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Oregon State Bar
Meeting of the Board of Governors
May 3, 2013
Oregon State Bar enter
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:30 p.m. on May 3, 2013.

Friday, May 3, 2013, 12:30 pm.

1.	**Call to Order/Finalization of the Agenda**			
2.	**Introduction of John Gleason, Disciplinary Counsel and Director of Regulatory Services**			
3.	**Report of Officers & Executive Staff**			
	A.	Report of the President [Mr. Haglund]	Inform	Exhibit
		1. May 1 Day at the Capitol	Inform	
		2. Task Force on Licensing Legal Technicians	Action	Exhibit
		3. Task Force on Cross-Border Legal Practice	Action	Exhibit
	B.	Report of the President-elect [Mr. Kranovich]	Inform	
	C.	Report of the Executive Director [Ms. Stevens]	Inform	Exhibit
		1. Increasing Section Administrative Fees		
	D.	Director of Diversity & Inclusion [Ms. Hyland]	Inform	
	E.	MBA Liaison Reports [Mr. Spier and Mr. Haglund]	Inform	
4.	**Professional Liability Fund** [Mr. Zarov]			
	A.	General Update	Inform	
	B.	Financial Report	Inform	Exhibit
5.	**PLF / BOG Issues of Common Interest**			
	A.	Prohibition Against BOG Members Prosecuting [Mr. Wade] or Defending PLF Claims	Inform	Exhibit
	B.	Special Underwriting Assessments [Mr. Zarov]	Action	Exhibit
	C.	Request for BarBooks Funding [Mr. Haglund]	Action	
	D.	OAAP Overview [Ms. Fishleder]	Inform	
6.	**ABA House of Delegates**			
	A.	Annual Meeting Agenda Preview [Mr. Johnson-Roberts]	Inform	Exhibit

7. OSB Committees, Sections, Councils and Divisions

A.	Oregon New Lawyers Division Report [Mr. Eder]		Inform	Exhibit
1.	Request for CLE Sponsor Fee Exemption		Action	Exhibit
B.	CSF Claims			
1.	Claims Recommended for Payment		Action	Exhibit
2.	Requests for Review			
	a.	CSF Claim HORTON (Calton)	Action	Exhibit
	b.	CSF Claim CONNALL (Raske)	Action	Exhibit
3.	Committee Recommendation re: Claims Cap		Action	Exhibit
C.	Legal Services Program Committee			
1.	Disbursement of Unclaimed Client Funds Held by Legal Services Program for 2013		Action	Exhibit
D.	Unlawful Practice of Law			
1.	UPL Informal Advisory Opinions		Action	Exhibit

8. BOG Committees, Special Committees, Task Forces and Study Groups

A.	Board Development Committee [Mr. Kranovich]			
1.	Board of Governors Election Update		Inform	
B.	Budget and Finance Committee [Mr. Knight]			
1.	OSB Investment Policy Revision Recommendation		Action	Handout
2.	2014 Budget Update		Inform	
C.	Governance and Strategic Planning Committee [Mr. Wade]			
1.	Revision to OSB Mission Statements		Action	Exhibit
2.	Proposal to Survey HOD		Action	Exhibit
3.	Bylaw 16.200: Charge for hard copy CLE materials		Action	Exhibit
4.	Bylaw 6.301: Notice of Reinstatement		Action	Exhibit
D.	Public Affairs Committee [Mr. Kehoe]			
1.	Legislative Update		Inform	Handout
E.	Special Projects Committee [Mr. Prestwich]			
1.	Update on Completed and Upcoming Projects		Inform	

F.	Centralized Legal Notice System Task Force Update [Mr. Ehlers]	Inform	
G.	Knowledge Base Task Force Update [Ms. Stevens]	Inform	

9. Other Action Items

A.	Appointments to Various Bar Committees, Boards, Councils	Action	Exhibit
B.	Referral & Information Services		
1.	Operations Update	Inform	Exhibit
C.	Lawyer Referral Service		
1.	Rule Changes	Action	Exhibit
D.	LawPay Proposal	Action	Exhibit

10. Consent Agenda

A.	Approve Minutes of Prior BOG Meetings		
1.	Regular Session – February 22 , 2013	Action	Exhibit
2.	Special Session – April 4, 2013	Action	Exhibit

11. Default Agenda

A.	CSF Claims Financial Report	Exhibit
B.	Claims Approved by CSF Committee	Exhibit
C.	PLF Conflict Affidavits	Exhibit
D.	Disciplinary Counsel's 2012 Annual Report	Exhibit
E.	Unclaimed Lawyer Trust Accounts Special Committee Report	Exhibit

12. 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

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

A. Correspondence

B. Articles of Interest

Report of President Mike Haglund

BOG-related activities, January 1 – April 20, 2013

January 4	Swearing in of Attorney General, Secretary of State, Treasurer and Labor Commissioner, State Capital
January 9	Justice David Brewer investiture, Oregon Supreme Court
January 11	BOG meeting and committees
January 12	Remarks to joint retreat of Diversity Section and Affirmative Action Committee
	Remarks to retreat of Solo and Small Practitioner Section
January 14	Meeting with Chief Justice, Portland
January 24	Law firm lunch, Dunn Carney
	Meeting with large firm managing partners regarding Citizens Coalition for Court Funding, Governor Hotel
January 31	Law firm lunch, Tonkin Torp
	Judge Janice Wilson retirement party
February 4	Markowitz Herbold firm 30th anniversary party Meeting with Chief Justice, Salem Portrait unveilings for Judges King and Haggerty
February 7-9	National Conference of Bar Presidents meeting, Dallas, Texas
February 14	Remarks to Oregon Minority Lawyers Association luncheon
February 15	Professionalism Commission meeting
February 20	Campaign for Equal Justice awards lunch
February 21-22	Meeting with Chief Justice; BOG meetings
March 2	OSB tree planting project
March 6	Mid-Columbia Bar Association, Hood River

March 7	Amy Holmes-Hein investiture
March 8	Reinvent Law Silicon Valley Conference, San Francisco
March 20-23	Western States Bar Conference, Hawaii
March 29	BOG committee meetings; 50-year luncheon; ONLD dinner
April 3	Law firm lunch, Lane Powell
April 11	MBA Presidents' reception
April 16-18	ABA Lobby Day, Washington, D.C.

MEMORANDUM

To: **OSB Board of Governors**

From: **Michael E. Haglund, President**

Re: **Proposed Task Force on Limited License Legal Technicians**

Date: **April 24, 2013**

As we are all aware, the hourly rates typically charged by private practitioners in Oregon are beyond the means of most of our state's population. Two recent studies indicate that millions of people have limited access to the U.S. civil justice system, partly because many can't afford to pay for legal services on their own and party because of disparities from state to state in government support for legal aid programs.

The World Justice Project's Rule of Law Index 2011 compared the extent to which residents of the United States and 10 other high-income nations turn to their court systems to recover a debt owed to them. In the U.S., only 7% of high-income residents did not seek redress through the justice system, which was far lower than in every other country except Spain. However, 30% of low-income U.S. residents did not access the justice system, higher than in nine other countries, and surpassed only by Canada.

In Oregon's family law courts, over 90% of the divorce filings include at least one party who is unrepresented. Several judges in Multnomah County hope to see the law library largely turned into a resource center to assist pro se litigants in all sorts of cases. The monetary inaccessibility of the legal profession to much of our population is resulting in more problems with individuals involved in the unlawful practice of law (UPL). Just last fall, the Washington Supreme Court waded into this thicket by issuing an order simultaneously adopting a Limited License Legal Technician (LLLT) Rule and ordering the Washington State Bar Association to develop the regulatory regime including rules for professional conduct, exam procedures, CLE and discipline. Washington's new LLLT Board began its work in January, decided on family law as the first practice area in which to license LLLTs and expects to roll out the regulations by the end of the year and then to start accepting applications in 2014 and to begin licensing of LLLTs.

According to the attached summary of a recent survey from the ABA Standing Committee on Client Protection, 21 states permit some form of limited practice by non-lawyers. Only six, however, permit non-lawyers to prepare legal documents including California, Arizona, the District of Columbia, Florida, Maine and Missouri. Texas is the only state that makes an exception to the definition of the practice of law that explicitly permits the sale and distribution of self-help legal software, software-powered legal websites, self-help law books and other technologically-based alternatives to the delivery of legal services.

The growth of legal websites like LegalZoom and Rocket Lawyer and the burgeoning need for technical assistance on routine legal matters at low prices strongly suggest that this sort of licensure will be part of the future. Rather than wait to react to a bill that lands in the Oregon legislature authorizing the licensing of legal technicians, I favor a proactive approach in which we appoint a Task Force to study the developments throughout the country, make recommendations to the Oregon Supreme Court and develop our own legislative package if that is the consensus view of the Task Force and ultimately approved by the BOG. Attached are copies of the Washington Supreme Court's order and the summary of the ABA survey on UPL programs in the U.S.

Attachment

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THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW APR 28—LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

ORDER

NO. 25700-A-1005

The Practice of Law Board having recommended the adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, and the Court having considered the revised rule and comments submitted thereto, and having determined by majority that the rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That we adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the Practice of Law Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal to establish a limited form of legal practitioner. During this time, we have also witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

We commend the Practice of Law Board for reaching out to a wide spectrum of affected organizations and interests and for revising the rule to address meritorious concerns and suggestions. We also thank the many individuals and organizations whose suggestions to the language of the rule have improved it. The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training,

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financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to "clients" and to the public's interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They are, under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

I. The Rule

Consistent with GR 25 (the Supreme Court rule establishing the Practice of Law Board),[1] the rule[2] establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the "practice of law" (as defined by GR 24)[3] and which are currently subject to exclusive regulation and oversight by this Court. The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the

[1] http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr25
[2] http://www.wsba.org/Lawyers/groups/practiceoflaw/2006currentruledraftfinal3.doc
[3] http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24

consideration of proposals to allow non-attorneys to practice. As required by GR 25, the rule establishes certification requirements (age, education, experience, pro bono service, examination, etc.),[4] defines the specific types of activities that a limited license legal technician would be authorized to engage in,[5] the circumstances under which the limited license legal technician would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the limited license legal technician to perform),[6] a detailed list of prohibitions,[7] and continuing certification and financial responsibility requirements.[8]

In addition to the rule, we are today acting on the Practice of Law Board's proposal to establish a Limited License Legal Technician Board.[9] This Board will have responsibility for considering and making recommendations to the Supreme Court with respect to specific proposals for the authorization of limited license legal technicians to engage in some or all of the activities authorized under the Limited License Legal Technician Rule, and authority to oversee the activities of and discipline certified limited license legal technicians in the same way the Washington State Bar Association does with respect to attorneys. The Board is authorized to recommend that limited license legal technicians be authorized to engage in specific activities within the framework of – and limited to – those set forth in the rule itself. We reserve the responsibility to review and approve any proposal to authorize limited license legal technicians

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[4] Exhibit A to January 7, 2008 submission from the Practice of Law Board to the Supreme Court, Proposed APR 28(C) (*hereafter* Proposed APR 28).
[5] APR 28(D)
[6] APR 28(E)
[7] APR 28(F)
[8] APR 28(G) and (H)
[9] Exhibit B to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (*hereafter* Regulations)

to engage in specific activities within specific substantive areas of legal and law related practice, and our review is guided by the criteria outlined in GR 25.

Today we adopt that portion of the Practice of Law Board's proposal which authorizes limited license legal technicians who meet the education, application and other requirements of the rule be authorized to provide limited legal and law related services to members of the public as authorized by this rule.[10]

II. The Need for a Limited License Legal Technician Rule

Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well (defined as families with incomes between 200% and 400% of the Federal Poverty Level).[11] One example of the need for this rule is in the area of family relations which are governed by a myriad of statutes. Decisions relating to changes in family status (divorce, child residential placement, child support, etc.) fall within the exclusive province of our court system. Legal practice is required to conform to specific statewide and local procedures, and practitioners are required to use standard forms developed at both the statewide and local levels. Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.

Recognizing the difficulties that a ballooning population of unrepresented litigants has created, court managers, legal aid programs and others have embraced a range of strategies to

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[10] Exhibit E to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (Family Law Subcommittee Recommendation as adopted by the Full Practice of Law Board)

provide greater levels of assistance to these unrepresented litigants. Innovations include the establishment of courthouse facilitators in most counties, establishment of courthouse-based self-help resource centers in some counties, establishment of neighborhood legal clinics and other volunteer-based advice and consultation programs, and the creation of a statewide legal aid self-help website. As reflected most recently in a study conducted by the Washington Center for Court Research,[12] some of these innovations – most particularly the creation of courthouse facilitators – have provided some level of increased meaningful support for pro se litigants.

But there are significant limitations in these services and large gaps in the type of services for pro se litigants. Courthouse facilitators serve the courts, not individual litigants. They may not provide individualized legal advice to family law litigants. They are not subject to confidentiality requirements essential to the practitioner/client relationship. They are strictly limited to engaging in "basic services" defined by GR 27.[13] They have no specific educational/certification requirements, and often find themselves providing assistance to two sides in contested cases. Web-based self-help materials are useful to a point, but many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.

From the perspective of pro se litigants, the gap places many of these litigants at a substantial legal disadvantage and, for increasing numbers, forces them to seek help from unregulated, untrained, unsupervised "practitioners." We have a duty to ensure that the public

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[11] Washington Supreme Court Task Force on Civil Equal Justice Funding, *Civil Legal Needs Study* at 23 (fig. 1), http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf

[12] George, Thomas, Wang, Wei, Washington's Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases (Washington State Center for Court Research, March 2008) http://www.courts.wa.gov/wsccr/docs/Courthouse%20Facilitator%20Program.pdf#xml=http://206.194.185.202/texis/search/pdfhi.txt?query=center+for+court+research&pr=www&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=480afa0a11

[13] http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr27

can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.

III. Specific Concerns and Responses

A number of specific issues that have been raised both in support of and in opposition to this rule deserve additional discussion and response.

Proponents have suggested that the establishment and licensing of limited license legal technicians should be a primary strategy to close the Justice Gap for low and moderate income people with family related legal problems. While there will be some benefit to pro se litigants in need of limited levels of legal help, we must be careful not to create expectations that adoption of this rule is not intended to achieve.

By design, limited license legal technicians authorized to engage in discrete legal and law related activities will not be able to meet that portion of the public's need for help in family law matters that requires the provision of individualized legal representation in complex, contested family law matters. Such representation requires the informed professional assistance of attorneys who have met the educational and related requirements necessary to practice law in Washington. Limited purpose practitioners, no matter how well trained within a discrete subject matter, will not have the breadth of substantive legal knowledge or requisite practice skills to apply professional judgment in a manner that can be consistently counted upon to meet the public's need for competent and skilled legal representation in complex legal cases.

On the other hand, and depending upon how it is implemented, the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.

Some opposing the rule believe that limited licensing legal technicians to engage in certain family related legal and law related activities poses a threat to the practicing family law bar.

First, the basis of any regulatory scheme, including our exercise of the exclusive authority to determine who can practice law in this state and under what circumstances, must start and end with the public interest; and any regulatory scheme must be designed to ensure that those who provide legal and law related services have the education, knowledge, skills and abilities to do so. Protecting the monopoly status of attorneys in any practice area is not a legitimate objective.

It is important to observe that members of the family law bar provide high levels of public and pro bono service. In fact, it is fair to say that the demands of pro bono have fallen disproportionately on members of the family law bar. As pointed out in the comments to the Practice of Law Board's proposal, young lawyers and others have been working for years to develop strategies to provide reduced fee services to moderate income clients who cannot afford market-rate legal help. Over the past year, these efforts have been transformed into the Washington State Bar Association's newly established Moderate Means program,[14] an initiative which holds substantial promise to deliver greater access to legal representation for greater numbers of individuals between 200% and 400% of the federal poverty guideline being provided services at affordable rates.

In considering the impact that the limited licensing of legal technicians might have on the practicing family law bar it is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule. With

[14] http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program

limited exception,[15] few private attorneys make a living exclusively providing technical legal help to persons in simple family law matters. Most family law attorneys represent clients on matters that require extended levels of personalized legal counsel, advice and representation – including, where necessary, appearing in court – in cases that involve children and/or property.

Stand-alone limited license legal technicians are just what they are described to be – persons who have been trained and authorized to provide technical help (selecting and completing forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, identifying additional documents that may be needed, etc.) to clients with fairly simple legal law matters. Under the rule we adopt today, limited license legal technicians would not be able to represent clients in court or contact and negotiate with opposing parties on a client's behalf. For these reasons, the limited licensing of legal technicians is unlikely to have any appreciable impact on attorney practice.

The Practice of Law Board and other proponents argue that the limited licensing of legal technicians will provide a substantially more affordable product than that which is available from attorneys, and that this will make legal help more accessible to the public. Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner.

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a

[15] *See, e.g.*, the All Washington Legal Clinic (http://www.divorcelowcostwa.com)

market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.

That said, if market economies can be achieved, the public will have a source of relatively affordable technical legal help with uncomplicated legal matters. This may reduce some of the demand on our state's civil legal aid and pro bono systems and should lead to an increase in the quality and consistency of paperwork presented by pro se litigants.

Further, it may be that non-profit organizations that provide social services with a family law component (e.g., domestic violence shelters; pro bono programs; specialized legal aid programs) will elect to add limited license legal technicians onto their staffs. The cost would be much less than adding an attorney and could enable these programs to add a dimension to their services that will allow for the limited provision of individualized legal help on many cases – especially those involving domestic violence. Relationships might be extended with traditional legal aid programs or private pro bono attorneys so that there might be sufficient attorney supervision of the activities of the limited license legal technicians to enable them to engage in those activities for which "direct and active" attorney supervision is required under the rule.

Some have suggested that there is no need for this rule at all, and that the WSBA's Moderate Means Program will solve the problem that the limited licensing of legal technicians is intended to address. This is highly unlikely. First, there are large rural areas throughout the state where there are few attorneys. In these areas, many attorneys are barely able to scrape by. Doing reduced fee work through the Moderate Means program (like doing pro bono work) will not be a high priority.

Second, limited licensing of legal technicians *complements*, rather than competes with, the efforts WSBA is undertaking through the Moderate Means program. We know that there is a huge need for representation in contested cases where court appearances are required. We know

further that pro se litigants are at a decided disadvantage in such cases, especially when the adverse party is represented.[16] Limited license legal technicians are not permitted to provide this level of assistance; they are limited to performing mostly ministerial technical/legal functions. Given the spectrum of unmet legal needs out there, Moderate Means attorneys will be asked to focus their energy on providing the help that is needed most – representing low and moderate income people who cannot secure necessary representation in contested, often complex legal proceedings.

Opponents of the rule argue that the limited licensing of legal technicians presents a threat to clients and the public. To the contrary, the authorization to establish, regulate and oversee the limited practice of legal technicians within the framework of the rule adopted today will serve the public interest and protect the public. The threat of consumer abuse already exists and is, unfortunately, widespread. There are far too many unlicensed, unregulated and unscrupulous "practitioners" preying on those who need legal help but cannot afford an attorney. Establishing a rule for the application, regulation, oversight and discipline of non-attorney practitioners establishes a regulatory framework that reduces the risk that members of the public will fall victim to those who are currently filling the gap in affordable legal services.

Unlike those operating in the unregulated marketplace, limited license legal technicians will practice within a carefully crafted regulatory framework that incorporates a range of safeguards necessary to protect the public. The educational requirements are rigorous. Unlike attorneys, legal technicians are required to demonstrate financial responsibility in ways established by the Board. There is a testing requirement to demonstrate professional competency

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[16] *See, e.g., In re the Marriage of King*, 162 Wn.2d 378, 404-411 (2007) (Madsen, J., dissenting).

to practice, contracting and disclosure requirements are significant, and there will be a robust oversight and disciplinary process. This rule protects the public.

Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen. GR 25 requires that any recommendation to authorize the limited practice of law by non-attorneys demonstrate that "[t]he costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime." The Practice of Law Board's rule expressly provides that the ongoing cost of regulation will be borne by the limited license legal technicians themselves, and will be collected through licensing and examination fees. Experience with the Limited Practice Board demonstrates that a self-sustaining system of regulation can be created and sustained. The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership.

IV. Conclusion

Today's adoption of APR 28 is a good start. The licensing of limited license legal technicians will not close the Justice Gap identified in the 2003 Civil Legal Needs Study. Nor will it solve the access to justice crisis for moderate income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law related services to members of the public in need of individualized legal assistance with non-complex legal problems.

The Limited License Legal Technician Rule is thoughtful and measured. It offers ample protection for members of the public who will purchase or receive services from limited license legal technicians. It offers a sound opportunity to determine whether and, if so, to what degree

the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in ways that serve the justice system and protect the public.

IT IS FURTHER ORDERED:

(1) That a new rule, APR 28, as attached hereto is adopted.

(2) That the new rule will be published in the Washington Reports and will become effective September 1, 2012.

DATED at Olympia, Washington this 15th day of June, 2012.

Madsen, C. J.

Chambers J.

Stephens, J.

Wiggins J.

González, J.

