

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 22, 2013  
[Red Lion Hotel](#)  
3301 Market Street NE  
Salem, OR 97301  
503.370.7888  
**Open Session Agenda**

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*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:30 a.m. on February 22, 2013.*

**Friday, February 22, 2013, 9:30 a.m.**

**1. Call to Order/Finalization of the Agenda**

**2. Report of Officers & Executive Staff**

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | Report of the President [Mr. Haglund]           | Inform |         |
|           | <b>1.</b> Legal Job Opportunities Task Force    | Inform | Exhibit |
|           | <b>2.</b> Citizens Coalition for Court Funding  | Inform |         |
| <b>B.</b> | Report of the President-elect [Mr. Kranovich]   | Inform |         |
| <b>C.</b> | Report of the Executive Director [Ms. Stevens]  | Inform | Exhibit |
| <b>D.</b> | Director of Diversity & Inclusion [Ms. Hyland]  | Inform | Exhibit |
| <b>E.</b> | MBA Liaison Reports [Ms. Kohlhoff & Mr. Knight] | Inform |         |

**3. Professional Liability Fund [Mr. Zarov]**

- |           |                  |        |         |
|-----------|------------------|--------|---------|
| <b>A.</b> | General Update   | Inform | Exhibit |
| <b>B.</b> | Financial Report | Inform | Exhibit |
| <b>C.</b> | Goals for 2013   | Inform |         |

**4. Rules and Ethics Opinions**

- |           |  |        |         |
|-----------|--|--------|---------|
| <b>A.</b> | Proposed Formal EOP: Social Media        | Action | Exhibit |
| <b>B.</b> | Proposal to Amend RPC 1.10               | Action | Exhibit |
| <b>C.</b> | Proposed Amendments to Advertising Rules | Action | Exhibit |

**5. OSB Committees, Sections, Councils and Divisions**

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | Oregon New Lawyers Division Report [Mr. Eder] | Inform | Exhibit |
|           | <b>1.</b> Comments [Mr. Spier]                | Inform |         |

**B. MCLE Committee**

- |   |        |         |
|---|--------|---------|
| 1. Proposed amendments to Rules 5.2(c) (1)(ii) and (g) and Regulation 5.250 | Action | Exhibit |
|---|--------|---------|

**C. Loan Repayment Advisory Committee**

- |  |        |         |
|--|--------|---------|
| 1. Proposed Changes to Policies & Guidelines | Action | Exhibit |
|--|--------|---------|

**D. CSF Claims**

- |                                      |        |         |
|--------------------------------------|--------|---------|
| 1. Claims Recommended for Payment    | Action | Exhibit |
| 2. Requests for Review               |        |         |
| a. CSF Claim DALRYMPLE (Flanakin)    | Action | Exhibit |
| b. CSF Claim JORDAN (Flores-Salazar) | Action | Exhibit |

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

**A. Board Development Committee [Mr. Kranovich]**

- |                        |        |         |
|------------------------|--------|---------|
| 1. HOD Election Update | Inform | Exhibit |
|------------------------|--------|---------|

**B. Budget and Finance Committee [Mr. Wade]**

- |                              |        |              |
|------------------------------|--------|--------------|
| 1. 2012 OSB Financial Report | Inform | To be Posted |
|------------------------------|--------|--------------|

**C. Governance and Strategic Planning Committee [Mr. Wade]**

- |  |        |         |
|--|--------|---------|
| 1. Resume Conducting Preference Polls          | Action | Exhibit |
| 2. CSF Authority to Resolve Small Awards       | Action | Exhibit |
| 3. Changing the BOG's Role in Reinstatements   | Action | Exhibit |
| 4. Proposed Amendment of Fee Arbitration Rules | Action | Exhibit |

**D. Public Affairs Committee [Mr. Kehoe]**

- |                       |        |         |
|-----------------------|--------|---------|
| 1. Legislative Update | Inform | Exhibit |
| 2. Court Funding      | Inform | Exhibit |

**E. Special Projects Committee [Ms. O'Connor]**

- |                       |        |
|-----------------------|--------|
| 1. Report on Projects | Inform |
|-----------------------|--------|

**F. Centralized Legal Notice System Task Force Update [Mr. Ehlers]**

Inform

**G. Knowledge Base Task Force Update [Ms. Stevens]**

Inform

**H. Oregon eCourt Update [Mr. Comstock]**

Inform

## **7. Other Action Items**

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | Revision of Model Explanation of Contingent Fee Agreement | Action | Exhibit |
| <b>B.</b> | Isaak Inquiry About CLE Materials Policy                  | Action | Exhibit |

## **8. Consent Agenda**

- |           |  |        |         |
|-----------|--|--------|---------|
| <b>A.</b> | Approve Minutes of Prior BOG Meetings                    |        |         |
| 1.        | Open Session – November 10 , 2012                        | Action | Exhibit |
| 2.        | Closed Session – November 10, 2012                       | Action | Exhibit |
| 3.        | Special Session – January 11, 2013                       | Action | Exhibit |
| <b>B.</b> | Appointments to Various Bar Committees, Boards, Councils | Action | Exhibit |

## **9. Default Agenda**

- |           |   |  |         |
|-----------|---|--|---------|
| <b>A.</b> | Minutes of Interim Committee Meetings       |  |         |
| 1.        | Board Development Committee                 |  |         |
| a.        | January 11, 2013                            |  | Exhibit |
| 2.        | Budget and Finance Committee                |  |         |
| a.        | November 10, 2012                           |  | Exhibit |
| b.        | January 11, 2013                            |  | Exhibit |
| 3.        | Governance and Strategic Planning Committee |  |         |
| a.        | January 11, 2013                            |  | Exhibit |
| 4.        | Member Services Committee                   |  |         |
| a.        | November 10, 2012                           |  | Exhibit |
| 5.        | Policy and Governance Committee             |  |         |
| a.        | November 10, 2012                           |  | Exhibit |
| 6.        | Public Affairs Committee                    |  |         |
| a.        | November 10, 2012                           |  | Exhibit |
| b.        | December 6, 2012                            |  | Exhibit |
| c.        | January 11, 2013                            |  | Exhibit |
| 7.        | Special Projects Committee                  |  |         |
| a.        | January 11, 2013                            |  | Exhibit |
| <b>B.</b> | CSF Claims Financial Report                 |  | Exhibit |
| <b>C.</b> | PLF Conflict Affidavits                     |  | Exhibit |

**10. Closed Sessions – [CLOSED](#) Agenda**

- 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

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

- A.** Correspondence
- B.** Articles of Interest

**NOTE:** During lunch there will be a video presentation of “The Rise of the Machines: Automation, Systematization and the Future of Law Practice” originally presented November 2, 2012 by Jordan Furlong. Lawyer members may claim MCLE credit for the presentation.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**Memo Date:** February 7, 2013  
**From:** George Wolff, Referral & Information Services Manager  
**Re:** Report on Modest Means Program Expansion

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### **Action Recommended**

Information only.

### **Background**

On February 10, 2012, the Board of Governors approved a percentage-fee model and implementation plan for the Lawyer Referral Service (LRS). The plan included a recommendation that expansion of the Modest Means Program should occur after the LRS percentage fee model was in place, and should occur with the advice and counsel of substantive law sections' executive committees.

The Public Service Advisory Committee and Referral & Information Services Department have worked together to reach out to substantive law sections' executive committees and are engaged in ongoing discussions with the following sections: Estate Planning and Administration; Elder Law; International Law; Criminal Law; Family Law; Workers Compensation; and Disability Law. Our preliminary assessment is that immigration law and some high priority areas of elder law, e.g., guardianships, appear to be the areas of law for first consideration in expanding the Modest Means Program. All stakeholders' initial reactions to these areas of law have been quite positive thus far.

Based on discussions of the Legal Opportunities Task Force ideas, OSB President Mike Haglund has requested that additional consideration be given to raising the income qualifications for Modest Means Program. He further requested that any expansion recommendations ready for BOG consideration be brought forward as soon as practicable. As a result, the committee and staff are preparing recommendations for the board's May meeting.

We are planning two focus groups in March to further explore both ideas: one group to address the possible addition of an immigration panel, and a second group to address alternative evaluation criteria and alternative billing arrangements (e.g., reduced flat fees in lieu of reduced hourly rates). In addition, we will survey all LRS panelists regarding addition of an elder law panel. Depending upon the outcome of the focus groups, we may conduct additional specific surveys to hone in on practitioners' receptivity to the groups' specific proposals. Submission of proposals to the Board of Governors will follow.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**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/IT (Rod Wegener)</b>	<p><i>Accounting &amp; Finance/Facilities</i></p> <ul style="list-style-type: none"><li>▪ The final 2012 financial report will be available just before the February board meeting. It should be close to a break-even budget.</li><li>▪ One good piece of financial news from 2012. Even though there still is 3,000 s.f. of vacant office space at the bar center, offsetting some of that lost revenue is income from renting conference and meeting rooms. This revenue was \$40,082, almost \$8,000 more than the prior year.</li><li>▪ Member fees were due January 31. Anecdotal information indicates a larger than normal number of members transferring from active to inactive status or resigning this year.</li><li>▪ With some changes in personnel reporting and duties, about nine staff were moved into different offices in January. The moves were performed with no out-of-pocket cost except for minor repainting in three offices.</li></ul> <p><i>Information Technology</i></p> <ul style="list-style-type: none"><li>▪ We upgraded the member login/dashboard to include the PLF Assessment, added a new print receipt button and member profile tab, which now houses the new demographics form.</li><li>▪ BarBooks was linked with citations on Fastcase in November, well in advance of the Jan 2013 goal. The API mechanism placed on the bar's website enables ongoing linkage with new citations with reliance on the structure of the citations in BarBooks.</li><li>▪ We are developing an alternative report mechanism for extracting member data from UniVerse using the new SQL platform. This will serve as an information bridge for staff as the new membership database platform is identified and implemented.</li><li>▪ Twenty new desktops were purchased as part of the annual cycle of equipment replacement that will include a trickle down of newer desktops to replace the oldest equipment.</li><li>▪ The new AtTask system was rolled out to bar staff in January. This new online system replaces the homegrown Outlook system used for both tech support and print/web design projects for the past ten years. In use now for all tech support, AtTask will be scaled up quickly to include print/web design, with the ability to include all bar departments.</li></ul>

<b>Admissions</b>	<ul style="list-style-type: none"><li>▪ We continue to see fewer applicants than in prior years. The February 2013 bar exam will test roughly 210 applicants, down from a more typical 250-260.</li><li>▪ There were 641 admittees in 2012 (exam, reciprocity, house counsel, all types). This is roughly 75 fewer than the year before.</li><li>▪ The recruitment effort for a new admissions director continues. The Board of Bar Examiners is holding a first round of interviews with a number of candidates on March 1. In the meantime, Charles Schulz continues as interim director.</li></ul>
<b>Communications &amp; Public Services (Kay Pulju)</b>	<ul style="list-style-type: none"><li>▪ The Communications &amp; Public Services Department is working on a comprehensive marketing and outreach plan for the bar. Our major projects for the first half of the year will be establishing a comprehensive CLE Seminars page on the bar's website and working with the Referral &amp; Information Services Department on public outreach. We are also preparing to resume production of Legal Links, our legal information video series distributed online and through community access TV.</li><li>▪ The January edition of the Bulletin featured a cover story on OSB President Mike Haglund and his goals for the year ahead. A new regular section, Attorneys' Marketplace, debuted in the same edition. The marketplace will provide a consistent platform for finding services and vendors formerly listed in the "Attorneys Guide to Products and Services" section of the printed membership directory.</li><li>▪ Invitations are out for two upcoming bar events: the annual 50-Year Member Luncheon on March 29, and a tree-planting event on March 2. The latter event, under direction of the BOG's Special Projects Committee, is being held in partnership with Friends of Trees and will be co-sponsored by the OSB Sustainable Future Section, OSB Environmental &amp; Natural Resources Section and the Oregon New Lawyers Division. It includes two planting projects in Portland and one in Eugene on the same date.</li></ul>
<b>CLE Seminars (Karen Lee)</b>	<ul style="list-style-type: none"><li>▪ Future video replay compilations (Super Video Week and Last Chance Video) have gone the way of the dodo bird – extinct. Three members registered for four days of video replays during December.</li><li>▪ Webcast attendance for the last live seminars of 2012 was very good. Out of 274 registrants for three seminars, slightly more than 50% attended via webcast. Child abuse reporting had the largest attendance, with 85 watching via the Internet.</li><li>▪ We scheduled 24 hours of online videos on December 30 and 31. There were 38 registrants, and the most popular videos to watch were child abuse reporting, ethics, and access to justice.</li><li>▪ 2013 marks the end of printed materials included with registration. Electronic materials will be included with seminar registration, with a print copy available at \$15 for one volume and \$25 for materials that require two volumes.</li><li>▪ 2013 also marks the closure of ten video replay sites that had low or no attendance during the past three years.</li></ul>

<b>Diversity &amp; Inclusion</b> <b>(Mariann Hyland)</b>	<ul style="list-style-type: none"><li>▪ The D&amp;I Department hosted the joint OSB Diversity Section and Advisory Committee on Diversity &amp; Inclusion (ACDI) annual retreat on January 12, 2013. Mike Haglund and Tom Kranovich presented welcoming remarks. Tom Kranovich attended the retreat as the BOG liaison for the Diversity Section and ACDI.</li><li>▪ The 15<sup>th</sup> annual OLIO Employment Retreat was held on January 26, 2013. Josh Ross attended as a representative from Stoll Berne and Tom Kranovich participated in the mock interviews. There were 44 law students attending. Five specialty bars participated – OAPABA, OC-NBA, OGALLA, OHBA, OMLA. There were 14 employer tables – Miller Nash, Lane Powell, Schwabe Williamson &amp; Wyatt, Perkins Coie, Davis Wright Tremaine, OHSU, Stoll Berne et al, Disability Rights Oregon, Metropolitan Public Defender Services, Office of Public Defender Services, Tonkon Torp, Oregon Department of Justice, Jordan Ramis, and Legal Aid Services of Oregon. Stoel Rives was a sponsor but did not have a table at the event.</li><li>▪ The inaugural meeting of the OSB Diversity Advisory Council meeting was January 23, 2013. This staff group will advise the ED on diversity issues and assist in assuring that OSB services are delivered in an inclusive and culturally responsive manner. Audrey Matsumonji and Josh Ross are BOG liaisons to the group.</li><li>▪ The D&amp;I Department launched its 2013 OLIO fundraising drive in February 2013. The goal is to raise \$50,000, which will be used primarily to fund the OLIO Orientation in August.</li></ul>
<b>General Counsel</b> <b>(Helen Hierschbiel)</b>	<ul style="list-style-type: none"><li>▪ Troy J. Wood started on February 19 as assistant general counsel in CAO. Troy has been licensed to practice law since 1995 and has a broad range of legal experience both in litigation and transactional matters. Also, Amber Hollister returned from family leave on February 11, so GCO is now at full staff again.</li><li>▪ The UPL Committee opened 63 new cases in 2012 and closed 66. Of the cases closed, 16 were dismissed, 6 were sent notice letters, 28 were sent cautionary letters, 4 were referred to other agencies for resolution, 5 were closed with no action taken, and we obtained injunctions in 4 of them.</li><li>▪ We received 103 petitions for Fee Arbitration in 2012. 36 cases were resolved in 2012. Of those, 23 were resolved after arbitration, 12 were resolved without hearing, and 1 was resolved through mediation. In the vast majority of the 52 cases that were filed but not resolved, the petition was either not returned or the respondent specifically declined to participate.</li><li>▪ We continue to provide legal counsel to all departments of the bar in order to protect the legal and policy interests of the bar.</li><li>▪ We continue to provide ethics guidance to members, in response to direct telephone and written inquiries, and through bar counsel columns and CLE presentations.</li></ul>



<b>Human Resources (Christine Kennedy)</b>	<ul style="list-style-type: none"> <li>▪ Troy Wood started February 19<sup>th</sup> as Assistant General Counsel and CAO Attorney. John Gleason will start the beginning of March as Disciplinary Counsel and Director of Regulatory Services.</li> <li>▪ AJ Ochoa, Carlos Diaz, and Mike Blythe were hired as RIS Assistants. AJ and Carlos are bilingual.</li> <li>▪ Danny Barbour was hired in the IT Department as the Technical Support Specialist.</li> <li>▪ The BBX has scheduled phone interviews for nine candidates on March 1<sup>st</sup>. Temporary employees were brought in to fill 1.5 FTE in administrative staff until the new department manager is hired.</li> <li>▪ There is a .5 FTE position to fill in Accounting.</li> <li>▪ The HR Director made two presentations to the ABA Standing Committee on Lawyer Referral Services annual conference. One was about hiring an LRS team and the other about motivating and fostering a team environment. She also presented to a senior HR management majors class at PSU about a career in HR.</li> </ul>
<b>Legal Publications (Linda Kruschke)</b> <ul style="list-style-type: none"> <li>○</li> </ul>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since my last report: <ul style="list-style-type: none"> <li>✓ The 2012 revision of <i>Administering Oregon Estates</i></li> <li>✓ The 2013 revision of <i>Consumer Law in Oregon</i></li> <li>✓ The 2012 supplements of <i>Uniform Civil</i> and <i>Criminal Jury Instructions</i></li> <li>✓ Two additional chapters of the 2013 revision of <i>Family Law</i></li> </ul> </li> <li>▪ <i>Administering Oregon Estates</i> went to the printer on December 17. Pre-order marketing campaign began on October 15. <ul style="list-style-type: none"> <li>✓ 2012 Budget = \$13,500; Actual to date = \$57,442</li> <li>✓ Of the total revenue to date, \$35,710 will be 2013 revenue</li> </ul> </li> <li>▪ <i>Consumer Law in Oregon</i> went to the printer on January 28. Pre-order marketing campaign began on November 27. <ul style="list-style-type: none"> <li>✓ 2013 Budget = \$15,000; Actual to date = \$16,635</li> </ul> </li> <li>▪ <i>Uniform Civil Jury Instructions</i> and <i>Uniform Criminal Jury Instructions</i> supplements went to the printer on February 7. Pre-order marketing campaign began on December 13. <ul style="list-style-type: none"> <li>✓ <i>Civil</i> – 2013 Budget = \$29,850; Actual to date = \$19,215</li> <li>✓ <i>Criminal</i> – 2013 Budget = \$22,025; Actual to date = \$11,365</li> </ul> </li> <li>▪ We are negotiating with Bloomberg Financial LLP to license some of our books. We have reached agreement on the titles to be licensed and the fee and are in the process of finalizing the terms of the Agreement. Annual revenue from this arrangement will be \$24,000. Additional titles may be added for a fee of \$1,200 per title.</li> <li>▪ We are negotiating with Lexis Nexis to license our jury instructions for their online database. The fee will be a royalty of 20% of the fees allocated to subscriber usage of the jury instructions.</li> </ul>

<b>Legal Services/OLF (Judith Baker)</b>	<p><i>Legal Services Program:</i></p> <ul style="list-style-type: none"><li>▪ The LSP Committee is reviewing the policy for disbursing abandoned client funds and will make a recommendation to the BOG on May 3. The LSP currently has \$135,000 in abandoned client funds.</li><li>▪ THE LSP received and responded to a Complaint and Freedom of Information Act request from Lauren Paulson. The LSP Committee met with the bar's General Counsel to review the complaint and craft a response.</li><li>▪ LSP staff will move forward in the next couple of weeks with accountability process as mandated by the LSP Standards and Guidelines.</li><li>▪ LSP staff continue to participate in strategic planning with legal aid programs to address the current funding crisis.</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 is working on a legislative proposal with the bar's Public Affairs Department to have the interest on escrow accounts go to the OLF to allocate grants to legal service programs.</li></ul>
<b>Media Relations (Kateri Walsh)</b>	<ul style="list-style-type: none"><li>▪ Responding to a media concern that municipalities could use the lawyer/client privilege to shield the public from access to investigative documentation, a small work group crafted a statutory fix to address the issue. The Oregonian has expressed concern that this fix has resulted in less access, rather than more. They would like to assemble another work group to look at the issue again and consider whether another statutory change may be warranted. I have talked to Susan about this, and we plan to discuss in more detail this week, including identifying some possible participants in the work group.</li><li>▪ The Bar/Press/Broadcasters Council will hold its annual "Building a Culture of Dialogue" event on May 4 at the OSB Center. Multnomah County DA Rod Underhill is Chairing the Council and the event this year. If any BOG members are interested in bar/media issues, this could be a fun event to attend. Contact Kateri for more information.</li></ul>
<b>Member Services (Dani Edwards)</b>	<ul style="list-style-type: none"><li>▪ On January 1 more than 300 members began a new term volunteering on one of the bar's 20 committees or 42 section executive committees.</li><li>▪ Recruiting for the OSB and ABA House of Delegates election has begun, the deadline for candidates to file is March 15. More than 40 seats are open for election this year with vacancies in each bar region.</li><li>▪ In lieu of the former Bar Leaders Conference, which has been only sparsely attended in recent years, the department has begun offering section executive committee members the opportunity to participate in a series of informative webinar sessions. Topics for the webinar sessions include CLE seminar planning, providing services to the section membership, increasing membership, and treasurer training.</li><li>▪ Member Services and IT Department staff are working on an internal platform for the bar's 60+ list serves. The new platform is in beta testing but is expected to fully launch by the end of February.</li></ul>

<b>Minimum Continuing Legal Education (Denise Cline)</b>	<ul style="list-style-type: none"><li>▪ The MCLE Committee met on Friday, December 14, and recommended amendments to Rules 5.2(c)(1)(ii) and (g) and Regulation 5.250. These proposals will be reviewed by the Board of Governors at its February 22, 2013 meeting.</li><li>▪ The MCLE Committee will have its first meeting of 2013 on March 8.</li><li>▪ Processed 7,402 program accreditation applications and 1,432 applications for other types of CLE credit (teaching, legal research, etc.) during 2012.</li><li>▪ 4,676 compliance reports were sent on October 15. Reports processed as of January 25: 2,852. Reports not been received as of January 25: 1,121. The filing deadline is January 31.</li></ul>
<b>New Lawyer Mentoring (Kateri Walsh)</b>	<ul style="list-style-type: none"><li>▪ December 31 marked the first regulatory deadline for the NLMP. The vast majority of 2012 participants were certified for completion by the deadline. A small group filed for extensions before the deadline, which has kept them in good status. Approximately 15 New Lawyers are currently non-compliant and are facing possible suspension if they do not repair. We are following a similar timeline to MCLE in terms of warnings and opportunities to repair.</li><li>▪ The NLMP Committee now has enough 2012 evaluation surveys to begin a formal process of assessing the first program year. Initial review of the evaluations is quite positive, especially among mentors. The committee will look into the disparity between mentor and new lawyer satisfaction.</li><li>▪ A collaborative team of NLMP, LRS, OLF and Pro Bono staff is developing a mechanism for identifying pro bono cases to pitch to Mentor/New Lawyer pairs, and to help them structure their mentoring year around co-counseling on those cases. The Civil Rights Section would like to identify some civil rights cases which may be appropriate for a similar approach. We are currently working to identify two cases to use as pilots for this approach, and hope to have these cases "assigned" by mid March.</li><li>▪ Mentor recruitment continues to be the most pressing need. The committee is looking at some new strategies and may enlist the assistance of the board in the next month with some targeted recruitment messages.</li></ul>

<b>Public Affairs</b> <b>(Susan Grabe)</b>	<ul style="list-style-type: none"> <li>▪ The OSB's Law Improvement Package for 2013 consists of 16 bills. All have been introduced and referred to their respective committees, primarily Judiciary, but also Veterans, Business and Consumer Protection Committees. Public Affairs staff has been working with sections to prepare testimony for hearings. Twelve of the 16 bills had hearings within the first 10 days of session.</li> <li>▪ Bar staff continue to meet with legislators to discuss the bar's proposals for court funding, legal aid and indigent defense funding.</li> <li>▪ Public Affairs staff has collaborated with Executive Services in planning the February 21 legislative reception in Salem, at which we expect a record turnout of legislators and local bar members. The Chief Justice will make brief remarks about the state of court funding.</li> <li>▪ The Public Affairs staff is continually monitoring all bills introduced during the legislative session, and referring to sections any bills that may be of interest. Sections are encouraged to work with Public Affairs to monitor ongoing legislation, and to become involved in the legislative process when appropriate.</li> <li>▪ The Public Affairs staff has been working with the OSB President to put together the Citizens Coalition for Court Funding and implement a legislative and grassroots strategy. OSB design staff created a logo and letterhead for the CCCF's written communications.</li> </ul>
<b>Referral &amp; Information Services</b> <b>(George Wolff)</b>	<ul style="list-style-type: none"> <li>▪ <i>Modest Means Program Expansion:</i> Attended meeting with Bar President Michael Haglund January 10. Ongoing discussions with Workers Compensation; International Law; Criminal Law; Elder Law and Family Law Sections. Planning upcoming focus groups in early March: one group to address possible addition of immigration panel, and a second group to address alternative evaluation criteria and alternative billing arrangements.</li> <li>▪ <i>Lawyer Referral Service:</i> Continuing implementation of percentage fee revenue model, including addressing ongoing delays in software development, bug fixes, and testing. Preliminary October 2012 - December 2012 percentage fee invoices total \$41,552, indicating that LRS generated at least \$346,264 in attorneys' fees for LRS attorneys during this time period.</li> </ul>
<b>Regulatory Services/Discipline</b> <b>(Jeff Sapiro)</b>	<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 February 14, 2013, and took action on approximately 20 separate matters. Greg Hendrix of Bend is chairperson this year. New members include Blair Henningsgaard of Astoria and Brad Litchfield of Eugene.</li> <li>▪ With the January 31 deadline to change membership status, Regulatory Services staff processed a substantial number of resignations and inactive transfer requests in the first month of 2013.</li> <li>▪ John S. Gleason will be the new OSB Disciplinary Counsel beginning in early March. John has held a similar position in Colorado since 1998.</li> </ul>

Date	Event
11/14	Lunch @ Perkins Coie
11/14	Meet w/Naoimi Stacy of Confederated Tribes of the Umatilla Indian Reservation
11/20	CEJ Board Meeting and Mid-Campaign Leadership Meeting
11/29	OSB Awards Luncheon
11/29	US Trust (Michelle Garcia) Holiday Open House
12/5	Justice Durham's Retirement Reception
12/7	PLF Board Meeting
12/11	Lunch @ Stoll Berne
12/19	ED's Breakfast
1/4	Attorney General Investiture
1/8	Lunch @ Jordan Ramis
1/9	CLNS Task Force Meeting
1/11	BOG Committees and BOG/MBA Social
1/12	Client Security Fund Committee Meeting
1/13	CEJ Board Meeting
1/15	OSB Knowledge Base Task Force
1/16	ED's Breakfast
1/21	The Skanner MLK Breakfast
1/24	Lunch @ Dunn Carney
1/29	Multnomah Bar Foundation Social
1/31	Lunch @ Tonkon Torp
1/31	Markewitz Herbold Open House
2/5-9	National Assoc. of Bar Executives/National Conf. of Bar Presidents Meetings-Dallas, TX
2/13	Professionalism Commission
2/13	Oregon Hispanic Bar Assn. Awards Dinner
2/20	CEJ Awards Lunch

# BOG Action Items Status

February 2013

Item	Responsible Staff	Status
CLNS Task Force	Stevens/Shields	TF appointed; 1st meeting 1/9/13
NLMP Rule changes	Walsh	awaiting SCt approval
Appellate Selection Bylaws	Stevens	done
CSF Rule changes	Stevens	done
Military & Veterans Section	Pulju/Edwards	in progress
Active Pro Bono bylaw	Stevens	done
RPC 4.4(b) to HOD	Stevens	pending
Bulletin Article on Discipline System	Hirschbiel/Sapiro	pending for March issue
Bar Legislative Package (including title escrow interest to OLF & tax credit for CEJ contributions)	Grabe	in progress
Knowledge Base Task Force	Stevens	TF appointed; 1st meeting coming up

Headcount and Turnover Report															
	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Annual Totals		
Number of Employees															
Exempt	42	42	42	42	42	42	42	41	41	41	40	40			
Non-Exempt	57	55	57	56	54	53	53	52	51	52	54	55			
Total	99	97	99	98	96	95	95	93	92	93	94	95			
Exempt Full Time	39	39	39	39	39	39	39	38	38	38	37	37			
Non Exempt Full Time	40	40	40	39	40	40	39	37	36	35	35	36			
Full Time Subtotal	79	79	79	78	79	79	78	75	74	73	72	73			
Exempt Part Time	3	3	3	3	3	3	3	3	3	3	3	3			
Non Exempt Part Time	17	15	17	17	14	13	14	15	15	17	19	19			
Part Time Subtotal	20	18	20	20	17	16	17	18	18	20	22	22			
Total	99	97	99	98	96	95	95	93	92	93	94	95			
FTE 1.0	79.0000	79.000	79.000	78.000	79.000	79.000	78.000	75.000	74.000	73.000	72.000	73.000			
FTE <1.0	10.5875	9.3875	10.3875	10.3875	9.6500	9.9750	10.4750	10.9750	10.9750	12.2250	13.2250	13.4750			
Total FTE	89.5875	88.3875	89.388	88.388	88.650	88.975	88.475	85.975	84.975	85.225	85.225	86.475			
New Hires															
Exempt	1	0	0	0	0	0	0	0	0	0	0	0	1		
Non-Exempt	0	0	2	0	1	0	1	1	0	1	2	2	10		
Total	1	0	2	0	1	0	1	1	0	1	2	2	11		
Exempt Full Time	1	0	0	0	0	0	0	0	0	0	0	0	1		
Non Exempt Full Time	0	0	0	0	1	0	0	0	0	0	0	1	2		
Subtotal	1	0	0	0	1	0	0	0	0	0	0	1	3		
Exempt Part Time	0	0	0	0	0	0	0	0	0	0	0	0	0		
Non Exempt Part Time	0	0	2	0	0	0	1	1	0	1	2	1	8		
Subtotal	0	0	2	0	0	0	1	1	0	1	2	1	8		
Total	1	0	2	0	1	0	1	1	0	1	2	2	11		
FTE 1.0	1.000	0.000	0.000	0.000	1.000	0.000	0.000	0.000	0.000	0.000	0.000	1.000	3		
FTE <1.0	0.000	0.000	1.000	0.000	0.000	0.000	0.500	0.500	0.000	0.750	1.000	0.500	4.25		
Total FTE	1.000	0.000	1.000	0.000	1.000	0.000	0.500	0.500	0.000	0.750	1.000	1.500	7.25		
Terminations															
Exempt	0	0	0	0	0	0	0	1	0	0	1	0	2		
Non-Exempt	0	2	0	1	3	1	1	2	1	0	0	1	12		
Total	0	2	0	1	3	1	1	3	1	0	1	1	14		
Exempt Full Time	0	0	0	0	0	0	0	1	0	0	1	0	2		
Non Exempt Full Time	0	0	0	1	0	0	1	1	1	0	0	0	4		
Subtotal	0	0	0	1	0	0	1	2	1	0	1	0	6		
Exempt Part Time	0	0	0	0	0	0	0	0	0	0	0	0	0		
Non Exempt Part Time	0	2	0	0	3	1	0	1	0	0	0	1	8		
Subtotal	0	2	0	0	3	1	0	1	0	0	0	1	8		
Total	0	2	0	1	3	1	1	3	1	0	1	1	14		
FTE 1.0 Voluntary	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.000	0.000	1.000	0.000	2		
FTE <1.0 Voluntary	0.000	0.500	0.000	0.000	1.100	0.300	0.000	0.500	0.000	0.000	0.000	0.250	2.65		
Subtotal	0.000	0.500	0.000	0.000	1.100	0.300	0.000	0.500	1.000	0.000	1.000	0.250	4.65		
FTE 1.0 Involuntary	0.000	0.000	0.000	1.000	0.000	0.000	1.000	2.000	0.000	0.000	0.000	0.000	4		
FTE <1.0 Involuntary	0.000	0.5625	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.5625		
Subtotal	0.000	0.5625	0.000	1.000	0.000	0.000	1.000	2.000	0.000	0.000	0.000	0.000	4.5625		
Total FTE	0.000	1.0625	0.000	1.000	1.100	0.300	1.000	2.500	1.000	0.000	1.000	0.250	9.2125		
Temporary															
Assignment Began	1	1	2	0	1	1	0	0	0	0	2	1	9		
Assignment Ended	0	2	1	2	0	2	0	0	0	0	0	1	8		
Assignment Began FTE	1.000	0.500	0.900	0.000	0.375	0.500	0.000	0.000	0.000	0.000	1.000	0.500	4.775		
Assignment Ended FTE	0.000	1.250	0.500	2.000	0.000	0.875	0.000	0.000	0.000	0.000	0.000	0.500	5.125		
Exempt	1	1	1	1	1	1	1	1	1	1	1	1			
Non-Exempt	3	2	3	1	2	1	1	1	1	0	2	2			
Total	4	3	4	2	3	2	2	2	2	1	3	3			
Exempt Full Time	0	0	0	0	0	0	0	0	0	0	0	0			
Non Exempt Full Time	1	1	1	0	0	0	0	0	0	0	0	0			
Subtotal	1	1	1	0	0	0	0	0	0	0	0	0			
Exempt Part Time	1	1	1	1	1	1	1	1	1	1	1	1			
Non Exempt Part Time	2	1	2	1	2	1	1	1	1	0	2	2			
Subtotal	3	2	3	2	3	2	2	2	2	1	3	3			
Total Temporary Employees	4	3	4	2	3	2	2	2	2	1	3	3			
FTE 1.0	1.000	1.000	1.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000			
FTE <1.0	1.750	1.000	1.400	1.000	1.375	1.000	1.000	1.000	1.000	0.500	1.500	1.500			
Total Temporary FTE	2.750	2.000	2.400	1.000	1.375	1.000	1.000	1.000	1.000	0.500	1.500	1.500			
Leave of Absence															
Leave Began	0	1	1	0	1	1	1	1	0	1	1	1	9		
Leave Ended	0	0	1	1	0	0	1	1	0	3	1	0	8		
Leave Began FTE	0.00	1.00	1.00	0.00	1.00	1.00	1.00	1.00	0.00	1.00	1.00	1.00	9		
Leave Ended FTE	0.00	0.00	1.00	1.00	0.00	0.00	1.00	1.00	0.00	3.00	1.00	0.00	8		
Exempt	0	0	1	0	1	2	1	1	1	0	1	2			
Non-Exempt	1	2	1	1	1	1	2	2	2	1	0	0			
Total	1	2	2	1	2	3	3	3	3	1	1	2			
Exempt Full Time	0	0	1	0	1	2	1	1	1	0	1	2			
Non Exempt Full Time	1	2	1	1	1	1	2	2	2	1	0	0			
Subtotal	1	2	2	1	2	3	3	3	3	1	1	2			
Exempt Part Time	0	0	0	0	0	0	0	0	0	0	0	0			
Non Exempt Part Time	0	0	0	0	0	0	0	0	0	0	0	0			
Subtotal	0	0	0	0	0	0	0	0	0	0	0	0			
Total	1	2	2	1	2	3	3	3	3	1	1	2			
FTE 1.0	1.000	2.000	2.000	1.000	2.000	3.000	3.000	3.000	3.000	1.000	1.000	2.000			
FTE <1.0	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000			
Total FTE	1.000	2.000	2.000	1.000	2.000	3.000	3.000	3.000	3.000	1.000	1.000	2.000			
Turnover															
Exempt	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	2.38%	0.00%	0.00%	2.44%	0.00%	Total	Average	
Non Exempt	0.00%	3.51%	0.00%	1.75%	5.36%	1.85%	1.89%	3.77%	1.92%	0.00%	0.00%	1.85%	4.82%	0.40%	
Full Time	0.00%	0.00%	0.00%	1.27%	0.00%	0.00%	1.27%	2.56%	1.33%	0.00%	1.37%	0.00%	21.91%	1.83%	
Part Time	0.00%	10.00%	0.00%	0.00%											

# **Oregon State Bar**

## **Diversity Advisory Council**

### **Background, Charge, Membership and Responsibilities**

#### **Background**

To fully achieve the Oregon State Bar's mission we must ensure our programs, services and activities are delivered in an inclusive and culturally responsive manner to our diverse bar and community. The OSB Diversity Advisory Council (DAC) will help to promote a systemic, collaborative and strategic approach to achieve set goals and objectives to enhance the OSB's interest in advancing diversity and inclusion in the bar.

#### **Charge**

Promoting access to justice, respect for the rule of law, increasing the quality of legal services, and developing a diverse and inclusive bar are key components of the OSB's mission and values. The DAC serves in an advisory capacity to the OSB Executive Director. As stewards and agents of the OSB, the DAC is charged with developing an internal Diversity Action Plan ("Plan") to ensure that the OSB's programs, services and activities are delivered in an inclusive and culturally responsive manner to our diverse bar and community. Upon approval of the Plan by the Executive Director and adoption by the Board of Governors, the DAC is charged with implementation and ongoing monitoring of the Plan, including measuring progress toward achieving goals and objectives. Also, the DAC advises the Executive Director generally on matters related to diversity and inclusion in all aspects of the OSB's mission.

#### **Membership**

The Chief Executive Officer shall appoint members to the DAC, taking into consideration the need to have representatives from each department and a diverse and inclusive team. The President of the OSB, at his or her discretion, may appoint representatives from the BOG to serve as DAC liaisons.

DAC members are expected to participate in meetings and contribute to the work of the team.

The OSB Diversity & Inclusion Department shall provide administrative staff to support the DAC's activities.



## **Responsibilities**

The DAC's responsibilities include developing a recommended Diversity Action Plan for the OSB that addresses all of the OSB's departments and mission areas. The DAC is encouraged to address and make recommendations concerning the following issues, as well as others as they are identified:

- Strategies to increase the diversity of OSB staff;
- Strategies to improve the OSB climate and the retention of diverse staff;
- Identification and development of diversity best practices;
- Identification of resources to support diversity initiatives, including resources for education, training, and staff recruitment.
- Identification of resources to assist employees in enhancing cultural proficiency when providing services to diverse customers;
- Identification of resources to assist departments with diversity strategic planning;
- Identification of resources to expand contacts and connections with diverse communities and organizations;
- Development of programs and initiatives to promote and support diversity in all of the OSB's mission areas;
- Development of a critical mass of support to bolster attendance at events dedicated to promoting diversity; and
- Improvement of services to diverse bar and community members.

The DAC shall make recommendations for an OSB Diversity Action Plan no later than the end of its first year. Upon approval and adoption of the Plan, the DAC shall monitor the Plan and measure and report on progress toward achieving Plan goals and objectives at least annually. Also, the DAC's responsibilities include making recommendations concerning the DAC's charge, membership and responsibilities.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21-22, 2013  
**Memo Date:** February 7, 2013  
**From:** Ira Zarov – CEO Professional Liability Fund  
**Re:** PLF Update

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### GENERAL

Because of the overlap in meeting dates between the PLF BOD and the BOG meetings, PLF staff and liaisons are unable to attend this meeting. The next BOG and BOD meeting is the joint meeting of the two boards (May 3, 2013). At that time, an overview of the 2012 claims experience and the OAAP and Practice Management activities will be presented.

### FINANCIAL OVERVIEW

The 2012 claim year was a successful one for the PLF. As the financial report indicates (see attached) there was a profit of over \$4.8 million. There were several sources for the gain. The PLF investments performed well and exceeded the budgeted amount. In addition, the number of claims (frequency) was lower than expected. And finally, the actuary report was positive overall for past claims still open at the start of the year. The actuary reports recalculate estimates of the total costs of pending claims based on how those claims have developed. The reports also predict claim costs for future time periods.

While the investment results are budgeted according to recommendations by our financial advisors, R.V. Kuhns & Associates, they are ordinarily not the driving factor in PLF financial results. Claims are the primary factor in determining the PLF fiscal picture. The good news in the actuary report is that claim costs, especially indemnity, have stabilized over the past several report periods and there are some indications that claim expenses have also settled after a period of significant increase. There has also been a fall in the frequency of new claims that began in the final half of 2012 and appears to have continued in the early part of 2013.

While encouraging, the profit for the year is also an example of the volatility of PLF results (in 2011 there was a loss of over \$2.4 million). That volatility is considered when setting the PLF annual assessment. One goal is to stabilize the assessment over time. Cognizant of the potentially large year-to-year swings, the BOD has instituted a policy that seeks to stabilize the assessment by building a \$12 million reserve above claim liabilities. (The \$12 million is the amount of a reserve the actuary report recommends as sufficient to respond to negative fluctuations in the PLF results 70% of the time.) In difficult times, the reserve would be used to avoid or limit increases in the assessment. An equally important goal is to set the assessment at a level that reflects the cost of providing PLF coverage to all covered parties in the Plan Year. An assessment that is too high is a subsidy for future covered parties whose assessment will be artificially low. An assessment that is too low is a surcharge on the covered parties of the future. (A Canadian program charged premiums that were so conservative over a long period

of time that, in an embarrassment of riches, it charged insureds a single dollar for a number of ensuing years.)

All that said, although circumstances can change quickly, we are optimistic that if current trends continue, the PLF will have a strong performance in 2013.

## **STAFFING**

In the past two years, two experienced claims attorneys have retired. Happily, we have been able to attract experienced and highly qualified candidates. Two new claims attorneys have been added to our staff - Holli Houston and Sharnel Mesirow. Ms. Houston previously worked for a defense panel firm. Ms. Mesirow previously worked as a solo practitioner and most recently as an associate at the Gevurtz Menashe firm. She was chosen from a pool of seventy-six applicants.

## **PLF – BOG Issues**

Each year, the PLF brings to the BOG for approval proposed changes to the coverage plan. The changes reflect new developments in the law as well as issues that arise during the course of the previous year. In addition to changes in the coverage plan, there are often changes to the PLF Policy Manual which the BOG must approve. Also, in the normal course of events, the PLF Budget and Assessment is approved by the BOG in the last quarter of the year. The 2014 budget will most likely include some reorganization of several PLF departments because of retirements and succession planning.

Another issue that will be brought to the BOG is the Special Underwriting Assessment (SUA). SUA is a surcharge on amounts over \$75,000 spent on a covered party's claim. After intensive study the PLF Board of Directors voted in 2012 to discontinue the SUA program at the end of 2013 for the reasons that SUA produced little income, potentially compromised the relationship of the claims attorneys to covered parties, and was arguably not altogether fair. Proponents of SUA believed that there should be a consequence for those who have malpractice claims requiring PLF expenditures. The BOG must approve the change in policy.

