**Subject:** Memorandum in Support of Application for Reimbursement  
Conduct of Daniel W. Dickerson

Dear Sir or Madam:

This firm represents Morning Star Missionary Baptist Church of Portland, Oregon (the "Church"), on a pro bono basis, with respect to the Church's Application for Reimbursement from the Client Security Fund ("CSF"). The Church's CSF claim stems from the dishonest conduct of Daniel W. Dickerson, a disbarred Oregon lawyer hired by the Church to act as its attorney in the Church's efforts to rebuild its house of worship.

This memorandum and the enclosed exhibits supplement the Church's Application with additional information to help in your investigation and analysis of the Church's CSF claim.

**I. Background Facts**

**A. The fire and the Church's plans to rebuild.**

The Church previously occupied a historic building located at 106 N.E. Ivy Street in Portland, Oregon. That building burned to the ground on the evening of February 6, 2007. Investigators never determined the cause of the fire, but the Church—through its congregation—was determined to rebuild its house of worship.

The Church has a primarily African-American congregation that numbered approximately 200-220 at the time of the fire, but that number has since dwindled to approximately 80-100. Before the fire, the Church operated a soup kitchen that provided meals to needy people twice a month—the fire forced the Church to cancel that service.



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But even though the Church had to hold its services in a funeral home, and even as its congregation decreased in numbers, the Church's leader—Pastor Albert Wayne Johnson—held strong to his faith and belief that the Church could rebuild and once again serve as a beacon in the community. The Church planned to use a combination of donations, a loan from a national organization of Baptist churches, and approximately \$925,000 in fire insurance proceeds to build a new facility on the site of the one that burned down.

**B. The Church hires a contractor: Ernie Bighaus/2RE.**

Pastor Johnson announced his vision to rebuild the Church's facility to the congregation on April 9, 2007, at which time Executive Deacon Lee Magee presented the congregation with the check for the fire insurance proceeds. Ernie Bighaus was one of the members of the congregation in attendance. Mr. Bighaus was a nightclub operator who knew Pastor Johnson: the pastor had counseled Mr. Bighaus on a personal spiritual matter around the time that Mr. Bighaus's father passed away.

Soon after the fire, Pastor Johnson reached out to Mr. Bighaus for help in the rebuilding process. Mr. Bighaus also held himself out as a general contractor, and had previously remodeled Pastor Johnson's office at the Church. Mr. Bighaus—then the construction manager for Commercial Finish Group ("CFG")—convinced the Church to pay CFG for construction management and supervision services for the rebuilding project. In March 2007, the Church paid CFG \$58,888.46 for those services. Soon thereafter, CFG went out of business, and Mr. Bighaus approached Pastor Johnson about becoming the general contractor for the rebuilding with his new company called 2RE General Contractors, Inc.

**C. The Church hires Mr. Dickerson as its attorney.**

When the Church realized that it needed a construction attorney to provide counsel on contracts relating to the rebuilding effort, Mr. Bighaus recommended that the Church retain Daniel W. Dickerson as its lawyer, stating that Mr. Dickerson was well known in the field of construction law. This statement turned out to be false: Mr. Dickerson had no expertise in construction law. Rather, Mr. Dickerson had represented Mr. Bighaus in various matters involving the Oregon Liquor Control Commission and served as the registered agent for at least one of Mr. Bighaus's companies, including 2RE when it was eventually registered to do business in Oregon in August 2009. Mr. Dickerson never corrected the Church's belief that he had expertise in construction law, nor did he disclose to the Church (orally or in



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writing) that his service as registered agent for Mr. Bighaus's companies presented a conflict of interest.

On or around June 24, 2008, Mr. Bighaus introduced Mr. Dickerson to Pastor Johnson and Executive Deacon Magee at a meeting at the Doubletree Hotel near Lloyd Center (the "Meeting"). At the beginning of the Meeting, Mr. Dickerson agreed to represent the Church: he recommended that the Church pay him a flat fee of \$20,000, in advance, for legal services during the preconstruction and construction phases of the rebuilding effort. We enclose a copy of the "Attorney Fee Agreement—Flat" between Mr. Dickerson and the Church (Binder Tab 1). We also enclose a copy of a June 24, 2008, e-mail communication from Mr. Dickerson to the Church, in which Mr. Dickerson (a) confirms his representation of the Church and (b) acknowledges that he will represent the Church on a flat-fee basis (Binder Tab 2).

On June 26 and July 24, 2008, the Church paid Mr. Dickerson's fee in two \$10,000 installments. We enclose copies of the cashier's check receipts for the Church's payment of Mr. Dickerson's attorney fees, along with copies of deposit receipts reflecting that Mr. Dickerson deposited the funds into his Bank of America account (Binder Tab 3).

**D. The Church signs a construction management contract with Mr. Bighaus/2RE.**

Also at the Meeting, the Church was presented with a written construction management contract (the "Contract") (Binder Tab 4). Pastor Johnson, a man of faith, did not read the Contract except to note the price. He knew that he had no construction experience or legal experience, so he requested and relied on Mr. Dickerson's legal advice.

Mr. Dickerson told Pastor Johnson and Executive Deacon Magee that he had read the Contract, that it contained all the provisions that the Church needed, that the Contract was in the Church's best interests, and that the Church should sign it. Mr. Dickerson and Mr. Bighaus also urged the Church to sign then and there if the Church wanted to receive a price discounted from \$438,000 to \$330,000. Pastor Johnson signed the Contract. Executive Deacon Magee (who also had no legal or construction experience) was troubled by the absence of a typed signature block for his name. He scanned the Contract and said that he would sign it when such a typed signature block was added (and that is what he later did).



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**E. Flaws in the Contract.**

Although Mr. Dickerson claimed that he had read the Contract and that it was in the Church's best interests to sign it, the Contract was actually significantly flawed in numerous ways, including the following:

- **2RE was not a licensed contractor.** As of June 24, 2008—the date of the Meeting—2RE was not licensed as a general contractor with the Oregon Construction Contractors Board (the "CCB"). Under Oregon law, contractors must be licensed with the CCB before agreeing to undertake work. *See* ORS 701.021. Mr. Dickerson never disclosed this fact to the Church.
- **2RE was not a valid business entity.** Also as of the date of the Meeting, 2RE was not a properly formed business entity, nor was it registered to do business in Oregon. 2RE did not incorporate until March 6, 2009, and did not register with the Oregon Secretary of State until August 17, 2009, more than one year after entering into the Contract with the Church. Mr. Dickerson never disclosed this fact to the Church.
- **No recognition of amounts already paid for the rebuilding effort.** The Contract did not reflect the substantial amounts that the Church had already paid to the architect (for design services) and to CFG (for construction management services). Mr. Dickerson never addressed this issue with the Church.
- **Unreasonable Contract price.** The amount charged by 2RE for construction management services—\$330,000 after the "cash discount"—was far in excess of reasonable charges for construction management services. Mr. Dickerson never addressed this issue with the Church.

Perhaps the most egregious flaw in the Contract was that it required the Church to pay the entire \$330,000 before Mr. Bighaus/2RE performed any work. Construction management contracts are typically paid in monthly installments upon submission of hours worked for the month in question. That protection is routinely built in because it is foreseeable that a contractor will not complete the promised work for a variety of reasons—so the owner protects itself by paying only for work that is



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completed. Mr. Dickerson's recommendation that the Church pay 100 percent of the Contract price up front is underscored by the illusory "cash discount" of getting a reduced price for signing at once.

But based on Mr. Dickerson's advice and counsel, the Church paid the amounts due under the Contract to Mr. Dickerson, expecting that those funds would be forwarded to Mr. Bighaus. We enclose copies of the cashier's check receipts for the Church's payments to Mr. Dickerson—totaling \$320,000—under the Contract, along with copies of deposit receipts reflecting that Mr. Dickerson deposited the funds into his Bank of America account (Binder Tab 5). We have no proof that those funds were ever forwarded to Mr. Bighaus/2RE.

**F. Mr. Dickerson fails to provide legal services under the attorney fee agreement.**

In exchange for the \$20,000 that Mr. Dickerson received, in advance, from the Church, Mr. Dickerson agreed (among other things):

"[To r]eview, advise and consult on the construction of the new church facility during the preconstruction and construction phases of the project.

\* \* \*

"To do full investigation and analysis of facts \* \* \*.

\* \* \*

"To do complete legal research and legal preparation." (See Binder Tab 1.)

But Mr. Dickerson performed no significant legal services for the Church beyond recommending that the Church sign the Contract. Indeed, throughout the course of the Church's rebuilding efforts, Mr. Dickerson's loyalty appeared to be more aligned with Mr. Bighaus/2RE than with the Church.





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**1. Mr. Dickerson declines to help the Church to recover amounts paid under the Contract.**

By February 2009, eight months after the Church signed the Contract and paid Mr. Dickerson \$340,000, no significant progress had been made in the Church's rebuilding effort. Frustrated with the lack of progress, the Church began to notice the deficiencies in the Contract, and accordingly, it sought to recover some of the money that it had paid to Mr. Dickerson for Mr. Bighaus/2RE's services.

In April 2009, Pastor Johnson and Executive Deacon Magee flew to Texas to confront Mr. Bighaus about his lack of performance. When asked what work had been performed under the Contract, Mr. Bighaus refused to answer. He also refused to meet with the architect, who was also located in Texas and had the construction industry experience to ask more educated questions than Pastor Johnson and Executive Deacon Magee.

After that meeting, Pastor Johnson asked Mr. Bighaus to return \$300,000 of the money that the Church had paid under the Contract. We enclose a copy of an April 29, 2009, letter from the Church to Mr. Bighaus/2RE (Binder Tab 6). Mr. Bighaus said that he would discuss the matter with his "team," but ultimately declined to return any money to the Church. But never once did Mr. Dickerson help the Church in its efforts to recover money that the Church had paid under the Contract.

**2. When Mr. Bighaus/2RE requests additional payment under the Contract, Mr. Dickerson sides with Mr. Bighaus/2RE.**

In October 2009, Mr. Bighaus flew to Portland to attend a groundbreaking ceremony, but it is difficult to identify any other substantive work that he performed under the Contract. And for the groundbreaking ceremony, Mr. Bighaus not only charged the Church for his travel and meals, but also charged the Church for his time (in addition to amounts that the Church had already paid under the Contract). We enclose a copy of an October 29, 2009, check to 2RE in the amount of \$5,140.73 for "Labor & Service—Ground Breaking Service" (Binder Tab 7). We also enclose a December 1, 2009, letter to Mr. Dickerson that reflects an additional \$1,115.90 payment "based on additional receipts received from 2RE Development" (Binder Tab 8).

But the final straw came when Mr. Bighaus demanded that the Church pay him \$15,000 that the Church had been holding back pending Mr. Bighaus's full



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performance under the Contract (i.e., until the Church's house of worship was complete). Up until this point, Mr. Bighaus/2RE had done little to no work (other than appear at the groundbreaking). Pastor Johnson met with Messrs. Dickerson and Bighaus to discuss the holdback, and instead of advocating for his client, Mr. Dickerson took Mr. Bighaus's side and insisted that the Church pay the \$15,000.<sup>1</sup> After the meeting, Mr. Bighaus asked Mr. Dickerson to join him for a cigar, and the two of them left together while Pastor Johnson returned to the Church offices. We enclose a copy of an October 29, 2009, check from the Church to 2RE in the amount of \$15,000, which was the amount that the Church was holding back from the Contract (Binder Tab 9).

#### **G. The Church fires Mr. Dickerson.**

On December 3, 2009, after Mr. Dickerson had made it obvious that his loyalties were with Mr. Bighaus, the Church made the decision to terminate the attorney-client relationship with Mr. Dickerson. We enclose a copy of the December 3, 2009, letter in which the Church fired Mr. Dickerson (Binder Tab 10).

In its letter, the Church asked Mr. Dickerson to "send a final accounting of your work and any funds remaining in the Church's client trust account \* \* \*." But Mr. Dickerson never sent the requested accounting funds to the Church. Instead, on January 30, 2010, Mr. Dickerson sent the Church's file to our firm, and in a brief cover letter stated that he would be "out of the country beginning February 1, 2010." We enclose a copy of the January 30, 2010, letter from Mr. Dickerson that accompanied the Church's client file (Binder Tab 11).

#### **II. The Church's Lawsuit Against Mr. Dickerson**

On June 21, 2010, the Church filed a lawsuit against Mr. Dickerson in Multnomah County Circuit Court, asserting claims relating to Mr. Dickerson's dishonest conduct. We enclose a copy of the initial complaint (Binder Tab 12). The Professional Liability Fund (the "PLF") appointed an attorney to represent Mr. Dickerson in the lawsuit.

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<sup>1</sup> By this time, Mr. Dickerson was acting as 2RE's registered agent in Oregon, a fact that he never disclosed to the Church.



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**A. Circumstances conspire to make it virtually impossible for the Church to effect full recovery against Mr. Dickerson.**

Almost from the beginning of the lawsuit, it became clear to the Church that there were significant barriers to recovering anything from Mr. Dickerson.

**1. Mr. Dickerson had moved to Kenya.**

Shortly after filing the complaint, the Church learned that Mr. Dickerson had fled to Mai Mahiu, Kenya, where he was working on a construction project with Mr. Bighaus. Although this supported the Church's suspicion that Mr. Dickerson and Mr. Bighaus were "working together" to relieve the Church of its money, it also created several practical difficulties for the Church.

**a. Service of Process**

Because Mr. Dickerson was not located in Oregon, the Church was forced to incur significant additional expenses to effect service of the summons and complaint. It eventually did so by obtaining an order allowing service by alternative methods, which included publication in *The Oregonian* and in *The Daily Nation* (Kenya's leading newspaper) at a total cost of \$5,778.24. We enclose copies of Plaintiff's Motion for Order to Authorize Service by Publication or Other Method and the Declaration of Cody J. Elliott in Support of Plaintiff's Motion for Order Allowing Service by Publication (Binder Tabs 13 and 14).

**b. Discovery**

Mr. Dickerson's absence also created practical discovery issues. In response to its request for production, the Church received only documents that had been recovered by the PLF—it did not receive any of the electronically stored e-mails or documents that likely existed on Mr. Dickerson's computer hard drives. Mr. Dickerson's absence also made it unlikely that the Church would have an opportunity to depose him.

**2. Mr. Dickerson's PLF insurance coverage.**

The terms and exclusions of Mr. Dickerson's PLF insurance coverage presented the second major barrier to the Church's recovery.



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**a. "Wasting" provision**

Mr. Dickerson's PLF insurance carried a \$300,000/claim policy limit with an additional \$50,000 claims expense allotment. But it was a "wasting policy": after Mr. Dickerson's attorney used up the defense allotment, any additional legal costs and expenses incurred in Mr. Dickerson's defense reduced the policy limits from which the Church could recover.

The "wasting" provision essentially forced the Church to settle its claims against Mr. Dickerson. Even if the Church proceeded to trial and obtained a judgment for the full amount of its prayer for relief, by the time the trial was over, the PLF policy limits would likely have been consumed or nearly consumed. The Church's own legal fees would have grown substantially. As explained below, Mr. Dickerson filed for bankruptcy and had no assets. As a result, no net economic recovery was foreseeable except through settlement.

**b. Exclusion for wrongful conduct and punitive damages**

Mr. Dickerson's PLF insurance also carried an exclusion for "any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions," and for "any CLAIM seeking punitive, exemplary or statutorily enhanced damages." These exclusions placed two significant constraints on the Church's claims against Mr. Dickerson:

- Even though the Church believed that Mr. Dickerson and Mr. Bighaus worked together to intentionally swindle the Church, the Church could not suggest in the complaint or attempt to prove that Mr. Dickerson's actions were intentionally dishonest or fraudulent; and
- The Church could not plead facts that would support an award of punitive damages (even though such facts existed) because doing so would likely result in the PLF's denying coverage.<sup>2</sup>

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<sup>2</sup> On February 24, 2011, the Church filed a Motion for Leave to File Second Amended Complaint and to Plead Punitive Damages (which included a Proposed Second Amended Complaint) and supporting declarations of Cody J. Elliott and Lee Magee, in which the Church pleaded facts supporting an award of punitive damages. Because these pleadings were filed after Mr. Dickerson filed for bankruptcy (but before



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In short, the "wrongful conduct" and "punitive damages" exclusions effectively hamstrung the Church.

**c. "Cooperation" condition**

As a condition of PLF insurance coverage, the insured must fully cooperate with the PLF, which includes (among other things):

- Delivering to the PLF sworn statements providing full disclosure about any aspect of the claim;
- Attending and testifying when requested by the PLF;
- Delivering to the PLF all files, records, papers, and documents relating to the claim; and
- Assisting, cooperating with, and communicating with the PLF "in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM \* \* \*."

This "cooperation condition" essentially prevented the Church from enforcing any of its discovery requests, and from seeking to obtain Mr. Dickerson's deposition testimony—because Mr. Dickerson was in Africa and had no assets to pay any judgment, it was very unlikely that Mr. Dickerson would cooperate with the PLF, since there was no incentive for him to do so.

**3. Mr. Dickerson's bankruptcy.**

The third barrier to the Church's recovery was Mr. Dickerson's February 16, 2011, bankruptcy filing. By filing bankruptcy, Mr. Dickerson made the PLF insurance policy the only source of recovery for the Church (since any judgment against Mr. Dickerson would likely be discharged in bankruptcy).<sup>3</sup>

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the Church had notice of the bankruptcy filing), they were nullities. The Church then decided not to amend its complaint to seek punitive damages because doing so would jeopardize the Church's ability to recover from the PLF insurance policy. We enclose copies of these pleadings (Binder Tabs 15, 16, and 17).

<sup>3</sup> The Church applied for, and received, relief from the automatic stay that arose upon Mr. Dickerson's bankruptcy filing. We enclose copies of the Church's Motion for Relief From Automatic Stay and the Order Granting Relief From Stay (Binder Tabs 18 and 19).



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**B. The Church compels Mr. Dickerson's attorney to enter into settlement discussions.**

Because of the significant obstacles to recovery that the Church faced, it sought to engage Mr. Dickerson's attorney in settlement negotiations shortly after he was appointed by the PLF. The Church first suggested scheduling a judicial settlement conference in October 2010, but Mr. Dickerson's attorney refused, stating that he required additional discovery (including the depositions of Pastor Johnson and Executive Deacon Magee) before engaging in settlement discussions.

By February 8, 2011, Mr. Dickerson's attorney had taken those depositions, and the Church again attempted to engage in settlement discussions. The parties agreed on an acceptable private mediator, and the Church obtained available mediation dates, but by March 10, 2011—one day before the certificate of alternative dispute resolution was due—Mr. Dickerson's attorney still had not confirmed a mediation date. Then, on March 16, 2011, Mr. Dickerson's attorney informed us that he was "not ready" to schedule mediation. Meanwhile, Mr. Dickerson's attorney issued requests for production of documents, to which the Church responded.

The Church filed a Motion for Settlement Conference with the Court to get a settlement conference and avoid further expenses. We enclose copies of the Motion for Settlement Conference and the Declaration of Bruce A. Rubin in Support of the Church's Motion for Settlement Conference (Binder Tabs 20 and 21). The Court granted the Church's motion, and the parties attended a judicial settlement conference before the Honorable Angel Lopez on Friday, May 27, 2011.

**C. The PLF agrees to settle the Church's claims against Mr. Dickerson for \$100,000.**

At the settlement conference, it became clear that the most that the Church could hope to secure without going to trial was \$100,000, and that the PLF was prepared to deny coverage for any verdict based on the nature of Mr. Dickerson's behavior.

The Church was faced with a grim reality: even if it prevailed on all its claims at trial and obtained a verdict of \$355,000, its net recovery would actually be *less* than \$100,000 (and perhaps even \$0) because of the PLF insurance policy wasting provision and the accumulation of the Church's own attorney fees. The Church made the only decision that it could have made under the circumstances: it took the money.



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**D. The parties negotiate a settlement agreement aimed at preserving the Church's ability to file its CSF claim.**

The Church made it clear throughout the judicial settlement conference that it intended to submit a claim to the CSF, and that any settlement agreement should be drafted to allow the Church to do so. The Church proposed a stipulated judgment of \$150,000, which would be partially satisfied by the PLF's \$100,000 settlement amount, coupled with a release that would eliminate any further liability for claims covered by the PLF. The PLF refused to agree to the Church's proposal, insisting instead on a stipulated general judgment for \$100,000, the PLF standard release, and the entry of a full satisfaction of judgment. We enclose copies of the Stipulated General Judgment, Release, and Satisfaction (Binder Tabs 22, 23, and 24).

**III. The Church's CSF Claim**

The lawsuit against Mr. Dickerson and the resulting settlement has come nowhere close to making the Church whole. In truth, neither will this claim with the CSF, even if the CSF determines that the Church is entitled to receive the maximum allowable claim of \$50,000.

We offer the following analysis for the committee's consideration.

**A. Mr. Dickerson was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the Church's claim arose.**

Mr. Dickerson was an active member of the Oregon State Bar until he was disbarred on August 7, 2010.<sup>4</sup> Accordingly, Mr. Dickerson was an active member of the Bar:

- When the Church hired Mr. Dickerson as its attorney at the Meeting;
- When he recommended that the Church enter into the Contract with Mr. Bighaus/2RE;

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<sup>4</sup> Mr. Dickerson was disbarred for, among other things, intentionally failing to account for and return "flat fee" funds and perform agreed-upon tasks. See Binder Tab 25.



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- When he accepted \$340,000 from the Church as payment for his legal fees and for the Contract amount;
- When the Church sought to recover money that it had paid under the Contract because Mr. Bighaus/2RE had not performed any work under the Contract; and
- When the Church fired Mr. Dickerson and requested a final accounting and a refund of funds remaining in the Church's client trust account.

Furthermore, the transaction prompting the Church's CSF claim -namely, the Contract with Mr. Bighaus/2RE—arose out of Mr. Dickerson's practice of law in Oregon. The Church hired Mr. Dickerson to provide legal advice in connection with the Church's rebuilding effort, which included counseling the Church on contracts that it had to enter into. But for Mr. Dickerson's legal advice, the Church would not have entered into the Contract with Mr. Bighaus/2RE.

**B. Mr. Dickerson's dishonest conduct caused a pecuniary loss to the Church.**

At the Meeting where Mr. Dickerson recommended that the Church enter into the Contract, his conduct *had to be dishonest*: either he was dishonest in representing to the Church that he had read the Contract before urging the Church to sign it (when he had not) or he was dishonest in representing to the Church that the Contract's terms were reasonable and that it contained everything necessary to protect the Church's interests.

Then, instead of earning the money paid by the Church by performing the services that he had agreed to perform, Mr. Dickerson did virtually nothing. Indeed, when the Church began to pressure Mr. Dickerson and seek a return of the money that it had paid to Mr. Dickerson, he and Mr. Bighaus fled to Kenya, ostensibly to build a children's home called Naomi's Village. The "projected building cost" of Naomi's Village, according to its Web site, is \$300,000, just slightly less than the sum that the Church paid for services that were never rendered. (See Binder Tab 14: Elliott Decl. ¶ 2, Ex. 1.) As of July 2, 2010, the Naomi's Village Web site announced that the "lead builder" on the project was Ernie Bighaus and that the "asst. builder; botanist" was "Dan Dickerson from Portland, OR." (*Id.*)





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Accordingly, Mr. Dickerson's dishonest conduct—leveraging his prior relationship with Mr. Bighaus to extract \$355,000 out of the Church—directly caused the Church's pecuniary harm.

**C. The Church obtained relief from the automatic bankruptcy stay for the limited purpose of recovering against the PLF insurance policy.**

Upon receiving notice of Mr. Dickerson's February 16, 2011, bankruptcy filing, the Church filed a motion for relief from the automatic stay. (See Binder Tab 18.) In its motion, the Church requested limited relief from the automatic stay "only to recover against available liability insurance proceeds." And the order granting relief from the automatic stay was similarly limited to recovery against available liability insurance proceeds. (See Binder Tab 19.)

Accordingly, the Church's lawsuit against Mr. Dickerson was not one that could have led to recovery for conduct that was excluded from PLF coverage. In other words, the partial recovery that the Church received from the PLF did not reach any of Mr. Dickerson's dishonest conduct (which is excluded under PLF coverage)—accordingly, the Church still has an unsatisfied pecuniary loss in the amount of \$255,000.

**D. If settling its claims against Mr. Dickerson acts to preclude the Church from obtaining a recovery from the CSF for Mr. Dickerson's dishonest conduct, then the protection offered by the CSF is illusory.**

We recognize that ORS 9.655(1)(c), if read literally, would require the Church to show that it has a judgment in which "execution issued on the judgment has been returned uncollected or issuance of execution would be a useless act." Even if the committee concludes that the Church's claim against Mr. Dickerson does not technically qualify for recovery under the CSF, the CSF should recommend that the Board of Governors of the Oregon State Bar use its authority under ORS 9.665(2) to waive one or more of the conditions for recovery because this is a special and unusual case that has resulted in extreme hardship for the Church. ORS 9.665(2) provides:

"The board shall not authorize payment unless the conditions of ORS 9.655 (1) have been found to exist. However, **the board may, in its sole discretion, waive one or more of the conditions of**



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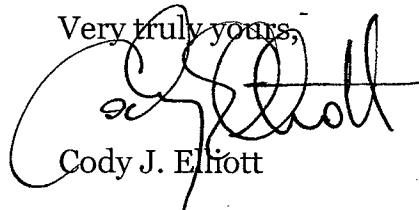
**ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances." (Emphasis added.)**

The Church found itself between a rock and a hard place. As explained above, the Church's only reasonable economic option was to settle for \$100,000 with the PLF. Mr. Dickerson's bankruptcy prevented the Church from even executing against any personal assets of Mr. Dickerson (and he had none). The PLF, for reasons that the Church cannot explain or control, refused to document the settlement through a judgment for \$150,000, and a release of the PLF, to leave a \$50,000 unsatisfied judgment. The Church truly had no options but to do what it did—take the \$100,000 settlement and pursue this CSF claim.

This is certainly a case of "extreme hardship" that involves "special and unusual circumstances." The CSF has an opportunity to do the right thing—it can prove that a group of lawyers will take action to restore some small portion of what the Church lost so that it can put this episode behind it.

Thank you for your consideration, and please call me if you have any questions.

Very truly yours,



Cody J. Elliott

Enclosures



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October 9, 2012

**BY FIRST-CLASS MAIL AND E-MAIL**

Ms. Sylvia E. Stevens [sstevens@osbar.org](mailto:sstevens@osbar.org)  
Oregon State Bar  
Post Office Box 231935  
Tigard, Oregon 97281-1935

Subject: Client Security Fund Claim No. 2011-28  
Claimant: Morning Star Missionary Baptist Church of Portland, Oregon  
Attorney: Daniel W. Dickerson

Dear Ms. Stevens:

Thank you for informing us of the Board of Governors' deferral of the decision on Morning Star Missionary Baptist Church's Client Security Fund claim. Although we had hoped that the Board would accept the CSF committee's recommendation at its August meeting, we are grateful for the opportunity to further clarify why Daniel W. Dickerson's professional negligence should not bar the Church's recovery from the CSF for his dishonest conduct.

Setting aside for a moment the claims pleaded by the Church in its malpractice complaint, the evidence reflects Mr. Dickerson's dishonest conduct, and should enable the Church to recover from the CSF. Specifically:

- The Church wrote checks in the amount of \$320,000 to Mr. Dickerson for construction management services that never were provided;
- Mr. Dickerson deposited those funds into his own Bank of America bank account;
- There is no evidence that Mr. Dickerson ever forwarded those funds to Ernie Bighaus (the owner of the construction management company and another client of Mr. Dickerson's); and



Ms. Sylvia E. Stevens  
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- The Church did not receive the benefit of those funds. Instead, Mr. Dickerson did.

In addition, the Church paid Mr. Dickerson \$20,000 in advance for legal fees, but did not receive anything close to \$20,000 in legal services. Mr. Dickerson should have kept the Church's \$20,000 in his IOLTA account and returned the unearned amounts to the Church at the conclusion of representation. He did not.

We certainly recognize that much of Mr. Dickerson's conduct also amounts to professional negligence in that he fell below the standard of care. For example:

- Mr. Dickerson recommended that the Church enter into a \$330,000 construction management contract requiring that the entire \$330,000 be paid in advance, even though the contract price was unreasonably high, and even though construction management contracts should be paid in monthly installments as the work progresses;
- Mr. Dickerson made his recommendation to the Church without first confirming that Mr. Bighaus's company was (1) a valid business entity, (2) a business that was registered to do business in Oregon, and (3) a licensed contractor qualified to perform the services in the construction management contract;
- Mr. Dickerson failed to perform any significant legal services for the Church, in violation of his duty of diligence to the Church under RPC 1.3; and
- When the Church asked for a final accounting of Mr. Dickerson's work and a refund of unearned fees, Mr. Dickerson failed to comply, instead keeping the \$20,000 in legal fees paid by the Church in advance in violation of RPC 1.15-1(c)-(d).