New Admission to Practice Rule 28: Limited Practice Rule for
Limited License Legal Technicians

A) **Purpose.** The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribes the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B) **Definitions.** For purposes of this rule, the following definitions will apply:

1) "APR" means the Supreme Court's Admission to Practice Rules.

2) "Board" when used alone means the Limited License Legal Technician Board.

3) "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.

4) "Limited License Legal Technician" means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

5) "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.

6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.

7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.

8) "Supervised" means a lawyer personally directs, approves and has responsibility

for work performed by the Limited License Legal Technician.

9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:

a) "May" means "has discretion to," "has a right to," or "is permitted to".
b) "Must" or "shall" mean "is required to.
c) "Should" means recommended but not required.

C) **Limited License Legal Technician Board.**

1) *Establishment.* There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

2) *Board Responsibilities.* The Board shall be responsible for the following:

(a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

(b) Processing applications and fees, and screening applicants;

(c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;

(d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;

(e) Approving education and experience requirements for licensure in approved practice areas;

(f) Establishing and over-seeing committees and tenure of members;

(g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme

Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

3) *Rules and Regulations*. The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;

(b) Establish trust account requirements and procedures;

(c) Establish rules of professional and ethical conduct; and

(d) Implement the other provisions of this rule.

D) **Requirements for Applicants**. An applicant for licensure as a Limited License Legal Technician shall:

1) *Age*. Be at least 18 years of age.

2) *Moral Character and Fitness to Practice*. Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

3) *Education and Experience*. Have the following education and experience:

a) (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

(ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

4) *Application*. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application-may be grounds for denial of the application.

5) *Examination Fee*. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E) **Licensing Requirements**. In order to be licensed as a Limited License Legal Technician, all applicants must:

1) *Examination*. Take and pass the examinations required under these rules;

2) *Annual License Fee*. Pay the annual license fee;

3) *Financial Responsibility*. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F) **Scope of Practice Authorized by Limited Practice Rule**. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. It if is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

1) Obtain relevant facts, and explain the relevancy of such information to the client;

2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

5) Review documents or exhibits that the client has received from the opposing

side, and explain them to the client;

6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

7) Perform legal research and draft legal letters and ~~pleadings~~ documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G) **Conditions Under Which A Limited License Legal Technician May Provide Services.**

1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;

2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:

   (a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

   (b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the ~~face~~ first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client ~~requires~~ should seek the services of a lawyer.

5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.

H) **Prohibited Acts**. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

2) Retain any fees or costs for services not performed;

3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; ~~or~~

4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized

by the license held by the Limited License Legal Technician;

5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b).

7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.

8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I) **Continuing Licensing Requirements.**

1) *Continuing Education Requirements*. Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.

2) *Financial Responsibility*. Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

3) *Annual Fee*. Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J) **Existing Law Unchanged**. This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K) **Professional Responsibility and Limited License Legal Technician-Client Relationship**.

1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

2) Limited License Legal Technicians shall be held to the ethical standards of the

Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW APR 28—LIMITED PRACTICE RULE FOR LEGAL TECHNICIANS AND NEW APR 28—NON-LAWYER PRACTICE COMMISSION REGULATIONS 1-7	)	No. 25700-A- DISSENT TO ORDER

OWENS, J. (dissenting)—During my years on the Washington Supreme Court, I have not once authored a dissent to an administrative order of this court. I depart from that custom today because I have very strong feelings that our court's decision to adopt the new Admission to Practice Rule, APR 28, is ill-considered, incorrect, and most of all extremely unfair to the members of the Washington State Bar Association (WSBA).

Let me quickly add that by expressing disagreement with the court's approval of this new rule, I am not suggesting that the legal needs of all persons in this state are currently being met. Like my judicial colleagues, I know that there is a great unmet need for legal services and we in the judiciary and the legal profession have an obligation to look for appropriate ways to expand the availability of legal assistance to the public.

My opposition to the board's work product should, therefore, not be considered disagreement with the goal the Practice of Law Board was seeking to achieve—expanding the availability of legal services to individuals who are confronted with legal problems. Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA. Assuming our court has the inherent

authority to create this new profession of legal technicians, I do not believe that we possess the authority to tax the lawyers of this state to pay "all of the expenses reasonably and necessarily incurred" by the Non-Lawyer Practice Commission, a body which comes into being pursuant to the rule and regulations. *See* Regulation 3(G). Pertinent to this point, I note that it is generally acknowledged that it will likely cost several hundred thousand dollars to set up the commission that will oversee this new profession of legal technicians. We have not been informed that the WSBA presently has sufficient money within its treasury to underwrite this considerable expense and I have significant doubts that it has an abundance of cash on hand. In fact, in light of the dues rollback, the opposite is true. Although I recognize that this court's order delays implementation of the new rule until January 1, 2013, I think it is unrealistic to assume that the WSBA will realize any large windfall of funds in 2013. Consequently, the only way the WSBA will be able to fulfill the considerable financial obligation this court has imposed upon it is to either reduce the amount it budgets for the programs and services it presently supports or increase the yearly dues of its members. Either way you look at it, this court is imposing a tax on lawyers.

The APR 28 regulations suggest that the APR 28 program will eventually support itself through certification fees. In that regard, we have been advised that something in the order of $200,000 may eventually be generated by these fees. In this day and age, $200,000 does not go very far and it is hard for me to see how this APR 28 program with its testing, certification, continuing education, and discipline provisions can be accommodated with a yearly budget of that amount. The hoped for self-sufficiency of the program will, in my view, depend to a large extent on the numbers of persons

achieving legal technician status under the rule. Although this court was earlier led to believe that initially there would be certification of legal technicians only in family law matters, the rule and regulations this court has approved provide the Practice of Law Board with unbridled discretion to recommend to the Supreme Court the areas, within the full range of practice areas encompassed by the GR 24 definition of the practice of law, in which legal technicians can practice.[1] I sense that the Practice of Law Board realized that there is uncertainty about whether the certification fees will produce sufficient funds to underwrite the annual cost of the legal technician program and, thus, provided that funding for the commission will be generated by certification fees "as well as commitments from the WSBA." Regulation 3(G).[2]

The unfairness of imposing what seems beyond doubt a significant obligation on the lawyers of this state is made all the more manifest by the fact that in recent years, the WSBA has undertaken, with the encouragement of this court, a number of efforts designed to address the very problems the new APR 28 purports to mitigate. I am speaking of (1) increased encouragement for Washington lawyers to provide pro-bono service and the provision of free and low cost training for lawyers who wish to provide such service; (2) the highly successful home foreclosure legal aid project, which helps low and moderate income persons deal with the threat of home foreclosure; (3) a major

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[1]The court's order contains a statement that "we adopt the portion of the Practice of Law Board's proposal which authorizes legal technicians . . . to provide limited legal and law related services to members of the public in certain defined family law related areas. It is noteworthy that the proposed rule, APR 28, and regulations do not contain the words "family law."

[2]The court's order expresses confidence that the fee based system will be "cost neutral." Perhaps it will be self-sufficient someday, but this conclusion does not address the significant start up costs which the court order requires the WSBA to pay.

one-time contribution by the WSBA of cash to the Legal Foundation of Washington in order to offset the impact of reduced Interest on Lawyers Trust Accounts revenues coming to the foundation, a contribution which leveraged a $3 million donation from the Gates Foundation to the Legal Foundation of Washington; (4) the statewide moderate means program, which is designed to assist individuals who need the assistance of a lawyer to obtain those services at a reduced cost; and (5) a check off on the annual license fee for lawyers, suggesting an annual contribution of at least $50 by lawyers to the Campaign for Equal Justice to help ensure equal access to justice for all Washingtonians regardless of financial standing.

The WSBA is not required to undertake any of the aforementioned initiatives but it has done so voluntarily with great zeal and enthusiasm endeavoring to address the public's legal needs. Furthermore, all of this was done at great expense to the WSBA. Indeed the WSBA's contribution of $1.5 million to the Legal Foundation of Washington in 2009 was a truly heroic gesture but one which made a major dent in the cash reserves the WSBA had built up over the years. Whether the obligation this court is now imposing on the WSBA will result in eliminating or curtailing any of these programs and initiatives, no one knows for certain. If, however, that is the result of our action, it would be a sad day for the WSBA and the many persons positively affected by the bar's considerable efforts.

Finally, I wish to observe that an impartial observer might wonder why the Supreme Court does not assume responsibility for funding implementation of APR 28. After all, the fact that the legal needs of the public are not being met is a problem that affects the entire community, not just a segment of our state's population like its

attorneys at law. Such a question would not be farfetched because in a number of states the expense associated with the admission and disciplining of lawyers is subsumed within the budget of the highest court in those states. I suspect, though, that if this court had been asked to assume financial responsibility for establishing and administering this major program for certification of legal technicians, with the vague promise that the program may someday be self-supporting, we would have concluded that we presently do not have sufficient funds within our budget with which to undertake this responsibility. Is it fair or equitable for this court to eschew assuming financial responsibility for the program in this time of economic distress, and instead impose the obligation on all of the state's lawyers, many of whom are feeling adverse affects of the current downturn of the economy? I say no. Because the majority by its order says yes, I dissent from the order.

DATED at Olympia, Washington this 14th day of June 2012.

OWENS, J.

I concur in result only.
Fairhurst, J.

http://www.elawyeringredux.com/2012/05/articles/unauthorized-practice-of-law/upl-and-legal-document-preparation-by-nonlawyer-providers/

UPL and Legal Document Preparation by Non-Lawyer Providers

Posted on May 25, 2012 by Richard Granat

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The ABA Standing Committee on Client Protection just released a survey it conducted on unlicensed practice of law programs (UPL) in United States jurisdictions in 2011-12.

Only 29 jurisdictions responded to the survey. Twenty-three of the 29 actively enforce UPL regulations, although some jurisdictions indicate that insufficient funding or resources make enforcement challenging. Nine jurisdictions stated that enforcement is inactive or non-existent.

Of the jurisdictions reporting, 21 states permit some form of limited practice by non-lawyers. Here is the summary from the report:

Twenty-one jurisdictions authorize nonlawyers to perform some legal services in limited areas. Sixteen permit legal assistants, legal technicians or paralegals to perform some legal services under the supervision of a lawyer; six jurisdictions permit nonlawyers to draft legal documents. Other allowable nonlawyer activities include: real estate agents/brokers may draft documents for property transactions or attend real estate closings; nonlawyers may attend (and in some states participate in) administrative proceedings; and participate in alternative dispute resolution proceedings. Many of these jurisdictions do not classify these activities as the practice of law.

There are only six jurisdictions in the US that permit nonlawyers to **prepare legal documents**, (without providing legal advice). These jurisdictions are California, Arizona, the District of Columbia, Florida, Maine, and Missouri. In these jurisdictions the "nonlawyers" are referred to as - "Legal Document Preparers" or "Legal Technicians".

[Download Entire Report Here].

Only one jurisdiction that we know of, the State of Texas, makes an exception to the definition of the practice of law, and explicitly permits the sale and distribution of self-help legal software, software-powered legal web sites, self-help law books, and other technologically-based alternatives to the delivery of legal services.

It's no wonder that LegalZoom is required to state in its S-1 filing to go public - that violation of UPL statutes in many states is a major risk factor for its business:

"Our business model includes the provision of services that represent an alternative to traditional legal services, which subjects us to allegations of UPL. UPL generally refers to an entity or person giving legal advice who is not licensed to practice law. However, laws and regulations defining UPL, and the governing bodies that enforce UPL rules, differ among the various jurisdictions in which we operate. We are unable to acquire a license to practice law in the United States, or employ, or employ licensed attorneys to provide legal advice to our customers, because we do not meet the regulatory environment of being exclusively owned by licensed attorneys. We are also subject to laws and regulations that govern business transactions between attorneys and non-attorneys, including those related to the ethics of attorney fee-splitting and the corporate practice of law."

Some Observations

- Some entity, such as the US Legal Services Corporation whose goal is to expand access to justice for all, or an independent or university-based research organization, should undertake empirical research which analyzes whether non-lawyer practices actually cause harm to consumers within the states that permit nonlawyer document preparation. Research should also be done on the impact that nonlawyer legal form web sites have on the consumer in terms of benefits and potential harm. Empirical research in England by the Legal Services Consumer Board on the issue of whether will writing by non-lawyers causes harm, concluded that it did. This resulted in making will drafting and will writing a reserved area under the new UK legal profession deregulation scheme.
- We need more empirical research like the UK Study to inform public policy making in this area. Perhaps if LegalZoom is successful with its public underwriting it could subsidize or contribute to such a study, as it would certainly be in their interest to do so!
- Research should be conducted in those states that permit nonlawyer document preparers to evaluate whether more consumers have access to the legal system and at a lower cost by using nonlawyer document preparers, rather than attorneys. This data would inform public policy with facts, instead of generalized theories that it is necessary to limit legal document preparation services to licensed attorneys in the interest of "protecting" the public from harm.
- Legal document preparation software is getting smarter -- more intelligent-- Web-enabled document automation applications can now generate documents that really do reflect a person's individual circumstances. These applications are getting smarter and the intelligent templates easier to build. Other than in Texas, there is an issue as to whether legal software, standing alone, constitutes the unauthorized practice of law, despite disclaimers to the contrary.

  State Bar UPL Committees should consider adopting the Texas UPL exception to avoid charges of monopolistic behavior, to gain the confidence of the public that the organized Bar is really interested in expanding access to the legal system through the use of technology, and to encourage innovation in the delivery of legal services. [**Disclosure**: We operate an intelligent legal forms software company].

It would be interesting to see whether legal fees are also lower in jurisdictions which have competition from nonlawyer document preparers as these authors claim.

MEMORANDUM

To: **OSB Board of Governors**

From: **Michael E. Haglund, President**

Re: **Proposed Task Force to Address Challenges of Globalization and Cross-Border Legal Practice**

Date: **April 24, 2013**

As of 2010, Oregon ranked 22nd in the United States in foreign exports with $17.6 billion in goods and services. With our location on the Pacific Rim, Oregon businesses and their lawyers are regularly involved in international trade and dealings with foreign lawyers. Currently, Oregon has no regulatory regime addressing the issues arising from globalization, cross-border practice and lawyer mobility. The State Bar of Georgia and the Georgia Supreme Court have adopted what appear to be fairly progressive and forward-looking regulations in this area. Attached is a recent memorandum from the ABA Task Force on International Trade and Legal Services that describes the Georgia experience and the practical steps to following a similar process here in Oregon.

Based upon what appears to be the sound reasoning in the ABA memo, I recommend that the Board of Governors appoint a Task Force on International Trade in Legal Services. It would consist of 15 to 20 members including a mix of lawyers from multistate firms, mid-size and small firms (including a number of solo practitioners), rural areas and corporate legal departments. We should consider having a lawyer from our general counsel's office as a staff liaison to the Task Force.

I also recommend that we consider adopting the following mission statement, which is modeled after that utilized in Georgia:

> This Task Force shall monitor the impact of international developments on the legal profession, including, but not limited to the effect of, the General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), other free trade agreements having an impact on delivery of legal services, changes in the regulation of the legal profession in foreign countries that may have local impact, and all other events affecting the delivery of legal services across international borders. It shall consider these matters from both the perspective of outbound legal services delivered in foreign countries by member lawyers and inbound delivery of legal services in this state by foreign lawyers. The Task Force shall also consider any international issues as requested by, and make reports and recommendations concerning its activities to, the Board of Governors.

Attachment

Task Force on International
Trade in Legal Services
AMERICAN BAR ASSOCIATION
740 Fifteenth Street, NW
Washington, DC 20005

Defending Liberty
Pursuing Justice

International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience[1]

American Bar Association Task Force on International Trade in Legal Services
February 4, 2012

"From Main Street to Wall Street, lawyers of every practice area, every size of firm, and every jurisdiction are affected by globalization. It may involve a dispute between a foreign supplier and a local grocery store; it may be a testator's ownership of foreign real estate; it may be a company's efforts to sell its products in an emerging market like China. The list could go on and on, but the message is clear: this is not the legal profession we inherited from our parents."[2]

I. INTRODUCTION

This white paper recounts the experience of the State Bar of Georgia and the Georgia Supreme Court in adopting a regulatory regime to confront issues arising from globalization, cross-border practice and lawyer mobility. Georgia has assumed a leadership position in adopting rules that specifically address and regulate some of the various means by which lawyers from foreign countries may seek to perform services in that state. The Georgia experience provides lessons on how other state bars can generate a consensus to move forward on these issues.

II. WHAT PROMPTED GEORGIA TO ACT?

The Georgia experience is explained by the recognition across a broad cross-section of the bar that Georgia clients (and their Georgia lawyers) had business dealings across the globe. State Bar regulators thought it sensible to consider these developments before a regulatory crisis occurred, not after the fact. They wanted to consider proactively what regulations, if any, were necessary to protect the public (and also position the state to preempt potentially more intrusive national-level regulation at some point down the road). They also recognized that a sound regulatory system that addresses the challenges posed by globalization can enhance the state's business climate and attractiveness for foreign trade and investment.

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[1] Unless otherwise indicated, the views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

[2] Gary A. Munneke, *Managing and Marketing a Practice in a Globalized Marketplace for Professional Services*, 80 N.Y. ST. B. J. 39 (Sept. 2008).

A. Background: "Clients Travel and Lawyers Follow those Clients."

Notwithstanding our current economic issues, the United States continues to be the world's largest national economy, both in terms of nominal gross domestic product (GDP) and purchasing power parity. The United States' economy represents approximately one-quarter of the former and one-fifth of the latter. It is also the largest trading nation in the world. Forty nine states and the District of Columbia have foreign exports in the billions. In the month of September 2011 alone, the United States exported approximately $180 billion in goods.

This magnitude of cross-border commerce inevitably involves significant interaction with lawyers admitted outside the United States. Much of that interaction occurs long-distance via telephone, email, courier service and travel by U.S. lawyers abroad. Indeed, according to 2009 data (which are the most recent available), the United States exports approximately $7.3 billion in legal services annually, and these exports contribute to a reduction in our trade deficit by approximately $5.5 billion.[3] Likewise, albeit to a much lesser extent, foreign lawyers also travel to the United States and increasingly have a physical and virtual presence in this country. Whether one sees the presence of foreign lawyers as a positive or a negative, it is a reality, and wherever global commerce is most robust, the number of visiting foreign lawyers will increase.

Like every other jurisdiction in the United States, Georgia is enmeshed with the global economy. Over 3600 foreign businesses from more than 60 countries have established operations in Georgia, including the U.S. headquarters of such notable names as Porsche Cars North America, Siemens, ING Americas, Philips Consumer Electronics, Ciba Vision, Intercontinental Hotels Group, Novelis, Munich Re and Mizuno. These companies directly employ approximately 194,000 Georgians and, by virtue of the ripple effect, indirectly generate jobs for many thousands more. Indeed, according to the Metro Atlanta Chamber of Commerce, foreign companies accounted for 20% of the metro area's new business activity in the last decade. Georgia's annual exports exceed $29 billion, and the port of Savannah is the nation's fastest growing and fourth largest container port. The state actively recruits foreign international business, with the Georgia Department of Economic Development maintaining international offices in Brazil, Canada, Chile, China, Germany, Japan, Korea, Mexico, Israel, and the United Kingdom. At least 66 countries are represented in Atlanta by a consulate, trade office or bi-national chamber of commerce.

Lawyers are in the middle of all this activity, creating both regulatory challenges and economic opportunities. As observed by one legal commentator, "[c]lients travel, lawyers follow those clients, and this has an impact on legal practice and legal regulation."[4]

B. An Alignment of Interests Between Regulators and Practitioners

Georgia was fortunate to have forward-thinking judges and bar leaders willing to tackle the issues arising from cross-border practice and lawyer mobility, as well as private practitioners willing to actively engage with them. The latter were Georgia lawyers who had observed cross-border mobility issues arise in their practices. Some of those issues were "outbound," when representing Georgia companies abroad. But there were also "inbound" issues: foreign lawyers

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[3] U.S. Int'l Trade Commission, *2011 Annual Report on Trends Tends in U.S. Services Trade*, Pub. 424, at 7-13 (Jul. 2011).

[4] Laurel S. Terry, *Foreword, 2008 Global Legal Practice Symposium*, 27 PENN ST. INT'L L. REV. 269, 272 (2008).

flying into (and promptly back out of) Georgia to negotiate deals or assist their clients with arbitrations seated in Georgia, foreign lawyers seeking to provide advice in Georgia on the laws of their home jurisdictions (but not Georgia law), Georgia-based multinational companies and foreign-invested companies seeking to employ foreign lawyers as in-house counsel to advise them on issues arising in connection with their global operations, and talented foreign lawyers seeking guidance on becoming qualified to practice law in Georgia and work with Georgia law firms. Georgia lawyers and their firms saw an opportunity to make their state a more attractive environment for international business by addressing these issues head-on.

At the State Bar, there was a strong sentiment that any foreign lawyers present in Georgia should be subject to the state's regulatory systems. The regulators also saw regulatory gaps that needed to be filled.