At the end of 2012, issues were raised on the solo and small firm practitioner website about the cost of the PLF installment plan. We are in the process of reviewing those issues in order to determine the feasibility of implementing some of the suggestions. We will report to the BOG on that review and, if appropriate, will bring policy changes consistent with the review to the BOG.

Attachment

# Professional Liability Fund

Ira R. Zarov  
Chief Executive Officer

February 12, 2013

To: Professional Liability Fund Board of Directors  
From: R. Thomas Cave, Chief Financial Officer  
Re: Draft December 31, 2012 Financial Statements

NTC

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I have enclosed draft December 31, 2012 Financial Statements. These statements assume that the Board of Directors will adopt the estimated liabilities for claims that staff and the actuaries have recommended. There are a few additional adjustments that will be made to these figures; however, the additional adjustments are not expected to significantly change the financial results.

These statements show 2012 Primary Program net income of over \$4.8 million. This is a welcome change from the nearly \$2.5 million loss in 2011.

Investment results were excellent and returns were nearly \$1.7 million higher than budget. However, the major reason for the 2012 income was good claim results. Claim costs and liabilities will be discussed in detail during the Finance Committee portion of the board meeting. If you view the two actuarial reports together, the development on claims pending at the start of 2012 was positive (less than the December 31, 2011 estimates) and the budget anticipated negative development (actual results to be slightly higher than December 31, 2011 estimates).

In addition, a single attorney was responsible for 141 claims made during 2012. This situation distorted both the financial results relating to claim results and claim frequency during much of the second half of 2012. It is probably best to remove these single attorney claims when evaluating 2012 claim results both financially and otherwise. These 141 claims are subject to a single \$350,000 limit and the actuaries made a large adjustment for this situation. Also, if these claims are not included, claim frequency dropped significantly during the second half of 2012.

If you have any questions, please contact me.

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
12/31/2012**

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3	Primary Program Income Statement
4	Primary Program Operating Expenses
5	Excess Program Income Statement
6	Excess Program Operating Expenses
7	Combined Investment Schedule

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**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Balance Sheet  
12/31/2012**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$2,931,542.67	\$2,318,022.25
Investments at Fair Value	42,396,004.86	40,146,720.55
Due from Reinsurers	1,346,014.01	92,717.95
Other Current Assets	265,996.39	77,736.69
Net Fixed Assets	980,612.12	1,029,923.75
Claim Receivables	66,271.00	69,888.65
Other Long Term Assets	<u>13,919.48</u>	<u>13,939.81</u>
<b>TOTAL ASSETS</b>	<b><u>\$48,000,360.53</u></b>	<b><u>\$43,748,949.65</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$194,072.75	\$249,226.80
Due to Reinsurers	\$18,916.32	\$3,068.00
Deposits - Assessments	10,128,861.50	9,747,483.99
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	14,200,000.00	15,000,000.00
Liability for Claim Expense	12,500,000.00	12,700,000.00
Liability for Future ERC Claims	2,700,000.00	2,700,000.00
Liability for Suspense Files	1,400,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	<u>2,400,000.00</u>	<u>2,300,000.00</u>
<b>Total Liabilities</b>	<b><u>\$43,987,471.08</u></b>	<b><u>\$44,530,084.07</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	(\$781,169.42)	\$2,349,430.48
Year to Date Net Income (Loss)	<u>4,794,058.87</u>	<u>(3,130,599.90)</u>
<b>Total Fund Equity</b>	<b><u>\$4,012,889.45</u></b>	<b><u>(\$781,169.42)</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$48,000,360.53</u></b>	<b><u>\$43,748,914.65</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Income Statement  
12 Months Ended 12/31/2012**

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	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$24,803,325.67	\$24,907,500.00	\$104,174.33	\$24,465,414.66	\$24,907,500.00
Installment Service Charge	394,631.00	401,000.00	6,369.00	385,593.00	401,000.00
Other Income	69,868.17	0.00	(69,868.17)	45,578.66	0.00
Investment Return	<u>4,295,120.03</u>	<u>2,628,331.00</u>	<u>(1,666,789.03)</u>	<u>(590,228.90)</u>	<u>2,628,331.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$29,562,944.87</u></b>	<b><u>\$27,936,831.00</u></b>	<b><u>(\$1,626,113.87)</u></b>	<b><u>\$24,306,357.42</u></b>	<b><u>\$27,936,831.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$20,760,000.00			\$18,079,500.00	
Actuarial Adjustment to Reserves	(2,435,227.40)			2,398,104.72	
Net Changes in AOE Liability	100,000.00			0.00	
Net Changes in ERC Liability	0.00			300,000.00	
Coverage Opinions	141,424.92			184,656.43	
General Expense	68,234.72			15,986.23	
Less Recoveries & Contributions	(161,352.20)			(41,534.61)	
Budget for Claims Expense		<u>\$21,189,000.00</u>			<u>\$21,189,000.00</u>
<b>Total Provision For Claims</b>	<b><u>\$18,473,080.04</u></b>	<b><u>\$21,189,000.00</u></b>	<b><u>\$2,715,919.96</u></b>	<b><u>\$20,936,712.77</u></b>	<b><u>\$21,189,000.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$2,222,235.63	\$2,201,774.00	(\$20,461.63)	\$2,296,029.63	\$2,201,774.00
Accounting Department	742,389.46	789,960.00	47,570.54	635,728.92	789,960.00
Loss Prevention Department	1,824,647.59	1,867,930.00	43,282.41	1,700,516.45	1,867,930.00
Claims Department	2,398,388.09	2,466,873.00	68,484.91	2,305,032.97	2,466,873.00
Allocated to Excess Program	<u>(1,099,825.92)</u>	<u>(1,099,826.00)</u>	<u>(0.08)</u>	<u>(1,350,103.80)</u>	<u>(1,099,826.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$6,087,834.85</u></b>	<b><u>\$6,226,711.00</u></b>	<b><u>\$138,876.15</u></b>	<b><u>\$5,587,204.17</u></b>	<b><u>\$6,226,711.00</u></b>
Contingency (2% of Operating Exp)	\$23,693.21	\$145,541.00	\$121,847.79	\$53,522.64	\$145,541.00
Depreciation and Amortization	\$175,500.35	\$237,600.00	\$62,099.65	\$209,326.30	\$237,600.00
Allocated Depreciation	<u>(35,996.04)</u>	<u>(35,996.00)</u>	<u>0.04</u>	<u>(43,635.96)</u>	<u>(35,996.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$24,724,112.41</u></b>	<b><u>\$27,762,856.00</u></b>	<b><u>\$3,038,743.59</u></b>	<b><u>\$26,743,129.92</u></b>	<b><u>\$27,762,856.00</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>\$4,838,832.46</u></b>	<b><u>\$173,975.00</u></b>	<b><u>(\$4,664,857.46)</u></b>	<b><u>(\$2,436,772.50)</u></b>	<b><u>\$173,975.00</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
12 Months Ended 12/31/2012**

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	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$349,295.22	\$3,984,099.59	\$4,016,426.00	\$32,326.41	\$3,858,799.80	\$4,016,426.00
Benefits and Payroll Taxes	125,668.69	1,410,661.61	1,441,243.00	30,581.39	1,256,075.74	1,441,243.00
Investment Services	7,036.50	27,718.50	27,000.00	(718.50)	27,303.75	27,000.00
Legal Services	2,556.00	13,240.50	15,000.00	1,759.50	7,930.85	15,000.00
Financial Audit Services	0.00	21,700.00	25,000.00	3,300.00	20,200.00	25,000.00
Actuarial Services	0.00	18,900.00	19,000.00	100.00	18,563.75	19,000.00
Claims Audit Services	0.00	0.00	0.00	0.00	5,609.47	0.00
Claims MMSEA Services	0.00	3,850.00	12,000.00	8,150.00	11,400.00	12,000.00
Information Services	8,676.13	86,814.17	74,000.00	(12,814.17)	84,000.57	74,000.00
Document Scanning Services	1,605.63	52,034.79	75,000.00	22,965.21	21,879.03	75,000.00
Other Professional Services	20,075.52	65,375.04	62,000.00	(3,375.04)	73,599.75	62,000.00
Staff Travel	1,084.81	16,159.55	12,950.00	(3,209.55)	8,048.77	12,950.00
Board Travel	9,624.70	38,011.15	41,300.00	3,288.85	29,994.17	41,300.00
NABRICO	205.85	9,996.13	10,500.00	503.87	24,805.25	10,500.00
Training	1,901.67	20,496.94	12,000.00	(8,496.94)	5,729.42	12,000.00
Rent	41,522.25	511,782.29	498,267.00	(13,515.29)	491,884.09	498,267.00
Printing and Supplies	6,017.01	60,187.24	85,000.00	24,812.76	75,579.87	85,000.00
Postage and Delivery	6,649.83	37,715.25	37,750.00	34.75	34,350.20	37,750.00
Equipment Rent & Maintenance	4,093.80	38,624.51	55,000.00	16,375.49	43,232.15	55,000.00
Telephone	3,856.33	36,563.64	35,000.00	(1,563.64)	34,328.63	35,000.00
L P Programs (less Salary & Benefits)	52,716.21	389,833.69	447,136.00	57,302.31	359,384.18	447,136.00
Defense Panel Training	0.00	0.00	200.00	200.00	20,705.79	200.00
Bar Books Grant	16,666.63	200,000.00	200,000.00	0.00	300,000.00	200,000.00
Insurance	(18,849.07)	70,792.93	61,265.00	(9,527.93)	60,080.89	61,265.00
Library	4,888.79	31,047.06	31,000.00	(47.06)	32,927.77	31,000.00
Subscriptions, Memberships & Other	11,500.55	42,056.19	32,500.00	(9,556.19)	30,894.08	32,500.00
Allocated to Excess Program	(91,652.16)	(1,099,825.92)	(1,099,826.00)	(0.08)	(1,350,103.80)	(1,099,826.00)
<b>TOTAL EXPENSE</b>	<b>\$565,140.89</b>	<b>\$6,087,834.85</b>	<b>\$6,226,711.00</b>	<b>\$138,876.15</b>	<b>\$5,587,204.17</b>	<b>\$6,226,711.00</b>

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**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Income Statement  
12 Months Ended 12/31/2012**

DRAFT

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$732,247.30	\$705,600.00	(\$26,647.30)	\$720,039.00	\$705,600.00
Prior Year Adj. (Net of Reins.)	1,395.58	1,500.00	104.42	703.08	1,500.00
Profit Commission	0.00	0.00	0.00	21,683.65	0.00
Installment Service Charge	37,180.00	38,000.00	820.00	37,322.00	38,000.00
Investment Return	<u>429,190.43</u>	<u>228,551.00</u>	<u>(200,639.43)</u>	<u>22,315.28</u>	<u>228,551.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$1,200,013.31</u></b>	<b><u>\$973,651.00</u></b>	<b><u>(\$226,362.31)</u></b>	<b><u>\$802,063.01</u></b>	<b><u>\$973,651.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$1,208,790.86	\$1,214,642.00	\$5,851.14	\$1,452,254.45	\$1,214,642.00
Allocated Depreciation	<u>\$35,996.04</u>	<u>\$35,996.00</u>	<u>(\$0.04)</u>	<u>\$43,635.96</u>	<u>\$35,996.00</u>
<b>NET INCOME (LOSS)</b>	<b><u>(\$44,773.59)</u></b>	<b><u>(\$276,987.00)</u></b>	<b><u>(\$232,213.41)</u></b>	<b><u>(\$693,827.40)</u></b>	<b><u>(\$276,987.00)</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
12 Months Ended 12/31/2012**

DRAFT

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$56,281.76	\$675,415.08	\$674,735.00	(\$680.08)	\$798,491.49	\$674,735.00
Benefits and Payroll Taxes	19,900.26	238,810.28	239,572.00	761.72	244,226.61	239,572.00
Investment Services	463.50	2,281.50	3,200.00	918.50	2,696.25	3,200.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,969.58	275,634.96	275,635.00	0.04	388,937.88	275,635.00
Reinsurance Placement & Travel	0.00	3,933.47	12,000.00	8,066.53	5,733.38	12,000.00
Training	0.00	0.00	1,000.00	1,000.00	0.00	1,000.00
Printing and Mailing	3,732.60	5,300.86	5,000.00	(300.86)	4,283.30	5,000.00
Program Promotion	505.00	6,069.71	1,000.00	(5,069.71)	1,595.54	1,000.00
Other Professional Services	0.00	1,345.00	2,500.00	1,155.00	6,290.00	2,500.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>TOTAL EXPENSE</b>	<b><u>\$103,852.70</u></b>	<b><u>\$1,208,790.86</u></b>	<b><u>\$1,214,642.00</u></b>	<b><u>\$5,851.14</u></b>	<b><u>\$1,452,254.45</u></b>	<b><u>\$1,214,642.00</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
12 Months Ended 12/31/2012**

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	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
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**Dividends and Interest:**

Short Term Bond Fund	\$18,087.07	\$202,322.79	\$31,771.39	\$195,362.54
Intermediate Term Bond Funds	291,236.92	519,527.14	68,647.26	303,125.23
Domestic Common Stock Funds	83,747.53	110,842.17	58,028.69	88,794.83
International Equity Fund	78,977.54	78,977.54	141,088.25	141,088.25
Real Estate	36,396.98	142,758.88	102,575.76	235,703.88
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>169,213.58</u>	<u>270,621.57</u>	<u>247,563.88</u>	<u>475,267.39</u>
<b>Total Dividends and Interest</b>	<b><u>\$677,659.62</u></b>	<b><u>\$1,325,050.09</u></b>	<b><u>\$649,675.23</u></b>	<b><u>\$1,439,342.12</u></b>

**Gain (Loss) in Fair Value:**

Short Term Bond Fund	(\$14,502.23)	\$284,635.31	(\$12,585.89)	\$61,308.85
Intermediate Term Bond Funds	(271,144.05)	248,701.30	62,932.10	14,598.16
Domestic Common Stock Funds	17,556.80	798,337.84	24,084.67	(420,781.83)
International Equity Fund	228,078.87	1,243,353.83	(143,572.87)	(1,198,859.08)
Real Estate	37,689.98	109,446.00	(26,595.92)	112,928.24
Hedge Fund of Funds	45,268.48	286,587.61	(18,441.87)	(294,549.77)
Real Return Strategy	<u>(134,459.99)</u>	<u>326,434.90</u>	<u>(246,839.83)</u>	<u>(281,900.31)</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>(\$91,512.14)</u></b>	<b><u>\$3,297,496.79</u></b>	<b><u>(\$361,019.61)</u></b>	<b><u>(\$2,007,255.74)</u></b>

**TOTAL RETURN**

	<b><u>\$586,147.48</u></b>	<b><u>\$4,622,546.88</u></b>	<b><u>\$288,655.62</u></b>	<b><u>(\$567,913.62)</u></b>
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**Portions Allocated to Excess Program:**

Dividends and Interest	\$43,121.37	\$102,995.76	\$52,753.63	\$128,837.47
Gain (Loss) in Fair Value	<u>(5,176.58)</u>	<u>326,194.67</u>	<u>(29,314.79)</u>	<u>(106,522.19)</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$37,944.79</u></b>	<b><u>\$429,190.43</u></b>	<b><u>\$23,438.84</u></b>	<b><u>\$22,315.28</u></b>

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Proposed Formal EOP: Accessing Information on a Social Networking Site

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### Action Recommended

Consider the recommendation of the Legal Ethics Committee to issue a formal opinion on the ethical implications of accessing information through a social networking website.

### Background

The Legal Ethics Committee has drafted an opinion discussing the ethical implications of accessing information about third parties from a social networking site. This is an evolving issue that has been the subject of much commentary and about which several jurisdictions have issued formal ethics advice for practitioners.<sup>1</sup>

The LEC opinion has three parts. The first part begins with a citation RPC 4.2, which governs a lawyer's communications with represented persons and determines, by analogy to OSB Ethics Op. 2005-164 (discussing the propriety of viewing an adverse party's website), that passively viewing information that is publicly available on a social media site is not a communication within the meaning of the rule.

The second question in the opinion concerns requesting access to the non-public information on a social media site. If the third party is not known to be represented by counsel on the subject of the lawyer's representation, RPC 4.3 would prohibit such a request only if the lawyer states or implies that she is "disinterested" in the matter or if the person "misunderstands" the lawyer's role. In the opinion of the LEC (an view shared by most authorities), a simple truthful request does not imply "disinterest." On the contrary, it suggests the opposite, that the requestor has some interest in the person's information, although for an unspecified reason. Similarly, a request to access non-public information does not by itself constitute a representation about the lawyer's role that could be misunderstood. The third person has complete control about who may access the non-public portions of the site; if the person exercises no discretion (i.e., by inquiry about the nature of or reason for the requestor's interest), it does not follow that the person "misunderstands" the lawyer's role. Rather, it is more likely that the person doesn't care and freely allows visitors to the non-public portions of the site.

Should the person inquire about the requesting lawyer's interest, the lawyer must of course respond truthfully or withdraw the request. A lawyer also may not ask to "friend" a

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<sup>1</sup> Connecticut Bar Assn.; Missouri Bar; Assn. of the Bar of the City of New York; New York State Bar Assn.; New York County Lawyers' Assn.; Philadelphia Bar Assn.

person that the lawyer knows is represented on the subject of the matter except through the person's counsel or with the counsel's prior consent.

The final portion of the opinion warns that the lawyer may not make a request using an alias in order to disguise the lawyer's identity. Whether the lawyer may do so through another depends on the applicability of RPC 8.4(b), which allows a lawyer to advise about or supervise the subterfuge of another to investigate the lawyer's reasonable belief that "unlawful activity has taken place, is taking place or will take place in the foreseeable future."

The LEC encourages the BOG to approve this opinion because it believes it strikes the right balance between a lawyer's obligations to his or her clients and the rights of third persons, and will provide helpful guidance to practitioners regarding developing methods of information-gathering.

## **PROPOSED-FORMAL OPINION 2013-XXXX**

### **Accessing Information about Third Parties Through a Social Networking Website**

#### **Facts:**

Lawyer wishes to investigate an opposing party, a witness, or a juror by accessing the person's social media website. While viewing the publicly available information on the website, Lawyer learns that there is additional information that the person has kept from public view through privacy settings and that is available by submitting a request through the person's website.

#### **Questions:**

1. May Lawyer review a person's publicly available information on the internet?
2. May Lawyer, or an agent on behalf of Lawyer, request access to a person's non-public information?
3. May Lawyer or an agent on behalf of Lawyer use a computer username or other alias that does not identify Lawyer when requesting permission from the account holder to view non-public information?

#### **Conclusions:**

1. Yes.
2. Yes, qualified.
3. No, qualified.

#### **Discussion:**

1. **Lawyer may access publicly available information on a social networking website.<sup>1</sup>**

Oregon RPC 4.2 provides:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject

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<sup>1</sup> Although Facebook, MySpace and Twitter are current popular social media sites, this opinion is meant to apply to any similar social networking websites.

of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

Accessing the publicly available information on a person's social media website is not a "communication" prohibited by RPC 4.2. OSB Ethics Op No 2005-164 discusses the propriety of a lawyer accessing the public portions of an adversary's website and concludes that doing so is not "communicating" with the site owner within the meaning of RPC 4.2. The Opinion compared accessing a website to reading a magazine article or purchasing a book written by an adversary. The same analysis applies to publicly available information on a person's social media web pages.<sup>2</sup>

**2. Lawyer may request access to non-public information if the person is not represented by counsel in that matter and no actual representation of disinterest is made by Lawyer.**

To access non-public information on a social media website, a lawyer may need to make a specific request to the holder of the account.<sup>3</sup> Typically that is done by clicking a box on the public portion of a person's social media site, which triggers an automated notification to the holder of the account asking whether he or she would like to accept the request. Absent actual knowledge that the person is represented by counsel, a

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This analysis is not limited to adversaries in litigation or transactional matters; it applies to a lawyer who is accessing the publicly available information of any person. However, caution must be exercised with regard to jurors. Although a lawyer may review a juror's publicly available information on social networking websites, communication with jurors before, during and after a proceeding is generally prohibited. Accordingly, a lawyer may not send a request to a juror to access non-public personal information on a social networking website, nor may a lawyer ask an agent to do so. See RPC 3.5(b) (prohibiting ex parte communications with a juror during the proceeding unless authorized to do so by law or court order); RPC 3.5(c) (prohibiting communication with a juror after discharge if (1) the communication is prohibited by law or court order; (2) the juror has made known to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, duress or harassment); RPC 8.4(a)(4) (prohibiting conduct prejudicial to the administration of justice). See, generally, §61:808, ABA/BNA Lawyers' Manual on Professional Conduct and cases cited therein.

<sup>3</sup> This is sometimes called "friending", although it may go by different names on different services, including "following" and "subscribing."

direct request for access to the person's non-public personal information is permissible. OSB Formal Ethics Op No 2005-164.<sup>4</sup>

In doing so, however, Lawyer must be mindful of Oregon RPC 4.3, which regulates communications with unrepresented persons. RPC 4.3 prohibits a lawyer from stating or implying that the lawyer is disinterested in the matter; moreover, if the lawyer "knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter" the lawyer is required to make an effort to correct the misunderstanding.<sup>5</sup> A simple request to access non-public information does not imply that Lawyer is "disinterested" in the pending legal matter. On the contrary, it suggests some that Lawyer is interested in the person's social media information, although for an unidentified purpose.

Similarly, Lawyer's request for access to non-public information does not in and of itself make a representation about a lawyer's role. In the context of social media websites, the holder of the account has full control over who views the information available on his pages. The holder of the account may allow access to his social network to the general public or may decide to place some, or all, of that information behind "privacy settings," which restrict who has access to that information. The account holder can accept or reject requests for access. Accordingly, the holder's failure to inquire further about the identity or purpose of unknown access requestors is not the equivalent of misunderstanding the lawyer's role in the matter.<sup>6</sup> By contrast, if

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<sup>4</sup> See, e.g., New York City Bar Formal Opinion 2010-2, which concludes that a lawyer "can – and should – seek information maintained on social networking sites, such as Facebook, by availing themselves of informal discovery, such as the truthful 'friending' of unrepresented parties \* \* \*."

<sup>5</sup> Oregon RPC 4.3 provides, in pertinent part:

In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The purpose of the rule is to avoid the possibility that a nonlawyer will believe lawyers "carry special authority" and that a non-lawyer will be "inappropriately deferential" to someone else's attorney. See also ABA Model Rule 4.3, Cmt. [1] ("An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client."). The rule is designed to correct for the possibility that a nonlawyer will believe that lawyers have special authority and will be inappropriately deferential to another person's lawyer. As such, it applies only when a lawyer is known to the person to be acting in the capacity of a lawyer. *Apple Corps Ltd. V. Int'l. Collectors Society*, 15 F.Supp2d 456 (D.N.J. 1998) (rejecting application of 4.3 to lawyers and lawyers' investigators posing as customers to monitor compliance with a consent order).

<sup>6</sup> Cf. *Murphy v. Perger* [2007] O.J. No. 5511, (S.C.J.) (Ontario, Canada) (requiring personal injury plaintiff to produce contents of Facebook pages, noting that "[t]he plaintiff could not have a serious expectation of privacy given that 366 people have been granted access to the private site.")



the holder of the account asks for additional information to identify Lawyer, or if Lawyer has some other reason to believe that the person misunderstands her role, Lawyer must provide the additional information or withdraw the request.

If Lawyer has actual knowledge that the holder of the account is represented by counsel on the subject of the matter, RPC 4.2 prohibits Lawyer from making the request except through the person's counsel or with the counsel's prior consent.<sup>7</sup> See OSB Formal Ethics Op No. 2005-80 (discussing the extent to which certain employees of organizations are deemed represented for purposes of RPC 4.2).

**3. Lawyer may not advise or supervise the use of deception in obtaining access to non-public information unless ORCP 8.4(b) applies.**

Oregon RPC 8.4(a)(3) prohibits a lawyer from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law."<sup>8</sup> See also RPC 4.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact to a third person in the course of representing a client). Accordingly, Lawyer may not engage in subterfuge designed to shield Lawyer's identity from the person when making the request.<sup>9</sup>

As an exception to RPC 8.4(a)(3), RPC 8.4(b) allows a lawyer to advise clients and others about or supervise, "lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct." For purposes of the rule "covert activity" means:

[A]n effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. 'Covert activity' may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

In the limited instances allowed by the RPC 8.4(b) (more fully explicated in OSB Formal Ethics Op No 2005-173), Lawyer may advise or supervise another's deception to access a person's non-public information on a social media website.

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<sup>7</sup> *In re Newell*, 348, Or. 396, 413, 234 P.3d 967 (2010), (reprimanding lawyer who communicated on "subject" of the representation).

<sup>8</sup> See *In re Carpenter*, 337 Or. 226, 95 P3d 203 (2004) (lawyer received public reprimand after assuming false identity on social media website).

<sup>9</sup> See Oregon RPC 8.4(a) which prohibits a lawyer from violating the RPCs, from assisting or inducing another to do so, or from violating the RPCs "through the acts of another").

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Proposed Amendment of RPC 1.10(c)

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### **Action Recommended**

Consider the Legal Ethics Committee's recommendation that the BOG submit an amendment of Oregon RPC 1.10(b) to the HOD in November 2013. The purpose of the amendment would be to correct a deficiency in the current rule.

### **Background**

#### *Oregon's Current Rule*

Oregon RPC 1.10(c) allows for screening to avoid disqualification when a lawyer moves between firms:

When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is screened from any form of participation or representation in the matter. For purposes of this rule, screening requires that:

- (1) the personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation;
- (2) at least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation; and
- (3) no violation of this Rule shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.

The difficulty with the language in current RPC 1.10(c) is its assumption that the personally disqualified lawyer's former law firm continues to represent the former client. In other words, that the lawyer represented a client while at Firm 1, then moved to Firm 2 which is representing the client's adversary in the same matter. The rule does not impute the lawyer's disqualification to everyone in Firm 2 so long as the lawyer is properly screened. Screening is accomplished by serving affidavits on the former firm assuring that adequate measures are in place to avoid the transfer of the client's confidential information from the lawyer to the members of Firm 2.

That screening mechanism doesn't address the situation where Client A terminates the representation of Firm 1 and is represented by Firm 3. The requirement in the rule that lawyer and Firm 2 provided affidavits to lawyer's "former firm" does nothing to protect the interests of the client who is no longer represented by Firm 1.

The detailed process in subparagraphs (1)-(3) retained the language in *former* DR 5-105(l), which had been incorporated into the Oregon Code in 1983. For many years, Oregon was only one of two jurisdictions that permitted screening of a personally disqualified lawyer to avoid "contaminating" the entire new firm. In the nearly 30 years of the rule, there have been no reports that the rule hasn't served its intended purpose of preventing the screened lawyer from inappropriately sharing information about the former client to other members of the firm.

When Oregon migrated to the ABA Model Rules format in 2005, the drafting committee made a conscious choice to retain the long-standing screening process in part because there was no analogous ABA Model Rule.<sup>1</sup> At the same time, the drafting committee incorporated the definition of "screened" as Oregon RPC 1.0(n):<sup>2</sup>

"Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

### *The ABA Model Rule and Other Screening Rule*

The ABA came late to the idea of screening took a fairly complicated approach. It requires timely notice to "any affected former client to enable the former client to ascertain compliance with the provisions of this rule." The notice must also include

- "a description of the screening procedures employed;

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<sup>1</sup> The ABA adopted a screening rule in 2009 after lengthy and vigorous debate. Since then, a majority of states have followed suit. As discussed herein, however, no state has adopted a rule identical to the ABA Model Rule.

<sup>2</sup> This was done to accommodate the permission in RPC 1.18 for a law firm to oppose a prospective client so long as the lawyer consulted by the prospective client is "screened" from the new matter. That rule does not contain any additional requirements.

- a statement of the firms' and of the screened lawyer's compliance with these Rules;
- a statement that review may be available before a tribunal; and
- an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures."

At "reasonable intervals" as requested by the client and upon termination of the screening procedures, the screened lawyer and the firm must also provide "certifications of compliance with these Rules and the screening procedures." Finally, the ABA Model Rule prohibits the screened lawyer from receiving any portion of the fee from the case.<sup>3</sup>

Approximately half of the US jurisdictions have some kind of screening rule.<sup>4</sup> In several jurisdictions, screening is allowed only when the disqualified lawyer's role in the former client's matter was not substantial or when the lawyer otherwise did not acquire information in the prior representation that would be significant in the new matter. In the twenty or so states that allow screening regardless of the lawyer's prior role, few follow the ABA approach. Most require only "timely screening" (without further description) and notice to the former client. Arizona requires that notice be given that will enable the former client "to ascertain compliance" with the rule. Colorado requires that both the personally disqualified lawyer and the firm have a "reasonable belief" in the efficacy of the screening procedures employed. Minnesota's rule requires that the screening procedure prevent both disclosure of confidential information or "involvement" in the matter by the disqualified lawyer.

Washington's rule may be the most comprehensive of all. In addition to effective screening and notice to the former client, screening is allowed in Washington only when:

"the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon

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<sup>3</sup> This is also a requirement of a majority of other jurisdictions that allow screening, but as it has never been a requirement in Oregon, it will not be addressed further in this memo

<sup>4</sup> See attached.

request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.”

According to the Comment to Washington’s rule, these requirements were added in 2011 in an effort to align Washington’s long-standing screening rule with the ABA Model Rule. The Comment also cautions that, “prior to undertaking the representation, non-disqualified firm members must evaluate the firm’s ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule.”

#### *Options for Amending Oregon’s Rule*

The Legal Ethics Committee recognized the problem with Oregon’s rule, with its focus on notice to the disqualified lawyer’s former law firm and the underlying assumption that the firm continues to represent the client.

The simplest change that would eliminate the problem would be to amend subparagraphs (1) and (2) to substitute “former client” for “former law firm:”

(1) the personally disqualified lawyer shall serve on the lawyer’s former [*law firm*] **client** an affidavit attesting that during the period of the lawyer’s disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former [*law firm*] **client**, a further affidavit describing the lawyer’s actual compliance with these undertakings promptly upon final disposition of the matter or representation;

(2) at least one firm member shall serve on the former [*law firm*] **client** an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former [*law firm*] **client**, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation; and

On the other hand, the LEC believes this may be an opportunity to simplify Oregon’s rule and require only that the personally disqualified lawyer be screened and that any affected client is given prompt notice, leaving the mechanics of the screening to the lawyer and the new firm:

When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule

1.9, unless the personally disqualified lawyer is **promptly** screened from any form of participation or representation in the matter **and written notice of the screening procedures employed is promptly given to any affected former client.**

Under this formulation, practitioners would not be required to follow any particular procedure, but would need to ensure that the procedures employed are sufficient to meet the standard in the definition of “screened.” (That is the situation currently with regard to RPC 1.18, which allows a lawyer who consulted with a prospective client to be screened to avoid disqualification of the firm from representing an adverse party.)

The LEC recommends the second, simpler approach. The BOG may wish to consider sending the proposal out to the membership for a comment period and an opportunity for final review before it goes on the 2013 HOD agenda.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Proposal to Amend Oregon's Advertising Rules

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### Action Recommended

Consider the Legal Ethics Committee's recommendation to submit amendments to Oregon's advertising rules to the HOD in November 2013.

### Background

In August 2009, a BOG-appointed Advertising Task Force presented its report and recommendations for sweeping changes in Oregon's rules governing lawyer advertising and solicitation. The Task Force's conclusions and recommendations were premised on its understanding of the limits that can be placed on commercial speech under the Oregon Constitution and its most significant proposed change was elimination of the prohibition on in-person solicitation. In the face of strenuous objection from the Oregon Trial Lawyers Association, the BOG accepted the Task Force report but took no action on the recommendations.

At the 2010 HOD meeting, a resolution to conform Oregon's RPCs on advertising to the Washington rules was defeated, principally because delegates felt they didn't have enough information about the effect of the changes. During the discussion, several members suggested that the issue was something the bar should study, not only to accommodate lawyers who practice in both Oregon and Washington, but also because increased reciprocity means more lawyers will be practice in different states and will benefit from more uniformity in regulation.

In February 2011, at the recommendation of the Policy and Governance Committee, the BOG directed the Legal Ethics Committee to study and make recommendations to the BOG regarding conforming Oregon's advertising rules to those of our neighboring states. After nearly two years of work, the LEC submitted its preliminary recommendations to the BOG at its June 2012 meeting. The BOG discussed the Committee's recommendations and suggested that members of OTLA and other interested members have an opportunity to comment on the proposed changes before they BOG decides whether to put them before the HOD for a vote. Between June 2012 and February 2013, the LEC continued to refine its proposal to assure that it retained provisions that addressed unique aspects of practice in Oregon. If the BOG approves the amendments now proposed by the LEC, there is ample time to present them to the membership for a "comment period" before the HOD meeting in November 2012.

Oregon's current rule are based on the *former* ABA Model Code that was promulgated in 1970. The rules were amended at various times over the ensuing 35 years as court decisions relaxed the limits on lawyer advertising and solicitation. In 2005, when Oregon adopted Oregon

RPCs based on the ABA Model Rules, the drafting group opted to leave the advertising rules largely as they were at the time, with the idea that they could be tackled separately at a later date.

The 2009 Task Force operated on the assumption that the principal purpose of the rules on advertising and solicitation is an assurance that those communications be truthful and not misleading. It did not believe that efforts to protect some groups of lawyers from potential competition, to regulate “good taste,” or to keep the public ignorant of their potential rights are proper purposes for professional regulation in Oregon. The Task Force also believed that the prohibitions involving duress or harassment and against further contact with individuals who have made known a desire not be contacted are appropriate and should continue. The LEC shared the 2009 Task Force’s view on those issues, particularly the view that the detail in RPC 7.1 was confusing, inadequate and unhelpful. The LEC concluded that adoption of the ABA Model Rules 7.1-7.5 (with some variations), Oregon will retain the important existing provisions, while providing clearer and simpler guidance to practitioners. The LEC also shared the 2009 Task Force’s view that interpretive guidance should be provided in formal ethics opinions.

The changes wrought by adopting ABA Model Rules 7.1-7.5 are for the most part stylistic although a few are more substantive. The attached chart shows a rule-by-rule comparison with brief accompanying explanations. Also attached is a copy of the report of the 2009 Advertising Task Force.



## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<i>INFORMATION ABOUT LEGAL SERVICES</i>		
<b>Rule 7.1 Communications Concerning a Lawyer's Services</b>		
<p>(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:</p> <p>(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;</p> <p>(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;</p> <p>(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;</p> <p>(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or</p>	<p>A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.</p>	<p><i>The proposed new rule combines (a) and (a)(1) of the current rule and states the overarching prohibition against communications that are false or misleading either by misrepresentation or omission.</i></p> <p><i>The remaining specific prohibitions are eliminated, with the exception of (a)(4), which is now found in Rule 7.4.</i></p> <p><i>Eliminating a list of specific prohibitions will require lawyers to evaluate proposed communications on a case-by-case basis, but also focuses the analysis on the harm to be prevented, namely that communications not be false or misleading.</i></p> <p><i>The 2009 Advertising Task Force also recommended eliminating the enumerated list on the grounds that it was overbroad and underinclusive since it didn't include every prohibited type of communications while including some things that weren't necessarily either false or misleading.</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>areas of law if the statement or implication is false or misleading;</p> <p>(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office;</p> <p>(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;</p> <p>(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;</p> <p>(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;</p> <p>(9) states or implies that one or more current or former clients of the lawyer or the</p>		

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;</p> <p>(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;</p> <p>(11) is false or misleading in any manner not otherwise described above; or</p> <p>(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.</p>		
<p>(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.</p>		<p><i>This prohibition is duplicative and unnecessary since a communication whose nature isn't clear from the context is very likely misleading if not false, which is covered above.</i></p>
<p>(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being</p>		<p><i>This prohibition is now found in Rule 7.2(c).</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.		
(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.		<i>This provision adds nothing and is duplicative of Rule 7.2, where to and is addressed more particularly.</i>
(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.		<i>This is nothing more than another statement that communications are not permitted if they violate the "false or misleading" standard. It is an unnecessary duplication, particularly with reference to the provisions of Rules 7.2 and 7.3.</i>
<b>Rule 7.2 Advertising</b>		
(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	<p><i>The new rule is a general permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact.</i></p> <p><i>The current prohibition against paying someone else to recommend or secure employment is found in (b).</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.</p>		
<p>(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.</p>	<p>(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may</p> <p>(1) pay the reasonable costs of advertisements or communications permitted by this Rule;</p> <p>(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and</p> <p>(3) pay for a law practice in accordance with Rule 1.17.</p>	<p><i>The current rule's prohibition on allowing another to promote a lawyer through means involving false or misleading communications is eliminated as unnecessary in light of the overarching prohibition against false and misleading communications in Rule 7.1 and RPC 8.4, which makes it misconduct for a lawyer to violate the rules through the acts of another.</i></p> <p><i>New paragraph (b) continues the prohibition against paying another for recommending or securing employment subject to specific exceptions. New (b)(1) is virtually identical to current (a). New (b)(2) is currently found in ORPC 7.2(c).</i></p> <p><i>New (b)(3) reiterates language in current ORPC 1.5(e).</i></p> <p><i>The committee believes that the structure of the new rule is clearer.</i></p> <p><i>[Note: the proposal differs from ABA MR 7.2(b) in two significant respects. MR</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		<p><i>7.2(b)(2) allows payment to a “qualified” lawyer referral service, which is defined as one approved an “an appropriate regulatory authority.” MR 7.2(b)(4) allows reciprocal referral agreements between lawyers or between lawyers and nonlawyer professionals, which is directly contradictory to Oregon RPC 5.4(e).]</i></p>
<p>(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:</p> <p>(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;</p> <p>(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;</p> <p>(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and</p> <p>(4) such plan, service or</p>		<p><i>The permission to participate in legal service plans and referral services is in new Rule 7.2(b). The remainder of the current rule is unnecessary since all of the prohibited conduct is covered in other rules, including Oregon RPC 5.4, which prohibits lawyer from allowing their judgment to be influenced by others.</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.		
	(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.	<i>This paragraph retains what is currently Oregon RPC 7.1(c).</i>
<b>Rule 7.3 [Direct Contact with Prospective] Solicitation of Clients</b>		
(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:  (1) is a lawyer; or  (2) has a family, close personal, or prior professional relationship with the lawyer.	(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:  (1) is a lawyer; or  (2) has a family, close personal, or prior professional relationship with the lawyer.	<i>The proposed new rule is identical to current Oregon RPC 7.3(a), but incorporates the recommendations of the ABA Ethics 20/20 Commission to change the title and deletes the phrase "from a prospective client." The reason for that change is to avoid confusion with the use of the phrase in Rule 1.18, where a prospective client is someone who has actually shared information with a lawyer.</i>
(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:  (1) the lawyer knows or reasonably should know that	(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:  (1) the lawyer knows or reasonably should know that the physical, emotional or	<i>Following the recommendation of the ABA Ethics 20/20 Commission, the proposed amended rule substitutes "target of the solicitation" for "prospective client" in subparagraphs (1) and (2).</i>  <i>The proposed rule also retains Oregon's (b)(1), which was eliminated from the Model</i>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p>mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p><i>Rule several years ago for reasons that are not entirely clear.</i></p>
<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).</p>	<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).</p>	<p><i>The new rule is virtually identical to the current rule, except that the new rule substitutes "anyone" for prospective client" and requires the words "Advertising Material" instead of "Advertisement." It also eliminates the requirement that the words be "in noticeable and clearly readable fashion," on the ground that the phrase is open to varying interpretation and because if the notification of "Advertising Material" isn't sufficiently readable it constitutes no notice and would be a violation of the rule.</i></p>
<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an</p>	<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an</p>	<p><i>The new rule is identical to the current rule.</i></p>



## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	
<b>Rule 7.4 (Reserved)</b>		
		<p><i>ABA MR 7.4 provides:</i></p> <p><b><i>Rule 7.4 Communication of Fields of Practice and Specialization</i></b></p> <p><i>(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.</i></p> <p><i>(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.</i></p> <p><i>(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.</i></p> <p><i>(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:</i></p> <p><i>(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and</i></p> <p><i>(2) the name of the certifying organization is clearly identified in the communication.</i></p>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		<i>The committee recommends not adopting any of the provisions on the ground that they are unnecessarily duplicative of the overarching prohibition against false or misleading communications.</i>
<b>Rule 7.5 Firm Names and Letterheads</b>		
(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.	(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.	<i>This new rule is similar current Oregon RPC 7.5(a), but includes the permission to use a trade name that is currently in Oregon RPC 7.5(c)(2). The phrase "professional designation" is broad enough to capture the listings enumerated in the current rule as well as other, more modern, uses of firm names. It also includes the prohibition against falsely implying a connection with government or charitable organization that is currently in Oregon RPC 7.1(a)(5) and 7.5(c)(2).</i>
(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm	(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.	<i>The LEC recommends deleting current(b) as being an unnecessary focus on the business relationships between lawyers. The definition of "firm" continues to include Of Counsel, which the committee believes is sufficient to capture the conflict aspect of "of counsel" relationships.  The new rule retains the</i>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
devotes a substantial amount of professional time in the representation of the client.		<i>requirement of current Oregon RPC 7.5(f).</i>
<p>(c) A lawyer in private practice:</p> <p>(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;</p> <p>(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and</p> <p>(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.</p>	<p>(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.</p>	<p><i>The new rule is similar to the prohibition in current RPC 7.5(d), except that it applies only to lawyer holding public office.</i></p> <p><i>Current (c)(1) is essentially the same as new 7.5(d).</i></p> <p><i>Current (c)(2) is covered in new 7.5(a).</i></p> <p><i>Current (c)(3) is a relic of a prior era and is unnecessary in view of the accepted use of "legacy" law firm names or names that don't name any of the lawyers.</i></p>
(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to	(d) Lawyers may state or imply that they practice in a partnership or other	<i>The new rule is a succinct but broad statement that covers much of what is currently in</i>

## PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.</p>	<p>organization only when that is a fact.</p>	<p><i>7.5(c),(d) and (e).</i></p>
<p>(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.</p>		
<p>(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.</p>		<p><i>See proposed new 7.5(b) above.</i></p>



# Oregon State Bar

Report of the Advertising Task Force

Presented to the OSB Board of Governors

August 28, 2009

## I. Introduction and Summary

When Oregon replaced the *former* Oregon Code of Professional Conduct (the DRs) with the Oregon Rules of Professional Conduct (the RPCs), effective January 1, 2005, the Oregon State Bar House of Delegates proposed and the Oregon Supreme Court required no changes to Oregon's disciplinary advertising and solicitation rules.<sup>1</sup> Consequently, former DR 2-101 through 2-105 were renumbered RPC 7.1 through 7.5 but the substance of these rules remained unchanged.<sup>2</sup>

In the course of its review of the draft RPCs, Oregon Supreme Court noted concerns about whether former DR 2-104(A)(1)/then-proposed new RPC 7.3(a) infringed on the free speech guarantees contained in the First Amendment to the United States Constitution or Article I, Section 8 of the Oregon Constitution.<sup>3</sup> Later, in response a successful challenge to several of New York's lawyer advertising rules,<sup>4</sup> the Oregon Supreme Court requested that the Bar appoint a Task Force to review the Oregon RPCs, not only with respect to federal and state constitutionality but also with respect to whether the rules strike a wise balance in terms of the public policies sought to be served.