But it was not mere negligence when Mr. Dickerson agreed to represent the Church knowing that he also represented Mr. Bighaus and choosing not to disclose that information to the Church—rather, it was a conscious decision that Mr. Dickerson made to secure not only the \$20,000 advance attorney fee from the Church, but also \$320,000 of the Church's fire insurance recovery, which Mr. Dickerson knew about, and which the Church paid directly to Mr. Dickerson. This dishonest conduct is underscored



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by Mr. Dickerson's flight to Kenya where he and Mr. Bighaus worked together on a \$300,000 construction project.

Ultimately, the Church believed that the PLF was its only means for recovery against Mr. Dickerson, so it crafted its complaint to focus on Mr. Dickerson's professional negligence and not his dishonest activity. Indeed, had the Church framed the allegations in terms of dishonesty by pleading fraud and seeking punitive damages, the PLF likely would have denied coverage and paid nothing in settlement.

In conclusion, that Mr. Dickerson's conduct was both dishonest *and* below the standard of care should not deter the Board from accepting the CSF committee's recommendation. We hope that the Board finds this letter helpful in making its decision on the Church's CSF claim. Please call me if you or the Board has any further questions.

Very truly yours,



Cody J. Elliott

cc: Bruce A. Rubin



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bcc: Pastor Albert Wayne Johnson



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December 1, 2011

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Oregon State Bar  
Client Security Fund  
Post Office Box 231935  
Tigard, Oregon 97281-1935

Subject: Memorandum in Support of Application for Reimbursement  
Conduct of Daniel W. Dickerson

Dear Sir or Madam:

This firm represents Morning Star Missionary Baptist Church of Portland, Oregon (the "Church"), on a pro bono basis, with respect to the Church's Application for Reimbursement from the Client Security Fund ("CSF"). The Church's CSF claim stems from the dishonest conduct of Daniel W. Dickerson, a disbarred Oregon lawyer hired by the Church to act as its attorney in the Church's efforts to rebuild its house of worship.

This memorandum and the enclosed exhibits supplement the Church's Application with additional information to help in your investigation and analysis of the Church's CSF claim.

**I. Background Facts**

**A. The fire and the Church's plans to rebuild.**

The Church previously occupied a historic building located at 106 N.E. Ivy Street in Portland, Oregon. That building burned to the ground on the evening of February 6, 2007. Investigators never determined the cause of the fire, but the Church—through its congregation—was determined to rebuild its house of worship.

The Church has a primarily African-American congregation that numbered approximately 200-220 at the time of the fire, but that number has since dwindled to approximately 80-100. Before the fire, the Church operated a soup kitchen that provided meals to needy people twice a month—the fire forced the Church to cancel that service.



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But even though the Church had to hold its services in a funeral home, and even as its congregation decreased in numbers, the Church's leader—Pastor Albert Wayne Johnson—held strong to his faith and belief that the Church could rebuild and once again serve as a beacon in the community. The Church planned to use a combination of donations, a loan from a national organization of Baptist churches, and approximately \$925,000 in fire insurance proceeds to build a new facility on the site of the one that burned down.

**B. The Church hires a contractor: Ernie Bighaus/2RE.**

Pastor Johnson announced his vision to rebuild the Church's facility to the congregation on April 9, 2007, at which time Executive Deacon Lee Magee presented the congregation with the check for the fire insurance proceeds. Ernie Bighaus was one of the members of the congregation in attendance. Mr. Bighaus was a nightclub operator who knew Pastor Johnson: the pastor had counseled Mr. Bighaus on a personal spiritual matter around the time that Mr. Bighaus's father passed away.

Soon after the fire, Pastor Johnson reached out to Mr. Bighaus for help in the rebuilding process. Mr. Bighaus also held himself out as a general contractor, and had previously remodeled Pastor Johnson's office at the Church. Mr. Bighaus—then the construction manager for Commercial Finish Group ("CFG")—convinced the Church to pay CFG for construction management and supervision services for the rebuilding project. In March 2007, the Church paid CFG \$58,888.46 for those services. Soon thereafter, CFG went out of business, and Mr. Bighaus approached Pastor Johnson about becoming the general contractor for the rebuilding with his new company called 2RE General Contractors, Inc.

**C. The Church hires Mr. Dickerson as its attorney.**

When the Church realized that it needed a construction attorney to provide counsel on contracts relating to the rebuilding effort, Mr. Bighaus recommended that the Church retain Daniel W. Dickerson as its lawyer, stating that Mr. Dickerson was well known in the field of construction law. This statement turned out to be false: Mr. Dickerson had no expertise in construction law. Rather, Mr. Dickerson had represented Mr. Bighaus in various matters involving the Oregon Liquor Control Commission and served as the registered agent for at least one of Mr. Bighaus's companies, including 2RE when it was eventually registered to do business in Oregon in August 2009. Mr. Dickerson never corrected the Church's belief that he had expertise in construction law, nor did he disclose to the Church (orally or in





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writing) that his service as registered agent for Mr. Bighaus's companies presented a conflict of interest.

On or around June 24, 2008, Mr. Bighaus introduced Mr. Dickerson to Pastor Johnson and Executive Deacon Magee at a meeting at the Doubletree Hotel near Lloyd Center (the "Meeting"). At the beginning of the Meeting, Mr. Dickerson agreed to represent the Church: he recommended that the Church pay him a flat fee of \$20,000, in advance, for legal services during the preconstruction and construction phases of the rebuilding effort. We enclose a copy of the "Attorney Fee Agreement—Flat" between Mr. Dickerson and the Church (Binder Tab 1). We also enclose a copy of a June 24, 2008, e-mail communication from Mr. Dickerson to the Church, in which Mr. Dickerson (a) confirms his representation of the Church and (b) acknowledges that he will represent the Church on a flat-fee basis (Binder Tab 2).

On June 26 and July 24, 2008, the Church paid Mr. Dickerson's fee in two \$10,000 installments. We enclose copies of the cashier's check receipts for the Church's payment of Mr. Dickerson's attorney fees, along with copies of deposit receipts reflecting that Mr. Dickerson deposited the funds into his Bank of America account (Binder Tab 3).

**D. The Church signs a construction management contract with Mr. Bighaus/2RE.**

Also at the Meeting, the Church was presented with a written construction management contract (the "Contract") (Binder Tab 4). Pastor Johnson, a man of faith, did not read the Contract except to note the price. He knew that he had no construction experience or legal experience, so he requested and relied on Mr. Dickerson's legal advice.

Mr. Dickerson told Pastor Johnson and Executive Deacon Magee that he had read the Contract, that it contained all the provisions that the Church needed, that the Contract was in the Church's best interests, and that the Church should sign it. Mr. Dickerson and Mr. Bighaus also urged the Church to sign then and there if the Church wanted to receive a price discounted from \$438,000 to \$330,000. Pastor Johnson signed the Contract. Executive Deacon Magee (who also had no legal or construction experience) was troubled by the absence of a typed signature block for his name. He scanned the Contract and said that he would sign it when such a typed signature block was added (and that is what he later did).



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**E. Flaws in the Contract.**

Although Mr. Dickerson claimed that he had read the Contract and that it was in the Church's best interests to sign it, the Contract was actually significantly flawed in numerous ways, including the following:

- **2RE was not a licensed contractor.** As of June 24, 2008—the date of the Meeting—2RE was not licensed as a general contractor with the Oregon Construction Contractors Board (the "CCB"). Under Oregon law, contractors must be licensed with the CCB before agreeing to undertake work. *See* ORS 701.021. Mr. Dickerson never disclosed this fact to the Church.
- **2RE was not a valid business entity.** Also as of the date of the Meeting, 2RE was not a properly formed business entity, nor was it registered to do business in Oregon. 2RE did not incorporate until March 6, 2009, and did not register with the Oregon Secretary of State until August 17, 2009, more than one year after entering into the Contract with the Church. Mr. Dickerson never disclosed this fact to the Church.
- **No recognition of amounts already paid for the rebuilding effort.** The Contract did not reflect the substantial amounts that the Church had already paid to the architect (for design services) and to CFG (for construction management services). Mr. Dickerson never addressed this issue with the Church.
- **Unreasonable Contract price.** The amount charged by 2RE for construction management services—\$330,000 after the "cash discount"—was far in excess of reasonable charges for construction management services. Mr. Dickerson never addressed this issue with the Church.

Perhaps the most egregious flaw in the Contract was that it required the Church to pay the entire \$330,000 before Mr. Bighaus/2RE performed any work. Construction management contracts are typically paid in monthly installments upon submission of hours worked for the month in question. That protection is routinely built in because it is foreseeable that a contractor will not complete the promised work for a variety of reasons—so the owner protects itself by paying only for work that is



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completed. Mr. Dickerson's recommendation that the Church pay 100 percent of the Contract price up front is underscored by the illusory "cash discount" of getting a reduced price for signing at once.

But based on Mr. Dickerson's advice and counsel, the Church paid the amounts due under the Contract to Mr. Dickerson, expecting that those funds would be forwarded to Mr. Bighaus. We enclose copies of the cashier's check receipts for the Church's payments to Mr. Dickerson—totaling \$320,000—under the Contract, along with copies of deposit receipts reflecting that Mr. Dickerson deposited the funds into his Bank of America account (Binder Tab 5). We have no proof that those funds were ever forwarded to Mr. Bighaus/2RE.

**F. Mr. Dickerson fails to provide legal services under the attorney fee agreement.**

In exchange for the \$20,000 that Mr. Dickerson received, in advance, from the Church, Mr. Dickerson agreed (among other things):

"[To r]eview, advise and consult on the construction of the new church facility during the preconstruction and construction phases of the project.

\* \* \*

"To do full investigation and analysis of facts \* \* \*.

\* \* \*

"To do complete legal research and legal preparation." (See Binder Tab 1.)

But Mr. Dickerson performed no significant legal services for the Church beyond recommending that the Church sign the Contract. Indeed, throughout the course of the Church's rebuilding efforts, Mr. Dickerson's loyalty appeared to be more aligned with Mr. Bighaus/2RE than with the Church.



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**1. Mr. Dickerson declines to help the Church to recover amounts paid under the Contract.**

By February 2009, eight months after the Church signed the Contract and paid Mr. Dickerson \$340,000, no significant progress had been made in the Church's rebuilding effort. Frustrated with the lack of progress, the Church began to notice the deficiencies in the Contract, and accordingly, it sought to recover some of the money that it had paid to Mr. Dickerson for Mr. Bighaus/2RE's services.

In April 2009, Pastor Johnson and Executive Deacon Magee flew to Texas to confront Mr. Bighaus about his lack of performance. When asked what work had been performed under the Contract, Mr. Bighaus refused to answer. He also refused to meet with the architect, who was also located in Texas and had the construction industry experience to ask more educated questions than Pastor Johnson and Executive Deacon Magee.

After that meeting, Pastor Johnson asked Mr. Bighaus to return \$300,000 of the money that the Church had paid under the Contract. We enclose a copy of an April 29, 2009, letter from the Church to Mr. Bighaus/2RE (Binder Tab 6). Mr. Bighaus said that he would discuss the matter with his "team," but ultimately declined to return any money to the Church. But never once did Mr. Dickerson help the Church in its efforts to recover money that the Church had paid under the Contract.

**2. When Mr. Bighaus/2RE requests additional payment under the Contract, Mr. Dickerson sides with Mr. Bighaus/2RE.**

In October 2009, Mr. Bighaus flew to Portland to attend a groundbreaking ceremony, but it is difficult to identify any other substantive work that he performed under the Contract. And for the groundbreaking ceremony, Mr. Bighaus not only charged the Church for his travel and meals, but also charged the Church for his time (in addition to amounts that the Church had already paid under the Contract). We enclose a copy of an October 29, 2009, check to 2RE in the amount of \$5,140.73 for "Labor & Service—Ground Breaking Service" (Binder Tab 7). We also enclose a December 1, 2009, letter to Mr. Dickerson that reflects an additional \$1,115.90 payment "based on additional receipts received from 2RE Development" (Binder Tab 8).

But the final straw came when Mr. Bighaus demanded that the Church pay him \$15,000 that the Church had been holding back pending Mr. Bighaus's full



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performance under the Contract (i.e., until the Church's house of worship was complete). Up until this point, Mr. Bighaus/2RE had done little to no work (other than appear at the groundbreaking). Pastor Johnson met with Messrs. Dickerson and Bighaus to discuss the holdback, and instead of advocating for his client, Mr. Dickerson took Mr. Bighaus's side and insisted that the Church pay the \$15,000.<sup>1</sup> After the meeting, Mr. Bighaus asked Mr. Dickerson to join him for a cigar, and the two of them left together while Pastor Johnson returned to the Church offices. We enclose a copy of an October 29, 2009, check from the Church to 2RE in the amount of \$15,000, which was the amount that the Church was holding back from the Contract (Binder Tab 9).

#### **G. The Church fires Mr. Dickerson.**

On December 3, 2009, after Mr. Dickerson had made it obvious that his loyalties were with Mr. Bighaus, the Church made the decision to terminate the attorney-client relationship with Mr. Dickerson. We enclose a copy of the December 3, 2009, letter in which the Church fired Mr. Dickerson (Binder Tab 10).

In its letter, the Church asked Mr. Dickerson to "send a final accounting of your work and any funds remaining in the Church's client trust account \* \* \*." But Mr. Dickerson never sent the requested accounting funds to the Church. Instead, on January 30, 2010, Mr. Dickerson sent the Church's file to our firm, and in a brief cover letter stated that he would be "out of the country beginning February 1, 2010." We enclose a copy of the January 30, 2010, letter from Mr. Dickerson that accompanied the Church's client file (Binder Tab 11).

#### **II. The Church's Lawsuit Against Mr. Dickerson**

On June 21, 2010, the Church filed a lawsuit against Mr. Dickerson in Multnomah County Circuit Court, asserting claims relating to Mr. Dickerson's dishonest conduct. We enclose a copy of the initial complaint (Binder Tab 12). The Professional Liability Fund (the "PLF") appointed an attorney to represent Mr. Dickerson in the lawsuit.

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<sup>1</sup> By this time, Mr. Dickerson was acting as 2RE's registered agent in Oregon, a fact that he never disclosed to the Church.



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**A. Circumstances conspire to make it virtually impossible for the Church to effect full recovery against Mr. Dickerson.**

Almost from the beginning of the lawsuit, it became clear to the Church that there were significant barriers to recovering anything from Mr. Dickerson.

**1. Mr. Dickerson had moved to Kenya.**

Shortly after filing the complaint, the Church learned that Mr. Dickerson had fled to Mai Mahiu, Kenya, where he was working on a construction project with Mr. Bighaus. Although this supported the Church's suspicion that Mr. Dickerson and Mr. Bighaus were "working together" to relieve the Church of its money, it also created several practical difficulties for the Church.

**a. Service of Process**

Because Mr. Dickerson was not located in Oregon, the Church was forced to incur significant additional expenses to effect service of the summons and complaint. It eventually did so by obtaining an order allowing service by alternative methods, which included publication in *The Oregonian* and in *The Daily Nation* (Kenya's leading newspaper) at a total cost of \$5,778.24. We enclose copies of Plaintiff's Motion for Order to Authorize Service by Publication or Other Method and the Declaration of Cody J. Elliott in Support of Plaintiff's Motion for Order Allowing Service by Publication (Binder Tabs 13 and 14).

**b. Discovery**

Mr. Dickerson's absence also created practical discovery issues. In response to its request for production, the Church received only documents that had been recovered by the PLF—it did not receive any of the electronically stored e-mails or documents that likely existed on Mr. Dickerson's computer hard drives. Mr. Dickerson's absence also made it unlikely that the Church would have an opportunity to depose him.

**2. Mr. Dickerson's PLF insurance coverage.**

The terms and exclusions of Mr. Dickerson's PLF insurance coverage presented the second major barrier to the Church's recovery.



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**a. "Wasting" provision**

Mr. Dickerson's PLF insurance carried a \$300,000/claim policy limit with an additional \$50,000 claims expense allotment. But it was a "wasting policy": after Mr. Dickerson's attorney used up the defense allotment, any additional legal costs and expenses incurred in Mr. Dickerson's defense reduced the policy limits from which the Church could recover.

The "wasting" provision essentially forced the Church to settle its claims against Mr. Dickerson. Even if the Church proceeded to trial and obtained a judgment for the full amount of its prayer for relief, by the time the trial was over, the PLF policy limits would likely have been consumed or nearly consumed. The Church's own legal fees would have grown substantially. As explained below, Mr. Dickerson filed for bankruptcy and had no assets. As a result, no net economic recovery was foreseeable except through settlement.

**b. Exclusion for wrongful conduct and punitive damages**

Mr. Dickerson's PLF insurance also carried an exclusion for "any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions," and for "any CLAIM seeking punitive, exemplary or statutorily enhanced damages." These exclusions placed two significant constraints on the Church's claims against Mr. Dickerson:

- Even though the Church believed that Mr. Dickerson and Mr. Bighaus worked together to intentionally swindle the Church, the Church could not suggest in the complaint or attempt to prove that Mr. Dickerson's actions were intentionally dishonest or fraudulent; and
- The Church could not plead facts that would support an award of punitive damages (even though such facts existed) because doing so would likely result in the PLF's denying coverage.<sup>2</sup>

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<sup>2</sup> On February 24, 2011, the Church filed a Motion for Leave to File Second Amended Complaint and to Plead Punitive Damages (which included a Proposed Second Amended Complaint) and supporting declarations of Cody J. Elliott and Lee Magee, in which the Church pleaded facts supporting an award of punitive damages. Because these pleadings were filed after Mr. Dickerson filed for bankruptcy (but before



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In short, the "wrongful conduct" and "punitive damages" exclusions effectively hamstrung the Church.

**c. "Cooperation" condition**

As a condition of PLF insurance coverage, the insured must fully cooperate with the PLF, which includes (among other things):

- Delivering to the PLF sworn statements providing full disclosure about any aspect of the claim;
- Attending and testifying when requested by the PLF;
- Delivering to the PLF all files, records, papers, and documents relating to the claim; and
- Assisting, cooperating with, and communicating with the PLF "in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM \* \* \*."

This "cooperation condition" essentially prevented the Church from enforcing any of its discovery requests, and from seeking to obtain Mr. Dickerson's deposition testimony—because Mr. Dickerson was in Africa and had no assets to pay any judgment, it was very unlikely that Mr. Dickerson would cooperate with the PLF, since there was no incentive for him to do so.

**3. Mr. Dickerson's bankruptcy.**

The third barrier to the Church's recovery was Mr. Dickerson's February 16, 2011, bankruptcy filing. By filing bankruptcy, Mr. Dickerson made the PLF insurance policy the only source of recovery for the Church (since any judgment against Mr. Dickerson would likely be discharged in bankruptcy).<sup>3</sup>

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the Church had notice of the bankruptcy filing), they were nullities. The Church then decided not to amend its complaint to seek punitive damages because doing so would jeopardize the Church's ability to recover from the PLF insurance policy. We enclose copies of these pleadings (Binder Tabs 15, 16, and 17).

<sup>3</sup> The Church applied for, and received, relief from the automatic stay that arose upon Mr. Dickerson's bankruptcy filing. We enclose copies of the Church's Motion for Relief From Automatic Stay and the Order Granting Relief From Stay (Binder Tabs 18 and 19).





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**B. The Church compels Mr. Dickerson's attorney to enter into settlement discussions.**

Because of the significant obstacles to recovery that the Church faced, it sought to engage Mr. Dickerson's attorney in settlement negotiations shortly after he was appointed by the PLF. The Church first suggested scheduling a judicial settlement conference in October 2010, but Mr. Dickerson's attorney refused, stating that he required additional discovery (including the depositions of Pastor Johnson and Executive Deacon Magee) before engaging in settlement discussions.

By February 8, 2011, Mr. Dickerson's attorney had taken those depositions, and the Church again attempted to engage in settlement discussions. The parties agreed on an acceptable private mediator, and the Church obtained available mediation dates, but by March 10, 2011—one day before the certificate of alternative dispute resolution was due—Mr. Dickerson's attorney still had not confirmed a mediation date. Then, on March 16, 2011, Mr. Dickerson's attorney informed us that he was "not ready" to schedule mediation. Meanwhile, Mr. Dickerson's attorney issued requests for production of documents, to which the Church responded.

The Church filed a Motion for Settlement Conference with the Court to get a settlement conference and avoid further expenses. We enclose copies of the Motion for Settlement Conference and the Declaration of Bruce A. Rubin in Support of the Church's Motion for Settlement Conference (Binder Tabs 20 and 21). The Court granted the Church's motion, and the parties attended a judicial settlement conference before the Honorable Angel Lopez on Friday, May 27, 2011.

**C. The PLF agrees to settle the Church's claims against Mr. Dickerson for \$100,000.**

At the settlement conference, it became clear that the most that the Church could hope to secure without going to trial was \$100,000, and that the PLF was prepared to deny coverage for any verdict based on the nature of Mr. Dickerson's behavior.

The Church was faced with a grim reality: even if it prevailed on all its claims at trial and obtained a verdict of \$355,000, its net recovery would actually be *less* than \$100,000 (and perhaps even \$0) because of the PLF insurance policy wasting provision and the accumulation of the Church's own attorney fees. The Church made the only decision that it could have made under the circumstances: it took the money.



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**D. The parties negotiate a settlement agreement aimed at preserving the Church's ability to file its CSF claim.**

The Church made it clear throughout the judicial settlement conference that it intended to submit a claim to the CSF, and that any settlement agreement should be drafted to allow the Church to do so. The Church proposed a stipulated judgment of \$150,000, which would be partially satisfied by the PLF's \$100,000 settlement amount, coupled with a release that would eliminate any further liability for claims covered by the PLF. The PLF refused to agree to the Church's proposal, insisting instead on a stipulated general judgment for \$100,000, the PLF standard release, and the entry of a full satisfaction of judgment. We enclose copies of the Stipulated General Judgment, Release, and Satisfaction (Binder Tabs 22, 23, and 24).

**III. The Church's CSF Claim**

The lawsuit against Mr. Dickerson and the resulting settlement has come nowhere close to making the Church whole. In truth, neither will this claim with the CSF, even if the CSF determines that the Church is entitled to receive the maximum allowable claim of \$50,000.

We offer the following analysis for the committee's consideration.

**A. Mr. Dickerson was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the Church's claim arose.**

Mr. Dickerson was an active member of the Oregon State Bar until he was disbarred on August 7, 2010.<sup>4</sup> Accordingly, Mr. Dickerson was an active member of the Bar:

- When the Church hired Mr. Dickerson as its attorney at the Meeting;
- When he recommended that the Church enter into the Contract with Mr. Bighaus/2RE;

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<sup>4</sup> Mr. Dickerson was disbarred for, among other things, intentionally failing to account for and return "flat fee" funds and perform agreed-upon tasks. See Binder Tab 25.



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- When he accepted \$340,000 from the Church as payment for his legal fees and for the Contract amount;
- When the Church sought to recover money that it had paid under the Contract because Mr. Bighaus/2RE had not performed any work under the Contract; and
- When the Church fired Mr. Dickerson and requested a final accounting and a refund of funds remaining in the Church's client trust account.

Furthermore, the transaction prompting the Church's CSF claim -namely, the Contract with Mr. Bighaus/2RE—arose out of Mr. Dickerson's practice of law in Oregon. The Church hired Mr. Dickerson to provide legal advice in connection with the Church's rebuilding effort, which included counseling the Church on contracts that it had to enter into. But for Mr. Dickerson's legal advice, the Church would not have entered into the Contract with Mr. Bighaus/2RE.

**B. Mr. Dickerson's dishonest conduct caused a pecuniary loss to the Church.**

At the Meeting where Mr. Dickerson recommended that the Church enter into the Contract, his conduct *had to be dishonest*: either he was dishonest in representing to the Church that he had read the Contract before urging the Church to sign it (when he had not) or he was dishonest in representing to the Church that the Contract's terms were reasonable and that it contained everything necessary to protect the Church's interests.

Then, instead of earning the money paid by the Church by performing the services that he had agreed to perform, Mr. Dickerson did virtually nothing. Indeed, when the Church began to pressure Mr. Dickerson and seek a return of the money that it had paid to Mr. Dickerson, he and Mr. Bighaus fled to Kenya, ostensibly to build a children's home called Naomi's Village. The "projected building cost" of Naomi's Village, according to its Web site, is \$300,000, just slightly less than the sum that the Church paid for services that were never rendered. (See Binder Tab 14: Elliott Decl. ¶ 2, Ex. 1.) As of July 2, 2010, the Naomi's Village Web site announced that the "lead builder" on the project was Ernie Bighaus and that the "asst. builder; botanist" was "Dan Dickerson from Portland, OR." (*Id.*)



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Accordingly, Mr. Dickerson's dishonest conduct—leveraging his prior relationship with Mr. Bighaus to extract \$355,000 out of the Church—directly caused the Church's pecuniary harm.

**C. The Church obtained relief from the automatic bankruptcy stay for the limited purpose of recovering against the PLF insurance policy.**

Upon receiving notice of Mr. Dickerson's February 16, 2011, bankruptcy filing, the Church filed a motion for relief from the automatic stay. (See Binder Tab 18.) In its motion, the Church requested limited relief from the automatic stay "only to recover against available liability insurance proceeds." And the order granting relief from the automatic stay was similarly limited to recovery against available liability insurance proceeds. (See Binder Tab 19.)

Accordingly, the Church's lawsuit against Mr. Dickerson was not one that could have led to recovery for conduct that was excluded from PLF coverage. In other words, the partial recovery that the Church received from the PLF did not reach any of Mr. Dickerson's dishonest conduct (which is excluded under PLF coverage)—accordingly, the Church still has an unsatisfied pecuniary loss in the amount of \$255,000.

**D. If settling its claims against Mr. Dickerson acts to preclude the Church from obtaining a recovery from the CSF for Mr. Dickerson's dishonest conduct, then the protection offered by the CSF is illusory.**

We recognize that ORS 9.655(1)(c), if read literally, would require the Church to show that it has a judgment in which "execution issued on the judgment has been returned uncollected or issuance of execution would be a useless act." Even if the committee concludes that the Church's claim against Mr. Dickerson does not technically qualify for recovery under the CSF, the CSF should recommend that the Board of Governors of the Oregon State Bar use its authority under ORS 9.665(2) to waive one or more of the conditions for recovery because this is a special and unusual case that has resulted in extreme hardship for the Church. ORS 9.665(2) provides:

"The board shall not authorize payment unless the conditions of ORS 9.655 (1) have been found to exist. However, **the board may, in its sole discretion, waive one or more of the conditions of**



**MILLER NASH**<sup>LLP</sup>  
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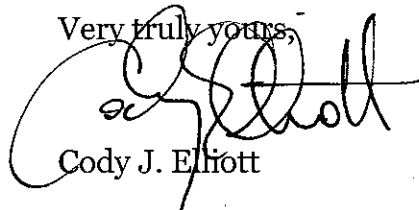
**ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances." (Emphasis added.)**

The Church found itself between a rock and a hard place. As explained above, the Church's only reasonable economic option was to settle for \$100,000 with the PLF. Mr. Dickerson's bankruptcy prevented the Church from even executing against any personal assets of Mr. Dickerson (and he had none). The PLF, for reasons that the Church cannot explain or control, refused to document the settlement through a judgment for \$150,000, and a release of the PLF, to leave a \$50,000 unsatisfied judgment. The Church truly had no options but to do what it did—take the \$100,000 settlement and pursue this CSF claim.

This is certainly a case of "extreme hardship" that involves "special and unusual circumstances." The CSF has an opportunity to do the right thing—it can prove that a group of lawyers will take action to restore some small portion of what the Church lost so that it can put this episode behind it.

Thank you for your consideration, and please call me if you have any questions.

Very truly yours,



Cody J. Elliott

Enclosures

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2012-41 NICHOLS (Krueger) Request for BOG Review

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### **Action Recommended**

Review, as timely requested by the claimant, the CSF Committee's denial of the claim.

### **Background**

In April 2012, Thomas Krueger, as an authorized representative of National Prep Productions, Inc. (NPPI), submitted an application for reimbursement from the Client Security Fund, alleging a loss of \$4,000 attributable to Jacques B. Nichols.