They also recognized that many of the international trade agreements to which the United States is a party[5] including the General Agreement on Trade in Services (GATS),[6] contemplate increased scrutiny of restrictive regulations applied to providers of professional services. The agreement texts may pose serious challenges for the bodies charged with supervision and regulation of legal professionals worldwide.[7] For instance, the GATS has obligated all World Trade Organization (WTO) member states, including the United States, to avoid regulation of professional services providers "more burdensome than necessary to ensure the quality of the service."[8] However, because no national regulatory regime of lawyer regulation now exists in the United States, this obligation is implemented at the state level. The application of these agreements to the offer and performance of legal services by foreign lawyers has proven to be challenging in this country because no national regulatory regime exists. Although the federal government could conceivably assert its treaty power to require state conformity to GATS rules,[9] there is no political will to attempt such pre-emption at this time.

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[5] The United States is currently party to free trade agreements with Australia, Bahrain, Chile, Columbia, Israel, Jordan, Korea, Morocco, Oman, Panama, Peru and Singapore, as well as the North American Free Trade Agreement (NAFTA), and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR. *See* http://www.ustr.gov/trade-agreements/free-trade-agreements. The NAFTA stipulates that the measures adopted or maintained by a party relating to cross-border trade in services of another Party should be given treatment not less favorable than its own service providers. North American Trade Agreement, Chapter 12, Part Five. (*See* http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpiID=143#A1202).

[6] The General Agreement on Trade in Services (GATS) is an addition to the agreement that created the World Trade Organization (WTO) and applies to cross-border services. The United States, including forty-four other countries, placed legal services on their Schedule of Specific Commitments in 1994, and therefore obligated themselves to further liberalize trade in services and reduce or eliminate existing limitations on market access or national treatment for those services to ensure domestic regulation measures do not create unnecessary barriers to trade. *See* Laurel Terry et al., *Transnational Legal Practice*, 42 INT'L LAWYER 833-61 (2008).

[7] The trade agreements are directed to government action. But for limited areas, that means actions of the federal government. No agreements give foreign lawyers a private right of action against state bar regulators. Nevertheless, some foreign lawyers and officials have suggested existing "American" lawyer regulations are violative of these trade agreements and they may seek to address the violation through the dispute settlement provisions of the agreements or the WTO. To the extent that a state's current rules do not recognize the reality of globalization or the legitimate need for clients and the public to have access to foreign lawyers and the rights of foreign lawyers from our trading partners to offer their services here, the state rules, are vulnerable to the complaints that they are inconsistent with the spirit, if not the text, of our trade agreements.

[8] GATS Art. VI, §4.(b).

[9] *Missouri v. Holland*, 252 U.S. 416 (1920).

Nevertheless, critics of the state-based regulatory system claim "[t]here is no question that, in the long run, the American profession will be more and more at a competitive disadvantage answering clients' global and international needs because of the Byzantine patchwork of regulations locally ... The solution is to replace our existing regulatory patchwork with a single national regulator and uniform rules of professional conduct."[10] This is already occurring in other countries with a federal system of government. For instance, the legal profession in Australia was traditionally regulated at the local level, but is now moving to a system of national regulation.[11] (It bears emphasizing that this is *not* the policy or view of the ABA, which is committed to the proven virtues of state-based judicial regulation). The State Bar of Georgia was determined to demonstrate that the critics of state-based regulation were wrong by taking steps to proactively address the regulatory issues arising from globalization, including the consideration of rules that govern the appropriate realm and conditions of practice by foreign lawyers.

We will turn to how Georgia organized a constituency to effect change later in this white paper, but first it is helpful to briefly examine how globalization is affecting your own state.

III. Globalization and Your State

Georgia's experience is not unique. Globalization – for better or worse – is a fact of life in *every* state in the U.S. Exports are now a vital part of every state's economy. The enclosed **Appendix B** shows where each state was ranked in 2010 in terms of exports. As reflected in this Appendix, virtually every state in the U.S. exported more than $1 billion of goods in 2010. Indeed, each state received even more money from exports than indicated in the enclosed chart because it focuses only on exports of goods and does not include services. We know that the U.S. exports more services than goods, but unfortunately, we do not have state-by-state figures that measure these services exports. Nor do these charts address the significant foreign investment activity in each state or matters involving our immigrant population.

There are many citizens in every state who are doing business with individuals and companies in other countries. Some of your citizens who are exporting goods and services are undoubtedly large corporations. But most of the exporting companies in your state will be mid-size and small businesses, which are the backbone of the U.S. economy.

In short, many clients in your state are going to need the services of foreign lawyers, and many lawyers licensed in your state will have occasions where, in the course of serving their clients, they will need to work with a foreign lawyer. One cannot assume that if a state has no policies on foreign lawyers, foreign lawyers will not come into that state. It is better for each state to consider the issues and adopt a policy so that foreign lawyers and their clients know what to expect and to ensure a system of accountability.

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[10] Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, ABA J. 34, 39 (Nov. 2011) (quoting a New York practitioner).

[11] *See* Department of Attorney General and Justice, New South Wales, Australia, *National Legal Profession Reform – Background Information*, http://www.ipc.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/lpr_background_info.

IV. The "Foreign Lawyer Cluster"

There are at least five different ways in which foreign lawyers might physically want to practice in your state.[12] They are as follows:

1. **Temporary Transactional Practice** (sometimes known as "fly in-fly out" or FIFO): An example of FIFO practice would be an instance in which a foreign lawyer flies into your state for negotiations to buy products or services from one of the companies operating in your state, but without establishing a systematic or continuous presence in your state or holding themselves out as being admitted to practice in your state.

2. **Foreign-licensed In-House Counsel**: A client might want to bring one of its in-house counsel lawyers who is not licensed in a U.S. jurisdiction to the U.S. for a rotation, or perhaps a more extended stay, or simply for a single matter. For example, a company with extensive overseas sales might seek to have foreign lawyers on staff to ensure compliance with laws in their customers' jurisdictions, or to protect its intellectual property, or simply to aid in communicating with counsel for prospective clients abroad.

3. **Permanent Practice as Foreign Legal Consultant:** A foreign lawyer might seek to practice in the U.S. as a foreign legal consultant (FLC). This individual would not (indeed could not) provide advice on the law of any U.S. jurisdiction (except on the basis of advice from a member of your state bar); or hold themselves out as a fully-licensed member of your bar. Rather, an FLC is entitled only to render legal advice regarding matters which are governed by international or non-U.S. law.[13] Indeed, a law firm in your state might want to have an FLC among its lawyers. That way, clients in your state would not have to travel to a foreign country or pay a foreign lawyer to come to the U.S. in order to learn about their rights and obligations under foreign law.

4. **Temporary In-Court Appearance – i.e., *Pro Hac Vice* Admission:** A client might want its foreign-licensed counsel to appear as co-counsel in a case using the *pro hac vice* process. Such instances will be rare, but when they arise, they may be critical to a foreign company doing (or considering doing) business in your state. Examples may involve the enforcement of a foreign judgment or arbitral award or a dispute that turns on a point of foreign law incorporated into the parties' contract. Of course, the foreign lawyer would have to associate with a member of the local bar and otherwise meet the requirements of *pro hac vice* admission.

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[12] This white paper focuses only on the ways in which persons offering or providing legal services while physically present in a state for any length of time can be identified and subjected to appropriate regulation. It does not seek to address what is perhaps an even larger and more difficult issue, namely, monitoring and regulating the provision of legal services without physical presence. In today's "wired" world, it is likely that most cross-border legal services are performed through what are described as "Mode 1" under the GATS. Described from a U.S. perspective, GATS Mode 1 deals with legal products (such as a faxed or emailed legal opinion) inbound to the U.S. that crosses an international border.

[13] Thirty-two jurisdictions in the United States provide for FLCs. Most allow FLCs to give advice on the law of the country in which he or she is licensed; however, ten jurisdictions – including Georgia – allow FLCs to provide legal advice regarding third-country law and international law, in addition to the law of the country in which they are licensed. *See* Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379 387-89 (2011).

5. **Full Licensure as a U.S. Lawyer:** Some foreign lawyers want the ability to become fully-licensed U.S. lawyers. Although California and New York have, by far, the most foreign lawyers who apply for admission and sit for a bar exam, more than 25 states annually have at least one foreign applicant, and often more, sit for a bar examination (and the identity of the states varies). The total number of persons educated outside the United States who applied to take a bar exam in all U.S. jurisdictions other than California and New York increased from about 100 per year -- an average of 111 applicants -- from 1992 through 1995, to 255 applicants per year from 2005 through 2007.[14] It is very time-consuming for states to consider such applications on an ad hoc basis, and thus it is useful for a state to develop policies establishing the conditions under which it would allow a foreign-trained applicant to sit for a bar examination.

The foregoing list is sometimes described as the "foreign lawyer cluster." The ABA has developed model rules on Items 1 and 3 above and is developing proposals on Items 2, 4, and 5.[15] Four of the five elements in the foreign lawyer cluster are in place in Georgia. The fifth -- Foreign Licensed In-House Counsel -- is covered by proposed rules approved by the State Bar's Board of Governors and presently pending before the Georgia Supreme Court.[16] Other states have policies on some, but not all of these issues.[17]

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[14] *Id.* at 392.

[15] The ABA Commission on Ethics 20/20 has been studying the impact of technology and globalization on professional conduct rules for lawyers in the United States. The Commission has already disseminated several draft recommendations relating to foreign lawyers that would: (1) extend the ABA Model Rule for Registration of In-House Counsel (which is separate from the Model Rules of Professional Conduct) to lawyers from foreign countries as well as other U.S. jurisdictions; (2) extend the ABA Model Rule on Pro Hac Vice Admission to lawyers from foreign jurisdictions; and (3) revise Rule 5.5 of the Model Rules of Professional Conduct to allow foreign lawyers to engage in temporary practice in U.S. jurisdictions, but with tighter restrictions than apply to lawyers licensed in other U.S. jurisdictions. *See* Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379, 380 (2011); Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, ABA J. 34, 39 (Nov. 2011). The ABA has also issued a Formal Ethics Opinion indicating that it is not a violation of Model Rule of Professional Conduct 5.4 for a U.S. lawyer to be a partner with, or share legal fees with, a lawyer licensed in a non-U.S. jurisdiction. *See* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 01-423 (2001) ("Forming Partnerships with Foreign Lawyers").

[16] On foreign legal consultants, see Supreme Court of Georgia, Rules Governing Admission to the Practice of Law, Part E, Section 1 – 7 (http://www.gabaradmissions.org/pdf/admissionrules.pdf). With respect to admission of foreign lawyers to practice, see State of Georgia Board of Bar Examiners, Board to Determine Fitness of Bar Applicants, *Waiver Process & Policy Admission to Practice* (http://www.gabaradmissions.org/pdf/waiverprocess.pdf). On *pro hac vice* admission of foreign lawyers, see Uniform Rules, Superior Courts of the State of Georgia, Rule 4.4 (http://georgiacourts.gov/files/UNIFORM%20SUPERIOR%20COURT%20RULES_Updated_09_29_11(1).pdf). On temporary practice, see Georgia Rules of Professional Conduct, Rule 5.5(e) (http://www.gabar.org/handbook/part_iv_after_january_1_2001_-_georgia_rules_of_professional_conduct/rule_55_unauthorized_practice_of_law_multijurisdictional_practice_of_law/). A rule authorizing foreign-licensed in-house counsel has been approved by the Georgia State Bar's Board of Governors and awaits approval by the Georgia Supreme Court.

[17] *See* Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379, 399 (2011) (noting that "[k]ey reforms that at this point are gaining traction include the following: allowing lawyers licensed outside the United States to qualify for limited licenses as in-house counsel; broadening the scope of practice so that all foreign legal consultants are allowed to give legal advice related to third-country and international law; and allowing fly in, fly out practice while temporarily present in the host state").

V. THE GEORGIA EXPERIENCE

The American Bar Association has long had policies in place to address the regulatory issues that arise from globalization and continues to adapt those policies to address the challenges of the 21st century.[18] Nevertheless, as often said, "all politics are local." Only the state supreme courts and state bars can effect change by adopting those policies (or adapting them to the needs of their own jurisdiction). As a practical matter, having a local constituency of practicing lawyers, law firm leaders, in-house counsel, and regulators to monitor developments and, where appropriate, advocate for change, is the most effective way to make it happen. Because the steps below worked well for Georgia, you might want to consider using a similar process in your state to address the impact of globalization and issues related to regulation of foreign lawyers.

Step 1 – Establishing a Supervisory Committee

In Georgia, the process began with the creation of a committee specially tasked with conducting a review and evaluation of the existing regulatory system for foreign lawyers. The makeup of this committee is critical. It must consist not only of lawyers from large multinational or multistate law firms who are routinely engaged in international business transactions and disputes, but also practitioners who might not be regularly involved in cross-border legal practice. They should all be interested in international matters and the world at large, however. Every segment of the State Bar that might have concerns about any proposed changes should be represented in order to give the ultimate product legitimacy.

In Georgia, this Committee is called "The Committee on International Trade in Legal Services" (ITLS). It consists of twenty members – a mix of lawyers from multistate firms, mid-size local firms, small firms (including a number of solo practices), non-urban areas, and corporate legal departments.[19] Many past members of the committee remain active in a non-voting capacity as "advisors." The State Bar's Ethics Counsel serves as a staff liaison to the ITLS Committee, and a member of the State Bar's Executive Committee serves as a direct liaison to the State Bar's leadership.

Step 2 – Considering the Mission

The Committee should have a clear mission. For instance, the Georgia ITLS Committee has the following mission statement:

> This special committee shall monitor the impact of international developments on the legal profession, including, but not be limited to the effect of, the General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), other free trade agreements having an impact on delivery of legal services, changes

[18] The American Bar Association has urged states to adopt rules allowing foreign lawyers to practice as foreign legal consultants (FLCs) without taking a U.S. qualification examination as well as allowing foreign lawyers to engage in temporary practice based on terms similar to the multijurisdictional rules in place for domestic lawyers. Thirty-one states have rules regarding FLCs, and six states have adopted provisions which permit foreign corporate counsels to work in-house within the U.S. A few states also allow foreign lawyers the right to admission *pro hac vice* to represent their clients in court or to waive in based on their expertise of their home country law.

[19] The current roster of the Georgia International Trade in Legal Services Committee can be found at: https://www.members.gabar.org/Custom/committees/default.aspx?g=SPEC.

in the regulation of the legal profession in foreign countries that may have local impact, and all other events affecting the delivery of legal services across international borders. It shall consider these matters from both the perspective of outbound legal services delivered in foreign countries by member lawyers and inbound delivery of legal services in this State by foreign lawyers. The committee shall also consider any international issues as requested by, and make reports and recommendations concerning its activities to, the Executive Committee and the Board of Governors.

Step 3 – Educating Members of the Committee and Reviewing the Existing Regulatory Framework

In the short-term, the Georgia ITLS Committee worked to:

1. educate its own members to understand the issues and vocabulary surrounding globalization, cross-border practice and lawyer mobility;

2. review the state's existing bar rules with respect to the five policy areas noted above (the "foreign lawyer cluster"); and

3. generally review the state's existing regulatory system to ensure that it is responding to global realities while also serving to protect the public.

Step 4 – Communicating Recommendations to the Bar, Recognizing the Need for Education, and Locating Sources of Support

After the review process has been completed, rule changes that are the product of an informed and deliberative process and supported by a broad cross-section of the Bar can be recommended to bodies with rule-making authority, such as the state supreme courts. These rule changes should ideally start with addressing one or more elements of the "foreign lawyer cluster": (1) temporary transactional "fly-in, fly-out" practice, (2) temporary litigation practice via *pro hac vice* admission, (3) practice as in-house counsel, (4) practice as a foreign law consultant, and (5) full admission as a licensed lawyer.

The Georgia ITLS Committee learned through experience that unless members of the bar are educated about the issues set forth in this white paper, their initial response may be unfavorable. Here, education is key. In fact, most services performed by foreign lawyers in the United States relate wholly or in significant part to foreign law or interaction with a foreign jurisdiction. It is work that would otherwise be performed abroad, or worse, poorly by a lawyer who is not experienced in the foreign law or jurisdiction, or not at all. Moreover, foreign lawyers engaged in facilitating trade and investment or in resolving disputes arising from such activity are already present in every jurisdiction, temporarily if not permanently, whether or not they are acknowledged by regulatory authorities.[20] As cross-border legal practice continues to grow, foreign lawyer accountability and cooperation in lawyer discipline must be addressed.

[20] Furthermore, a jurisdiction's hostility towards foreign lawyers might be seen as hostility towards foreign investment, and thus the business might simply move to another state.

Step 5 – Staying Ahead of the Regulatory Curve

Over the longer term, the ITLS Committee monitors global developments to ensure that state bar leaders know what is coming down the pike in this area. Instead of having every committee member master every topic, volunteers on the Georgia ITLS Committee tackle the learning curve on certain topics and "brief" fellow committee members on those issues.

There are powerful forces of change in the world of lawyer regulation and many developments in this country and abroad that should be monitored. To cite just one, in North Carolina legislation has been introduced that would permit non-lawyer ownership of law firms, as in Australia and the United Kingdom. The ITLS Committee can protect the State Bar and its leadership from being surprised by the appearance in this country of regulatory changes that first emerged overseas. Because many of the issues are complex, changes are being made with relatively little input from state regulators, bar association officials or lawyers. It is in everyone's best interest that as many voices as possible are involved in the discussions and debates.

Step 6 – Providing a Voice for State Bars at the National Level

The free trade agreements, NAFTA, CAFTA-DR and GATS listed in footnote 4 of this white paper impact the regulation of foreign lawyers when delivering legal services in this country, and yet they were negotiated with little input from the various state bars. A local ITLS Committee that is well-versed on issues relating to international trade in legal services can serve as an advocate for the interests of state bars as these treaties are implemented and in future treaty negotiations. For instance, in 2008, the Georgia State Bar President relied upon the Georgia ITLS Committee to prepare comments on a draft WTO document addressing certain principles of domestic regulation of professional services. Among other comments, the Georgia ITLS Committee stressed to the Office of the United States Trade Representative that "in considering the applicability of GATS disciplines to the States under our Federal system, the unique relationship of, and the distribution of powers between, the States and Federal Government should be taken into account in connection with the formulation of any GATS discipline intended to have general application."[21] Yet a single ITLS Committee, such as Georgia's, is only a single voice; the message would be more powerful if local ITLS committees formed by several states were to join together and seek meaningful participation at the national level.

VI. RESOURCES

In order to ensure that the members of your ITLS Committee have a better understanding of the issues it is recommended that, at the outset, they be provided with a number of basic reference materials. These are included in **Appendix A.**

[21] Letter from Georgia State Bar President Gerald M. Edenfeld to Ambassador Susan C. Schwab.

VII. CONCLUSION

Each state should consider establishing its own ITLS Committee to proactively address the challenges of globalization, cross-border legal practice, lawyer mobility, and bilateral and multilateral trade agreements affecting the regulation of legal services. If you would find it useful to hear directly from a state that has been tackling these issues head-on, please get in touch with the Georgia ITLS Committee. Its chair is Ben Greer (ben.greer@alston.com) and its staff liaison is William P. Smith III (bill@gabar.org). They would be happy to come to your group (virtually if not in person) and share their experience.

If you would like "benchmarking" data regarding the policies of other states in this area or their experiences with those policies, we encourage you to contact the ABA ITILS Task Force through its chair, Glenn Hendrix (glenn.hendrix@agg.com) or its staff liaison, Kristi Gaines (kristi.gaines@americanbar.org). The Task Force has been serving as a central data collection point and has useful resources it can share with you.

APPENDIX A

- **American Bar Association Commission on Ethics 20/20 Memorandum Concerning Multijurisdictional Practice**
  http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/priorities_policy.html

- **American Bar Association Section of Legal Education and Admission to the Bar: Report of the Special Committee on International Issues**
  http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20090715_international_issues_report.pdf

- **ABA Policy**
  - ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/FLC.pdf
  - ABA Model Rule for the Temporary Practice of Foreign Lawyers
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201j.pdf

- **Foreign Legal Consultants (FLC)**
  - ABA Commission on Multijurisdictional Practice
    FLC rules by state
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.authcheckdam.pdf
  - ABA Policy Implementation Committee
    Comparative chart of states with FLC rules and states without
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.pdf
  - State Implementation of ABA MJP Policies
    http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf
  - Comparative Analysis of United States Rule Licensing Legal Consultants
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/silver_flc_chart.pdf
  - National Conference of Bar Examiners
    Bar Examination and Admission Statistics for FLC
    http://www.ncbex.org/bar-admissions/bar-examination-and-admission-statistics/

- **Admission by Motion**
  - National Organization of Bar Counsel
    Rules for Admission of Foreign License/ Admission on Motion
    http://www.nobc.org/Rules_for_Admission_on_Foreign_License/Admission_on_Motion.aspx

- ABA Policy Implementation Committee
  Admission by Motion Rules
  http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/admission_motion_rules.authcheckdam.pdf

- State Implementation of ABA MJP Policies
  http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf

- **Temporary Practice - Foreign Lawyer FIFO (fly-in, fly-out) Rules**

  - State Implementation of ABA MJP Policies
    http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf

  - National Organization of Bar Counsel
    Rules for Temporary Admission/ Pro Hac Vice
    http://www.nobc.org/Rules_for_Temporary_Admission/Pro_Hac_Vice.aspx

- **Temporary Practice - Corporate Lawyers, Foreign and Domestic; In-House *Pro Hac Vice* Admission**

  - National Organization of Bar Counsel
    Rules for Temporary Admission/ Pro Hac Vice
    http://www.nobc.org/Rules_for_Temporary_Admission/Pro_Hac_Vice.aspx

  - ABA Policy Implementation Committee
    Comparison of ABA Model Rule for Pro Hac Vice Admission with State Versions and Amendments since 2002
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_comp.pdf

  - ABA Policy Implementation Committee
    Pro Hac Vice Admission Rules by State
    http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_rules.pdf

  - State Implementation of ABA MJP Policies
    http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf

- **Admission Requirements**

  - National Conference of Bar Examiners
    Bar Admission Offices
    http://www.ncbex.org/bar-admissions/

  - National Conference of Bar Examiners
    Comprehensive Guide to Bar Admissions
    http://www.ncbex.org/assets/media_files/Comp-Guide/2011CompGuide.pdf

- **Affiliation Restrictions**

  - ABA Formal Opinion 01-423
    http://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions/index_by_subject.html

  - ABA Model Rules of Professional Conduct
    http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

  - Mark Harrison & Mary Gray Davidson, *The Ethical Implications of Partnerships and Other Associations Involving American and Foreign Lawyers*, 22 PENN. ST. INT'L L. REV. 639 (2003).