This Report is the work product of the nine-member Advertising Task Force appointed by the Oregon State Bar Board of Governors in response to the Oregon Supreme Court's suggestions (the "Task Force").<sup>5</sup> As is explained further below, eight of the nine Task Force members (the "Majority") have concluded that the present Oregon RPCs do not strike a proper balance, either in terms of state constitutional law or in terms of public policy. We therefore propose that present Oregon RPC 7.1 through 7.5 (the "Current Rules") be replaced by the revised proposed rules attached hereto as Exhibit B (the "Proposed Rules").

The Proposed Rules are different from the Current Rules in a number of respects. For example:

The Majority believes that the principal purpose to be served by limitations on lawyer advertising and solicitation is an assurance that lawyer advertising and solicitation be truthful and not misleading. By contrast, attempts to protect some groups of lawyers against potential competition, attempts to regulate what appears to be in good taste or

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<sup>1</sup> Amendments to the Oregon RPCs require formal approval by both the Oregon State Bar House of Delegates and the Oregon Supreme Court.

<sup>2</sup> Exhibit A hereto is a copy of current Oregon RPC 7.1 through 7.5.

<sup>3</sup> Article I, Section 8 of the Oregon Constitution provides that "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

<sup>4</sup> See *Alexander v. Cahill*, 2007 WL 2120024 (NDNY 2007), appeal pending.

<sup>5</sup> The Task Force members are Peter Jarvis (Chair), Mark Cogan, Hon. Robert Durham, Guy Greco, Steve Johansen, Gregory Lusby, Velda Rogers, Lawrence Wobbrock and Pamela Yee. Oregon State Bar General Counsel Sylvia Stevens acted as Bar staff liaison.

attempts to keep members of the public ignorant of their potential rights are not proper purposes for such limitations.

The Majority also believes, however, that the present prohibitions involving duress or harassment and prohibitions against further contacts of individuals who have made known a desire not to be contacted are appropriate and should be continued.

The Proposed Rules focus much more clearly on the need for lawyer advertising and solicitation to be truthful and not misleading. Thus, the “laundry list” of specific prohibitions contained in Current RPC 7.1(a) has been eliminated due to an overlapping series of concerns about whether the list as written supported this objective or was even helpful to attorneys. The Majority believes that this list should be replaced by an extended Bar-sponsored commentary which will, among other things, allow a more nuanced assessment of advertising and solicitation issues than is possible within the limits of black-letter RPCs.

The Majority believes that Article I, Section 8 of the Oregon Constitution prevents the blanket prohibition against in-person or real-time electronic solicitation of clients by lawyers or their agents or employees that is presently contained in RPC 7.3. The Majority also believes that this blanket unduly restricts much behavior that is entirely appropriate and in the public interest.

The Majority considered whether the blanket prohibition on in-person or real-time electronic solicitation of clients should be wholly abandoned or, perhaps, retained solely as to personal injury, wrongful death and consumer matters, as distinct from business matters. Although the Majority concluded that the blanket prohibition should be repealed as to both personal and business matters, we note this potential distinction could appeal to some members of the Bar.

The Majority believes that a 30-day waiting period on in-person or real-time electronic solicitations, which is not a part of the Current Rules, would not be considered a reasonable time, place and manner limitation within the meaning of Article I, Section 8.

The Majority should not be understood to say that its Proposed Rules must be accepted or rejected on an “all or nothing” basis. For example, and by way of illustration only, changes could conceivably be made to include limitations on the days or hours at which in-person or real-time electronic solicitation of clients. Similarly, changes could conceivably be made to limit the extent to which non-lawyers may engage in in-person or real-time electronic solicitation on behalf of lawyers.

It will not do for Bar members to stand still or to rage against the tide as the world around us evolves. We therefore look forward to the opportunity to discuss this Report with the Board of Governors and with the larger Bar membership.

## II. Constitutional Protection of Free Speech

The Task Force spent a great deal of time studying constitutional protections of and limitations on attorney speech. What we provide in this section is not an extensively detailed presentation but rather an overview of the reasons why the Majority (eight of nine of the Task Force members) believes that significant changes are necessary.

### A. Federal Constitutional Free Speech Protections<sup>6</sup>

The day is long since past when anyone can credibly assert that lawyer advertising or solicitations by mail or email can all be prohibited. “Commercial speech” that is truthful and not misleading is unquestionably protected by the First Amendment to the United States Constitution. *See e.g., Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapiro v. Kentucky Bar Ass’n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). As a matter of federal First Amendment case law, the only permissible restrictions on advertising or solicitation that is truthful and not misleading are reasonable restrictions on the time, place and manner or means by which advertising and solicitation may occur. *See generally*, Maureen Callahan VanderMay, “Marketing, Advertising and Solicitation,” THE ETHICAL OREGON LAWYER §§ 2.1 *et. seq.* (Oregon CLE 2006).

Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). The test requires first, that the state assert a substantial interest in support of its regulation; second, that the restriction on speech “directly and materially advances that interest”: and third, that the regulation be “narrowly drawn.” *Central Hudson*, 447 US at 624. In *Went For It*, the court applied the *Central Hudson* test in upholding a state regulation that created a 30-day “blackout period” on direct mail solicitation following an accident or disaster. *Went For It*, 515 US at 625-32. The court found the state had an interest in protecting victims and their loved ones against unwanted solicitation by lawyers when the lawyers had no prior professional or close personal relationship with the lawyers and when a significant motive for the lawyers’ contact with the client was personal gain for the lawyers. The court further found that the Florida’s extensive study of lawyer advertising demonstrated that the regulation advanced the state interest and that the 30-day blackout was reasonably narrowly drawn. *Id.* at 632-34.

By contrast, the court struck down as unreasonable a limitation that prohibited certified public accountants from making cold calls in business matters. *Edenfield v. Fane*, 507 US 761 (1993). In addition, several lower court have held that when a particular set of

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<sup>6</sup> Although, as a jurisprudential matter, we would ordinarily consider state constitutional provisions before turning to their federal counterparts, we believe that for purposes of this report, it makes sense first to discuss the narrower federal protections on speech before turning to the broader state protections.



legal circumstances requires that a potential client take action in less than 30 days (*e.g.*, with respect to criminal and traffic law defendants who may well need particularly prompt assistance), a 30-day blackout cannot be imposed. *See, e.g., Ficker v. Curran*, 119 F3d 1150 (4<sup>th</sup> Cir 1997).

There are still unanswered questions concerning the scope of federal free speech protection. Some of these questions stem from the fact that under the First Amendment, commercial speech is entitled to less protection than political speech. *See, e.g., Central Hudson, supra*. For example, one can readily assert that under *Edenfield v. Fane*, a prohibition on in-person or real-time electronic client solicitation in business matters would not pass muster—at least absent the kind of study that the Florida Bar submitted on behalf of its 30-day waiting period. The Majority found it unnecessary to reach a conclusion on this issue as a matter of federal First Amendment law because, in our view, the state constitutional protection of lawyer speech is clearly greater than the First Amendment protection.

#### B. State Constitutional Free Speech Protections

Article I, Section 8 of the Oregon Constitution, which has been a part of the state constitution since 1859, provides that:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

A long line of Oregon cases has held that the state constitution provides greater protection to speech than the federal First Amendment. The Oregon Supreme Court has held, for example, that the state constitution protects commercial speech to the same degree that it protects political speech. *See, e.g., Moser v. Frohnmayer*, 315 Or 372, 376, 845 P2d 1284 (1993). If, in other words, the state cannot prevent certain kinds of speech by political actors (*e.g.*, all types and forms of door-to-door or telephone canvassing), it cannot prevent the same kinds of speech by commercial actors, including but not limited to lawyers.

The Oregon Supreme Court applies its own three step approach to free speech analysis under Article I, Section 8.

First, the Oregon Supreme Court distinguishes between laws that focus on restricting the *content* of speech and laws that focus on restricting *results or effects* of speech. *See, e.g., State v. Plowman*, 314 Or 157, 163, 838 P2d 558 (1992) (summarizing *State v. Robertson*, 293 Or 402, 649 P2d 569 (1982)). Laws that focus on the *content* of speech violate Article I Section 8 unless they fall within a well-established historical exception. Thus, a content-based restriction is prohibited unless: “the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Robertson, supra*, 293 Or. at 412. For example, the state was

unable to establish that 19th century prohibitions on public nudity were sufficient to establish an historical exception for the regulation of live sex shows. *State v. Ciancanelli*, 339 Or 282, 321-22, 121 P3d 613, 634-35 (2005); *see also*, *Zackheim v. Forbes*, 134 Or App 548, 550 (1995) (historical prohibition on access to public records insufficient to establish historical exception for limiting the use of public records). The requirement for a historical exception to justify an express limitation on the content of speech is particularly significant as to lawyer advertising and solicitation for one simple reason. In and before 1859, and indeed for some time thereafter, advertising and solicitation by Oregon lawyers and non-Oregon lawyers was not prohibited. For the most part, those limitations did not take hold until the early 20<sup>th</sup> Century.

Second, when a law focuses on forbidden results but expressly prohibits forms of speech used to achieve those results, the court will analyze the law for potential overbreadth. *See e.g. State v. Moyle*, 299 Or 691, 705 P2d 740 (1985) (harassment statute upheld where statute required unambiguous and genuine threat to person or property that causes actual alarm); *State v. Garcias*, 296 Or 688, 679 P2d 1254 (1984) (menacing statute upheld). This limitation is significant as to lawyer advertising and solicitation because the present blanket prohibition against in-person or real-time electronic solicitation prohibits not only communications that may be untruthful or misleading or that may involve duress or harassment but also many other communications that would not involve any such concerns. We also are aware of no empirical justification for the view that lawyers who engage in some or all forms of advertising or solicitation will necessarily be less honest, less competent or less diligent than their non-advertising and non-soliciting colleagues.

Third, reasonable restrictions—as distinct from outright prohibitions, on the time, place or manner of speech—may be upheld. *See, e.g., Outdoor Media Dimensions, Inc. v. Dept. Of Transportation*, 340 Or 275, 288-89, 132 P2d 5, 12 (2006) (content-neutral permit and fee requirements for highway signs permissible under this category); *City of Hillsboro v. Purcell*, 306 Or 547, 761 P2d 510 (1988) (ordinance banning all door-to-door solicitation unconstitutionally overbroad, though reasonable limitations would be permitted). In other words, laws that restrict speech, but do not prohibit it entirely, may be constitutional if sufficiently narrowly tailored to meet specific, clearly expressed and permissible objectives. In *In re Lasswell*, 296 Or 121, 673 P2d 855 (1983), for example, the court upheld the constitutionality of Oregon's former rule limiting pretrial publicity as applied to lawyers involved in a case, but only as long as a "serious and imminent threat" to a fair trial could be shown. At the same time, the court noted that it would be impermissible to restrict the expression of lawyers merely because they were lawyers. *Id.* at 125. By definition, a wholesale ban on in-person or real-time electronic solicitation is not a reasonable restriction on time, place or manner. For much the same reason, the Majority also believes that a 30-day waiting period on in-person or real-time electronic solicitations would not be a reasonable time, place and manner limitation within the meaning of Article I, Section 8. If nothing else, there are times when a potential client may choose to or have to act in less than 30 days and in which a delay of notification could prove harmful.

### C. From the General to the Specific

In addition to reviewing the larger question of the present blanket prohibition on in-person and real-time electronic solicitation, the Task Force also went line-by-line through the Current Rules. As we did so, we became concerned that the “laundry list” of prohibitions contained in current Oregon RPC 7.1(a) contained many items that were either overbroad (in that they prohibited speech that did not have any of the proscribed effects) or ambiguous (in that they did not, in our view, give sufficiently clear or nuanced guidance as to what is or is not allowed).

We therefore considered revising the list on a subsection by subsection basis but ultimately concluded that it would be extremely difficult, in the context of black-letter rules, to rewrite those prohibitions that we believed were worth keeping in a succinct and sufficiently helpful manner. The Majority therefore proposes instead the preparation of a set of comments that will address the issues raised in current RPC 7.1(a) and additional issues in a way that will provide guidance to practicing lawyers and to the Bar in its disciplinary capacity. Although the Oregon Supreme Court has, in the past, expressed little interest in adopting either the Official Comments to the ABA Model Rules or a set of such comments modified to fit Oregon’s disciplinary experience, we would not expect the court to object to the publication of these kinds of comments any more than it objects to the publication of other CLE materials.

The reader will note that the Proposed Rules also contain a number of other changes. For example, the simplification of the prohibitions on lawyer advertising and solicitation make it possible to simplify the regulation of firm names and to eliminate the presently existing special set of exemptions that applied to prepaid legal services plans.

### III. Additional Information and Considerations

In summary, the Majority concluded that state, if not also federal, free speech considerations required a substantial revision of the Current Rules. The Majority also concluded, however, that this sort of revision makes public policy sense. Of course, the promotion of free speech is itself a considerable public policy goal that should not lightly be overridden. This is not, however, our only public policy consideration. For example:

We believe that much public good can be and is accomplished by lawyer-initiated communications with potential or prospective clients. Restrictions on such communications therefore be no broader than they need to be.

We believe that most Oregonians, if not also most non-Oregonians with whom Oregon lawyers are likely to come into contact, can do a perfectly good job most of the time to protect themselves against dishonest or abusive solicitation efforts..

We observed that very few bar complaints alleging more than technical violations have been filed against Oregon lawyers in recent years.

The changes that we have proposed with respect to in-person and real-time electronic solicitation are not unprecedented. The District of Columbia abandoned most ethics rule based prohibitions on in-person or real-time solicitation in 1997. More recently, the State of Maine has adopted a version of ABA Model Rule 7.3 that permits in-person solicitation of commercial clients.

The Current Rules already contain exceptions for solicitation of current clients (whether the subject of the solicitation is related or unrelated to the work being done), former clients (again whether the subject of the solicitation is related or unrelated to prior work) or solicitation of attorneys (including but not limited to in-house counsel for business entities). The fact that these means of solicitation appear not to create any undue difficulties is consistent with the Majority's view that there is nothing inherently wrongful or inappropriate with in-person or real time electronic solicitation.

#### **IV. Concluding Remarks**

The Majority therefore recommends adoption of the Proposed Rules in the form attached hereto as Exhibit B.

**Exhibit A**  
**Current Oregon Rules of Professional Conduct**

*INFORMATION ABOUT LEGAL SERVICES*

**RULE 7.1 COMMUNICATION CONCERNING  
A LAWYER'S SERVICES**

(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

(8) states or implies that one or more persons depicted in the communication are current clients

or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.

(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.

#### RULE 7.2 ADVERTISING

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

#### RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

#### RULE 7.4 [RESERVED]

#### RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the

name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

**RULE 7.6 [RESERVED]**

**Exhibit B**  
**Advertising Task Force**  
**Proposed Oregon Rules of Professional Conduct**

*INFORMATION ABOUT LEGAL SERVICES*

**RULE 7.1 COMMUNICATION CONCERNING  
A LAWYER'S SERVICES**

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is a solicitation for professional employment.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, city and state in which the office of the lawyer or law firm whose services are being offered is located.

**RULE 7.2 [RESERVED]**

**RULE 7.3 [RESERVED]**

**RULE 7.4 [RESERVED]**

**RULE 7.5 FIRM NAMES AND LETTERHEADS**

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable

legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

**RULE 7.6 [RESERVED]**

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## Exhibit C

### Advertising Task Force

#### Proposed Oregon Rules of Professional Conduct

(New material is underlined; material to be deleted is bracketed in [italics])

#### INFORMATION ABOUT LEGAL SERVICES

##### RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

[A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly

*influence any court or other public body or office;*

*(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;*

*(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;*

*(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;*

*(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;*

*(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;*

*(11) is false or misleading in any manner not otherwise described above; or*

*(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.*

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement or solicitation of professional

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employment unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, *[and post office box or street address of ] city and state in which the office of the lawyer or law firm whose services are being offered is located.*

*[(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.*

*(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.]*

#### **RULE 7.2 [ADVERTISING] RESERVED ]**

*[(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.*

*(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.*

*(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:*

*(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;*

*(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;*

*(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and*

*(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.]*

#### **RULE 7.3 [DIRECT CONTACT WITH PROSPECTIVE CLIENTS] RESERVED]**

*[(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:*

*(1) is a lawyer; or*

*(2) has a family, close personal, or prior professional relationship with the lawyer.*

*(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:*

*(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;*

*(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or*

*(3) the solicitation involves coercion, duress or harassment.*

*(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).*

*(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from*

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persons who are not known to need legal services in a particular matter covered by the plan.]

#### **RULE 7.4 [RESERVED]**

#### **RULE 7.5 FIRM NAMES AND LETTERHEADS**

[(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.]

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

#### **RULE 7.6 [RESERVED]**

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**Memo Date:** February 6, 2013  
**From:** David Eder, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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To begin the year the ONLD Executive Committee met in McMinnville for our annual retreat and January Executive Committee meeting. In addition to continuing the projects the Executive Committee administered last year we are brainstorming additional programming to help newer lawyers adjust to the practice of law in the State of Oregon. We are also targeting law students and alumni boards to help recruit and spread the word of ONLD programming.

Since the last BOG meeting, members of the ONLD attended and hosted several events. In early November the ONLD's annual meeting brought more than 100 new lawyers together in Portland. After-work socials were also held in Bend and Salem late last year and were well received by the local legal community. The ONLD plans to participate in the ABA Young Lawyers Division meet and greet event on February 21.

January 17 was the first brown bag CLE seminar held at the Multnomah County Courthouse this year. Future programs in Multnomah County are scheduled each month for the remainder of this year. The subcommittee also plans to host CLE programs in Bend, Eugene, and Lincoln City this year.

The popular Practical Skills through Public Service Program will undergo changes this year by converting the program to a year-round open recruitment system. This program is in its third year and is designed to provide unemployed and underemployed new attorneys an opportunity to get hands-on practical skills by volunteering services at a legal organization.

We would like to thank Richard Spier for taking the time to participate in the ONLD retreat and we look forward to supporting the BOG with their initiatives in 2013.

## 2013 ONLD Master Calendar

Last updated February 6, 2013

Date	Time	Event	Location
February 21-22	9:00 a.m.	BOG Board Meeting	Red Lion, Salem
<b>February 23</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
February 26-27	All Day	Bar Exam	Monarch Hotel, Clackamas
March 7	Noon	Diversity Series CLE	MCC, Portland
March 21	Noon	Jury Selection CLE	MCC, Portland
March 29	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
<b>March 29</b>	<b>TBD</b>	<b>Dinner with the BOG</b>	<b>OSB, Tigard</b>
<b>March 30</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
April 16-18	All Day	ABA Day	Washington, D.C.
April 18	Noon	Access to Justice CLE	MCC, Portland
<b>April 19</b>	<b>5:30 p.m.</b>	<b>CLE Program &amp; Social</b>	<b>TBD, Eugene</b>
<b>April 20</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Gleaves Swearingen et al, Eugene</b>
May 3	9:00 a.m.	BOG Board Meeting	OSB, Tigard
May 16	Noon	Employment Law CLE	MCC, Portland
May 16-18	All Day	ABA Spring Conference	Minneapolis, MN
<b>May 17</b>	<b>5:30 p.m.</b>	<b>CLE Program &amp; Social</b>	<b>Greg's Grill, Bend</b>
<b>May 18</b>	<b>6:30 a.m.</b>	<b>Pole, Pedal, Paddle</b>	<b>Mt. Bachelor Monument, Bend</b>
<b>May 18</b>	<b>3:00 p.m.</b>	<b>Executive Committee Meeting</b>	<b>Sunriver</b>
June 6	Noon	Diversity Series CLE	MCC, Portland
June 14	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
June 20	Noon	Cross Examination CLE	MCC, Portland
<b>June 22</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
July 11-13	9:00 a.m.	BOG Board Meeting	TBD, Astoria
July 18	Noon	Family Law CLE	MCC, Portland
July 30-31	All Day	Bar Exam	Red Lion, Portland

\* indicates an update since the last version

**Bold** indicates required attendance

August 8-10	All Day	ABA Annual Meeting	San Francisco, CA
August 9-11	All Day	OLIO Orientation	Hood River Inn, Hood River
<b>August 9</b>	<b>7:00 p.m.</b>	<b>ONLD Social Event at OLIO</b>	<b>TBD</b>
<b>August 10</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>TBD</b>
August 15	Noon	Professionalism CLE	MCC, Portland
August 23	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
September 5	Noon	Diversity Series CLE	MCC, Portland
<b>September 6</b>	<b>5:30 p.m.</b>	<b>CLE Program &amp; Social</b>	<b>TBD, Lincoln City</b>
<b>September 7</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>TBD, Lincoln City</b>
September 19	Noon	Estate Planning CLE	MCC, Portland
September 27	9:00 a.m.	BOG Board Meeting	OSB, Tigard
<b>October 4</b>	<b>TBD</b>	<b>Executive Committee Meeting</b>	<b>TBD</b>
October 10-12	All Day	ABA Fall Conference	Phoenix, AZ
October 17	Noon	Ethics CLE	MCC, Portland
October 21	2:00 p.m.	Pro Bono CLEs and Fair	WTC, Portland
November 1	9:00 a.m.	BOG Committee Meeting	OSB , Tigard
November 1	TBD	HOD Annual Meeting	OSB, Tigard
<b>November 1</b>	<b>5:30 p.m.</b>	<b>Annual Meeting</b>	<b>Governor Hotel, Portland</b>
November 21	Noon	Construction CLE	MCC, Portland
November 21-23	9:00 a.m.	BOG Board meeting	Bend
December 5	Noon	Diversity Series CLE	MCC, Portland
December 12	Noon	Child Abuse Reporting CLE	MCC, Portland

\* indicates an update since the last version

**Bold** indicates required attendance

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**Memo Date:** January 11, 2013  
**From:** MCLE Committee  
**Re:** Proposed amendments to Rules 5.2(c) (1)(ii) and (g) and Regulation 5.250

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### Action Recommended

Review and approve the proposed amendments to Rules 5.2(c)(1)(ii) and (g) and Regulation 5.250.

### Background

At the request of the Uniform Criminal Jury Instructions (UCrJI) and Uniform Civil Jury Instructions (UCJI) Committees, the MCLE Committee recommends amending the MCLE Rules to grant credits for service on, and work derived from service on, those committees.

The proposed amendments to Rules 5.2(c)(1)(ii) and (g) and Regulation 5.250 come after months of study and discussion of the responsibilities of the two committees and the time and work involved in carrying out those responsibilities. In the end, the MCLE Committee determined that the UCrJI and UCJI Committees spend considerable time researching and analyzing changes to the law and drafting and revising instructions to conform to those changes. Their work, in fact, is comparable in many respects to that of Legal Ethics Committee members, who currently receive two hours of credit for each year of their service on the Legal Ethics Committee and who may also earn credit for legal research/writing of ethics opinions that are adopted and published by the bar.

The proposed amendment to Rule 5.2(c)(1)(ii) allows credit for legal research and writing of final instructions of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee personally authored or edited by the applicant.

Proposed new Rule 5.2(g) allows credit for service on the UCrJI and UCJI Committees. Current Rule 5.2(g) will be renumbered to Rule 5.2(h). Proposed new Regulation 5.250 sets forth attendance requirements for credit granted under proposed Rule 5.2(g).

...

### 5.2 Other CLE Activities.

...

#### (c) Legal Research and Writing.

(1) Legal research and writing activities, including the preparation of written materials for use in a teaching activity may be accredited provided the activity satisfies the following criteria:

- (i) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and

- (ii) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (iii) It contributes substantially to the legal education of the applicant and other attorneys; and
- (iv) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on stylistic editing.

(d) Legal Ethics Service. A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.

(e) Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

(f) New Lawyer Mentoring Program (NLMP)

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

(g) Jury Instructions Committee Service. A member serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee may earn two general credits for each 12 months of service.

(h) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.

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### **Regulations to MCLE Rule 5 Accreditation Standards**

**5.100 Other CLE Activities.** The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

(a) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.



- (b) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.
- (c) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.
- (d) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

#### **5.200 Legal Research and Writing Activities.**

- (a) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.
- (b) Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

**5.250 Jury Instructions Committee Service.** To be eligible for credit under MCLE Rule 5.2(h), a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2013  
**Memo Date:** January 17, 2013  
**From:** Loan Repayment Advisory Committee  
**Re:** Changes to the LRAP Policies and Guidelines

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### **Action Recommended**

The Loan Repayment Advisory Committee recommends that the Board of Governors approve a decrease in the debt requirement from \$50,000 to \$35,000 for public service lawyers applying for the Oregon State Bar Loan Repayment Assistance Program and that the LRAP Policies and Guidelines be changed to reflect that the Advisory Committee will consider applicants who previously have received a loan from the Program.

### **Background**

The Loan Repayment Assistance Program (LRAP) is now in its seventh year of providing forgivable loans to lawyers pursuing careers in public service law. Through this program, lawyers working in public service may receive loans for up to \$5,000 per year for three years to aid them in repaying their educational debt. Each loan is forgiven at the end of the year, provided that the lawyer remains in public service. The LRAP Advisory Committee seeks to decrease the current debt minimum of \$50,000 to \$35,000. When the Program started, the debt minimum was \$30,000. It has been as high as \$60,000 and is currently \$50,000. The Advisory Committee believes that \$35,000 is the proper debt minimum now. Decreasing the debt minimum will allow attorneys to apply for the LRAP funds who have served for many years in public service. Those attorneys are not eligible for new federal loan forgiveness programs and have disproportionately higher loan payments to make compared with newly admitted attorneys.

In addition, the Advisory Committee wishes to refine the Policies and Guidelines to make clear that public service lawyers who previously received a loan through the Program are allowed to re-apply and be considered for additional loans. Adding language to Section 2 Subsection (A) of the Policies and Guidelines makes this information clear.

Proposed changes to the Policies and Guidelines are attached hereto.

***Loan Repayment  
Assistance Program***

**Policies and Guidelines**

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**Adopted by the Board of Governors  
November 18, 2006**

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*Revised January 1, 2012*[23](#)

**The mission of the Oregon State Bar’s Loan Repayment Assistance Program is to attract and retain public service lawyers by helping them pay their educational debt.**

### **Statement of Purpose**

The Oregon State Bar recognizes that substantial educational debt can create a financial barrier which prevents lawyers from pursuing or continuing careers in public service law. The Oregon State Bar’s program of loan repayment assistance is intended to reduce that barrier for these economically-disadvantaged lawyers, thereby making public service employment more feasible.

## **Section 1 – Administrative Partners**

### **(A) *Advisory Committee***

#### **(i) Membership**

An Advisory Committee will be appointed by the Oregon State Bar (OSB) Board of Governors, and will be comprised of nine members who meet the following criteria:

- OSB President, or member of the Board of Governors designated by the President
- Chair of the OSB New Lawyers Division, or designee
- Representative from an Oregon law school, preferably with financial aid expertise
- Representative from the indigent criminal defense area of public service law
- Representative from a county district attorney’s office
- Representative from the civil area of public service law
- Three at-large members who are OSB members, represent geographical diversity, and have shown a commitment to public service law

#### **(ii) Appointment and Administration**

- OSB President and Chair of the OSB New Lawyers Division, or designees, will serve for a term of one year.
- Other Advisory Committee members will serve for a term of three years and may be reappointed for one additional term.
- Advisory Committee members will elect a Chair and such other officers as they determine are necessary from among Advisory Committee members. Officers shall serve a one-year term, subject to renewal.
- One-third of the initial appointments will be for one year, one-third for two years, and one-third for three years. The OSB Board of Governors will determine which of the initial positions is for which length.
- The OSB will designate a staff person to support the Advisory Committee’s work.
- Current applicants for or recipients of LRAP loans may not serve on the Advisory Committee.

#### **(iii) Advisory Committee Duties**

- Select participants for the loan repayment assistance program (LRAP or the Program), and report the selections to the OSB.

- Report annually to the OSB Access to Justice Committee on the Program's status.
- Amend and set policy guidelines as needed for the Program.
- Raise funds to achieve programmatic objectives.
- Adopt procedures to avoid conflicts of interest.
- Make clear program rules to avoid grievances.

**(B) *Oregon State Bar***

- Support the Advisory Committee's work through provision of a part-time staff person
- Receive and invest member dues designated for LRAP
- Administer other funds raised by the Advisory Committee
- Receive and review LRAP applications for completeness and eligibility, and forward completed applications from eligible applicants to the Advisory Committee
- Disburse LRAP money to participants selected by the Advisory Committee.
- Receive and review annual certifications of continuing LRAP eligibility.
- Provide marketing and advertising services for the Program, including an LRAP website which includes frequently asked questions with responses.
- Coordinate response to grievances submitted by Program participants.
- Handle inquiries about LRAP through the staff person or, if necessary, forward such inquiries to the Advisory Committee.

## **Section 2 – Requirements for Program Participation**

**(A) *Application and Other Program Procedures***

- Applicants must fully complete the Program application, submit annual certifications and follow other Program procedures.
- [Previous recipients may apply.](#)

**(B) *Qualifying Employment***

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.
- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment.
- Part-time employees are eligible to apply for the Program, but participation may be prorated at the discretion of the Advisory Committee.

**(C) *Graduation/License/Residency Requirements***

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.
- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.

- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

**(D) *Salary Cap for Initial Applicants***

Applicants with full time salaries greater than \$55,000 at the time of initial application will be ineligible for Program participation.

- The Advisory Committee may annually adjust the maximum eligible salary.
- As more fully described in Section 3(B)(ii), Program participants may retain eligibility despite an increase in salary above the cap set for initial participation.

**(E) *Eligible Loans***

All graduate and undergraduate educational debt in the applicant's name will be eligible for repayment assistance.

- Applicants with eligible debt at the time of initial application less than ~~\$50,000~~ 35.000 will be ineligible for Program participation.
- If debt in the applicant's name and in others' names is consolidated, the applicant must provide evidence as to amount in the applicant's name prior to consolidation.
- Loan consolidation or extension of repayment period is not required.
- Program participants who are in default on their student loans will be ineligible to continue participating in the Program (see 4(C)(v) below for more details).

### **Section 3 – Description of Benefit to Program Participants**

**(A) *Nature of Benefit***

The Program will make a forgivable loan (LRAP loan) to Program participants.

**(i) Amount and Length of Benefit**

- LRAP loans will not exceed \$5,000 per year per Program participant for a maximum of three consecutive years. LRAP loans cannot exceed the annual student loan minimum payments of the participant.
- .
- The Advisory Committee reserves discretion to adjust the amount of the LRAP loan and/or length of participation based on changes in the availability of program funding.
- LRAP loans will be disbursed in two equal payments per year. .

**(ii) Interest on LRAP Loans**

Interest will accrue from the date the LRAP loan is disbursed, at the rate per annum of Prime, as published by the Wall Street Journal as of April 15 of the year in which the loan is awarded, not to exceed nine percent.

**(iii) Federal Income Tax Liability**

Each Program participant is responsible for any tax liability the Program participant may incur, and neither the Advisory Committee nor the OSB can give any Program participant legal advice as to whether a forgiven LRAP loan must be treated as taxable income.

Program participants are advised to consult a tax advisor about the potential income tax implications of LRAP loans. However, the intent of the Program is for LRAP loans which are forgiven to be exempt from income tax liability.

**(B) *Forgiveness and Repayment of LRAP Loans***

The Program annually will forgive one year of loans as of April 15 every year if the Participant has been in qualifying employment the prior year and has paid at least the amount of his/her LRAP loan on his/her student loans. Only a complete year (12 months from April 15, the due date of application) of qualifying employment counts toward LRAP loan forgiveness.

**(i) Loss of Eligibility Where Repayment Is Required**

Program participants who become ineligible for Program participation because they leave qualifying employment must repay LRAP loans, including interest, for any amounts not previously forgiven.

- The repayment period will be equal to the number of months during which the Program participant participated in the Program (including up to three months of approved leave).
- The collection method for LRAP loans not repaid on schedule will be left to the discretion of the Oregon State Bar.
- Participants shall notify the Program within 30 days of leaving qualifying employment.

**(ii) Loss of Eligibility Where Repayment Is Not Required**

Program participants who become ineligible for continued Program participation due to an increase in income from other than qualifying employment (see Section 4(C)(iv)) or because their student loans are in default (see Section 4(C)(v)) will not receive any additional LRAP loans. Such Program participants will remain eligible to receive forgiveness of LRAP loans already disbursed so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

**(iii) Exception to Repayment Requirement**

A Program participant may apply to the Advisory Committee for a waiver of the repayment requirement if (s)he has accepted public interest employment in another state, or for other exceptional circumstances. Such Program participants will not receive any additional LRAP loans.

**(C) *Leaves of Absence***

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. This extra time is added to the end of the year in which the leave is taken and thereafter, the starting date of the new

year is reset based upon the new ending date of the year in which the extended leave is taken.

## **Section 4 – Program Procedures**

### **(A) *Application and Disbursement Procedure***

- Applications submitted to the Advisory Committee must be postmarked or delivered to the Oregon State Bar office by April 15 of each year.
  - Applicants must be members of the OSB already engaged in qualifying employment by the application deadline.
  - Applicants may not commence the application process prior to receiving bar exam results.
  - Unsuccessful applicants will get a standard letter drafted by the Advisory Committee and may reapply in future years as long as they meet the qualifications.
- Applicants will be notified by June 1 of each year as to whether or not they have been selected for Program participation in accordance with the selection criteria set forth in Section 4(B).
- Those applicants selected as Program participants will receive a promissory note for the first year of LRAP loans along with their notification of selection. The executed promissory note will be due to the Advisory Committee by June 15.
- Initial disbursement of LRAP loans will be made by July 1 provided the executed promissory note has been returned.
- In conjunction with the annual certification procedure set forth in Section 4(C), persons who remain eligible Program participants will be sent a new promissory note, covering the LRAP loan in the upcoming year by June 1, which must be executed and returned by June 15.
- Ongoing disbursement of loans to persons who remain Program participants will be made on or about July 1 of each year.

### **(B) *Program Participant Selection***

#### **(i) *Factors to be Considered***

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
  - Demonstrated commitment to public service;
  - Financial need;
  - Educational debt, monthly payment to income ratio, and/or forgivability of debt;
  - Extraordinary personal expenses;
  - Type and location of work;
  - Assistance from other loan repayment assistance programs;
- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants



for a period of six months in the event a selected individual does not participate in the Program.

**(ii) Other Factors to be Considered Related to Applicant's Income**

The following factors, in addition to the applicant's salary from qualifying employment, may be considered in determining applicant's income:

- Earnings and other income as shown on applicant's most recent tax return
- Income-producing assets;
- Medical expenses;
- Child care expenses;
- Child support; and
- Other appropriate financial information.

**(C) Annual Certification of Program Participant's Eligibility**

**(i) Annual Certifications Required**

Program participants and their employers will be required to provide annual certifications to the OSB by April 15 that the participant remains qualified for continued Program participation. Annual certifications forms will be provided by the Program. The OSB will verify that the Program participants remain eligible to receive LRAP loans and will obtain new executed promissory notes by June 15 prior to disbursing funds each July 1.

**(ii) Program Participant Annual Certifications - Contents**

The annual certifications submitted by Program participants will include:

- Evidence that payments have been made on student's loans in at least the amount of the LRAP loan for the prior year and evidence that student loan is not in default.
- Completed renewal application demonstrating continued program eligibility

**(iii) Employer Certification - Contents**

The annual certifications submitted by employers will include:

- Evidence that the Program participant remains in qualifying employment; and
- Evidence of the Program participant's current salary and, if available, salary for the upcoming year.

**(iv) Effect of Increase in Salary and Income and Changes in Circumstances**

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant's financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

**(v) Effect of Default on Student Loans**

Program participants who are in default on their student loans will be ineligible to receive further LRAP Loans, but may seek to have LRAP loans forgiven in accordance with the loan forgiveness schedule if they remain in qualifying employment and submit an employer certification pursuant to Section 4(C)(iii).

**(vi) Voluntary Withdrawal from Program**

A Program participant may voluntarily forgo future LRAP loans despite retaining eligibility (e.g., the Program participant remains in qualifying employment and receives a substantial increase in salary). In such a case, LRAP loans already received will be forgiven in accordance with the loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification as otherwise required under Section 4(C)(iii).

**(D) *Dispute/Grievance Resolution***

- Grievance procedure applies only to Program participants, not applicants.
- Program participants have 30 days to contest a determination in writing.
- The Advisory Committee has 60 days to respond.
- The Advisory Committee's decision is final, subject to BOG review.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the CSF Committee's recommendation that awards be made in the following matters:<sup>1</sup>

No. 2012-24 HOWLETT (Steinbeck)	\$750.00
No. 2012-80 KAUFMAN (Lite)	\$1,207.24
No. 2012-15 GRUETTER (Gordon)	\$50,000.00
No. 2012-31 GRUETTER (Roccasalva)	\$61,682.33 (2 claims)
No. 2012-35 GRUETTER (Martinez)	\$7,061.23
No. 2012-61 McBRIDE (Carosella)	\$3,350.00
No. 2012-63 McBRIDE (Lua)	\$2,500.00
No. 2012-76 McBRIDE (Hernandez Rodriguez)	\$4,100.00
No. 2012-78 McBRIDE (Cortez Hernandez)	\$3,300.00
No. 2012-McBRIDE (Valdivia)	\$3,000.00
No. 2012-88 McBRIDE (Palacios Rodriguez)	\$1,500.00
No. 2012-91 McBRIDE (Garibay, Rudolfo)	\$1,500.00
No. 2012-92 McBRIDE (Lucas-Lepe)	\$4,900.00
No. 2012-93 McBRIDE (Ramirez, A.)	\$5,000.00
No. 2012-94 McBRIDE (Keiper)	\$4,000.00
No. 2012-96 McBRIDE (Maldonado, Jose E.)	\$3,100.00
No. 2012-110 McBRIDE (Melchor)	\$4,500.00
<b>TOTAL</b>	<b>\$161,450.80</b>

### Background

#### No. 2012-24 HOWLETT (Steinbeck) - \$750

Claimant hired Portland lawyer Bruce Howlett on January 4, 2011 for defense of DUII charges and agreed to a non-refundable earned-on-receipt fee of \$1900, half of which was due immediately and the remaining half only if Claimant elected to go to trial. The fee agreement

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<sup>1</sup> The CSF Committee recommends waiver of the requirement for a judgment in all of these cases. With McBride and Gruetter, the conduct giving rise to the claims was either part of or very similar to the conduct that resulted in their Form B resignations. In the other cases, the circumstances are such that it would be futile or a hardship for the claimants to pursue civil judgments. Moreover, Howlett is deceased, Kaufman's whereabouts are unknown, McBride has filed bankruptcy and Gruetter is likely to be in prison soon.

provided that if the representation was terminated by the defendant prior to conclusion of the case, Howlett would be entitled to a minimum fee equal to the greater of \$950 or \$200/hour.

Howlett represented Claimant at a DMV hearing, after which Claimant decided to go to trial on the DUII charges and paid the remaining \$950 of Howlett's fee in March 2011. Trial was scheduled for December 22, 2011 and Claimant met with Howlett three or four times over the ensuing months. Howlett died from heart failure on October 20, 2011; Claimant retained another lawyer to represent him at the trial, but was unable to recover any funds from Howlett's estate (Howlett had previously suffered from throat cancer and his widow claimed that medical expenses had exhausted the family's finances.) Claimant seeks reimbursement of the \$950 trial fee.

While there is no evidence that Howlett didn't intend to complete the work when he accepted the trial fee, and it was earned on receipt by the terms of the agreement, the CSF nevertheless recommends reimbursing the Claimant since the services Howlett provided after receipt of the trial fee were minimal. The Committee recommends an award of \$750, allocating \$200 for the work Howlett did after the trial fee was paid.

**No. 2012-80 KAUFMAN (Lite) - \$1207.24**

Claimant hired Lake Oswego lawyer Eric Kaufman on June 24, 2011 for representation in the dissolution of client's marriage. Claimant deposited a \$2500 retainer against Kaufman's hourly fee of \$198.75. Kaufman worked on the Claimant's matter through early 2012. The January 2012 statement shows a trust balance of \$1306.61.

Claimant met with Kaufman for about half an hour on March 20, 2012 to review a draft of the dissolution judgment prepared by the opposing attorney. Kaufman was going to forward comments to the judgment to the other lawyer, but never did so. In mid-April (apparently because he was unable to contact Kaufman) claimant sent an e-mail terminating Kaufman's services and demanding a return of the unused retainer. Kaufman never responded and Claimant hired another attorney to complete the dissolution.

The CSF Committee concluded this claim is eligible for reimbursement because Kaufman apparently failed to keep Claimant's retainer in trust and has failed to refund any portion of what he acknowledged was due to the client. The Committee recommends an award of \$1207.24, allocating \$99.37 of the January 2012 retainer balance to the ½ hour of work performed by Kaufman in March 2012.

**No. 2012-15 GRUETTER (Gordon) - \$50,000**

Claimant retained Bend attorney Bryan Gruetter in April 2009 to pursue her injury claims against a cosmetic surgery center. The case settled on March 25, 2011 for \$250,000. Gruetter deposited the settlement funds into his trust account and began negotiating with Claimant's medical providers for a reduction of their liens.

Pursuant to the fee agreement, Gruetter was entitled to a fee of 40% (\$100,000) plus reimbursement of costs advanced (\$16,147.38). He disbursed \$83,495.86 to Claimant and held back the balance (\$50,356.76) to pay medical providers. Claimant was unaware that the medical providers were not paid until they began calling her in December 2011. Claimant's calls to Gruetter's office went unanswered. There was approximately \$2,300 in Gruetter's trust account at the time the bar took custody of his practice in February 2012.

The CSF Committee recommends an award of \$50,000 to compensate the Claimant for money misappropriated by Gruetter.

**No. 2012-31 GRUETTER (Roccasalva) - \$50,000 and \$11,682.33**

Claimant was seriously injured in an automobile accident in February 2007 and hired Gruetter shortly thereafter to pursue her injury claims. In February 2008, Gruetter resolved her uninsured motorist claim with Claimant's own insurer for \$150,000 and distributed the net proceeds (after deduction of his 1/3 fee and costs) to Claimant.