In the application, Krueger stated that Nichols was hired in November 2010 "to help our company obtain venture capital or angel investors," in exchange for a \$4,000 "retainer fee." The company was a startup that was newly incorporated.

No agreement was ever signed, although Krueger acknowledges the representation was confirmed by an "e-handshake." The agreement proposed by Nichols described the services he would provide as:

- Introductions to individual persons, corporations and institutions he knows to be interest in making investments;
- On request, coaching and mentoring the company about attracting strong advisors or board members;
- His opinion on corporate strategies and schooling of corporate management;
- Personal consultation in response to all questions
- Introductions to individuals qualified to join the management team or board of directors.

The agreement also stated that Nichols was licensed to practice law in Oregon. "If he serves the Company in a capacity as an attorney, then the Services listed hereinabove shall be considered to be part of his work as an attorney, otherwise they shall be performed in his capacity as a member of the Board of Directors or of the Advisory Board."

In addition to the flat fee of \$4,000, the agreement provided that Nichols would be appointed to the company's board of directors and be given an undetermined number of shares, and that he would receive a fee of 7% of any investment received by the company. The signature block for Nichols said "Jacques B. Nichols, Attorney."

According to Krueger, Nichols introduced one potential funding source in December 2010 but the funding never materialized. Thereafter, there was little contact between Nichols

and NPPI, despite Krueger's claim to have tried on numerous occasions to contact Nichols. In April 2011, Krueger relayed his disappointment with Nichols' services and requested a refund of "at least \$3,000." In February 2012, Krueger's company filed a small claims action (breach of contract) in Clackamas County and obtained a judgment by default in the principal amount of \$4,000.

Nichols was interviewed in the course of the CSF investigation and stated that he performed some work in the role of an attorney. He referred to a December 2010 e-mail to NPPI incorporators in which he offered his recommendations regarding the structure of NPPI and their respective equity interests. Other than that, however, Nichols asserted that most of his work was as a board member and not as an attorney. He claims to have spent 25 to 30 hours trying to find venture capital for NPPI, without success.

The CSF concluded that this loss did not arise from "an established lawyer-client relationship" as required in CSF Rule 2.5.1, because Nichols was hired and working principally as a business consultant to NPPI. Moreover, NPPI has made no effort to collect on its judgment against Nichols because, according to Krueger, "the Client Security Fund was available."

In his request for BOG review, Krueger disputes the CSF conclusion that Nichols wasn't retained to provide legal services, and he acknowledges that NPPI "did receive our contracted services to help our firm with company legal documentation and formation." In support of his contention that Nichols misrepresented the legal services he would provide, Krueger provided copies of news articles reflecting Nichols' difficulties with the SEC on unrelated matters. Nichols resigned Form A in January 2012. He has no disciplinary history, although the bar received three trust account overdraft notices in late 2011, all of which were dismissed by Disciplinary Counsel's Office after review.

Attachments: Application for Reimbursement  
Investigator's Report  
Request for Review Letter

# HINSHAW

& C U L B E R T S O N L L P

November 7, 2012

Ms. Mitzi M. Naucler  
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Re: Proposed Amendment to Oregon RPC 4.4

Dear Ms. Naucler:

I am the former Chair, and a current member, of the Legal Ethics Committee. Shannon Armstrong and I were appointed by the current Chair to review a request by the Oregon State Bar Board of Governors to consider a proposal that Oregon Rule of Professional Conduct (“RPC”) 4.4(b) be amended to prohibit the use of inadvertently sent information by the recipient.<sup>1</sup> After a thorough discussion and review of relevant materials, the Committee recommends that RPC 4.4(b) not be amended at this time.

Oregon RPC 4.4(b) provides:

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

The rule requires a lawyer who receives a document that he or she knows or reasonably should know was inadvertently sent to promptly notify the sender. The rule is prophylactic in nature: by requiring the recipient to notify the sender, it puts the burden on the sender to take protective measures to demonstrate that the document was inadvertently sent and that privilege (if the document is one to which privilege would otherwise attach) should require return of the document.<sup>2</sup>

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<sup>1</sup> Ms. Armstrong is a trial lawyer concentrating on complex business disputes; her bio can be found at: <http://mhgm.com/attorneys/Shannon-Armstrong>. My practice emphasizes lawyer discipline and risk management issues, and includes a component of defense litigation; my bio can be found at: <http://www.hinshawlaw.com/delkanich/>.

<sup>2</sup> Comment 2 to ABA Model Rule 4.4 provides, in part: “If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the



A rule requiring a lawyer to return any document he or she knows or reasonably should know was inadvertently sent goes too far for a number of reasons. First, an inadvertently produced document may not be one protected by the attorney-client privilege or the work-product doctrine.

Second, even if an inadvertently produced document may be subject to the attorney-client privilege and/or work-product doctrine, any such protection may be waived by the inadvertent production. This can happen if, for example, the sending lawyer does not take reasonable precautions to prevent the disclosure and/or where the sending lawyer failed to take adequate measures to rectify or mitigate the damage of the disclosure.

The Oregon Ethical Lawyer § 6.7 addresses waiver by production and notes that there is generally a difference between the *voluntary* and the *unintentional* production of documents with respect to waiver. Where the production is voluntary, privilege generally will be waived with regard to the documents produced and with regard to the communications so revealed, as well as any others relating to the same subject matter. See OEC 511; *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or 336, 838 P2d 1069 (1992) (holding that employer waived privilege as to letter its attorney voluntarily gave to employee in response to discovery request). Where, on the other hand, the disclosure is inadvertent, the Oregon Ethical Lawyer indicates that waiver may be found where there is at least some degree of client and lawyer negligence. Thus, a lawyer who receives a document that may have been inadvertently produced would have a non-frivolous argument that the sending lawyer waived privilege and should have a right to openly litigate that dispute if they choose to do so.<sup>3</sup> (Although, it should be noted that in my experience, most Oregon lawyers agree to return any allegedly inadvertently produced documents since they know they could be in the same position – and need the same courtesy – at some point the future).

Third, there already are procedural and evidentiary rules in place to protect the sending lawyer (and his or her client). For example, Oregon Legal Ethics Opinion 2005-150 provides guidance to lawyers who receive inadvertently produced documents; informing them of the need to notify opposing counsel and of the right to openly litigate waiver if appropriate. In addition, Fed. R. Civ. Proc. 26(b)(5)(B) provides that a party must “promptly return, sequester, and destroy the specified information or any copies it has . . . [and] must not use or disclose the information until the claim [of privilege] is resolved[.]” If the receiving lawyer wishes to use the information, he or she must first go to the court to litigate privilege waiver and may file the document under seal. Also, Fed. R. Civ. Proc. 26(f)(3)(D) approves of the use of so-called “claw back” agreements, by which parties may agree in advance that inadvertent production will be returned. And Fed. R. Evid. 502(b) (enacted in 2009) finds no waiver in the context of alleged inadvertent production if: “(1) the disclosure is inadvertent; (2) the holder of the privilege or

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scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person.”

<sup>3</sup> Oregon RPC 1.4(a) and (b) would likely require the lawyer to discuss the allegedly inadvertent production with his or client before deciding whether to return the document or openly litigate waiver.

protection took reasonable steps to prevent disclosure; and, (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following \* \* \* [Fed. R. Civ. Proc.] 26(b)(5)(B).”

Consider a case from just two months ago: *Inhalation Plastics, Inc. v. Medex Cardio-Pulmonary, Inc.*, No. 2:07-CV-116, 2012 WL 3731483 (S.D. Ohio Aug. 28, 2012), where the court held that privilege had been waived as to 347 pages of inadvertently produced emails. Among other things, the Court found significant that the defendant had failed to establish the reasonableness of the precautions taken to prevent the disclosure and “failed to take adequate measures to rectify or mitigate the damage of the disclosure.”

Moreover, there are already consequences for lawyers who inappropriately review and use documents that were inadvertently received without notifying opposing counsel. *See, e.g., Richards v. Jain*, 168 F Supp2d 1195, 1200-1202 (WD Wash 2001) (disqualifying lawyer and requiring disgorgement of fees, where lawyer did not disclose possession of ostensibly privileged documents but used them in litigation); *PacifiCorp v. Department of Revenue*, 838 P2d 914 (Mont 1992) (reversing trial-court result due to failure to exclude inadvertently produced documents).

Fourth, it is important to note that American Bar Association Model Rule 1.6 was recently amended to add a new paragraph (c), which provides: “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Although the duty was already described in comments to the model rules, the ABA’s Ethics 20/20 Commission noted that “in light of the pervasive use of technology to store and transmit confidential client information, this existing obligation should be stated explicitly in the black letter of Model Rule 1.6.” And a similar rule change is being proposed to Oregon’s RPCs. Such a rule change would confirm that the sending lawyer has an obligation to safeguard information and prevent the unauthorized disclosure and use of such documentation.

Finally, the Committee is mindful that one goal in adopting a version of the ABA Model Rules is to have consistency between the jurisdictions. My office has done an unscientific review of the other jurisdictions and we have found no discernable trend toward amending Rule 4.4(b) to prohibit the use of inadvertently sent information by the recipient.<sup>4</sup> We have located 30 states (including Oregon) that have Model Rules the same as, or substantially similar to, ABA Model Rule 4.4(b)<sup>5</sup>, and seven states that do not have Model Rule 4.4(b) addressing the receipt of inadvertently sent documents.<sup>6</sup> Of the remaining 13 jurisdictions, various approaches have

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<sup>4</sup> Peter Tran, a 3L at Lewis & Clark Law School and a Law Clerk with Hinshaw & Culbertson LLP, is credited with doing the research necessary for this analysis.

<sup>5</sup> Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, North Dakota (actually RPC 4.5), Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming.

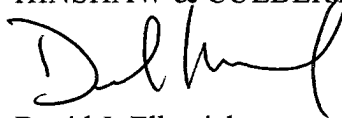
<sup>6</sup> Georgia, Hawaii, Massachusetts, Michigan, Texas, Virginia, and West Virginia

been adopted to address the receipt of inadvertently sent documents, including allowing a time period for the sending party to take protective measures, requiring the receiving lawyer to submit the issue to a tribunal or follow any instructions from the sending lawyer. The Committee evaluated those options but felt that none of them maintained consistency with other jurisdictions while staying true to the other points discussed in this letter.

Accordingly, for all of the reasons noted above, the Legal Ethics Committee respectfully recommends that Oregon RPC 4.4(b) not be amended to prohibit the use of inadvertently sent information by the recipient. There are sufficient evidentiary and procedural safeguards currently in place to ensure lawyers act appropriately with respect to documents allegedly inadvertently sent.

Very truly yours,

HINSHAW & CULBERTSON LLP

A handwritten signature in black ink, appearing to read "D. Elkanich", written over the printed name below.

David J. Elkanich  
delkanich@hinshawlaw.com

DJE:

cc: Legal Ethics Committee

The following is a preview of what will be on the ABA HOD Mid-Year Agenda:

**POTENTIAL AGENDA ITEMS FOR THE 2013 MIDYEAR MEETING  
OF THE HOUSE OF DELEGATES  
OF THE AMERICAN BAR ASSOCIATION**

**NOTE:** This list includes issues that may be presented for consideration at the 2013 Midyear Meeting or a future meeting of the House of Delegates. Please remember that, with the exception of state and local bar associations, the filing deadline for submission of Resolutions with Reports by Association entities and affiliated organizations is **Wednesday, November 14, 2012.**

**DISABILITY RIGHTS**

1. Commitment to Lawyers with Disabilities

Affirms the ABA's commitment to the employment and advancement of lawyers with disabilities throughout the profession, including law firms, corporations, law schools, the judiciary, and all other legal employers. **Commission on Disability Rights**. Contact: Amy Allbright\*\*, 202/662-1575, E-mail: [amy.allbright@americanbar.org](mailto:amy.allbright@americanbar.org).

2. Use of Language for Persons with Disabilities

Addresses the use of appropriate language when referring to persons with disabilities in legal advocacy, judicial opinions, legislation, and bar policies. **Commission on Disability Rights**. Contact: Amy Allbright\*\*, 202/662-1575, E-mail: [amy.allbright@americanbar.org](mailto:amy.allbright@americanbar.org).

**ETHICS 20/20**

3. Model Rules of Professional Conduct

The ABA Commission on Ethics 20/20 may file Resolutions: 1) addressing the ability of foreign lawyers, subject to multiple conditions, to have limited authority to practice in the U.S. as in-house counsel or pro hac vice; 2) amending the Black Letter and Comments to Rules 1.7 and 8.5 of the ABA Model Rules of Professional Conduct to permit lawyers and clients to agree which jurisdiction's conflicts of interest rules will apply to the representation; and 3) amending the Comment of Rule 1.5 of the ABA Model Rules of Professional Conduct to provide guidance regarding choice of law issues relating to the division of fees between two lawyers in different firms, where one lawyer is with a firm in a jurisdiction that prohibits nonlawyer ownership of law firms and the other lawyer works for a firm that has

nonlawyer owners and is in a jurisdiction that permits it. **Commission on Ethics 20/20**. Contact: Ellyn S. Rosen\*, Phone: 312/988-5311; E-mail: [ellyn.rosen@americanbar.org](mailto:ellyn.rosen@americanbar.org).

## **LEGAL SERVICES**

### 4. Access to Legal Services

Encourages practitioners to consider limiting the scope of representation, when appropriate, as a means of increasing access to legal services. **Standing Committee on the Delivery of Legal Services**. Contact: Will Hornsby\*, 312/988-5761, E-mail: [will.hornsby@americanbar.org](mailto:will.hornsby@americanbar.org).

## **PARALEGAL EDUCATION**

### 5. Paralegal Education Programs

Grants approval, reapproval and/or extension and withdrawal of the term of approval to several paralegal education programs. **Standing Committee on Paralegals**. Contact: Peggy C. Wallace\*, 312/988-5618, E-mail: [peggy.wallace@americanbar.org](mailto:peggy.wallace@americanbar.org).

## **SPECIALIZATION**

### 6. Reaccreditation of Specialty Certification Programs

Reaccredits several programs as designated specialty certification programs for lawyers. **Standing Committee on Specialization**. Contact: Martin Whittaker\*, 312/988-5309, E-mail: [martin.whittaker@americanbar.org](mailto:martin.whittaker@americanbar.org).

## **UNIFORM ACTS**

### 7. Uniform Asset Freezing Orders Act

Adopts the Uniform Asset Freezing Orders Act which creates a uniform process for the issuance of asset freezing orders – *in personam* orders freezing the assets of a defendant in order to prevent a party from dissipating assets prior to a judgment. **National Conference of Commissioners on Uniform State Laws**. Contacts: Kathleen J. Hopkins, Suite 654, 1326 5th Ave., Seattle, WA 98101, E-mail: [khopkins@rp-lawgroup.com](mailto:khopkins@rp-lawgroup.com); Steven M. Richman, P.O. Box 52013, Princeton, NJ 08543, E-mail: [smrichman@duanemorris.com](mailto:smrichman@duanemorris.com); Katie Robinson, National Conference of Commissioners on Uniform State Laws, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, 312/450-6616, E-mail: [katie.robinson@uniformlaws.org](mailto:katie.robinson@uniformlaws.org).

8. Uniform Deployed Parents Custody and Visitation Act

Adopts the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) which addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. **National Conference of Commissioners on Uniform State Laws.** Contacts: James Noel Higdon, Higdon, Hardy & Zuflacht, LLP, Suite 200, 1200 Huebner Road, San Antonio, TX 78230, E-mail: [inhigdon@hhzlaw.com](mailto:inhigdon@hhzlaw.com); Jean Crowe, Legal Aid Society, 300 Deaderick St., Nashville, TN 37201, E-mail: [jcrowe@las.org](mailto:jcrowe@las.org); Mark E. Sullivan, Suite 195, 2626 Glenwood Ave., Raleigh, NC 27608, E-mail: [mark.sullivan@ncfamilylaw.com](mailto:mark.sullivan@ncfamilylaw.com); Katie Robinson, National Conference of Commissioners on Uniform State Laws, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, 312/450-6616, E-mail: [katie.robinson@uniformlaws.org](mailto:katie.robinson@uniformlaws.org).

9. Uniform Premarital and Marital Agreements Act

Adopts the Uniform Premarital and Marital Agreements Act which brings clarity and consistency to a range of legal agreements between spouses or those who are about to become spouses. **National Conference of Commissioners on Uniform State Laws.** Contacts: Carlyn S. McCaffrey, McDermott, Will & Emery, LLP, 340 Madison Ave., New York, NY 10173, E-mail: [cmccaffrey@mwe.com](mailto:cmccaffrey@mwe.com); Linda J. Ravdin, Pasternak & Fidis, 7735 Old Georgetown Rd., Suite 1100, Bethesda, MD 20814, E-mail: [lravdin@pasternakfidis.com](mailto:lravdin@pasternakfidis.com); Katie Robinson, National Conference of Commissioners on Uniform State Laws, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, 312/450-6616, E-mail: [katie.robinson@uniformlaws.org](mailto:katie.robinson@uniformlaws.org).

Submitted via email on 10/19/2012 by  
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**Oregon State Bar**  
**Meeting of the Board of Governors**

August 24, 2012

**Open Session Minutes**

The meeting was called to order by President Mitzi Naucler at 12:32 p.m. on August 24, 2012. The meeting adjourned at 3:20 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Ann Fisher, Michael Haglund, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Audrey Matsumonji, Pat Ehlers, Maureen O'Connor, Travis Prestwich, Richard Spier and David Wade. Staff present were Sylvia Stevens, Rod Wegener, Helen Hierschbiel, Jeff Sapiro, Kay Pulju, Susan Grabe, Mariann Hyland, Linda Kruschke and Camille Greene. Others present were Ira Zarov, PLF COO, Tom Cave PLF CFO, Laura Rackner, PLF BOD, and Jason Hirshon, ONLD Chair.

**1. Call to Order/Finalization of the Agenda**

**2. Department Presentations**

- A.** Ms. Kruschke presented an overview of the Legal Publications Department whose purpose is to improve the knowledge and skills of Oregon lawyers by producing high-quality resources in a timely manner with new material posted as received. The department relies on volunteer authors who are members of the bar. All staff editors are members of the bar. The primary product is the BarBooks™ online library. Monthly BarBooks™ seminars train members how to use BarBooks™ and count for one CLE credit. The average "pageviews" per day is steadily rising.

**3. Reports**

**A.** Report of the President

As written.

**B.** Report of the President-elect

As written.

**C.** Report of the Executive Director

ED Operations Report as written. Ms. Stevens asked the board members to pass along to her any suggestions they have for changing the current BOG committee structure that would make the committees and the BOG function more effectively.

Ms. Stevens reminded the board that a few members had suggested that lawyers be required to complete a certain number of their MCLE credits in live programs; she asked whether the BOG wanted to ask the MCLE Committee to study the issue and the consensus was yes. Ms. Stevens will draft a memo for the MCLE Committee on behalf of the board.

**D.** Board Members' Reports

Board member Ms. O'Connor will be presenting to the national meeting of the Lawyer Referral Services on branding and marketability. Mr. Emerick recently attended OLIO and was impressed with the program and encouraged board members to support Opportunities for Law in Oregon (OLIO.) Mr. Haglund and Mr. Knight hosted the first meeting of the OSB Legal Job Opportunities Task Force at the bar center. Three future meetings are scheduled. Ms. Dilaconi is going to be playing Marie Callas in February.

**E. Director of Diversity & Inclusion**

Ms. Hyland reported on the 15th Annual OLIO in Hood River, OR. The event was well attended and for the first time undergraduates participated. Some funding issues arose and they are researching the use of member dues to fund OLIO.

**F. MBA Liaison Reports**

Mr. Larson reported on the August 1, 2012 MBA meeting. He noted the MBA has a new chairman, Gregory Moab, and the MBA is searching for a new executive director. Mr. Larson recommended the board be involved in the MBA's court funding committee.

**G. Oregon New Lawyers Division Report**

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. ONLD hosted a casino night with OLIO participants and has a new four-month series of CLEs on diversity beginning in September. ONLD will host an information booth at the Lane County Fair, utilizing more than 30 volunteers. ONLD passed out survival kits during the July bar exam and attended the ABA Young Lawyers Division annual meeting in Chicago earlier in August. The executive committee would like to schedule a social with the board in the near future.

**4. Professional Liability Fund**

Mr. Zarov gave a general update and presented the May 31, 2012 Financial Statements. He reported that the excess program has done well since 2008; and cyber coverage will be added to the program in 2013. The PLF will present its budget to the board for approval in November. Claims are up approximately 10% over previous year's averages but are skewed by one member with multiple claims. He introduced the 2013 PLF BOD President-Elect, Laura Rackner.

Mr. Cave explained the claim liabilities' negative effect on the PLF's financials. The average cost of defending claims continues to rise and is greater than the average amount of indemnity.

**5. BOG Committees, Special Committees, Task Forces and Study Groups**

**A. New Lawyer Mentoring Program**

The board reviewed the list of mentor candidates submitted by the NLMP Committee.

**Motion:** Mr. Larson moved, Ms. Dilaconi seconded, and the board voted unanimously to recommend the list of candidates to the Oregon Supreme Court. Mr. Emerick abstained. **[Exhibit A]**



**B.** Executive Director Evaluation Committee

In Ms. Garcia's absence, Ms. Naucler presented the committee's recommended changes to the Executive Director's annual salary. **[Exhibit B]**

**Motion:** The board voted unanimously to approve the recommendation of the Executive Director Evaluation Committee to increase the Executive Director's salary by 2% effective immediately.

**C.** Budget and Finance Committee

Mr. Haglund presented the committee recommendation to increase the Client Security Fund assessment from \$15 to \$45. The board agreed to table the discussion until the September board meeting.

Mr. Haglund presented the committee recommendation to delegate the authority to Mr. Wegener to negotiate the tenant improvements at the bar center and take the cost from the landlord contingency fund.

**Motion:** The board voted unanimously to approve the recommendations of the Budget and Finance Committee regarding tenant improvements funding and direction.

Mr. Haglund presented the committee's recommended revisions to the OSB investment Policy to diversify the bar's investments. **[Exhibit C]**

**Motion:** The board voted unanimously to approve the investment policy recommendations of the Budget and Finance Committee.

**D.** Member Services Committee

Mr. Kehoe presented the committee's recommended awards recipients. **[Exhibit D]**

**Motion:** The board voted unanimously to approve the awards recommendations of the Member Services Committee.

**E.** Policy and Governance Committee

Ms. Fisher presented three committee recommendations:

1. Section bylaw changes including meeting flexibility and sunseting a section. **[Exhibit E];**

**Motion:** The board voted unanimously to approve the section bylaw recommendations of the Policy and Governance Committee.

2. Survey the HOD delegates for their views on the continuing viability of the HOD governance model and, if retained, how it can be a more meaningful experience for the delegates. **[Exhibit F];**

**Motion:** The board voted unanimously to survey the HOD, based on the recommendations of the Policy and Governance Committee.

3. Review the BOG's role in judicial selection. Policy and Governance will continue to study the issues of judicial evaluations and continuing legal education requirements for judges, but for now recommends going back to the prior BOG policy of ranking candidates for appellate appointments and informing the Governor which are "highly qualified" or "qualified." Ms. Billman also said the information should be available to the public prior to appointment. Mr. Wade stated that this would help prevent the Governor from appointing without considering the bar's input. The board discussed the bar's role in the judicial selection and the public's perception of that role. If the bar cannot give an honest assessment of the candidates, which may or may not involve ranking, then they should not participate in the evaluation process at all. **[Exhibit G];**

**Motion:** The board voted to approve the recommendations of the Policy and Governance Committee regarding review of candidates for appellate appointment. Mr. Larson and Ms. Naucner were opposed.

**F. Public Affairs Committee**

Mr. Larson presented a legislative update. Five of the bar's bills have been finalized by Legislative Counsel's Office. One additional bills have been added to the bar's legislative package relating to allocating interest on title escrow accounts to the OLF. The Bar Act bill will also be amended to add minor changes that will align the delinquency dates for annual fees and IOLTA certification and allow for electronic notice of delinquency. **[Exhibits H & I]**

**Motion:** The board voted unanimously to approve the recommendations of the Public Affairs.

**6. Other Action Items**

- A. Sending the Centralized Legal Notice System Plan to 2012 House of Delegates.

**Motion:** Mr. Wade moved to send a resolution to the HOD in support of pursuing the idea of a centralized legal notice system to generate revenue for low-income legal services. After discussion of the relative merits of taking the issue to the HOD at this time, Mr. Wade withdrew his motion.

- B. Client Security Fund Claims Recommended for Payment

**Motion:** Mr. Haglund moved, Mr. Wade seconded, and the board voted to approve the payments of \$242,127.45 recommended by the Client Security Fund. The BOG deferred action on the DICKERSON (Morning Star) claim pending the review of additional information. Ms. Fisher was opposed. **[Exhibit J].**

- C. Request to Survey OSB Members About Violence in the Profession.

Ms. Stevens presented correspondence from Stephen D. Kelson request a survey of the OSB membership. The board denied Mr. Kelson's request to the extent it constitutes a request that he be provided a list of members at no cost.

**7. Consent Agenda**

**Motion:** Mr. Larson moved, Ms. Fisher seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit K]**.

**8. Closed Sessions – see CLOSED Minutes**

**A.** Judicial Session (pursuant to ORS 192.690(1)) – Reinstatements

**B.** Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report

**9. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

None.

**MENTORS FOR BOG APPROVAL, August 2012 --- New Lawyer Mentoring Program**

<b>Bar#</b>	<b>Sal.</b>	<b>F.Name</b>	<b>M.Name</b>	<b>L.Name</b>	<b>City.State.Zip</b>
981738	Ms.	Carolyn		Alexander	Salem, OR 97301
041409	Ms.	Amy		Angel	Portland, OR 97204
710101	Mr.	Dennis		Ashenfelter	Albany, OR 97321
861494	Mr.	Lawrence		Beck	Portland, OR 97205
841132	Mr.	Mark		Becker	Hillsboro, OR 97124
791575	Mr.	Charles	D.	Beshears III	Portland, OR 97201
851571	Mr.	Whitney		Boise	Portland, OR 97205
760679	Mr.	Douglas		Bomarito	Tigard, OR 97223
861606	Ms.	Michelle		Burrows	Portland, OR 97209
851745	Mr.	Timothy		Colahan	Burns, OR 97720
042669	Ms.	Renee		Cummings	Portland, OR 97212
952428	Ms.	Alice		Cuprill-Comas	Portland, OR 97209
922560	Mr.	Michael		Czaiko	Oregon City, OR 97045
812037	Mr.	C.	Thomas	Davis	Beaverton, OR 97005
891621	Mr.	Robert		Demary	Portland, OR 97204
972496	Mr.	Robert	A.	Diehl	Wilsonville, OR 97070
872132	Mr.	Jeffrey		Eberhard	Portland, OR 97204
820476	Mr.	Paul		Elsner	Portland, OR 97201
841361	Mr.	Hunter		Emerick	Salem, OR 97308
840473	Mr.	Mark		Geiger	Salem, OR 97301
035386	Ms.	Katrina		Glogowski	Seattle, WA 98121
983893	Ms.	Stephanie		Hortsch	Salem, OR 97301
861717	Ms.	Eva		Kripalani	Portland, OR 97212
993098	Mr.	Lance		Lefever	Springfield, OR 97477
842733	Mr.	Roger		Lenneberg	Clackamas, OR 97015
872860	Mr.	Michael	C.	Lewton	Portland, OR 97204
060270	Ms.	Christine	N.	Moore	Portland, OR 97204
681121	Mr.	Roger		Mundorff	Milwaukie, OR 97222
732218	Mr.	Roscoe	C.	Nelson	Portland, OR 97258
021268	Mr.	James		Oberholtzer	Portland, OR 97204
770604	Mr.	Gene		Platt	Newberg, OR 97132
661038	Mr.	Robert	C.	Robertson	Medford, OR 97501
080325	Mr.	Joseph	Justin	Rollin	Portland, OR 97205
753221	Mr.	Michael	E.	Rose	Portland, OR 97204
973875	Mr.	Craig		Russillo	Portland, OR 97204
661091	Mr.	Norman		Sepenuk	Portland, OR 97204
891187	Mr.	John		Shadden	Hillsboro, OR 97123
045530	Ms.	Michelle	Barton	Smigel	Portland, OR 97204
993833	Ms.	Cathern		Tufts	Siletz, OR 97380
860993	Mr.	Douglas	V.	Van Dyk	Oregon City, OR 97045
944898	Hon.	Debra	Kay Zuhlke	Vogt	Eugene, OR 97401
801350	Mr.	Robert	C.	Weaver	Portland, OR 97204
944605	Judge	Katherine		Weber	Oregon City, OR 97045
901359	Mr.	David		Wiles	Portland, OR 97204

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Michelle Garcia, Chair, ED Evaluation Committee  
**Re:** Executive Director Compensation

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### **Action Recommended**

Approve the recommendation of the Executive Director Evaluation Committee to increase the annual salary of the Executive Director by 2%.