- **The International Bar Association: GATS Handbook for International Bar Association Member Bars**
  http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/may2002_gats_handboo1_1183718328.pdf

- **United States Trade Representative: Free Trade Agreements**
  http://www.ustr.gov/trade-agreements/free-trade-agreements

- Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services,* 43 AKRON L. REV. 875 (2010) http://www.personal.psu.edu/faculty/l/s/lst3/Terry_From_GATS_to_APEC.pdf.

APPENDIX B

State Export Data

State	2007	2008	2009	2010
United States	1,148,198,722,191	1,287,441,996,730	1,056,042,963,028	1,278,263,225,486
Texas	168,228,620,315	192,221,780,916	162,994,740,450	206,960,767,594
California	134,318,906,761	144,805,748,349	120,079,965,765	143,192,250,991
New York	71,115,801,477	81,385,735,231	58,743,030,056	69,695,634,935
Florida	44,858,050,410	54,238,239,529	46,888,006,761	55,364,760,752
Washington	52,089,477,068	54,498,049,919	51,850,856,743	53,353,413,033
Illinois	48,896,249,905	53,677,477,963	41,626,110,699	50,058,293,734
Michigan	44,555,349,131	45,135,506,345	32,655,333,884	44,768,187,457
Ohio	42,562,233,016	45,627,982,845	34,104,484,238	41,493,512,722
Louisiana	30,318,911,145	41,908,136,496	32,616,451,452	41,355,870,039
Pennsylvania	29,195,435,464	34,648,502,042	28,381,102,168	34,927,694,246
New Jersey	30,836,468,846	35,643,101,080	27,244,246,431	32,153,593,976
Georgia	23,365,865,349	27,513,961,882	23,743,041,911	28,949,552,263
Indiana	25,956,346,037	26,502,291,510	22,907,367,488	28,744,977,002
Massachusetts	25,351,439,596	28,369,195,305	23,593,277,279	26,303,601,826
Tennessee	21,864,789,113	23,237,724,782	20,484,299,844	25,942,724,022
North Carolina	23,355,818,431	25,090,543,442	21,792,953,156	24,905,063,910
Puerto Rico	18,078,284,156	19,961,283,553	20,937,064,690	22,784,088,942
South Carolina	16,575,455,732	19,852,520,521	16,488,111,133	20,328,687,951
Wisconsin	18,825,489,177	20,569,621,721	16,724,996,880	19,789,522,286
Kentucky	19,652,095,856	19,120,585,559	17,649,768,303	19,342,737,535
Minnesota	18,061,826,408	19,186,171,449	15,531,557,833	18,903,725,389
Oregon	16,530,875,039	19,352,130,713	14,907,405,450	17,671,067,072
Virginia	16,864,469,904	18,941,608,711	15,052,091,034	17,163,324,645
Connecticut	13,799,141,842	15,384,102,725	13,978,898,792	16,056,449,947
Arizona	19,227,791,370	19,784,243,422	14,023,462,270	15,635,757,846
Alabama	14,406,676,895	15,879,048,527	12,354,803,017	15,501,508,839

Utah	7,814,523,484	10,305,992,531	10,337,135,031	13,809,376,642
Missouri	13,483,588,154	12,852,324,415	9,522,229,617	12,925,559,774
Iowa	9,655,733,616	12,124,631,240	9,042,125,564	10,880,026,652
Maryland	8,948,636,829	11,383,050,502	9,225,376,423	10,163,267,062
Kansas	10,277,477,026	12,513,976,006	8,916,920,376	9,905,219,429
Mississippi	5,184,420,753	7,323,468,227	6,316,488,807	8,228,851,021
Colorado	7,352,198,821	7,712,606,567	5,867,265,731	6,726,706,628
West Virginia	3,987,020,782	5,643,487,491	4,825,570,207	6,449,180,362
Nevada	5,713,833,904	6,121,087,925	5,672,185,096	5,911,812,450
Nebraska	4,266,141,656	5,412,021,410	4,872,924,899	5,819,949,181
Oklahoma	4,579,067,887	5,076,531,187	4,414,915,717	5,353,190,640
Arkansas	4,886,844,975	5,775,976,750	5,266,978,589	5,218,646,154
Idaho	4,703,433,247	5,005,251,812	3,877,389,493	5,156,919,667
Delaware	4,024,183,349	4,898,437,003	4,311,773,339	4,965,544,823
New Hampshire	2,914,139,835	3,752,476,603	3,060,715,994	4,367,331,611
Vermont	3,684,920,270	3,697,411,932	3,219,270,656	4,277,417,496
Alaska	4,009,894,879	3,541,796,749	3,270,429,748	4,154,626,473
Maine	2,750,326,347	3,016,395,471	2,231,142,502	3,163,991,540
North Dakota	2,046,659,843	2,772,203,944	2,193,011,373	2,536,428,341
Rhode Island	1,648,709,556	1,974,431,973	1,495,522,447	1,949,146,488
Virgin Islands	808,339,747	2,747,339,175	1,217,003,134	1,898,505,274
New Mexico	2,585,121,373	2,782,906,663	1,269,535,234	1,540,970,873
Dist. of Columbia	1,082,135,647	1,195,906,725	1,090,543,044	1,500,660,263
Montana	1,133,672,004	1,394,600,906	1,053,312,395	1,388,777,953
South Dakota	1,509,876,310	1,653,712,654	1,010,960,601	1,259,394,822
Wyoming	802,170,915	1,081,014,094	926,141,589	983,287,911
Hawaii	560,071,275	959,607,734	563,059,688	684,045,484

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OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
Accounting & Finance/Facilities/IT (Rod Wegener)	▪ We will be sending out certified notices to the 643 bar members who have not yet paid their 2013 license fees. The number is down slightly from 2012. ▪ We have closed the books on 2012. After some year-end adjustments for expenses the final 2012 net operating revenue of $7,008 was reduced to a $2,641 net operating expense. This still came without using any reserve funds for operations. ▪ The bar is finalizing a lease for the smaller vacant space on the first floor (1,057 rsf). Hopefully, the final terms can be announced at the board meeting. If this lease executes, there will be only 2,091 rsf unoccupied space in the bar center. ▪ Joffe Medi-Center, a tenant of 6,015 rsf on the first floor, has been closed for 2 to 3 months, but has been timely with all rent payments. The bar is discussing a termination of its lease if another tenant is found. Again, more details will be available at the board meeting. ▪ Carolyn McRory is the bar's new IT Manager. This position is a combination of two technology-related positions at the bar and a result of internal changes is a few departments. Carolyn has been with the bar for 1-1/2 years and came from Schnitzer Industrial. One of Carolyn's duties is the lead on the bar's software modernization project. ▪ We have reviewing responses to an RFI for copier rental and copy services from six vendors as the existing lease expires. We anticipate dollar savings for the bar as the copy and print use has dropped dramatically over the past 5-6 years.
Admissions	▪ Charles Schulz has been promoted to Admissions Director. Charles has been with the Bar for many years and most recently served as the Interim Admissions Director. ▪ 197 applicants took the February bar exam. The number is a significant reduction from previous years. The results will be announced on April 26th. ▪ The July bar exam is scheduled for July 30th & 31st.

Communications & Public Services (Kay Pulju)	▪ The latest edition of the Bulletin featured articles on two BOG priorities: (1) economics of law practice, highlighting the recently completed economic survey, and (2) diversity, including information from the Diversity & Inclusion program. The electronic Bar News and BOG Updates provided members with updates and alerts about other bar issues and programs. ▪ Communications staff prepared for and hosted the annual 50-Year member Luncheon, and began preparing for the annual awards cycle and hosting the national NABE Communications conference in the fall. ▪ Working with the creative services team, we are developing a bar-wide communications and marketing plan to ensure more coordinated and comprehensive outreach efforts. Key projects now in progress include bringing the CLE Seminars website in house and increasing public outreach for the Lawyer Referral Service. Efforts to encourage use of the online member dashboard and keep member email listings updated are ongoing. ▪ We added a Google translate application to our public web site home page. A variety of languages are available and translations roll through to the all text blocks, including tabs. Pick your language and check it out at http://www.osbar.org/public.
CLE Seminars (Karen Lee)	▪ The switch to pay-for-print CLE course materials has gone very smoothly, attributable in part to the 18-month gradual transition and a multitude of announcements and notices about the change. ▪ Technology in law practice is a popular topic this spring, with strong attendance at two Microsoft Word seminars (82 and 66 respectively, which exceeded our initial estimates of 50 people per program) and excellent evaluations. The speaker, Barron Henley, gave a technology presentation at the bankruptcy institute the next day and was also very well received by both the Oregon and Washington bankruptcy bars. ▪ Webcast Hotspots, one-hour webcast only seminars, did very well last year and will be available in 2013 during the summer months. Nine seminars (three more than last year) will focus on business topics, ranging from ethics for business lawyers and commercial lease considerations to the new Health Care Reform Act.

Diversity & Inclusion (Mariann Hyland)	▪ The OLIO Spring Social occurred on April 4 at the UofO in Eugene, with 45 people attending. Dean Michael Moffitt welcomed everyone to the UofO; Lane County Judge Josephine Mooney and Benton County DA John Haroldson gave keynote speeches ▪ The OLIO Orientation will take place in Hood River on August 9-11 and BOG members are encouraged to attend. The fundraising campaign is in progress and we would appreciate any contribution BOG members or their firms would like to make. ▪ The OSB Diversity Advisory Council (an internal group of senior staff plus Audrey Matsumonji and Josh Ross) has met a total of three times and is working on assessment and diagnoses in preparation for developing a recommended diversity action plan for the BOG's approval. ▪ D&I is preparing to launch its inaugural electronic newsletter. ▪ Work continues on the Diversity Story Wall. Historian Chet Orloff and graphic designer Linda Wisner will serve as project consultants. We have secured $19,000 in sponsorships and pledges to date and need to raise an additional $11,000 to reach our $30,000 fundraising goal.
General Counsel (Helen Hierschbiel)	▪ The Disciplinary Board Conference was held April 19, 2013 at the OSB Center. Justice Brewer gave the opening remarks and the Disciplinary Board members met John Gleason, the new OSB Disciplinary Counsel/Director of Regulatory Services. ▪ The Client Assistance Office 2012 Annual Report will be published soon. The CAO Annual Reports are available on the OSB website here: http://www.osbar.org/surveys_research/snrtoc.html. ▪ August 2013 is the ten year anniversary of the CAO. We are reviewing CAO operations and considering possible changes to its scope of authority. ▪ We continue to provide legal counsel to all departments of the bar in order to protect the legal and policy interests of the bar. ▪ We continue to provide ethics guidance to members, in response to direct telephone and written inquiries, and through bar counsel columns and CLE presentations.
Human Resources (Christine Kennedy)	▪ Charles Schulz was selected as the new Admissions Director. Work is underway to replace Charles as Admissions Coordinator and hire full-time support staff in Admissions. ▪ A new .5 FTE Accounts Payable clerk was hired; an internal candidate was promoted to Accountant. A .5 FTE MCLE assistant has been hired for the summer, at which time we will recruit for a permanent hire. ▪ Staff training opportunities included "Get Heart Healthy One Step at a Time" from Cascade Centers and "The Rise of the Machines," a video of Jordan Furlong's presentation prior to the November 2012 HOD meeting.

Legal Publications (Linda Kruschke)	▪ The following have been posted to BarBooks™ since my last report: o Formal Ethics Opinion 2013-189 o Two revised and eight reviewed (but not revised) *Uniform Civil Jury Instructions* o Eleven additional chapters of the 2013 revision of *Family Law*; by April 22, the PDF of *Family Law* will also be posted. ▪ *Family Law* is at the printer. Pre-order marketing campaign began on February 12. o 2013 Budget = $49,025; Actual to date = $58,480 ▪ Consumer *Law in Oregon* is at the printer. o 2013 Budget = $15,000; Actual to date = $18,184 ▪ *Uniform Civil Jury Instructions* and *Uniform Criminal Jury* Instructions supplements are at the printer. Although both are currently below budget, these titles tend to sell steadily throughout the year. o *Civil* – 2013 Budget = $29,850; Actual to date = $21,895 o *Criminal* – 2013 Budget = $22,025; Actual to date = $17,093 ▪ We entered *Administering Oregon Estates* in the ACLEA's Best Publication competition because it is our best selling title of 2012. o 2012 Budget = $13,500; 2012 Actual = $21,732 o 2013 Budget = $5,400; 2013 Actual to date = $39,133 ▪ We edited and did production for the 2012 *Disciplinary Board Reporter*, which was finished in time for the DB Conference on April 19. ▪ We are working with Tanya Hanson of the PLF to revise their *Oregon Statutory Time Limitations* book. ▪ Licensing OSB material to third parties: o We are waiting on the final agreement from Bloomberg Financial LLP to license 20 of our books. o We signed an agreement with Lexis Nexis to license our jury instructions for their online database. We will receive a royalty of 20% of the fees allocated to subscriber usage of the jury instructions.

Legal Services/OLF (Judith Baker)	▪ The LSP has developed a proposal for disbursing abandoned client funds. ▪ LSP staff are in the annual accountability process as mandated by the LSP Standards and Guidelines. For the first time we are using survey monkey to gather information from stakeholders and Oregon lawyers about the quality of legal aid services provided to Oregonians. ▪ LSP staff continue to participate in strategic planning with legal aid programs to address the current funding crisis. ▪ We have 12 LRAP applications and the LRAP Advisory Committee will select recipients on May 18. Depending on the amounts requested, there may select six to ten recipients. ▪ The Pro Bono Policy Subcommittee is exploring ways to use social media to promote pro bono especially to reach out to law students. It is also considering proposing an amendment to the Judicial Code to make it clear that judges may encourage pro bono by attorneys. ▪ The Pro Bono Events Subcommittee is busily planning the Pro Bono Fair and other events for Pro Bono week. We hope to simultaneous events in Eugene and Central Oregon. The Pro Bono Fair is scheduled for Monday, October 21st.
Media Relations (Kateri Walsh)	▪ We are finalizing planning for the Bar Press Broadcasters Council's invitation-only annual program event May 4, which brings together print and broadcast journalists, law enforcement, judges, prosecutors , defense attorneys, and ethicists to talk about the coverage of high-profile criminal cases in Oregon. This year's event will be a roundtable dialogue among the 45 participants facilitated by US District Court Judge Michael Simon. BOG member Ethan Knight is one of the invited prosecutors, largely due to his handling of the Mohamed Mohamud case, and the media issues raised during that trial. ▪ On behalf of the Citizen's Campaign for Court Funding, we set up several editorial board visits for the end of April and are now preparing the media outreach portion of the effort. ▪ We have been providing information to a reporter for Willamette Week who is working on a story about the Oregon Law Foundation's loss of revenue and the implications for legal services. We do not believe it's related to the legal notices issue. We persuaded the reporter to postpone the story so we can continue to work with her to correct misunderstandings about the various funders and their interrelationships. ▪ We are managing coverage of about eight to ten current discipline cases. ▪ We are also working with John Gleason on some minor changes to our media policies on discipline cases. Most notably we are discussing increasing our media outreach on certain cases where there may be a threat of further community harm. A case in point is a suspended lawyer who may still have or be granted power of attorney by several potentially vulnerable elderly residents. While we do not want to push out negative lawyer stories, we recognize the need for outreach to protect the community in appropriate cases.

Member Services (Dani Edwards)	▪ Provided 2013 membership enrollment lists to sections. On average, section enrolment declined slightly from 2013 membership levels. A well-attended conference call was held for section leaders to provide guidance on increasing membership and services the bar provides to assist in this area. ▪ Conducted OSB and ABA House of Delegates election ballots. With the Board Development Committee's recruitment efforts there was a significant increase in the number of HOD candidates, resulting in contested races in all but Regions 2 and 3. The results were announced April 16. ▪ The 2012 committee and section annual reports are now available online. ▪ An increase in the section per member assessment fee will be announced to section chairs in early May. On January 1, 2014 the fee will increase from $6.50 to $8.00. This annual assessment is the bar's cost for the following services: dues collection, accounting services, legislative coordination, bar liaison expenses, membership rosters including executive committee rosters, administrative support for electronic communications including broadcast e-mails and list serve maintenance. Pursuant to OSB Bylaw 15.400 the administrative fee is recalculated periodically by the ED so that it equals 50% of the bar's cost in providing the services. The 2014 increase will be about $.40 short of that goal.
Minimum Continuing Legal Education (Denise Cline)	▪ The Oregon Supreme Court approved amendments to MCLE Rules 5.2(c)(1)(ii) and (g) effective March 27, 2013. ▪ We processed 2,088 program accreditation applications and 323 applications for other types of CLE credit (teaching, legal research, etc.) since the first of the year. ▪ Notices of Noncompliance were sent to 388 members in February. As of mid-April 176 members were not in compliance with the MCLE Rules.
New Lawyer Mentoring (Kateri Walsh)	▪ We are nearing completion of web site re-design, a revision of the curriculum, and a new manual for the participants. We are also preparing to launch what we hope will be a monthly newsletter. ▪ The NLMP Committee is beginning an extensive review and evaluation of the first year of the program. The process will include focus groups. ▪ We are creating a Mentor to Mentor contact mechanism, for any challenges that arise in mentoring relationships. ▪ We've spoken at the three law schools this Winter/Spring to prepare 3Ls for entering into the NLMP. ▪ We're doing targeted mentor recruiting in specific practice areas, most recently Intellectual Property and Environmental Law, both of which are under-represented. ▪ The launch of our "Pro Bono Mentoring" initiative is awaiting announcement in conjunction with the unveiling of the new web site and newsletter. ▪ We are preparing for the May 16 swearing-in ceremony and an influx of new lawyers.

Public Affairs (Susan Grabe)	▪ The Public Affairs Committee has sponsored 16 bills currently making their way through the legislative session. Of the 16 bills, 11 of them have passed through at least the first chamber and 2 have been signed by the Governor. ▪ Staff is monitoring all session bills and referring to sections any that may be of interest. ▪ The Public Affairs staff has worked with the OSB President to establish the Citizens' Campaign for Court Funding, a coalition of business and legal leaders. ▪ The Department is hosting a Day at the Capitol on Wednesday May 1st. The goal is to put lawyers in touch with their Representatives and Senators to talk about justice system issues of importance to the bar, in particular funding for the bar's three funding priorities. There are no better legislative advocates than constituents, and ideally we would like to arrange meetings with all legislators. ▪ The Department is working with the BOG Appellate Screening Committee in anticipation for the 3 court of appeals vacancy interviews in May. ▪ The OSB president and Public Affairs Director attended ABA Lobby Day in Washington DC in April to advocate increased funding for the legal services corporation and the federal judiciary (which includes the federal public defenders).
Referral & Information Services (George Wolff)	▪ *Modest Means Program*: Conducted focus group March 22 to address alternative evaluation criteria and alternative billing arrangements. Continue to explore possible subject matter expansion of program with substantive law sections. [Report on BOG agenda.] ▪ *Lawyer Referral Service*: Continuing implementation of percentage fee revenue model, including software platform upgrade, rollout of additional attorney portal enhancements, additional development, addressing bug fixes, and testing of each. Preliminary data indicates 2013 Q1 percentage fee invoices total $61,375, indicating that LRS generated $511,458.33 in attorneys' fees for LRS attorneys during this time period. Reviewed and revised LRS Policies and Operating Procedures for BOG for approval. [Report and recommendations on BOG agenda.] ▪ *All Programs – Public Outreach*: In four months, distributed nearly 850 new public outreach posters promoting RIS programs to trial courts, tribal courts, government buildings, libraries, etc.