In November 2009, a second settlement was reached with the at-fault drivers for \$100,000. Gruetter deposited that amount into his trust account on November 24, 2009. After deduction of his fees (there is no mention in the files about costs advanced), there should have remained \$66,667.00 in Gruetter's trust account for Claimant. That money has not been accounted for.

Claimant was involved in a second, unrelated automobile accident on April 30, 2007 and she retained Gruetter to pursue her claims from that incident. After a jury trial in January 2011, Claimant was awarded \$24,919.18 in damages and \$1259.00 in costs (for a total of \$26,178.18). The defendant insurance carrier paid \$3,169.18 directly to Claimant's PIP carrier and sent the balance to Gruetter. (Note, the check appears to have been short by \$100; instead \$23,009.00, Gruetter received only \$22,909.00) After deducting Gruetter's 40% fee (\$9,967.67) and a PIP payment of \$3,169.18, there should have been \$11,682.33 in Gruetter's trust account for Claimant. That money has not been accounted for.

The CSF Committee recommends two awards to Claimant, one for \$50,000 and the second for \$11,682.33 on the grounds that she has two separate claims against Gruetter for his theft of two unrelated settlements. The Committee concluded that the \$50,000 cap is *per claim* and not *per claimant* and therefore, the claimant here is entitled to two awards.

**No. 2012-35 GRUETTER (Martinez) - \$7,061.23**

Claimant retained Gruetter in June 2008 to represent her in a medical malpractice claim. Gruetter settled the case in March 2010 for \$50,000. He provided a preliminary accounting reflecting the deduction of his fees and costs, together with \$15,112.26 he would hold in trust to cover outstanding medical expenses. That left a net of \$17,980.33 for the client; Gruetter said there would be an additional distribution if he could negotiate down the lien obligations.

Sometime thereafter Gruetter disbursed an additional \$8,051.03 to Claimant, informing her that he had negotiated the liens down to \$7,061.23. However, the liens were never paid and the \$7,061.23 that Gruetter was supposed to be holding in trust for that purpose was never accounted for.

**No. 2012-61 McBride (Carosella) - \$3,350**

Claimant (an Argentinian married to a US citizen) consulted McBride in January 2012 about getting establishing legal residency. On January 30, 2012, McBride's office sent Claimant an "intake packet" and a fee agreement.

On February 6 and 9, 2012, the Bar filed a formal disciplinary complaint and a petition for immediate suspension, respectively, against McBride based on several complaints of incompetence, neglect and charging excessive fees. On May 3, 2012, McBride stipulated to an interim suspension effective June 14, 2012.<sup>2</sup>

On May 8, 2012, Claimant paid \$3500 to McBride's firm. Over the next few weeks, Claimant exchanged e-mails with McBride's assistant regarding additional documentation needed for her application. On June 4, Claimant e-mailed McBride for a status update, as her tourist visa was due to expire and she was expecting her third child. McBride responded that it would not be a problem to file before the visa expired, but that the expiration of the visa would not have a negative impact on her application.

On July 12, 2012, McBride corresponded with Claimant by e-mail, sending forms for her to sign and requesting checks for the filing fees. That was Claimant's last contact with McBride. He did not mention his suspension.

Later in July, Claimant learned from the PLF that McBride had closed his office and elected to have her file transferred to a former McBride associate who is now handling her matter. They have paid \$3,300 to the new attorney to complete the application process.

The CSF Committee concluded that McBride was dishonest in accepting fees in early May without disclosing the pending interim suspension petition and in continuing to provide services after his suspension. As of July 12, McBride had not filed Claimant's application; as she got no value from the representation the Committee recommends a refund of the entire fee advanced to McBride.

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<sup>2</sup> McBride subsequently tendered his Form B resignation in August and it was effective October 4, 2012. McBride closed his office in mid-July with the assistance of the PLF.

**No. 2012-63 McBride (Lua) - \$2,500**

McBride was hired in January 2012 to complete Claimant's immigration case. He and his wife had filed some initial papers on their own, but wanted an attorney to handle the later stages. Claimant paid McBride a flat fee of \$2,500.

After the initial meeting, Claimant heard nothing from McBride and received no documentation or correspondence. Her calls to the office went unanswered. There is no evidence that McBride did anything on the matter.

The investigator spoke to Keith Karnes, who was McBride's partner at the time of McBride's suspension. Karnes reported that McBride admitted to taking fees for work he was not going to be able to complete.

**No. 2012-76 McBride (Hernandez-Rodriguez) - \$4,100**

Claimant hired McBride on January 17, 2012 to handle immigration and criminal defense matters. He paid a flat fee of \$5,000; the agreement provided that if the representation terminated before the matters were concluded, McBride's would be compensated at the rate of \$300/hour for any work completed.

Claimant reports that McBride arranged for his bail and attended a hearing in the criminal case and that one of McBride's associates covered an immigration Master Hearing (essentially a scheduling hearing).

Claimant heard nothing more from McBride's and learned of McBride's suspension when he went to the office in August 2012 and found a notice posted on the door.

The CSF Committee recommends reimbursing Claimant for all but \$900 of the fee paid in recognition of the fact that McBride did some work on the matters.

**No. 2012-78 McBride (Cortes-Hernandez) - \$3,300**

Claimant hired McBride in November 2011 for immigration and criminal cases. Between November 2011 and July 2012, he had paid McBride \$4,200. The last Two payments were made May 29 and July 2, 2012.

According to Claimant, McBride participated by telephone in a Master Hearing at the end of November 2011 and another on May 3, 2012. In July, Claimant received a letter informing him that McBride had closed his office.

Although there was no copy of it in this case, the CSF Committee assumed that McBride had the same agreement with this Claimant as with other clients: a flat fee, but an understanding that his time would be charged at \$300/hour if the representation terminated

prior to completion. Based on that, the Committee allocated three hours of work (\$900) to McBride for his attendance at the two Master Hearings and recommends an award of \$3,300.

**No. 2012-85 McBRIDE (Valdivia) - \$3,000**

Claimant retained McBride in November 2011 to get a visa and to assist both herself and her daughter obtain legal residency. Claimant discussed her case with one of McBride's associates who explained the process to her and quoted a fee of \$3,000. Claimant paid \$1500 in November 2011 and the balance in five monthly installments.

McBride's office gave Claimant forms to complete and return with the filing fees of \$1500. It took her several months to accumulate that money, but her efforts to discuss her case with McBride were unavailing. In May 2012, she made a claim with the PLF, at which time she was informed of his impending suspension and the closure of his office.

Claimant hired another attorney to pursue her immigration matters. The new attorney found no evidence that McBride did anything that would justify any fees. The CSF Committee recommends an award of the entire sum paid to McBride.

**No. 2012-88 McBRIDE (Palacios Rodriguez) - \$1,500**

Claimant hired McBride's firm on January 12, 2012 and had two short interviews with an associate during which he provided information to support his visa application. Claimant's application was based on his having been injured in a robbery of his employer and cooperating in the police investigation. Claimant paid \$1000 toward a flat fee of \$1,500. After reviewing the matter, McBride's associate advised Claimant that he didn't have the requisite facts to support the application and he shouldn't pursue it. The associate offered to refund the \$1,000 already paid.

Claimant asked the associate to check with McBride before abandoning his application. Thereafter the associate informed Claimant that McBride recommended continuing the application and Claimant paid the remaining \$500 of the fee.

Several weeks went by with no contact from McBride's office. Then Claimant received a letter from McBride telling Claimant that McBride had talked to Claimant's relatives in Mexico and was unable to obtain the conclusive information that was necessary for a successful case. Claimant tried unsuccessfully to reach McBride to discuss the letter. In early July 2012 he went to McBride's office and found it closed.

The CSF Committee concluded that it was dishonest for McBride to encourage Claimant to continue the case under the circumstances, especially without informing the client that he was facing serious charges from the bar including the possibility of an immediate suspension that would prevent him from completing the matter.



**No. 2012-91 McBRIDE (Garibay, R.) - \$1,500**

Claimant is a Mexican citizen who entered the US illegally in the early 1980's. He was deported in 1996 following a conviction for burglary. He returned to the US illegally and resided here without problem until early 2010 when he was stopped by police for not having a current vehicle license plate. Based on his illegal status he was taken into custody and again deported to Mexico where he remains.

Claimant's wife and grown son hired McBride in February 2010 because Claimant's grounds for post-conviction relief included immigration issues; Claimant's son paid a flat fee of \$3000. McBride filed a petition for post-conviction relief in August 2011 and after some time, a hearing was scheduled for June 11, 2012. Once the petition was filed, Claimant's wife had no success contacting McBride for information about the status of the case. Shortly before the hearing date, Claimant's wife learned from the bar that McBride was due to be suspended on June 14, 2012. Claimant's wife and son went to court alone on June 11 and obtained a continuance so they could find another lawyer to represent Claimant.

The new lawyer (retained at additional cost) reports that McBride did some work on the post-conviction matter but there is much more to do, including research, briefing and appearing at the hearing. Based on that information, the CSF Committee recommends awarding Claimant half of the money paid to McBride.

**No. 2012-92 McBRIDE (Lepe-Lucas) - \$4,900**

Claimant has entered the US illegally on several occasions. He consulted with McBride in May 2011 about getting a work visa and establishing permanent legal residency. McBride agreed to take the case for \$5000 and to commence work when he had received \$2,500 of that amount. Claimant paid \$3,500 on May 12, 2011 and balance in monthly installments between June 2011 and July 9, 2012.

Claimant provided McBride with all the necessary information for his case including a complete history of his illegal entries. McBride did not tell Claimant that he was ineligible for the relief he sought because of his many illegal entries and deportations. Communication with McBride was difficult from the beginning. When Claimant last spoke to McBride in March 2012, he was informed that McBride was working on the case. No mention was made that McBride was in danger of losing his ability to practice law.

In August 2012, Claimant learned from the PLF of McBride's resignation. Claimant consulted another immigration lawyer who told him he was ineligible for a visa or permanent residency for at least 10 years and that this was such basic immigration law that McBride shouldn't have taken his money. There is no evidence that McBride did anything on Claimant's matter and McBride has not accounted for or returned any money to Claimant.

The CSF Committee recommends an award of \$4,900, concluding that McBride was entitled to his \$100 initial consultation fee.

**No. 2012-93 McBRIE (Ramirez, A.) - \$5,000**

Claimant entered the US illegally in 1999 and has resided here ever since. He is married to a US citizen and they have one child. Claimant retained McBride in February 2012 to obtain a work visa and obtain lawful residency. McBride agreed to take the case for \$5,500. Claimant paid \$4,000 on February 16 and the balance of \$1,500 on February 20, 2012. McBride did not inform Claimant that there were formal disciplinary charges pending or that the bar was seeking his immediate suspension.

The file reflects that McBride filed the initial I-130 application and related forms in March 2012. There is no evidence that any further work was done and McBride has not accounted for or refunded any of the advanced fee. Claimant learned from the PLF in August 2012 that McBride had resigned from the practice of law. Claimant's new lawyer estimates that McBride had completed only 10-20% of the necessary work on the matter.

The CSF Committee recommends an award of \$5,000, allowing McBride 10% of the fee for the services performed prior to his resignation.

**No. 2012-94 McBRIE (Kieper) - \$4,000**

Claimant entered the US illegally in 1999, but returned to Mexico voluntarily. Sometime later she was allowed entry without documentation and has resided in the US ever since. She is married to a US citizen and they have two children.

Claimant retained McBride in June 2010 to establish lawful residency and pay a fee of \$4500 in two installments that month. McBride did very little on the case and Claimant's efforts to communicate with him about the case were not fruitful. Her last contact with the office was in July 2012, when she learned that he was no longer there.

Claimant then retained a former associate of McBride to complete her matter. The new attorney reports that McBride's approach to the case was wrong, apparently based on his failure to understand that Claimant's second entry was lawful even though without documentation. Had McBride followed the correct procedure, Claimant would have had a green card quickly. The new attorney estimates that McBride did only about 10% of the work needed for Claimant's case and that is was of little value.

The CSF Committee concluded that McBride was dishonest in failing to ever inform Claimant that his status as a lawyer was in jeopardy or that he would be unable to complete her matter. He has not accounted for or refunded any of her funds. The Committee recommends an award of \$4,000, which allows \$500 to McBride for the work he did.

**No. 2012-96 McBRIE (Maldonado) - \$3,100**

Claimant is a Mexican citizen living in the US illegally; a November 2011 DUI citation triggered deportation proceedings. He hired McBride on February 4, 2012 to defend against the

deportation. McBride agreed to handle the case for \$5,000. Claimant paid \$2,500 upon signing the fee agreement, followed by 4 monthly installments of \$300 (for a total of \$3,700) before learning that McBride had been suspended and closed his office. The third installment was accepted by McBride while he was suspended and after he had signed his Form B resignation and the fourth was accepted after the effective date of the resignation.

Following the single meeting McBride had with Claimant, McBride was able to have the deportation process suspended temporarily. However, the immigration authorities' review of the documents filed by McBride revealed errors and inaccuracies and the proceedings started up again. Claimant has retained new counsel who specializes in immigration removal defense and who says that McBride's work was of little, if any, use to Claimant.

The CSF Committee concluded that McBride was dishonest for not disclosing his pending inability to handle the client's case and for accepting payment after he was suspended. The Committee allocated two hours of work (\$600) to McBride and recommends an award of the remaining \$3,100.

**No. 2012-110 McBRIDE (Melchor) - \$4,500**

Claimant is a Mexican citizen. In 1984 she married to a Mexican citizen living lawfully in the US and on the basis of her marriage, Claimant obtained a green card. About ten years later Claimant's husband divorced her in Mexico, but she was unaware of it until she attempted to divorce him. Because of the divorce she was no longer eligible for her green card and when the immigration authorities learned of the divorce in 2009 a deportation (removal) order was issued.

Claimant was initially represented by Catholic Charities Immigration Services, but she subsequently hired McBride on March 31, 2010 and paid his \$5,000 flat fee.

Claimant had only sporadic contact with McBride; she was rarely able to speak to him when she called but he always assured her he was working on her case. His file is comprised mostly of multiple copies of documents provided by Claimant and some evidence that he requested and was granted continuances of the hearings in her case.

Claimant eventually became frustrated with McBride's lack of responsiveness and hired another lawyer to help her.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim DALRYMPLE (Flanakin) Request for Review

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### Action Recommended

Consider Mr. Flanakin's request for review of the CSF Committee's denial of his claim for reimbursement.

### Background

Michael Flanakin hired Klamath Falls attorney Richard Dalrymple in February 2007 after being served with divorce papers. Flanakin gave Dalrymple a retainer of \$3000. Two months later, Flanakin and his wife reconciled and Dalrymple refunded unearned fees of \$610.82.

In October 2007, Flanakin again retained Dalrymple after Flanakin's wife filed a second petition for dissolution. Between October 2007 and October 2008 Flanakin made payments to Dalrymple totaling \$13,000. Trial of the dissolution case was set for February 2009. Flanakin had an appointment with Dalrymple on January 21, but when he arrived at Dalrymple's office it was closed. On January 30, Flanakin learned that Dalrymple had attempted suicide and was in the hospital. Several days later, Flanakin learned that Dalrymple had died and that the divorce trial had been postponed.

Flanakin obtained his file from Dalrymple's office along with a refund of \$1070.<sup>1</sup> He then hired a new lawyer, Bonnie Lam, and paid her a \$5000 retainer. According to Flanakin, Ms. Lam told him that Dalrymple had done "a whole lot of nothing" on the case and she would need to start from the beginning. As it turned out, however, when the divorce was concluded in 2010, Flanakin received a refund from Lam of approximately \$1000.

Flanakin acknowledges that Dalrymple did some work on his case, but believes that the divorce should not have cost more than the \$4000 he paid Lam since he believes she "started again from the beginning." He has heard from people in his community that Dalrymple's suicide was prompted by money troubles and over-charging his clients. He also claims that the OSB told him \$4000 was "about right" for a divorce and he believes Dalrymple took advantage of him. "In total, I paid him \$14,319.18<sup>2</sup> with very little if anything to show for it."

Based on the investigator's report, the CSF Committee arrived at a different conclusion. The OJIN record is lengthy and indicates there were many motions, hearings and filings in the case, suggesting that Dalrymple was quite active on Flanakin's behalf. The relatively modest fee

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<sup>1</sup> Refunds were issued by Dalrymple's widow based on her review of his trust account records.

<sup>2</sup> This is the net amount of all payments less the two refunds.

Flanakin paid to Ms. Lam for at least 10 months of work also indicated that most of the work on the case was done by Dalrymple prior to his death.

Moreover, the Committee was bound by CSF Rule 2.2 which provides, in pertinent part:

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....

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.

The CSF Committee found no evidence of dishonesty on Dalrymple's part in accepting fees from Flanakin (i.e., that he did so without the intention to provide legal services); it also found that Dalrymple's services were more than minimal or insignificant and there was no independent finding that Flanakin was entitled to a further refund of the fees paid to Dalrymple. Accordingly, the Committee concluded that Flanakin's claim was, at best, a fee dispute and not eligible for reimbursement from the CSF.

### **Conclusion**

The Board must decide whether there is evidence of dishonesty by Dalrymple to meet the standard of CSF Rule 2.2.1 and if so, whether there is a sufficient accounting that would entitle Flanakin to a refund of all or part of the fees paid to Dalrymple.<sup>3</sup>

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<sup>3</sup> The CSF Committee recommended, and the BOG approved, reimbursements to two other former clients of Dalrymple. In each case, however, the amount paid (\$1945 and \$852) was the trust balance shown on statements to the clients at the time Dalrymple concluded his work or immediately prior to his death.

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06 February 2013

Re: Client Security Fund Claim No. 2012-82

Dear Oregon Bar,

On 02 October 2012 I submitted an Application for Reimbursement in the amount of \$14,319.18 on the Estate of Richard Dalrymple. On 27 October 2012 it was denied and stated that the court records showed considerable work done by Mr. Dalrymple and there was no evidence of dishonesty.

After receiving that letter I contacted the Oregon State Bar and talked to Sylvia Stevens and was told I had until the next meeting on 22 February 2013 to submit any other information that I had. (I'm including a copy of her email back to me).

I would like to make the following changes and why.

Amount claimed: \$1,141.45

According to all the records that I was able to get of Mr. Dalrymple monthly statements, I was only reimbursed \$1,070.00 through my new lawyer, Bonnie Lam on or about 13 March 2009. The balance on my account with Mr. Dalrymple was \$2,111.45, going by his statements that I was able to get.

Mr. Dalrymple only accounted for \$2,000.00 of my \$2,500.00 payment on 18 October 2007 that I have a copy of his signed receipt.

Mr. Dalrymple charged me 2 times for a re-billing fee in the amount of \$50.00 each, dated 31 January 2008 and 28 March 2008 for a total of \$100.00. Mr. Dalrymple did not send me any statements from 18 October 2007 when I retained his services, until he sent me the statement for 30 April 2008. When I talked to Mr. Dalrymple on 27 May 2008, he stated that he needed more money and informed me that he had been sending my monthly statements to an old address. (I have been living in my home from August 2007 until present. Before I retained Mr. Dalrymple for the second time). I then made a \$4000.00 payment to him on 29 May 2008. During this seven month time frame, I have seen and talked to Mr. Dalrymple a minimum of 34 times (according to his statements) with no mention of needing more money or that I have not responded to any of his statements that shows I owe any money to him.

Going by Mr. Dalrymple's monthly statements and his signed receipts. I paid him a total of \$13,000.00 from 18 October 2007 until his death. He billed me for \$10,888.55 and a refund was sent to my new lawyer Bonnie Lam in the amount of \$1,070.00. That leaves a balance on my account of \$1041.45 that I have never received.

Amount paid: \$13,000.00

Amount billed: \$10,888.55

Amount refunded: \$1,070.00

Total: \$11,958.55

Account balance: \$1,041.45

Amount overcharged: \$100.00

Amount owed: \$1041.45

Also it was noted in the "CLIENT SECURITY FUND INVESTIGATIVE REPORT" dated 24 October 2012 that I waited over 2 years after Mr. Dalrymple's death before filing a claim. Due to the delay in transferring my files and refund to my new lawyer and realizing that I was missing money from Mr. Dalrymple. I reported it to the Oregon Bar as soon as I became aware.

I am not blaming Mr. Dalrymple nor have I ever said that he did not work on my behalf. All I know is my total balance was not returned to me along with 2 re-billing fees that I did not know about. All I'm asking for is what I'm due. Mr. Dalrymple was a good lawyer and I believe a good friend. I do not want to ruin his name. I just want what's owed to me.

Thank you very much,



Michael S. Flanakin

# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
12-Oct-07	Phone Call	\$0.00
15-Oct-07	Phone Call	-\$18.00
18-Oct-07	<b>Payment</b>	<b>\$2,500.00</b>
	Consultation	\$0.00
	Setup file	-\$90.00
	Filled notice	-\$36.00
	Review documents	-\$36.00
23-Oct-07	Preparation	-\$1.55
24-Oct-07	Preparation	-\$90.00
	Preparation	-\$90.00
	Meeting	-\$36.00
25-Oct-07	Miscellaneous	-\$108.00
	Administration action	-\$18.00
29-Oct-07	Court appearance	-\$90.00
30-Oct-07	Administration action	-\$18.00
	Phone Call	-\$18.00
25-Oct-07	Court cost	-\$194.00
01-Nov-07	Phone Call	-\$18.00
05-Nov-07	Phone Call	-\$15.00
07-Nov-07	Obtain document	-\$54.00
	Review documents	-\$72.00
	Administration action	-\$18.00
08-Nov-07	Meeting	-\$162.00
	Preparation	-\$198.00
	Court appearance	-\$108.00
	Preparation	-\$144.00
	Phone Call	-\$18.00
09-Nov-07	Miscellaneous	-\$36.00
	Court appearance	-\$90.00
	Miscellaneous	-\$54.00
	Meeting	-\$90.00
14-Nov-07	Review documents	-\$18.00
16-Nov-07	Phone Call	-\$18.00
	Phone Call	-\$18.00
	Phone Call	-\$18.00
19-Nov-07	Court appearance	-\$90.00
20-Nov-07	Administration action	-\$18.00
21-Nov-07	Phone Call	\$0.00
	Court appearance	-\$360.00
23-Nov-07	Phone Call	-\$18.00
	Phone Call	-\$18.00
28-Nov-07	Preparation	-\$108.00
	Meeting	-\$90.00
04-Dec-07	Review documents	-\$18.00
05-Dec-07	Phone Call	-\$18.00



# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
	Phone Call	-\$18.00
07-Dec-07	Phone Call	-\$18.00
	Preparation	-\$90.00
	Administration action	-\$18.00
11-Dec-07	Court appearance	-\$288.00
	Meeting	-\$90.00
	Preparation	-\$144.00
	Phone Call	\$0.00
12-Dec-07	Court appearance	-\$90.00
	Phone Call	-\$18.00
	Phone Call	-\$18.00
18-Dec-07	Phone Call	\$0.00
18-Dec-07	letter	-\$90.00
20-Dec-07	<b>Re-billing fee</b>	<b>\$0.00</b>
	Phone Call	-\$18.00
09-Jan-08	Phone Call	-\$18.00
	Phone Call	-\$18.00
10-Jan-08	Meeting	-\$36.00
	Phone Call	-\$18.00
14-Jan-08	Phone Call	-\$18.00
	Phone Call	-\$18.00
17-Jan-08	Phone Call	-\$18.00
18-Jan-08	Administration action	-\$18.00
	Preparation	-\$90.00
	Administration action	-\$18.00
	Phone Call	-\$18.00
	Phone Call	-\$18.00
22-Jan-08	Phone Call	-\$15.00
	Court appearance	-\$90.00
23-Jan-08	Phone Call	-\$18.00
24-Jan-08	Review documents	-\$18.00
25-Jan-08	Administration action	-\$18.00
28-Jan-08	Phone Call	-\$18.00
31-Jan-08	<b>Re-billing fee</b>	<b>-\$50.00</b>
04-Feb-08	Phone Call	-\$18.00
	Phone Call	-\$18.00
11-Feb-08	Court appearance	-\$90.00
18-Feb-08	Phone Call	-\$18.00
19-Feb-08	Phone Call	\$0.00
21-Feb-08	Administration action	-\$18.00
22-Feb-08	Phone Call	-\$18.00
25-Feb-08	Phone Call	-\$18.00
	Phone Call	-\$18.00
27-Feb-08	Meeting	-\$54.00
28-Feb-08	Administration action	-\$18.00

# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
03-Mar-08	Court appearance	-\$90.00
05-Mar-08	Administration action	-\$18.00
12-Mar-08	Review documents	-\$18.00
14-Mar-08	Preparation	-\$198.00
	Meeting	-\$72.00
	Court appearance	-\$216.00
18-Mar-08	Phone Call	-\$18.00
	Phone Call	-\$18.00
19-Mar-08	Phone Call	\$0.00
21-Mar-08	Preparation	-\$108.00
	Meeting	-\$234.00
25-Mar-08	Administration action	-\$36.00
28-Mar-08	<b>Re-billing fee</b>	<b>-\$50.00</b>
01-Apr-08	Phone call	-\$18.00
02-Apr-08	Administration action	-\$18.00
03-Apr-08	Phone call	-\$18.00
	Phone call	-\$18.00
	Phone call	-\$18.00
	Phone call	\$0.00
08-Apr-08	Phone call	-\$18.00
	Phone call	-\$18.00
	Review	-\$18.00
14-Apr-08	Phone call	\$0.00
21-Apr-08	Phone call	-\$18.00
22-Apr-08	Meeting	-\$90.00
	Court appearance	-\$90.00
	Letter	-\$90.00
30-Apr-08	Phone call	-\$18.00
07-May-08	Review	-\$18.00
09-May-08	Phone call	-\$18.00
27-May-08	Phone call	\$0.00
29-May-08	<b>Payment</b>	<b>\$4,000.00</b>
	Meeting	-\$108.00
02-Jun-08	Phone call	-\$18.00
	Phone call	\$0.00
	Phone call	-\$18.00
03-Jun-08	Phone call	-\$18.00
	Phone call	-\$18.00
	Letter	-\$90.00
09-Jun-08	Court appearance	-\$90.00
	Phone call	-\$18.00
	Phone call	-\$18.00
16-Jun-08	Review	-\$72.00
	Phone call	-\$36.00
19-Jun-08	Phone call	\$0.00

# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
	Email	-\$90.00
23-Jun-08	Review	-\$36.00
24-Jun-08	Review	-\$54.00
	Phone call	-\$36.00
	Phone call	-\$18.00
25-Jun-08	Phone call	-\$18.00
	Phone call	-\$18.00
	Phone call	-\$18.00
	Filed motion	-\$90.00
	Review	-\$18.00
30-Jun-08	Phone call	-\$18.00
09-Jul-08	Administrative action	-\$18.00
11-Jul-08	Phone call	\$0.00
	Phone call	-\$18.00
	Administrative action	\$0.00
14-Jul-08	Phone call	-\$18.00
15-Jul-08	Phone call	-\$18.00
18-Jul-08	Administrative action	-\$18.00
24-Jul-08	Phone call	-\$18.00
28-Jul-08	Phone call	-\$18.00
30-Jul-08	Administrative action	\$0.00
01-Aug-08	Phone call	\$0.00
04-Aug-08	Court appearance	-\$90.00
	<b>Payment</b>	<b>\$1,500.00</b>
28-Aug-08	Phone call	-\$18.00
03-Sep-08	Administrative action	-\$18.00
	Review	-\$18.00
04-Sep-08	Review	-\$54.00
	Phone call	-\$18.00
10-Sep-08	Phone call	-\$18.00
	Miscellaneous	-\$162.00
	Preparation	-\$90.00
	Preparation	-\$180.00
11-Sep-08	Administrative action	-\$18.00
15-Sep-08	Phone call	-\$18.00
16-Sep-08	Proof of service	-\$36.00
23-Sep-08	Meeting	-\$180.00
	Preparation	-\$54.00
	Court appearance	\$270.00
29-Sep-08	Court appearance	-\$90.00
	Phone call	-\$18.00
03-Oct-08	Administrative action	-\$36.00
	Phone call	-\$18.00
06-Oct-08	Phone call	-\$18.00
09-Oct-08	Meeting	-\$54.00

# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
	Court appearance	-\$144.00
10-Oct-08	Administrative action	-\$18.00
12-Oct-08	Sent check in mail	
15-Oct-08	Phone call	-\$18.00
23-Oct-08	Phone call	-\$18.00
	Phone call	-\$18.00
21-Oct-08	<b>Payment</b>	<b>\$5,000.00</b>
05-Nov-08	Phone call	-\$18.00
06-Nov-08	Phone call	-\$18.00
	Phone call	-\$18.00
07-Nov-08	Meeting	-\$108.00
	Phone call	-\$18.00
13-Nov-08	Phone call	-\$18.00
	Preparation	-\$36.00
	Meeting	-\$54.00
14-Nov-08	Letter	-\$90.00
	Phone call	-\$18.00
19-Nov-08	Phone call	-\$18.00
	Review	-\$18.00
20-Nov-08	Meeting	-\$54.00
21-Nov-08	Meeting	-\$108.00
	Preparation	-\$54.00
	Phone call	-\$18.00
	Meeting	-\$36.00
	Preparation	-\$324.00
	Phone call	\$0.00
	Phone call	-\$18.00
	Miscellaneous	-\$195.00
	Fee to serve papers	\$0.00
24-Nov-08	Preparation	-\$612.00
	Phone call	-\$18.00
	Phone call	-\$18.00
	Filed motion	-\$90.00
	Meeting	-\$144.00
	Phone call	-\$18.00
	Phone call	-\$18.00
25-Nov-08	Phone call	\$0.00
	Phone call	\$0.00
	Phone call	-\$18.00
	Phone call	-\$18.00
	Preparation	-\$90.00
	Court appearance	-\$90.00
	Phone call	\$0.00
	Review	\$0.00
	Phone call	\$0.00

# Mr. Dalrymple's Statement on Michael Flanakin

Date	Services	Charge/Payment
	Phone call	\$0.00
26-Nov-08	Administrative action	\$0.00
03-Dec-08	Review	-\$18.00
08-Dec-08	Court appearance	-\$90.00
	Phone call	-\$18.00
	Court document	-\$90.00
16-Dec-08	Administrative action	-\$18.00
20-Jan-09	Phone call	-\$18.00
	Phone call	-\$18.00
	Phone call	-\$18.00
	Email	-\$18.00
	<b>Balance</b>	<b>\$2,111.45</b>
13-Mar-09	Sent check to Bonnie Lam	-\$1,070.00
	<b>Ending Balance</b>	<b>\$1,041.45</b>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim JORDAN (Flores-Salazar) Request for Review

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### Action Recommended

Consider Mr. Flores-Salazar's request for review of the CSF Committee's denial of his claim for reimbursement.

### Background

Armando Flores-Salazar was convicted of multiple felonies in November 2006 following a four-day jury trial in Clackamas County.<sup>1</sup> Shortly thereafter, he hired Keith Jordan to represent him on appeal. Flores-Salazar withdrew funds from his 401(k) account to pay Jordan's \$15,000 flat fee in advance. The fee agreement provided that the fee was earned in full on receipt and non-refundable except in the event of a fee dispute.

Jordan filed a Notice of Appeal in December 2006 and in January 2007 filed a motion for release pending appeal. The motion was denied. The transcript was not filed until May 2007, in part because it took Flores-Salazar several months to gather the transcriptionist's \$2400 fee, which was not included in Jordan's fee.

Jordan filed the opening brief on October 25, 2007 after having obtained several extensions from the Court of Appeals. The brief ran to 50 pages and contained six assignments of error. (The DOJ claimed his brief exceeded the court's page limit, since Jordan used a 12-point font instead of the required 13-point.) According to the CSF investigator, the brief was thoroughly researched and competently drafted.

Jordan was suspended from practice in Oregon in January 1, 2008 in connection with unrelated matters and performed no further services for Flores-Salazar. Upon learning of Jordan's suspension, Flores-Salazar was represented by court-appointed counsel through the end of his appeal. The new counsel filed a supplemental brief to address in more detail one of the assignments of error. Flores-Salazar's conviction was eventually affirmed without opinion.

In addition to a disciplinary complaint and his claim for reimbursement with the CSF, Flores-Salazar also filed a civil breach of contract action against Jordan in Umatilla County Circuit Court. That case was dismissed in April 2012 for lack of prosecution; Flores-Salazar was apparently unable to effect service on Jordan.

The CSF concluded that Flores-Salazar's claim was not eligible for reimbursement. CSF Rule 2.2 provides, in pertinent part:

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....

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<sup>1</sup> He is currently incarcerated, serving out his 75-month sentence.

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;....

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.

The CSF Committee found no evidence that Jordan had been dishonest in accepting Flores-Salazar's advance fee; it also concluded that Jordan's services were more than minimal or insignificant and that Flores-Salazar had received the benefit of the remaining services at no additional cost. Accordingly, the Committee concluded that Flores-Salazar had suffered no loss and that his claim was, at best, a fee dispute.

Flores-Salazar made a timely request for BOG review of the CSF Committee's decision. In his request he cites Jordan's stipulation for discipline in which Jordan agreed there was "potential for great injury and Flores-Salazar suffered anxiety and frustration" during the period between Jordan's suspension and the appointment of new counsel. The stipulation includes Jordan's acknowledgement that he caused actual injury to Flores-Salazar by refusing to refund the unearned portion of the advanced fees. Flores-Salazar asserts that Jordan was dishonest in failing to disclose his "original disability,"<sup>2</sup> in exaggerating Flores-Salazar's chance of success on appeal, and because he tried to collect an additional \$15,000 while he was suspended. Finally, Flores-Salazar says he did not receive from the public defender's office "all of the services I paid Mr. Jordan to complete or the result he suggested to me."

Disciplinary Counsel's Office's investigation of Jordan is relevant to Flores-Salazar's assertions about Jordan's dishonesty. Jordan was a member of both the Oregon and California bars, focusing on immigration and criminal defense. His practice in California "ran into some problems" in 2003-2004 in connection with eight immigration matters and Jordan stipulated to a 2-year suspension (all but 9 months stayed) of his California license. The California Supreme Court approved the stipulation in May 2007, but the OSB had been aware of Jordan's difficulties for some time. In October 2006, DCO asked Jordan for information about his status and in June 2007 informed Jordan he would be subject to reciprocal suspension based on the California discipline.

In July 2007, DCO notified the Oregon Supreme Court of Jordan's California suspension and asked for a similar suspension. Jordan filed an objection, arguing he should be suspended in Oregon only for the 9 months he was actually suspended in California. On November 1, 2007, the Oregon Supreme Court issued an order suspending Jordan for 9 months, effective immediately. Jordan asked for a deferred effective date in order to wrap up pending client matters and the court agreed, making his suspension effective January 1, 2008.

Several of Jordan's requests for more time to file the opening brief were made during the time he knew the OSB was seeking reciprocal discipline for his California suspension. His opening brief for Flores-Salazar was filed five days before the Oregon Supreme Court issued its original suspension order. Accordingly, by that time Jordan knew he would not be able to complete Flores-

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<sup>2</sup> Presumably this refers to Jordan's disciplinary problems, discussed below.

Salazar's appeal. Additionally, notwithstanding have been give two months to complete pending client matters, Jordan did not seek leave to withdraw from Flores-Salazar's appeal and did not inform Flores-Salazar that he would be unable to continue the representation.

Flores-Salazar claims not to have known about Jordan's suspension until he received a letter in late June 2008. (The letter was dated June 24, 2007, but DCO suspects it was a typographical error or an intentional misdating to avoid a charge of practicing while suspended.) Jordan assured Flores-Salazar that he would finish the case when he was reinstated, although he also confirmed that Flores-Salazar didn't need to wait for Jordan's reinstatement but could hire a new lawyer if he wished.

In the letter, Jordan also asserted that Flores-Salazar owed an additional \$15,000 for work Jordan had done on the brief because the appeal was more complicated than he originally anticipated. Flores-Salazar disagreed and, in fact, claimed to be owed a partial refund of what he had already paid. He wrote to Jordan demanding a refund of \$10,000 but Jordan never answered.

In August 2008, the state filed its brief and case was "at issue." In November 2008, concerned that his interests weren't being protected, Flores-Salazar wrote to the Court of Appeals informing it that Jordan had been suspended and requesting that he be appointed new counsel. In December 2008, counsel appointed by the PLF filed a motion on Jordan's behalf for permission to withdraw.

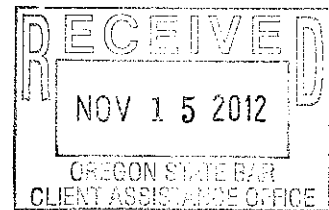
DCO believed there was probable cause to charge Jordan with dishonesty (among other things) because the June 2008 (?) letter was misleading in suggesting he would be available to complete the appeal and Jordan's claim to be entitled to another \$15,000 in fees for work on the brief was a misrepresentation because nothing more was owed under clear language of the fee agreement.

### **Conclusion**

The essence of Flores-Salazar's claim is that Jordan was dishonest about his ability to see the representation through to the end and, while he was thereafter represented without charge by appointed counsel, the fees paid to Jordan should be reimbursed. The Board must decide whether there is sufficient evidence of dishonesty by Jordan to meet the standard of CSF Rule 2.2.1 and if so, whether that constitutes "extraordinary circumstances" within the meaning of Rule 2.2.4.

Attachments: Flores-Salazar Request for Review





November 13, 2012

Sylvia E. Stevens, CSF Administrator  
Oregon State Bar  
16037 S.W. Upper Boones Ferry Rd.  
P.O. Box 231935  
Tigard, OR 97218-1935

RE: CSF Claim No. 2011-01 JORDAN

Dear Ms. Stevens:

I'm writing in regard to the Bar's refusal to reconsider its previous denial of my claim against suspended attorney Keith Jordan. In your letter dated January 18, 2012, you stated,

"The Client Security Fund does not reimburse clients except where there has been dishonesty; a decision by the civil court that Mr. Jordan owes you a refund of fees is not, without more, evidence of dishonesty."

Since you provided this answer, there has been a change in the background of this case, because Mr. Jordan has stipulated to his dishonest actions and the Oregon Supreme Court accepted this stipulation on 08/16/2012. Please see, *In Re: Complaint as to the Conduct of Keith G. Jordan* as well as the Bar's own stipulation signed by Mr. Jordan on 07-16-2012.

In Mr. Jordan's stipulation, as it applies to me, at 12, ¶ 41, § c, he agreed that,

"\* \* \* there was potential for great injury and Flores-Salazar suffered anxiety and frustration during the period he was left unrepresented. The accused ***caused actual injury*** by his failure to refund a portion of the flat fee he charged in the Flores-Salazar matter in recognition of his inability to complete the representation for which the flat fee was paid.

(Emphasis added). It appears that Mr. Jordan's stipulation has changed the background upon which the Bar's decision was made and reconsideration of its prior decision seems appropriate.

While I understand your statement that the Bar does not reimburse except where there has been dishonesty, I believe there has been extensive dishonesty on Mr. Jordan's part where he initially concealed his original disability from me, where he initially represented to me an exaggerated chance of winning my case in order to convince me to pay him the original \$15,000.00 flat fee, and where he then sought an additional \$15,000.00 from me while he was suspended and for monies he was not owed.

In addition, Mr. Jordan's stipulation does not stop at merely his failure to refund the unused portion of the flat fee, but also to the "anxiety and frustration" he caused through his dishonest actions. Moreover, while it may be true that I received some services from the public defender's office, this does not mean that I received all of the services I paid Mr. Jordan to complete or the result he suggested to me. It is unfair that Mr. Jordan should be provided a windfall out of funds he dishonestly contrived from me.

Without question, Mr. Jordan would be held accountable in a civil action by his own admission. I am not asking for anything unreasonable, but only a reimbursement for the unused portion of the funds he did not earn and which he does not deserve. I am also asking for compensation for the added suffering he caused. Please reconsider your prior decision in light of Mr. Jordan's stipulation

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Armando Flores-Salazar". The signature is written in a cursive, flowing style.

Armando Flores-Salazar

SID# 16425955

2605 State Street

Salem, OR 97310

cc

**CLIENT SECURITY FUND  
INVESTIGATION REPORT  
(REVISED)**

From: Chris Eggert  
Date: March 8, 2011  
Re: Client Security Fund Claim No. 2011-01  
Claimant: Armando Flores-Salazar  
Attorney: Keith Jordan

**Investigator's Recommendation**

I recommend that the Committee deny in full the \$10,000 claim.

**Statement of the Claim**

Armando Flores-Salazar submitted a claim on December 29, 2010, for reimbursement in the amount of \$10,000. Mr. Flores-Salazar claims he paid \$15,000 to Mr. Jordan and asserts the work performed has no value beyond \$5,000.

Mr. Flores-Salazar was convicted following a four-day jury trial in Clackamas County Circuit Court on November 17, 2006, of multiple felonies, for which he was sentenced to a Measure 11 sentence of 75 months in prison. He is currently incarcerated and continues to serve his sentence.

Shortly after Mr. Flores-Salazar was convicted, attorney Keith Jordan was hired to represent him on appeal. Alicia Ramos, not the Claimant, signed a fee agreement for payment of a \$15,000 flat fee for Mr. Jordan to prepare the appeal and handle a restitution hearing. The fee agreement provided that the fee was earned in full and non-refundable, except if a fee dispute arose. Mr. Flores-Salazar reportedly paid the fee by withdrawing his 401(k) balance.

Mr. Jordan filed an appearance in Clackamas County Circuit Court, and filed a timely Notice of Appeal in December 2006. In January 2007, Mr. Jordan filed in the Circuit Court a motion for release pending appeal. A hearing was held on this motion on February 6, 2007; the motion was denied. OJIN records that a restitution hearing was not held because the Court of Appeals had jurisdiction over the case while the appeal was pending.

The transcript was not prepared until May 2007. The delay was due in part to the transcriptionist's fee of \$2,400, which was required by the transcriptionist to be paid in advance. Mr. Flores-Salazar's family paid the transcriptionist in Spring 2007, and the transcript was prepared and filed.

In a letter dated June 24, 2007, Mr. Jordan wrote to Mr. Flores-Salazar that he had been suspended from the practice of law for 270 days. He further informed Mr. Flores-Salazar that he could continue to work on the appeal after reinstatement, that the matter was considerably more complicated than had been anticipated at the time he was hired for the appeal, and that

an additional fee of \$15,000 would need to be paid for his work to continue. Mr. Jordan was not in fact suspended at this time, the additional \$15,000 was never paid, and Mr. Jordan went on to file a brief before the end of 2007.