### **Background**

Sylvia began her tenure as ED in August 2010. Her contract (which expires December 31, 2013) calls for annual salary increases “in an amount determined between the Executive Director and the Board, but by not less than the percentage increase granted to other OSB staff.”

Sylvia’s first annual performance review as ED took place in November 2011 and was very favorable. No adjustment in salary was addressed at that time. In January 2012, Sylvia’s annual salary was increased by 2%, the same amount that all OSB staff salaries were increased.

In April, the ED Evaluation Committee met and voted to recommend an increase in Sylvia’s salary in recognition of her excellent performance. After consultation with Mitzi Naucler, Sylvia suggested an additional 2% for the remainder of 2012. Her 2013 salary can be addressed after the BOG establishes the budget for 2013.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 10, 2012  
**From:** Rod Wegener, CFO  
**Re:** Revision to Investment Policy in Bylaw 7.402

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### Action Recommended

Approve the recommendation of the Budget & Finance Committee to revise the list of approved investments in bylaw 7.402.

### Background

The Board of Governors earlier approved the Budget & Finance Committee's recommendation to revise the bar's investment policy. However, it was later determined that two of the asset classes recommended were actually the same class, only with different titles. To formalize the revision, below is the revised policy approved by the Committee at its July 27 meeting.

#### OSB Bylaw Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities.
- (h) Mutual funds in these asset classes: high-yield bonds, emerging market bonds, international small capitalization equities, and diversified commodities.**
- ~~(i) Federal deposit insurance corporation insured accounts.~~
- ~~(j) Individual public-traded stocks, excluding margin transactions, short sales, and derivatives.~~
- ~~(k) Small capitalization international equities.~~
- ~~(l) Emerging markets fixed income.~~

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 21, 2012  
**From:** Matt Kehoe, BOG Member Services Committee  
**Re:** 2012 OSB President's Awards, Carson Award and Award of Merit

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### Action Recommended

Approve the following slate of award nominees.

*President's Membership Service Award:*

Ben & David Eder

Andrew Schpak

*President's Public Service Award:*

Michelle Grable

Hon. Michael McShane

*President's Affirmative Action Award:*

Emilie Edling & Akira Heshiki

*President's Public Leadership Award:*

Suzanne Rowe

*President's Sustainability Award:*

Diane Henkels

*Wallace P. Carson, Jr., Award for Judicial Excellence:*

Hon. Marco Hernandez

*Award of Merit:*

David S. Barrows

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 6, 2012  
**From:** Ann Fisher, Policy & Governance Committee Chair  
**Re:** Amendments to OSB Standard Section Bylaws

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### **Action Recommended**

The Policy & Governance Committee recommends that the Board adopt the attached amendments to the OSB Standard Section Bylaws.

### **Background**

As required by the Standard Section Bylaws, in late March the Member Services Department sent section executive committee members proposed standards section bylaw changes with a request for feedback. The following proposed bylaw changes have incorporated feedback received from section executive committee members, OSB General Counsel's Office, and the Member Services Committee of the BOG. The amendments provide for more meeting flexibility and clarify the procedure for sunseting a section. Additional housekeeping changes are also proposed.



## Standard Section Bylaws

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#### Article I Definition And Purpose

**Section 1.** Sections provide Bar members who share interests in particular substantive areas of law an opportunity to develop and improve skills and provide a forum for communication and action in matters of common interest.

**Section 2.** Sections may adopt a statement of purpose.

**Section 3.** The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.

#### Article II Membership

**Section 1.** Any active or inactive member of the Oregon State Bar may be a regular member upon payment of the membership dues. Any active member of another state bar may be an out-of-state member. Sections are encouraged to offer complimentary membership to 50-year members and to judges and their lawyer staff. Nonlawyers may be associate members as provided in Section 2 of this Article. Only regular members may vote and hold office except as otherwise specifically approved by the Section membership and the Board of Governors.

Section 2.

(A). Associate membership shall be available to: (1) employees of an Oregon lawyer or employees of the legal department of a corporation or government entity who are supervised by an Oregon lawyer, (2) law students, and (3) members of related professions.

(B). Out-of-state members as defined in Section 1 and associate members as defined in Section 2(A) are automatically entitled to membership upon payment of section dues unless the Section votes at its annual meeting to “opt out” and not include either out-of-state members or associate members.

(C). Out-of-state members and associate members shall certify their qualifying status upon initial application for membership and annually upon renewing their membership.

(D). Out-of-state or associate membership shall terminate immediately upon the termination of the member’s qualifying status. There shall be no refund of dues in that event.

**Section 3.** Membership dues shall be set by the membership of the Section at the annual meeting of the Section or by mail or electronic ballot, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. Dues may be waived for new admittees, law students or any other category designated by the Section. Membership dues for members of the Oregon State Bar shall be collected annually by the Bar with Bar membership fees.

### Article III Meetings of Section

**Section 1.** Meetings of the Section (including meetings of the Executive Committee and its committees) are subject to the Public Meetings Law (ORS 192.610 et seq. and 192.630(4)). ORS 192.630(4) requires that meetings of a public body be held within the geographic boundaries of the state. The Section shall notify the Bar at least twenty (20) days in advance of any meeting, or in the case of special meetings as soon as possible.

**Section 2.** The Section shall hold at least one membership meeting annually for the purpose of conducting Section business, which meeting shall be known as the Section Annual Business Meeting. The Section Annual Business Meeting may be held ~~electronically in conjunction with the Annual House of Delegates Meeting of the Oregon State Bar.~~ Sections shall elect officers and executive committee members by November 15, ~~either at the Section Annual Meeting or by a mail or electronic ballot election.~~

**Section 3.** Special meetings of the Section may be scheduled from time to time by the Section Executive Committee.

**Section 4.** A quorum is required to conduct Section Business ~~at all meetings of the Section~~ ~~the Section Annual Business Meeting.~~ ~~At Section meetings other than Section Executive Committee meetings,~~ ~~those members present voting participating in the vote~~ ~~voting~~ shall constitute a quorum. ~~Action and -action at a meeting of the Section~~ shall be by majority of those voting.

**Section 5.** A report to the Section membership shall be ~~included in-~~ presented at the meeting ~~notice~~ and shall include information about the Section’s activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section’s finances, its budget, long range plan and fiscal reserve policy.

**Section 6.** The Section shall sponsor or co-sponsor not ~~less-fewer~~ than one continuing legal education program every two years. The CLE program may, but need not, be held in conjunction with the Section’s Annual Business Meeting. Sections are encouraged to offer complimentary CLE admission to 50-year members and to judges and their lawyer staff.

### Article IV Officers

**Section 1.** The officers of the Section shall be the Chair, Chair-Elect, Immediate Past Chair, Secretary, Treasurer and such other officers as may be determined to be necessary by the membership. Officers of the Section shall be active members of the Oregon State Bar. Sections may establish eligibility-requirements or other procedures to ensure rotation of the Chair among specific groups or specialty areas of the membership, such as plaintiff or defense counsel.

**Section 2.** The Chair, or the Chair-Elect in the absence of the Chair, shall preside at all meetings of the Section and of the Section Executive Committee. The Chair shall appoint the officers and members of all committees of the Section pursuant to Article VII; plan and monitor the programs of the Section; keep the Section Executive Committee informed and carry out its decisions; and perform such other duties as may be designated by the Section Executive Committee. The Chair shall serve as an ex officio voting member of the Oregon State Bar House of Delegates. In the event the section chair serves in another ex officio House of Delegates capacity, the chair-elect shall serve in the chair's stead at the House of Delegates' annual meeting as provided in the House of Delegates Rules of Procedure.

**Section 3.** The Chair-Elect will become the Chair on January 1 regardless of the date of the Section Annual Business Meeting or, regardless of the date of the mailed or electronic ballot election. The Chair-Elect shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term or disability.

**Section 4.** The Secretary shall retain and maintain all books, papers, documents and other property pertaining to the work of the Section, and shall keep a true record of proceedings of all meetings and votes of the Section and of the Section Executive Committee. The Secretary shall perform other duties as assigned by the Section Executive Committee.

**Section 5.** The Treasurer shall keep an accurate record of all receipts and expenditures by the Section as hereinafter provided; report on the Section's present and projected financial condition at each meeting of the Section Executive Committee; prepare an annual projected budget for approval by the Section Executive Committee; and submit a report of the Section's financial affairs and financial condition to the members at the Section Annual Business Meeting.

## Article V Section Executive Committee

**Section 1.** The Section Executive Committee shall be composed of the Chair, the Chair-Elect, the Immediate Past Chair, the Secretary, the Treasurer, and not fewer than two (2) nor more than twelve (12) Members-at-Large. The terms of the Members-at-Large shall be staggered as evenly as possible. Suspended members may not serve on the Section Executive Committee.

**Section 2.** The Section Executive Committee shall supervise and control the affairs of the Section subject to these Bylaws and the Bar's bylaws.

**Section 3.** A quorum is required to conduct Executive Committee business. A quorum shall consist of a majority of the Executive Committee. Action of the Section Executive Committee shall be by majority vote of those voting.

**Section 4.** The Chair may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

**Section 5.** Between meetings of the Section, the Section Executive Committee shall have full power to do and perform all acts and functions that the Section itself may perform. Voting on matters of Section business may be done electronically and results of an electronic vote must be recorded in the official minutes of the Section.

**Section 6.** The Section Executive Committee may direct that a matter be submitted to the members of the Section by a mail or electronic vote or by a vote at the Section Annual Business Meeting; in any such event, binding action of the Section shall be by majority of those voting.

**Section 7.** No salary or compensation for services shall be paid to any member of the Section Executive Committee or member of any committee with the exception of the Editor and other staff of the Section newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Section Executive Committee and members of all Section standing and special committees.

**Section 8.** The membership of the Section shall have the right to rescind or modify any action or decision by the Section Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Section Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind

an act of the Section Executive Committee shall not include the power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Section Executive Committee must be taken at a meeting at which two-thirds of members voting approve the Motion.

## Article VI Terms of Office and Elections

**Section 1.** No member may serve on the Section Executive Committee for more than nine consecutive years.

**Section 2.** Each term of office shall begin on January 1 regardless of whether the election is held at the Section Annual Business Meeting or a mailed or electronic ballot election.

**Section 3.** A position on the executive committee, including an officer position, may be, at the option of the Executive Committee, deemed vacant if that member:

A. Fails to attend two consecutive meetings, in the absence of an excuse approved by the chair prior to the meeting; or

B. Fails to attend four consecutive meetings, even if excused.

**Section 4.** Except as provided by Article IV, Section 3, and except for the office of Chair-Elect, the Section Executive Committee shall fill by appointment until January 1 of the next year any position that becomes vacant.

**Section 5.** Any officer or Member-at-Large appointed to fill an unexpired term shall serve the unexpired period. Such members shall then be eligible at the next Section Annual Business Meeting or mail or electronic ballot election for election for a first full term, unless the member's election to the new term will result in a violation of Section 1 of this article.

**Section 6.** At the Section Annual Business Meeting or a mail or electronic ballot election, the Section membership shall elect:

A. A Chair-Elect, Secretary and Treasurer, each to serve a term of one year; and

B. Members-at-Large to serve terms of two years or less on the Section Executive Committee.

**Section 7.** The Chair-Elect will succeed to the office of Chair on January 1 and serve a term of one year. If the office of Chair-Elect is vacant at the Section Annual Business Meeting or a mail or electronic ballot election, then a Chair shall be elected by the members. No officer shall serve two successive terms in the same office, except the Treasurer. A Member-at-Large may serve no more than four consecutive years as a Member-at-Large.

**Section 8.** At least sixty (60) days prior to the Section Annual Business Meeting or a mail or electronic ballot election, the Section Executive Committee shall appoint a nominating committee of not less than three members of the Section, no more than two-thirds of whom may be on the Executive Committee. The nominating committee shall make and report to the Chair at least thirty (30) days prior to the Section Annual Business Meeting or the date of a mail or electronic ballot election one nomination for each position to be filled by election. The nominating committee shall use reasonable efforts to ensure that the members nominated reflect the diversity of the Section membership, the Oregon State Bar and community at large, taking into account all relevant factors including without limitation practice area, office location, age, gender, ~~and~~ race, ethnicity, disability and sexual orientation

**Section 9.** To the extent possible, no more than one person from the same law firm, company or department of a public agency may serve on the Executive Committee at the same time.

**Section 10.** If elections are held at the Section Annual Business Meeting, the report of the nominating committee shall be distributed to the Section membership along with the notice of the time and place of the Section Annual Business Meeting at least fourteen (14) business days in advance of the meeting. Additional nominations for any position may be made from the floor at the Section Annual Business Meeting. Elections for

contested positions may be by written ballot. Each contested position shall be set forth and voted upon separately. In a contested election, the candidate receiving the highest number of votes shall be elected.

**Section 11.** Upon approval of the Section Executive Committee, elections may be by mail or electronic ballot of the Section membership provided that: (1) write-in votes are allowed, (2) ballots are returned to an appropriate Section officer for tabulation, and (3) the results are certified to the Bar Center no later than November 15.

## Article VII Committees

**Section 1.** The Section Executive Committee may establish as many standing committees as deemed necessary and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all standing committees.

**Section 2.** In addition to the standing committees provided above, the Executive Committee may appoint as many special committees for particular purposes as deemed appropriate and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all special committees.

## Article VIII Legislative Activities

**Section 1.** Legislative activity of the Section, whether initiating legislation or taking positions in support or opposition of pending legislation shall be in compliance with Article 12 of the OSB Bylaws and these bylaws. The Section shall not represent to the legislature or any committee thereof a position or proposal or any bill or act as the position of the Section without the majority approval of the Section Executive Committee and the approval of the Board of Governors, except as provided otherwise below.

**Section 2.** The Section shall submit proposals for new legislation, together with the full text of the proposals to the Public Affairs Director by ~~May-April 1 of each odd-numbered year~~, or such ~~other~~ date as the Public Affairs Director shall designate. The proposal shall indicate whether the Section requests that it be presented to the legislature under the sponsorship of the Oregon State Bar or of the Section. The Board of Governors will inform the Section whether the legislation should go forward under the sponsorship of the Section or under the sponsorship of the Bar, and whether it will be presented to the House of Delegates or the membership for approval. If the Board of Governors declines to submit the Section's proposal for Bar-sponsored legislation to the House of Delegates or the membership, any member of the Section may submit the matter to the House of Delegates or the membership in accordance with ORS 9.148(3) and (4) and Article 3 of the OSB Bylaws.

**Section 3.** During regular legislative sessions the Section Executive Committee may, by majority vote, tentatively approve a position in favor of or in opposition to any pending bill within its general subject area. The proposal shall be submitted to the Bar's Public Affairs Director or the Chair of the Board of Governors Public Affairs Committee. After receipt of the proposal, the chair of the committee shall have 72 hours to approve the position or to refer it to the entire Public Affairs Committee. If the chair or committee approves the proposal, the action then becomes an official position of the Section and representatives of the Section may testify or make other appropriate statements.

**Section 4.** When special need is demonstrated, the Public Affairs Committee may expedite the introduction of new Section bills or amendments. The Public Affairs Director shall be kept informed about the status of Section legislative activity.

## Article IX Receipts and Expenditures

**Section 1.** Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

**Section 2.** The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

**Section 3.** Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar.

**Section 4.** Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee.

Section 5.

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

## Article X

### Notice of Meetings, Minutes and Reports

**Section 1.** The Chair or Secretary shall distribute notice of scheduled Section Executive Committee meetings together with an agenda and minutes of the previous meeting to all Section Executive Committee members and to the Bar at least ten (10) business days prior to such meetings, or if ten days' notice is not practicable, then such lesser notice as is practicable. ~~Typed Minutes~~ minutes of all meetings of the Section and of the Section Executive Committee shall be distributed to all members of the Section Executive Committee and to the Bar no later than thirty (30) days after the meeting and are subject to amendment and approval at the next meeting of the Section or the Section Executive Meeting.

**Section 2.** Whenever the Section desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

**Section 3.** Not later than December 1, the Chair shall file with the Executive Director of the Oregon State Bar a concise report summarizing the activities of the current year and anticipated activities for the ensuing year, ~~together with the full text of any proposed legislation.~~

**Section 4.** A proposed annual budget and proposed annual dues for approval by the Board of Governors shall be provided to the Executive Director no later than October 15 of each year if it contains a proposal for a change in membership dues, or no later than December 1 of each year if no change in membership dues is proposed. Alternatively, this budget information may be included with the Section's annual report submitted December 1, pursuant to Section 3 of this Article.

**Section 5.** The proposed budget shall have attached to it a short description of the Section's long range plans for programs and activities which require accumulation of funds and the Executive Committee's reserve plan, including the target reserve calculated to protect the Section from foreseeable financial loss.

**Section 6.** At the request of the Board of Governors, the Section Chair shall present a report in person to the Board of Governors concerning the activities of the Section for the current and succeeding years.

## Article XI Amendments to Bylaws

**Section 1.** These Bylaws may be amended by the Board of Governors. Notice of intent to promulgate and pass Bylaw Amendments shall be given to the Section Executive Committee Chair in sufficient time to allow for review and comment. Bylaw amendments passed by the Board of Governors become effective upon passage.

**Section 2.** These Bylaws may be amended by the Section by a majority of those voting in a mail or electronic ballot or at any membership meeting of the Section to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws and the text of proposed amendments shall be distributed to all Section members at least fourteen (14) business days prior to the meeting or mail or electronic balloting.

## Article XII Sunsetting the Section

**Section 1.** A Section Executive Committee may recommend that the Board of Governors sunset the section if it has accomplished its goals or is otherwise deemed no longer necessary. A sunset recommendation submitted to the Board of Governors must include a proposal for distribution of any section assets.

**Section ~~2~~.** The Section has a duty to its members, and at a minimum each year, must:

- A. Hold regular Executive Committee meetings.
- B. Appoint a Nominating Committee.
- C. Hold a Section Annual Business Meeting.
- D. Elect officers and executive committee members at large by November 15 of each year.
- E. Submit an annual budget.
- ~~F. File an annual Section CLE Participation Report.~~
- ~~FG.~~ File ~~its an~~ annual report.

If the Section fails to meet the above minimum requirements, it is subject to restructuring or sunsetting by the Board of Governors.

## Article XIII Rules of Order

**Section 1.** Except as otherwise provided herein, meetings of this Section shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

Section 2. All references in these Bylaws to "mail" or "mailing" or "mail ballot" shall also include electronic email to a member or addressee who has an email address on file with the Oregon State Bar ~~and who has agreed to be contacted by electronic mail.~~

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Ann Fisher, Chair, Policy & Governance Committee  
**Re:** HOD Structure Review

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### Action Recommended

Approve the committee's recommendation that HOD delegates be surveyed at the November 2012 meeting for their view on the continuing relevance of the HOD and any structural changes that will make it more fairly representative and relevant.

### Proposal

In January 2012, the Policy & Governance Committee discussed an OSB member's suggestion that governance issues be put to an electronic vote of the membership now that we have that ability, rather than be delegated to a small number of HOD members. Recognizing that the suggestion was in essence to abolish the HOD, the discussion turned to looking at the whether the HOD continues to be an effective governance model for the OSB.<sup>1</sup> In February, the BOG agreed that the issue should be studied further.

In discussion over the ensuing months, the P&G Committee identified several concerns and issues:

1. The HOD is "metro area-centric" because ¾ of the section chairs (ex officio delegates) are from the metro area of the Willamette Valley; the metro slant is further exacerbated by the fact that many local bar leaders are unaware that they are also ex officio delegates.
2. Several delegates frequently question the value or significance of their roles; others have complained about wasting time with delegate resolutions that have no obvious connection to OSB governance.
3. Delegates have struggled to identify and bring forth issues appropriate for the HOD.
4. The availability of electronic voting makes it again possible for governance issues to be presented to the membership as a whole, rather than to a relatively small group of delegates.

The P&G Committee also identified several potential solutions:

1. Eliminate the HOD and devolve all HOD authority to the BOG and/or the Supreme Court.
2. Eliminate the HOD and revert to an online "town hall" system of member governance.

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<sup>1</sup> See the brief history of the HOD, *infra*.



3. Eliminate section chairs as ex officio delegates.
4. Enhance outreach and information to local bar leaders so they understand their ex officio delegate role.
5. Establish an all-regions “caucus” several months in advance of the HOD during which delegates can brainstorm and develop resolutions for HOD consideration.

After examining the various possibilities, the P&G Committee concluded that the best approach was to get input from the HOD delegates before proposing any actions. Accordingly, it recommends that some time be scheduled during the HOD meeting to get the delegates’ reactions to the above possibilities and any others that the delegates may have.

### **Background**

#### *History of the House of Delegates*

The first HOD meeting was 1996, but the idea of a House of Delegates was an ongoing discussion at various times beginning in 1938. One thought permeated all of those discussions: there should be a more representative system of governance than placing the decisions in the hands of those who had the time, money and inclination to attend the Annual Meeting. Early efforts to establish a delegate governance model were unsuccessful. Committees were established to study the issue in 1938, 1944, 1956 and 1963. In 1972 the issue was referred to the Committee on Function and Organization of the Bar<sup>2</sup> which studied it for five years before drafting a legislative proposal that was presented at the Annual Meeting in 1977; it was rejected in favor of a study on how to improve the existing “town hall” system. No changes resulted from that study.

Surveys in 1979 and 1983 indicated that the majority of responding members favored the town hall system coupled with mail referenda on some questions. By the latter part of the 1980’s, Oregon was one of only a handful of states that retained a town hall membership governance structure. In 1989, the Function and Organization Committee proposed a vote-by-mail procedure by which any proposal (other than one from the BOG) would be submitted to a non-binding vote at the Annual Meeting and then to the entire membership for a binding vote. Nothing came of that proposal, but in 1990 the BOG asked the Committee to develop a model for a House of Delegates.

The proposal developed by the BOG was submitted to a membership vote in August 1992. Of the 9,346 active members, 36% returned ballots; the proposal was favored by a 2/3 majority. The proposal was submitted to the 1993 Legislature as SB 256. It provided for one elected delegate for every 100 bar members with a minimum of five delegates per region. It also provided that section and committee chairs and BOG members would be ex officio delegates.

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<sup>2</sup> A predecessor of the Policy and Governance Committee.

The bill passed the Senate with some amendments, but ran into strong opposition in the House from Rep. Del Parks, who was not persuaded that the HOD makeup would fairly reflect the interests of lawyers throughout the state. He proposed reducing the number of elected delegates (from 1:100 lawyers in the region to 1:200) and having 2 representatives from each local bar, which would have given much greater power to the rural counties. The bill died in the House.

A revised bill was introduced in 1995, the most fundamental difference in which was the addition of local bar presidents as ex officio members. The bill did not meet the same resistance as its predecessor and it became effective January 1, 1996. The first delegate elections were held in April 1996. For the next few months, delegates met with BOG representatives and OSB staff to draft rules of procedure and discuss other potential structural and procedural issues (such as seating in “regional delegations,” having an executive committee, and the like). The first meeting of the HOD was held in Medford on September 28, 1996.

### *Attendance and Participation*

HOD attendance has been adequate over the years, with only one year that there was no quorum. Between 1996 and 2011, the attendance of various components of the HOD was as follows:<sup>3</sup>

<i>Category</i>	<i>High</i>	<i>Low</i>
Elected delegates	90%	63%
Public members	83%	17%
Local bar presidents	57%	11%
Committee chairs <sup>4</sup>	90%	30%
Section chairs	79%	13%
BOG	100%	45%

During that same period, overall attendance ranged from a high of 80% (1996) to a low of 52% (2004).<sup>5</sup> HOD members were surveyed in 1998, after the second HOD meeting. The reasons given for not attending included “didn’t realize I was a member,” “on vacation or out of town,” “scheduling conflict,” “other commitments,” and “too expensive.” It is unknown whether different responses would be given now that the HOD is a more mature governance structure.

Anecdotal information suggests that some delegates don’t find the agenda compelling. Similarly, there have been some concerns raised in the last couple of years that too much of the HOD meeting is taken up with delegate resolutions on matters not relevant to bar governance.

Various ideas have surfaced from time to time to “enhance” the HOD including having an executive committee, appointing “chief delegates” from each region, and improving

<sup>3</sup> See attached spreadsheet for details.

<sup>4</sup> Eliminated after 2001.

<sup>5</sup> Attendance was 50% in September 2008, insufficient for a quorum, as discussed above.

member understanding of the HOD's role. The most significant change occurred about five years ago when a second round of pre-HOD regional meetings was instituted. The first regional meetings usually takes place in July, well in advance of the resolution filing deadline, and provides an opportunity for delegates to discuss ideas for resolutions and get information about how to submit them. The second round of meeting takes place approximately a month before the HOD meeting, after the preliminary agenda approved by the BOG has been published.

### *Over- and Under-Representation*

Over the years there has been concern that the HOD was heavily weighted in favor of the metro area or the Willamette Valley because a majority of ex officio delegates (section chairs, local bar presidents and BOG members) reside in the Portland metropolitan area<sup>6</sup> or in the Willamette Valley.<sup>7</sup> Having local bar presidents as ex officio delegates was intended to ameliorate that situation. The HOD will always have the majority of its members in the metro area and Willamette Valley because that is where the majority of lawyers practice. Currently, 82% of section chairs are from those areas. By contrast, only 40% of local bar presidents are from the metro area or the valley:

Total delegates	227 (6 are currently vacant)
Section Chairs	41 (31 from the metro area, 3 from the valley)
Local Bar Presidents	20 (3 from the metro area and 5 from the valley)

### *Other Bar Governance Models*

As noted above, one of the arguments in favor of creating the HOD in the early 1990's was that that Oregon was one of only a few bars that retained a "town hall" style of membership governance. No mention was made about what other bar were doing in lieu of a town hall, but it appears there was an unspoken understanding that they were being replaced by houses of delegates (representative assemblies). Whether that was true in the early 1990's or not, it is certainly not the case now. A 2009 ABA survey showed that only 5 of the 35 unified bars has a representative assembly (HOD), and none of them are in the western states.

Rather, the predominant model of bar governance is a board of governors. Among the western states,<sup>8</sup> board size ranges from 5 (Idaho) to 23 (California). About half have public members on the board and several have designated seats for minority lawyers, young lawyers, and law school representatives. Most meet 6-10 times per year. All but three have an executive committee that handles interim operational matters. Most jurisdictions also have some kind of initiative process by which a specified percentage of members can petition for a bar-wide vote on an issue.

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<sup>6</sup> Multnomah, Washington and Clackamas Counties.

<sup>7</sup> Marion, Polk, Benton, Linn and Lane Counties.

<sup>8</sup> Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Ann Fisher, Chair, Policy and Governance Committee  
**Re:** Judicial Selection, Evaluation and Education

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### **Action Recommended**

Consider the recommendations of the Policy and Governance Committee that the BOG:

- (1) change the way it makes recommendations to the governor on appellate appointments;
- (2) develop a process for evaluation of municipal, state and federal judges; and
- (3) mandate continuing legal education on judicial ethics and demeanor for sitting judges.

### **Background**

Over the last several months, the Policy and Governance Committee has discussed several issues involving the judiciary. They fall into two categories: (1) the BOG's contribution to appellate judicial appointments and (2) evaluation and education of sitting judges.

#### *Appellate Selection*

On the issue of appellate judicial appointments, the committee believes that the Bar's contribution was more valuable when it included a public ranking of the candidates. Currently, OSB Bylaw 2.703 provides generally that "Upon completion of the due diligence review, the Board's Committee on the Judiciary<sup>1</sup> will recommend a list of candidates suitable for consideration by the Governor to the Board,...."

For many years, the bylaws provided that the BOG would recommend those candidates it believed were "highly qualified" and, on request of the Governor, would also provide names of "qualified" candidates.<sup>2</sup> That type of recommendation was dropped sometime in 2005 in favor of merely indicating which candidates are "suitable to consideration." The change was made to accommodate the then-Governor, who didn't want any ranking in the recommendations. As a practical matter, since the change all candidates have been recommended to the Governors as suitable for consideration. At the same time, the BOG's preferences are shared with the governor's counsel or the governor orally so there is no public record of what could be considered a ranking of the candidates.

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<sup>1</sup> Since renamed to the Appellate Selection Committee.

<sup>2</sup> The BOG policies in effect at the time also included the following statement: "A 'highly qualified' or 'qualified' recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified."