Regulatory Services/Discipline (John Gleason)	▪ The SPRB reviewed 38 matters at its March and April meetings. The SPRB found probable cause to proceed on 21 matters. Greg Hendrix of Bend is the current chair of the SPRB. ▪ After 25 years of service to the Oregon Bar, Jeff Sapiro retired as Director of Regulatory Services on February 28th. On March 1st, John Gleason took over as Director. John served as Regulation Counsel for the Colorado Supreme Court for many years prior to his arrival in Oregon. ▪ A renewed emphasis on outreach to the practicing bar is underway in the office. If any BOG member is interested in a speaker on the disciplinary process or attorney ethics please contact John Gleason at 503-431-6319. ▪ A review of the procedural rules related to the discipline process is underway and proposed revisions should be to the BOG by its July meeting.

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

Date	Event
2/27	Lunch@Lindsay Hart
2/28	CLNS Task Force Meeting
2/28	Partners in Diversity "Say Hey" event
3/1	First Interviews for Admissions Director
3/2	President's Tree Planting Project
3/5	Coffee with CJ Balmer to introduce new Disciplinary Counsel
3/6	Dinner with Mid-Columbia Bar (Hood River)
3/8	OSB/BBX Workgroup Meeting
3/8	OWLs Dinner & Auction
3/9	Client Security Fund Committee
3/12-15	NABE Bar Chief Executives Retreat and ABA Bar Leadership Institute (Chicago)
3/19-23	Western States Bar Conference (and ED Retreat)
3/29	50-Year Member Appreciation Lunch
3/29	BOG Committee Meetings
3/29	BOG/ONLD dinner
4/1	Meet with OSU Professor Stern re: his continuing education for licensed professionals
4/2	Lunch@Lane Powell
4/3	BOG Conference Call
4/5	Final interviews for Admissions Director
4/11	CLNS Task Force Meeting
4/11	MBA Past Presidents' Reception
4/11	Gevurtz Menashe Open House
4/12	Meet with Chief Justice
4/13	Legal Ethics Committee Meeting
4/18	Tonkon Torp Spring Party
4/24	Classroom Law Project Annual Dinner
4/25	Lunch@Davis Wright
4/26	Asian Reporter Banquet

4/30	Lunch@Schwabe Williamson
5/1	Hispanic Metro Chamber Luncheon
5/2	BOG/PLF Joint Dinner

Oregon State Bar

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

April 23, 2013

To: Professional Liability Fund Board of Directors

From: R. Thomas Cave, Chief Financial Officer RTC

Re: February 28, 2013 Financial Statements

I have enclosed February 28, 2013 Financial Statements. These statements show Primary Program net income of $623,000 for the first two months of 2013. The major reason for this result is better than expected investment results.

If you have any questions, please contact me.

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Processed on 4/3/2013

Oregon State Bar
Professional Liability Fund
Financial Statements
2/28/2013

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Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
2/28/2013

ASSETS

	THIS YEAR	LAST YEAR
Cash	$1,110,550.68	$1,230,049.29
Investments at Fair Value	51,349,432.49	48,917,199.66
Assessment Installment Receivable	9,701,316.00	9,628,817.99
Due from Reinsurers	770,037.56	225,877.57
Other Current Assets	101,762.16	69,710.66
Net Fixed Assets	952,880.99	1,006,081.96
Claim Receivables	59,896.10	69,588.65
Other Long Term Assets	9,825.00	9,900.00
TOTAL ASSETS	**$64,055,700.98**	**$61,157,225.78**

LIABILITIES AND FUND EQUITY

	THIS YEAR	LAST YEAR
Liabilities:		
Accounts Payable and Other Current Liabilities	$129,480.13	$67,613.92
Due to Reinsurers	$3,878,542.74	$3,808,695.40
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	14,143,360.67	15,234,946.70
Liability for Claim Expense	12,619,170.26	12,787,564.04
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)	2,400,000.00	2,300,000.00
Excess Ceding Commision Allocated for Rest of Year	615,376.22	598,369.35
Assessment and Installment Service Charge Allocated for Rest of Year	21,017,230.83	20,820,591.39
Total Liabilities	**$59,348,781.36**	**$60,148,086.08**
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	$4,047,255.11	($781,169.42)
Year to Date Net Income (Loss)	659,664.51	1,790,309.12
Total Fund Equity	**$4,706,919.62**	**$1,009,139.70**
TOTAL LIABILITIES AND FUND EQUITY	**$64,055,700.98**	**$61,157,225.78**

Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
2 Months Ended 2/28/2013

	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
REVENUE					
Assessments	$4,138,971.00	$4,174,833.34	$35,862.34	$4,099,152.95	$25,049,000.00
Installment Service Charge	64,475.17	65,000.00	524.83	64,965.33	390,000.00
Other Income	16,950.00	0.00	(16,950.00)	29,912.60	0.00
Investment Return	827,797.63	410,470.50	(417,327.13)	2,045,556.14	2,462,823.00
TOTAL REVENUE	**$5,048,193.80**	**$4,650,303.84**	**($397,889.96)**	**$6,239,587.02**	**$27,901,823.00**
EXPENSE					
Provision For Claims:					
New Claims at Average Cost	$3,280,000.00			$3,600,000.00	
Coverage Opinions	38,849.80			31,122.09	
General Expense	71,159.94			3,012.19	
Less Recoveries & Contributions	(2,235.17)			1,775.00	
Budget for Claims Expense		$3,454,320.00			$20,725,920.00
Total Provision For Claims	**$3,387,774.57**	**$3,454,320.00**	**$66,545.43**	**$3,635,909.28**	**$20,725,920.00**
Expense from Operations:					
Administrative Department	$352,229.67	$380,533.50	$28,303.83	$347,230.16	$2,283,201.00
Accounting Department	124,361.51	131,037.18	6,675.67	120,165.39	786,223.00
Loss Prevention Department	294,217.68	317,161.54	22,943.86	273,792.98	1,902,969.00
Claims Department	426,073.76	446,985.68	20,911.92	404,134.49	2,681,914.00
Allocated to Excess Program	(184,184.00)	(184,184.00)	0.00	(183,304.32)	(1,105,104.00)
Total Expense from Operations	**$1,012,698.62**	**$1,091,533.90**	**$78,835.28**	**$962,018.70**	**$6,549,203.00**
Contingency (2% of Operating Exp)	$0.00	$51,028.66	$51,028.66	$30,920.16	$306,172.00
Depreciation and Amortization	$29,606.34	$34,666.66	$5,060.32	$29,770.24	$208,000.00
Allocated Depreciation	(5,009.34)	(5,009.34)	0.00	(5,999.34)	(30,056.00)
TOTAL EXPENSE	**$4,425,070.19**	**$4,626,539.88**	**$201,469.69**	**$4,652,619.04**	**$27,759,239.00**
NET INCOME (LOSS)	**$623,123.61**	**$23,763.96**	**($599,359.65)**	**$1,586,967.98**	**$142,584.00**

Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
2 Months Ended 2/28/2013

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
EXPENSE:						
Salaries	$351,540.18	$697,598.75	$691,362.50	($6,236.25)	$666,045.42	$4,148,175.00
Benefits and Payroll Taxes	117,708.76	240,359.98	262,700.38	22,340.40	235,370.34	1,576,202.00
Investment Services	0.00	0.00	4,666.66	4,666.66	0.00	28,000.00
Legal Services	0.00	360.00	2,666.66	2,306.66	1,792.50	16,000.00
Financial Audit Services	0.00	0.00	3,766.66	3,766.66	0.00	22,600.00
Actuarial Services	6,448.75	6,448.75	3,166.66	(3,282.09)	6,337.50	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	1,700.00	0.00
Information Services	2,082.13	14,667.38	16,000.00	1,332.62	17,920.23	96,000.00
Document Scanning Services	0.00	0.00	12,500.00	12,500.00	4,488.70	75,000.00
Other Professional Services	7,041.02	9,991.99	9,566.68	(425.31)	7,059.80	57,400.00
Staff Travel	343.80	444.74	2,075.00	1,630.26	521.60	12,450.00
Board Travel	839.51	839.51	6,499.98	5,660.47	1,582.47	39,000.00
NABRICO	0.00	0.00	1,750.00	1,750.00	0.00	10,500.00
Training	3,907.60	4,117.60	4,083.34	(34.26)	1,650.25	24,500.00
Rent	41,833.67	83,355.92	86,790.16	3,434.24	82,124.00	520,741.00
Printing and Supplies	4,438.33	9,206.94	13,166.68	3,959.74	9,286.79	79,000.00
Postage and Delivery	676.00	7,862.80	6,125.00	(1,737.80)	7,797.17	36,750.00
Equipment Rent & Maintenance	7,207.35	11,534.98	6,033.32	(5,501.66)	3,225.74	36,200.00
Telephone	3,631.75	7,392.21	7,166.66	(225.55)	5,132.73	43,000.00
L P Programs (less Salary & Benefits)	28,469.67	46,966.35	72,260.04	25,293.69	37,229.08	433,560.00
Defense Panel Training	0.00	0.00	3,850.02	3,850.02	0.00	23,100.00
Bar Books Grant	16,666.67	33,333.34	33,333.34	0.00	33,333.34	200,000.00
Insurance	0.00	0.00	15,021.50	15,021.50	2,817.00	90,129.00
Library	4,498.27	4,583.27	5,500.00	916.73	1,932.10	33,000.00
Subscriptions, Memberships & Other	3,254.88	17,818.11	5,666.66	(12,151.45)	17,976.26	34,000.00
Allocated to Excess Program	(92,092.00)	(184,184.00)	(184,184.00)	0.00	(183,304.32)	(1,105,104.00)
TOTAL EXPENSE	**$508,496.34**	**$1,012,698.62**	**$1,091,533.90**	**$78,835.28**	**$962,018.70**	**$6,549,203.00**

Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
2 Months Ended 2/28/2013

	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
REVENUE					
Ceding Commission	$123,075.24	$124,458.34	$1,383.10	$119,673.87	$746,750.00
Prior Year Adj. (Net of Reins.)	2,176.80	250.00	(1,926.80)	1,369.88	1,500.00
Installment Service Charge	41,150.00	6,333.34	(34,816.66)	37,180.00	38,000.00
Investment Return	75,630.00	30,895.66	(44,734.34)	249,922.97	185,374.00
TOTAL REVENUE	**$242,032.04**	**$161,937.34**	**($80,094.70)**	**$408,146.72**	**$971,624.00**
EXPENSE					
Operating Expenses (See Page 6)	**$200,481.80**	**$203,759.88**	**$3,278.08**	**$198,806.24**	**$1,222,559.00**
Allocated Depreciation	**$5,009.34**	**$5,009.34**	**$0.00**	**$5,999.34**	**$30,056.00**
NET INCOME (LOSS)	**$36,540.90**	**($46,831.88)**	**($83,372.78)**	**$203,341.14**	**($280,991.00)**

Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
2 Months Ended 2/28/2013

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
EXPENSE:						
Salaries	$55,804.48	$111,608.96	$111,609.00	$0.04	$112,563.52	$669,654.00
Benefits and Payroll Taxes	20,896.92	41,793.84	42,255.18	461.34	39,803.56	253,531.00
Investment Services	0.00	0.00	500.00	500.00	0.00	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	46,479.00	46,479.00	0.00	45,939.16	278,874.00
Reinsurance Placement & Travel	0.00	0.00	833.34	833.34	0.00	5,000.00
Training	0.00	0.00	83.34	83.34	0.00	500.00
Printing and Mailing	0.00	0.00	833.34	833.34	0.00	5,000.00
Program Promotion	0.00	600.00	833.34	233.34	500.00	5,000.00
Other Professional Services	0.00	0.00	333.34	333.34	0.00	2,000.00
Software Development	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL EXPENSE	**$99,940.90**	**$200,481.80**	**$203,759.88**	**$3,278.08**	**$198,806.24**	**$1,222,559.00**

Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
2 Months Ended 2/28/2013

	CURRENT MONTH THIS YEAR	YEAR TO DATE THIS YEAR	CURRENT MONTH LAST YEAR	YEAR TO DATE LAST YEAR
Dividends and Interest:				
Short Term Bond Fund	$21,995.73	$40,154.73	$30,056.46	$60,189.67
Intermediate Term Bond Funds	15,661.57	29,548.78	19,350.46	40,017.45
Domestic Common Stock Funds	0.00	0.00	0.00	0.00
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	0.00	0.00	0.00	0.00
Total Dividends and Interest	**$37,657.30**	**$69,703.51**	**$49,406.92**	**$100,207.12**
Gain (Loss) in Fair Value:				
Short Term Bond Fund	$36,188.20	($9,781.49)	($1,996.01)	$165,515.40
Intermediate Term Bond Funds	29,408.95	(7,290.19)	(0.01)	172,073.10
Domestic Common Stock Funds	59,109.71	501,040.55	350,758.11	738,522.28
International Equity Fund	(129,435.49)	208,462.95	289,798.36	657,135.39
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	19,984.28	128,185.08	89,710.22	182,004.49
Real Return Strategy	(29,876.89)	13,107.22	80,153.80	280,021.33
Total Gain (Loss) in Fair Value	**($14,621.24)**	**$833,724.12**	**$808,424.47**	**$2,195,271.99**
TOTAL RETURN	**$23,036.06**	**$903,427.63**	**$857,831.39**	**$2,295,479.11**
Portions Allocated to Excess Program:				
Dividends and Interest	$4,036.86	$6,699.90	$5,948.59	$11,130.21
Gain (Loss) in Fair Value	(1,567.40)	68,930.10	97,334.31	238,792.76
TOTAL ALLOCATED TO EXCESS PROGRAM	**$2,469.46**	**$75,630.00**	**$103,282.90**	**$249,922.97**

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: Prohibition Against BOG Members Prosecuting or Defending PLF Claims

Action Recommended

None. This is for discussion during the joint BOG/PLF portion of the meeting.

Background

Since at least 1994,[1] BOG members have been prohibited from prosecuting or defending PLF-covered claims. OSB Bylaw 23.503 provides, in pertinent part:

> (a) Board of Governors members will neither prosecute nor defend PLF covered claims, but may mediate the claims at the request of the parties.
>
> (b) The policy set forth in (a) above does not extend to the prosecution or defense of PLF covered claims by lawyers in board members' firms, as long as the board member is screened from any form of participation or representation in the matter.* * *[2]

The rationale behind the prohibition is obvious: to avoid even the appearance of improper influence on the handling or outcome of a PLF claim by a member of the BOG who represents a party to the claim. The possibility of influence exists because the PLF is a function of the Bar and the BOG appoints the members of the PLF board.

In recent years, a handful of potential BOG candidates have declined to run for the BOG because it would mean foregoing PLF work that is a principal source of income. Even though other members of a BOG member's firm are permitted to prosecute or defend PLF matters, excluding the BOG member from the case may work a hardship to the client and the firm, especially when the matter is pending at the time the BOG member takes office.

As a practical matter, opportunities for the BOG to influence the PLF handling of a claim are nonexistent. The bylaws are clear that the BOG's oversight role is limited to approving PLF bylaws and policies and appointing its board:

> **Section 23.3 Operation**
>
> Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board

[1] I suspect, but cannot confirm, that the prohibition came into being shortly after the establishment of the PLF in 1978-1979. However, the oldest BOG Policies I have been able to locate are from 1994; the prohibition became part of the OSB Bylaws in 2003.

[2] The remainder of the bylaw details the affidavits that must be filed with the Executive Director to confirm that appropriate screening will be put in place and, when the matter is completed, that the screening procedures were adhered to.

> of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF.

The BOG also plays a role in the imposition of a Special Underwriting Assessment, but that involvement arises only after the PLF has paid or otherwise resolved a claim.

The PLF maintains a careful screen around anything having to do with claims handling. BOG liaisons to the PLF board do not attend the closed sessions of the board meetings at which claims are discussed; mention of claims are open session are rare and never include the name of the covered party or the nature of the issues. The only exceptions to the "cone of silence" that surrounds PLF claim matters is when the joint Special Issues Committee reviews controversial claim defense strategies or significant claims against the PLF, or when there is BOG review of a SUA assessment.

Because the BOG members play such a limited role in PLF affairs, it would seem that concerns about influence or the appearance of it can be easily addressed by requiring a BOG member prosecuting or defending a PLF claim to provide notice and recuse himself or herself from any BOG decision involving the PLF while the matter is pending.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: April 23, 2013
From: Ira R. Zarov, Chief Executive Officer
Re: An Assessment of the Special Underwriting Assessment (SUA)

Action Recommended

The PLF Board requests that the BOG approve the discontinuation of PLF Policy 3.500 which provides for the Special Underwriting Assessment (SUA).

Introduction

In each of the past three years the PLF Board of Directors has grappled with the Special Underwriting Assessment (SUA). In 2012, the discussions culminated in a decision to recommend to the BOG that SUA be discontinued at the end of 2013. This memo is a brief statement of the PLF Board's position.[1]

The PLF Board studied this issue exhaustively. The mechanisms used to evaluate options included a Focus Group of covered parties chosen from large firms, medium sized firms, and solo and small firm attorneys, a questionnaire to members of the PLF defense panel, and input gathered from the claims department.

The results of efforts demonstrated that the SUA rules are poorly understood by covered parties, that opinions differ among covered parties as to SUA's efficacy and desirability and that the differing opinions are consistent with the differing opinions expressed by the PLF BOD. The differences in opinions are stark and strongly held. There are those who wish to discontinue SUA because it does not achieve the goals it was designed to achieve, and those who wish to continue SUA because they believe that it is important to have a consequence for covered parties on whose behalf substantial expenditures of defense costs or indemnity are made.

Special Underwriting Assessment - SUA

Despite the BOD struggle with formulating a practicable SUA policy, there has been agreement on the theoretical goals for SUA policies. There are three accepted principles.

[1] Because the issue was controversial and strong opinions were held by BOD members, Board members involved in the discussions with an opposing view requested that a memo they had written to the BOD prior to the PLF vote be included in the BOG materials. In addition, a study of the claims history of Covered Parties with frequent claims is also included in the materials.

- SUA should create an incentive for covered parties to practice law more carefully;

- SUA should be a mechanism to charge an additional amount that at least partially reflects the risk the covered party presents; and

- SUA should create the perception among covered parties who have not had claims that a mechanism exists to ensure that there is a "moral hazard" for lawyers who fall below the accepted standard of care.

The struggle has been to formulate a SUA that fairly accomplishes these goals.

SUA has been a constant of PLF policy for close to 30 years. It has also been problematic for much of that time. Over the years there have been five separate SUA iterations and at least three proposed SUA "fixes" which were not adopted. Each new version was developed in response to either perceived unfairness in the design of the previous SUA or the administrative burden that aspects of the SUA policies placed on the PLF.

SUA Circa 2013

The current SUA (found in PLF Policy 3.500) is a 1% five year surcharge calculated on the amount expended on a claim in excess of a $75,000 safe harbor. For example, if the combined indemnity and defense costs of a claim were $100,000, the covered party would have a SUA calculated on $25,000 ($100,000 - $75,000). The SUA would be 1% or $250, and would be paid for five years consecutive years. A limit claim in which both the $50,000 defense allowance and the remaining limit of $300,000 was expended would cost $2750.00 - $275,000 ($350,000 - $75,000) x .01.

The grounds for a SUA appeal are limited. Covered parties can appeal the allocation of indemnity when more than one covered party is involved in a claim or claims for which one limit is shared. Covered parties can also challenge the amount spent on the claim on the grounds that the PLF improperly handled the claim.

Basic Problems Related to SUA

An analysis of the factors that drove the SUA revisions reflects three stubborn problems. The first was how to handle frivolous claims or claims where aggressive litigators increased costs beyond normal expectations. For example, should covered parties subjected to frivolous but expensive claims be charged a SUA when he or she made no legal error? The safe-harbor provisions were designed to reduce the chances that a claim would generate a SUA during the course of defending a frivolous claim on the theory a frivolous claim could be defended for less than $75,000. Therefore, appeals cannot be based on the argument that a claim was "frivolous."

The second repetitive problem arose when more than one covered party was potentially responsible for a claim and a limit was shared. In those circumstances, the difficult question was how to allocate claim costs between the two covered parties (or more). The response to this problem was a well developed and robust appeal process that allowed input from all covered parties involved and two levels of appeal, one to the PLF Board of Directors and another to the OSB Board of Governors.

The third problem was the tension between the administration of the SUA policies and the burden SUA implementation had on the operation of the PLF. For example, in the SUA incarnation which allowed SUA appeals on the assertion that the claim was frivolous, the policy resulted in so many appeals that a part-time seasonal employee was added to handle SUA appeals. Other SUA procedures presented, and continue to present, other administrative difficulties.

Rationale for BOD Recommendation

Fairness Questions

The effect of SUA is to change the PLF from a pure shared risk pool to one in which some of the costs are shifted to attorneys who have had claims. Because a shared risk pool is a bedrock principle of the PLF, the fairness of any deviation is of vital importance. The underlying basis for SUA was the belief that primarily careless lawyers incurred claims and that the claims history of a covered party was a reflection of a lawyer's competence. It followed that imposition of a SUA was a legitimate charge to covered parties with claims. It was also thought that the threat of a SUA would encourage better practice.