Mr. Jordan prepared and filed an Appellant's Opening Brief. The brief was timely filed in late 2007 after several extensions of time were granted by the Court of Appeals. Mr. Jordan requested and received multiple extensions of time due to the lengthy preparation of the trial transcript and to his own lengthy brief preparation period. The brief Mr. Jordan filed ran some 50 pages and included six assignments of error. It is of some interest that the Department of Justice in its pleadings noted the brief rightfully should have been even longer, as Mr. Jordan used a 12-point typeface instead of the required 13-point typeface. The investigator reviewed the Appellant's Opening Brief in the Court of Appeals file. The brief appears to have been thoroughly researched and competently prepared.

Mr. Jordan was suspended in Oregon on January 1, 2008. He has not to this day been reinstated. Mr. Jordan does not appear to have performed any work on Mr. Flores-Salazar's behalf after the date of his suspension.

Mr. Flores-Salazar obtained the assistance of a publicly-appointed attorney from the Public Defense Services Commission's Appellate Division. The PDSC court-appointed attorney requested and received permission to file a supplemental brief. The Supplemental Brief contained additional briefing materials on only one of the six assignments of error. The original brief was not amended, withdrawn or disavowed in any way by the court-appointed appellate attorney.

The conviction was ultimately affirmed without opinion.

Mr. Flores-Salazar has not filed a civil complaint in any court against Mr. Jordan, and no judgment is forthcoming. There has been no criminal prosecution of Mr. Jordan in connection with this matter.

A PLF claim is pending against Mr. Jordan in connection with this matter.

Mr. Jordan's file and time records, if any exist, are not available for review.

### **Investigator's Actions**

The investigator contacted Mr. Linn Davis in the Oregon State Bar Disciplinary Counsel's Office for information about Mr. Jordan and this claim. Mr. Davis advised the investigator that there were no time records available, Mr. Jordan's file would not likely be available, and that Mr. Jordan would likely not be available for interview. Mr. Davis sent the investigator a timeline of Mr. Jordan's various suspensions.

The investigator obtained an OJIN print of the Clackamas County Circuit Court case in which Mr. Flores-Salazar was convicted, which was the subject of the appeal Mr. Jordan was hired to handle.

The investigator conducted a telephone interview with Mr. Flores-Salazar, who is incarcerated.

The investigator reviewed the appellate file at the Oregon Court of Appeals.

Following the initial write-up of this report, Mr. Flores-Salazar provided the investigator with a copy of the fee agreement, and a letter from Mr. Jordan dated June 24, 2007.

### **Findings and Conclusions**

The claimant had an attorney-client relationship with Mr. Jordan. Mr. Jordan was an active member of the bar at the time of the representation, and was working in Oregon. Mr. Jordan ceased providing services after one year to the claimant, when he started a suspension on January 1, 2008.

There was a contract for Mr. Jordan for legal services, but it is not clear that the claimant was a contracting party or, aside from his verbal statement to the investigator, the paying party. The contract was for representation on appeal of Mr. Flores-Salazar's criminal conviction and related actions in Circuit Court. The fee for Mr. Jordan's services was \$15,000, which appears to have been paid in full. The fee agreement provided for the fee to have been "earned upon receipt", no portion of it was likely ever deposited to a lawyer trust account, and while termed "nonrefundable" the fee agreement provided for the possibility of a refund or partial refund in the event of a fee dispute.

It cannot be said that a loss was suffered by the claimant, or that any loss was the result of the lawyer's dishonest conduct. Mr. Jordan appears to have performed substantial services for Mr. Flores-Salazar, in both of the courts he was hired to appear in connection with this matter. While a subsequent attorney was granted the opportunity to supplement a portion of Mr. Jordan's work, there was no amendment, withdrawal or abandonment of Mr. Jordan's work. The value of Mr. Jordan's work cannot be accurately determined without time records, but it certainly was of more than minimal value.

There was no criminal prosecution of Mr. Jordan, there is no civil judgment against Mr. Jordan in connection with this claim, and Mr. Jordan's suspension was not related to this matter. A disciplinary complaint against Mr. Jordan in connection with this claim is pending. The claim is for more than \$5,000.

There is no evidence of a bond, surety or insurance.

Claimant sent Mr. Jordan a demand letter, and no reply was received.

The claim was filed more than two years after discovery of the claimed loss.



Jordan Law Firm

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San Jose, CA 95126  
Tel: 408 271 9500  
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ATTORNEY-CLIENT CONTRACT  
Fixed Fee Felony-Criminal-State Superior/Municipal Court

This ATTORNEY-CLIENT FEE CONTRACT ("Contract") is entered into by and between "Client" identified below and the JORDAN LAW FIRM ("Attorney"). If this agreement is signed by someone other than the client, the signer represents that client has given authority to sign this agreement on the client's behalf. Client will be represented by Attorney in the matter of People v.

Armando Flores Salazar; Docket Number(s):  
CR06-00856 Appeal & Constitution Hearing

1. **CONDITIONS.** This contract will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Contract and pays the fixed fee called for in this agreement.
2. **SCOPE AND DUTIES.** Client hires Attorney to provide legal services reasonably required to represent Client for all matters in the State Superior and Municipal Court including investigation, research, pre-trial hearings and pre-trial motions. Should the matter be dismissed or concluded in the State Court without a trial there will be no additional Attorney fees. However, if the matter is not concluded before trial, Client will pay to Attorney, well before the start of a misdemeanor trial, or immediately after a preliminary hearing on a felony, a fee of \$ 114 per day in trial. Representation of Client at trial will not occur until payment of the above trial fee. Further, it is understood that our fees in the State Court **do not include** re-hearings or representation on matters dismissed, writs or appeals except on the payment of additional Attorney fees which will be negotiated at that time. Client hires Attorney to handle this matter, and not any specific individual within Attorney. Attorney shall take all reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Client agrees to appear in court at all times requested by the Court or Attorney. Client shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, abide by this Contract, pay Attorney's bills on time and keep Attorney advised of Client's address, home/work telephone number, pager number and whereabouts.
3. **BASE RETAINER FEE.** Client agrees to pay a non-refundable retainer of \$ 15,000 for Attorney's services under this Contract. The retainer is due upon signing this agreement and Attorney will not make any appearance for Client in Court until the retainer is paid in full. Attorney shall have no obligation whatsoever to provide services to Client until the fixed fee is paid in full. Except as provided elsewhere in this agreement, the retainer will be earned in full and **no portion of it will be refunded** once any professional services have been performed, unless a reasonable dispute arises concerning money earned. Client agrees to resolve any fee dispute through binding arbitration with either the local Bar Association in the County where this case was filed, or the State Bar of California Mandatory Fee Arbitration Program.

Our retainer fee is not charged on an hourly basis and client will not be billed on the basis of hours spent on the case no matter how many or how few hours are spent. Client is paying a retainer for professional services rendered in accordance with the terms of this retainer agreement.

# OREGON STATE BAR

## Board of Governors Agenda

**Meeting Date:** February 22, 2013  
**Memo Date:** February 8, 2013  
**From:** Tom Kranovich, Board Development Committee Chair  
**Re:** House of Delegates Election Vacancies

### Action Recommended

Review the OSB House of Delegates vacancies and identify possible candidates to run in the election.

### Background

The Oregon State Bar is currently seeking candidates for the OSB House of Delegates election. Below are the number of open seats in each bar region and the names of candidates who have filed thus far. The deadline for candidate statements is Friday, March 15.

Region 1 – 3 vacancies

Region 2 – 4 vacancies

Region 3 – 1 vacancy

Region 4 – 4 vacancies

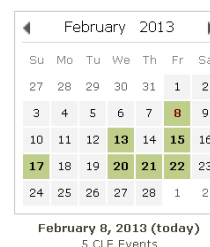
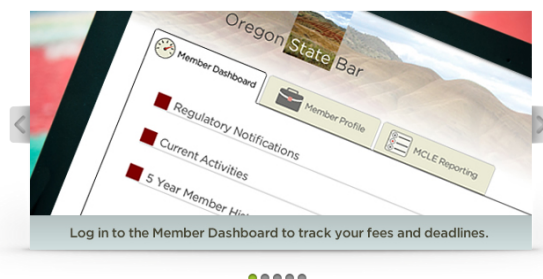
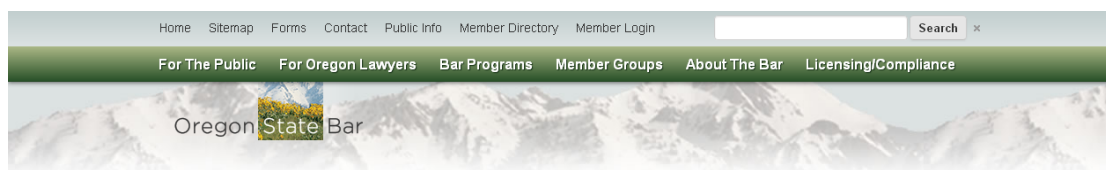
Region 5 – 17 vacancies

Region 6 – 5 vacancies

Region 7 – 3 vacancies

Out-of-State – 7 vacancies (candidates: Gabriel Bradley and Lish Whitson)

Election information and candidate forms can be accessed from the OSB website homepage:



Candidate forms and election information

#### News and Events

##### OSB Section Sign Up Info

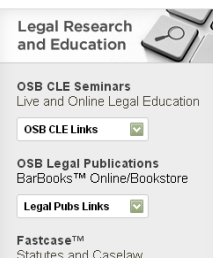
OSB Sections let you interact with other attorneys in your specific practice areas. Learn more about OSB sections, including the new Military & Veterans Law and Nonprofit Organizations sections, [here](#).

##### Run for a seat on the OSB or ABA House of Delegates

The Oregon State Bar is currently seeking candidates for the OSB and ABA House of Delegates elections. Relevant information and forms for applying are available [here](#).

##### OSB Membership Fee Information

OSB membership fees are due on January 31, 2013. [Online payment is available here](#). For additional information, [please refer to the membership fee FAQ](#).



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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** Preference Polls for Circuit Court Appointments

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### Action Recommended

Approve the Governance and Strategic Planning Committee's recommendation to resume conducting preference polls for circuit court appointments.

### Background

Pursuant to OSB Bylaw 2.701, the bar conducts preference polls of judicial candidates for statewide and circuit court *elections*. Pursuant to Bylaw 2.702, preference polls for circuit court *appointments* are conducted only "at the request of the Governor of the State of Oregon or the Board."

Since about 2005, neither the Governor nor the board has requested a poll for a circuit court appointment. Preference polls for appointments were eliminated at the same time that the BOG stopped ranking its recommendations for appellate court appointments, at the request of the then-Governor.

In place of preference polls of bar members in the county/judicial district of the vacancy, the BOG has encouraged local bars to conduct an interview-based screening process similar to what the board uses for statewide judicial appointments. The Multnomah Bar Association's judicial screening process is possibly the oldest most structured of the various county bar mechanisms. Lane and Washington Counties have similar processes, but many county bars do nothing formal in regard to the circuit court appointments.

Preference polls are disfavored by some as being nothing more than "popularity contests." Proponents counter that many (if not most) bar members take the polls seriously, making their selections based on their knowledge of the candidates and their assessment of the candidates' respective qualifications. Particularly in counties that don't have a screening process (or where the county bar's screening process is perceived to be flawed), a preference poll can provide valuable information to the Governor and to the public.

Preference polls are relatively easy and inexpensive for the bar to administer electronically and will not impose a significant burden on staff.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 2, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** CSF Authority to Resolve Small Awards

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### Action Recommended

Approve the recommendation of the Governance and Strategic Planning Committee that the Client Security Fund be authorized to give final approval to awards of less than \$5,000.

### Background

In 1967, the Board of Governors established the Client Security Fund under the authority of ORS 9.625:

**9.625 Plan to relieve client losses; rules.** The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to this fund.

The statutory scheme reposes final authority for payment of claims with the Board of Governors:

**9.665 Authority for reimbursement of client; waiver of conditions....**(1) Except as provided in this section, reimbursement from the client security fund is discretionary with the board of governors.

(2) 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 ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances....

The BOG's authority over claims is echoed in the CSF Rules adopted pursuant to ORS 9.625:

4.11. Claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon.

4.12 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.

Although the investigation of claims is handled by a committee appointed by the BOG and the day-to-day operations are handled by OSB staff, the BOG is the trustee of the Fund, ultimately responsible for assuring it is properly maintained and distributed.

The volume of claims received by the CSF in 2012 prompted some BOG members to question whether it was a good use of the BOG's time to review the smaller claims. After discussion, the Governance and Strategic Planning Committee recommends that the CSF Committee be able to give final approval to awards of less than \$5,000 and to make a report on such awards at each BOG meeting. Not only will this change less the burden on the BOG, but it will allow for speedier payment of those awards.

To effect the proposed change, the GSP Committee recommends that the CSF Rule 4.11<sup>1</sup> be amended as follows:

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 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.

**4.11. Claims for which the award is less than \$5,000 may be finally approved by the Committee. All other [C]claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon. The Committee shall provide reports to the Board of Governors reflecting all awards finally approved by the Committee since the last Board meeting.**

4.12 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.

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<sup>1</sup> The text of preceding and following rules are included for context.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** BOG Role in Reinstatements

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### Action Recommended

Approve the recommendation of the Governance and Strategic Planning Committee to delegate to the Executive Director the authority to review formal reinstatement applications in certain cases.

### Background

There are several types of reinstatement applications, two of which can come before the BOG under existing rules:

- formal applications (BR 8.1<sup>1</sup>) in which lawyers seek reinstatement after more than five years of voluntary resigned or inactive status, or disciplinary suspension greater than six months. These applications are given a high degree of scrutiny by staff and are presented to the BOG for discussion. The BOG then makes a recommendation to the Supreme Court, the final decision-maker; and
- informal applications (BR 8.2), in which lawyers seek reinstatement after less than five years of voluntary resigned or inactive status, or after an administrative suspension (for not complying with bar dues, PLF or IOLTA requirements) that has lasted more than six months. Staff investigation into these applications is not as comprehensive as with the formal applications and the results are submitted to the Executive Director, who can approve them if everything looks in order. The BOG reviews these application only if the ED has a question whether an applicant has the requisite character and fitness. The BOG can then either reinstate the applicant or make a recommendation to the Supreme Court that the application be approved with conditions or denied.<sup>2</sup>

Currently, the BOG's only direct participation in the regulation of lawyers is reviewing formal reinstatement applications.<sup>3</sup>

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<sup>1</sup> References are to the Bar Rules of Procedure which are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542.

<sup>2</sup> BR 8.2(e) provides that: "If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has [good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest], the Executive Director shall refer the application to the Board for consideration, with notice to the applicant."

<sup>3</sup> The BOG participates indirectly in its general oversight of the bar's regulatory functions and in recommending changes to the Rules of Procedure that govern disciplinary cases.

Recently, some BOG members questioned the need for the BOG to review formal applications that presented no complex or difficult issues. At the January Governance and Strategic Planning Committee meeting, Disciplinary Counsel Jeff Sapiro suggest two alternatives:

1. delegate the routine application to the Executive Director, subject to referral to the BOG when there is a question, as is now the process for informal applications, or
2. put routine applications on the BOG's consent agenda so that discussion will occur only if a BOG member requests it.

After discussion, the Governance and Strategic Planning Committee voted unanimously in favor of the first option, and staff has drafted proposed amendments to Title 8 of the Bar Rules of Procedure to accomplish that objective. The amendments will

- Allow the ED to make favorable recommendations directly to the Supreme Court,
- Allow the ED to include conditions as part of the recommendation (mostly to address the "make the applicant get CLE hours" situation),
- All the Ed to reinstated an applicant temporarily under BR 8.7,
- Direct the ED to refer questionable applications to the BOG, and
- Reserve to the BOG the authority to recommend against reinstatement.

Staff also suggests that if the Supreme Court approves the proposed amendments to the Bar Rules of Procedure, then OSB Bylaw 6.103 should be repealed. The one-meeting notice rule for BOG review of applications will no longer apply and the second part of the bylaw merely restates what is in BR 8.1 about the possibility of an application being required to take the bar exam or earn CLE credits before reinstatement.

The one piece we haven't worked out is whether to build in some time to publish the names of formal reinstatement applications and allow a comment period before processing them. The current one-meeting notice process coupled with the BOG's alternate-month meeting schedule means that a formal reinstatement application may be pending for four or more months. That is sufficient time for an announcement to be published in the Bulletin. As envisioned under the new process, the application can be recommended to the Supreme Court as soon as the bar's investigation is complete. While the quicker process may be appealing to many applicants, it is not necessarily going to give us the opportunity to solicit comments from the membership. The board may wish to incorporate a 30 day notice and comment period into the proposed process. In that event, new BR 8.1(e) could be modified slightly to read as follows:

(e) Review by Executive Director; Referral of Application to Board. Notice of and requests for comment on applications filed under BR 8.1 shall be published on the bar's web site for a period of 30 days. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Executive Director determines that the applicant has made the showing required by BR 8.1(b), the Executive Director shall recommend to the Supreme Court, as provided in BR 8.7, that

the application be granted, conditionally or unconditionally. If the Executive Director is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

Attachments: Proposed amendments to Reinstatement Rules  
Text of OSB Bylaw 6.301

Amendments to Reinstatement Rules of Procedure -  
To Allow Executive Director to Review and Act on Most BR 8.1 Applications

Title 8 — Reinstatement

**Rule 8.1 Reinstatement — Formal Application Required.**

(a) Applicants. Any person who has been a member of the Bar, but who has

- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
- (ii) resigned under Form B of these rules prior to January 1, 1996; or
- (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (iv) been suspended for misconduct for a period of more than six months; or
- (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
- (vi) been enrolled voluntarily as an inactive member for more than five years; or
- (vii) been involuntarily enrolled as an inactive member; or
- (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The ~~Board-Bar~~ may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$500.

(e) Review by Executive Director; Referral of Application to Board. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Executive Director determines that the applicant has made the showing required by BR 8.1(b), the Executive Director shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Executive Director is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court that the application be denied.

### **Rule 8.2 Reinstatement — Informal Application Required.**

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive member for five years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$250.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

### **Rule 8.3 Reinstatement — Compliance Affidavit.**

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250.

### **Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.**

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon:

(i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and

(ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or



(iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or

(iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or

(v) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

#### **Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.**

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Completing the requirements that led to the suspension;

(ii) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, NLMP or Ethics School Rule. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension; and

(iii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

#### **Rule 8.6 Other Obligations Upon Application.**

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i), BR 8.2(a)(iii) or BR 8.2(a)(iv) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

(i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and

(ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

#### **Rule 8.7 Board Investigation And Recommendation.**

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Executive Director or the Board, as the case may be, shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, the Executive Director or the Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. In no event shall the Executive Director or the Board temporarily reinstate an applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status.

#### **Rule 8.8 Petition To Review Adverse Recommendation.**

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Board's Bar's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive membership status shall remain in effect until final disposition of the petition by the court.

#### **Rule 8.9 Procedure On Referral By Court.**

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

#### **Rule 8.10 Answer To Statement Of Objections.**

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with the Disciplinary

Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

**Rule 8.11 Hearing Procedure.**

Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

**Rule 8.12 Burden Of Proof.**

An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

**Rule 8.13 Burden Of Producing Evidence.**

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

**Rule 8.14 Reinstatement and Transfer--Active Pro Bono.**

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

***Subsection 6.103 Reinstatement***

A final vote by the Board on an application for reinstatement submitted under BR 8.1 of the Rules of Procedure requires notice at a prior board meeting unless two thirds of the entire Board waives such requirement. If the Board, in its review and investigation, determines that an applicant for reinstatement as an active member of the Bar has not been an active member continuously for a period of more than five years, the Board may recommend to the Supreme Court of the State of Oregon that, as one of the conditions precedent to reinstatement, if it is otherwise recommended, the applicant (1) be required to establish his or her competency and learning in the law by receiving a passing grade on the Oregon Bar Examination as defined under the Rules of the Supreme Court for Admission of Attorneys next following the date of filing of such application for reinstatement or (2) be required to complete a specified number of credit hours of accredited Continuing Legal Education activity before or within a specified time after the applicant's reinstatement.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** Amendment of Fee Arbitration Rules

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### Action Recommended

Approve the recommendation of the Governance and Strategic Planning Committee that Section 8 of the Fee Arbitration Rules be amended as discussed below and shown on the next page.

### Background

The OSB is subject to certain provisions of the Public Records Law by virtue of ORS 9.010(3)(f) as a result of which most records pertaining to the business of the bar are available for public inspection on request. Since the inception of the OSB Fee Arbitration Program, we have considered the records of fee arbitrations to be exempt from disclosure because they are “confidential submissions” within the meaning of ORS 192.502(4).<sup>1</sup>

This proposal adds language to Section 8 of the Fee Arbitration Rules to clarify that General Counsel considers records submitted as part of the program to be confidential submissions exempt from public disclosure. While not having this language has not been a problem in the past, the clarification will be helpful in the event of a challenge. If the bar cannot 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 proposed 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 also clarify General Counsel’s obligation to share documents internally with the Client Assistance Office and/or Disciplinary Counsel’s Office to facilitate the investigation of any ethical violations.

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<sup>1</sup> That subsection exempts “[i]nformation submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.”

## 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 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, [A]all 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 any alleged ethical violations in accordance with BR 2.5 and BR 2.6.**

8.[5]6 Notwithstanding paragraphs 8.1, 8.2, [*and*] 8.3 **and 8.4**, 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.[6]7 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).

# OREGON STATE BAR

## Public Affairs Committee Agenda

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**Meeting Date:** February 21, 2013  
**From:** UPL Task Force  
**Re:** HB 2573 amendment (Unauthorized practice violates Unlawful Trade Practices Act)

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After this bill was drafted, the Public Affairs Department sent it to a number of interested parties, including the lobbyist for the Oregon Collectors Association, Jim Markee. Mr. Markee raised concerns about the breadth of the bill, and expressed an interest in defining “unauthorized practice of law” in the statute.

The members of the UPL Committee were unanimous in wanting to avoid an attempt to develop a specific definition, which has defied the efforts of all who have attempted it. Instead, the group searched for a way to limit the bill to something specific but meaningful at the same time.

The result is a very straightforward amendment. The bill as introduced would make violation of ORS 9.160(1) – the general UPL statute – an unlawful trade practice. The amendment will remove the reference to ORS 9.160(1) and replace it with a reference to ORS 9.280, which prohibits a person from acting as an immigration consultant, unless the person is a member of the bar. While immigration consultants are not the only unauthorized practitioners that the original bill was intended to address, they are a significant part of the problem.

We expect that this amendment will satisfy Mr. Markee, avoid the specter of devising a UPL definition, and provide a useful remedy to private parties who need one.

**PAC Bar List & Position Tracking**

BILL	SUMMARY	Recent Status	Position
	<b>OSB BOG</b>		
HB 2565	Custodianship - Gives judgment lien awarded to custodian of law practice priority over certain other creditors and security interests. Allows executive director of Oregon State Bar to send certain notices to members by electronic mail. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary. 2/6 - PH & Poss WS scheduled.	
HB 2573	UPL - Provides that practicing law in this state without active Oregon State Bar membership is unlawful practice subject to enforcement under Unlawful Trade Practices Act.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary.	
SB 125	SCRA Notice - Requires state agency to provide notice to parties in contested case hearing describing rights that active duty servicemembers have to stay proceedings under federal law.	1/14 - 1st reading. Referred to Pres. 1/22 - Referred to Vets, then Jud. 2/7 - PH 2/14 - WS	
SB 124	Judicial Discretion in Sentencing - Directs court to consider evidence received during criminal proceeding regarding defendant's status as servicemember in determining aggravation or mitigation. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Pres. 1/22 - Referred to Vets, then Jud. 2/7 - PH 2/14 - WS	
HB 2608	Interest from Escrow - Requires, when arties utilize services of escrow agents, trust funds to be deposited in interest-bearing accounts. If trust funds are not exprected to produce net positive return, requires funds to be deposited in pooled interest-bearing trust accounts. Requires interest, net of reasonable costs, to be distributed to public benefit corporations that are organized for purpose of suporting access to justice and that distribute funds to provide legal services to persons of lesser means. Applies to interest accrued on funds deposited with escrow agents or after January 1, 2014.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Bus. & Labor.	
	<b>Administrative Law</b>		
SB 52	Fastcase - Directs state agencies to preserve final orders issued by agency in digital format and to provide electronic copies to Oregon State Bar, or designee, upon request.	1/14 - 1st reading. Referred to Pres. 1/18 - Referred to Judiciary. 2/4 - PH	
	<b>Animal Law</b>		
SB 53	Modifies authority granted to peace officers to perform community caretaking functions. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Pres. 1/18 - Referred to Judiciary. 2/6 - PH & poss. WS	
	<b>Appellate Practice</b>		
HB 2451	Requires transfer of case from Supreme Court to Court of Appeals if it is impossible to appoint sufficient judges pro tempore to Supreme Court to replace disqualified judges. Provides that decision of Court of Appeals in case is final. Directs Supreme Court to appoint judges pro tempore to Court of Appeals as necessary to replace disqualified judges. Provides qualifications for eligibility as judge pro tempore of Court of Appeals. Provides that decision in which judge who is disqualified participated is void unless it was impossible to replace disqualified judge with judge pro tempore who would not have been disqualified. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary.	Oppose ( <i>pending</i> )
HB 2562	Allows Chief Justice of Supreme Court to adopt rules governing use of electronic applications for all state court records and for transmission of jury information to circuit courts. Removes requirement that state courts maintain separate probate index. Allows State Court Administrator to establish procedures for destruction of all state court records, not just circuit court records. Modifies laws on filing of transcript on appeal to allow electronic filing of transcript. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary. 2/6 - PH & Poss WS scheduled.	Support
SB 50	Provides that trial court has jurisdiction to enter appealable order after filing of notice of appeal in certain circumstances. Declares emergency, effective on passage.	1/14 - 1st reading. Referred to Pres. 1/18 - Referred to Judiciary. 2/7 - PH & poss. WS	Support
	<b>Business Law</b>		
HB 2567	Remote-only Shareholder - Permits board of directors of corporation to authorize participation in shareholders' meeting by remote communication subject to guidelines and procedures of board. Requires board to implement measures to verify that participants are shareholders or proxy holders and that participation by remote communication is effective	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Bus. & Labor. 2/11 - PH	



PAC Bar List & Position Tracking

BILL	SUMMARY	Recent Status	Position
HB 2566	Equity Awards - Permits board of directors of corporation to delegate to officer of corporation authority to designate recipients of rights, options, warrants and equity compensation awards for purchasing or receiving shares of corporation. Permits officer to specify terms under which recipients receive rights, options, warrants and other equity compensation awards. Prohibits officer from using authority to designate officer or other persons board identifies as ineligible to receive rights, options, warrants or equity compensation awards.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Bus. & Labor. 2/11 - PH	
	<b>Debtor-Creditor</b>		
HB 2568	Notices of Sale - Provides that in amended notice of sale following release from stay on foreclosure proceedings, trustee must describe only defaults that existed on date stay was terminated if portion of defaults specified in original notice of sale was cured during stay or if additional defaults have occurred during stay.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Consumer Protection & Govt Efficiency	
HB 2569	Qualifications for Trustee - Allows law practices to serve as trustees of trust deeds. Permits attorney who is shareholder, partner, member, proprietor or employee of law practice that is trustee to sign document that is permitted or required to be signed in connection with trust deed if attorney provides attorney's full name, Oregon State Bar number and relationship between attorney and trustee.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Consumer Protection & Govt Efficiency	
	<b>Elder Law</b>		
HB 2570	Protective Proceedings- Clarifies that funds of protected person may be used to pay reasonable compensation rendered on behalf of respondent in protective proceeding. Provides that court approval is required for payment of attorney fees for services provided in protective proceeding by attorney who appeared in proceeding. Excepts payment of attorney fees for certain services provided prior to filing of protective proceeding. Allows party or attorney to file motion requesting court approval and payment of attorney fees at any time during pendency of protective proceeding but no later than two years after date services were provided. Specifies factors for court to consider in determining whether to award attorney fees in protective proceeding and in determining amount of attorney fees to award.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary. 2/6 - PH & poss. WS	
	<b>Estate Planning</b>		
SB 54	Digital Assets - Defines 'digital accounts' and 'digital assets' for purposes of administration of estates and trusts. Requires custodian of digital accounts and digital assets to transfer, deliver or provide access to accounts or electronic copies of assets to personal representative, conservator or settlor upon written request.	1/14 - 1st reading. Referred to Pres. 1/18 - Referred to Judiciary. 2/11 - PH	
	<b>Family Law</b>		
HB 2571	Housekeeping - Clarifies that spousal support payments terminate on death of either party in domestic relations proceeding. Provides for imposition of restraining order prohibiting parties in unmarried parents proceeding from making changes relating to health or life insurance policies. Provides that venue for filiation proceedings is county where either party or child resides.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary. 2/12 - PH	
HB 2572	Life Insurance - Allows court to order payment of attorney fees, costs and expenses in domestic relations proceeding that relates to life insurance. Expands applicability of life insurance provisions to domestic relations proceeding involving unmarried parents.	1/14 - 1st reading. Referred to Speaker. 1/22 - Referred to Judiciary. 2/12 - PH	
	<b>Uniform Criminal Jury Instructions</b>		
SB 55	UCJI Correction - Modifies jury instruction applicable to witness who consciously testifies falsely in one part of testimony.	2/5 - 2nd reading. 2/7 - 3rd reading. Carried by Close. PASSED. Ayes, 28.	

Bill #	Relating Clause	Bill Description	Most Recent Action
HB 2083	Relating to the provision of services to active duty service members.	Permits service member called into active service to suspend and reinstate provision of telecommunications, Internet, health spa and health club services.	Referred to Veterans and Emergency Preparedness.
HB 2161	Relating to authorizations to engage in a profession; declaring an emergency.	Requires, under specified circumstances, boards, councils, commissions and other entities that examine applicants for licensure, registration, certification or other authorization to issue license, registration, certification or other authorization to pra	Referred to Veterans and Emergency Preparedness with subsequent referral to Education.
HB 2170	Relating to orders in contested cases.	Requires that final order of state agency in contested case proceeding include copy of statutes relating to appeal of order and notification of right of party to request leave to present additional evidence on appeal.	Referred to Judiciary.
HB 2171	Relating to civil penalties.	Provides that person has right to trial in circuit court if agency proposes to impose civil penalty of \$2,000 or more against person.	Referred to Judiciary.
HB 2214	Relating to tax practitioners; declaring an emergency.	Exempts employees of attorneys from licensure and other requirements relating to tax return preparation.	Referred to Business and Labor. Public Hearing scheduled 2/15.
HB 2520	Relating to vexatious litigants.	Allows party defending claim to move for order that claimant is vexatious litigant.	Referred to Judiciary.
HB 2533	Relating to awards of costs in tax-related proceedings; prescribing an effective date.	Authorizes awards of attorney fees and expenses by tax court magistrate.	Referred to Judiciary.
HB 2546	Relating to civil actions for unlawful practices.	Limits class of plaintiffs for civil action for unlawful practice to natural persons.	Referred to Judiciary.
HB 2547	Relating to jurors summoned by circuit courts; declaring an emergency.	Modifies statutes relating to jurors summoned by circuit courts.	Public Hearing and Possible Work Session held 2/6.
HB 2548	Relating to bail.	Establishes commercial bail system.	Referred to Judiciary with subsequent referral to Ways and Means.
HB 2556	Relating to a legal rate of interest.	Provides that rate of interest on judgments that exceed \$1 million is lesser of five percent per annum or three percentage points more than discount rate in effect at Federal Reserve Bank in Federal Reserve district that includes Oregon.	Referred to Judiciary.
HB 2557	Relating to comparative negligence in civil actions.	Directs trier of fact in civil action to compare fault of claimant with fault of all third party defendants, whether or not third party defendant is liable to claimant.	Referred to Judiciary.
HB 2558	Relating to punitive damages; declaring an emergency.	Limits awards of punitive damages to amount equal to three times economic damages and noneconomic damages awarded to plaintiff.	Referred to Judiciary.
HB 2558	Relating to punitive damages; declaring an emergency.	Limits awards of punitive damages to amount equal to three times economic damages and noneconomic damages awarded to plaintiff.	Referred to Judiciary.

Bill #	Relating Clause	Bill Description	Most Recent Action
HB 2561	Relating to fees for electronic court services; declaring an emergency.	Authorizes Chief Justice of Supreme Court to establish reasonable fees for use of state court electronic applications and systems.	Referred to Judiciary with subsequent referral to Ways and Means.
HB 2562	Relating to courts; declaring an emergency.	Allows Chief Justice of Supreme Court to adopt rules governing use of electronic applications for all state court records and for transmission of jury information to circuit courts.	Public Hearing and Possible Work Session held 2/6.
HB 2563	Relating to salaries of judges; declaring an emergency.	Modifies annual salaries of justices of Supreme Court and judges of Court of Appeals, Oregon Tax Court and circuit courts.	Referred to Judiciary with subsequent referral to Ways and Means.
HB 2565	Relating to attorneys; declaring an emergency.	Gives judgment lien awarded to custodian of law practice priority over certain other creditors and security interests.	Public Hearing and Possible Work Session held 2/6.
HB 2566	Relating to equity compensation awards.	Permits board of directors of corporation to delegate to officer of corporation authority to designate recipients of rights, options, warrants and equity compensation awards for purchasing or receiving shares of corporation.	Referred to Business and Labor. Public Hearing scheduled 2/11.
HB 2567	Relating to shareholders' meetings conducted by remote communication.	Permits board of directors of corporation to authorize participation in shareholders' meeting by remote communication subject to guidelines and procedures of board.	Referred to Business and Labor. Public Hearing scheduled 2/11.
HB 2568	Relating to requirements for amended notice of sale following stay of foreclosure.	Provides that in amended notice of sale following release from stay on foreclosure proceedings, trustee must describe only defaults that existed on date stay was terminated if portion of defaults specified in original notice of sale was cured during stay	Referred to Consumer Protection and Government Efficiency.
HB 2569	Relating to conditions for certain trustee's signatures on trust deed documents.	Allows law practices to serve as trustees of trust deeds.	Referred to Consumer Protection and Government Efficiency.
HB 2570	Relating to compensation in protective proceedings.	Clarifies that funds of protected person may be used to pay reasonable compensation rendered on behalf of respondent in protective proceeding.	Public Hearing and Possible Work Session held 2/6.
HB 2571	Relating to domestic relations proceedings.	Clarifies that spousal support payments terminate on death of either party in domestic relations proceeding.	Referred to Judiciary. Public Hearing and Possible Work Session scheduled 2/12.
HB 2572	Relating to life insurance in domestic relations proceedings.	Allows court to order payment of attorney fees, costs and expenses in domestic relations proceeding that relates to life insurance.	Referred to Judiciary. Public Hearing and Possible Work Session scheduled 2/12.
HB 2573	Relating to the unlawful practice of law as an unlawful trade practice.	Provides that practicing law in this state without active Oregon State Bar membership is unlawful practice subject to enforcement under Unlawful Trade Practices Act.	Referred to Judiciary.

Bill #	Relating Clause	Bill Description	Most Recent Action
HB 2608	Relating to escrow accounts.	Requires, when parties utilize services of escrow agents, trust funds to be deposited in interest-bearing accounts.	Referred to Business and Labor.
HB 5006	Relating to the financial administration of the Criminal Fine Account; declaring an emergency.	Directs distribution of moneys from Criminal Fine Account.	Assigned to Subcommittee On Capital Construction.
HB 5016	Relating to the financial administration of the Judicial Department; appropriating money; declaring an emergency.	Appropriates moneys from General Fund to Judicial Department for biennial expenses.	Assigned to Subcommittee On Public Safety.
HB 5017	Relating to the financial administration of the Commission on Judicial Fitness and Disability; appropriating money; declaring an emergency.	Appropriates moneys from General Fund to Commission on Judicial Fitness and Disability for biennial expenses.	Assigned to Subcommittee On Public Safety.
HB 5041	Relating to the financial administration of the Public Defense Services Commission; appropriating money; declaring an emergency.	Appropriates moneys from General Fund to Public Defense Services Commission for certain biennial expenses.	Assigned to Subcommittee On Public Safety.
SB 28	Relating to publishing notice on the Internet; declaring an emergency.	Authorizes publishing notice of criminal forfeiture, civil forfeiture and intent to dispose of unclaimed property on Internet.	Referred to Judiciary.
SB 39	Relating to appeals.	Authorizes sentencing court to enter order staying sentence or portion of sentence pending resolution of appeal.	Referred to Judiciary. Public Hearing and Possible Work Session scheduled 2/26.
SB 43	Relating to jury instructions; declaring an emergency.	Authorizes appellate court to review jury instructions for plain error despite failure of party to object with particularity.	Referred to Judiciary.
SB 44	Relating to appeals; declaring an emergency.	Directs appellate court to notify parties to appeal when appellate court receives corrected or supplemental judgment from trial court.	Referred to Judiciary. Public Hearing and Possible Work Session scheduled 2/26.
SB 49	Relating to state court security; declaring an emergency.	Authorizes Chief Justice of Supreme Court to adopt standards and plan for physical security of judges and staff.	Public Hearing and Work Session held 2/7.
SB 50	Relating to trial court jurisdiction after notice of appeal has been filed; declaring an emergency.	Provides that trial court has jurisdiction to enter appealable order after filing of notice of appeal in certain circumstances.	Public Hearing and Work Session held 2/7.
SB 51	Relating to state court administration; declaring an emergency.	Streamlines consolidation of probation violation proceedings.	Public Hearing held 2/7.

Bill #	Relating Clause	Bill Description	Most Recent Action
SB 52	Relating to final orders.	Directs state agencies to preserve final orders issued by agency in digital format and to provide electronic copies to Oregon State Bar, or designee, upon request.	Public Hearing held 2/4.
SB 53	Relating to community caretaking functions; declaring an emergency.	Modifies authority granted to peace officers to perform community caretaking functions.	Public Hearing held 2/6.
SB 54	Relating to digital property.	Defines "digital accounts" and "digital assets" for purposes of administration of estates and trusts.	Referred to Judiciary. Public Hearing scheduled 2/11.
SB 55	Relating to jury instructions.	Modifies jury instruction applicable to witness who consciously testifies falsely in one part of testimony.	Third reading. Carried by Close. PASSED.
SB 92	Relating to crime; declaring an emergency.	Increases maximum penalty when certain crimes are committed against judicial officer and are related to officer's official duties.	Referred to Judiciary. Public Hearing and Possible Work Session scheduled 2/12.
SB 124	Relating to servicemembers; declaring an emergency.	Directs court to consider evidence received during criminal proceeding regarding defendant's status as servicemember in determining aggravation or mitigation.	Work Session scheduled 2/14.
SB 125	Relating to contested case hearings.	Requires state agency to provide notice to parties in contested case hearing describing rights that active duty servicemembers have to stay proceedings under federal law.	Work Session scheduled 2/14.
SB 158	Relating to government ethics.	Allows use of proceeds from legal expense trust fund to pay expenses incurred by public official in connection with Oregon State Bar disciplinary proceedings.	Referred to Rules.
SB 180	Relating to criminal actions; declaring an emergency.	Reduces portion of fine imposed in criminal action that is payable to state.	Referred to Judiciary, then Ways and Means.
SJR 5	Proposing amendment to Oregon Constitution relating to limitations on civil damages.	Proposes amendment to Oregon Constitution to allow legislature to impose limitations on civil damages.	Referred to Judiciary, then Rules.

## **2013 Judicial Department Funding Priorities**

### **1. Maintain Current Service Level Budget.**

- The Oregon Constitution requires the courts to provide justice completely without delay, and any reductions in current service levels will further impair the courts' ability to fulfill this responsibility.
- The Governor's Budget for 2013-15 imposes a \$12 million across the board reduction from current service levels.
- Funding at current service levels would prevent further reductions in court operations, delays in case processing, and access to justice. It would also eliminate unpaid furlough days for court staff and allow courts to operate every business day.

### **2. Continue funding for Oregon eCourt.**

- The electronic court project is an on-going effort to bring more efficiency to the state's judicial system and increase access to court information.
- An additional \$22.9 million in bond funding is needed to continue the statewide circuit court roll-out for 11 additional courts in 2013-15, and \$4.4 million from the General Fund will be needed for debt service to support the new bonds.
- The requested budget also seeks \$1.93 million General Fund for training and maintenance not eligible for bond funding.

### **3. Fund the additional Court of Appeals panel approved in the 2012 session.**

- An additional \$3 million General Fund is needed to fund the additional three judge panel approved last session for Oregon's intermediate appellate court – one of the busiest in the country.

### **4. Restore timely court services.**

- To meet basic timelines in case disposition and public safety, 62 positions cut over the past several budget cycles must be restored, at a cost of \$7.7 million General Fund.
- These timelines include a three-day standard to enter judgments so that they may be enforced and a 24-hour standard on recalling arrest warrants.
- The restoration of these positions would also ensure that all courts would be able to answer phones and provide counter service for 7 hours every business day.

### **5. Increase Judicial Compensation.**

- Enacts 2009 Public Official's Compensation Commission recommendation and includes 4% cola.
- Promotes diversity expertise among Oregon's Appellate and Trial Courts at a cost of \$12.2 million in General Fund.

### **6. Enhance Court Security and Facilities.**

- Provide \$800,000 for security upgrades in courthouses in Central and Southern Oregon, including purchasing metal detectors and alarm systems.
- Fund \$4.4 million in bond proceeds to make critical repairs to the Supreme Court building – built in 1914 and is the only state-owned courthouse.
- Provide \$3.55 million to leverage courthouse facilities construction or improvements in six counties.

## **Oregon State Bar Legislative Priorities for 2013**

1. **Court funding.** The bar is mobilizing support for adequate funding for Oregon's courts in two ways:
  - **Coalition.** Building a coalition of corporate counsel, business, and community and bar leaders to advocate for restoration of trial court services cut in recent budget cycles.
  - **Statewide Taskforce.** Forming a group of high profile state leaders (former elected officials, judges, business leaders) to provide ongoing leadership in educating the public and supporting a viable state court system.
2. **Support for legal services for low income people.**
  - a. **Civil Legal Services.**
    - **Protect Filing Fees.** Highest priority is maintenance of the current level of funding derived from state court filing fees that supports legal services.
    - **Treat Escrow Accounts like IOLTA accounts.** Advocate legislation (LC 2764) that uses interest on escrow accounts in real estate transactions to support legal services. These accounts are trust accounts that are separate from funds belonging to the title companies. This proposal would make pooled escrow accounts interest bearing, with interest paid to the Oregon Law Foundation. Only funds that will not produce a positive net return for the client or a third party could be placed in the pooled account. National title companies and banks are familiar with similar treatment of escrow accounts in other states.
    - **50% tax credit.** Advocate for a 50 percent tax credit for donations to the Campaign for Equal Justice, a private non-profit that supports legal services programs. Tax credits are a way for the state to support activities it wants to promote by foregoing revenue that it would otherwise collect, instead of spending state resources out of pocket. A taxpayer who donates \$1,000 to the Campaign for Equal Justice could claim a credit of \$500 against taxes that the taxpayer would otherwise owe.
  - b. **Criminal Legal Services.**
    - Support funding for indigent criminal defense. This is an overlooked but crucial element of the public safety system.
3. **Support Oregon State Bar Law Improvement Package of bills.**

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Revision of Model Explanation of Contingent Fee Agreement

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### **Action Recommended**

Approve the proposed revision of the Model Explanation of Contingent Fee Agreement to conform to the recent amendment of Oregon RPC 1.8(e).