Several BOG members who have served on the Appellate Selection Committee have expressed chagrin that they devote a considerable amount of time to interview and evaluate the candidates (often on a short time schedule), yet are prohibited from giving the governor a frank assessment of the candidate's qualifications.

#### *Judicial Evaluations*

On the issue of judicial evaluations, the committee members expressed concern at what appears to be an increasing lack of professionalism among judges, manifesting in rude treatment of lawyers and litigants. The committee believes the BOG should develop a system for evaluating sitting judges in municipal, state and federal courts.<sup>3</sup> Judicial evaluations can improve judicial performance in addition to helping citizen be more informed voters in judicial elections.

Evaluations of Multnomah County judges were done for several years during the 1970s and 1980s and the results were published in *The Oregonian*. The idea of judicial evaluations for state court judges was recommended some years ago by the BOG's *former* Committee on the Judiciary, but in the face of strong opposition from the then-Chief Justice, no action was taken. The P&G Committee believes it is time to revisit the idea.<sup>4</sup>

#### *Judicial Education*

The committee's concerns about judicial behavior suggest the need for better training and education. To that end, the P&G Committee recommends amending the MCLE rules to require that judges obtain 6 hours in each reporting period on the subjects of "judicial ethics and demeanor." This would be in addition to the 6 hour requirement for all members in "ethics and professional responsibility" (which includes one hour of child abuse reporting).

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<sup>3</sup> Information, guidance and templates are available from a variety of sources including the National Center for State Courts.

<sup>4</sup> Unbeknownst to the P&G Committee at the time of its discussions, the Appellate Judicial Selection Work Group of the Oregon Law Commission is considering the merits of judicial evaluations, among other issues. BOG Member Mike Haglund serves on the work group.

# OREGON STATE BAR

## Public Affairs Committee Agenda

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**Meeting Date:** August 24, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Alignment of Delinquency Dates and Elimination of Certified Mail for Notices

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### Action Recommended

Consider adding to the bar's 2013 Legislative package proposed amendments to ORS 9.200 and ORS 9.675 that would align the delinquency dates for payment of fees and IOLTA compliance, and allow the bar to send notices of delinquency/noncompliance by e-mail rather than by certified mail.

### Background

#### Delinquency Dates

OSB members who fail to pay their annual fees or PLF premiums or to file their annual IOLTA certification<sup>1</sup> by the due dates are subject to administrative suspension. For reasons that are lost to history, members are not considered delinquent on payment of the annual fee until 90 days after the due date, yet they are delinquent on payment of the PLF premium 30 days after the due date. There is no "grace period" for the IOLTA certification requirement so members who fail to file on January 1 are immediately in noncompliance. In all cases, suspension occurs 60 days after the notice of delinquency or noncompliance is mailed to the member:

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of 90 days, or any person in default in payment of membership fees established under ORS 9.191 (2)<sup>2</sup> for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director[, *by registered or certified mail,*] to the member in default at the [*last-known post-office address of the*] member's e-mail on file with the bar on the date of the notice, except that notice shall be sent by mail to any member who is exempt from having an e-mail address on file with the bar. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member....

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<sup>1</sup> Lawyers are required to certify whether they have a lawyer trust account in Oregon and, if so, at what financial institution, or alternatively, that they are exempt from the requirement to maintain such an account.

<sup>2</sup> That provision applies to prorated fees for members admitted to practice after the due date for annual fees.

**9.675 Mandatory certification and disclosures for lawyer trust accounts.**

\* \* \*

(2) If a member does not file the certificate and disclosures required by this section by or within 30 days after the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member[. *The notice shall be sent by registered or certified mail to the last-known post-office address of*] at the member's e-mail address on file with the bar on the date of the notice, except that the notice shall be mailed to any member who is exempt from having an e-mail address on file with the bar. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person's membership in the bar is automatically suspended....

Because of the different “grace periods,” members who don't pay their annual fees by the January 31 due date are delinquent at the end of April and subject to suspension on July 1. Members who don't pay their PLF assessment are delinquent on or about March 1 and subject to suspension on or about May 1.<sup>3</sup> Members who don't file their IOLTA compliance certificate are delinquent on February 1 and subject to suspension on or about April 1.<sup>4</sup>

In addition to the statutorily required notices, more reminders and notices are sent to members who haven't paid their dues or filed their IOLTA compliance certificates. The PLF does the same with assessment delinquencies (including telephoning the members). Nevertheless, the inconsistent suspension dates (together with three notices from different departments) cause considerable confusion on the part of our members. Aligning them (and eventually devising a method to send a single notice) would go a long way toward assisting members with these requirements. The easiest way would be to reduce the annual fee “grace period” to 30 days and build in a 30 day “grace period” for IOLTA certification.

**Notices**

When a members is delinquent with payments or IOLTA compliance filing, written notice is sent informing the member of the delinquency and the time for cure before suspension will occur. In both cases, the notices are required to be sent by registered or certified mail to the member's last known post office address. In 2012, the cost of mailing delinquent annual fee notices was \$2600. The cost of mailing notices of IOLTA noncompliance was in excess of \$2400. (We do not have information relating to the cost of mailing notices of PLF assessment delinquencies, but suspect they are the same or higher, as the PLF allows the assessment to be paid in quarterly installments.)

Beginning January 1, 2011, all active members have been required to maintain an e-mail address for official bar communications.<sup>5</sup> We sent annual fee notices by e-mail in 2011 and

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<sup>3</sup> The date varies by one or two days, depending on how quickly the notices are prepared.

<sup>4</sup> See note 2; in actual practice since the IOLTA certification requirement is only a few years old, we have sent a “courtesy reminder” in early February, giving members another 30 days before we send the 60-day suspension notice.

<sup>5</sup> Bar Rule of Procedure 1.11(b) provides, in pertinent part: “All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except attorneys who are over the age of 65 and fully retired from the practice of law and attorneys for whom reasonable accommodation is required by applicable law.”

2012 with very favorable results both in the timing of payments and the cost savings over printing and mailing. Additional cost savings can be had by eliminating the requirement for sending the delinquency notices by e-mail.

If the foregoing ideas were implemented, ORS 9.200 and 9.675 would be amended as follows:

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of [90] 30 days, or any person in default in payment of membership fees established under ORS 9.191 (2)<sup>6</sup> for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member....

\* \* \*

**9.675 Mandatory certification and disclosures for lawyer trust accounts.**

\* \* \*

(2) If a member does not file the certificate and disclosures required by this section by the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member. The notice shall be sent by registered or certified mail to the last-known post-office address of the member. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person's membership in the bar is automatically suspended....

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<sup>6</sup> That provision applies to prorate fees for members admitted to practice after the due date for annual fees.



**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE: INTEREST FROM ESCROW ACCOUNTS**

**Submitted by: Oregon Law Foundation**

**Legislative Contact(s): Judith Baker**  
**Phone: (503) 431-6323**  
**E-mail: [jbaker@osbar.org](mailto:jbaker@osbar.org)**

**1. Does this amend current law or program?**

- a. Yes  **Amends ORS 696.578**  
b. No

**2. PROBLEM PRESENTED** (including level of severity):

Escrow trust accounts set up by title companies are very similar in form and function to lawyer trust accounts. However, moneys in the accounts are not treated similarly in terms of requirements for the accounts to be interest bearing with funds dedicated toward an appropriate purpose. Specifically these accounts need not be interest bearing, and if they are the interest may be kept by the escrow agent.

**3. SOLUTION:**

Require that escrow trust accounts be established as interest bearing accounts with interest dedicated to an approved charitable purpose such as the Oregon Law Foundation.

Title companies currently have escrow trust accounts set up to hold funds of parties to a real estate transaction until the transaction is completed. Similar to IOLTA accounts, escrow accounts must be set up as trust accounts kept separate and distinct from funds belonging to the title company. Currently under Oregon statute these escrow trust accounts can be set up as either noninterest bearing accounts or interest bearing with interest, upon agreement of all parties, going to either the escrow agent or a nonprofit selected by the escrow agent that has an affordable housing mission.

There are large sums of money being held in escrow trust accounts that have the potential to earn a substantial amount of interest to fund legal aid during a time when legal aid funding is decreasing and statewide services are eroding. It is difficult to predict with certainty the level of interest revenue that could be generated. This is because we currently don't know how much money is held in escrow accounts in Oregon and what the interest rate would be. In an attempt to estimate a ball park figure it may help to use Ohio as an example. Ohio's escrow accounts, which are only for residential property, generate two-thirds the interest revenue produced by Ohio's IOLTA accounts. When interest rates are more robust OLF annually receives \$3.6 million in IOLTA account interest. Two-thirds of \$3.6 million is almost \$2.4 million.

**4. PUBLIC POLICY IMPLICATION** of this proposed legislative change:

It will increase the interest revenue going to the OLF which in turn will increase the grant allocations to legal aid providers and other legal service organizations that provide access to justice to low income Oregonians.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

**Groups that Support**

This would be supported by legal service organizations that receive funding from the OLF for access to justice purposes. Support may also come from the courts who value increased funding for organizations that promote access to the court system.

**Groups with Concerns**

The three groups that it might concern are the banks, title companies and the Oregon Association of Realtors Home Foundation (Foundation).

- The banks may be concerned because it is believed that escrow accounts are mostly set up as noninterest bearing and therefore the banks benefit from not paying interest on accounts with potentially large balances.
- The title companies also benefit from having funds in noninterest bearing accounts because the banks allow an earnings credit on other accounts title companies hold at the bank. That said all but one title company in Oregon is a national company. In all likelihood the national title companies are already familiar with escrow accounts being IOLTA accounts in other state.
- In 2003 legislation was passed allowing escrow agents and real estate agents to voluntarily open client trust accounts with interest going to a nonprofit that provides first time home buying assistance and for development of affordable housing. In 2004 the **Oregon Association of Realtors Home Foundation** was set up with the mission to provide financial resources to create, expand and encourage home ownership opportunities for Oregonians. The Foundations website encourages both escrow agents and real estate agents to voluntarily set up their client trust accounts with interest going to the Foundation. The Foundation also encourages direct contributions and in the last couple of years has held fundraising events.

Based on the Foundation's tax returns the Foundation is not generating a large amount of revenue from escrow and real estate account interest. The following is the revenue reported from the Foundations tax returns for 2004 through 2010 (includes both interest and contribution revenue but not revenue generated by fundraising events)

- 2004 - \$21,480
- 2005 - \$14,970
- 2006 - \$14,960
- 2007 - \$46,235
- 2008 - \$41,058
- 2009 - \$82, 838
- 2010 - \$32,792

8. **Has this been introduced in a prior session?**

No.

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part II – Legislative Language**

Please provide your legislative language below:

We don't have legislative language at this time.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the recommendation of the Client Security Fund that the following applications for reimbursement be granted:

No. 2011-18 DICKERSON (Morning Star)	\$50,000.00
No. 2011-22 SCHANNAUER (Olive)	\$800.00
No. 2011-29 GRUETTER (Foster)	\$50,000.00
No. 2012-03 GRUETTER (Key)	\$50,000.00
No. 2012-04 GRUETTER (Liebzeit)	\$50,000.00
No. 2012-07 GRUETTER (Runkel)	\$46,833.14
No. 2012-17 GRUETTER (Thornhill)	\$30,705.27
No. 2012-28 GRUETTER (Love)	\$2,206.44
No. 2012-34 GRUETTER (Carey)	\$3,345.00
No. 2012-38 GRUETTER (Shatka)	\$2,237.60
No. 2012-40 GRUETTER (Haron)	\$6,000.00

**TOTAL** **\$292,127.45<sup>1</sup>**

### Background

#### **No. 2011-22 SCHANNAUER (Olive) - \$800.00**

Wendy Olive hired Bend attorney Peter Schannauer in October 2009 to complete the adoption of her domestic partner's child. She deposited a flat fee of \$800 for Schannauer's services and \$200 for estimated filing fees. There was no written fee agreement and nothing to indicate that the fees were earned on receipt.

Olive heard almost nothing from Schannauer thereafter (except for one call in March 2010 instigated by Olive) and in October 2010 she demanded a refund of her \$800. In November, Schannauer responded that he had filed a petition on her behalf, but that it had been rejected and needed additional work. That was the last Olive heard from him. Olive then hired Eugene attorney Brewer to complete the adoption. Brewer learned from the court that

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<sup>1</sup> \$234,127.45 attributable to Bryan Gruetter.

nothing had been filed on Olive's behalf. Schannauer expressed remorse to Brewer about his representation of Olive and promised a refund of the advanced funds but he never delivered it.

The CSF Committee reviewed the claim in October 2011 and recommended an award of the entire \$800 that Olive had paid Schannauer. The BOG considered the claim at its November 2011 meeting, but a question was raised about whether there was sufficient evidence of dishonesty, particularly since no complaint had been made to Disciplinary Counsel's Office. Following that meeting, the CSF referred the matter to DCO.

Schannauer didn't respond to DCO's inquiries and the matter was referred to the Region 1 LPRC in January 2012. Schannauer initially told the LPRC investigator that he had filed Olive's petition; later amended his statement to say he had drafted the petition and submitted it for review to an adoption specialist at DHS. He was advised to gather additional information and amend the petition. Schannauer believed he reported this development to Olive (which she denies) and also thought he had drafted an amended petition but had not filed it because he felt insecure about filing it. He was unable to produce an amended petition for the LPRC investigator.

Schannauer acknowledged that he failed to issue a refund to Olive, saying he was "too busy." The money tendered for fees and costs was all deposited into Schannauer's business account. He told the LPRC investigator he was unaware of special language necessary to make his \$600 fee "earned on receipt." He first said he had deposited the \$200 cost advance into trust, but later acknowledged that it too had been deposited into his business account. Schannauer admitted using all of the funds paid by Olive for his own use and that he was will to make "any necessary financial reimbursement" but "only over time."

The Committee concluded that any work Schannauer did was of no value and that all of the money deposited by Olive was misappropriated to Schannauer's own use. Schannauer continues to practice in Bend. The SPRB has authorized prosecution on this and two other complaints against Schannauer. The CSF Committee is confident Schannauer will be disciplined in connection with his representation of Olive and recommends that she be reimbursed all of the money deposited with Schannauer. Because the loss is for less than \$5000 and Schannauer will be disciplined in connection with it, no judgment is required.

#### **No. 2011-18 DICKERSON (Morning Star) - \$50,000**

In February 2007, the Morning Star Missionary Baptist Church building was destroyed by fire. After collecting nearly \$1 million in insurance proceeds, the church pastor reached out to one of its congregants, Ernie Bighaus, for guidance about rebuilding the church. Bighaus recommended that the Church also hire attorney Daniel Dickerson to advise on contracts relating to the rebuilding. Bighaus represented Dickerson as "well-known" in the field of construction law, when in fact, Mr. Dickerson had no such expertise. However, Dickerson had previously represented Bighaus on several matters.

On June 24, 2008, Bighaus introduced Dickerson to the pastor. Dickerson presented a flat fee agreement under which the church would pay \$20,000 for his services. At the same time, Bighaus presented the pastor with a contract whereby the church would engage 2RE General Contractors, Inc., a Texas company owned by Bighaus, to manage the construction project (“the contract”). The contract called for an up-front payment of \$438,000, discounted to \$330,000 if paid immediately. Dickerson told the church officials that he had read the contract, that it would protect the church and was in its best interest, and urged them to sign in order to receive the discount.<sup>2</sup>

Between June 26 and July 24, Dickerson received his \$20,000 attorney fees as well as \$320,000 toward the construction management contract. (The final \$10,000 was due on completion.) Eight months went by with no meaningful progress on the church rebuilding and little contact from Bighaus. In April 2009, after a local contractor offered to donate construction management services to the congregation, church officials requested that Bighaus refund \$300,000 of the monies paid. He declined.

In October 2009, Bighaus demanded payment of the “hold back” that was due on completion of the project. Church officials contacted Dickerson for advice and help, but he urged them to pay Bighaus and they did.

In December 2009, recognizing that his loyalties were with Bighaus,<sup>3</sup> the church fired Dickerson and hired Miller Nash to represent it. In response to Miller Nash’s request for the file, an accounting and a refund of any unearned portion of the \$20,000 fee, Dickerson stated he would be out of the country beginning in February 2010. The church later learned that Dickerson and Bighaus moved to Kenya where they are involved in building a charitable children’s home called “Naomi’s Village.” The projected building cost, according to the Naomi’s Village website, is \$300,000. Bighaus is listed as the “lead builder” and Dickerson as the “ass’t. builder, botanist.”)

The church sued Dickerson in June 2010 alleging negligence, breach of fiduciary duty, and breach of contract and seeking to recover all of the money delivered to Dickerson for his own or 2RE’s benefit. (The church did not allege theft or other intentional conduct because it would negate PLF coverage.) The PLF appointed counsel to represent Dickerson; the case was complicated by Dickerson’s absence from the jurisdiction and by his filing bankruptcy in early 2011. The church eventually settled with the church for \$100,000; because of the “wasting” provisions of the PLF policy, the church feared it could end up with nothing even if it prevailed at trial.

The CSF Committee concluded that this claim is eligible for reimbursement. The church was Dickerson’s client and Dickerson’s dishonesty (in collusion with Bighaus) led to the church’s loss of more than \$350,000. The Committee recommends an award of \$50,000. The church has

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<sup>2</sup> In fact, the contract, an AIA form, was not completed fully and contained ambiguous and contradictory terms.

<sup>3</sup> Unbeknownst to the church, 2RE was not a licensed contractor in Oregon and was not a valid business until early 2010 when Dickerson incorporated it and served as its registered agent.

no further recourse against Dickerson. He was disbarred in August 2010 for, among other things, failing to account for flat fees and perform agreed work in matter unrelated to his representation of the church. The church's civil claim was reduced to a judgment that was fully satisfied by the PLF payment.

### **Bryan Gruetter Claims**

#### *Common Facts*

Bryan Gruetter was admitted to practice in 1986; after working for two Bend law firms, he had his own successful plaintiff's personal injury practice for more than 8 years. He was well known and widely respected in the Bend legal community. Gruetter had an unblemished disciplinary history until he was admonished in August 2011 for failing to promptly disburse payment to a third party lienholder. He excused his delay as the result of failing to enter the payment date in his "tickle system," being caught up in a complex trial, and health issues that took him away from the office. He assured DCO that he was hiring a new assistant to help bring order to his practice.

Unbeknownst to Disciplinary Counsel's Office, colleagues in Bend had noticed for several months that Gruetter was behaving strangely. He was often seen playing video poker in bars, he missed appointments and increasingly failed to show for court hearings or sought last-minute continuances alleging on health problems or calendar conflicts.

In late November 2011, a complaint was filed alleging that Gruetter had failed over the course of a year to pay a client's hospital lien. Within a few days, additional complaints began to come in, all alleging inability to communicate with Gruetter or to receive payments from his office. By January 20, 2012, the bar had received 16 complaints. Several days later, first by court order then by stipulation with Gruetter, the bar became the custodian of Gruetter's practice. At the time, there was slightly more than \$2500 in Gruetter's trust account. (The custodianship is closed and the balance of Gruetter's trust account was disbursed to the CSF by court order.)

Within days of the first disciplinary complaint, Gruetter's clients began to present applications for reimbursement from the Client Security Fund. As of July 17, 2012, the Fund had received 33 claims alleging losses ranging from \$500 to \$142,000. Reduced to claim limits, awards to all of the claimants will exceed \$750,000.

In late February, Gruetter submitted a Form B resignation (citing 25 pending matters) which was accepted by the Supreme Court and became effective April 19, 2012. Gruetter and his wife are currently under investigation by the US Attorney's office, which plans to prosecute them for wire fraud.

At its June 2012 meeting, the BOG approved awards totaling \$173,815.39 to seven of Gruetter's clients. The CSF Committee recommends that the requirement for judgments be waived in all cases. In some of the smaller cases that were part of his Form B resignation, no judgment is required in any event. For the others, the Committee believes that pursuing a judgment against Gruetter is pointless. He has no assets of which anyone is aware, and he is

likely to be convicted and imprisoned before too long. Additionally, it would be an undue burden on his clients to have incur the additional expense of legal proceedings.

**No. 2011-29 GRUETTER (Foster) - \$50,000**

Elisha Foster retained Gruetter to bring a claim for injuries suffered in a December 2008 auto accident. Her claim was settled in May 2010 for \$452,000. Gruetter deposited the settlement proceeds into his trust account. Gruetter deducted his fees (\$150,000) and costs (\$1962), paid medical expenses of \$37,617.98 and distributed \$202,000 to the client. He promised to pay remaining outstanding medical bills from the balance of \$60,420.02 and, if he could arrange additional reductions, to return any remainder to the client.

Despite his assurances to Foster, Gruetter did not pay the remaining medical claims and she learned of this only when the creditors began to look to her for payment. In one case, the creditor obtained a judgment and began foreclosure and sale of Foster's home to satisfy the obligation. The sale has been deferred pending the outcome of Foster's CSF claim.

The Committee recommends that Foster be awarded \$50,000 of her loss.

**No. 2012-03 GRUETTER (Key) - \$50,000**

Veryl Key hired Gruetter to pursue her injury claim resulting from a 2005 fall. The case settled in December 2010 for \$100,000. After deducting his attorney fees and costs, \$66,434.41 remained for the client. Gruetter disbursed \$10,000 to her in January 2011 and promised the balance after he resolved her medical liens.

Over the next year Gruetter failed to pay or compromise the outstanding medical claims, failed to provide Key with an accounting and failed to disburse any additional funds to Key.

The Committee recommends that Key be awarded \$50,000 of her loss.

**No. 2012-04 GRUETTER (Liebzeit) - \$50,000**

LeAnn Liebzeit hired Gruetter on July 2, 2010 to pursue a claim for injuries sustained in an auto accident. The claim was settled in October 2011 for \$150,000. After deduction of Gruetter's fee and costs (totaling \$50632.95) there remained \$99,367.05. Gruetter made partial disbursement of \$40,000 to Liebzeit but retained the balance (\$59,367.05) to apply to outstanding liens and expenses.

Among Liebzeit's outstanding obligations was a PIP "lien" for \$37,850. Liebzeit's new attorney confirms that Gruetter never sought or obtained a waiver of the lien, or a waiver or reduction of any of her other medical expenses. The PIP carried indicates it might reduce its claim if Liebzeit is still treating and can provide proof of additional expense. She is unable to do



that, however, because her doctors won't provide additional service until her outstanding balances are resolved.

The Committee recommends that Liebrecht be awarded \$50,000 of her loss. There was considerable discussion of whether the award should be reduced by the amount of the PIP lien since that is money she wouldn't have received if Gruetter had paid it. The Committee ultimately concluded, however, that it is not a "windfall" to the client because if the PIP carrier had waived or reduced the lien Liebrecht would have received some or all of it. Also, she will likely now have to use it to settle the lien.

**No. 2012-07 GRUETTER (Runkel) - \$46,833.14**

Gruetter settled Lana Runkel's personal injury claim in August 2011 for \$145,000. He deducted his fees and costs, paid medical expenses and made a partial distribution to the client:

Settlement proceeds	145,000.00
Gruetter's 1/3 fee	(48,333.33)
Costs Advanced by Gruetter	(1,127.16)
Medical Expenses Paid	(46,706.37)
Received by Client	<u>(2,000.00)</u>
Balance due Client	\$46,833.14

Despite many requests by Runkel between September 2011 and January 2012, Gruetter failed to account for or deliver the balance of her funds. Runkel's new attorney, Ed Merrill, has filed suit against Gruetter for \$46,833.14. He anticipates a default judgment will be entered but will be uncollectible.

The Committee recommends that Runkel be awarded \$46,833.14 in exchange for an assignment of any judgment she obtains against Gruetter.

**No. 2012-17 GRUETTER (Thornhill) - \$30,705.27**

Cheryl Thornhill was represented by Joe Walsh of Gruetter's office in connection with a claim for injuries suffered in an auto accident in early 2009. Thornhill settled with the at-fault driver for \$25,000 in December 2009. In February 2011, she settled with her own insurer and received \$22,328.56 in UIM benefits (for a total recovery of \$47,328.56).

Walsh provided a "final accounting" in December 2011 indicating that after deduction of the firm's fees and costs and \$1,770.44 owed to Aetna, there would be \$28,934.83 for Thornhill. Walsh instructed Thornhill to deal directly with Gruetter or his wife to get a check for that amount.<sup>4</sup> Thornhill's calls to Gruetter's office went unanswered. She went to the office in early January 2012 and was told by Gruetter's wife that she (Thornhill) would have to deal with

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<sup>4</sup> Walsh was an independent contract and had no access to or information about Gruetter's trust account.

Walsh. Only upon contacting Walsh again did Thornhill learn that no checks were being issued from Gruetter's account.

There is no record that Gruetter's office ever paid the \$1,770.44 owed to Aetna, so the Committee recommends an award of \$30,705.27 (\$28,934.83 + \$1,770.44).

**No. 2012-28 GRUETTER (Love) - \$2,206.44**

Jenny Love is Gruetter's niece. She hired him to assist her with a personal injury claim. The case was settled in October 2010 for \$35,615.24. After deducting his costs, Gruetter distributed all the proceeds to Love except \$3345 that he was holding back to reimburse costs owed to Hurley Re<sup>5</sup> (estimated at \$500) and a Regence lien of \$2,843.82.

In December 2010, Gruetter reimbursed Hurley Re's costs of \$189.44. In September 2011, Regence agreed to reduce its lien to \$1,895.88 (a reduction of \$947.94). In October and November 2011, Love contacted Gruetter's office several times requesting confirmation that all of her obligations had been satisfied and that she would receive the remaining funds. In December 2011, Gruetter disbursed \$947.94 to Love.

Gruetter never paid the Regence lien of \$1,895.88, nor did he refund the \$310.56 difference between what was held back for Hurley Re and what was actually paid. The Committee recommends Love be awarded \$2,206.44 for her loss.

**No. 2012-34 GRUETTER (Carey) - \$3,345**

Gruetter was engaged in 2007 to handle a personal injury case for Carol Carey, which he eventually settled in 2009 for \$100,000. Over a period of months, Gruetter made partial disbursement to the client and paid her hospital bill, but never provided a full accounting. The CSF investigator was able to construct the following accounting:

Settlement proceeds	100,000.00
Gruetter's 1/3 fee	33,333.00
Advanced Costs	410.00
Disbursed to client	44,000.00
Legacy payment	18,912.00
Hold back for Compro	<u>1,613.00</u>
Balance due to client	1,732.00

Gruetter did not pay Compro and never disbursed the remaining \$1,732 to the client. The Committee recommends that Carey be awarded \$3,345 for her loss.

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<sup>5</sup> Gruetter was with the Hurley Re firm at the time he undertook Love's representation.

**No. 2012-38 GRUETTER (Shatka) - \$2,327.60**

Gruetter was retained to pursue Michael Shatka's claims for injuries arising from a 2006 auto accident. The case was eventually tried to a jury and resulted in a \$60,000 verdict in late 2010. Gruetter paid the clients medical bills and disbursed approximately \$22,000 to the client. In June 2011, the client learned that Gruetter had not paid the fees of the client's surgeon for his trial testimony.

The Committee recommends that Shatka be reimbursed \$2,327.60, the amount that should have been paid to the witness.

**No. 2012-40 GRUETTER (Haron) - \$6,000**

Gruetter was engaged to pursue claims for injuries sustained by Louis Haron during surgery at St. Vincent Hospital. The claim was settled for \$250,000 in 2010. Gruetter deducted his fees and costs, paid the client's medical bills, and disbursed the net proceeds to the client except for \$10,000 that was held back as "a precaution" against additional medical bills.

Louis Haron died in May 2011 of unrelated causes. Before his death he demanded that Gruetter release the remaining \$10,000, which resulted in a disbursement of \$4000 shortly before Louis' death. Mrs. Haron continued to make demand of Gruetter for the balance (the last one on January 4, 2012), but got no response.

The Committee recommends an award of \$6,000 to Alice Haron. There is no pending probate and Mrs. Haron was her husband's sole beneficiary.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 24, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Volunteer Appointments

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### **Action Recommended**

Approve the following Appointments Committee recommendations.