In the PLF Board's view there are substantial reasons to reject these premises. Simply put, experience has proven that claims are volatile and many "good" lawyers generate claims. The annual frequency rate (the number of claims per 100 covered parties) is now close to 14%. The 14% rate taken together with the fact that *no indemnity payment* is made in approximately two-thirds of PLF claims indicates that lawyer error is an issue in a minority of claims, far fewer than PLF original policy makers expected.

Although many of these claims would not generate a SUA, many claims fairly characterized as frivolous do. In fact, whole categories of claims are both expensive and arguably frivolous – claims made by stubborn ideologues, claimants motivated by personal animus, or claims made by those with psychological problems are good examples. The SUA safe-harbor provisions were designed to provide a sufficient expense budget to defeat these types of claims, but the defense allowance does not do so in many cases.

In cases where the safe-harbor is not sufficient to avoid a SUA, covered parties who prevail at trial are often charged with a SUA. It is possible for a full limit to be expended in successfully defended claims and, therefore, a maximum SUA generated. One of the primary motivators for

recommendation of discontinuing SUA is the BOD's belief that it is fundamentally unfair to impose a surcharge on covered parties who have made no error in the representation of their clients. Deviating from the shared risk philosophy when there is no evidence that an increased risk exists is at odds with the structure of the PLF. In addition, the recommendation comes after literally years of unsuccessfully attempting to craft a SUA that successfully targets only covered parties who are at fault.

The fault issue is truly problematic. SUA is based upon the amount paid on a given claim. The amount paid often has little to do with the nature of the attorney error and more to do with the size of the underlying transaction. Very large prayers, even with little evidence of attorney error, routinely result in substantial indemnity payments.

There is also no evidence that the existence of SUA improves the standard of practice. The focus group results reinforced the claims department experience that indicated that until a claim is made against a covered party, it is unlikely that they are aware of how SUA works and most certainly do not adjust their practices based on the risk of incurring a SUA.

As already noted, successful lawyers often handle legal matters involving large transactions in which alleged errors in a matter involving a large transaction may result in the maximum SUA. On the other hand, many egregious errors on small transactions may result in no SUA at all because of the $75,000 per claim exemption. This result represents a failure of SUA to meet one of the fundamental goals it is designed to accomplish – to encourage covered parties to practice law more competently. The failure of SUA to effectively meet this goal, and the difficulties and complications in designing a SUA that limited the safe harbor without substantial administrative burdens, was another supporting factor in the BOD's current recommendation.

There are other more subtle problems with SUA. For example, it is arguable that SUA rules treat attorneys who are involved in cases where potential liability is shared with other attorneys differently than those whose potential liability is unshared. Attorneys in the first category can dispute the allocation of SUA. Attorneys in the second category cannot. No unfairness necessarily results (assuming the rationality of the allocation process) when the malpractice action is genuine and indemnity is paid. But if the malpractice case is well founded against one of two attorneys in a related claim and frivolous against the second, the second attorney can avoid a SUA by placing full responsibility on the first. A solo attorney must pay all of the SUA despite the fact the claim was frivolous.

Administrative Issues

Additional tensions arise after a case is settled and the SUA appeal is in progress. As the SUA process now works, the covered party notices the appeal and the claims attorney who had been assigned to the case responds. In doing so, their role changes from an advocate for the covered party to an advocate for the Fund. In short, the SUA process puts the Fund in an

adverse position to its covered parties. (A secondary problem with the SUA is the time it takes for claims attorneys to respond to SUA appeals, especially in difficult cases that have long histories. As a point of reference, the number of SUA appeals in the last decade has ranged from zero to upwards of eight. Each appeal almost invariably involves several covered parties.)

While time spent on appeals can be substantial, as worrisome is that the threat of a SUA in a particular action can cause tension between the claims attorney and covered party while the claim is still being defended. The desire to avoid a SUA may be in conflict with the best way to settle the claim. Examples include circumstances where a covered party wants to settle a matter the claims attorney and defense counsel believe is frivolous, but might cost more than $75,000 to defend. Or the covered parties might resist a joint defense with another covered party involved in the claim in order to shift the responsibility for SUA. Such an action would compromise the overall defense. Claims attorneys find these types of conflicts to be disruptive to the covered party-PLF relationship.

In addition, there are occasionally extra administrative costs relating to SUA. Each year, a small number of extra claim files are opened solely for SUA purposes. (Each claim file opened because of SUA is a $20,000 cost to the PLF.) All costs related to claims must be carefully matched to the appropriate claim file. When there are multiple covered parties, costs often have to be split or reallocated to different claim files as more facts related to the claims are discovered. We have not been able to successfully computerize the current SUA system. Many accounting hours are spent each year consulting with the claims attorneys and manually revising SUA bills.

Finally, SUA is not an economically sound policy. SUA generates approximately $180,000 a year. On the other hand, costs allocated to SUA are estimated to be in the range of $90,000. Administrative costs arise because SUA is complicated and not understood by Oregon lawyers and significant amounts of time are spent explaining the system. Extra letters and phone calls are required. Sometimes additional explanation from the accounting department, the claims attorneys, or other administrators is required at the time the lawyer receives the SUA bill. (The analysis of administrative costs does not take into account the costs of opening additional claim files when multiple parties are involved in a related claim, further reducing the net gain from SUA.)

Conclusion

There are numerous reasons that argue for and against discontinuing the SUA or revising it in a significant way. After significant debate, the most recent PLF Board to examine the program elected to discontinue SUA. The Board requests that the BOG approve the discontinuation of PLF Policy 3.500 which provides for the Special Underwriting Assessment.

Attachments:

1. Memo – Bill Carter and Tim Martinez
2. Memo – Covered Parties with multiple claims
3. PLF Policy 3.500 et. seq.

Memo

To: Professional Liability Fund Board of Directors
From: Board Members Bill Carter and Tim Martinez
Re: Special Underwriting Assessment

We have asked Cindy to include this memo in the Board Agenda materials, for the purpose of explaining our opposition to elimination of the Special Underwriting Assessment. We would be happy to respond to any questions regarding our position at the October 7, 2011 meeting.

Preliminarily, we think that Ira has done a good and objective job of providing us with information, including the focus group and polls, but in the final analysis, it is our duty as bar leaders and PLF policy makers to exercise our independent judgment in making a decision on this issue.

Incentive to Careful Practice:

There is a long-recognized concept in the insurance industry known as "moral hazard". Briefly stated, it says that a party insulated from risk behaves differently than one would behave if exposed, even partially, to the risk. Moral hazard arises because an individual does not assume the consequences and responsibilities of his or her actions, and therefore has a tendency to act less carefully than they otherwise would, leaving another to hold responsibility for the consequences of those actions.

The PLF is unique. Unlike commercial insurers, it cannot "rate" or charge higher premiums for high-risk lawyers, deny coverage, charge a deductible or cancel coverage. Moreover, while it has been the bar's policy that discipline, rather than the cost of assessment, should be the measure of who should be allowed to practice law, the PLF is barred by confidentiality from reporting malfeasance or negligence to the bar's disciplinary counsel. In a word, the PLF must insure all members. The SUA is the only tool that we have to incentivize careful practice or deter negligence.

Fairness:

As a compulsory program, we have a duty, within the parameters of our mandate, to operate the PLF in a manner that is both businesslike and fair. In that context, one wonders what the members would think if they had access to the 1999-2008 ten year survey of multiple claims. While high-claims attorneys are sometimes ultimately disbarred (and sometimes not), it can take years or even decades for their negligence to catch up with them.

Ira's historical information indicates that while attorneys with 8+ claims constitute 2% of covered parties, they represent 17% of the total claims.

Our own analysis of the same data indicates that some 14 lawyers still practicing when the data was compiled accounted for 196 claims, with costs totaling $6,708,509. One lawyer has had 39 claims. At the current assessment of $3,500, these 14 attorneys have over the survey period exhausted the annual assessment of 1,916 attorneys, or in any given year, 192 lawyers. This is unfair to the majority of the lawyers having few or no claims, and one can only speculate on the effect of a total elimination of the policy. We would argue that by totally eliminating SUA, we could become enablers of chronic negligence, allowing it to occur with impunity, to the detriment of the public and the bar.

An objection has been made that continuation of SUA is an effort by the PLF to "price lawyers out of practice", and is therefore unduly punitive. The policy itself is objective and neutral, and the consequences are purely a matter of individual responsibility - the lawyers themselves are in control of their professional future.

Not Revenue, but Deterrence:

The argument has been made that SUA recovery is financially insignificant – about $200,000 per year (only in the insurance business is $200,000 an insignificant amount!). Conceding that this recovery is a small portion of the claim paid, and might be economically insignificant ("symbolic") to the PLF, it isn't to the covered party, and serves as a deterrent to negligent practice (or an incentive to careful practice), and if cumulative, this effect is magnified.

The argument is also made that SUA is difficult and expensive to administer. Everything that the PLF does is difficult and expensive to administer. With a total operating budget of in excess of $7 million, the cost of SUA is negligible. The value of SUA as a deterrent is intangible and difficult to measure, but no more so than the benefit of attorney assistance, bar books, CLE or law practice management programs.

Not Onerous:

One advocate of abolition of SUA raised the issue of fairness to the individual lawyer. First, the covered party has the privilege of purchasing coverage, at a reasonable rate, that otherwise might not even be available to that lawyer. Additionally, the SUA procedure has many layers of protection. There is the $75,000 "safe harbor", below which no assessment is made at all. When an assessment is made, there are three layers of review (staff, board, BOG), in which the assessed person can argue the fairness of the amount or allocation. The amount assessed is a very small fraction of the cost to the PLF, and is collected only for a limited period of time. No one would argue that a "safe driver

discount" is unfair. SUA, while structured in the reverse, embraces the same idea.

Consistency:

The PLF and the Bar spend thousands of dollars on programs designed with a single purpose in mind – to make Oregon lawyers better lawyers. These include mandatory CLE, Fastcase legal research, Bar Books, law practice management, attorney assistance, extensive specialty sections, new lawyer mentoring, etc. The SUA shares that goal by incentivizing careful practice. Eliminating SUA would render us indifferent to the quality of legal services being provided, and would be in direct opposition to that common goal.

Precedent:

Prior boards have articulated the purpose of SUA in various ways, two examples of which are set forth below:

- At inception: "Oregon lawyers did not want a 'no fault' system, but instead wanted those lawyers who had malpractice claims to bear a greater share of the PLF's costs. The increased charge was tied to future PLF coverage"

- The 2002 Board voted 6-1 not to discontinue or declare a moratorium of SUA during study, and the 2003 Board decided to leave SUA in place & adopt what are now the current policies. The goals stated by that Board were:

    - To recoup lost income from those responsible for the loss.
    - Improve the practice of law
    - A number of Board members thought the SUA was important for symbolic reasons – they thought it was important that there should be a potential economic penalty for attorneys who have malpractice claims.

SUA has existed for about 30 years. Although prior boards have periodically reconsidered SUA, they have universally elected to retain it. The PLF has been a uniquely successful bar program. What special knowledge or new evidence does this board have to justify reversal of decades of policy? If such knowledge or evidence exists, it hasn't been presented by the proponents of elimination.

Respectfully submitted,

Bill Carter
Tim Martinez

Identifying Information Has Been Removed
For Confidentiality Purposes

BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		8	$47,587.15	0	1 reprimand ; 3 complaints dismissed latest
		21	$323,473.04	Resigned	9 complaints suspension ; 3 complaints dismissed latest
		9	$96,332.96	Suspended - nondisciplinary	Currently suspended nondisciplinary; 5 complaints suspension ; 4 admon latest ; 6 complaints dismissed latest
		11	$83,911.62	Form B Resignation	16 complaints Form B Resignation ; 2 complaints admon ; 17 complaints dismissed latest
		9	$19,558.24	0	14 complaints dismissed latest
		9	$17,731.75	0	1 admon ; 1 complaint dismissed
		8	$166,681.33	Form B Resignation	5 complaints Form B ; 1 complaint suspension ; 1 admon ; 3 complaints dismissed latest
		13	$167,757.11	0	2 complaints dismissed latest
		10	$138,791.27	0	1 admon ; 1 reprimand ; 5 complaints dismissed latest
		8	$21,778.32	Form B Resignation	1 complaint Form B ; 1 admon 6 complaints dismissed latest
		12	$332,904.78	0	2 complaints admonitions latest ; 1 reprimand ; 1 complaint dismissed
		10	$289,206.94	0	1 reprimand ; 3 complaints dismissed latest
		10	$461,533.31	0	1 complaint suspension
		8	$75,204.67	0	2 complaints admonitions latest ; 6 complaints dismissed latest
		9	$181,420.99	0	1 complaint suspension ; 1 admonition 4 complaints dismissed latest
		14	$158,955.57	Form B Resignation	16 complaints Form B Resignation 2 complaints dismissed latest

Names and Bar Numbers Have Been Removed
For Confidentiality Purposes

Identifying Information Has Been Removed
For Confidentiality Purposes

BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		11	$125,017.38	7 pending	7 complaints pending; 1 reprimand ; 5 complaints dismissed latest
		8	$53,894.58	0	3 complaints dismissed latest
		8	$142,668.62	0	1 reprimand 3 complaints dismissed latest
		9	$79,437.31	0	no complaints.
		13	$95,467.19	0	1 complaint dismissed
		8	$33,726.45	Form B Resignation	6 complaints Form B Resignation
		103	$176,450.91	Form B Resignation	1 complaint Form B ; 2 complaints dismissed latest
		4	$517,631.53	0	3 complaints dismissed latest
		9	$98,486.52	0	1 complaint admonition , 6 complaints dismissed latest
		15	$328,071.50	Deceased; disbarred	5 complaints Disbarred
		4	$596,205.00	0	1 admon 5 complaints dismissed latest
		17	$273,419.66	0	6 complaints dismissed latest
		9	$160,861.29	0	1 complaint admonition , 11 complaints dismissed latest
		12	$280,934.03	0	1 complaint suspension ; 10 complaints dismissed latest
		8	$21,123.02	0	1 complaint admonition ; 11 complaints dismissed latest
		19	$373,331.17	2 Pending	2 complaints pending latest 4 complaints suspension 2 complaints reprimands latest ; 11 complaints dismissed latest
		12	$646,173.76	0	12 complaints dismissed latest
		12	$58,375.17	Disbarred	4 complaints post disbarment , 26 complaints disbarment 4 complaints admonitions latest 2 complaint dismissed

Names and Bar Numbers Have Been Removed
For Confidentiality Purposes

Identifying Information Has Been Removed
For Confidentiality Purposes

Names and Bar Numbers Have Been Removed For Confidentiality Purposes

BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		3	$649,960.40	0	no complaints.
		13	$258,931.71	Disbarred	1 complaint post disbarment , 3 complaints disbarrment ; 2 complaints dismissed latest
		10	$95,400.12	Form B Resignation	10 complaints Form B Resignation ; 3 complaints 2 reprimands latest . 3 complaints dismissed latest
		8	$73,437.92	0	no complaints.
		9	$129,835.83	0	1 complaint admonition 2 complaints dismissed latest
		15	$76,457.24	0	1 complaint admonition ; 8 complaints dismissed latest
		9	$181,803.50	3 pending	3 complaints pending ; 1 complaint admonition
		9	$54,307.19	deceased	no complaints.
		17	$191,138.15	Resigned	2 complaints suspensions latest ; 1 complaint admonition 7 complaints dismissed latest
		10	$237,619.51	Form B Resignation	3 complaints Form B Resignation 1 complaint suspension ; 1 complaint admonition ; 4 complaints dismissed latest
		10	$38,202.46	0	1 suspension ; 1 complaint dismissed
		12	$144,698.04	0	3 admon latest ; 1 reprimand , 5 complaints dismissed latest
		8	$65,987.69	Suspended - nondisciplinary	3 complaints dismissed latest
		11	$147,511.06	0	2 admon latest . 1 reprimand 5 complaints dismissed latest
		11	$326,217.21	Form B Resignation	13 complaints Form B , 3 complaints dismissed latest

Identifying Information Has Been Removed
For Confidentiality Purposes

Names and Bar Numbers Have Been Removed For Confidentiality Purposes

BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		14	$184,561.39	0	2 complaints suspension ; ; 4 complaints dismissed latest
		9	$43,400.71	suspended with 23 complaints pending	suspended; 23 complaints pending; 1 admon ; 1 reprimand ; 10 complaints dismissed latest
		8	$97,351.45	0	3 complaints admon latest ; 1 reprimand ; 4 complaints dismissed latest
		13	$56,346.97	0	1 complaint, dismissed
		8	$113,479.44	1 pending ; 9 mo suspension, all but 60 days stayed, 2-yr probation	1 Admon ; 2 complaints -suspension ; 1 self report dismissed ; 1 pending ;
		9	$59,904.56	0	1 Complaint, dismissed
		11	$329,016.10	0	0 complaints
		6	$571,787.03	0	1 admon ; 1 complaint dismissed
		12	$205,756.21	0	2 complaints dismissed latest 3/12/05
		8	$61,175.56	0	2 admon latest ; 1 reprimand ; 1 suspension ; 1 complaint dismissed
		8	$190,636.72	Form B resignation	4 discipline matters, Form B .
		10	$158,437.80	0	3 pending latest ; 3 admon latest ; 3 reprimands latest ; 13 complaints dismissed latest ;
		11	$395,904.95	0	1 admon ; 1 reprimand ; 4 complaints dismissed latest
		8	$316,368.13	deceased	0 complaints
		8	$28,011.15	0	1 admon ; 1 reprimand ; 4 complaints dismissed latest
		8	$207,178.95	0	3 complaints dismissed latest
		8	$25,257.90	0	1 complaint dismissed
		10	$51,402.82	Form B resignation	6 complaints Form B 5 complaints suspension ; 2 reprimands latest ; 2 admon latest ; 12 complaints dismissed latest

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BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		16	$228,701.28	0	5 complaints dismissed latest ; 1 suspension
		10	$33,577.84	Inactive; 0	no complaints
		27	$190,151.38	Form B Resignation	4 complaints Form B ; 3 admon latest 10 complaints dismissed latest
		39	$744,822.22	Suspended 2 yr	10 suspensions latest 3 Admon latest ; 1 reprimand ; 2 no further actions latest 51 complaints dismissed latest
		10	$169,389.03	0	3 complaints dismissed latest
		8	$325,864.40	0	1 complaint dismissed
		8	$87,826.38	Form B Resignation	7 complaints - Form B ; 1 complaint dismissed
		8	$325,683.20	Suspended (6 mos-- not readmitted)	6 complaints - suspended latest (status still suspended); 1 reprimand ; 2 complaints suspended 2 complaints dismissed latest
		8	$39,897.16	Form B Resignation	11 complaints - Form B 5 complaints dismissed latest
		8	$68,427.64	0	2 admon latest ; 3 complaints dismissed latest
		10	$39,723.01	0	2 complaints dismissed latest
		22	$317,548.54	deceased	3 complaints -suspension ; 1 reprimand
		8	$237,181.75	Suspended (1 yr - not readmitted)	4 complaints - suspension (status still suspended); 1 reprimand ; 5 complaints dismissed latest
		38	$266,675.33	0	2 admon latest ; 2 complaints - Reprimand ; 5 complaints dismissed latest
		9	$43,215.92	Form B Resignation	6 complaints - Form B ; 3 complaints dismissed latest
		16	$123,841.29	Disbarred	12 complaints - disbarred ; 1 admon

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BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		11	$53,268.94	0	1 reprimand ; 19 complaints dismissed latest
		9	$149,886.15	0	2 complaints - suspension ; 6 complaints dismissed latest
		8	$79,198.22	Pending	1 pending ; 1 complaint dismissed
		10	$131,956.34	0	5 complaints dismissed latest
		8	$259,346.16	Form B Resignation	6 complaints - Form B ; 3 complaints - suspension ; 4 admon latest 2 reprimands latest ; 2 complaints dismissed latest
		12	$444,028.48	Disbarred	1 complaint disbarred ; 7 complaints suspension latest ; 1 admon ; 1 complaint dismissed
		18	$82,015.78	Resigned	22 complaints - Suspension ; 1 admon ; 1 complaint dismissed
		8	$101,346.74	Suspended 4 yrs	5 complaints - suspension , 1 complaint dismissed
		12	$142,336.17	0	1 admon ; 1 reprimand , 11 complaints dismissed latest
		13	$141,290.13	0	1 suspension ; 11 complaints dismissed latest
		8	$110,878.85	0	5 complaints dismissed, latest
		8	$110,613.46	0	2 Admon latest 6 complaints dismissed latest
		10	$422,347.69	Disbarred	5 complaints disbarred 2 suspensions latest ; 1 Reprimand 1 no further action ; 9 complaints dismissed latest
		12	$158,274.06	inactive	2 complaints - suspension ; 5 complaints dismissed latest
		8	$51,459.37	0	2 complaints dismissed latest
		8	$53,700.02	0	1 Admon 1 complaint dismissed

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BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		9	$119,336.85	0	1 Admon ; 4 complaints dismissed latest
		10	$24,136.75	0	4 complaints dismissed latest
		12	$55,025.40	Form B Resignation	1 complaint Form B ; 2 complaints suspension ; 6 complaints dismissed latest
		10	$85,584.76	Form B Resignation	4 complaints Form B ; 4 suspensions latest 3 complaints dismissed latest
		12	$863,534.39	Form B Resignation	1 complaint Form ; 1 admon 5 complaints dismissed latest
		12	$269,396.00	0	10 complaints dismissed latest
		8	$92,366.78	0	5 complaints dismissed latest
		4	$580,456.45	0	1 admon
		15	$31,698.51	Form B Resignation	1 complaint form B ; 4 complaints dismissed latest
		8	$457,708.40	Suspended interim	1 Reprimand ; 11 complaints pending latest ; 1 complaint dismissed
		19	$409,504.92	Suspended 18 mos	2 suspensions latest ; 1 Admon ; 7 complaints dismissed latest
		8	$8,539.57	0	1 admon 2 complaints dismissed latest
		9	$26,234.22	Form B Resignation	5 complaints Form B ; 2 complaints suspension ; 1 reprimand ; 12complaints dismissed latest
		17	$209,867.80	Suspension 3 yr	10 suspensions latest ; 3 admon latest ; 1 Reprimand 39 complaints dismissed latest
		4	$532,572.94	0	2 complaints dismissed latest
		14	$65,583.75	0	2 complaints dismissed latest
		8	$102,218.83	0	2 complaints dismissed latest
		9	$71,540.13	0	no complaints
		11	$22,245.83	0	1 admon ; 14 complaints dismissed latest

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For Confidentiality Purposes

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BAR #	ATTY NAME	CLAIMS 1999-2008	TOTAL INCURRED 1999-2008	CURRENT STATUS	DISCIPLINE RECORD
		10	$211,370.84	Disbarred	3 complaints post disbarment; 8 complaints disbarrment ; 2 complaints suspension ; 1 admon , 3 complaints dismissed latest
		13	$400,639.70	Form B Resignation	1 complaint post Form B; 6 complaints Form B ; 1 admon ; 1 reprimand 2 complaints suspension ; 7 complaints dismissed latest
		8	$59,346.26	Pending	1 pending , 1 admon , 1 complaint dismissed
		16	$305,138.55	Form B Resignation	8 complaints Form B Resignation , 1 suspension , 2 complaints dismissed latest
		13	$103,570.46	0	no complaints

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 (the "Base Amount"). SUA will be assessed for all claims which are settled or closed by the PLF by September 30 of the prior year. The surcharge for each claim will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years.