### **Background**

ORS 20.340 governs contingent fee agreements. In addition to being written in “plain and simple language,” the terms and conditions must be explained to the client “in compliance with a model explanation” prepared by the Oregon State Bar before the client signs the agreement.

The current version of the Model Explanation recites that the client must repay any money advanced for filing fees and other expense “whether the case is won or lost.” With the recent amendment of Oregon RPC 1.8(e),<sup>1</sup> the language in the Model Explanation is no longer correct in all cases. Rather, as amended, RPC 1.8(e) allows (but does not require) the repayment of costs to be contingent upon the outcome of the matter. It also allows a lawyer representing an indigent client to pay costs and expenses on behalf of the client.

Staff has drafted a proposed revision of the Model Explanation for the BOG’s consideration and approval. The proposed revision sets out three alternatives that the lawyer may choose in undertaking the representation: (1) the client repays the costs regardless of the outcome of the matter; (2) the client repays the costs only if the lawyer recovers money for the client; or (3) the client does not repay the costs regardless of the outcome of the case.

We have publicized the change in Oregon RPC in a *Bulletin* column and in various bar news outlets. Nevertheless, many practitioners may be unaware of the change until a revised Model Explanation is posted online and incorporated into the Fee Agreement Compendium.

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<sup>1</sup> Approved by the HOD November 2, 2012 and adopted by the Supreme Court November 29, 2012. Effective date January 1, 2013.



**Oregon State Bar Approved**  
**Explanation of Contingent Fee Agreement**

This is an explanation of your Contingent Fee Agreement with us. Please read it and sign it before you sign the Agreement.

The Contingent Fee Agreement says:

1. We agree to handle your case.
2. If we handle your case to completion and do not recover any money for you, you do not have to pay us for our services.
3. If we handle your case to completion and recover some money for you, you must pay us for our services. Our fee will be a percentage of what we recover for you. The percentage is set forth in the Contingent Fee Agreement.
4. If we advance money for filing fees, witness fees, doctors' reports, court reporters' services or other expenses on your behalf:  

☐ you must repay us whether the case is won or lost; or  
☐ you must repay us only if we recover money for you; or  
☐ you do not need to repay us regardless of the outcome of your case.
5. You may cancel the Contingent Fee Agreement by notifying us in writing within 24 hours after you sign it.
6. If you cancel the agreement within the 24-hour period, you will have no obligation to us.

I have read the foregoing explanation before signing a Contingent Fee Agreement with  
(Name of Lawyer or Firm)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Date

~~I have read the foregoing explanation before I signed a Contingent Fee Agreement with [Name of Firm].~~

\_\_\_\_\_  
Client's Signature  
\_\_\_\_\_  
\_\_\_\_\_ Date

← Formatted: Tab stops: 4", Left + 5", Left

January 25, 2013

Charles N Isaak  
14325 SW Lisa Ln  
Beaverton, OR 97005

Re: Complimentary CLE for 50-Year Members

Dear Mr. Isaak:

I understand you were unhappy to learn that your complimentary CLE seminar registration for yesterday's environmental law program did not include a print copy of the seminar materials. You asked for either a free copy of the print materials or a letter from the Board of Governors confirming a change in the complimentary registration policy.

BOG Policy 16.200 provides in relevant part:

(a) Complimentary registration for CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary registration does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar.

I believe the BOG's intent is clear from the language: anything for which the CLE Seminars department charges a fee separate from the program attendance fee is not complimentary. Thus, an electronic copy of the seminar materials is included in the complimentary registration, but elective print copies are not. As you may know, the BOG has over the past few years effected significant expense savings by moving to electronic rather than print materials. That includes the membership directory, the annual fee statements, and most regulatory filings. The move to "pay for print" seminar materials is part of the cost-saving effort.

I will share this letter with the BOG at its next meeting on February 22, 2013 and will be sure to let you know if the BOG corrects my understanding of the policy.

Sincerely,

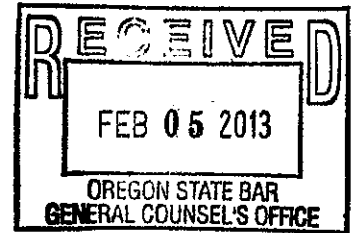
/s/

Sylvia E. Stevens  
Executive Director

*Ext. 359, Fax: (503) 598-6959  
Email: sstevens@osbar.org*

cc: Karen Lee, Director of CLE Seminars

CHARLES N. ISAAK  
14325 S.W. Lisa Lane  
Beaverton, Oregon 97005  
(503) 641-4381



February 1, 2013

Ms. Sylvia Stevens  
Executive Director  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935

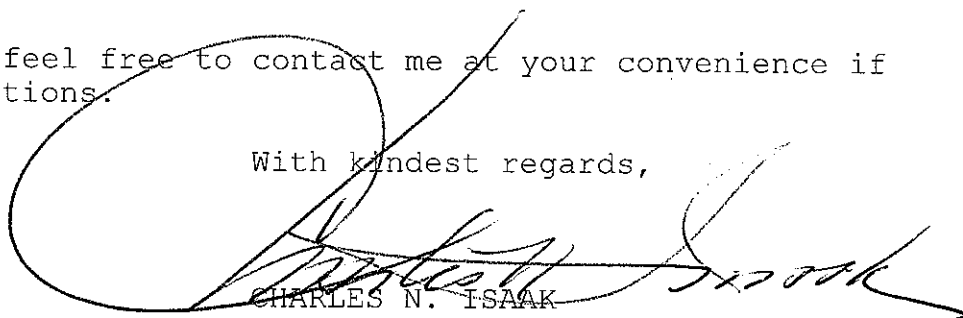
RE: Complementary OSB CLE Policy

Dear Ms. Stevens:

Enclosed herewith is my response to your letter dated January 25, 2013.

Please feel free to contact me at your convenience if you have any questions.

With kindest regards,



CHARLES N. ISAAK  
OSB No. 57038

CNI:li  
Enclosure

cc: Karen Lee, Director of CLE Seminars  
Board of Governors  
(W/enclosures)

CHARLES N. ISAAK

14325 S.W. Lisa Lane  
Beaverton, Oregon 97005  
(503) 644-5410

February 1, 2013

U.S. CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
No. 7003 3110 0000 6691 7666

Board of Governors, Oregon State Bar  
c/o Michael E. Haglund, President  
Haglund Kelly Jones & Wielder  
200 SW Market Street, Suite 1777  
Portland, OR 97201

RE: Complementary OSB CLE Policy

Dear Mr. Haglund:

It is not without some concern that I raise the following issues.<sup>1</sup>

The issue this time is over the Bar's policy of complimentary registration for its CLE Seminars. The issue is inaccurately set forth in Sylvia Stevens letter to me dated January 25, 2013, copy enclosed.

Nor would I be raising this issue but for the inaccuracies in her said letter and her advice that she will be taking this matter up with the BOG in its February 22, 2013 meeting. I need to set the record straight, especially if the BOG is going to take up the matter, and especially in light of my past experiences with some staff members.

- 1) Ms. Stevens advises that: "I understand you were unhappy to learn that the complimentary CLE seminar registration for yesterday's environmental law program did not include a print copy of the seminar materials."  
[Emphasis added]

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<sup>1</sup>The Oregon State Bar, should it choose to do so, has the unrestricted power to totally destroy members, their families, their reputations, and their ability to earn a living. I respectfully submit that it has done all of the foregoing to me and my wife (See the Brooks file); in addition, it has damaged my wife's health (See also the Hoag file, subsequently dismissed at the last minute, after years of struggle by your author and his wife). The Bar's handling of the Brook's matter has made it impossible for me to earn a living, as a lawyer.

CHARLES N. ISAAK'S RESPONSE:

I was not "unhappy" at the OSB's advice that I would have to pay fifteen dollars for the printed material accompanying the said seminar. If that was the new BOG rule, as announced by Bar Staff, I had no objection to following it. I have always tried to follow all of the rules since admitted to practice in 1957. I merely inquired of the Bar Staff that was present at the time (a young man - new to me- and two ladies, also on the Bar Staff) what the source of the new rule was. Their responses seemed to point to Sylvia Stevens. At about this time I said "she hates my guts."<sup>2</sup> Because of our past relationship, I inquired if I could have a hard copy of the authority that supported the change. Bar staff, as I recall, made several phone calls and were unable to give me any definitive answers.

Because I had a half-hour before the seminar started, I went up to the OSB receptionist desk on the second floor (staffed by two lady Bar receptionists). I inquired if anyone was available who could respond to my question. As I recall, no one was in or available.<sup>3</sup>

I returned to the seminar down stairs and the young man behind the table offered me a copy marked "desk copy" that he said I could use but not keep. Because I mark up my hard copies during the presentation, and because I didn't want Bar staff to disobey their instructions, I said no thank you. As I recall, Staff made one or two more phone calls on the phone that was available in the foyer. I listened to Staff's end of the conversation and keep correcting staff as to what I was 1) doing, and 2) saying. I only wanted to obtain written authority for the change in policy and the fifteen dollar charge for the written materials. Nothing more - nothing less. It was my understanding that no one was available; that Ms. Stevens was out, and that Ms. Stevens would write me a letter, presumably the letter dated January 25, 2013, received by me in the mail on January 28, 2013, copy enclosed.

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<sup>2</sup>I have been attending the complimentary CLEs for over a year, and the written material had always been provided free of charge. (I am computer illiterate). Sylvia and I have a long history of disagreements and conflict. The last discussion I had with her on the phone, before she was made Executive Director turned into the worst shouting match of my fifty plus year career.

<sup>3</sup>I was instructed to return to the seminar and someone would meet me there with the requested information. No one ever did.

2) Ms. Stevens advises that: "You asked for either a free copy of the print materials or a letter from the Board of Governors confirming a change in the complimentary registration policy." [Emphasis added]

ISAAK RESPONSE:

I never said I either wanted a free copy or a letter from the BOG "confirming" the fifteen-dollar charge. Because of my previous experiences with Ms. Stevens, et al, and the impression that I had from what Bar staff had previously said, I was worried that Ms. Stevens had 1) imposed the charge by herself, without BOG approval, or even worse, 2) she had singled me out alone, because of our past relationship. All I ever asked for was hard copy support for her having imposed the fifteen-dollar charge, after having received all prior printed materials as a part of the complimentary process.

The suspicion that Ms. Stevens had acted ex party without BOG approval (this is BOG policy - not Sylvia Stevens policy) seems to be reinforced by Ms. Steven's choice of words in her letter dated January 25, 2013, i.e. she tries to suggest that I wanted a BOG letter "confirming" a change, as opposed to a hard copy reflecting that the BOG had approved a change (one Bar staffer who is in a position to know said she had never heard of any changes to BOG policy since it was originally enacted and shortly thereafter broadened out to include more beneficiaries).<sup>4</sup>

I assume the BOG policy quoted by Ms. Stevens in her letter dated January 25, 2013 is true, accurate, and current. May I have access to copies of all of the BOG policies and proceedings on this subject?

Ms. Stevens opines that: "I believe the BOG's intent is clear from the language:" [Emphasis added] If the language was "clear" I don't believe the Bar Staff would have been supplying me with free printed material for over a year, at each of the past CLEs I have attended. Moreover, I have an impression, whether well grounded or not, that because of my hearing requirements, which the Bar must make a special effort to accomodate, the Bar would just as soon that I didn't attend anymore complimentary CLEs - ever.

The hard copy materials are an integral part of the

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<sup>4</sup>See also the last paragraph of Ms. Stevens said letter dated January 25, 2013. An effort to cover her ex parte position for the fifteen-dollar charge ?

Board of Governors, Oregon State Bar  
February 1, 2013  
Page 4

complimentary CLE, not another "...fee-based activities held in conjunction with a CLE seminar."<sup>5</sup>

I am not computer literate. I have the impression, rightly or wrongly, that in addition to singling me out, the Bar staff (without BOG approval?) is trying to force everyone to use the internet, and print out the materials at our expense, whether we are computer/internet literate or not. Ms. Stevens' logic is not supportable, and it appears to me to be deficient on the face of her letter dated January 25, 2013, if said letter is read carefully and critically. In my opinion, the print copies are not "elective" for those of us who are computer illiterate.

It is not in dispute that the Bar could save money if the Bar can force all those attending to use the internet. It is, however, I submit, irrelevant. Given the recent history of electronic media, it is not consistent with the history of BOG policy \$16.200 if quoted accurately by Ms. Stevens, or the reality that there are still people who are not computer/internet literate.

Respectfully submitted,

  
CHARLES N. ISAAC, OSB 57038

CNI:li  
Enclosure

CC: ✓ Sylvia Stevens, Executive Director  
Karen Lee, Director of CLE Seminars  
Ann L. Fisher, Region 4  
Matthew H. Kehoe, Region 4

P.S. If you/the OSB desire my physical presence anywhere at any time, please advise and I will try to accomodate.

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<sup>5</sup>If one pays the CLE fee, the material is an integral part of the program and the fee.

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 10, 2012  
**Open Session Minutes**

The meeting was called to order by President Mitzi Naucner at 12:32 p.m. on November 10, 2012. The meeting adjourned at 3:50 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, 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. Newly-elected board members present were Timothy Williams and Caitlin Mitchel-Markley. Staff present were Sylvia Stevens, Rod Wegener, Helen Hierschbiel, Kay Pulju, Susan Grabe, Mariann Hyland, Judith Baker and Camille Greene. Others present were Mark Johnson Roberts, Tom Cave, PLF CFO, Ira Zarov, PLF COO, David Eder, ONLD Chair-elect, and Jason Hirshon, ONLD Chair.

**1. Call to Order/Finalization of the Agenda**

**2. BOG Officer Elections**

**A. President and President-elect**

**Motion:** Mr. Knight moved, and the board, by acclamation, elected Tom Kranovich as President-elect and Mike Haglund as President for 2013. Mr. Wade and Mr. Knight will be vice-presidents in 2013.

**3. Reports**

**A. Report of the President**

As written.

**B. Report of the President-elect**

**Motion:** Mr. Haglund proposed the board pursue the following in 2013: Court funding, implementation of Legal Job Opportunities task force proposals, Legal Aid funding for general fund, legislative approval of a tax credit for donations to CEJ as well as obtaining interest from title escrow accounts, and the development of a SOLACE program. The motion passed unanimously.

Mr. Haglund reminded the BOG of the quarterly goals approved at the planning session: tree planting (winter), a May Day event (spring), a fun run (summer), and the launch of SOLACE emergency network (fall).

**C. Report of the Executive Director**

ED Operations Report as written. Ms. Stevens announced departmental organization changes that will be effective January 2013.

**D. Board Members' Reports**

None.



**E. Director of Diversity & Inclusion**

Ms. Hyland and Mr. Kranovich reported on the success of BOWLIO and the high participation rate. Ms. Hyland met with the Confederated Tribes who invited the board to visit again. She reported on the progress of the Diversity Timeline wall in the bar center and on their website.

**F. MBA Liaison Reports**

Ms. Kohlhoff reported on the October 3, 2012 MBA meeting. Mr. Spier reported on the November 7, 2012 MBA meeting.

**G. Oregon New Lawyers Division Report**

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. The ONLD is nationally recognized as an exemplary young lawyer division. They met in Lincoln City in September to paint a non-profit theater and launched the practice tips thumb drive project at the Pro Bono Fair. The latest project is to place new lawyers with non-profits and a focus on leadership positions for ONLD members.

**4. Professional Liability Fund**

Mr. Zarov gave a general update, announced open positions in the office, explained changes to the PLF website, and revisions to the excess program including protection for cyber loss. Beginning this year, the PLF assessment can be paid with credit cards. Mr. Cave reported on the budget, pending claims and the cost of defending claims.

Mr. Zarov asked the board to approve the 2013 Assessment of \$3500 per covered party and approve the PLF 2013 Budget as written.

**Motion:** Mr. Wade moved, Mr. Haglund seconded, and the board voted unanimously to approve the assessment and budget as presented. **[Exhibit A]**

Mr. Zarov asked the board to approve the PLF Claims Made Plan, specifically the sections regarding definitions, exclusions from coverage, and notice of claims as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the PLF Claims Made Plan as presented. **[Exhibit B]**

Mr. Zarov asked the board to approve changes to PLF policies 3.500 and 3.550 as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the policy changes as presented. **[Exhibit C]**

Mr. Zarov asked the board to approve changes to various PLF policies as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted to approve the remaining policy changes as presented. Mr. Spier was opposed to changes in policy 3.200. **[Exhibit D]**

## 5. Emerging Issues

As BOG liaison to the Labor & Employment Law section, Mr. Larson informed the board of the concerns surrounding decline in section membership and proposed an event to get section leadership together. Mr. Hirshon reported that many young lawyers do not see value in joining a section. The Member Services committee will further study this issue.

Ms. Naucier announced her plan to appoint a task force to study the Centralized Legal Notice System possibilities. Mr. Ehlers and Mr. Prestwich will co-chair. Ms. Kohlhoff and Mr. Kranovich will be on the task force along with 8-10 additional members from various areas of practice.

Ms. Fisher asked the board to look at the economic survey and determine if the bar's programs are meeting the needs of its members in areas such as diversity, reciprocity and foreign lawyers practicing in Oregon.

## 6. 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. Kranovich moved, Mr. Ehlers seconded, and the board voted unanimously to approve the committee motion to recommend the list of candidates to the Oregon Supreme Court.

Ms. Pulju asked the board to approve the revisions to three elements in the mentoring program's rules.

**Motion:** Mr. Wade moved to approve the changes recommended by the NLMP Committee and also to amend Rule 4 so that new mentors will appointed by the Supreme Court based on recommendations from the Committee and not the BOG. Ms. Dilaconi seconded the motion and the amendment, and the board voted unanimously to approve the revisions and amendment as presented. **[Exhibit E]**

### B. Affirmative Action Committee Name Change Recommendation

Ms. Hyland presented the recommendation of the Diversity & Inclusion Department and the Affirmative Action Committee that the Board change the name of the Affirmative Action Committee to the "Advisory Committee on Diversity & Inclusion."

**Motion:** Mr. Wade moved, Mr. Spier seconded, and the board voted unanimously to approve the committee motion regarding the name change.

### C. Budget and Finance Committee

Mr. Haglund presented the 2013 budget for approval.

**Motion:** The board voted unanimously to approve the 2013 budget as recommended in the committee motion. **[Exhibit F]**

**D.** Member Services Committee

Mr. Kehoe presented the committee's recommended election dates.

**Motion:** The board voted unanimously to approve the election dates as recommended by the Member Services Committee motion. **[Exhibit G]**

**E.** Policy and Governance Committee

Ms. Fisher presented four committee recommendations:

1. Amend 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.

**Motion:** Mr. Wade moved to waive the one-meeting rule. Ms. Dilaconi seconded. The board voted unanimously to approve the motion to waive the one-meeting rule.

**Motion:** Mr. Kranovich moved to amend the motion to include cultural competency in the selection criteria. Mr. Ehlers seconded. The board unanimously approved the amendment.

**Motion:** The board voted to approve the committee motion, as amended, to amend the bylaws as recommended regarding the appellate screening process. Ms. Naucier and Mr. Larson were opposed. **[Exhibit H];**

2. Amend the Client Security Fund Rules.

**Motion:** The board voted unanimously to accept the rule changes as recommended. **[Exhibit I];**

3. 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, effective immediately.

**Motion:** The board voted unanimously to waive the one-meeting notice and approve the bylaw change as recommended in the committee motion. **[Exhibit J];**

4. Approve formation of a Military and Veterans Law Section with membership dues set at \$20.00 as recommended by the committee.

**Motion:** The board voted unanimously to create the section as recommended.

**F.** Public Affairs Committee

Mr. Larson presented two handouts with the 2012 election results. Mr. Larson presented the committee motion that the BOG adopt a resolution in support of stable funding for the court system.

**Motion:** The board voted unanimously to approve the court funding resolution. **[Exhibit K]**

## **7. Other Action Items**

### **A. Client Security Fund**

Ms. Stevens presented the claims recommended for payment by the CSF. **[Exhibit L]**

**Motion:** Mr. Wade moved, Ms. Matsumonji seconded, and the board voted unanimously to approve payments totaling \$262,141.19 as recommended by the Client Security Fund.

**Motion:** Mr. Wade moved, Mr. Ehlers seconded, that CSF claims under \$5000, or \$25,000 in total claims for one attorney, do not need board approval. Motion was withdrawn.

Ms. Stevens presented the Client Security Fund Committee's recommendation that the DICKERSON (Morningstar) claim, deferred in August, be paid in the amount of \$50,000.

**Motion:** Mr. Wade moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the payment of \$50,000 as recommended by the Client Security Fund.

Ms. Stevens presented the claimant's request for BOG review on the NICHOLS (Krueger) claim.

**Motion:** Mr. Haglund moved, Mr. Ehlers seconded, and the board voted unanimously to approve the CSF Committee's denial of the claim.

### **B. Legal Ethics Committee recommendation not to amend RPC 4.4(b).**

**Motion:** Mr. Wade expressed his disagreement with the LEC's recommendation that the rule not be changed. He moved, Ms. Dilaconi seconded, and the board voted to amend RPC 4.4(b) to add at the end "and follow the sender's instructions." Mr. Larson and Mr. Spiers opposed.

## **8. Consent Agenda**

**Motion:** Mr. Haglund moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda including various appointments. **[Exhibit M]**

## **9. 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

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

None.



# Professional Liability Fund

Exhibit A

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**

	<b>2010 ACTUAL</b>	<b>2011 ACTUAL</b>	<b>2012 BUDGET</b>	<b>2012 PROJECTIONS</b>	<b>2013 BUDGET</b>
<b><u>Revenue</u></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><u>Expenses</u></b>					
Provision for Claims					
New Claims	\$18,461,583	\$18,538,608	\$19,070,100	\$18,700,000	\$19,660,320
Pending Claims	<u>\$1,481,000</u>	<u>\$2,398,105</u>	<u>\$2,118,900</u>	<u>\$200,000</u>	<u>\$1,065,600</u>
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	<u>(1,257,082)</u>	<u>(1,393,740)</u>	<u>(1,135,822)</u>	<u>(1,135,822)</u>	<u>(1,135,160)</u>
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**

	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	\$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>
  Full Time Employees (See Explanation)	  44.33	  44.56	  45.73	  44.73	  47.06
  Number of Full Pay Attorneys	  6,894	  6,937	  7,063	  7,034	  7,104
  Non-personnel Expenses	  \$1,678,762	  \$1,822,435	  \$1,868,868	  \$1,816,036	  \$1,929,930
Allocated to Excess Program	<u>(\$317,976)</u>	<u>(\$388,938)</u>	<u>(\$275,635)</u>	<u>(\$275,635)</u>	<u>(\$278,874)</u>
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

	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	\$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	0	0	0	0	0
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>
 Administration Full Time Employees	 9.10	 8.75	 8.00	 8.00	 8.00

**CHANGE IN OPERATING EXPENSES:**

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	2011	2012	2012	2013
	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>BUDGET</u>	<u>PROJECTIONS</u>	<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>
 <b>Accounting Full Time Employees</b>	 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>
  L P Depart Full Time Employees (Includes OAAP)	  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%

Claims Depart Full Time Employees	18.50	17.88	18.75	18.00	20.33
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**CHANGE IN OPERATING EXPENSES:**

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**

	<b><u>2010 ACTUAL</u></b>	<b><u>2011 ACTUAL</u></b>	<b><u>2012 BUDGET</u></b>	<b><u>2012 PROJECTIONS</u></b>	<b><u>2013 BUDGET</u></b>
<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

**CHANGE IN OPERATING EXPENSES:**

Decrease from 2012 Budget 0.65%

Decrease from 2012 Projections 1.02%

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 October 30, 2012  
 Page 2

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:

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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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### 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)

X (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





(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

### 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)

PLF Policy Manual  
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#### 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

(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

★ See pg. 16

(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]

PLF Policy Manual  
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(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  
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: B06 ???

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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

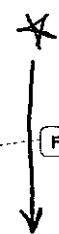
(A) Assessments of the Professional Liability Fund will be established on the basis of the PLF's experience, operating needs, and projections of future claim development. The projected assessment for the following Plan Period will be submitted to the Board of Governors for their approval no later than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

~~(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



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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:

Prior Coverage Period Total	Step Rating Credit
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



(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 8/9/95; 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)

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 for program changes, proposed amendments 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

## 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</b> rewards 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

REQUIRED ACTIVITIES	DATE COMPLETED
<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>	

▪ Review and discuss the OSB Statement on Professionalism.	
▪ Discuss the importance of cultural competence to effectively represent diverse clients and work in a diverse legal community.	

<b>PROFESSIONALISM OPTIONAL ACTIVITIES</b>	
<i>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:</i>	
▪ 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.	
▪ 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>	
▪ 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.	
▪ Discuss and explain the Minimum Continuing Legal Education requirements and ways to fulfill such requirements, including OSB programs.	

<b>3. Introduction to Law Office Management</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
▪ 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>	
▪ Review and discuss malpractice insurance coverage including disclosure requirements.	

<b>LAW OFFICE MANAGEMENT OPTIONAL ACTIVITIES</b>	
<p><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></p>	
<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>	
<p><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></p>	
<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.

ACTIVITY	DATE COMPLETED
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

## 2013 Budget Summary by Program

Exhibit F

<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

# 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<sup>3</sup>, *and as screened in using, at a minimum,* **and** the following criteria: integrity, legal knowledge and ability,

<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.**

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, t~~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.~~ \$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.~~

***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.



## **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>

# OREGON STATE BAR

## Board of Governors Agenda

**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)

### 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 12/31/2015:  
DePaolis, Diane  
Freitas, Norma  
Howry, John  
Lam, Vincci  
Schrader, 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  
Villella, 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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** November 10, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (2 of 2)

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### Action Recommended

Approve the following recommendations from the Appointments Committee.

#### Disciplinary Board

State Chair and Chair-Elect terms expire 12/31/2013.

State Chair: Wood, Mary Kim

State Chair-Elect: Yee, Pam

Unless otherwise noted, regional chair positions have terms expiring 12/31/2013 and members have terms expiring 12/31/2015.

#### **Region 1**

Chair: Hopp, Carl W. Jr.

#### **Region 2**

Chair: Miller, Robert A.

Members:

Harris, Jet

MucCully, George A. (PM)

#### **Region 3**

Chair: Annand, Megan

Members:

Austin, Penny

Paquin, Phil (PM)

#### **Region 4**

Chair: Yee, Pam

Members:

Reel, Allen

Bailey, William D

#### **Region 5**

Chair: Cooper, Nancy

Members:

Butterfield, Lisanne M.

Green, David W.

Hathaway, Charles R.

Watkins, Ulanda

Crispin, Craig

Dippel, Courtney C.

Hercher, David W.

Jackson, JoAnn (PM)

Yosses, Mary Beth (PM)

#### **Region 6**

Chair: Edmonds, James

Members:

Johnson, Philip

Bagg, John T.

#### **Region 7**

Chair: Buccino, Anthony

#### Client Security Fund Committee

William Davis, member, term expires 12/31/2015

#### Legal Ethics Committee

Ankur Doshi, member, term expires 12/31/2015

#### Legal Services Committee

Mike Hallinan, chair, term expires 12/31/2013

Josh Newton, secretary, term expires 12/31/2013

Kristin L. Bremer, member, term expires 12/31/2015

Amy Edwards, member, term expires 12/31/2015

Josh Newton, member, term expires 12/31/2015

#### New Lawyer Mentoring Committee

Sarah Brown, member, term expires 12/31/2015

#### Local Professional Responsibility Committee

Douglas R. Olsen, region 1 alternate chair, term expires 12/31/2013

#### Oregon Law Foundation Board

Katharine West, term expires 12/31/2016

#### Professional Liability Fund Board of Directors

Teresa Statler, term expires 12/31/2017

Tim Martinez, public member, term expires 12/31/2017

**Oregon State Bar  
Board of Governors Meeting  
November 10, 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. Martha E. Beaves – 980334

**Motion:** Mr. Knight presented information concerning the BR 8.1 reinstatement application of Ms. Beaves and the recommendation to waive the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Knight moved, and Mr. Haglund seconded, to waive the one meeting notice and recommend to the Supreme Court that Ms. Beaves's reinstatement application be approved upon completion of 25 CLE credits. The motion passed unanimously.

2. Philip R. Bennett – 841687

**Motion:** Mr. Knight, in Mr. Emerick's absence, presented information concerning the BR 8.1 reinstatement application of Mr. Bennett to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Bennett's application will be placed on a future agenda for consideration and action.

3. Jennifer M. Gleason – 935198

**Motion:** Ms. Dilaconi presented information concerning the BR 8.1 reinstatement application of Ms. Gleason. Ms. Dilaconi moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Ms. Gleason's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.

4. Paul S. Majkut – 872900

**Motion:** Ms. Matsumonji, presented information concerning the BR 8.1 reinstatement application of Mr. Majkut. Ms. Matsumonji moved, and Mr. Prestwich seconded, to recommend to the Supreme Court that Mr. Majkut's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.



5. Kimberly M. Pfefer – 053471

**Motion:** Mr. Kehoe presented information concerning the BR 8.1 reinstatement application. Mr. Kehoe moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Ms. Pfefer's reinstatement application be approved upon completion of 45 CLE credits. The motion passed unanimously.

6. Ann E. Setty-Rosevear – 971347

**Motion:** Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Ms. Setty-Rosevear to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Setty-Rosevear's application will be placed on a future agenda for consideration and action.

7. Joel D. Shapiro – 003814

**Motion:** Mr. Ehlers presented information concerning the BR 8.1 reinstatement application of Mr. Shapiro. Mr. Ehlers moved, and Ms. Dilaconi seconded, to recommend to the Supreme Court that Mr. Shapiro's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.

8. Emily Rae Swensen – 971759

**Motion:** Ms. Fisher presented information concerning the BR 8.1 reinstatement application of Ms. Swensen. Ms. Fisher moved, and Mr. Kehoe seconded, to recommend to the Supreme Court that Ms. Swensen's reinstatement application be approved. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
November 10, 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.
2. The UPL Committee recommends the Board seek injunctive relief against Mr. Marcus to prevent his continued unlawful practice of law.

**Motion:** Mr. Haglund moved, Mr. Wade seconded, and the board voted unanimously to approve the initiation of a lawsuit seeking to enjoin Philip Marcus from the unlawful practice of law pursuant to ORS 9.166.

**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.

# **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

**Oregon State Bar  
Special Closed Meeting of the Board of Governors  
January 11, 2013  
Minutes**

The meeting was called to order by President Michael Haglund at 11:02 a.m. on January 11, 2013. The meeting adjourned at 11:40 a.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, Audrey Matsumonji, Caitlin Mitchel-Markley, Maureen O'Connor, Travis Prestwich, Joshua Ross, Richard Spier, David Wade, Charles Wilhoite and Timothy Williams. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Susan Grabe, Mariann Hyland and Camille Greene.

**1. Swearing-In of New Board Members**

New members R. Ray Heysell, Caitlin Mitchel-Markley, Joshua L. Ross, Charles A. Wilhoite and Timothy L. Williams, President Michael Haglund and President-Elect Tom Kranovich took their oaths of office.

**2. Finance 101**

Mr. Wegener presented an overview of the bar's budget, financial statements and 2015 projections.

**3. Legal Job Opportunities Task Force Report**

Mr. Haglund reported on the results of the Legal Job Opportunities Task Force.  
**[Exhibit A]**

**4. Western States Bar Conference Attendees**

Ms. Stevens presented the dates for the WSBC, explained the bar's availability of funds for limited reimbursement for three board members, and asked those interested in attending to contact her as soon as possible.

# MEMORANDUM

**TO:** OSB Legal Job Opportunities Task Force  
**FROM:** Michael E. Haglund, Co-Chair   
**RE:** Board of Governors Approval in Concept/Implementation  
**DATE:** January 9, 2013

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Following our summit conference on October 30, the entire Board of Governors devoted more than an hour to considering the Legal Job Opportunities Task Force proposals at its planning retreat in November. At that session, the BOG reaffirmed its strongly held view that addressing the ongoing legal jobs crisis in Oregon is a high priority and that most of the ideas put forward by the Task Force should be implemented in 2013. The top priorities on which the OSB staff is now working include the following:

1. Substantial Expansion of OSB Modest Means Program. Staff has been asked to develop a detailed approach to this expansion which can be considered by the Board of Governors at its February meeting. As noted below, the Board of Governor's new Special Projects Committee will address related implementation issues including lists of modest means attorneys by specialty and rate as well as negotiations with the PLF for reduced premium levels for lawyers taking on specified levels of modest means cases.

2. Establish a Program to Match New Practitioners With Soon-to-Retire Attorneys. Sylvia Stevens is identifying an OSB staffer to work with the BOG Special Projects Committee to create a program designed to assist senior lawyers in succession planning and to establish both a clearinghouse for rural law jobs and a residency program for new practitioners involving interested senior lawyers. The BOG has opted not to establish an OSB Senior Lawyers Division, but instead will focus on programs serving senior lawyers with particular needs. There will be close coordination with the already existing programs of the PLF focused on succession planning and retirement.

3. Improve Access to Law Office Management Expertise. The BOG was highly supportive of the idea of establishing a weekly evening law office management session at each of the Oregon law schools staffed by volunteer senior lawyers with sessions that are split equally between a curriculum and Q&A. The BOG's Special Projects Committee has been asked to take on the task of recruiting the volunteer senior lawyers. I will personally be involved in that recruitment effort and suggest that a subset of our Task Force that includes representatives of all three law schools continue for several months to hopefully establish this program by the end of the first quarter.

4. Enhanced Practical Skills Training. The BOG concurred with the consensus view at the summit conference that this area is already being well covered by

existing state and local bar practical skills CLEs, offerings from the ONLD and MBA YLS and increased attention to this area by the law schools. The BOG did not feel there was anything in particular that needed to be implemented at the OSB level in this category.

**Next Steps.** The first set of BOG committee meetings is scheduled for this Friday, January 11. We will get out a report early next week reporting on the actions by the Special Projects Committee. We can then set up a conference call to wrap up the work for most of the Task Force and identify those who will be continuing on in more focused implementation roles over the next quarter.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**Memo Date:** February 12, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Volunteer Appointments

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### Action Recommended

Approve the following recommendations for committee, council and board appointments.

### Background

#### Federal Practice and Procedure Committee

The board appointed Nadine Gartner as secretary of the FPP Committee last November. Ms. Gartner is not available to serve and current committee member, **Marjorie A. Elken (073368)**, has agreed to serve. The committee supports Ms. Elken's appointment.

**Recommendation:** Marjorie A. Elken, Secretary, term expires 12/31/2013

#### Legal Heritage Interest Group

The board appointed Mary Anne Anderson as chair of the LHIG last November. Ms. Anderson is not available to serve and **Mary L. Dougherty (076950)** has volunteered to serve in her place. The committee supports Ms. Dougherty's appointment.

**Recommendation:** Mary L. Dougherty, Chair, term expires 12/31/2013

#### Loan Repayment Assistance Program Committee

The LRAP Committee guidelines require member participation from attorneys practicing specific of areas of law. The indigent criminal defense seat is vacant. For this position the committee requests the appointment of **Russell S. Barnett III (960383)**. The representative from the civil area of public service law seat is also vacant. The committee and staff recommend the reappointment of **Suzannah E. Newman (040930)** for this position. Ms. Newman has worked for LASO since 2007 and has served only two years on the LRAP Committee thus far.

**Recommendation:** Russell Barnett, member, term expires 12/31/2015

**Recommendation:** Suzannah E. Newman, member, term expires 12/31/2015

#### Minimum Continuing Legal Education Committee

One public member seat is vacant on the MCLE Committee. Staff and the committee recommend **Claudia Pieters** for appointment. Ms. Pieters has volunteered with the bar in a variety of positions including the Fee Arbitration Board, House of Delegates, and the Disciplinary Board.

**Recommendation:** Claudia Pieters, public member, term expires 12/31/2015

#### **Pro Bono Committee**

Due to resignations, the committee has two vacant member seats. Staff and the committee recommend **Kristina Faricy** (120849) and **Joshua R. Orem** (116872) for appointment. Ms. Faricy brings experience as legal services provider and has indicated a strong interest in serving on this committee. Mr. Orem is a solo practitioner and would add balance to the practice type currently represented on the committee.

**Recommendation:** Kristina Faricy, member, term expires 12/31/2013

**Recommendation:** Joshua R. Orem, member, term expires 12/31/2014

#### **Quality of Life Committee**

One of the QOL Committee members appointed last November was unable to accept the position. As such, staff and the committee recommend the appointment of **Cody Elliott** (091027). Mr. Elliott is an associate at Miller Nash LLP.

**Recommendation:** Cody Elliott, member, term expires 12/31/2015

#### **Disciplinary Board**

Region 5 public member, Nicole Ferran, moved to Washington State for a new employment opportunity. Staff recommends **Dr. John H. Kilian** to fill the vacant seat created by Ms. Ferran's resignation. Dr. Kilian has extensive community involvement and served as a public member of the OSB MCLE Committee through December 2012. The Supreme Court makes appointments to the DB based on the board's nomination.

**Nomination:** Dr. John H. Kilian, public member, term expires 12/31/2015

#### **Local Professional Responsibility Committee**

Two of the five members recently appointed to the Region 4 LPRC, including the chairperson, have declined to serve. Of the three remaining committee members, **Cynthia Phillips (803412)** is the only one with prior LPRC experience. Ms. Phillips is willing to serve as chairperson. Region 4 has no pending investigative assignments and the caseload is not expected to be large this year. Based on this and the fact that there are no other volunteers available, staff recommends only appointing a chair at this time.

**Recommendation:** Cynthia Phillips, Chair, term expires 12/31/2013



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# MINUTES

## BOG Board Development Committee

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**Meeting Date:** January 11, 2013  
**Location:** Oregon State Bar, Tigard  
**Chair:** Tom Kranovich  
**Members Present:** Ray Heysell, Caitlin Mitchel-Markley, Maureen O'Connor, Richard Spier, Charles Wilhoite  
**Staff Members:** Sylvia Stevens, Michelle Lane, Danielle Edwards

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### INFORMATION ITEMS

- 1. Topic: Committee Goals and Strategy.** The committee's assignment was reviewed followed by a discussion regarding the focus for this coming year. The committee will work toward encouraging diverse member involvement at all levels of bar volunteering through a variety of outreach efforts including website and Bulletin announcements, targeted messages to various affiliated organizations, print brochures, volunteer fairs and the like.

The committee agreed to consider ways to acclimate incoming BOG members to the board and the bar. As such, in the coming year some time will be used to assess the current understanding and skill set of the board and identify areas for training and future member involvement.

In addition to the above mentioned items, the committee will also focus efforts on public member involvement.

**Minutes**  
**Budget & Finance Committee**  
November 10, 2012  
Surfsand Resort  
Cannon Beach, Oregon

**Present - Committee Members:** Mike Haglund, chair; Steve Larson, vice-chair; Ethan Knight; Theresa Kohlhoff; David Wade. **Other BOG Members:** Mitzi Naucner; Jenifer Billman. **2013 BOG Members:** Ray Heysell; Timothy Williams; Caitlin J. Mitchel-Markley. **Staff:** Sylvia Stevens; Helen Hierschbiel; Mariann Hyland; Rod Wegener.

**1. Minutes – September 28 and October 12, 2012 Committee Meeting**

The minutes of the September 28 and October 12, 2012 meetings were approved.

**2. 2013 OSB Budget**

The committee reviewed the 2013 budget report before its recommendation to the Board of Governors meeting later in the day. The committee discussed the potential short-term and long-term impact on the bar's revenue if the membership plateaus or declines as is projected in the budget report.

One factor in declining membership revenue is the increasing number of over 50-year members who pay no fee. The committee recommended that it further study whether the policy of no fee for these members continue. Mr. Wegener stated he would provide data on this membership at a future meeting.

Prior to the discussion of the salary pool of 2% for 2013, Mr. Wegener pointed out that the correct amount of reduction in personnel costs if there were no salary pool is \$130,900 – not \$78,100 as indicated on page 5 of the report.

The committee recommended that the 2013 budget include a 2% salary pool.

The highlights of the 2013 budget are:

- a. The projected net operating revenue is \$27,258.
- b. There is no change to the active member fee.
- c. The inactive member fee is raised by \$15.00 to \$125.00. This action was approved by the House of Delegates at the November 2 meeting.
- d. The Client Security Fund assessment is raised by \$30.00 to \$45.00.
- e. The PLF will increase the grant for BarBooks from \$100,000 to \$200,000.
- f. One Hundred thousand dollars (\$100,000) will be transferred from the Contract Legal Fees contingency to operating revenue.
- g. Funding for the Senior Lawyers Task Force remains at \$10,000.
- h. Funding for the Remote Communication Task Force is discontinued.

**3. Financial Report – September 30, 2012**

Mr. Wegener referred the committee to the chart in the report which showed the funds in the portfolio exceeding the required amount in the reserves as of September 30. This large variance is a healthy and enviable condition. He further stated the October report will provide a more positive financial month than September.

**4. Section Budgets for 2013 with Dues Increase**

Report only.

**5. Next Committee meeting**

The next meeting is scheduled for January 11, 2013 at the bar center.

**Minutes**  
**Budget & Finance Committee**  
January 11, 2013  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** David Wade, vice-chair; Hunter Emerick; Matt Kehoe; Theresa Kohlhoff; Caitlin Mitchel-Markley; Charles Wilhoite. **Other BOG Members:** Tom Kranovich. **Staff:** Sylvia Stevens; Mariann Hyland; Rod Wegener.

**1. Minutes – November 10, 2012 Committee Meeting**

The minutes of the November 10, 2012 meeting were approved.