#### **Affirmative Action Committee**

**Recommendation:** Diane Schwartz Sykes, term expires 12/31/2014

#### **House of Delegates**

**Region 3 Recommendation:** Joel Benton, term expires 4/20/2015

**Region 4 Recommendation:** Mark J. Lang, term expires 4/20/2015

**Region 4 Recommendation:** Ellen Strom, public member, term expires 4/20/2015

**Region 5 Recommendation:** Paresh Patel, public member, term expires 4/20/2015

**Region 6 Recommendation:** Debra Cohen Maryanov, term expires 4/20/2015

**Region 7 Recommendation:** Claudia Pieters, public member, term expires 4/20/2015

**Out of State Region Recommendation:** Michael E. Vinding, term expires 4/20/2015

**Oregon State Bar  
Board of Governors Meeting  
August 24, 2012  
Judicial Proceedings Minutes**

Reinstatements and disciplinary proceedings are judicial proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements

1. Jennifer M. Gleason – 935198

**Motion:** Ms. Dilaconi presented information concerning the BR 8.1 reinstatement application of Ms. Gleason to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Gleason’s application will be placed on a future agenda for consideration and action.

2. Paul S. Majkut – 872900

**Motion:** Mr. Sapiro, on behalf of Ms. Matsumonji, presented information concerning the BR 8.1 reinstatement application of Mr. Majkut to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Majkut’s application will be placed on a future agenda for consideration and action.

3. Kimberly M. Pfefer – 053471

**Motion:** Mr. Kehoe presented information concerning the BR 8.1 reinstatement application of Ms. Pfefer to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Pfefer’s application will be placed on a future agenda for consideration and action.

4. Michelle Lynn Shaffer – 981018

**Motion:** Mr. Wade presented information concerning the BR 8.1 reinstatement application of Ms. Shaffer. Mr. Wade moved, and Ms. Dilaconi seconded, to recommend to the Supreme Court that Ms. Shaffer's reinstatement application be approved. The motion passed unanimously.

5. Emily Rae Swensen – 971759

**Motion:** Ms. Fisher presented information concerning the BR 8.1 reinstatement application of Ms. Swensen to satisfy the one meeting notice requirement set

forth in Bar Bylaw 6.103. Ms. Swensen's application will be placed on a future agenda for consideration and action.

6. Joel D. Shapiro – 003814

**Motion:** Mr. Ehlers presented information concerning the BR 8.1 reinstatement application of Mr. Shapiro to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Shapiro's application will be placed on a future agenda for consideration and action.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
August 24, 2012  
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law

1. The BOG received status reports on the non-action items.

B. Pending or Threatened Non-Disciplinary Litigation

1. The BOG received status reports on the non-action items.

C. Other Matters

1. The BOG received status reports on the non-action items.
2. Ms. Hirschbiel presented the request of Jossi Davidson for the board to file an application to appear *amicus curiae* in the case of *Martin v. Coleman*.

**Motion:** Mr. Spier moved, Mr. Prestwich seconded, and the board voted unanimously to deny the request to file the application.

**Oregon State Bar  
Special Meeting of the Board of Governors  
September 28, 2012  
Minutes**

The meeting was called to order by President Mitzi Naucler at 10:02 a.m. on September 28, 2012, and adjourned at 11:05 a.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Michelle Garcia, Michael Haglund, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Audrey Matsumonji, Patrick Ehlers, Travis Prestwich, Richard Spier and David Wade. Staff present were Helen Hirschbiel, Rod Wegener, and Camille Greene.

**1. Budget & Finance Committee**

Mr. Haglund presented the committee's 2013 budget recommendations to the board on the active and inactive member fee and the Client Security Fund assessment.

**Motion:** The board voted unanimously to approve the committee motion to increase the Inactive Member Fee by \$15.

**Motion:** The board voted unanimously to approve the committee motion to increase the Client Security Fund Assessment by \$30 until a sufficient reserve is rebuilt by additional annual assessments, and to support the request to not charge the CSF assessment to Active Pro Bono members.

**Motion:** The board voted unanimously that the 2013 budget be balanced with no active member fee increase, and to approve the committee motion to adopt the 2013 budget as presented.

**2. Approval of 2012 House of Delegates Agenda**

Ms. Naucler asked the board to determine whether it wishes to take a position on the various delegate resolutions on the 2012 draft HOD agenda.

**HOD Agenda Item #12:**

**Motion:** Ms. Dilaconi moved, Mr. Kranovich seconded, and the board voted unanimously to oppose HOD agenda item #12 re: Online Computer Knowledge Base based on financial and scope issues.

**HOD Agenda Item #13:**

**Motion:** Mr. Wade moved, Mr. Emerick seconded, and the board voted unanimously to oppose HOD agenda item #13 re: Metropolitan Court District because it is outside of the scope of our authority.



**HOD Agenda Item #14:**

**Motion:** Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to oppose HOD agenda item #14 re: Lawyer Referral Service Policy and Procedure.

**HOD Agenda Item #15:**

**Motion:** Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to take no position on HOD agenda item #15 re: Amendment of Oregon Rule of Professional Conduct 1.1.

**HOD Agenda Item #17:**

**Motion:** Ms. Dilaconi moved, Mr. Kehoe seconded, and the board voted unanimously to support HOD agenda item #17 re: Support for Adequate Funding for Legal Services to Low-Income Oregonians.

**HOD Agenda Item #18:**

**Motion:** Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to take no position on HOD agenda item #18 re: Fairness in PIP Arbitration Proceedings.

**HOD Agenda Item #19:**

**Motion:** Mr. Wade moved, Mr. Prestwich seconded, and the board voted unanimously to take no position on HOD agenda item #19 re: Amend Oregon Rule of Civil Procedure 54E.

**HOD Agenda Item #20:**

**Motion:** Mr. Kehoe moved, Mr. Knight seconded, and the board voted unanimously to oppose HOD agenda item #20 re: Legal Rate of Interest Upon Non-Contract Obligations.

**HOD Agenda Item #21:**

**Motion:** Mr. Wade moved, Ms. Dilaconi seconded, and the board voted unanimously to oppose HOD agenda item #21 re: Establish Centralized legal Notice System as being premature.

**HOD Agenda Item #22:**

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted unanimously to oppose HOD agenda item #22 re: Amendment of Oregon Rule of Professional Conduct 3.4.

**HOD Agenda Item #23:**

**Motion:** Ms. Kohlhoff moved, Mr. Wade seconded, and the board voted unanimously to oppose HOD agenda item #23 re: Amendment of Oregon Rule of Professional Conduct 7.3.

Ms. Naucler presented the draft 2012 HOD Agenda for approval.

**Motion:** Ms. Dilaconi moved, Mr. Wade seconded, and the board voted unanimously to approve the 2012 HOD Preliminary Agenda.

**3. Closed Session – see attached CLOSED minutes**

Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel Report

**4. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

None.

**Oregon State Bar  
Special Meeting of the Board of Governors  
September 28, 2012  
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

**Washington State Department of Revenue Decision**

Ms. Hirschbiel recommended the board decide whether to appeal the Washington Department of Revenue decision regarding the Oregon State Bar's tax liability to Washington. The board could accept decision or further negotiate waiver of past sales tax liability by filing a petition for reconsideration.

**Motion:** Ms. Dilaconi moved, Mr. Larson seconded, to take no further action and await the DOR's assessment of our tax liability. After discussion, the motion was withdrawn.

**Motion:** Mr. Wade moved, Mr. Hunter seconded, and the board voted unanimously to file a petition for reconsideration with the DOR and attempt to negotiate a settlement that reduces our past tax liability.

**Oregon State Bar  
Special Meeting of the Board of Governors  
October 12, 2012  
Minutes**

The meeting was called to order by President Mitzi Naucler at 12:00 p.m. on October 12, 2012, and adjourned at 12:25 p.m. Members present from the Board of Governors were Jenifer Billman, Ann Fisher, Michelle Garcia, Matthew Kehoe, Theresa Kohlhoff, Tom Kranovich, Patrick Ehlers, Maureen O'Connor, Travis Prestwich, Richard Spier and David Wade. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Dani Edwards and Camille Greene.

**1. Public Member Selection Special Committee**

Ms. Billman presented the committee's recommendation to appoint Charles Wilhoite as Public Member to the Board of Governors for a four-year term beginning January 1, 2013.

**Motion:** The board voted unanimously to approve the committee motion to appoint Mr. Wilhoite.

**2. Review BOG Presentations of HOD Delegate Resolutions.**

Ms. Naucler presented the list of HOD Delegate resolutions and the board member(s) who will present the board's position on each resolution. Discussion regarding the recently submitted amendment to HOD Delegate Resolution No.1 resulted in a motion for a change in the board's position.

**HOD Agenda Item #12, Delegate Resolution No. 1:**

**Motion:** Mr. Ehlers moved, Mr. Spiers seconded, and the board voted in favor (10-1-1) of changing their position on HOD agenda item #12 re: Online Computer Knowledge Base from one of opposition to one of support. Ms. Naucler voted no, and Ms. O'Connor abstained.

**3. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

None.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** October 12, 2012  
**Memo Date:** October 12, 2012  
**From:** Jenifer Billman, Public Member Selection Committee Member  
**Re:** Board of Governors Public Member Recommendation

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### **Action Recommended**

Appoint Charles Wilhoite as Public Member to the Board of Governors for a four-year term beginning January 1, 2013.

### **Background**

The Public Member Selection Committee conducted interviews on September 28 and October 12. Based on those interviews and the information provided by the candidates, the committee recommends the appointment of Charles A. Wilhoite.

There were four candidates interviewed for the BOG public member position. Those candidates not selected for the BOG position would be an asset to the bar in another appointed capacity. Those candidates include:

Bernadette Anne Harrington  
Morad Noury  
Mary Beth Yosses

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last) <b>Charles Allen Wilhoite</b>	
Residence Address: (number, street, city, state, zip) <b>9655 NW Marvin Lane Portland, OR 97229</b>	Residence Phone: <b>(503) 203-8463</b>
County: <b>Washington</b>	Office Phone: <b>(503) 243-7500</b>
Office Address: (number, street, city, state, zip) <b>111 SW Fifth Ave., Ste. 2150 Portland, OR 97204</b>	E-Mail Address: <b>cawilhoite@ willamette.com</b>
County: <b>Multnomah</b>	
Office Mailing Address: (if different):	Occupation: (and job title, if any) <b>Financial Analyst Managing Director</b>
County:	

### College and Post-Graduate Education:

School	Location	Dates	Degrees
Arizona State Univ.	Tempe, AZ	1982-1987	B/S - Accounting B/S - Finance
Certified Public Accountant (CPA) Accredited in Business Valuation (ABV) Certified in Financial Forensics (CFF) Certified Management Accountant (CMA) Certified in Financial Management (CFM) Accredited Senior Appraiser (ASA)			
Chartered Global Management Acct. (CGMA)			

### Employment: List major paid employment chronologically beginning with most recent experiences.

Dates (from/to)	Employer and Position Held	City/State
1990 - Current	Willamette Management Managing Director	Portland, OR Chicago, IL
1987 - 1990	KPMG Senior Auditor	Phoenix, AZ

### Community/Volunteer Services: List significant volunteer activities chronologically beginning with most recent services.

Dates (from/to)	Organization and Position Held	City/State
1999 - Current	<sup>2</sup> Urban League of Portland BOD	Portland, OR
2004 - Current	<sup>1</sup> OHSU BOD	Portland, OR
2010 - Current	The Nature Conservancy BOD	Portland, OR
2004 - Current	<sup>2</sup> SMART BOD	Portland, OR
2004 - Current	<sup>2</sup> The Portland Dev. Commission BOD	Portland, OR
2004 - 2011	<sup>2</sup> Portland Business Alliance BOD	Portland, OR
2004 - 2010	PSJ Foundation BOD	Portland, OR

<sup>1</sup> Current board chair  
<sup>2</sup> Previous board chair

**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

My professional career requires interactions with legal professionals throughout Oregon and the entire country. My community service activity, similarly, requires regular and recurring consideration of regulatory guidelines, necessitating significant consultation with legal experts. A more thorough understanding of the structure and oversight of Oregon's legal environment, and the opportunity to apply both my professional and personal experiences in an oversight role, cause me to believe that service to the OSB would be of benefit to both the OSB and me.

**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime or violation? Do not include minor traffic offenses or juvenile convictions if expunged.  Yes  No

Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?  Yes  No

If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

**Opportunities:** If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

- Board of Governors  Disciplinary Board  Fee Arbitration  House of Delegates
- Professional Liability Fund  State Professional Responsibility Board

**Committees:**

- Affirmative Action  Client Security Fund  Judicial Administration  Legal Services
- Minimum Continuing Legal Education  Professionalism Commission  Public Service Advisory
- Quality of Life  State Lawyers Assistance  Unlawful Practice of Law

**References:** List names and contact information of three people who may be contacted as references.

Name	Prm./CEO	Address
Sandra K. McDonough	Portland Business Alliance	200 SW Market St, Ste 1410 Portland, OR 97201
Phone		Email Address
(503) 552-6762		smcdonough@portlandalliance.com
Name	Dr. Joseph E. Robertson	Address
President, OHSU		mc 4565 2181 SW Sam Jackson Park Rd. Portland, OR 97239-3078
Phone		Email Address
(503) 494-8252		robertj@ohsu.edu
Name	Kerry Barnett	Address
EVP + Chief Legal Officer, Cambia		200 SW Market St, Ste 1500 Portland, OR 97201
Phone		Email Address
(503) 276-1814		kbarnett@cambia.com

Applicant's Signature Charles A. White Date July 27, 2012

Where did you learn about the public member opportunities available at the Oregon State Bar?

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** November 7, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (1 of 2)

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### Action Recommended

Approve the following recommendations from the Appointments Committee.

#### **Affirmative Action Committee**

Chair: Reeves, Liani  
Secretary: Haroldson, John M  
Members with terms expiring 12/31/2013:  
Meng, Linda  
Members with terms expiring 12/31/2015:  
Butler, Deborah  
Haroldson, John M  
O'Neil, Yumi  
Umscheid, Lisa  
Wu, Michael

#### **Bar Press Broadcasters Council**

Chair: Underhill, Rod  
Members with terms expiring 12/31/2015:  
Hermann, Robert  
Ludwig, Lisa  
Mackeson, Wayne  
Meek, Daniel  
Thompson, Hon. Kristen

#### **Client Security Fund Committee**

Chair: Bennett, Steve  
Secretary: Brown, Elaine  
Members with terms expiring 12/31/2015:  
Miller, Lisa A  
Reinecke, Mark  
Statler, Teresa  
Calderon, Carlos (public member)

#### **Federal Practice and Procedure Committee**

Chair: Haile, Benjamin  
Secretary: Gartner, Nadine  
Members with terms expiring 12/31/2013:  
Haile, Benjamin  
Members with terms expiring 12/31/2015:  
Farrell, Timothy  
Kelly, Adam  
McConnell, Kevin  
Meserow, Nancy  
Scannell, Terry  
Zusman, Kelly

#### **Judicial Administration Committee**

Co-Chairs: Nordyke, Vanessa  
Secretary: Boutin, Roderick  
Members with terms expiring 12/31/2015:  
Duong, Phil  
Dielschneider, Janmarie  
Hunsaker, Danielle  
Paris, Wendy  
O'Brien, Danielle

#### **Legal Ethics Committee**

Chair: Hansen, Kurt  
Secretary: Riordan Armstrong, Shannon  
Members with terms expiring 12/31/2015:  
Asai, Kristin  
Burt, Robert  
Downey, Sean  
Gordon, David  
Hallvik, Taylor  
Muhlheim, Wilson

#### **Legal Heritage Committee**

Chair: Anderson, Mary Anne  
Secretary: von Ter Stegge, Katherine  
Members with terms expiring 12/31/2015:  
Farr, Mary Ellen  
Hull, Rachel  
Quinn, Rebecca  
Vogt, Randall

#### **MCLE Committee**

Chair: Batlan, Cecelia  
Secretary: O'Day, Sean  
Members with terms expiring 12/31/2015:  
Batlan, Cecelia  
Banwarth, Allison  
King, Christy  
Larkin, Linda



**New Lawyer Mentoring Committee**

Chair: Schpak, Andrew  
Members with terms expiring 12/31/2013:  
Hill, Gary  
Members with terms expiring 12/31/2014:  
DePaolis, Diane  
Freitas, Norma  
Howry, John  
Lam, Vincci  
Schradle, Philip

**Pro Bono Committee**

Chair: Shumaker, Brantley  
Secretary: Sawyer, Justin  
Members with terms expiring 12/31/2014:  
Robbins, Meagan  
Members with terms expiring 12/31/2015:  
Hanks, Virginia  
Richards, Gabrielle  
Sawyer, Justin  
Schmonsees, Brian  
Strauhull, Jonathan

**Procedure and Practice Committee**

Chair: Posner, Jason  
Secretary: Pistacchio, Jason  
Members with terms expiring 12/31/2014:  
Tahir, Melissa L  
Members with terms expiring 12/31/2015:  
Bachofner, John  
Gerber, Susan  
Jackson, Neil  
Kafoury, Jason  
Lewton, Michael

**Public Service & Information Committee**

Chair: Jones, William M.  
Secretary: Fitzgerald, Erin  
Members with terms expiring 12/31/2015:  
Brown, Heidi  
Costa, Jennifer  
Lang, Mark  
Soper, Josh  
Horan, James (public member)

**Quality of Life Committee**

Chair: Milton Decker, Heather  
Secretary: Marcotrigiano, Eva  
Members with terms expiring 12/31/2015:  
Gilbert, Joan  
Vilella, Anne

**State Lawyers Assistance Committee**

Chair: Gumusoglu, Shea  
Secretary: Lusk, Robert “Kim”  
Members with terms expiring 12/31/2014:  
Grover, Diane  
Members with terms expiring 12/31/2016:  
Laidler, Deanna  
Lusk, Robert “Kim”  
Parsons, John  
Versteeg, Ed (public member)  
Harrington, Bernadette (public member)

**Uniform Civil Jury Instructions Committee**

Chair: Houston, Holli  
Secretary: Malmsheimer, Matthew  
Members with terms expiring 12/31/2015:  
Colbach, Michael  
Devlin, John  
Mooney, Josephine H  
Rounds, Christopher  
Young, John

**Uniform Criminal Jury Instructions Committee**

Chair: Davis, Kara  
Secretary: Leggett, Terry  
Members with terms expiring 12/31/2015:  
Contreras, Jamie  
Johnson, Rankin  
Latto, Harrison  
Nelson, Justin  
Price, Steven L

**Unlawful Practice of Law Committee**

Chair: Colton, Britney  
Chair-Elect: Rufolo, Laura  
Secretary: von Ter Stegge, Katharine  
Members with terms expiring 12/31/2015:  
Overgaard, Mary  
Members with terms expiring 12/31/2016:  
Brown, Jermaine  
Hilton, Frank  
Lanker, Alan S

**Bar Counsel Panel**

All terms expire 12/31/2015

**Region 1**

Phil Hung Duong  
Richard E. Forcum  
Susan R. Gerber  
Michael W. Peterkin

**Region 2**

Wendy J. Baker  
Stephen R. Blixseth  
Louis L. Kurtz  
Michael H. Long  
David B. Mills  
Wilson C. Muhlheim  
Liane I. Richardson  
Stephen J. R. Shepard  
Tina Stupasky

**Region 3**

Robert L. Cowling  
Richard A. Cremer  
John C. Howry  
Bernard S. Moore  
Steven L. Wilgers

**Region 4**

James A. Underwood

**Region 5**

John F. Adlard  
Mark P. Bronstein  
Paul R. Duden  
James M. Finn  
Mark Morrell  
Eric J. Neiman  
Jennifer A. Nelson  
Michael P. Opton  
Christopher R. Piekarski  
Bruce R. Rubin  
Steven W. Seymour  
David P. R. Symes  
Steven T. Wax  
Candace H. Weatherby

**Region 6**

Mary Crawford  
Elaine D. Smith-Koop  
Calvin N. Souther, Jr.

**Region 7**

Herbert C. Sundby

**Local Professional Responsibility Committee**

All terms expire 12/31/2013

**Region 1**

Beth M. Bagley (Chair)  
David M. Gordon  
Douglas R. Olsen  
Mark G. Reinecke  
Paige L. Sully  
Bradley Timmons  
Valerie Wright

**Region 2**

Diane DePoalis  
Martin M. Fisher  
Francisco, Vaden B. (Chair)  
Danielle O'Brien

**Region 3**

Bruce R. Coalwell (Chair)  
Joel C. Benton  
Janay Haas

Lore Rutz-Burri

**Region 4**

Cynthia Phillips  
Rebecca A. Quinn  
Barbara Smythe (Chair)  
James A. Underwood  
Elijah Van Camp

**Region 5**

Richard Bailey  
Heather Bowman (Chair)  
Mary Page Farr  
Taylor R. Hallvik  
Jerilyn A. Krier  
Deanna P Laidler  
Morgan W. Long  
Marisa Moneyhun  
Brenda Terreault

Maite Uranga

**Region 6**

David Amesbury  
John H. Beckfield (Chair)  
J. Channing Bennett  
David L. Carlson  
Alan S. Lanker  
Carol A. Parks  
Patti Powell

**Region 7**

Michael J. Buroker (Chair)  
Kara L. Govro  
Gary D. Hill  
Eva M. Marcotrigiano  
Jessica A. Morgan

**State Professional Responsibility Committee**

Chair: Greg Hendrix, term expires 12/31/2013

Region 2: E. Bradley Litchfield, term expires 12/31/2016

Region 4: Blair Henningsgaard, term expires 12/31/2016

Region 5: Danna Fogarty, term expires 12/31/2014

# MINUTES

## BOG Access to Justice Committee

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**Meeting Date:** August 24, 2012  
**Location:** Oregon State Bar Center  
**Chair:** Maureen O'Connor  
**Vice-Chair:** Ann Fisher  
**Members Present:** Tom Kranovich, Ann Fisher, Jenifer Billman, Audrey Matsumonji, Patrick Ehlers, Mitzi Naucler  
**Members Absent:** Maureen O'Connor  
**Staff Members:** Judith Baker, Cathy Petrecca, Kay Pulju, Susan Grabe

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### ACTION ITEMS

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1. **Topic:** Approved July 27, 2012 meeting minutes.
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### INFORMATION ITEMS

#### 2. **Topic: Continued Discussion Regarding Pro Se Litigants**

The committee engaged in further discussion regarding how to move forward providing resources for pro se litigants. Which included the use of uniform interactive forms and implementation of the recommendations from the Task Force on Family Law Forms and Services. The Task Force recommendation was twofold. The Oregon Judicial Department should take the lead in developing and maintaining model family law forms for use in Oregon. The Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. If funding or other issues prevent OJD from committing to this role by January 2012, the bar should assume the leadership role but collaborate with the OJD on technology and practice requirements.

The committee agreed that the next step was to have Mitzy meet with Chief Justice Balmer to ask if he could issue a court order making family law forms uniform across Oregon. In addition Mitzy will discuss the possibility of having the bar assume the responsibility for the development of the interactive electronic format.

#### 3. **Topic: Legal Aid Presentation**

Legal aid presented regarding the impact of decreased funding on statewide services and how the BOG can help. They reported that in the past 2 years, Oregon's legal aid programs have experienced a 25% decrease in funding, and a resulting 20% reduction in staffing. This comes at a time when Oregonians are dealing with the recession. The following were suggestions made to the committee concerning how the BOG can help:

- Encourage competition for the justice cups and equity cup.

- Support the HOD resolution supporting legal aid funding
- Encourage bar section to contribute. \$22,000 was contributed last year. The goal for this year is \$30,000.
- Encourage lawyers to give 2 billable hours to CEJ.

# MINUTES

## BOG Access to Justice Committee

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**Meeting Date:** October 12, 2012  
**Location:** Tigard  
**Chair:** Maureen O'Connor  
**Vice-Chair:** Ann Fisher  
**Members Present:** David Wade, Jenifer Billman, Patrick Ehlers, Tom Kranovich  
**Members Absent:** Audrey Matsumonji  
**Guests:** Mitzi Naucler  
**Staff Members:** Susan Grabe, Catherine Petrecca

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### ACTION ITEMS

1. **Topic: Approved August 24, 2012 Minutes**

### INFORMATION ITEMS

2. **Topic: Campaign for Equal Justice Trophies**

The Committee discussed somehow providing a showcase for the Campaign's Equity and Justice Cups.

3. **Topic: Continued Discussion Regarding Pro Se Litigants**

The committee engaged in further discussion regarding how to best assist pro se litigants. Bar President Mitzi Naucler informed the Committee about her meeting with Chief Justice Balmer. He is aware of the issues related to statewide forms. The court just paid to have the Family Law forms updated. He intends to issue an Order that all courts must accept the unified forms, once e-court is established. The Committee discussed other ways to help pro se litigants, such as attorneys assisting with intake at LASO or LRS, or attorneys volunteering through social services agencies. Other possibilities are encouraging more attorneys to sign up for the Modest Means Program, encouraging judges to be kinder to pro se litigants, encouraging the community model of legal services, such as the "Coordinated Community Care" model that is a pilot program in The Bronx. The Committee asked for further information about the Coordinated Community Care Model.

4. **Topic: Centralized Legal Notice System**

Pat Ehlers gave the Committee an update on discussions held between members of the BOG, the Oregon Law Foundation Board and the Oregon Newspaper Publishers Association. There remains a possibility that all three organizations could work together to change legislation regarding a centralized legal notice system.



# **Minutes**

## **Budget & Finance Committee**

August 24, 2012  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** Mike Haglund, chair; Steve Larson, vice-chair; Hunter Emerick; Theresa Kohlhoff; David Wade. **Other BOG Members:** Mitzi Naucler; Tom Kranovich. **Staff:** Sylvia Stevens; Susan Grabe; Helen Hirschbiel; Mariann Hyland; Rod Wegener.

### **1. Minutes – July 27, 2012 Committee Meeting**

The minutes of the July 27, 2012 meeting were approved with the change that Hunter Emerick was not in attendance at the meeting.

### **2. 2013 Executive Summary Budget Report**

Upon review of the 2013 budget issues worksheet, the Committee discussed various changes to the Client Security Fund reserve and assessment. Considered were a per lawyer cap, lower than \$50,000 per claim cap, bonding for member in lieu of an assessment, delaying payments, and efforts to even out the claims over the years. Ms. Stevens reported that the claims in 2012 are very unusual and the bar never has had claims as high and frequent as the current claims.

The Committee resolved to increase the CSF assessment in 2013 from \$15.00 to \$45.00 per active member.

The Committee further resolved to raise the inactive member fee by \$15.00 to \$125.00 for 2013 and remove the \$10,000 placeholder amounts for the Senior Lawyer and Remote Communications task forces from the budget.

Based on the length of discussion of the approved and other 2013 budget issues, the Committee agreed to meet in person for 90 minutes on September 28 prior to the special BOG conference call to continue the review of the budget and formalize the recommendations to the BOG on the increased CSF assessment, the increase to the inactive member fee, and the active member fee for 2013.

### **3. Consideration of Alternative retirement Plan**

The Committee agreed for the bar's CFO to continue investigation of an alternative retirement plan for bar employees. Hunter Emerick will explore with his associates about providing legal resource and expertise on retirement plans to the bar.

### **4. Update on Leases and Vacant Space at the Bar Center**

Mr. Wegener reported there are two lease proposals in negotiation for two different vacant spaces on the first floor of the bar center. Both will require tenant improvements. The bar has agreed to finance the TI's of the proposal furthest in negotiation and expects to finance the TI's on the other proposal if a lease is agreed upon.



The Committee authorized the bar's CFO to expend a reasonable amount for tenant improvements for the vacant spaces upon consultation with the bar's broker. The TI's will be funded by the Landlord Contingency Fund.

**5. Financial Report – July 31, 2012**

Due to lack of time, there was no oral report or discussion.

**6. Review of Investment Policy and Portfolio Report**

Due to lack of time, there was no oral report or discussion.

**7. Next Committee meeting**

The next meeting is a special committee meeting scheduled for September 28, 2012 prior to the BOG conference call. The next regularly scheduled meeting is October 12, 2012. Both meetings are at the bar center in Tigard.

**Minutes**  
**Budget & Finance Committee**  
September 28, 2012  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** Mike Haglund, chair; Steve Larson, vice-chair; Hunter Emerick; Michelle Garcia; Ethan Knight; Theresa Kohlhoff; David Wade. **Other BOG Members:** Mitzi Naucler; Jenifer Billman. **Staff:** Helen Hirschbiel; Mariann Hyland; Catherine Petrecca; Rod Wegener.

**1. Minutes – August 24, 2012 Committee Meeting**

The minutes of the August 24, 2012 meeting were approved.

**2. Consideration of Alternative Retirement Plan**

Mr. Randall Cook of the Saalfeld Griggs firm was asked by Mr. Wegener to address the Committee on PERS and alternative retirement plans for bar employees. Mr. Cook explained the pros and cons of the exiting PERS program and the changes that have occurred over the years. He outlined the challenges of offering an alternative plan for new bar employees and questioned whether an alternative plan could be established that would be a cost benefit to the bar and seen by the employee as having benefits equivalent to the PERS plan available to new participants.