(BOD 10/5/12; BOG 11/10/12

(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:

(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 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 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 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 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)

3.550 PROCEDURE FOR REVIEW OF SPECIAL UNDERWRITING ASSESSMENT

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

(B) Basis for Appeal:

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

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

(2) A Petition for Review of a SUA must be delivered to the office of the 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:

Activity	Time Allowed
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 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 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 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 SUA, an appropriate refund will be made by the PLF together with statutory interest thereon.

(4) If the decision of the Board of Directors serves to impose all or part of the subject 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 SUA, appropriate refund will be made by the PLF together with statutory interest thereon.

(6) If the review of the Board of Governors serves to impose all or part of the subject 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 CEO of the 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 11/10/12)

POTENTIAL AGENDA ITEMS FOR THE 2013 ANNUAL MEETING OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION

NOTE: This list includes issues that may be presented for consideration at the 2013 Annual Meeting or a future meeting of the House of Delegates. Please remember that, with the exception of state and local bar associations, the filing deadline for submission of Resolutions with Reports by Association entities and affiliated organizations is **Tuesday, May 7, 2013.**

ASSOCIATION'S CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE

1. Proposed Amendments
   The House's agenda will include the following proposals to amend the Association's Constitution, Bylaws and House Rules of Procedure:

   A) Amends §1.2 of the Constitution to include the following language as one of the purposes of the Association: "to defend the right to life of all innocent human beings, including all those conceived but not yet born." Contact: Edward Haskins Jacobs, Attorney-at-Law, 2121 (16A) Queen Street, Unit 1, Christiansted, St. Croix, VI, 00820; Phone: 340/773-3322; Fax: 340/773-2566; E-mail: edwardjacobs@yahoo.com.

   B) Amends §6.2(a)(5) and §10.1(a) of the Association's Constitution, and §30.5 of the Bylaws to change the name of the Law Practice Management Section to the Law Practice Division. Contacts: Joan Rose Marie Bullock, Florida A&M University College of Law, 201 Beggs Avenue, Orlando, FL 32801-1733, Phone: 407/254-3201; E-mail: joan.bullock@famu.edu; Tom Bolt, BoltNagi, PC, Suite 21, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410; Phone: 340/774-2944; E-mail: tbolt@vilaw.com.

   C) Amends §30.5 of the Association's Bylaws, to allow non-U.S. lawyer associates to serve on the Council and in the leadership of the Section of Litigation. Contacts: William R. Bay, Thompson Coburn LLP, Ste. 3500, 505 N 7th St., St. Louis, MO 63101-1693, Phone: 314/552-6008; E-mail: wbay@thompsoncoburn.com; Pamela A. Bresnahan, 23 Sands Ave., Annapolis, MD 21403-4426; Phone: 202/467-8861; E-mail: pabresnahan@vorys.com.

   D) Amends §31.7 of the Association's Bylaws to change the jurisdictional statement of

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*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

the Standing Committee on Legal Assistance for Military Personnel. Contact: Brig Gen (Ret.) David G. Ehrhart, Lockheed Martin Aeronautics Company, PO Box 748, Fort Worth, TX 76101-7450, Phone: 817/777-1706; E-mail: david.g.ehrhart@lmco.com.

E) Amends §31.7 of the Association's Bylaws to discontinue the Standing Committee on Federal Judicial Improvements. Contact: Sharon Stern Gerstman, Magavern, Magavern, Grimm LLP, 1100 Rand Building, 14 Lafayette Square, Buffalo, NY 14203, Phone: 716/856-3500; E-mail: sgerstman@magavern.com.

F) Amends §31.7 of the Association's Bylaws to discontinue the Standing Committee on Strategic Communications. Contact: Sharon Stern Gerstman, Magavern, Magavern, Grimm LLP, 1100 Rand Building, 14 Lafayette Square, Buffalo, NY 14203, Phone: 716/856-3500; E-mail: sgerstman@magavern.com.

CRIMINAL JUSTICE

2. Co-Occurring Disorders
Urges additional funding for and enacts legislation that would address the complex problem presented by the large number of youth and adults with co-occuring mental health and substance abuse disorders who come into contact with the criminal justice system. **Criminal Justice Section**. Contact: Sarina Cox**, Phone: 202/662-1518, E-mail: sarina.cox@americanbar.org.

3. Gay Panic Defense
Urges implementation of legislative and or judicial solutions to reduce instances of bias, sympathy, prejudice, or public opinion which manifest discrimination based upon sexual orientation or gender identity. **Criminal Justice Section**. Contact: Sarina Cox**, Phone: 202/662-1518, E-mail: sarina.cox@americanbar.org.

4. Mandatory Reporting
Urges legislative bodies to review and determine what changes, if any, are appropriate regarding their mandatory reporting requirements for child abuse and neglect, sanctions for failure to report child abuse and neglect, penalties for child abuse and whether to extend civil immunity to professionals. **Criminal Justice Section**. Contact: Sarina Cox**, Phone: 202/662-1518, E-mail: sarina.cox@americanbar.org

5. Overcriminalization
Addresses the issue of over-federalization of crime and criminalization of regulatory matters. **Criminal Justice Section**. Contact: Sarina Cox**, Phone: 202/662-1518, E-mail: sarina.cox@americanbar.org.

6. Plea Waivers

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*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

Opposes plea agreements where a criminal defendant waives the right to claim ineffective counsel assistance, or prosecutorial misconduct and urges judges to reject such plea agreements and urges defense attorneys to inform their clients that such plea waivers have been found to be unethical in some jurisdictions. **Criminal Justice Section**. Contact: Sarina Cox**, Phone: 202/662-1518, E-mail: sarina.cox@americanbar.org.

ETHICS AND PROFESSIONAL RESPONSIBILITY

7. ABA Model Code of Judicial Conduct
Amends the Terminology Section and Rule 2.11 of the ABA Model Code of Judicial Conduct which seek to clarify judges' ethical obligations to recuse themselves in matters in which their impartiality might reasonably be questioned as a result of judicial election and retention election campaign contributions made to them or their opponents, as well as independent expenditures made in support of or opposition to a judge's election or retention. **Standing Committee on Ethics and Professional Responsibility**. Contact: Ellyn S. Rosen*, Phone: 312/988-5311, E-mail: ellyn.rosen@americanbar.org.

GROUP AND PREPAID LEGAL SERVICES

8. Group Legal Services Plans
Supports group legal services plans as a mechanism for delivering legal services to moderate income consumers. **Standing Committee on Group and Prepaid Legal Services**. Contact: Tori Jo Wible*, Phone: 312/988-5753, E-mail: tori.wible@americanbar.org.

HEALTH LAW

9. Mental Health Treatment Services
Supports the rights of our nation's veterans to access mental health treatment services and substance use disorder coverage that is required to be made available under federal and state law and urges Congress to ensure that a uniform and plain language disclosure of the terms of coverage is required across all insurance and welfare benefit plans. **Health Law Section**. Contact: Wanda Workman*, Phone: 312/988-5548, E-mail: wanda.workman@americanbar.org.

HOMELESSNESS AND POVERTY

10. Human Right to Housing

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*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

Recognizes adequate housing as a human right. **Commission on Homelessness and Poverty**. Contact: Amy E. Horton-Newell**, Phone: 202/662-1693, E-mail: amy.hortonnewell@americanbar.org.

INTERNATIONAL LAW

11. Statutes of Limitations for Serious Crimes
Adopts policy regarding the statutes of limitations for genocide, crimes against humanity, and serious war crimes and encourages all governments to apply this international legal standard. **Section of International Law**. Contacts: Ted Carroll**. 202/662-1675, E-mail: ted.carroll@americanbar.org; Becky Farrar, Co-Chair, SIL International Human Rights Committee, 1121 Arlington Blvd, Apt. 220, Arlington, VA 22209, Phone: 726/692-0065, E-mail: rfarrar88@gmail.com.

12. U.S. Judicial Network
Proposes establishment of an intra-country judicial network, within the United States, that will serve as a mechanism for judicial communication and education about relevant international family law matters. **Section of International Law**. Contacts: Ted Carroll**. Phone: 202/662-1675, E-mail: ted.carroll@americanbar.org; Melissa Kucinski, Chair, SIL International Family Mediation Task Force, Global Family Mediation, 720 Pettis Ave., Mountain View, CA 94041, E-mail: melissa@globalfamilymediation.com.

LAW AND AGING

13. Rights of Patients with Advanced Chronic Conditions
Supports the rights of patients with advanced chronic conditions to receive care coordination services to ensure continuity and coordination of services and supports acute, long-term, and palliative conditions regardless of setting, provider, and medical condition. **Commission on Law and Aging**. Contact: Charlie Sabatino**, Phone: 202/662-8686, E-mail: charles.sabatino@americanbar.org.

14. Social Security Representative Payees and Veterans Fiduciaries
Urges state and territorial courts handling adult guardianship and federal, state and territorial agencies that administer representative payment programs for government benefits to coordinate information sharing, training and educating to best serve individuals with fiduciary financial decision-makers. **Commission on Law and Aging**. Contact: Charlie Sabatino**, Phone: 202/662-8686, E-mail: charles.sabatino@americanbar.org.

LAWYER DISCIPLINE

15. Legal Marijuana Regulations
Urges appropriate disciplinary agencies not to bring disciplinary action against lawyers who assist and advise clients on how to implement or comply with legal marijuana

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*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

regulations under state or territorial law. **King County Bar Association**. Contact: Thomas M. Fitzpatrick, Talmadge Fitzpatrick PLLC, 18010 Southcenter Pkwy, Tukwila, WA 98188, Phone: 206/574-6661, E-mail tom@tal-fitzlaw.com.

PARALEGALS

16. Paralegal Education Programs
Grants approval, reapproval and/or extension of the term of approval to several paralegal education programs. **Standing Committee on Paralegals**. Contact: Peggy C. Wallace*, Phone: 312/988-5618, E-mail: peggy.wallace@americanbar.org.

PRO BONO

17. Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means
Adopts the revised black letter Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, dated August 2013, and recommends appropriate implementation of these Standards by entities providing civil pro bono legal services to persons of limited means. **Standing Committee on Pro Bono and Public Service.** Contacts: Larry McDevitt, The Van Winkle Law Firm, 11 N. Market Street, Asheville, NC, 28801-2932, E-mail: lmcdevitt@vwlawfirm.com; Cheryl Zalenski*, Phone: 312/988-5770, E-mail: cheryl.zalenski@americanbar.org.

PROFESSIONAL DISCIPLINE

18. Guidelines for an International Regulatory Information Exchange Protocol
Adopts Guidelines for an International Regulatory Information Exchange Protocol to facilitate better communication and cooperation among lawyer regulators in different jurisdictions. **Standing Committee on Professional Discipline**. Contact: Ellyn S. Rosen*, Phone: 312/988-5311, E-mail: ellyn.rosen@americanbar.org.

YOUTH AT RISK

19. Children's Exposure to Violence
Encourages endorsement and implementation of recommendations which call for trauma-informed identification, assessment, and treatment of children and youth exposed to violence, as well as improving child welfare, juvenile justice, and other child-serving systems' responses through application of trauma-informed approaches.

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*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

Commission on Youth at Risk. Contact: Garry Bevel**, Phone: 202/662-1749, E-mail: gary.bevel@americanbar.org.

20. Indian Child Welfare Act
    Urges governments, states, and child welfare agencies to meet the needs of American Indian and Alaska Native children and families through state court collaborations, increased and improved federal agreements and understanding between states and Tribes, legal services to Tribes, increased actions to reduce the number of American Indian and Alaska Native children's removal from their families, and increased financial support from USDOJ, HHS, and the Department of Interior. **Commission on Youth at Risk**. Contact: Garry Bevel**, Phone: 202/662-1749, E-mail: gary.bevel@americanbar.org.

*American Bar Association, 321 N. Clark Street, Chicago, IL 60654
**American Bar Association, Washington Office, 740 15th Street NW, Washington, DC 20005-1009

OREGON STATE BAR
Board of Governors Agenda

Meeting Date:	May 3, 2013
Memo Date:	April 12, 2013
From:	David Eder, Oregon New Lawyers Division Chair
Re:	ONLD Report

Since the last BOG meeting the ONLD Executive Committee met three times. Below is a list of updates on the ONLD's work since February.

- Participated in the bar's Tree Planting event on March 2
- Launched the 2013 High School Essay Contest- topic: the Fourth Amendment as applied to unreasonable searches and seizures and probable cause
- Held panel presentations on legal job opportunities at each of the three law schools
- Sponsored informal social events in February and March in Portland
- Conducted a half-day practical skills program in Eugene with dual-track CLE programming followed by a social with local attorneys and law students
- Appointed Collin McKean to the Campaign for Equal Justice board as the young lawyer representative
- Launched a LinkedIn and Twitter account, and continued to maintain a Facebook presence
- Held monthly brown bag lunch CLE programs in Portland
- Organized a sole and small firm dinner for new lawyers to network with seasoned practitioners
- Began planning a new CLE programs geared toward the "older new lawyer" or those members nearing the end of their ONLD membership
- Finalized plans for a four part diversity CLE program series held in Multnomah County

OREGON STATE BAR
Board of Governors Agenda

Meeting Date:	May 3, 2013
Memo Date:	April 23, 2013
From:	Danielle Edwards, Director of Member Services
Re:	ONLD Request for Exemption from CLE Registration Fee

Action Recommended

Consider the Oregon New Lawyers Division request for an exemption from the CLE Seminars Department event registration services fee.

Background

From the late 1980's through 2010 the ONLD utilized the services offered by the CLE Seminars Department to process their attendee event registrations. Originally a $1 per registrant rate was charged for these services, this fee was increased to $5 per registrant in 2002.

During the budgeting process in 2010, along with other bar departments, the ONLD was encouraged to reduce its budget. A decision was made to transfer event registration duties to the ONLD staff liaisons. In addition to other cutbacks, the ONLD reduced its CLE Subcommittee budget by 25 percent, a cut of $1,000.

At the end of last year under Sylvia's direction, changes were made to department structures and staff duties. As part of these changes all OSB department and program event registration processing was moved to the CLE Seminars Department. The objective for making this change was to reduce member confusion when calling to register for a bar program, centralize event fee processing, and utilize the experience and proficiency of the CLE Seminars staff.

As mentioned in the exemption request letter, the CLE Seminars Department now charges $100 per program to perform registration services for the ONLD as compared to the 2002-2010 rate of $5 per registrant. The Brown Bag CLE Series the ONLD is requesting a fee exemption for has an average of 26 attendees per program. Of those, 19 attendees are paying and 7 receive complementary registration. These numbers are based on last year's program attendance when registration was $10 per credit. Registration rates for this year's Brown Bag CLE Series have increased to $15 per credit to accommodate the increased cost for registration services.

OSB Oregon New Lawyers Division

February 28, 2013

Oregon State Bar
Attn: Mike Haglund, President
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224

Re: Request for Exemption from CLE Registration Fee

Dear Mr. Haglund,

We are the co-chairs of the Oregon New Lawyers Division CLE Subcommittee. The ONLD helps new lawyers successfully navigate the many obstacles they face as they begin practice in our state. We promote professionalism, access to justice, and programs of value to new lawyers and law students in Oregon. One of our primary programs for new lawyers is our "Brown Bag CLE Series." This series of one-credit, lunchtime CLE's provides low-cost ($10/credit) credit for lawyers across the state with topics specific to new practitioners. Last year we held over 15 Brown Bag CLE's in cities such as Bend, Oregon City, Eugene, Portland and Salem. We request a waiver from the administrative fees that have been proposed to process registrations for program participants.

The Brown Bag Series depends on a volunteer spirit to help new lawyers. Our speakers are volunteers, the CLE's are held in a volunteered courtroom, and traditionally we have received exemption from the CLE registration fee usually charged by the Oregon State Bar. Our group makes every effort to keep costs associated with this program at an absolute minimum. Through this volunteer effort the ONLD has been able to absorb the administrative fees attributed to our group to provide the valuable service to the legal community.

A recent decision was made to remove the ONLD's exemption from the administrative fees to process registrations for attendees. This decision means that the ONLD now must pay a $100 charge per CLE that we hold. This program benefits hundreds of new Oregon lawyers annually. We ask that the Board of Governors grant the ONLD an exemption from this fee for our Brown Bag CLE Series.

JAMES S. BRUCE JOSEPH KRAUS

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon 97281-1935
www.osbar.org/onld onld@osbar.org (503) 431-6426 *toll-free in Oregon* (800) 452-8260 ext. 426

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Awards Recommended for BOG Approval

Action Recommended

Consider the recommendation of the Client Security Fund for awards in the following cases:

CONNALL (Risch)	$50,000.00
GRUETTER (Bothwell)	$44,690.70
GRUETTER (Boyer)	$10,747.46
GRUETTER (Richmond)	$13,485.84
HANDY (Bartow)	$45,500.00
BERTONI (Ramirez)	$15,000.00
BERTONI (Vargas Torres)	$15,000.00
TOTAL	$194,424.00

Discussion

CONNALL (Risch) - $50,000

Stephen Risch hired Des and Shannon Connall to represent him in March 2008, to defend him against multiple sex offense charges. The Connalls charged a flat fee of $50,000 for their services through trial. Risch was convicted on all counts after a six-day trial in September 2009.

After the trial, the Connalls and Risch agreed on two new flat fee agreements for the Connall's continued representation in a request for a new trial and, if necessary, for appeals through the Supreme Court. The fee for the second trial was $40,000 and the fee for the appeal was $25,000.

In late September 2009, Risch delivered to the Connall firm $24,000 in cash and ten gold coins (worth approximately $10,000). Risch also asked the firm to receive and hold in trust his paychecks, and between September 2009 and March 2010 the firm received pay checks totaling $8,739.60. In December 2009, Risch gave Shannon Connall his power of attorney for banking purposes and authorized the Bank of Astoria to release all of his funds to her for application to his fees. Pursuant to that authority, in January 2010, another $23,000 of Risch's funds were transferred to the Connall firm.

In late October 2009, the court granted Risch's motion for new trial and the second trial was set for April 2010.

Despite his having handing over money and property worth more than $65,000, Risch found that his relationship with the Connalls deteriorated soon after the first trial. Shannon Connall was Risch's primary contact and communication between them was sporadic. Among other things, he asserts that most of Shannon's appointments with him were for her to secure additional funds. Additionally, Risch was not notified until late March that the new trial had been postponed to November 2010. On April 4, 2010, Risch hired new counsel and wrote to the Connalls terminating the representation and demanding a refund of all unearned fees. The gold coins were transferred to Risch's new counsel, but no refund or accounting of the funds delivered to the Connalls was every provided.

In response to Disciplinary Counsel's investigation, Des Connall claims that all fees were "well deserved" and reasonably earned. He also disputes the amounts Risch claims to have paid. Connall says Risch gave the firm only $9500 in cash, but the firm's accounting ledger shows a cash payment of $24,000.