**2. Reassessment of the Bar's Investment Policy and Practices**

The committee recommended the following:

a) Revisions to the investment policy

The Committee took no action, except to state it will discuss the previous revisions to the policy with the representatives of Washington Trust Bank at the next meeting.

b) Investment of short-term funds

The Committee indicated the bar's short-term invested funds could all remain invested in the Local Government Investment Pool (LGIP) and not diversified in bank CD's. The Committee instructed Mr. Wegener to send to the Committee the latest audit report of the Oregon Short-Term Fund, in which the LGIP funds are invested.

c) Meeting with investment management firms

The Committee will meet with each investment management firm for 30 minutes at the February 21 meeting. The purpose of the meeting will be to review each portfolio's performance for 2012.

d) Authorization letter from Becker Capital Management

This topic was added later to the agenda and regarded a letter and a "Consent to Assignment" from Becker. The bar was asked to act on the consent form due to the retirement of the founder of the firm whose shares will be assigned to the other fourteen owners of Becker Capital. The Committee recommended the execution of the assignment.

**3. Financial Report – November 30, 2012**

Mr. Wegener added little to the printed report other than that December historically is a month of a net expense, but 2012 still could end at break-even to a small net revenue. It is too early to tell if the use of reserves is necessary to break-even. He also reported that the amount of claims paid from the Client Security Fund for 2012 was \$673,535.

**4. Section Budgets for 2013**

Mr. Wegener reported that six sections have fund balances in excess of \$20,000. The committee instructed Mr. Wegener to send the 2013 budgets of the sections with the largest fund balances to the BOG representative of those sections so they can discuss the section's position on its respective fund balance.

**5. Update on Tenants and Vacant Space at the Bar Center**

Report only. No discussion at the meeting.

**6. New Topic – the OSB Database**

Mr. Wegener provided additional information about the existing database and the need for a new platform for the bar's best opportunity to provide services and support to members using technology. The Committee was supportive of the plan to replace the existing database and program software. Mr. Wegener reported the project will require a thorough evaluation and analysis of existing internal systems and operations and alternative products, and will be several months before any information about the cost and product would be available.

**7. Financial Issues to Face in 2013 and Beyond**

Report only. No discussion at the meeting.

**8. Next Committee meeting**

The next meeting is scheduled for Thursday, February 21, 2013, the day prior to the Board of Governors meeting in Salem. Due to the scheduled sessions with the investment management firms, the committee meeting will be 90 minutes.

# Minutes

## BOG Governance & Strategic Planning Committee

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**Meeting Date:** January 11, 2013  
**Location:** OSB Center, Tigard, Oregon  
**Chair:** David Wade  
**Vice-Chair:** Tom Kranovich  
**Members:** Jenifer Billman, Patrick Ehlers, Ray Heysell, Audrey Matsumonji, Richard Spier

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### ACTION ITEMS

- 1. Call to Order; Attendance.** Mr. Wade called the meeting to order at 3:30 p.m. All committee members were in attendance, along with BOG members Michael Haglund and Hunter Emerick, and staff members Sylvia Stevens, Helen Hierschbiel, Jeff Sapiro and Susan Grabe.
- 2. Approve minutes of October 12, 2012 and November 10, 2012 meetings.** On motion of Mr. Spier, seconded by Mr. Heysell, the minutes of the October 12, 2012 and November 10, 2012 *former* Policy & Governance Committee were approved unanimously as submitted.
- 3. Amending Fee Arbitration Rules.** Ms. Hierschbiel explained the proposed amendments to the Fee Arbitration Rules relating to the requirement that arbitrators report evidence of misconduct to OSB Disciplinary Counsel's Office. On motion of Mr. Spier, seconded by Mr. Heysell, the committee voted unanimously to forward the proposed changes to the BOG for consideration.
- 4. Preference Polls for Circuit Court Appointments.** The committee discussed whether to recommend reinstating preference polls for circuit court appointments as was done regularly prior to 2006. There was a consensus that the polls are taken seriously by lawyers who make their choices based on a candidate's qualifications and thus provide helpful information to the public. On Ms. Billman's motion, seconded by Mr. Spier, the committee voted unanimously to pass the recommendation on to the board.
- 5. BOG Consideration of CSF Recommendations.** After discussion, Mr. Kranovich moved, seconded by Mr. Heysell, to recommend that the CSF be granted authority to resolve claims of less than \$5,000, subject to regular and timely reporting to the BOG.
- 6. BOG Role in Reinstatements.** Mr. Sapiro reminded the committee that the ED currently has authority to approve informal reinstatement applications. With regard to formal applications, Mr. Sapiro suggested two possibilities: (1) delegate review of the routine formal applications to the ED, who could refer any questionable application to the BOG, and (2) put the routine applications on the BOG's consent agenda for approval without discussion unless a BOG member asked for it. After discussion, on motion of Mr. Kranovich, seconded by Mr. Ehlers, the committee voted unanimously that the Bar Rules should be amended to allow the first option. Staff will draft the necessary rule changes for the committee's consideration in February.
- 7. MCLE Rule re: Judicial Temperament.** Mr. Haglund reported his belief that the Chief Justice is reluctant to impose a special MCLE rule on judges that would require training on "appropriate judicial temperament." The committee discussion then turned to suggesting a rule that would require training on "demeanor, adherence to the law, and bias." There

was a consensus that the MCLE Committee should be asked to draft a rule for this committee's further consideration.

**8. OSB/BBX Relationship.** The ED and General Counsel reviewed the history of the BBX and the relationship that has existed between the BOG, the ED and the BBX over the years. The committee supports the idea of a joint BOG/BBX committee to meet and discuss the two boards' respective spheres of responsibility.

**9. Support to Sections.** Ms. Stevens reported that staff is planning a session with section leaders to address membership retention and CLE Seminars staff is reviewing its co-sponsorship formulas. The other section support issue is the administrative fee charged to sections, which is currently at \$6.50 per section member. The OSB bylaws require that the fee cover 50% of the actual cost of the administrative services and authorizes the ED to adjust the fee as appropriate. The CFO's calculations suggest that the administrative fee should be \$8.44, and there was general agreement among committee members that the administrative fee should be raised in 2014 to \$8.50. Staff will convey that information to sections soon to allow them to factor it into their 2014 planning.

**10. HOD Structure and Role.** The committee continues to believe that the HOD structure needs review after 15 years. It was suggested that HOD members be surveyed to determine whether they believe the HOD continues to be an appropriate governance model and, if it is to be retained, should section chairs be eliminated as delegates to reduce the "Portland-centric" composition of the body? Staff will prepare a survey proposal for the committee to consider in February.

**11. 2013 Issues Agenda.** Mr. Wade suggested the following issues for consideration during 2013 and invited committee members to add others to the list: (1) Review and clarify the OSB mission and purpose; (2) Review OSB Bylaws and recommend whether to separate the "policies" from the true bylaws; (3) Prohibition against prosecuting or defending PLF claims by BOG members; (4) Underrepresentation of women in private practice and wage gaps between male and female lawyers; (5) Others?

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# MINUTES

## BOG Member Services Committee

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**Meeting Date:** November 10, 2012  
**Location:** Cannon Beach, OR  
**Chair:** Matt Kehoe  
**Vice-Chair:** Tom Kranovich  
**Members Present:** Matt Kehoe, Tom Kranovich, Barbara Dilaconi, Ann Fisher, Travis Prestwich, Richard Spier  
**Staff Members:** Kay Pulju

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### ACTION ITEMS

1. **Minutes.** The October minutes were approved as offered.

### INFORMATION ITEMS

2. **Section Enrollment.** The Committee discussed strategies for supporting sections in recruiting and retaining members. Recommendations for staff implementation are: continue sharing details with section leaders on annual section counts, including lists of new members and non-renewing members; continue development of enhanced list serve platform, which will provide renewal reminders to section members; increase promotion of the availability and value of section memberships; work with sections to enhance their value proposition for membership; provide training and networking opportunities for section leaders to share recruitment strategies.
3. **SSFP interest in creating a referral service.** The committee discussed a proposal from the Sole & Small Firm Practitioners Section to create a website with referral-service properties. Members agreed on a goal of finding ways to support the section's goals without undermining the bar's own referral program, which is still in the early stages of an overhaul. Representatives from the SSFP were scheduled to present the proposal to the full BOG.



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# MINUTES

## BOG Policy and Governance Committee

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**Meeting Date:** November 10, 2012  
**Location:** Surfsand Resort, Cannon Beach, Oregon  
**Members Present:** Ann Fisher (Chair), David Wade (Vice-Chair), Jenifer Billman, Barbara Dilaconi, Matt Kehoe, Travis Prestwich, Richard Spier  
**Guests and Staff:** Mitzi Naucler, Tom Kranovich, Heather Brann, Lauri Zwingli, Sylvia Stevens, Helen Hierschbiel

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### ACTION ITEMS

- |   |
|---|
| <p><b>1. Minutes of October 12, 2012.</b> This item was skipped in favor of beginning immediately with the SSFP presentation.</p>   |
| <p><b>2. SSFP Proposal for Online Lawyer Referral System.</b> Ms. Brann and Ms. Zwingli appeared on behalf of the Sole &amp; Small Firm Practice Section to present the section's proposal to create a web-based referral system. By way of background they reported that more than 50% of bar members are in sole or small (1-6 lawyer) firms; sole and small firm lawyers face new competition from Legal Zoon and other online services; many feel they cannot afford to participate in the bar's Lawyer Referral Service; and they want to establish a mechanism to help the public find affordable legal help. The proposal is characterized as an "expert tree" that would guide users through a series of "plain English" questions to determine the nature of legal services needed. As envisioned, the first phase of the project would be enhancement of the existing online directory of section members. Once that is complete and operational, the section would seek BOG approval to promote it to the public.</p> <p>Questions raised by committee members included: how many members are in the SSFP section (623); does the section membership support the project (not sure); who will do the majority of the work (section executive committee members); and how much will it cost (unclear at this time; one vendor has offered free development followed by a monthly maintenance fee).</p> <p>After discussion, Mr. Wade moved, seconded by Ms. Dilaconi, to authorize the section to enter into an appropriate contract for Phase I, and then return to the BOG for further consideration if the section gets to the point of being able to open the database to the public.</p> |
| <p><b>3. Amending Judicial Selection Bylaws.</b> The committee reviewed the changes to the bylaws suggested at the last meeting and on motion of Mr. Wade, seconded by Mr. Kehoe, voted unanimously to pass the recommended changes to the BOG. The recommendation includes waiving the one-meeting notice so that the changes will be effective immediately.</p>   |
| <p><b>4. Creation of Military &amp; Veterans Section.</b> On motion of Mr. Spier, seconded by Mr. Kehoe, the committee voted unanimously to recommend that the BOG establish a Military &amp; Veterans Section to carry on the work of the Military Assistance Panel and the work begun by the 2011 Lawyers for Veterans project.</p>   |

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# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** November 10, 2012  
**Location:** Surfsand Resort, Cannon Beach, Oregon  
**Chair:** Steve Larson  
**Vice-Chair:** Hunter Emerick,  
**Members Present:** Steve Larson, Tom Kranovich, Patrick Ehlers, Maureen O'Connor, Michael Haglund, Audrey Matsumonji  
**Others Present:** Theresa Kohlhoff, Caitlin Mitchell-Markley  
**Members Absent:** Hunter Emerick  
**Staff Members:** Susan Grabe

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### ACTION ITEMS

**Minutes.** The minutes for the October 12, 2012 meeting were moved by Audrey Matsumonji and seconded by Mike Haglund. They were formally approved by acclamation.

**Stable Court Funding Resolution.** Maureen O'Connor moved and Mike Haglund seconded the motion to forward an updated version of the stable court funding resolution to the board for approval. The motion was adopted unanimously.

### INFORMATION ITEMS

**Election Results.** The committee reviewed what the election results mean in Oregon: both chambers are now controlled by Democrats with a Democratic governor. The Senate is 16 -14 with Senator Peter Courtney continuing as Senate President. The House went from a 30-30 split house to a 34 – 26 margin with a net gain of four seats and Representative Tina Kotek is speaker with Representative Garrett as speaker pro tem. We will have 14 legally trained legislators in 2013.

**Court Funding Coalition update.** The OSB will be coordinate with the Multnomah Bar Association and others to develop a strategy on court funding for the 2013 session. More to follow.

**Public Affairs Overview and Timeline.** The committee reviewed the timeline, process and procedures for OSB and bar group involvement in the legislative process.

# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** December 6, 2012  
**Location:** Oregon State Bar, Tigard, Oregon  
**Chair:** Steve Larson  
**Vice-Chair:** Hunter Emerick,  
**Members Present:** Steve Larson, Tom Kranovich, Michael Haglund  
**By phone:** Patrick Ehlers, Maureen O'Connor,  
**Others Present:** Theresa Kohlhoff, Caitlin Mitchell-Markley  
**Members Absent:** Hunter Emerick  
**Staff Members:** Susan Grabe, David Nebel, Kateri Walsh

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### ACTION ITEMS

**November Minutes.** Approval of the November minutes was set over for a regularly scheduled meeting.

### INFORMATION ITEMS

**Court Funding Coalition update.** The committee discussed current developments and next steps moving forward. The OSB will focus its energy on a two-tiered strategy: in the short term targeting key legislators for the 2013 session; and in the long term, developing a statewide task force and initiative to educate the public and build support for the court system. The general action plan includes 1) development of a backgrounder on the OJD budget and talking points which will be distributed to the board in the next day or so 2) refinement of the message according to the NCSC report 3) work with the MBA to retain a PR firm to develop vignettes for the webpage that show how courts intersect with people/ the community, and that align with leadership's priorities of consumer protection, human services and education 4) Build coalition with managing partner roundtable and business groups 5) and Create a standing advisory task force of public officials to deliver the message to the public.

**Grassroots effort.** The committee expressed interest in revitalizing the bar's grassroots network for the 2013 session. Although labor intensive, this type of local networking can be very effective once mobilized. Public Affairs will start to gather names of volunteers when updated legislative information is available. Due to the election and redistricting, information for the 2013 legislative districts will not be available until after the January 14.

**February Legislative Reception.** The committee discussed a limited CLE program (30 minutes) for the reception where the President of the bar would host the event and showcase Chief Justice Balmer speaking on the State of the Courts.



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# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** January 11, 2013  
**Location:** Oregon State Bar, Tigard, Oregon  
**Chair:** Matthew Kehoe  
**Vice-Chair:** Hunter Emerick  
**Members Present:** Matthew Kehoe, Hunter Emerick, Patrick Ehlers, Theresa Kohloff, Tim Williams, Josh Ross and Travis Prestwich  
**Staff Members:** Susan Grabe

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### ACTION ITEMS

**November Minutes.** The November minutes were approved.

**December Minutes.** The December minutes were approved.

### INFORMATION ITEMS

**Court Funding update.** Mike Haglund gave the committee an update on efforts to pull together coalition members and to coordinate with the Multnomah Bar Association regarding hiring a marketing/PR consultant to help create a video and refine the message. A managing partner meeting has been scheduled for January 24 to leverage the contacts within that organization as well.

**Public Safety Commission Report.** Included in the materials for review was the Oregon Commission on Public Safety report to the legislature. The collective report and recommendations discuss a comprehensive set of reforms that will save an additional \$600 million. These reforms are intended to protect public safety, control prison costs, and to hold offenders accountable. However, there are some tough policy choices leadership will have to wrestle with during session.

**January Organizations Days.** The legislature met and it appears that the leadership intends to move quickly to get things organized and hit the ground running.

**February Legislative Reception.** The joint OSB/local bar reception in Salem will be held Thursday, February 21 at the State Justice Civic Center across from the Capitol. A popular event with legislators and judges, it is usually well attended. The Chief Justice has been invited to speak and will make remarks regarding the state of the courts and court funding.

# MINUTES

## BOG Special Projects Committee

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**Meeting Date:** January 11, 2013  
**Location:** OSB Center, Tigard  
**Chair:** Travis Prestwich  
**Vice-Chair:** Maureen O'Connor  
**Members Present:** Travis Prestwich, Maureen O'Connor, Patrick Ehlers, Joshua Ross, Timothy Williams, Audrey Matsumonji (by phone)  
**Members Absent:** None  
**Guests:** Jenifer Billman, Mike Haglund  
**Staff Members:** Kay Pulju, Brenda Cerda

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### ACTION ITEMS

1. **Topic:** ABA Tree Project. The committee agreed to proceed with a tree-planting event, preferably in two locations (Portland and Eugene) on a single Saturday in March. The event will be coordinated with the Oregon chapter of Friends of Trees and co-sponsored by the bar's Sustainable Future Section, Environmental & Natural Resources Section, and the Oregon New Lawyers Division.
2. **Topic:** May Day Lobby Proposal. This item was tabled pending the recommendations of other bar groups working on access to justice and judicial funding issues.

### INFORMATION ITEMS

3. **Topic:** Fundraising Fun Run. This item will be discussed further at the next meeting. Haglund will discuss the concept with leaders at the Campaign for Equal Justice; Pulju will confer with the St. Andrew Legal Clinic regarding the clinic's annual fundraising run.
4. **Topic:** SOLACE Network. Prestwich will discuss this ABA program with one or more state bar's that have already implemented a project, and will invite a guest to participate by phone in a future committee meeting. Pulju will discuss with PLF staff for implementation ideas.
5. **Topic:** Modest Means Program Expansion. Bar staff will incorporate suggestions raised by the recent Economic Opportunities Task force into an existing review of the program. More information will be presented to the full board at its next meeting.
6. **Topic:** Matching new practitioners with members contemplating retirement. Mike Haglund presented information on expected recommendations of the Legal Opportunities Task Force. Along with expansion of the Modest Means Program, a key recommendation

will be to connect new lawyers with experienced lawyers who may be considering winding down their practices. Another idea, which has also been discussed by the BOG, is to encourage new lawyers to consider locating their practices outside the Willamette Valley. The committee discussed various ideas for follow-up: incorporating into the bar's existing New Lawyer Mentoring Program; publishing articles in the Bulletin; hosting a "speed dating" type program for new lawyers and those nearing retirement, possibly coupled with a CLE on retirement planning and/or information tables for vendors, including representatives from non-Valley chambers of commerce.

CLAIM No.			NAME	ATTORNEY	CLAIM	PENDING	ASSIGNED TO	HOLD
2009	-	39	Pottle, John	Ryan, T. Michael	200.00	200.00	Franco	
2010	-	31	Johns, Chongnak and Frank	Connall, Des	25,300.00	25,300.00	BOG	No Assignment recvd
2011	-	2	Risch, Stephen R	Connall, Des & Shannon	57,000.00	57,000.00	Wright	
2011	-	5	Raske, Karen	Connall, Shannon	3,250.00	3,250.00	Wright	
2011	-	7	Stratton, Laurence Eugene	Connall, Shannon and Des	10,000.00	10,000.00	Wright	
2011	-	21	Roelle, Brian D	Connall, Des	23,000.00	23,000.00	Wright	
2012	-	10	Schnee, Cynthia	Hammond, Paula	1,500.00	1,500.00	Brown	
2012	-	15	Gordon, Tae Mee	Gruetter, Bryan	66,504.14	50,000.00	Kekel	
2012	-	23	Leece, Gerald and Kimberly	Hammond, Paula	2,699.00	2,699.00	Brown	
2012	-	24	Steinbeck, Theodore C	Howlett, Bruce	950.00	950.00	Brown	
2012	-	25	McClain, Kathryn A	Gruetter, Bryan	23,767.96	23,767.96	Angus	Waiting on Civil Decision
2012	-	26	Shore, Ryan	Gruetter, Bryan	18,390.34	18,390.34	Eggert	
2012	-	27	Boyer, Robbyn Lynn	Gruetter, Bryan	20,000.00	20,000.00	Eggert	Deferred
2012	-	29	Estate of Melvin Johnson	La Follett, Thomas	37,371.92	37,371.92	Monson	
2012	-	31	Roccasalva, Hope	Gruetter, Bryan	96,113.87	50,000.00	Franco	
2012	-	35	Martrinez, Deborah	Gruetter, Bryan	15,000.00	15,000.00	Franco	
2012	-	37	Andrach, Theordore Wells, Lauran	Gruetter, Bryan	4,800.00	4,800.00	Kekel	
2012	-	43	Mosley, Amanda Nicole	Gruetter, Bryan	25,000.00	25,000.00	Angus	Waiting on Civil Decision
2012	-	44	Cheney, Perry M	Jagger, James C	4,500.00	4,500.00	Monson	
2012	-	45	Torres, Gonzalo-Vargas	Bertoni, Gary	15,000.00	15,000.00	Bennett/Calderon	
2012	-	46	Ramirez, Angel	Bertoni, Gary	15,000.00	15,000.00	Bennett	
2012	-	54	Lupton, Lela Mae	Gruetter, Bryan	20,500.00	20,500.00	Miller	
2012	-	55	Hernandez-Morales, Edgar	McBride, Jason	4,100.00	4,100.00	Cousineau	Deferred
2012	-	56	Olivier, Johannes and Jacomina	McBride, Jason	3,000.00	3,000.00	Monson	
2012	-	57	Maldonado Herrera, Reybel and Garcia, Claudia	McBride, Jason	4,500.00	4,500.00	Miller	
2012	-	58	Gutierrez Lopez, Gabriel	McBride, Jason	2,500.00	2,500.00	Franco	
2012	-	59	Marquez, Alberto Luis and Talamantes, Estela	McBride, Jason	500.00	500.00	Franco	
2012	-	61	Carosella, Ken and Maria Luciana	McBride, Jason	3,500.00	3,500.00	Atwood	
2012	-	62	Chavez, Francisco and Mendoza, Esmeralda	McBride, Jason	4,000.00	4,000.00	Monson	
2012	-	63	Lua, Nancy Perez	McBride, Jason	2,500.00	2,500.00	Cousineau	
2012	-	68	Romero, Oscar G	McBride, Jason	10,000.00	10,000.00	Angus	



2012	-	70	Steers, Penelope Ann	Connall, Des	21,000.00	21,000.00	Kekel	
2012	-	71	Sanchez-Serrano, Jonathan Alejandro	McBride, Jason	4,950.00	4,950.00	Cousineau	
2012	-	72	Ponce, Eduan and Roldan, Ana	McBride, Jason	5,500.00	5,500.00	Calderon	
2012	-	74	Alonso-Vasquez, Alejandro	McBride, Jason	5,700.00	5,700.00	Atwood	
2012	-	75	Javier, Zulema	McBride, Jason	4,100.00	4,100.00	Eggert	
2012	-	76	Hernandez-Rodriguez, Alfredo	McBride, Jason	5,000.00	5,000.00	Cousineau	
2012	-	77	Parra-Navarro, Alan Gerardo	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	-	78	Hernandez-Cortez, Rafael (aka Thomas Mandujano-Ponce)	McBride, Jason	4,200.00	4,200.00	Cousineau	
2012	-	79	Sherman, Tim L and Sanchez, Laura Y	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	-	80	Lite, Kenneth Edwin Jr	Kaufman, Eric A	2,500.00	2,500.00	Brown	
2012	-	81	Torres-Zuniga, Fabian	McBride, Jason	5,000.00	5,000.00	Calderon	Deferred
2012	-	83	Alatorre, Elizabeth	McBride, Jason	3,500.00	3,500.00	Monson	
2012	-	84	Bothwell, Christopher Charles(rep Greg Kraus)	Gruetter, Bryan	100,000.00	50,000.00	Kekel	
2012	-	85	Valdivia, Sandra	McBride, Jason	3,000.00	3,000.00	Calderon	
2012	-	88	Palacios-Rodriguez. Isidrio	McBride, Jason	1,500.00	1,500.00	Calderon	
2012	-	89	Grana, Marta	McBride, Jason	3,500.00	3,500.00	Monson	
2012	-	90	Vega de Garibay, Maria Sela	McBride, Jason	10,000.00	10,000.00	Angus	
2012	-	91	Garibay, Rodolfo	McBride, Jason	3,000.00	3,000.00	Angus	
2012	-	92	Lucas-Lepe, Juan Carlos	McBride, Jason	5,000.00	5,000.00	Angus	
2012	-	93	Ramirez, Abelardo Silva	McBride, Jason	5,500.00	5,500.00	Angus	
2012	-	94	Keiper, Alma	McBride, Jason	4,500.00	4,500.00	Angus	
2012	-	95	Castillo-Rodriguez, Miriam	McBride, Jason	2,500.00	2,500.00	Calderon	Deferred
2012	-	96	Echevarria-Maldonado, Jose Elihel	McBride, Jason	3,700.00	3,700.00	Calderon	
2012	-	97	Reyes-Escobedo, Jose and Reyes, Rosa M	McBride, Jason	5,000.00	5,000.00	Angus	
2012	-	98	Santos, Hector Reyes	McBride, Jason	2,000.00	2,000.00	Miller	
2012	-	99	Duran Del Horno, Jose Luis	McBride, Jason	3,500.00	3,500.00	Miller	
2012	-	100	Lopez, Juan	McBride, Jason	1,500.00	1,500.00	Angus	Deferred
2012	-	101	Balderas, Jennie and Alfredo	McBride, Jason	3,700.00	3,700.00	Atwood	
2012	-	102	Vera, Pio Hernandez	McBride, Jason	5,100.00	5,100.00	Atwood	
2012	-	103	Richmond, Doug	Gruetter, Bryan	13,425.84	13,425.84	Bennett	
2012	-	104	Calton, Christopher	Horton, William	90,000.00	50,000.00	Bennett	
2012	-	105	Cisneros, Javier Ramirez	McBride, Jason	4,000.00	4,000.00	Miller	
2012	-	106	Flores, Juana Cisneros	McBride, Jason	4,250.00	4,250.00	Calderon	

2012	-	107	Lopez, Jennifer Luna	McBride, Jason	9,500.00	9,500.00	Angus	
2012	-	108	Vazquez, Froylan Marquez	McBride, Jason	5,000.00	5,000.00		
2012	-	109	De Jesus Garibay, Maria	McBride, Jason	1,500.00	1,500.00	Atwood	
2012	-	110	Melchor, Dolores Velazquez	McBride, Jason	5,000.00	5,000.00	Angus	
2012	-	111	Dawson, Marlene	McBride, Jason	3,000.00	3,000.00	Angus	
2012	-	112	Rangel, Ever Alexis	Gruetter, Bryan	8,190.66	8,190.66	Bennett	
2012	-	113	Cervantes Garcia, Juan Manual	McBride, Jason	5,500.00	5,500.00		
2012	-	114	Estrada, Sonia E	McBride, Jason	5,000.00	5,000.00	Atwood	
2012	-	115	Manriquez, Maria Luz	McBride, Jason	4,900.00	4,900.00	Eggert	
2012	-	116	Estate of Samuel Bartow Jr	Handy, Paul	50,000.00	50,000.00	Reinecke	
2013	-	1	New, Earl Lawrence	Gatti, Daniel	85,000.00	50,000.00	Davis	
2013	-	2	Steidley, James J	Goff, Daniel	40,000.00	40,000.00	Davis	
2013	-	3	Domingues, Abimael Moreno	McBride, Jason	5,000.00	5,000.00	Monson	
2013	-	4	Bispham, Lorrain Elizabeth	Kleen, Jerry			Miller	
2013	-	5	Mays, Craig A (Cascade Aluminum Inc)	Ginsler, Brace William	1,100.00	1,100.00	Reinecke	
2013	-	6	Power, Jody	Groh, Phillip	4,000.00	4,000.00	Angus	
2013	-	7	Olvera, Jose Alvarado	McBride, Jason	5,100.00	5,100.00	Angus	
2013	-	8	Andrade, Elsa	McBride, Jason	4,300.00	4,300.00	Brown	
2013	-	9	Delhorno Duran, Jose Carmen	McBride, Jason	3,850.00	3,850.00	Calderon	
2013	-	10	Mercado, Francisco	McBride, Jason	2,500.00	2,500.00	Angus	
2013	-	11	Lopez Lopez, Edith S	McBride, Jason	4,000.00	4,000.00	Cousineau	
2013	-	12	Dial, Fay and Dale	McBride, Jason	7,500.00	7,500.00	Davis	
2013	-	13	Wright, Jacinta	McBride, Jason	2,100.00	2,100.00	Bennett	
2013	-	14	Valadez, Pedro	McBride, Jason	2,000.00	2,000.00	Angus	
2013	-	15	Rivas, Raul Ruiz	McBride, Jason	4,300.00	4,300.00	Davis	
2013	-	16	Roccasalva, Dominic Giorgio	Gruetter, Bryan	13,739.93	13,739.93	Franco	
2013	-	17	Elizarraras, Victoria Ysassi	McBride, Jason	2,325.00	2,325.00	Kekel	
						959,360.65		
			Funds available for claims and indirect costs allocation as of Noveber 2012	I in CSF Account		204,306.00		
					Fund Excess	\$ (755,054.65)		

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Eleven Months Ending November 30, 2012**

Description	November 2012	YTD 2012	Budget 2012	% of Budget	November Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$132	\$3,060	\$3,400	90.0%	\$213	\$2,727	12.2%
Judgments	420	5,699	6,000	95.0%	385	8,015	-28.9%
Membership Fees	945	225,072	226,200	99.5%	675	221,457	1.6%
<b>TOTAL REVENUE</b>	<b>1,497</b>	<b>233,831</b>	<b>235,600</b>	<b>99.2%</b>	<b>1,273</b>	<b>232,199</b>	<b>0.7%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,159	25,648	27,700	92.6%	2,752	32,007	-19.9%
Employee Taxes & Benefits - Reg	858	8,415	10,100	83.3%	872	9,911	-15.1%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,016</b>	<b>34,063</b>	<b>37,800</b>	<b>90.1%</b>	<b>3,624</b>	<b>41,918</b>	<b>-18.7%</b>
<b>DIRECT PROGRAM</b>							
Claims	144,533	586,922	200,000	293.5%		93,815	525.6%
Collection Fees		46	2,000	2.3%		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>144,533</b>	<b>589,066</b>	<b>203,800</b>	<b>289.0%</b>		<b>97,086</b>	<b>506.7%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Messenger & Delivery Services			100				
Office Supplies			150				
Photocopying			150				
Postage	37	498			24	167	197.4%
Professional Dues		200	200	100.0%			
Telephone		47	450	10.3%		34	37.2%
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>37</b>	<b>1,219</b>	<b>3,766</b>	<b>32.4%</b>	<b>24</b>	<b>1,835</b>	<b>-33.6%</b>
<b>TOTAL EXPENSE</b>	<b>147,586</b>	<b>624,348</b>	<b>245,366</b>	<b>254.5%</b>	<b>3,648</b>	<b>140,840</b>	<b>343.3%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(146,089)</b>	<b>(390,517)</b>	<b>(9,766)</b>		<b>(2,374)</b>	<b>91,359</b>	<b>-527.5%</b>
Indirect Cost Allocation	1,119	12,309	13,425		1,079	11,869	3.7%
<b>NET REV (EXP) AFTER ICA</b>	<b>(147,208)</b>	<b>(402,826)</b>	<b>(23,191)</b>		<b>(3,453)</b>	<b>79,490</b>	<b>-606.8%</b>
	=====		=====		=====	=====	=====
Fund Balance beginning of year		607,132					
<b>Ending Fund Balance</b>		<b>204,306</b>					
		=====					
<b>Staff - FTE count</b>		<b>.35</b>	<b>.30</b>			<b>.35</b>	

## **2013 JUDGMENTS COLLECTED**

<b>Date</b>	<b>Attorney</b>	<b>Payment Received</b>
1/25/2013	Shinn, Michael	50.00

Total Collected in 2012 was \$24,484.58

**TOTAL**

**\$50.00**

AFFIDAVIT OF JOSHUA L. ROSS

STATE OF OREGON            )  
                                      ) ss.  
County of Multnomah        )

I, Joshua L. Ross, having been duly sworn do hereby depose and say:

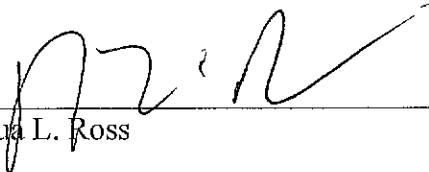
I am a shareholder with the law firm of Stoll Stoll Berne Lokting & Shlachter PC.

Keith A. Ketterling of our firm, represents Thomas Brenneke in a matter involving a Professional Liability Fund covered claim.

Gary Berne of our firm, represents Hooker Creek Companies, LLC in a matter involving a Profession Liability Fund covered claim.


Mr. Berne also represents another client in a matter that involves a Professional Liability Fund covered claim. That dispute is confidential and has not been filed in any court or other forum for resolution.

As of January 1, 2013 I have not in any way participated in the representation of these clients and will not participate in those representations in the future or discuss these matters or the representations with any other firm member or staff person.

  
\_\_\_\_\_  
Joshua L. Ross

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of January, 2013.



  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: 3-07-16

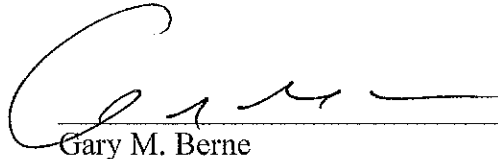
AFFIDAVIT OF GARY M. BERNE

STATE OF OREGON            )  
                                      ) ss.  
County of Multnomah        )

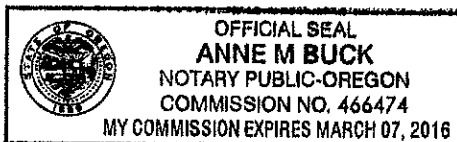
I, Gary M. Berne, having been duly sworn do hereby depose and say:


I am a shareholder with the law firm of Stoll Stoll Berne Lokting & Shlachter PC. I make this affidavit on behalf of the firm, pursuant to OSB Bylaws Subsection 23.503(b)(2).

Joshua L. Ross, will not in any way participate in the representation of the firm's clients (or in any matters on behalf of the firm's clients) involving a Professional Liability Fund covered claim. As of January 1, 2013, there have been and will be no discussions with Josh about these representations. All firm members and staff members have been instructed that Josh is screened from these matters and that they are not to not discuss these matters with him.

  
\_\_\_\_\_  
Gary M. Berne

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of January, 2013.



  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: 03-07-16

## **A Brief Answer to the Question “What Does the Board Do?”**

The OSB Board of Governors oversees and supports the work of the Oregon State Bar. It ensures adherence to the statutory mission of the OSB, plans for the organization’s future, establishes and monitors programs, provides financial oversight and long-term planning, and supports the Executive Director’s implementation of the BOG’s objectives.

Laurel G. Bellows  
President

AMERICAN BAR ASSOCIATION

321 North Clark Street  
Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
abapresident@americanbar.org

January 25, 2013

Mitzi Naucner  
President  
Oregon State Bar  
16037 SW Upper Boones Ferry Road  
P.O. Box 231935  
Tigard, OR 97281-1935

**RECEIVED**

JAN 30 2013

Oregon State Bar  
Executive Director

Re: Enactment of the New CFPB Attorney-Client Privilege Protection Law, P.L. 112-215  
(H.R. 4014)

Dear Mitzi:

During a period when the U.S. Congress has been characterized as gridlocked, polarized, and often dysfunctional, efforts of the legal community and its allies miraculously succeeded in securing final passage of important bipartisan legislation protecting the attorney-client privilege. We could not have done it without your help.

I want to offer my personal gratitude, and the sincere thanks of the American Bar Association, for your communicating with your senators to express your bar's support for the legislation clarifying that when banks and other supervised entities submit attorney-client privileged information to the Consumer Financial Protection Bureau, those submissions will not waive the privilege as to any third party. This new law provides much needed certainty to business lawyers across the country and their clients in their dealings with the CFPB and the other federal banking regulatory agencies.

The ABA greatly appreciates your willingness to weigh in on this legislation; with the strength of constituent relationships and a brand recognized for its expertise, your bar was in a unique position to help achieve final Senate passage of the bill. We also appreciate the outstanding efforts of your public affairs director, Susan Grabe, in conveying the bar's views to your senators and look forward to opportunities to work constructively with you in the future on other issues of importance to our profession.

Warm wishes for the New Year,

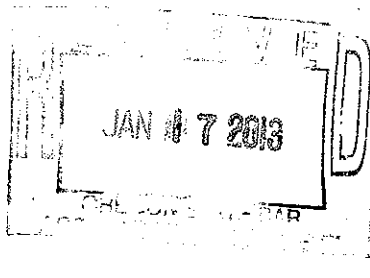
Sincerely,



Laurel G. Bellows  
President, American Bar Association

cc: Susan Evans Grabe, Director of Public Affairs, Oregon State Bar  
Thomas M. Susman, Director, ABA Governmental Affairs Office





**James H. Bennett**  
7910 N. Denver Avenue  
Portland, OR 97217  
707.845.1469

January 15<sup>th</sup>, 2013

Oregon State Bar – Accounting Department  
P.O. Box 231935  
Tigard, OR  
97281-1935

To Whom It May Concern,

I am begrudgingly enclosing my 2013 dues in the amount of \$522.00. My sentiments are based on the fact that I am receiving no benefit from my bar membership, and am working in a field that does not require an Oregon State Bar license. I am in a position where I must choose to either resign my license number and essentially give up on practicing in Oregon in the near future, or continue to pay the full amount, which has recently increased by over 25%.

I do not expect any action to come of my complaint, but instead just hope to share my frustration. I do not know what my dues are funding. In a time when many of my class are unemployed or underemployed, I am fortunate to have work. However, paying \$522.00 for the opportunity to pay more to attend CLEs that are not relevant to my work is a hardship, especially when that money could be going toward my substantial student loan debt.

I wish that the Bar would consider enacting some level of membership between active and inactive in order to help those in positions similar to mine.

Thank You,

James Bennett  
#106054

## Sylvia Stevens

---

**From:** James Bennett [jamesbennett82@yahoo.com]  
**Sent:** Friday, January 25, 2013 6:53 AM  
**To:** Sylvia Stevens  
**Subject:** Re: Your OSB Annual Fees

Hi Sylvia,

Thanks for taking the time to get in touch with me. I am working out of the state and didn't get your message, but did see that I got a call from OSB shortly before your email.

I appreciate your addressing my frustration personally. As a member of this self-governing body I simply hoped to share my thoughts on how dues are collected and spent and to raise awareness of an issue that it seems must be impacting a growing group of members. I was surprised by the fee increase from prior years, and although I know that I am helping to fund programs and staff positions that generally don't apply to me, that is the nature of any professional association, and I of course could be taking better advantage of resources that do apply to me. For example, there are CLEs that can benefit most any profession, including my current work.

I will investigate inactive status if my circumstances have not changed before next years fees become due. When I inquired about it in the past, I got the impression that inactive status equated to retirement of one's bar number and would keep me from being able to promptly accept a job offer as an Oregon attorney, but never took it upon myself to investigate the reinstatement process more thoroughly.

Again, I appreciate the response, and especially your time to address my letter personally.

Have a great weekend,

Jim Bennett

---

**From:** Sylvia Stevens <sstevens@osbar.org>  
**To:** "jamesbennett82@yahoo.com" <jamesbennett82@yahoo.com>  
**Sent:** Thursday, January 24, 2013 6:36 PM  
**Subject:** Your OSB Annual Fees

Jim, the Accounting Department shared your January 15, 2013 letter with me and I wanted to respond. I left a message for you last Friday, but decided e-mail might be a better way to connect.

You indicated that it is a hardship for you to pay the active member fee, and that you are working in a field that does not require you to be a licensed attorney. Have you considered taking inactive status until you secure legal employment? I know some people are concerned that reinstating will be difficult, but it really isn't, especially if done within five years. Even if the inactive period is longer than five years, no one is ever required to take the bar exam, at most only to complete some CLE.

I would be happy to discuss your situation and your options in more detail if you'd like, so feel free to call at your convenience.



Sylvia E. Stevens

Law Office Of William H. King  
1061 NW Promontory Court  
Bend, Oregon 97701

Telephone: (541) 388-4395

Facsimile: (541) 388-4395

E-mail: [Wking@Bendbroadband.com](mailto:Wking@Bendbroadband.com)

RECEIVED

JAN 21 2013

Oregon State Bar  
Executive Director

January 19, 2013

Sylvia E. Stevens  
Executive Director  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935

Re: William H. King - OSB 023463 - MCLE

Dear Ms. Stevens:

I am enclosing my payment of the \$522 State Bar Fee with the hope that you may reconsider my request for a waiver.

Like most forms, the waiver request I submitted fails to accurately capture the substance of my request.

I am an 83 year-old retired attorney. I do not have an arbitration practice per se. I do arbitrate as a volunteer for the Deschutes County Circuit Court and for the Financial Industry Regulatory Authority.

The Deschutes County Circuit Court Arbitration Panel is a panel of volunteer attorneys that handles cases subject to mandatory arbitration (under \$50,000). The arbitrator's compensation is \$250-\$375 from each party depending on whether the demand is over or under \$25,000.

In many instances, the defendant declines or does not bother to obtain a waiver of the fee if unable to pay and, as arbitrator, I have the choice of defaulting the defendant or foregoing the defendant's portion of the fee. Usually I forego the fee to allow the defendant an opportunity to be heard.. As the average time spent by me per arbitration is 10 hours (including setting the hearing, dealing with motions, reading briefs, and preparing an award and judgment), the amount received is, in my view, a modest stipend.

The Financial Industry Regulatory Authority is also a volunteer program. It pays \$200 per session. A session is defined as part of a four hour period attended by both the parties and arbitrators (a three arbitrator panel). Again it does not include preparation, reading briefs and motions, travel time and conferring with fellow arbitrators.

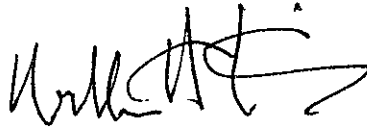
The number of cases assigned by each program is limited. Last year, I made approximately \$3000 from arbitrating and mediating.

To place this in context, the Oregon State Bar Fee is approximately one sixth of this amount. A lawyer earning \$30,000 would pay the same fee but it would be only approximately one sixtieth of his income.

Perhaps an equitable result would be to charge me one half or one third of the fee. I would be happy to pay that.

I am enclosing my check in anticipation that you will not change your mind. If I am correct, please pass it on to the OSB accounting department.

Best Regards,

A handwritten signature in black ink, appearing to read 'William H. King', with a stylized flourish at the end.

---

William H. King  
OSB 023463

January 11, 2013

William H King  
1061 NW Promontory Ct  
Bend, OR 97701

Re: Request for Membership Fee Waiver

Dear Mr. King:

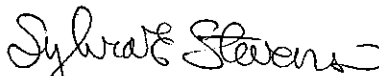
I have reviewed your request for a waiver of your 2013 membership fees and assessments and must respectfully deny it. Pursuant to OSB Bylaw 6.6, I am authorized to waive fees and assessments for members serving in "volunteer programs serving the national interest or the legal profession."