The Committee thanked Mr. Cook for his thorough and concise description of the PERS program and what an alternative plan would need for future employees to want to enroll.

**3. Special Meeting Report on the 2013 Budget**

Mr. Wegener reported that at this stage the 2013 budget contained a \$194,000 deficit with some assumptions incorporated into the next draft of the budget. The Committee worked through the worksheet of 2012 budget issues and discussed the following:

- Reaffirmed raising the inactive member fee by \$15.00.
- Reaffirmed no change in the active member fee.
- Chair Haglund will meet with the PLF to ask that the PLF raise its grant in 2013 from \$100,000 to \$200,000.
- The bar's general counsel has stated that \$100,000 can be transferred from the Contract Legal Fees Contingency to revenue for general operations.
- Funding for the Senior Lawyer Task Force (with a placeholder of \$10,000) is to remain in the 2013 budget, but similar funding for the Remote Communications Task Force is eliminated.
- Shrink the board travel budget but continue with appearances in regions throughout the bar.
- Ms. Petrecca asked the Committee to consider changing the bylaw which requires the Active Pro Bono member from paying both the inactive member fee and the Client Security Fund assessment, especially since both were increasing in 2013.

- Whether staff salaries should be raised in the challenging economic times for many members.
- The Client Security Fund assessment is to be raised by \$30.00 for 2013, but the CSF Committee should discuss changes in the current policy on per lawyer claim limits, per claim caps, and various other practices to limit the exposure for the fund.

In closing, Mr. Wegener stated it is his intent to present a balanced budget to the Committee at its October 12 meeting.

**Action:** The Committee recommended the following items for the Board of Governors: the inactive member fee be raised by \$15.00 to \$125.00 in 2013 (if approved, this recommendation would go before a vote by the House of Delegates); the Client Security Fund assessment be raised by \$30.00 to \$45.00 for 2013.

#### **4. Financial Report – August 31, 2012**

Mr. Wegener provided a brief summary of the August statements and pointed out the significant drop in revenue from Admissions.

#### **5. Next Committee meeting**

The next committee meeting is scheduled for October 12 at the bar center in Tigard.

**Minutes**  
**Budget & Finance Committee**

October 12, 2012  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** Mike Haglund, chair; Steve Larson, vice-chair; Theresa Kohlhoff; David Wade. **Other BOG Members:** Mitzi Naucler. **Staff:** Sylvia Stevens; Susan Grabe; Helen Hierschbiel; Rod Wegener.

**1. Minutes – September 28, 2012 Committee Meeting**

The minutes of the September 28, 2012 meeting were not available.

**2. 2013 OSB Budget**

Mr. Wegener presented the next phase of the 2013 in a PowerPoint presentation with the opening statement that the 2013 budget is still "a work in progress." The budget to date reflects a net expense of \$47,000 with both revenue and expenses lower than the 2012 budget. Mr. Wegener explained that an unexpected variance in the initial projected forecasts was the lower membership fee revenue caused by the slowing growth in active membership. A critical chart showed that members going inactive, retiring, resigning, or becoming 50-year members are outpacing the number of new lawyers joining the bar via the bar exam or the reciprocity process.

Chair Haglund reported that the PLF has agreed to raise its grant in 2013 from \$100,000 to \$200,000, but did not commit beyond 2013.

Mr. Wegener stated he still had to review some department budgets with the managers and will present a final budget to the committee at its next meeting.

**3. Financial Report – September 30, 2012**

Mr. Wegener stated the September statements became available the day before the meeting and the report would be out the following week.

**4. Third Quarter Investment Portfolio Reports and Review of Investments Policy**

The Committee had received the third quarter reports the day before the meeting and no action was taken. Mr. Wegener reported on the conversation Ms. Garcia and he had regarding the list of approved investments becoming too specific with the recent addition of four asset classes to the policy. He stated he will include the matter on the January agenda for review by the new committee.

**5. Alternative Retirement Plan**

Due to lack of time there was no discussion on the topic.

**6. Next Committee meeting**

The next meeting is scheduled for November 9 or 10 prior to the BOG meeting in Cannon Beach.

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# MINUTES

## BOG Member Services Committee

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**Meeting Date:** October 12, 2012  
**Location:** Oregon State Bar, Tigard  
**Chair:** Matt Kehoe  
**Vice-Chair:** Tom Kranovich  
**Members Present:** Matt Kehoe, Tom Kranovich, Ann Fisher, Travis Prestwich, Richard Spier  
**Guests Present:** Jenifer Billman, Christopher Kent  
**Staff Members:** Christine Kennedy, Danielle Edwards

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### ACTION ITEMS

- 1. Topic: Minutes.** August meeting were approved as offered.
- 2. Topic: BOG and HOD Election Dates.** The committee reviewed and approved the proposed dates for the 2013 BOG and HOD elections. The Committee's recommendation to approve the dates will be presented to the full BOG in November.

### INFORMATION ITEMS

- 3. Topic: Lawyers for Veterans.** Christopher Kent, Chair of the Lawyers for Veterans Special Committee, provided a summary of the committee's work this year. Of note, a summer CLE program, drafted legislation, and recognition of the ongoing attention needed to this area of law. Mr. Kent offered the special committee's recommendation to establish a Military & Veterans Law section and outlined the actions required to further this proposal.
- 4. Topic: OSB Section Enrollment.** Overall section membership has declined in 2012. The committee had a general discussion and touched on the following ideas: section per member assessment fee seems high, liaison support may not be necessary at executive committee meetings, section enrollment should be conducted at a time other than with membership fees, and CLE Seminars should charge sections on a sliding scale based on the section's account balance. Committee members also expressed the following concerns: the bar should provide more support to sections, sections are confused about their organizational role and authority, and sections should be allowed more involvement in legislative proposals they offer by allowing section representatives to present bills on their own without connection to the bar.

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# MINUTES

## BOG Policy and Governance Committee

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**Meeting Date:** August 24, 2012  
**Location:** OSB Center  
**Members Present:** Ann Fisher (Chair), Barbara Dilaconi, Jenifer Billman, Matt Kehoe, Travis Prestwich, Richard Spier and David Wade (Vice-Chair)  
**Guests and Staff:** Mitzi Naucler, Sylvia Stevens, Jeff Sapiro, and Helen Hierschbiel

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### ACTION ITEMS

- |   |
|---|
| <p><b>1. Approve Minutes of July 27, 2012 meeting.</b> The minutes of the July 27, 2012 meeting were approved by consensus.</p>   |
| <p><b>2. Discipline System Review.</b> At Ms. Fisher's request, Mr. Sapiro provided an overview of the disciplinary process and how some aspects of it have changed over time. After Mr. Sapiro's explanation and further discussion, there was a consensus among the committee members that many members have only a vague understanding of how the process works. It was suggested that additional information and education be provided on the subject, by way of <i>Bulletin</i> articles and live presentations. Ms. Fisher asked Mr. Sapiro to draft an article for the <i>Bulletin</i> describing the disciplinary process. She also asked him to prepare a list for the committee of the aspects of the process that he believes could be improved.</p> |
| <p><b>3. Judicial Selection, Evaluation and Education.</b> Ms. Fisher questioned whether these issues should be presented to the BOG as planned, concerned that the staff memo might not be sufficiently developed. In particular, she asked for additional information about judicial evaluation and education in other states. After discussion, the consensus of the committee was that the recommendation about judicial selection (reverting to a process where the BOG ranks the candidates) should be presented to the board as planned.</p>   |

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# MINUTES

## BOG Policy and Governance Committee

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**Meeting Date:** October 12, 2012  
**Location:** OSB Center, Tigard, Oregon  
**Members Present:** Ann Fisher (Chair), David Wade (Vice-Chair), Jenifer Billman, Matt Kehoe, Travis Prestwich, Richard Spier  
**Guests and Staff:** Mitzi Naucner, Sylvia Stevens, Helen Hierschbiel, Catherine Petrecca

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### ACTION ITEMS

- |   |
|---|
| <p><b>1. Minutes of August 24, 2012.</b> On motion of Ms. Billman, seconded by Mr. Prestwich, the minutes of the August 24, 2012 meeting were approved unanimously.</p>   |
| <p><b>2. Client Security Fund Rule Changes.</b> The committee discussed the proposed changes to the rules. A question was raised about retaining the claim cap, which might be changed if the BOG makes changes to the program structure. On Motion of Mr. Wade, seconded by Mr. Spier, the committee voted unanimously to forward the proposed rule changes to the BOG for approval in November.</p>   |
| <p><b>3. Amending Judicial Selection Bylaws.</b> The committee reviewed the proposed bylaw amendments, including whether it was best to return to the pre-w005 process or do something different. There was a suggestion to revise the language in paragraph (f) to make it clear that reference reports could be discussed by the BOG in executive session. Staff will make that change and the bylaw will be reviewed again by the committee in November.</p>   |
| <p><b>4. Proposed Change to Bylaw 6.101(c).</b> On motion of Mr. Wade, seconded by Ms. Billman, the committee voted unanimously to recommend to the BOG in November that Pro Bono members be relieved of the CSF assessment.</p>  |
| <p><b>5. Consider Section Activities and Bar Oversight.</b> Mr. Kehoe reported on the Member Services Committee discussion about what kind of services the bar should offer to sections and at what cost. The committee then had a discussion about the purpose of sections and their degree of independence from the bar with regard to legislative and other activities. The committee agreed to work collaboratively with the Member Services Committee to analyze why there has been a drop off in section membership and what services the Bar could offer to sections (and at what cost) to reverse that trend. While the question of section autonomy came up in terms of legislative packages and other proposals, the committee members agreed that ultimately section autonomy would have to be addressed by the BOG as a policy issue.</p> |

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# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** August 24, 2012  
**Location:** Oregon State Bar  
**Chair:** Steve Larson  
**Vice-Chair:** Hunter Emerick,  
**Members Present:** Steve Larson, Hunter Emerick, Michael Haglund, Tom Kranovich, Patrick Ehlers, Audrey Matsumonji (by ph)  
**Members absent:** Maureen O'Connor  
**Staff Members:** Susan Grabe

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### ACTION ITEMS

**Minutes.** The minutes for the August 24, 2012 meeting were formally approved.

**Priorities.** The committee adopted the following priorities for 2013 session – court funding, legal services for the poor, and support the 2013 LIP.

**Additions to 2013 Law Improvement package.** The committee unanimously approved a request by the OLF to reconsider the Interest from Escrow account concept as well as a proposal to allow email notice for dues, PLF, IOLTA, and MCLE suspensions.

### INFORMATION ITEMS

**2013 Law Improvement Proposals.** The committee discussed in more detail the status of particular law improvement proposals and requested more information about the process, role of the board and interaction with internal (bar) stakeholders.



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# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** October 12, 2012  
**Location:** Oregon State Bar  
**Chair:** Steve Larson  
**Vice-Chair:** Hunter Emerick,  
**Members Present:** Steve Larson, Tom Kranovich, Patrick Ehlers, Maureen O'Connor  
**Members absent:** Hunter Emerick, Michael Haglund, Audrey Matsumonji  
**Staff Members:** Susan Grabe, David Nebel

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### ACTION ITEMS

**Minutes.** The minutes for the August 24, 2012 meeting were formally approved.

**Law Improvement package.** The committee reviewed the status of the law improvement package proposals. Public Affairs Committee officially approved the package for pre-session filing and introduction at the December Joint Judiciary Committee hearing. Some concern was expressed about including the Animal Law Section bill in light of continuing concerns by members of the criminal defense bar and criminal law section. The committee asked staff to see if the section's goals could also be achieved through education as opposed to legislation.

### INFORMATION ITEMS

**Legal Services update.** Pat Ehlers gave the committee an update on progress regarding discussions related to the centralized notice concept, the possibility of pursuing a tax credit and other ideas under consideration.

**Legislative Tips Workshop.** The committee discussed the best way to get information to bar members about the legislative process. Discussion points included whether the Legislative Tips workshop was the best/ most effective way to deliver information; whether 1 hour CLEs with legislators in local communities would be more effective or simply be labor and resource intensive with little or no gain; whether creating a Legislative Tips video to stream on the website would be useful or whether anybody would take the time to watch it; whether it was better to work with substantive sections in crafting legislative programs tailored to their area of practice.

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# MINUTES

## BOG Public Member Selection Committee

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**Meeting Date:** August 24, 2012  
**Location:** Oregon State Bar Center  
**Chair:** Barbara Dilaconi  
**Vice-Chair:** Matt Kehoe  
**Members Present:** Jenifer Billman and Travis Prestwich  
**Members Absent:** Maureen O'Connor  
**Staff:** Danielle Edwards and Mariann Hyland

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### INFORMATIONAL ITEMS

**1. Topic: Selection of BOG Interview Candidates**

The committee reviewed the list of Board of Governor public member candidates and selected four to interview. The interviews will be conducted at the Oregon State Bar on September 28 and consist of eight questions.

CLAIM No.	NAME	ATTORNEY	CLAIM	PENDING	ASSIGNED TO
09-39	Pottle, John	Ryan, T. Michael	200.00	200.00	Franco
10-31	Johns, Chongnak and Frank	Connall, Des	25,300.00	25,300.00	
11-02	Risch, Stephen R	Connall, Des & Shannon	57,000.00	57,000.00	Wright
11-05	Raske, Karen	Connall, Shannon	3,250.00	3,250.00	Wright
11-07	Stratton, Laurence Eugene	Connall, Shannon and Des	10,000.00	10,000.00	Wright
11-21	Roelle, Brian D	Connall, Des	23,000.00	23,000.00	Wright
11-28	Morning Star Missionary Baptist Church	Dickerson, Daniel	355,000.00	50,000.00	Deferred to Nov BOG
12-08	Burk, Alice Elizabeth	Gruetter, Bryan	6,940.00	6,940.00	Wright
12-09	Mills, Carolyn Betty	Gruetter, Bryan	3,696.50	3,696.50	Wright
12-10	Schnee, Cynthia	Hammond, Paula	1,500.00	1,500.00	Brown
12-12	Riggs, Amy Lynn Evadora	Gruetter, Bryan	100,000.00	50,000.00	BOG
12-14	Ferguson Norma	Gruetter, Bryan	7,171.67	7,171.67	BOG
12-15	Gordon, Tae Mee	Gruetter, Bryan	66,504.14	50,000.00	Kekel
12-18	Strohm, Mary Jo	Gruetter, Bryan	16,319.22	16,354.22	BOG
12-19	Ray, Michael	Gruetter, Bryan	100,000.00	50,000.00	BOG
12-22	Lyons, Angela	Gruetter, Bryan	4,530.99	4,530.99	BOG
12-23	Leece, Gerald and Kimberly	Hammond, Paula	2,699.00	2,699.00	Brown
12-24	Steinbeck, Theodore C	Howlett, Bruce	950.00	950.00	Brown
12-25	McClain, Kathryn A	Gruetter, Bryan	23,767.96	23,767.96	Angus
12-26	Shore, Ryan	Gruetter, Bryan	18,390.34	18,390.34	Eggert
12-27	Boyer, Robbyn Lynn	Gruetter, Bryan	20,000.00	20,000.00	Eggert
12-29	Estate of Melvin Johnson	La Follett, Thomas	37,371.92	37,371.92	Monson
12-31	Roccasalva, Hope	Gruetter, Bryan	96,113.87	50,000.00	Franco
12-33	Sare, Anna	Gruetter, Bryan	20,000.00	20,000.00	Bennett
12-35	Martrinez, Deborah	Gruetter, Bryan	15,000.00	15,000.00	Franco
12-37	Andrach, Theordore Wells, Lauran	Gruetter, Bryan	4,800.00	4,800.00	Kekel
12-42	Alire, Allis Keeley	Gruetter, Bryan	33,500.00	33,500.00	Miller
12-43	Mosley, Amanda Nicole	Gruetter, Bryan	25,000.00	25,000.00	Angus
12-44	Cheney, Perry M	Jagger, James C	4,500.00	4,500.00	Monson
12-45	Saucedo, Erika Sayago	McBride, Jason	8,000.00	1,800.00	BOG
12-46	Ramirez, Angel	Bertoni, Gary	15,000.00	15,000.00	Bennett
12-47	Bown, Candice Louise	McBride, Jason	3,000.00	3,000.00	Atwood
12-48	Behnumea, Eduardo and Guadalupe	McBride, Jason	5,000.00	2,500.00	BOG
12-49	Pardo-Parra, Ramon	McBride, Jason	3,650.00	3,650.00	Angus
12-50	Laughlin, Kristi Lynn	Gruetter, Bryan	5,000.00	5,000.00	Atwood
12-51	Churchill, Caden	Gruetter, Bryan	19,000.00	19,000.00	Atwood
12-52	Gonzalez, Juan Manual Ramos	McBride, Jason	3,500.00	5,500.00	BOG
12-53	Miller, Teresa Michelle	Dalton, Steven D	2,000.00	2,000.00	Miller
12-54	Lupton, Lela Mae	Gruetter, Bryan	20,500.00	20,500.00	Miller
12-55	Hernandez-Morales, Edgar	McBride, Jason	4,100.00	4,100.00	Cousineau
12-56	Olivier, Johannes and Jacomina	McBride, Jason	3,000.00	3,000.00	Monson
12-57	Maldonado Herrera, Reybel and Garcia, Claudia	McBride, Jason	4,500.00	4,500.00	Miller
12-58	Gutierrez Lopez, Gabriel	McBride, Jason	2,500.00	2,500.00	Franco
12-59	Marquez, Alberto Luis and Talamantes, Estela	McBride, Jason	500.00	500.00	Franco
12-60	Rodrigues-Romero, Veronica	McBride, Jason	5,000.00	4,000.00	BOG
12-61	Carosella, Ken and Maria Luciana	McBride, Jason	3,500.00	3,500.00	Atwood
12-62	Chavez, Francisco and Mendoza, Esmeralda	McBride, Jason	4,000.00	4,000.00	Monson
12-63	Lua, Nancy Perez	McBride, Jason	2,500.00	2,500.00	Cousineau
12-64	Mejia, Marco Antonio	McBride, Jason	5,000.00	5,000.00	Angus
12-65	Torres, Gonzalo-Vargas	Bertoni, Gary	15,000.00	15,000.00	Bennett/Calderon
12-66	Vina-Cruz, David	McBride, Jason	4,500.00	4,500.00	Calderon
12-67	Escobar, Bayron and Oliva	McBride, Jason	2,000.00	2,000.00	Bennett
12-68	Romero, Oscar G	McBride, Jason	10,000.00	10,000.00	Angus
12-69	Jung, Dayna	McBride, Jason	5,500.00	5,500.00	Angus
12-70	Steers, Penelope Ann	Connall, Des	21,000.00	21,000.00	Kekel
12-71	Sanchez-Serrano, Jonathan Alejandro	McBride, Jason	4,950.00	4,950.00	Cousineau
12-72	Ponce, Eduan and Roldan, Ana	McBride, Jason	5,500.00	5,500.00	Calderon
12-73	Lopez, Hipolito	McBride, Jason	2,500.00	2,500.00	Calderon
12-74	Alonso-Vasquez, Alejandro	McBride, Jason	5,700.00	5,700.00	Atwood
12-75	Javier, Zulema	McBride, Jason	4,100.00	4,100.00	Eggert
12-76	Hernandez-Rodriguez, Alfredo	McBride, Jason	5,000.00	5,000.00	Cousineau
12-77	Parra-Navarro, Alan Gerardo	McBride, Jason	3,000.00	3,000.00	Eggert
12-78	Hernandez-Cortez, Rafael (aka Thomas Mandujano-	McBride, Jason	4,200.00	4,200.00	Cousineau
12-79	Sherman, Tim L and Sanchez, Laura Y	McBride, Jason	3,000.00	3,000.00	Eggert
12-80	Lite, Kenneth Edwin Jr	Kaufman, Eric A	2,500.00	2,500.00	Brown
12-81	Torres-Zuniga, Fabian	McBride, Jason	5,000.00	5,000.00	Calderon
12-82	Flanakin, Michael Shawn	Dalrymple, Richard	14,319.18	14,319.18	Bennett
12-83	Alatorre, Elizabeth	McBride, Jason	3,500.00	3,500.00	Monson
12-84	Bothwell, Christopher Charles(rep Greg Kraus)	Gruetter, Bryan	100,000.00	50,000.00	Kekel
12-85	Valdivia, Sandra	McBride, Jason	3,000.00	3,000.00	Calderon

12-86	Salinas, Alvarado, Lucy	McBride, Jason	4,350.00	4,350.00	Angus
12-87	Perez, Jorge	McBride, Jason	2,600.00	2,600.00	Angus
12-88	Palacios-Rodriguez. Isidrio	McBride, Jason	1,500.00	1,500.00	Calderon
12-89	Grana, Marta	McBride, Jason	3,500.00	3,500.00	Monson
12-90	Vega de Garibay, Maria Sela	McBride, Jason	10,000.00	10,000.00	
12-91	Garibay, Rodolfo	McBride, Jason	3,000.00	3,000.00	
12-92	Lucas-Lepe, Juan Carlos	McBride, Jason	5,000.00	5,000.00	
				<b>930,691.78</b>	
	Funds available for claims and indirect costs allocation as of September 2012		<b>in CSF Account</b>	<b>351,627.00</b>	
			<b>Fund Excess</b>	<b>\$ (579,064.78)</b>	

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Nine Months Ending September 30, 2012**

Description	September 2012	YTD 2012	Budget 2012	% of Budget	September Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$222	\$2,835	\$3,400	83.4%	\$255	\$2,270	24.9%
Judgments	3,436	4,287	6,000	71.5%	385	7,245	-40.8%
Membership Fees	147	219,252	226,200	96.9%	450	215,995	1.5%
<b>TOTAL REVENUE</b>	<b>3,805</b>	<b>226,374</b>	<b>235,600</b>	<b>96.1%</b>	<b>1,090</b>	<b>225,510</b>	<b>0.4%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,159	21,330	27,700	77.0%	4,126	26,512	-19.5%
Employee Taxes & Benefits - Reg	671	7,072	10,100	70.0%	926	8,069	-12.4%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>2,830</b>	<b>28,402</b>	<b>37,800</b>	<b>75.1%</b>	<b>5,052</b>	<b>34,581</b>	<b>-17.9%</b>
<b>DIRECT PROGRAM</b>							
Claims	239,890	440,151	200,000	220.1%	2,000	93,815	369.2%
Collection Fees		46	2,000	2.3%	446	3,272	-98.6%
Committees			250				
Pamphlet Production		11	150	7.6%			
Travel & Expense		2,086	1,400	149.0%			
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>239,890</b>	<b>442,295</b>	<b>203,800</b>	<b>217.0%</b>	<b>2,446</b>	<b>97,086</b>	<b>355.6%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Messenger & Delivery Services			100				
Office Supplies			150				
Photocopying			150				
Postage	50	399			5	137	190.0%
Professional Dues		200	200	100.0%			
Telephone		38	450	8.5%	7	34	12.6%
Training & Education		475	600	79.2%		350	35.7%
Staff Travel & Expense			2,116			1,284	-100.0%
<b>TOTAL G &amp; A</b>	<b>50</b>	<b>1,112</b>	<b>3,766</b>	<b>29.5%</b>	<b>12</b>	<b>1,805</b>	<b>-38.4%</b>
<b>TOTAL EXPENSE</b>	<b>242,770</b>	<b>471,809</b>	<b>245,366</b>	<b>192.3%</b>	<b>7,510</b>	<b>133,472</b>	<b>253.5%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(238,965)</b>	<b>(245,435)</b>	<b>(9,766)</b>		<b>(6,420)</b>	<b>92,038</b>	<b>-366.7%</b>
Indirect Cost Allocation	1,119	10,071	13,425		1,079	9,711	3.7%
<b>NET REV (EXP) AFTER ICA</b>	<b>(240,084)</b>	<b>(255,506)</b>	<b>(23,191)</b>		<b>(7,499)</b>	<b>82,327</b>	<b>-410.4%</b>
Fund Balance beginning of year		607,132					
<b>Ending Fund Balance</b>		<b>351,627</b>					
<b>Staff - FTE count</b>		<b>.35</b>	<b>.30</b>			<b>.35</b>	

## 2012 JUDGMENTS COLLECTED

<b>Date</b>	<b>Attorney</b>	<b>Payment Received</b>
1/30/2012	Kelley, Phil	360.00
2/17/2012	Shinn, Michael	25.00
3/7/2012	Kelley, Phil	360.00
3/19/2012	Shinn, Michael	15.00
4/3/2012	Kelley, Phil	360.00
5/7/2012	Kelley, Phil	360.00
5/29/2012	Shinn, Michael	25.00
6/4/2012	Kelley, Phil	720.00
7/6/2012	Anunsen, Roger	30.00
7/26/2012	Shinn, Michael	25.00
8/1/2012	Kelley, Phil	360.00
8/1/2012	Anunsen, Roger	20.00
8/22/2012	Shinn, Michael	25.00
8/29/2012	Shinn, Michael	43.00
8/31/2012	Kelley, Phil	360.00
9/13/2012	Gruetter, Bryan	3026.06
9/20/2012	Shinn, Michael	50.00
10/8/2012	Anunsen, Roger	10.00
	<b>TOTAL</b>	<b>\$6,174.06</b>

11-10-12 BOG Default Agenda

**Boston Film and Video Productions LLC**  
98 Chestnut Street #1  
Boston, Ma. 02108  
617 388 7443  
[bostonfilmvideo@gmail.com](mailto:bostonfilmvideo@gmail.com)  
[www.bostonfilmandvideo.com](http://www.bostonfilmandvideo.com)

**RECEIVED**

OCT 25 2012

Oregon State Bar  
Executive Director

October 22, 2012

Dear Ms. Naucler,

I write to ask the support of your bar association for a film on the importance of the rule of law in establishing civil society in Africa. We have received grants from the International Bar Association and the U.S. Institute for Peace to assist in making the film and, earlier this year, the American Bar Association's Center for Human Rights featured Beatrice Mtetwa, the main character of the film, at its meeting in New Orleans.

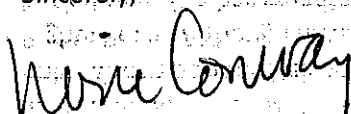
Beatrice Mtetwa—the person through whom we are telling the story of the importance of the rule of law—is an attorney who has devoted her career to upholding the rule of law in Zimbabwe. She is the only African besides Nelson Mandela to have received France's prestigious Trarieux International Human Rights Prize. Although arrested and beaten by the Zimbabwean police, Beatrice Mtetwa has refused to back down. She has steadfastly defended those jailed by Robert Mugabe's government. In her own words, she has done so "to uphold the principle of the rule of law" and to create "an official record" that will make it impossible for the Mugabe regime to deny its abuses of the law.

Once completed, the film, which is titled *Fearless: Beatrice Mtetwa and the Rule of Law*, will be shown on television and at film festivals in North America, Europe, and Africa. The film will also be donated to schools throughout Africa, so that children there can learn the importance of the rule of law and be inspired by this courageous woman lawyer. A video trailer of the film can be viewed at <http://vimeo.com/36452404>

By seeking financial support from you and other bar associations here and abroad, we want to place the weight of the international bar community behind the film's message. We are looking for contributions in the \$2000-\$5000 range from a wide range of bar associations. Individual members of the bar can also contribute. Contributors will be listed in the film credits and be provided a copy of the film. The fiscal sponsor of the film, the Filmmakers Collaborative, is a registered non-profit 501 C-3, [www.filmmakerscollab.org](http://www.filmmakerscollab.org).

Thank you for your time and consideration of my request. Please feel free to call or email me if you would like more information about the film project.

Sincerely,



Lorie Conway  
Director and Producer

**"Beatrice Mtetwa of Zimbabwe is a courageous lawyer, a reminder of why we became lawyers. This documentary film--her story--deserves our full support."**

**Michael S. Greco  
Past President, American Bar Association;  
Chair, ABA Center for Human Rights**

"

There are two ways for your bar association to donate to the project. Contributions from individual members of the bar are also welcome and are tax deductible in countries where the tax code allows a deduction for charitable contributions.

1. To donate online through the film's fiscal sponsor and non-profit 501 c-3, the Filmmakers Collaborative, please go to:

<http://filmmakerscollab.org/films/making-the-case-beatrice-mtetwa-and-the-rule-of-law/>

2. To donate by check, make it payable to:  
Filmmakers Collaborative, Zimbabwe film project

please mail to:  
The Filmmakers Collaborative  
Attn: Katherine Dietz, Executive Director  
397 Moody St.  
Waltham, MA 02453

Please feel free to call or email Lorie Conway, the film's director and producer, if you would like more information about the film project.  
[bostonfilmvideo@gmail.com](mailto:bostonfilmvideo@gmail.com) phone: 617 388 7443

To view the trailer please go to:  
<http://vimeo.com/36452404>

Thank You.





August 22, 2012

Rod Wegener  
Chief Financial Officer  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd.  
Tigard, OR 97224

RE: OSB Financial Support for CEJ/Legal Aid

Dear Rod:

On behalf of Oregon's legal aid programs and the Campaign for Equal Justice, we would like to thank the OSB for your continued financial support of the Campaign. The \$45,000 we receive from the OSB helps to offset our costs, and also adds to our annual fund drive. The Campaign is able to use these funds to leverage support for legal aid.

I'm attaching a copy of our FYE 2012 year in review, along with our Annual Report, and our audit. The Campaign is audited each year by Gary McGee and Company.

I know you are aware of the difficult financial situation of Oregon's legal aid programs: an increased demand for services and a 25% reduction in revenue. Despite these difficult times, our legal aid programs continue to provide high quality legal services to low-income Oregonians. In addition, despite the funding crisis that has hit other sources of revenue for legal aid, Oregon lawyers have stepped up their efforts in support of legal aid by contributing to the Campaign. We attribute that growth, in part, to the continued efforts of Bar in support of the Campaign. Our fundraising goal for our 2012-2013 year is \$1.2 million.

We hope that the OSB will continue its longstanding partnership and support for the Campaign in 2013 in furtherance of the Bar's mission to make justice a reality for all Oregonians.

Please do not hesitate to contact me if you have any questions, or if you would like additional information about the Campaign.

Sincerely,



SANDRA A. HANSBERGER  
Executive Director

c: Sylvia Stevens

August 23, 2012

Joel E. Fowlks  
Attorney at Law  
4664 SE King Road  
Milwaukie, OR 97222

Re: Letter of appreciation from Susan Clifton

Dear Mr. Fowlks:

This week the bar received a letter regarding your recent representation of Susan Clifton. It is infrequent that a client takes the time to write the bar commending a lawyer on his or her exemplary professional representation. As you can see from the enclosed copy of the letter, your client truly appreciated the professional approach you took to her case.

Our records show that you were only admitted less than a year ago and if you continue to represent your clients as you did with Ms. Clifton, you have a bright future ahead of you. I have taken the liberty to see that the letter is placed in your permanent membership file, and I will also bring it to the attention of the Board of Governors at their November meeting.

On behalf of the entire bar, thank you for your good work.

Sincerely,



Sylvia E. Stevens  
Executive Director

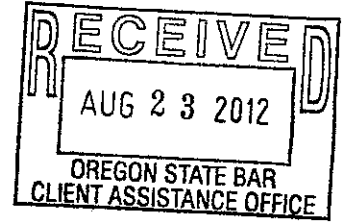
SES/cmg

cc: Susan Clifton

Susan Clifton  
10306 SE 41<sup>st</sup> Court  
Milwaukie, OR 97222

August 20, 2012

Chris L. Mullman  
Asst. General Counsel  
P.O. Box 231935  
Tigard, OR 97281-1935



Dear Mr. Mullman. I have written to you in the past regarding a complaint I had against an attorney who had represented me. I am not sure of the process, if there is one, where I can send a complement on an attorney, so I was hoping you could forward this letter to the appropriate place.

The Oregon Bar recommended an attorney to me by the name of Joel Fowlks. Mr. Fowlks practices in a law office located at 4664 SE King Rd, Milwaukie, OR 97222. I wanted to make sure the Oregon Bar had my recommendation of Mr. Fowlks as an attorney for anyone seeking legal counsel.

After a disastrous first encounter with an attorney I paid to handle my divorce case, I was referred to Mr. Fowlks. From the first time I met Mr. Fowlks, he handled my divorce case with respect toward me, hard work, and ongoing communication. I was amazed at the amount of work he did at an extremely low fee. He never once asked for more money from me despite the amount of work he put in on my case. He was always kind, and always explained every process of the proceedings. He did everything so quickly and professionally. He was very thorough. I was amazed at the amount of work it took to make sure I was completely and legally covered in respect to finances, insurance, and protection for my son.

I believe Mr. Fowlks doesn't have the years of experience of many high-paid attorneys who work at large firms. What he does have is intelligence and integrity. Thank you so much for your referral.

Sincerely,

A handwritten signature in cursive script that reads "Susan Clifton".

Susan Clifton



**ILLINOIS STATE  
BAR ASSOCIATION**

John E. Thies • *President*  
jthies@webberthies.com

August 30, 2012

**RECEIVED**

SEP 04 2012

Oregon State Bar  
Executive Director

Mitzi M. Naucler, President  
Oregon State Bar Association  
Oregon State Bar Center  
P.O. Box 231935  
Tigard, OR 97281

Dear Mitzi:

I want you to know how much I appreciate your help with Resolution 10A at the ABA Annual Meeting. Based on the feedback received since returning from Chicago (and even when we were still there), 10A did everything it was supposed to do.

The process we undertook called attention to the serious threat we face from those who would change our ethics rules to permit greater and greater involvement from non-lawyers in the practice of law. We are now much better positioned to respond when formal proposals that would make these changes are presented to the House (in February or otherwise).

It has been a pleasure working with you on such an important matter. Your efforts have made a difference in the defense of our honorable profession. On to Dallas!

Kindest personal regards.

Very truly yours,

John E. Thies

JET/meb

## Legal Ethics

# Ethics 20/20 Proposals Would Make It Easier for Foreign Lawyers to Practice in US

Posted Sep 5, 2012 8:59 AM CDT

By [James Podgers](#)

The ABA Commission on Ethics 20/20 released drafts of possible recommendations Tuesday that would make it easier for foreign lawyers to obtain limited authority to practice in U.S. jurisdictions.

But a [cover memo](#) (PDF) issued by commission co-chairs Jamie S. Gorelick and Michael Traynor emphasizes that the commission still has not decided whether to submit resolutions on practice by foreign lawyers to the ABA's policy-making House of Delegates, or what the final version of those recommendations would be.

Those decisions will be made when the commission meets in Washington, D.C., on Oct. 25-26, state Gorelick and Traynor in their memo. Gorelick is a partner at Wilmer Cutler Pickering Hale and Dorr in Washington. Traynor of Berkeley, Calif., is a past president of the American Law Institute.

In the meantime, the commission is seeking comments on its draft recommendations. Those comments may be submitted by Oct. 12 to Natalia Vera, the commission's senior paralegal, at [natalia.vera@americanbar.org](mailto:natalia.vera@americanbar.org).

The commission plans to submit any final resolutions for consideration by the House when it convenes in February during the 2013 ABA Midyear Meeting in Dallas. The House adopted the commission's [first set of recommendations](#) in August at the 2012 Annual Meeting in Chicago.

Two of the draft proposals released Tuesday would apply to foreign lawyers working as in-house counsel in U.S. jurisdictions. One of the proposals would amend [Rule 5.5\(d\)](#) (PDF) of the ABA Model Rules of Professional Conduct, which currently permits a lawyer admitted in one U.S. jurisdiction to provide legal services in another jurisdiction where the lawyer is not admitted to practice if those services are provided to the lawyer's employer or its organizational affiliates, and are not services for which the second jurisdiction requires pro hac vice admission.

The lawyer also may provide those services if authorized by another law of the second jurisdiction or by federal law. The amendments essentially would apply Model Rule 5.5 to a foreign lawyer who is a member in good standing of a recognized legal profession in a foreign jurisdiction whose members are admitted to practice. In addition, the foreign lawyer only may advise the client on the law of U.S. jurisdictions only in consultation with an American lawyer.

The ABA Model Rules are the direct basis for lawyer conduct rules in every state except California. Forty-four jurisdictions have adopted some version of Model Rule 5.5. since it was amended by the House of Delegates in 2002 to permit U.S. lawyers to engage in more cross-jurisdictional practice.

A [related draft proposal](#) (PDF) developed by the Ethics 20/20 Commission would amend the ABA Model Rule for Registration of In-House Counsel to include foreign lawyers working as in-house counsel in the United States.

A foreign lawyer would be required to register with the appropriate regulatory authority in the U.S. jurisdiction within 180 days of beginning work there. The lawyer may not advise the client on law other than international law except in consultation with a U.S. lawyer. The registered foreign lawyer also would be subject to the domestic jurisdiction's professional conduct rules.

A draft report released with the possible amendments notes that six states—Arizona, Connecticut, Delaware, Virginia, Washington and Wisconsin—already have in-house registration rules that give foreign lawyers limited authorization to work for their employers in the United States. Georgia permits limited practice by foreign lawyers, but does not require them to register.

The amendments for foreign in-house lawyers would "provide the corresponding procedural mechanism to regulate the limited practice authority for these lawyers sought in the Commission's proposal to amend Model Rule 5.5(d)," states the draft report.

A third [draft proposal](#) (PDF) released Tuesday by the commission would add a new section to the ABA Model Rule on Pro Hac Vice Admission to allow state courts or agencies to admit a foreign lawyer in a particular proceeding as co-counsel with an in-state lawyer, or to serve in an advisory role in that proceeding.

But the in-state lawyer would be responsible for the conduct of the proceeding and for independently advising the client on substantive law in the U.S. jurisdiction and procedural issues. The new section also contain a number of safeguards and limitations on the scope of the foreign lawyer's activities. The current version of the Model Rule on Pro Hac Vice Admission applies only to lawyers admitted to practice in U.S. jurisdictions.

The draft report accompanying the proposal notes that 15 states and the U.S. Virgin Islands permit pro hac vice admission of

foreign lawyers. The rules of the U.S. Supreme Court provide that a qualified foreign lawyer may be permitted to argue pro hac vice before the justices, and some federal courts of special jurisdiction also have pro hac vice provisions for foreign lawyers.

"It is clear that as communications and commerce have become increasingly globalized so too have clients, their families, businesses, and other assets," states the report. "As a result, there has been a concomitant increase in litigation in U.S. courts implicating parties, property or businesses located in other countries. Under these circumstances, clients (both institutional and individual) will on occasion need to or wish to seek the involvement of both U.S. and foreign lawyers and thus, when appropriate, want foreign lawyers of their choosing to appear pro hac vice along with their U.S. counsel."

*Last updated 6:30 p.m. Wednesday to clarify that the draft proposals would apply to foreign lawyers working as in-house counsel in U.S. jurisdictions.*

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## Quebec lawyers in 2021: Developing forward-looking scenarios

In attempting to create a forward-looking projection, the Committee developed a picture of what the legal profession would look like ten years from now in order to define the best way to reach this goal.

### Legal profession in 2011

1. An “unloved” profession
2. Evolving professional structure
3. Increasingly complex practices
4. Increasing presence of non-lawyer competitors
5. Inadequate knowledge of traditional and/or emerging markets
6. Fees charged for services are disconnected from reality
7. Major trends with uncertain outcomes for the future of the profession (IT/globalization)

### Legal profession in 2021

1. The profession will be held in higher esteem
2. Lawyers’ training will be more focused on the complexity of current and potential markets
3. Lawyers will be bilingual/multilingual
4. Gains will be maintained
5. New markets will be developed
6. Lawyers will be positioned in the upper echelons (top third) of the professional world
7. A move will be made towards another model (more balanced profession/quality of life)
8. Revenues will be based on the value added of services
9. Specialties will be recognized
10. Multi-disciplinary practices will flourish
11. There will be a collective positive appreciation of the omnipresence and benefits of the law within society

### Three scenarios

The Committee has developed three scenarios:

1. “Textile manufacturing”: Lawyers do not embrace the technological changes required to develop the profession and are not interested in new opportunities offered by globalization.
2. “Compact discs”: The future of the legal profession essentially lies in protecting the profession by taking a repressive approach based on monitoring for illegal practice and controlling access to the profession.
3. “Bombardier”: In the wake of major social changes, innovation is essential. Lawyers must adapt if they wish to reap the many benefits of IT and communications. Globalization is an opportunity to be seized, not a threat.

### Adopted scenario: the Bombardier scenario

The report recommends the adoption of the proactive “Bombardier scenario”, under which the Quebec Bar is asked to take change into account at all levels. The organization will thus enhance its understanding of the issues affecting lawyers, such as more women lawyers, the aging population, competition, technology and, most importantly, the positive outlook offered by globalization.

### Private practice in 2021

#### HOLDING THE PROFESSION IN HIGHER ESTEEM

Lawyers will be positioned in the upper echelons (top third) of the professional world  
A collective positive appreciation of the omnipresence and benefits of the law within society

#### LEGAL PRACTICE

Bilingual/multilingual lawyers  
A move will be made towards another model (more balanced profession/quality of life)  
Revenues will be based on the value added of services

**PRIVATE  
PRACTICE  
RECONFIGURED  
(2021)**

#### MARKETS

Gains will be maintained  
Lawyers’ training will be more focused on the complexity of current and potential markets  
New markets will be developed  
Specialties will be recognized  
Multi-disciplinary practices will flourish

To consult the PDF version of the complete report on the Quebec Bar’s website: [www.barreau.qc.ca](http://www.barreau.qc.ca)

or to download it:



### Report’s conclusions

By 2021, women will represent 56% of the Quebec Bar’s members; most members under age 55 will be women. The legions of male baby-boomers who dominated the profession in the post-WWII period will be in the minority and on the verge of giving up the practice of law.

Technological advances will enable lawyers to practice in various areas based on the types of legal services offered and on the target clientele. The market will be based on “commodity products” or “specialties”.

Specialized lawyers who can identify and address their clients’ unmet needs will be able to generate substantial revenues from business clients or individuals.

Globalization will definitely have created links between the continents. But there will still be room in the market in 2021 for lawyers who decide to practice only in Quebec or elsewhere in Canada. However, Quebec-based lawyers will have to remain on the technological cutting edge and maintain contact with actors in other jurisdictions.

In addition to the importance of market segments and lawyers’ positioning within the confines of private practice, the remuneration model will be very different. Hourly rates will still be used to calculate lawyers’ fees. However, hourly rates will no longer be the primary means of determining revenues.

As a lawyer, are you prepared for the future?



Report of the Committee  
on current issues in private practice  
and future of the profession

### Background

During his term as president of the Quebec Bar (2007-2008), J. Michel Doyon sought to reflect on the future of the legal profession in the area of private practice in Quebec, set against a backdrop of increasingly globalized legal services and markets. This new report ties in with the previous “Report on the Future of the Legal Profession” (more commonly known as the “Singapore Report”), produced by the Quebec Bar in 1996. One of the outcomes of the Singapore Report was the creation of the CAIJ (Centre for Access to Legal Information).

An inaugural committee on current issues in private practice was created in October 2007 to fulfil its mandate of “targeting and analyzing current issues in the area of private practice and establishing strategies to address them adequately in the future.”

This document is a summary of the complete report which is the culmination of nearly four years of work by two committees consisting of some 40 lawyers from all areas of private practice across Quebec. Based on economic analysis, the report features a proven methodology (prospective analysis) aimed not only at setting out relevant observations on the current state of private legal practice, but also (and most importantly) at encouraging the Quebec Bar and the legal profession to adopt a forward-looking approach with a view to ensuring the development and advancement of lawyers in private practice in Quebec.

The final report was unanimously approved by the Quebec Bar’s general council in June 2011.

### Committee members

With the technical support of the Quebec Bar’s members services department, some 40 lawyers took part in the work that led to the report:

- Dominique Bertrand
- Jacques G. Bouchard
- Serge Bourque
- Louis Carrière
- Jean-Pierre Casavant
- Chantal Châtelain
- Marc Choquette
- Suzanne Côté, Ad. E.
- Robert Daigneault
- Renée Delaquis
- François Demers
- Marc Dorion, Ad. E.
- Patrick Ferland
- Francis Gervais, Ad. E., President, Quebec Bar
- Paul Larochelle
- François Morin
- Raymond Nepveu
- Josée Noiseux
- Sonia Paradis
- Tonya Perron
- Serge Poupart
- Benoit Lapointe
- Pierre V. LaTraverse
- Madeleine Lemieux, Ad. E., President, Quebec Bar
- Caroline Malo
- Alain Michaud (until his appointment to the judiciary in May 2010)
- Moïse Moghrabi
- Marie-Anne Paquette
- Claudia P. Prémont, Ad. E.
- Richard Poitras
- David Rhéaume
- Judith Rochette
- Paul Routhier

- Annie Quimper
- Martin F. Sheehan
- Marc Simard
- Paul Yanakis
- François Vallières

### Quebec Bar’s members services department:

- Dyane Perreault, Director
- Laurent Fafard
- Fanie Pelletier, Equity Advisor
- Pascale Vigneau, Interim Equity Advisor (January-September 2010)

To assist it in its work, the Committee retained the services of Pierre Boucher, an economist with the *Observatoire des services professionnels*.

### Report’s objectives and methodology

The report seeks to:

- Analyze socio-economic environments in the early 21<sup>st</sup> century.
- Examine legal practices in certain jurisdictions.
- Document the area of private practice within the legal services industry.
- Offer a diagnostic of the current state of private practice.
- Set out assumptions concerning future changes affecting lawyers as well as private practice markets and develop scenarios with a view to describing changes in this sector.
- Adopt the most likely scenario and map out an action plan aligned with the Quebec Bar’s strategic plan.

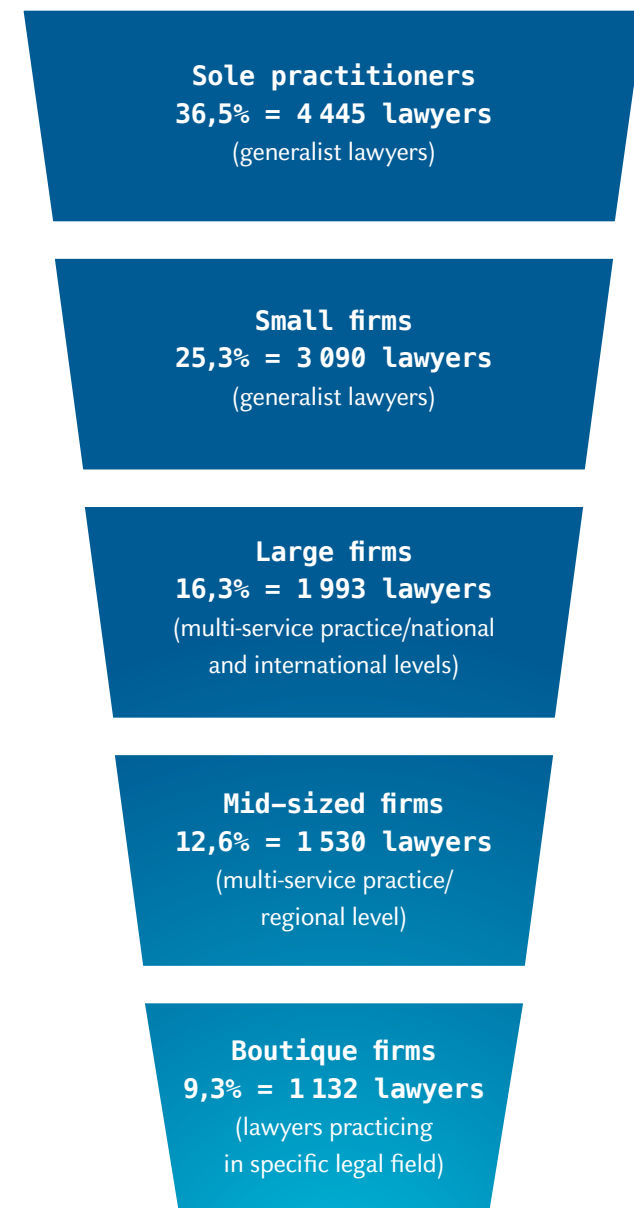
To those ends, the Committee utilized the methodology of prospective analysis, which seeks to develop forward-looking scenarios.

## Major vectors of change: Globalization and information technology

The report takes as its premise that there are two major vectors of change that will influence private practice in the future: globalization and information technology.

## Services offered by lawyers in private practice

Lawyers' services are very wide-ranging. The following diagram provides an overview of lawyers' services based on practice types.



**There is 12 190 lawyers in private practice on a total of 24 000 lawyers.**

## Overview of the profession in 2021

Based on demographic projections, there will be 30,000 lawyers practicing in Quebec in 2021, or a 25% increase over the next 10 years. The average age of lawyers will continue to decrease, from 44.8 years in 2010 to 43.8 years in 2021. By 2021, women will account for 56% of practicing lawyers.

Despite their strong presence, women are currently under-represented in private practice: only one-third of lawyers in private practice today are women.

The reasons for women's under-representation are well known and documented. Here are a few of them:

## Income of lawyers in private practice: hourly rates and negative impacts

Lawyers' primary method of billing remains hourly rates in 65% of all cases. Lawyers are very reluctant to abandon this model even though it corresponds less and less to the realities of the current economic environment.

Factors to be considered	Impact on the profession
Law firm culture	The widespread policy of hourly billing has caused the pace of law practice to become frenetic. More hours are required to offset higher costs. This has had an impact on the collegiality of law firm culture. Talented lawyers are leaving private practice.
<i>Pro bono</i> work	Loss of available time for <i>pro bono</i> work. Lawyers value only billable work.
Project/case planning	When lawyers begin practicing, they soon learn that they are responsible for a "time budget". Billable hours are the goal, rather than effectiveness. In some cases, lawyers can plan engagements on an hourly basis. For example, repetitive cases can be planned on that basis.
Cost estimates for clients	Clients have difficulty predicting how much a case will cost.
Value added for clients	The outcome is often inappropriate given the costs incurred.
Penalizes the efficient/productive lawyer	Lawyers tend to be less productive because if they are more efficient, they will be billing fewer hours (and thus bringing in less revenue).
Discourages lawyer/client communication	Communicating with the client means billing for short time periods (e.g. fractions of hours), depending on the duration of the communications. Minimizing costs sometimes means minimizing lawyer/client communication.
Fails to promote a risk/benefit analysis	Few lawyers conduct an objective evaluation of the risks and benefits associated with a client's case.
Lawyer/client conflict of interest	Lawyers have annual billing targets. This does not tie in with the client's goal of minimizing costs. The parties' interests are thus in conflict.

Source: American Bar Association, "ABA Commission on Billable Hours Report", 2002.

Time continues to be a key consideration when private practitioners determine their fees, although it should be viewed from a more nuanced perspective. Hourly rates as the sole billing method should be reserved for more complicated cases that have a high degree of risk and that are handled by experienced lawyers able to justify high rates and this particular method.

### Billing methods to analysed

Billing method	How it works
Based on work performed	This method takes into account the complexity of the work to be performed. Also entering into the equation is the concept of "value added", according to which the remuneration for the legal services provided is based on expertise and experience.
Focused on results	This billing method cannot be used on a recurring basis. Some mandates of this type can be taken on, but they must be combined with other mandates.
Fixed terms	This billing method applies to commodity services. Lawyers must be familiar with the prerequisites of how these repetitive services are conducted.
Hybrid methods	Hybrid billing methods apply to modern practices in which lawyers offers a wide range of services. Remuneration is adapted to the lawyer's expertise and to the client.

Source: American Bar Association, "ABA Commission on Billable Hours Report", 2002.

*continued on next page*

- Hectic pace of work, difficulties achieving work/family balance.
- Maternity wall.
- Mismanagement of maternity leaves/returns.
- Billable hours targets.
- Resistance to flexible/part-time schedules.

In short, two key factors (a "male" model of private practice, developed at a time when lawyers – and clients – were mostly men; and a culture specific to the "baby boom" generation) stand in direct opposition to the different realities, expectations and values expressed by women and young people.

To ensure the future of private practice, steps must be taken to ensure that the services supplied are more

aligned with the realities and needs of the majority of the available workforce.

It is also anticipated that the legal profession in 2021 will be even more diverse. Although only 3% of lawyers practicing today identify as members of a minority ethnic or cultural group, this proportion rises to 16% among students at the Quebec Bar's Professional Training Center.

Thus far, lawyers from minority ethnic or cultural groups are more active as sole practitioners or in small firms or the civil service.

This is another important aspect that should be taken into account.

Some firms have already put in place project evaluation models (mandates), according to which the cost of the client services is estimated at the beginning of the mandate. This estimate includes strategic aspects of the client's operations, a determination of the client's risk tolerance, discussions about the desired outcomes and, most importantly, the value that the client assigns to the contract to be negotiated, the legal issues to be analyzed or the dispute to be resolved.

Over time, this model will be used in all areas of private practice and will become the standard in the legal services industry. Even sole practitioners will have to adhere to this model, which more closely reflects the economic value of the legal services provided.

## Competition

The market for legal services is increasingly competitive. A number of competitors offer alternative services aligned with clients' needs. The contracting out of legal services is a reality that lawyers will have to face in their day-to-day operations.

## "Participatory justice" and lawyers' advisory role

The introduction of "participatory justice" is a major trend. Although this approach has been in existence for many years, it has not been extensively developed. Nevertheless, mediation, conciliation and arbitration procedures are all fields that lawyers should explore in greater depth.

Defending clients in civil or commercial matters may currently occur at the trial level. However, the future will be increasing based on advisory, negotiation and mediation services.

## Market development

Lawyers in Quebec today, regardless of their field of practice, regardless of whether they practice alone or in a corporate setting and regardless of whether they serve individuals or companies, should regard their clientele as markets to be developed. Private practice at all levels is adapted to the pace of change affecting these clienteles, and lawyers should have the information they need to ensure the economic growth of their practice. It is unlikely that lawyers who take a different view of delivering legal services will be successful.

Here, two challenges arise: lawyers must know how to correctly identify markets and then develop them.

## Identification of emerging markets

Litigation is not a market, and neither are any other areas of practice. A market corresponds to an economic sector, e.g. food.

Lawyers are not trained in the areas of business development or market analysis. Like accountants, engineers and architects, lawyers in private practice are members of groups that compete for market segments. Since the legal profession is more complex, development has been more extensive in certain areas of practice, such as consumer affairs, competition, finance, the environment and intellectual property, to name but a few. In addition, lawyers are familiar with the comparative advantages of their practice and can position themselves strategically in target markets.



The marketing information industry geared towards lawyers appears to take for granted that lawyers are familiar with markets and their respective potential. Criteria pertaining to communications and public relations are primarily issued to lawyers.

To determine the need for legal services in a given economic sector, it is important to know what the sector stakeholders are doing, what the current legal issues are, which lawyers are present, what prices are being paid and so on. It is also important to understand how the sector operates, i.e., to verify changes in industry operations and to design an original service offer that meets expressed needs that have only been partially satisfied, if at all.

### Business development: the mistakes more frequently made by lawyers

Type of error	Implications
Downplaying the importance of marketing	Lawyers in private practice devote 99% of their time to learning or honing their professional skills (i.e. how to do their work), but very few focus on how to obtain recurring mandates.
Blindly copying what other firms are doing	The size of the practice (solo, small firm, boutique firm, national firm) together with the lawyer's personality or the firm's culture will determine the type of business development. Copying what others are doing is ineffective and even pointless.
Not devoting enough time to business development	Lawyers in private practice should devote between 15% and 30% of their time to client development.
"Me-based" marketing strategies	Clients don't want to hear about the lawyer; they want to hear about the solutions the lawyer can deliver.
Uncomfortable discussing service costs	In North American culture, money is a taboo topic.
Not knowing clients in depth	To get to know their clients better, lawyers must familiarize themselves with their clients' industry (GDP, jobs, main stakeholders, potential, constraints, risk factors).
Unclear development objectives	What are the firm's or the lawyer's objectives concerning the number of clients or amount of revenues?
Conveying vague or imprecise messages	The message conveyed to clients should be closely related to the position adopted by the lawyer, firm or practice group. Otherwise, the message will be drowned out by the competition.
Discomfort with "closing the sale"	Of course, being too pushy should be avoided, although clients' objections must be addressed. The desire to reach an agreement should be clearly expressed to each client.
Lack of follow-up (or problems with follow-up method)	Maintaining contact with clients is the very key to market development and referrals.

Source: Compilation by the authors of various articles on the subject.

## Traditional areas of practice and emerging sectors

### Emergence of a new legal services offer

The future of the legal services market lies in formulating new service offers.<sup>1</sup> The following diagram presents the steps involved in designing an original offer.



This approach allows for the possibility of developing value-added services and including them in the client's value chain in a given economic sector. The lawyer demonstrates to the client the economic value of the service offer. The client can see when the legal service is incorporated (i.e. at what step) and identifies the advantages for him/her. The billing process is thus adapted to the client's business reality.

<sup>1</sup> Diagram adapted from Richard Susskind, "The End of Lawyers", Oxford University Press, 2008.