The bylaw originally allowed waivers only for members in the military service or who were in Peace Corps or VISTA services. The bylaw language was amended in 1999 to encompass newer programs such as the ABA CEELI programs which promote the rule of law around the world. The Board of Governors' objective in amending the bylaw was not to allow waiver for all public service, but to recognize the increasing number of programs deemed to serve the national interest or the legal profession.

Moreover, the waiver is intended to assist members who are not compensated for their work, but who receive only a modest stipend that is the principal source of income. Arbitrators fees are not the equivalent of a stipend regardless of whether they constitute the principal source of income.

Given that background, I do not believe your work as a an arbitrator qualifies you for a fee waiver. I regret that we cannot accommodate your request.

Sincerely,



Sylvia E. Stevens  
Executive Director  
Ext. 359, Fax: (503) 598-6959  
Email: sstevens@osbar.org

## Membership Fees & Assessments Waiver Request

### WAIVER INFORMATION

The annual membership fees and assessments may be waived for members in **active** U.S. military service, the Peace Corps, VISTA or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member's principal source of income. **Section membership fees are not eligible for the waiver.**

Requests for waivers **must be submitted annually**, and are **due January 31** of the year for which it is granted. Waivers for members serving in any branch of the military will be granted regardless of the lawyer's length of service in the military for the year the waiver is granted. A copy of the member's current orders or other documentation certifying active military service is required.

For members requesting a waiver due to their service in the Peace Corps, VISTA or other volunteer programs, the waiver will be granted if the lawyer's service encompasses the majority of the year **and** meets the criteria for the other waivers category.

**Waivers will not be granted without the accompanying documentation and signature.**

NAME: William H. King

BAR #: 023463

MEMBERSHIP FEE YEAR: 2013

MEMBERSHIP FEE AMOUNT: \$522.00

SERVICE START DATE: 01 / 01 / 2013

SERVICE END DATE: 12 / 31 / 2013

WAIVER TYPE (please check applicable box):

☐ Military (WM) All Branches – Branch: \_\_\_\_\_  
(Copy of current orders or other documentation certifying your active service is required)

☐ Peace Corps (WP) – Stipend: \$ \_\_\_\_\_ (Stipend documentation required)

☐ VISTA (WV) – Stipend: \$ \_\_\_\_\_ (Stipend documentation required)

☐ AmeriCorps (WA) – Stipend: \$ \_\_\_\_\_ (Stipend documentation required)

☒ Other (WO) – Stipend: \$ \$250-375 per hour (Stipend documentation required)

Organization Name: Deschutes County Circuit Court, U.S. District Court

Description of Organization & Nature of Services Provided:

I am a volunteer mediator on the mediation and arbitration panel for the Circuit Court for Deschutes County and the mediation panel for the U.S. District Court.

My stipend is \$250-\$375 for arbitrations for Deschutes County. No stipend is offered by the Federal Court. The modest income received from Deschutes County is my principal source of income other than social security. I am 83 years old and retired from the practice of law.

☒ I hereby certify any stipend or remuneration received is my principal source of income. (Check box is applicable for AmeriCorps, VISTA, Peace Corps and Other waivers only).

I certify the information included above is accurate to the best of my knowledge.

Member Signature (required for processing ALL waivers)

Date

01, 04, 2013

**Questions:** Please contact the bar's Accounting Dept. at \_\_\_\_\_, or call the bar office at (503) 620-0222, extensions 302, 304 or 305. Waivers may be scanned and submitted electronically **IF you ensure your social security number is covered** prior to scanning the document. Please do not mail a confirmation copy if faxing or submitting your waiver electronically.

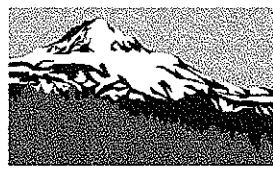
**Mailing Address:** Oregon State Bar, PO Box 231935, Tigard, OR 97281-1935

**Fax:** (503) 598-6924

**E-mail:**

JAN - 8 2013

OREGON STATE BAR  
ACCOUNTING DEPT.



**OAJC**  
OREGON AREA  
JEWISH COMMITTEE

December 21, 2012

Sylvia Stevens  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Dear Sylvia:

I am writing to thank you for supporting the Oregon Area Jewish Committee's 2012 Human Relations Award Dinner, honoring Senator Jeff Merkley. As you know, the Human Relations Award honors business leaders and corporations who, with their skills, influence, and dedication, have demonstrated their profound commitment to our community. OAJC was very pleased to honor the Senator, who has worked with us on numerous issues over the years.

Our speakers for the evening focused on the themes of collaboration, partnership, and the pursuit of social justice. David Leslie of Ecumenical Ministries of Oregon spoke eloquently about the coalition-building history of OAJC around hunger and poverty concerns and Mary Jo Tully of the Archdiocese of Portland gave a beautiful benediction. Upon accepting the Human Relations Award, Senator Merkley said:

*"Thank you Oregon Area Jewish Committee for this award. Thank you even more, for everything you do in our community: feeding the hungry and addressing the needs of the most vulnerable, fighting for civil rights and human rights; saying 'Never Again' to genocide; promoting interfaith understanding in an increasingly fractured world. All of you at OAJC believe in the best in human nature, and it shows every day in your work."*

Your generous contribution of \$400 in honor of the Senator is greatly appreciated: of this contribution \$130 represents the cost of the dinner, and \$270 is tax deductible.

Event Chair Ken Lewis and OAJC President John L. Moss join me in thanking you for supporting the work that OAJC does to advance justice, build community, and promoting understanding. Thank you for making helping to make the event a success.

Sincerely,

Emily Georges Gottfried  
Executive Director

*Thank you!*

**OAJC**  
7410 SW Oleson Rd.  
PMB #190  
Portland, OR 97223  
503-295-6761 ph  
503-497-9054 fax  
info@OAJOnline.org  
www.OAJOnline.org

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John Moss

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**Executive Director**  
Emily Georges Gottfried

The Oregon Area Jewish Committee is an Independent Affiliate of the American Jewish Committee®  
OAJC is a non-profit, tax-exempt charitable organization. Our tax ID is 26-1871211.

## SHENKER & BONAPARTE, LLP

ARDEN E. SHENKER  
ROBERT E.L. BONAPARTE  
NELL HOFFMAN BONAPARTE  
TODD M. GREWE

ATTORNEYS AT LAW  
1500 SW FIRST AVENUE, SUITE 765  
PORTLAND, OR 97201  
TELEPHONE: (503) 294-1118  
FACSIMILE: (503) 294-0015  
WEBPAGE: [www.ashenkeresq.com](http://www.ashenkeresq.com)

LICENSED IN OREGON, WASHINGTON,  
COLORADO, NEW YORK, AND  
WASHINGTON, D.C.

---

**ARDEN E. SHENKER**  
E-MAIL: [ashenker@ashenkeresq.com](mailto:ashenker@ashenkeresq.com)

December 26, 2012

Via Email

Richard G. Spier  
Richard G Spier, J.D. Mediator  
2536 NE 28th Avenue  
Portland, OR 97212

Re: ORCP 57F(4)

Dear Rich:

The Council on Court Procedures is proposing to disenfranchise alternate jurors from participating in deliberations. I suppose that a stipulation of trial counsel, accepted by the trial judge, might be able to trump that provision. I would prefer a specific exception, such as "an alternate juror, ABSENT THE PARTIES' STIPULATION, who does not replace a juror shall not attend or otherwise participate in deliberations".

I always have thought that it was cruel to keep alternates from participation. Sometimes I have been able to persuade opposing counsel and the court; sometimes not.

Does the Board of Governors take a position on submitting the Council on Court Procedures/supreme court's proposed amendments to the Legislative Assembly? If not, whom would you suggest as a lawyer legislator for me to contact?

All the best at the holiday season.



Arden E. Shenker

AES/as

cc: Robert E. L. Bonaparte  
Todd M. Grewe



**2012**  
**Chief Legal Officer Survey**  
**An Altman Weil Flash Survey**



### 2012 Chief Legal Officer Survey

For the thirteenth year in a row, Altman Weil, Inc. has surveyed Chief Legal Officers (CLOs) on issues of importance in managing their corporate law departments. The purpose of these surveys is to capture current thinking of Chief Legal Officers and share the results with the legal profession, enabling both corporate law departments and law firms to benefit from the surveys.

### Survey Findings

Corporate law departments report that they are re-negotiating outside counsel fees, shifting work to lower-priced law firms, increasing in-house capacity, opting for alternative service providers and using new technology — all to develop a more cost-effective legal services model — according to over 200 General Counsel who participated in the **Altman Weil 2012 Chief Legal Officer Survey**.

Chief Legal Officers are not waiting for law firms to change their business models. They are taking change into their own hands in 2012 to create a new internal value proposition.

### Cost Control and Efficiency

The survey asked Chief Legal Officers what they have done in the last 12 months to control costs – their highest management priority as reported in the 2011 Survey.

The number one answer, from 71% of respondents, was to negotiate price reductions from outside counsel. In addition, 47% of law departments shifted work from law firms to in-house lawyer staff; 41% shifted law firm work to lower priced firms; and, 36% reduced the total amount of work sent to outside counsel. Ten percent of CLOs reported instituting a law firm convergence program.

In addition to outside counsel cost management, law departments addressed internal cost issues in 2012. Sixty-three percent of departments improved the efficiency of their own procedures to cut costs; 36% shifted in-house work from lawyers to paralegals or other paraprofessionals; 35% used contract lawyers; and 25% of law departments outsourced some work to non-law-firm vendors to save money.

The methods of cost control that proved most effective were negotiating price reductions and shifting work in-house, according to the survey.

When asked what actions they had taken to improve internal efficiency in the last twelve months, CLOs identified greater use of technology tools as the most often used method, as well as the most effective. Other efficiency enhancers were greater use of paralegals and other paraprofessionals, project staffing with contract or temporary lawyers, outsourcing to non-law-firm vendors and project management training.

### **Staffing and Budget**

Survey results on law department staffing and spending reinforce findings on the shifting balance of work between law firms and in-house lawyers.

In 2012, 46% of law departments increased their internal budgets, compared to 28% reporting a decrease. Additionally 38% of law departments report that they plan to increase their in-house lawyer workforce in the next 12 months, compared to only 7% of departments that plan to decrease the number of in-house lawyers.

At the same time, 39% of law departments decreased their outside counsel budget in 2012, compared to 34% that increased it. This is the first time in three years that the survey has found more departments decreasing than increasing their law firm spend.

In the next 12 months, 29% of law departments expect to decrease their use of outside counsel, compared to 14% that plan to increase outside counsel use.

These aren't enormous changes, and many departments still plan to maintain the status quo. But there is clear, incremental movement in how CLOs are managing their law departments.

### **Inside – Outside Relationship**

Asked how much pressure corporations are putting on law firms to change the value proposition in 2012, CLOs rated the pressure at a median 6 on a scale of 0 (no pressure) to 10 (intense pressure), up from 5 the previous year. CLOs continue to express deep skepticism about law firms' willingness to change their service delivery model, rating firms' seriousness about change at a median 3 on a 0 to 10 scale for the fourth year running.

Chief Legal Officers have clear preferences when it comes to choosing law firms.

When asked to rate which factors influence their selection of outside counsel, Chief Legal Officers identified ‘demonstrated understanding of your business/industry’ as the top factor and rated it 9.6 on a scale of 0 (no effect) to 10 (extremely positive effect). Other highly rated influencers were referrals from colleagues, rated 8.6; personal contacts, rated 6.7; and written material demonstrating a lawyer’s expertise, rated 6.1. Ten additional factors, including law firm websites, directory listings and social media activity, all rated under 5 on the 0 to 10 scale.

### The Survey

The **Chief Legal Officer Survey** has been conducted and published annually by Altman Weil, Inc. since 2000, most recently in September and October 2012. Two hundred and four responses were received for the 2012 survey, 15.7% of the 1,297 corporate law departments invited to participate. Demographic and budgetary data on responding law departments is included in the survey report.

The survey report follows and is available online at [www.altmanweil.com/CLO2012](http://www.altmanweil.com/CLO2012).

### About Altman Weil

Founded in 1970, Altman Weil, Inc. is dedicated exclusively to the legal profession. It provides management consulting services to law firms, law departments and legal vendors worldwide. The firm is independently owned by its professional consultants, who have backgrounds in law, industry, finance, marketing, administration and government. More information on Altman Weil can be found at [www.altmanweil.com](http://www.altmanweil.com).





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# Law School Applications Are Collapsing (As They Should Be)

By Jordan Weissmann

It appears that law schools are about to experience a bit of economic justice.

As the New York Times [reports today](#), applications from aspiring JDs are on pace to [hit a thirty year low](#). About 30,000 brave souls have applied for a spot this fall's law school class, a staggering 20 percent drop from this time last year, and down 38 percent from 2010, as shown in the graph below from the [Law School Admissions Council](#). When all is said and done, [about 40,000](#) students are projected to enroll, which would cap off a 24 percent free-fall in just three years -- or the time it takes your average student to graduate.

This is a desperately needed adjustment, for which the academy largely has itself to blame. The legal economy is a shambles, and law schools have done virtually nothing to react.

Fall ABA Applicants by Week



For the last decade and a half, universities treated legal education as a cash cow. Tuition rose beyond all reason, so that the average private law school grad in the class of 2011 borrowed \$125,000 for their degree, [according to](#) the American Bar Association. Public school grads were a little better off, borrowing around \$75,700. With students forking over ungodly sums of cash to learn the fine arts of torts and contracts, new institutions opened rapidly. These schools often catered to relatively marginal students, who they [lured](#) with egregiously over-optimistic jobs stats. Today, there are about 201

ABA-approved law schools, 19 more than there were in 2000, and seven more than in 2007, when the legal industry suffered a recession-induced aneurysm from which it hasn't recovered.

Just how crippled is the legal job market? Utterly. Here's the graph of total employment in legal services since 1990. It includes everyone from attorneys to paralegals to secretaries, but it gives you a sense of the industry's much deteriorated health. There are 50,000 fewer jobs today than five years ago. In meantime, schools have been graduating more than 40,000 students a year.

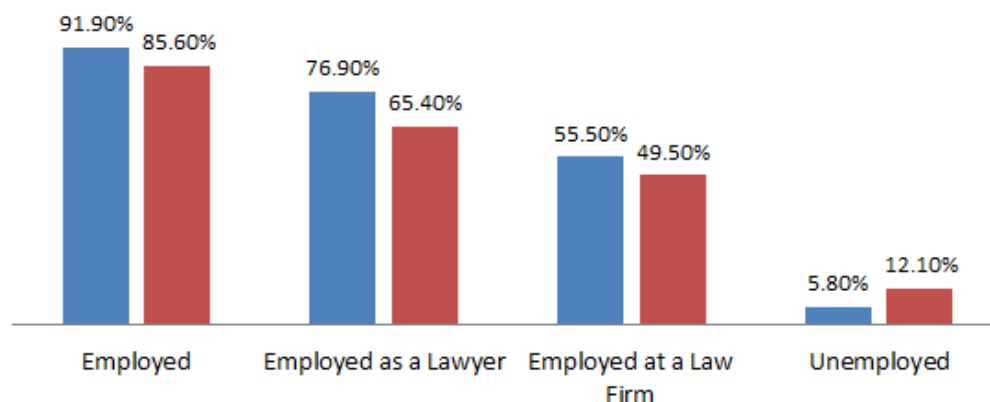


Many of them been eaten alive on the job market. According to the National Association of Legal Placement, just 85 percent of the class of 2011 had a job 9 months after graduation, down about 6 percentage points, according to the [National Association of Legal Placement](#). But fewer than two-thirds had a job that required bar passage,\* and not even half were at law firms. At the largest law school in the country, Thomas M. Cooley, [only 37 percent](#) of new graduates are getting full-time jobs that require their JD.

## Employment for New Law School Grads

(National Association of Legal Placement)

■ Class of 2007 ■ Class of 2011



With jobs few and far between, salaries have tumbled. Median pay for new grads in private practice has [fallen 18 percent](#) since 2010 to \$85,000. The only reason this particular combination of debt

and falling pay isn't a bigger disaster is the federal government's [income based repayment program](#), which caps student loan payments at 15 percent of income and forgives the balance after 25 years.

The upshot of all this is that unless you're graduating from a truly top program -- and then, only if you graduate reasonably high in your class -- going to law school has turned into professional Russian Roulette. If it works out, you survive to pay off a truly enormous debt burden. If you don't make it on the job market, you've just spent three valuable years of your life sweating through deadening lectures and high-stakes finals for nothing, probably consigning yourself to a quarter-century loan payments the process.

And yet, the response from law schools has amounted to not much more than some extremely belated soul searching. In June, the *Wall Street Journal* [found 10 schools](#) that are considering cutting their enrollment -- a positive development, but only an incremental one. And still, some members of the professoriate don't to understand the problems they're facing. Take this gem from the *Times* story:

Some argue that the drop is an indictment of the legal training itself -- a failure to keep up with the profession's needs. "

We have a significant mismatch between demand and supply," said Gillian K. Hadfield, professor of law and economics at the University of Southern California. "It's not a problem of producing too many lawyers. Actually, we have an exploding demand for both ordinary folk lawyers and big corporate ones."

In a word, no. Legal education could do a better job teaching students actual practice skills, and maybe that would help a few students find gainful employment. But the difference would be on the margins, and there's simply no sign of "exploding demand" anywhere in the market. As Citi Private Bank -- the pre-eminent lender for major law firms -- noted in [a recent report](#), demand for high-end corporate legal services has fallen at a 0.4 percent annual rate since every year since 2008. Revenue at big firms has grown slower than inflation. And while firms have tried to raise their official rates to make up the difference, the reality is they're handing out discounts left and right, particularly to big clients.

**Chart 1: Legal Industry Performance by Period**

Metric	2004-08 CAGR	2008-12 CAGR
Demand	3.7%	-0.4%
Rates	6.7%	3.4%
Revenue	9.8%	0.8%
PPEP	6.0%	1.7%

And things aren't looking up any time soon. On the bottom of the market, companies like LegalZoom that provide basic legal documents online are taking work from solo-practice attorneys and small firms. On the higher end, the rate of major firm collapses has doubled since 2007, and Citi has a watch list of others it believes are at risk, especially as their old business models come under attack from new sources of competition. The rise of legal outsourcing firms that can competently handle bread-and-butter corporate legal work in bulk will continue cutting into firms' profits. Computer programs capable of searching through vast troves of legal documents will continue to shrink on the number of

lawyers needed for litigation. The industry is looking at a period of consolidation.

Changing what law students are taught won't help. The only answer is to graduate fewer lawyers, and cut the price of an education that is swiftly becoming a less valuable asset. That means fewer law schools, with fewer dollars flowing into them.

Things are about to get really ugly for the legal academy. As they should.

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**\*Correction:** An earlier version of this article stated that around two thirds of recent JD recipients were employed in full-time jobs that required a law degree. That, unfortunately, was a bit overly optimistic. In fact, NALP's table states that around 65 percent merely have jobs that require bar passage, which may mean part-time work as contract attorneys, who often earn around \$25 an hour. I regret failing to convey the severity of the situation.

This article available online at:

<http://www.theatlantic.com/business/archive/2013/01/law-school-applications-are-collapsing-as-they-should-be/272729/>

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January 30, 2013

# Law Schools' Applications Fall as Costs Rise and Jobs Are Cut

By **ETHAN BRONNER**

Law school applications are headed for a 30-year low, reflecting increased concern over soaring tuition, crushing student debt and diminishing prospects of lucrative employment upon graduation.

As of this month, there were 30,000 applicants to law schools for the fall, a 20 percent decrease from the same time last year and a 38 percent decline from 2010, according to the [Law School Admission Council](#). Of some 200 law schools nationwide, only 4 have seen increases in applications this year. In 2004 there were 100,000 applicants to law schools; this year there are likely to be 54,000.

Such startling numbers have plunged law school administrations into soul-searching debate about the future of legal education and the profession over all.

“We are going through a revolution in law with a time bomb on our admissions books,” said William D. Henderson, a professor of law at Indiana University, who has written extensively on the issue. “Thirty years ago if you were looking to get on the escalator to upward mobility, you went to business or law school. Today, the law school escalator is broken.”

Responding to the new environment, schools are planning cutbacks and accepting students they would not have admitted before.

A few schools, like the Vermont Law School, have started [layoffs and buyouts](#) of professors. Others, like at the University of Illinois, have offered across-the-board tuition discounts to keep up enrollments. Brian Leiter of the University of Chicago Law School, who runs a blog on the topic, said he expected as many as 10 schools to close over the coming decade, and half to three-quarters of all schools to reduce class size, faculty and staff.

After the normal dropout of some applicants, the number of those matriculating in the fall will be about 38,000, the lowest since 1977, when there were two dozen fewer law schools, according to Brian Z. Tamanaha of Washington University Law School, the author of “Failing Law Schools.”

The drop in applications is widely viewed as directly linked to perceptions of the declining job market. Many of the reasons that law jobs are disappearing are similar to those for disruptions in other knowledge-based professions, namely the growth of the Internet. Research is faster and easier, requiring fewer lawyers, and is being outsourced to less expensive locales, including West Virginia and overseas.

In addition, legal forms are now available online and require training well below a lawyer's to fill them out.

In recent years there has also been publicity about [the debt load and declining job prospects](#) for law graduates, especially of schools that do not generally provide employees to elite firms in major cities. Last spring, the American Bar Association released [a study](#) showing that within nine months of graduation in 2011, only 55 percent of those who finished law school found full-time jobs that required passage of the bar exam.

"Students are doing the math," said Michelle J. Anderson, dean of the City University of New York School of Law. "Most law schools are too expensive, the debt coming out is too high and the prospect of attaining a six-figure-income job is limited."

Mr. Tamanaha of Washington University said the rise in tuition and debt was central to the decrease in applications. In 2001, he said, the average tuition for private law school was \$23,000; in 2012 it was \$40,500 (for public law schools the figures were \$8,500 and \$23,600). He said that 90 percent of law students finance their education by taking on debt. And among private law school graduates, the average debt in 2001 was \$70,000; in 2011 it was \$125,000.

"We have been sharply increasing tuition during a low-inflation period," he said of law schools collectively, noting that a year at a New York City law school can run to more than \$80,000 including lodging and food. "And we have been maximizing our revenue. There is no other way to describe it. We will continue to need lawyers, but we need to bring the price down."

Some argue that the drop is an indictment of the legal training itself — a failure to keep up with the profession's needs.

"We have a significant mismatch between demand and supply," said Gillian K. Hadfield, professor of law and economics at the University of Southern California. "It's not a problem of producing too many lawyers. Actually, we have an exploding demand for both ordinary folk lawyers and big corporate ones."

She said that, given the structure of the legal profession, it was hard to make a living dealing with matters like mortgage and divorce, and that big corporations were dissatisfied with what they see as the overly academic training at elite law schools.

The drop in law school applications is unlike what is happening in almost any other graduate or professional training, except perhaps to veterinarians. Medical school applications have been [rising steadily](#) for the past decade.

Debra W. Stewart, president of the [Council of Graduate Schools](#), said applicants to master of business degrees were steady — a 0.8 percent increase among Americans in 2011 after a decade of substantial growth. But growth in foreign student applications — 13 percent over the same period — made up the difference, something from which law schools cannot benefit, since foreigners have

less interest in American legal training.

In the legal academy, there has been discussion about how to make training less costly and more relevant, with special emphasis on the last year of law school. A number of schools, including elite ones like Stanford, have [increased their attention to clinics](#), where students get hands-on training. Northeastern Law School in Boston, which has long emphasized in-the-field training, has had one of the smallest decreases in its applicant pool this year, according to Jeremy R. Paul, the new dean.

There is also discussion about permitting students to take the bar after only two years rather than three, a decision that would have to be made by the highest officials of a state court system. In New York, the [proposal](#) is under active consideration largely because of a desire to reduce student debt.

Some, including Professor Hadfield of the University of Southern California, have called for one- or two-year training programs to create nonlawyer specialists for many tasks currently done by lawyers. Whether or not such changes occur, for now the decline is creating what many see as a cultural shift.

“In the ’80s and ’90s, a liberal arts graduate who didn’t know what to do went to law school,” Professor Henderson of Indiana said. “Now you get \$120,000 in debt and a default plan of last resort whose value is just too speculative. Students are voting with their feet. There are going to be massive layoffs in law schools this fall. We won’t have the bodies we need to meet the payroll.”

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THE A-HED | Updated January 27, 2013, 10:35 p.m. ET

# Lawyers Behaving Badly Get A Dressing Down From Civility Cops

*Adversarial System Grows Obscenely Nasty; 'Get More Results With Sugar'*

By JENNIFER SMITH



A group of attorneys concerned about bad manners in their profession held a musical revue at a downtown Manhattan law firm, complete with doctored song lyrics. WSJ's Jennifer Smith reports.

In New York one night recently, U.S. District Judge Richard Sullivan donned his robes, walked onstage and belted out to his colleagues this heartfelt plea for lawyerly politeness (to the tune of "If I Were a Rich Man"):

*"If lawyers were more civil*

*Daidle deedle daidle daidle daidle deedle daidle dum*

*They'd treat their breth-er-en with more respect*

*Wouldn't always yell, 'object.' "*

The ditty struck a nerve—and brought down the house, a largely pinstriped crowd of 80 or so lawyers there for a musical refresher course on the virtues of civility.

But it is no laughing matter to those who fret that a tide of rudeness has engulfed the legal profession.

From courtroom yelling matches to insulting letters and depositions that turn into fistfights, some lawyers and judges worry that the adversarial system of justice has gotten a little too adversarial.

To rein in "Rambo" litigators, the politeness patrol is pushing etiquette lessons, and even seeking to have civility included in attorney oaths.

The well-mannered caution that lawyers who shout, lie and shoot off vulgar emails don't merely alienate judges and juries. They also slow the wheels of justice and cost clients money.

"Lawyers already have a bad enough reputation," said Stewart Aaron, a litigator and head of Arnold & Porter LLP's New York office. He performed alongside Judge Sullivan in the revue.

The show—titled "A Civility Seder" and put together by the New York Inn of Court, a legal group that promotes collegiality and ethical behavior—might be the most colorful example of the manners movement. But it pales beside the R-rated antics of the attorneys whose behavior inspired it.

Take, for instance, lawyer Marvin Gerstein of Illinois, who has been disciplined three times for his profane epistolary style, according to the Attorney Registration & Disciplinary Commission of the Illinois Supreme Court.



Claudio Papapietro for The Wall Street Journal

Ain't Misbehavin'? Attorney Peter Dizozza, right, accompanies a song about civility and ethical behavior.

Over the years, Mr. Gerstein has sent letters to legal adversaries calling them, variously, a "fool," "idiot," "slimeball," and other names unfit for publication. He has also suggested opponents have their heads inserted so far into an unpleasant place that they "think it's a rose garden," language that an expert witness for Mr. Gerstein said served a business purpose by vividly demonstrating the point.

The disciplinary commission rejected that argument, although a dissenting member argued that his conduct was protected by the First Amendment.

"If you cross the line with me, you get both barrels," said an unrepentant Mr. Gerstein. He has since dialed his language back to avoid further sanctions, he said, but "it's none of their business what goes on between two attorneys."

Jaw-droppingly outrageous conduct is rare, even the most ardent defenders of decorum agree. More common are small-bore disputes: lawyers whose sniping, in person and on paper, can spiral out of control.

"When I'm upset, I can feel the testosterone rising, and I can literally feel my judgment declining," said David Casselman, a senior partner at Wasserman, Comden, Casselman, & Esensten LLP in Tarzana, Calif., and a co-chair of the American Board of Trial Advocates' committee on professionalism, ethics and civility. "It's so easy to slide into tit-for-tat mode."

Last month Indiana's Supreme Court chastised lawyers on both sides of a \$1.75 million medical negligence lawsuit for making excessive objections and for "the unnecessary sparring and outright contemptuous conduct of each attorney directed toward the other."

"A jury trial is not a free-for-all," Justice Steven H. David wrote.

Whether the problem is worse now is hard to quantify. Professional codes instruct lawyers to be

civil, but rudeness isn't tracked or punished as much as more concrete trespasses, such as filching clients' money.

But a number of attorneys and judges say courtly conduct has collapsed over the years, particularly in the more fractious realms of the profession, like divorce proceedings.

Some blame email, and the decline of face-to-face interactions among lawyers in big cities, where sparring attorneys rarely encounter foes at their kids' weekend soccer game.

"You don't do this to people you know," said San Francisco lawyer William B. Smith, also a co-chairman of the trial lawyers' civility committee. "Now it's people sitting behind computers doing nasty things to each other."

Mr. Casselman began collecting examples of bad behavior a few years ago.

He enlisted prominent judges and lawyers for a civility video, and, with Mr. Smith, persuaded the trial lawyers group to develop an entire program on the topic.

Thus far the amiability advocates have made presentations at dozens of law firms, bar groups and law schools. Now they are pushing legal educators to make civility a regular part of the curriculum.

Some lawyers say nastiness and aggression results in smaller settlements or can even lose a case, hitting lawyers where it hurts—their wallets.



RICHARD SULLIVAN

"I tell all the lawyers in my firm, you're not a fighter, you're a lover," said Stephen Susman, a founding partner at litigation boutique Susman Godfrey LLP, which has a tradition of inviting opposing counsel to its holiday party. "You will get more results with sugar than with vinegar."

Still, the bad behavior rolls on.

Last year Meyer Ziman, an Arizona personal-injury lawyer, was suspended from practice for 12 months after he "repeatedly and intentionally committed offensive conduct," in violation of the state's oath of admission to the bar.

In one instance, during phone calls while trying to obtain a client's medical records, Mr. Ziman allegedly showered a hospital employee with expletives, then told another who asked him to watch his mouth, "you are nothing but a slut that works for a copy service."

Mr. Ziman said during disciplinary proceedings that he had used the term "slug," an explanation that Arizona's attorney discipline panel found "implausible" according to its report on the case.

Mr. Ziman, wrote Presiding Disciplinary Judge William J. O'Neil, "brandishes his opinion as a battering ram, intentionally offending people...While in his private life he may be as rude, offensive and demeaning as he chooses, in his professional life he may not hide behind his First Amendment right [in order] to ignore his sworn responsibilities."

Mr. Ziman doesn't feel his conduct warranted a suspension, said his lawyer, Joseph Collins, who said he personally doubts civility codes will do much to burnish lawyers' reputations.

"I think the end goal," Mr. Collins said, "is not going to be achieved by pursuing attorneys who use



offensive language."

**Write to** Jennifer Smith at [jennifer.smith@wsj.com](mailto:jennifer.smith@wsj.com)

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## New-model firm plans hiring spree, 50 to 100 lawyers a year

Posted Jan 17, 2013 11:25 AM CST

By [Rachel M. Zahorsky](#)



Photo of Rachel Zahorsky  
by Marc Hauser.

One part law firm and one part business entity, Washington D.C.-based Clearspire aims to expand its nontraditional legal services model across the country with the addition of 50 to 100 former BigLaw lawyers each year for the next five years.

With brick-and-mortar outposts recently opened in New York, Los Angeles and San Francisco, and more planned for Chicago, Atlanta and a handful of other cities, Clearspire operates primarily through a \$5 million online platform that connects lawyers and clients through virtual offices and high-end videoconferencing systems. The company's business operation aims to raise another \$3 million from outside investors in 2013.

This model allows Clearspire Law Co., a law firm that outsources all business processes, technology administration and commoditized legal work to its independent sister company, Clearspire Services Co., to cut overhead costs by 50 percent compared to traditional firms. That drastically reduces client fees on complex legal matters and maintains market salaries for its lawyers and staff, the firm says.

The model has attracted the attention of 165 general counsel of Fortune 500 companies, says Clearspire president and CEO Bryce Arrowood, who co-founded the company with civil trial lawyer Mark A. Cohen, a large-scale, early adopter of information technology in the delivery of

legal services.

"When Mark and I looked at the legal landscape and what was happening in 2008, no law firm was looking at changing their model the way the market was telling them they needed to change," Arrowood tells the ABA Journal.

"While a lot has been done to bring costs down," Arrowood says, citing a boost in overseas outsourcing and contract attorneys, "nobody looked at how firms could be more cost-efficient at the high end.

"If everyone sticks to what they do well, and firms let businesspeople manage projects and tech people build robust systems, lawyers are liberated to focus on the law."

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January 17, 2013

# Make Law Schools Earn a Third Year

By DANIEL B. RODRIGUEZ and SAMUEL ESTREICHER

TODAY, leaders of the New York bar, judges and law school faculty members will [gather](#) at New York University to discuss a [proposed rule change](#). If adopted by the state's highest court, it could make law school far more accessible to low-income students, help the next generation of law students avoid a [heavy burden of debt](#) and lead to improvements in legal education across the United States.

The proposal would amend the rules of the New York State Court of Appeals to allow students to take the state bar exam after two years of law school instead of the three now required. Law schools would no doubt continue to provide a third year of legal instruction — and most should (more on that in a bit) — but students would have the option to forgo that third year, save the high cost of tuition and, ideally, find a job right away that puts their legal training to work.

Like many industries today, the legal profession is in the midst of a period of [destabilizing change](#). Myriad services are now being outsourced (often abroad) to nonlawyers, and the number of positions with large firms is [dwindling](#), making it harder for graduating students — many of whom are saddled with six-figure student-loan debts — to find work at the outset of their careers that can even begin to pay off their obligations.

Such prospects are discouraging many young people from pursuing law degrees, and pushing away lower-income students the most.

Part of the problem is that tuition and fees (which [topped \\$40,000](#) a year, on average, at private schools in 2012) have been soaring, and law schools must do a better job of containing these costs. We also need more financial aid for students. But a straightforward solution — one that would shave the current law school bill by a third for those who take this option — is simply to permit law students to sit for the bar exam and begin practicing even if they have not received a law school degree.

While this wouldn't increase the number of available jobs, a two-year option would allow many newly minted lawyers to pursue careers in the public interest or to work at smaller firms that serve lower- or average-income Americans, thereby fulfilling a largely unmet need. As it is now, many young lawyers say they would love to follow this path but cannot afford to because of their onerous debts.

The rationale for reforming the three-year rule, however, is not merely financial. As legal scholars, jurists and experienced attorneys have attested for decades, many law students can, with the appropriate course work, learn in the first two years of law school what they need to get started in

their legal careers.

In the 1970s, when similar proposals were discussed, two distinguished panels of experts — one led by Paul D. Carrington, then a University of Michigan law professor, and the other, the Carnegie Commission on Higher Education, overseen by a Stanford law professor and a dean — issued reports supporting a two-year curriculum, as long as certain essential courses were included.

What, then, of the third year, those famous semesters in which, as the saying goes, law schools “[bore you to death](#)” and student attendance drops like a stone? With this reform, law schools would have an obvious financial incentive to design creative curriculums that law students would want to pursue — a third-year program of advanced training that would allow those who wished it to become more effective litigators, specialize or better prepare for the real-world legal challenges that lie ahead.

We are confident that many law schools will be able to meet that challenge.

In fact, that evolution is already going on, as many schools (including our own) reimagine their third-year curriculums through externships, public service programs and courses that offer in-depth practical training.

If this trend continues — and the two-year option would only encourage it — those who graduate from rigorous three-year programs will not only emerge with sharper legal skills, but also be more essential to employers, raising the rate of job placement out of law school.

But legal education is not, nor ever truly has been, a “one size fits all” system. We have long had varied routes to the profession. Northwestern, for example, offers an [accelerated](#) program that lets students pursue a three-year course of study in two years, allowing them to take the bar and enter the job market a year earlier. And a handful of states, including New York, allow individuals to take the bar after working for a law office for a number of years, in lieu of going to law school, though this approach is seldom used.

Some will argue that the two-year option would only create unequal classes of lawyers and glut the marketplace with attorneys who don’t have the skills and training that generations of law school graduates before them have had.

We doubt this will occur. And in any case, the risk ought to be balanced with the varied needs of the American people for legal services. A two-year option, in our view, would provide young lawyers with the training they need to get started, lift a heavy financial burden off the backs of many — and vastly improve third-year curriculums in the process. That would be a big step in the right direction.

*Daniel B. Rodriguez is the dean at Northwestern University School of Law. Samuel Estreicher is a professor at New York University Law School and a director of its Opperman Institute of Judicial Administration.*

February 9, 2013

# Relax! You'll Be More Productive

By TONY SCHWARTZ

THINK for a moment about your typical workday. Do you wake up tired? Check your e-mail before you get out of bed? Skip breakfast or grab something on the run that's not particularly nutritious? Rarely get away from your desk for lunch? Run from meeting to meeting with no time in between? Find it nearly impossible to keep up with the volume of e-mail you receive? Leave work later than you'd like, and still feel compelled to check e-mail in the evenings?

More and more of us find ourselves unable to juggle overwhelming demands and maintain a seemingly unsustainable pace. Paradoxically, the best way to get more done may be to spend more time doing less. A new and growing body of multidisciplinary research shows that strategic renewal — including daytime workouts, short afternoon naps, longer sleep hours, more time away from the office and longer, more frequent vacations — boosts productivity, job performance and, of course, health.

“More, bigger, faster.” This, the ethos of the market economies since the Industrial Revolution, is grounded in a mythical and misguided assumption — that our resources are infinite.

Time is the resource on which we've relied to get more accomplished. When there's more to do, we invest more hours. But time is finite, and many of us feel we're running out, that we're investing as many hours as we can while trying to retain some semblance of a life outside work.

Although many of us can't increase the working hours in the day, we can measurably increase our energy. Science supplies a useful way to understand the forces at play here. Physicists understand energy as the capacity to do work. Like time, energy is finite; but unlike time, it is renewable. Taking more time off is counterintuitive for most of us. The idea is also at odds with the prevailing work ethic in most companies, where downtime is typically viewed as time wasted. More than one-third of employees, for example, [eat lunch at their desks](#) on a regular basis. More than 50 percent assume they'll work during their vacations.

In most workplaces, rewards still accrue to those who push the hardest and most continuously over time. But that doesn't mean they're the most productive.

Spending more hours at work often leads to less time for sleep and insufficient sleep takes a substantial toll on performance. In a study of nearly 400 employees, published last year, researchers found that sleeping too little — defined as less than six hours each night — was one of the best predictors of on-the-job burn-out. A recent Harvard study estimated that sleep deprivation costs American companies \$63.2 billion a year in lost productivity.

The Stanford researcher Cheri D. Mah found that when she got male basketball players to sleep 10 hours a night, their performances in practice **dramatically improved**: free-throw and three-point shooting each increased by an average of 9 percent.

Daytime naps have a similar effect on performance. When night shift air traffic controllers were given 40 minutes to nap — and slept **an average of 19 minutes** — they performed much better on tests that measured vigilance and reaction time.

Longer naps have an even more profound impact than shorter ones. **Sara C. Mednick**, a sleep researcher at the University of California, Riverside, found that a 60- to 90-minute nap **improved memory test results** as fully as did eight hours of sleep.

MORE vacations are similarly beneficial. In 2006, the accounting firm Ernst & Young did an internal study of its employees and found that for each additional 10 hours of vacation employees took, their year-end performance ratings from supervisors (on a scale of one to five) improved by 8 percent. Frequent vacationers were also significantly less likely to leave the firm.

As athletes understand especially well, the greater the performance demand, the greater the need for renewal. When we're under pressure, however, most of us experience the opposite impulse: to push harder rather than rest. This may explain why a recent survey by Harris Interactive found that Americans left an average of **9.2 vacation days unused** in 2012 — up from 6.2 days in 2011.

The importance of restoration is rooted in our physiology. Human beings aren't designed to expend energy continuously. Rather, we're meant to pulse between spending and recovering energy.

In the 1950s, the researchers William Dement and Nathaniel Kleitman discovered that we sleep in cycles of roughly 90 minutes, moving from light to deep sleep and back out again. They named this pattern the Basic-Rest Activity Cycle or BRAC. A decade later, Professor Kleitman discovered that this cycle recapitulates itself during our waking lives.

The difference is that during the day we move from a state of alertness progressively into physiological fatigue approximately every 90 minutes. Our bodies regularly tell us to take a break, but we often override these signals and instead stoke ourselves up with caffeine, sugar and our own emergency reserves — the stress hormones adrenaline, noradrenaline and cortisol.

Working in 90-minute intervals turns out to be a prescription for maximizing productivity. Professor **K. Anders Ericsson** and his colleagues at Florida State University have studied elite performers, including musicians, athletes, actors and chess players. In each of these fields, Dr. Ericsson found that the best performers typically practice in uninterrupted sessions that last no more than 90 minutes. They begin in the morning, take a break between sessions, and rarely work for more than four and a half hours in any given day.

“To maximize gains from long-term practice,” Dr. Ericsson concluded, “individuals must avoid

exhaustion and must limit practice to an amount from which they can completely recover on a daily or weekly basis.”

I’ve systematically built these principles into the way I write. For my first three books, I sat at my desk for up to 10 hours a day. Each of the books took me at least a year to write. For my two most recent books, I wrote in three uninterrupted 90-minute sessions — beginning first thing in the morning, when my energy was highest — and took a break after each one.

Along the way, I learned that it’s not how long, but how well, you renew that matters most in terms of performance. Even renewal requires practice. The more rapidly and deeply I learned to quiet my mind and relax my body, the more restored I felt afterward. For one of the breaks, I ran. This generated mental and emotional renewal, but also turned out to be a time in which some of my best ideas came to me, unbidden. Writing just four and a half hours a day, I completed both books in less than six months and spent my afternoons on less demanding work.

The power of renewal was so compelling to me that I’ve created a business around it that helps a range of companies including Google, Coca-Cola, Green Mountain Coffee, the Los Angeles Police Department, Cleveland Clinic and Genentech.

Our own offices are a laboratory for the principles we teach. Renewal is central to how we work. We dedicated space to a “renewal” room in which employees can nap, meditate or relax. We have a spacious lounge where employees hang out together and snack on healthy foods we provide. We encourage workers to take renewal breaks throughout the day, and to leave the office for lunch, which we often do together. We allow people to work from home several days a week, in part so they can avoid debilitating rush-hour commutes. Our workdays end at 6 p.m. and we don’t expect anyone to answer e-mail in the evenings or on the weekends. Employees receive four weeks of vacation from their first year.

Our basic idea is that the energy employees bring to their jobs is far more important in terms of the value of their work than is the number of hours they work. By managing energy more skillfully, it’s possible to get more done, in less time, more sustainably. In a decade, no one has ever chosen to leave the company. Our secret is simple — and generally applicable. When we’re renewing, we’re truly renewing, so when we’re working, we can really work.

*Tony Schwartz is the chief executive officer of [The Energy Project](#) and the author, most recently, of “Be Excellent at Anything.”*