Connall has not offered any explanation as to why a refund is not due for the work yet to be done under the flat fee agreements. Additionally, other than the motion for new trial, there is no evidence of any work done on Risch's behalf after the motion was granted. DCO has conducted an exhaustive review of this matter and agrees with the CSF Committee's conclusion.

The Committee recommends an award to Risch of $50,000 (against a loss in excess of $65,000) and waiver of the requirement that he get a judgment against the Connalls. The Committee does not believe it is fair to require Risch to litigate (to the extent he can do so from prison) with Des Connall over the value of services that may or may not have been provided; additionally, all evidence suggests that the Connalls are judgment-proof.

GRUETTER (Bothwell) - $44,690.70

Chris Bothwell was struck by a car while crossing E. Burnside street and sustained multiple severe injuries including brain trauma that required the appointment of a conservator for a period of time. He hired Gruetter in September 2007 to pursue claims against the driver's insurer and entered into a standard 1/3 contingency fee agreement.

A $300,000 settlement was received by Gruetter in April 2008. He deducted his $100,000 fee and delivered more than $140,000 to the conservator, retaining the balance to satisfy medial liens and bills. Over the next year or so, Gruetter's office (with some prodding from the client) paid some of the medical providers. He also disbursed small amounts (totaling $7000) to Bothwell.

A reconstructed accounting based on Gruetter's bank and other records indicates there should have been $44,690.70 in Gruetter's trust account when the OSB took over as custodian of his practice. There was, however, only slightly more than $2000 in the account.

The CSF Committee recommends an award of $44,690.70 to Bothwell, along with a waiver of the requirement that he obtain a civil judgment against Gruetter. Our information is that Gruetter is negotiating a plea with federal prosecutors that will involve jail time and significant restitution. We also believe him to be judgment-proof.

GRUETTER (Boyer) - $10,747.46

Robbyn Boyer retained Gruetter's firm in July 2009 on a 40% contingent fee agreement. Her case settled for $57,500; she received a preliminary distribution of nearly $13,000 after deduction of attorney fees and costs. Gruetter's records reflect that he paid some, but not all of Boyer's outstanding medical bills, and retained $10,747.46 that was intended for that purpose. Boyer learned of this when she started receiving calls from the medical providers.

The Committee recommends an award of $10,747.46 and waiver of the requirement for a civil judgment for the reasons stated above.

GRUETTER (Richmond) - $13,485.84

Doug Richmond hired Gruetter in December 2008 to pursue a personal injury claim on a standard 1/3 contingency fee basis. After settling the claim for $100,000 in February 2009, , Gruetter paid himself his fees and costs and held $13,425.84 to pay two outstanding medical bills. When Richmond began to receive demands from the creditors, he was assured as late as November 2011, that Gruetter was continuing to negotiate reductions and paying the bills. When Gruetter's office closed in January 2012, the bills remained unpaid and there was no money in Gruetter's trust account.

The Committee recommends an award of $13,485.84 and waiver of the requirement for a civil judgment for the reasons stated above.

Handy (Bartow) - $45,500.00

Bend attorney Paul Handy represented Sam Bartow in various matters over some period of time. In 2007, Bartow deposited $50,000 into Handy's trust account to be held until Bartow needed the funds. In the meantime, Bartow authorized Handy to use the $50,000 as collateral for loans to finance an unrelated case for an unrelated client. In exchange, Handy agreed not to charge Bartow for any legal services performed during the time he was using Bartow's funds as collateral.

Bartow died in 2008. Elizabeth Campen was appointed personal representative of Bartow's estate. Upon appointment, Campen demanded return of the $50,000 from Handy, but Handy said he could not release the funds until the other client's civil matter was resolved.

Campen allowed Handy to retain the funds until July 2012, when she requested proof that the funds remained in Handy's trust account. Handy provided what he represented was a copy of his trust account statement reflecting that the funds were on deposit.

In October 2012, Handy admitted that the funds were gone. He said that over some unstated period of time his assistant had inadvertently applied the funds to work Handy performed on behalf of Bartow. The following month, Handy confessed judgment in favor of the estate for $50,000 but with no specific admission of guilt.

Handy is currently being prosecuted in Deschutes County on forgery charges. Disciplinary Counsel's Office is investigating two complaints against Handy, one relating to a claim of forgery and the other relating to his handling of Bartow's funds.

The CSF investigator found evidence that Handy had performed approximately 15 hours of work on six relatively minor matters of Bartow's after the $50,000 was deposited. Notwithstanding Handy's agreement not to charge Bartow for those legal services, the CSF Committee concluded that Bartow or his estate benefited from the work and that the eligible loss to be reimbursed by the fund is $45,500 (deducting $4,500 for 15 hours of work at $300/hour).

With that reduction, the Committee recommends an award of $45,500 in exchange for an assignment of the Estate's judgment against Handy.

Bertoni (Ramirez) - $15,000.00

In January 2012, Portland attorney Gary Bertoni stipulated to a 150-day disciplinary suspension from the practice of law based on charges that he had commingled funds and improperly handled his trust account. Bertoni arranged with attorney Kliewer to take possession of his files and be the contact for clients needing their files during his suspension. On March 26, 2012, Kliewer was substituted as attorney of record in an number of Bertoni's pending cases.

Ramirez hired Bertoni in April 2012 to appeal Ramirez' criminal conviction and deposited a retainer of $15,000. When Ramirez subsequently learned that Bertoni was suspended and could not begin working on the appeal right away, he fired Bertoni and demanded a refund of the retainer.

Bertoni claims he intended to perform all necessary services in a timely fashion notwithstanding his suspension. He says he filed motions to extend the briefing schedule and expected to begin working on the brief in a law clerk capacity, then complete the matter after his reinstatement to active practice. Bertoni also claims to have entered into an agreement to repay Ramirez' deposit, but no payments have been made.

Bertoni was reinstated in August 2012 but is currently being investigated by Disciplinary Counsel's Office on multiple charges including failure to pay withholding taxes for employees,

failing to communicate with clients, charging excessive fees, entering into an improper fixed fee agreement, failing to account, and others.

The Committee recommends and award to the client of the entire $15,000 retainer with no offset for any work purportedly performed by Bertoni while he was suspended. The committee also recommends waiving the requirement for a civil judgment as claimant is incarcerated out of state and Bertoni is believed to have no assets available to satisfy a judgment.

Bertoni (Vargas-Torres) - $15,000.00

Client hired Bertoni on January 27, 2012 to handle criminal cases pending in Oregon and Idaho. That was one week after Bertoni signed a stipulation for disciplinary suspension to begin on March 27, 2012.

Bertoni asserts that the client appeared in court in early March and agreed to the substitution of Ronnee Kliewer as his counsel. Kliewer says Bertoni assured her she wouldn't have to do anything on the cases during his suspension, even though they were set for trial in September.

Bertoni claims to have performed substantial services on the client's matters prior to his suspension and to have taken steps to protect the client's interests until he could be reinstated. Bertoni has refused to refund any portion of the $15,000 paid by the client, claiming it was a flat fee earned on receipt.

It is not clear whether Kliewer resigned or was fired by the client, but he eventually hired new counsel to represent him. The new lawyer found no evidence that Bertoni performed any material services on the cases. She also says that Bertoni's inaction caused the client to lose his opportunity to negotiate a favorable plea deal, as a result of which he will likely face a more severe sentence than his co-defendants.

The Committee concluded that any services performed by Bertoni were *de minimis* within the meaning of the CSF rules and that the client should be awarded the entire $15,000 paid to Bertoni. The Committee also recommends waiving the requirement for a civil judgment as the client is incarcerated and Bertoni is believed to have no assets available to satisfy a judgment.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 20112-104 HORTON (Calton)

Action Recommended

Consider the Calton's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In November 2012, Christopher Calton filed a claim for reimbursement with the Client Security Fund for funds allegedly misappropriated by William Horton. Calton claimed that Horton settled Calton's $90,000 personal injury claim in 2007, but failed to deliver Calton's share of the settlement proceeds and lied about what had happened to it. In an interview with the CSF investigator, Calton asserted that he discovered his loss in the summer of 2008 and confirmed it in 2009 when he learned that Horton was deceased.[1] Calton had no explanation for why he waited more than four years to present his claim to the CSF.

The CSF Rules require that claims be submitted:

> "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.

Based on that rule, the CSF Committee denied Calton's claim on the ground it was untimely.

Calton has requested BOG review. In his request, Calton explains he was busy with other issues that prevented him from actively attempting to recover the settlement funds. He also says he didn't learn of Horton's death until sometime in 2012 and shortly thereafter learned of the existence of the Client Security Fund. Calton provided no documents to support his claim. The information available to the CSF came from Horton's file[2] and his bank records that were subpoenaed by the CSF in connection with an earlier claim.

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[1] Horton took his own life in late January 2009, following his admission in a fee arbitration proceeding to misappropriating another client's settlement funds. In 2009 and 2010, the CSF paid a total of $86,718 to four of Horton's former clients.

[2] The PLF assisted Horton's widow with the closing of his office and took possession of what appeared to be "open files." The PLF also sent letters to all of the affected clients informing them of Horton's death.

Calton hired Horton in January 2007 to pursue a third party claim for injuries sustained at work for which Calton had been receiving benefits from SAIF. Horton negotiated a settlement with Farmers Insurance for $31,447.07, which included nearly $14,000 owed to SAIF. Calton's share after deduction of Horton's fees and costs was $5,989.07.

Horton received the settlement check (net of the SAIF lien amount) on or about October 25, 2007. There is no deposit to his trust account that matches the sum received from Farmers, but a close amount was deposited on October 26. By the end of October, the balance of Horton's trust account was $1.00.

On November 26, 2007, Horton deposited $1250[3] into Calton's account at US Bank. In February 2008, Calton acknowledged that $5,739 of his funds remained.

In late February 2008, Horton received a demand from Calton's ex-wife for the 80% of his injury settlement that had been awarded to her in a default divorce judgment. Calton objected and Horton advised the parties that he would hold the funds pending their resolution of the issue or he would interplead them into court.

In November 2008, attorney Morrell contacted Horton on behalf of Calton's ex-wife. In response to Morrell's demand, Horton claimed there was only a small portion of Calton's money left, explaining that he had applied more than $3800 of it fees for his services relating to Calton's criminal case and divorce. The letter purported to include a check to the ex-wife representing 80% of the trust balance, but Morrell confirms he never received it and heard nothing further from Horton.

There is no evidence whatsoever that Horton provided any services to Calton in connection with either Calton's criminal or domestic relations cases. To the contrary, in a letter to Calton in October 2007, Horton says he is unsure as to the confidentiality of written communications while Calton is in jail, suggesting an unfamiliarity with criminal defense. Similarly, Horton told Calton's ex-wife that he didn't do divorce work and was therefore unsure how to handle her demand.

There is little doubt that Horton misappropriated all of Calton's settlement proceeds within a few days of receiving the money and told a continuing series of lies to cover up what he had done. Although he distributed $1250 of the proceeds, $5,739 remains unaccounted for.

I spoke with Calton about his delay in making a claim to the Fund. Calton claims to have inquired of Horton about his funds on the day in mid-2008 that he was released from jail. On that and subsequent occasions, Horton informed Calton that he couldn't release the funds in the face of the ex-wife's claim. Calton was reluctant to get into a fight with Horton, fearing it would jeopardize his parole, so by the end of 2008 he dropped the issue and had no further

[3] There is a corresponding withdrawal from Horton's business account on that date. Recall that Horton's trust account was depleted within days of receiving Calton's settlement funds.

contact with Horton. He denies having learned of Horton's death in early 2009 when the PLF assisted with the closure of the office following Horton's death. Calton claims that all his mail went to his ex-wife's address and she didn't give it to him. Toward the end of 2012, Calton was going through old documents that reminded him of the money that he believed Horton was holding. Unable to contact Horton at his old address, Calton did an internet search and learned both of Horton's death and that the CSF had reimbursed other clients.

If the BOG finds Calton's explanation credible, he may yet be eligible for an award since the claim was made within the CSF Rules' 6 year "statute of ultimate repose." In that event, the requirement for a civil judgment should also be waived on the ground that Horton died insolvent.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim CONNALL (Raske) Request for Review

Action Recommended

Consider Ms. Raske's request for BOG review of the CSF Committee's denial of her application for reimbursement.

Discussion

The CSF Committee denied Karen Raske's application because it believed more than *de minimis* work was done on the matter by Shannon and Des Connall and therefore the claim was not eligible for reimbursement. Ms. Raske, through her counsel, has made a timely request for BOG review of the Committee's decision.

Ms. Raske's sister accused Raske of elder financial abuse against their mother and obtained a restraining order preventing Raske from having contact with the mother. Raske retained the Connall firm in August 2010 to help her set aside the restraining order. Shannon Connall assured Raske that setting aside the order would be a simple matter and quoted a fee of $3250 for ten hours of work. Raske paid that amount in advance.

Shannon instructed Raske on what forms needed to be completed and filed, how to get a hearing scheduled, and what to say at the hearing. After filing the papers and getting a hearing scheduled for February 4, 2011, Raske went to the firm's office to discuss her case. Shannon was unavailable, so she met with Des Connall. Raske understood that Shannon would represent her at the hearing, but Des showed up instead and was unprepared. More importantly, Shannon had not told Raske about the need to serve the opposing party, who didn't show for the hearing. Raske's motion was ultimately dismissed. She hopes to use the CSF award to hire another attorney to help her get the restraining order set aside.

Although Raske claims no work was done by Shannon or Des Connall on her case, the Committee wasn't persuaded. At the very least, Shannon provided some services in the initial meeting at which she instructed Raske on how to proceed and she had an office conference of some sort with Des Connall.

At the time Shannon took on Raske's case, she was being investigated and prosecuted on a variety of bar complaints alleging, among other things, neglect and misappropriation of client funds. She resigned Form B in December 2010. The bar's prosecution of Des Connall for his role in those several matters is pending.

Attachment: Raske Request for Review

Michael J. Kavanaugh
Attorney at Law
5530 S.E. Center St.
Portland, Or. 97206
(503) 788-3639/Fax (503) 771-4202
michael5517@netzero.net

April 2, 2013

Oregon State Bar
Client Security Fund
16037 SW Upper Boones Ferry Rd.
P.O. Box 231935
Tigard, Or. 97281

Re: Client Security Fund Claim No. 2011-05
Lawyer: Shannon Connall
Appeal decision of 03/12/13

Fund,

In addition to the materials or statements previously submitted, the following should be considered:

1) Ms. Raske had been the subject of a restraining order for alleged elder financial abuse regarding her mother, actually her mother's trust.

2) Ms. Connall represented to Ms. Raske in front of witnesses that it "is a very easy matter to knock this whole thing out" or words to that effect, as one basis for taking a $3,250.00 retainer.

She showed up two hours late for that meeting as well.

3) Ms. Connall had Ms. Raske fill out paperwork which should have been the province of the attorney. Telling a client to fill out sensitive pleadings that the attorney was hired to do, is fraudulent and thus dishonest.

4) At the time of the hearing, Ms. Raske appeared with witnesses but clearly without any clue as what was going to happen and how it was supposed to have happened. Any notice

failure is the failure of the attorney to undertake the duties she had agreed to.

The money was taken under false pretenses that dealing with an existing order based upon elder financial abuse was an *easy matter* and under the false pretense that the attorney would undertake to do the necessary pleadings and be prepared for a noticed hearing.

Any access to malpractice ran in 2012.

Ms. Raske requests the Fund reconsider its earlier decision.

Very truly yours,

Michael J. Kavanaugh

I Kurt Lauk am a friend of Karen Raske and can testify to the conversation in 2 above.

Kurt Lauk
(503) 644-9735

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Client Security Fund Rules and Policies

Action Recommended

The CSF Committee recommends amending the CSF rules to clearly cap claims at $50,000 *per claimant* but not changing anything else about the Fund's operating policies and discretionary authority.

Background

The unprecedented magnitude of CSF claims from clients of Bend lawyer Bryan Gruetter[1] exceeded the reserve balance of the CSF and necessitated a near-doubling of the annual assessment. As it worked through approving the claims and assuring sufficient cash flow to pay them in a timely manner, the board expressed concern about how to avoid a similar situation in the future and asked the CSF Committee to consider the options and make a recommendation.

Not surprisingly, the CSF Committee has had many discussions about the impact of the Gruetter claims on the Fund. Most recently, the Committee convened specially to discuss what to recommend to the BOG.

Put most simply, there was no support on the Committee to make significant changes in the CSF rules or operating policies. The Committee members believe strongly that the CSF serves an important client protection function and pays dividends in enhancing the public perception of lawyers and the profession. As a self-regulating profession we have an obligation to do what can to mitigate the losses of clients who are victimized by errant lawyers. The Committee opposes any change that would dilute the Fund's ability to compensate clients except were limits are necessary to protect the integrity of the Fund or to avoid an unnecessary burden on OSB members.

With the exception of unanimous support for clarifying the amount that could be awarded to any one claimant (as against one lawyer), the Committee is satisfied that the CSF Rules provide sufficient authority to adapt to challenging circumstances. In the absence of a history of fund exhaustion, the consensus of the Committee is that pro-ration of claims or other limits should be implemented only as needed.

The Committee is aware that several Funds cap annual distributions to funds available at the beginning or end of the year (or some percentage of it). In those jurisdictions, claims are reviewed and decided throughout the year, the pro-rated as necessary at the end of the year to

[1] If the BOG approves the three claims on the May 3 agenda, the total paid to date will be $803,731.

stay within the cap. Nothing in Oregon's CSF rules prevents that approach if it is deemed necessary. Under the CSF rules, all payments are discretionary. No claimant has a right to payment or a right to any specific amount. The Committee is confident that it can adequately assess when claim volume suggests a problem and invoke an appropriate process to avoid exhaustion of the Fund.

A complete copy of the CSF Rules accompanies this memo. The Committee's proposal to clarify the amount that can be awarded to any one claimant can be implemented by amending CSF Rule 6.2 as follows:

> 6.2 No reimbursement from the Fund ~~on~~ to any one claimant shall exceed $50,000.

The Board may also wish to add language to express explicitly the discretion of the Fund. If so, the following could be added to Rule 6.2: "The Board of Governors may set limits on reimbursements from the Fund as it deem appropriate." That leaves the Board free to impose per claim, per claimant, per lawyer or other caps as the situation dictates.

Client Security Fund Rules

(As approved by the Board of Governors through February 22, 2013)

TABLE OF CONTENTS

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 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 submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The 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 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 Administrator within a reasonable time after the referral of the claim to that member. 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 Records Law. 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 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 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.

4.13 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.

4.14 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 Administrator shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. 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 $50,000.

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 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.

OREGON STATE BAR
Board Of Governors

Meeting Date: May 3, 2013
Memo Date: April 18, 2013
From: Legal Services Program Committee
Re: Abandoned or Unclaimed Client Funds Appropriated to the OSB Legal Services Program

Action Recommended

The Legal Services Program (LSP) Committee is recommending that the BOG approve disbursing $137,000 from the unclaimed client fund to the legal aid programs for 2013.

Background

Abandoned or unclaimed client money held in a lawyers' trust account is sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received by OSB may be used for the funding of legal services provided through the Legal Services Program, the payment of claims and the payment of expenses incurred by the OSB in the administration of the Legal Services Program.

Disbursement Method Approved in 2012

Last year the BOG approved a method for disbursing unclaimed client funds. The method approved was that the LSP hold $100,000 in reserve to cover potential claims for the return of unclaimed property and distribute the revenue that arrives each year above this amount. The OSB also entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the allotted reserve gets diminished or depleted. The amount of the disbursement changes from year to year depending on the unclaimed funds received each year. $125,000 was disbursed in 2012.

2013 Disbursement Recommendation

There is currently about $237,000 unclaimed client funds being held by the LSP. The LSP Committee recommends that the BOG approve allocating $137,000 to the legal aid providers holding $100,000 in reserve pursuant to the disbursement method approved in 2012.

For purposes of discussion two documents are attached. One is the Summary of Unclaimed Client Funds which gives the total funds that have been received minus the following:

- claims made by the owners of the funds,
- property forwarded to other jurisdictions
- allocations to the providers

The other is called Claim Detail Summary which outlines details on the claims received.

2013 Legal Aid Allocations

The $137,000 will be disbursed by using the percent of poverty population with 11% to Lane County Legal Aid and Advocacy Center, 6% to the Center for Nonprofit Legal Services, 1% to Columbia County Legal Aid and 82% to Legal Aid Services of Oregon and Oregon Law Center which cover the rest of the state. The percentage to be disbursed between LASO and OLC will be determined at a later date. The Director of Legal Services Program will disburse funds pursuant to the recommendation forwarded by the LASO and OLC boards.

Summary of Unclaimed Client Funds

$389,350.54	Submitted Abandoned Property
$2,685.88	Claimed Property
$17,305.91	Property Forward to Other Jurisdictions
$125,000.00	Distributions to Programs
$244,358.75	Total in GL acct 122-2320-000
($6,858.36)	Less Property Pending to be forwarded
$237,500.39	Funds Available

Claim Detail Summary

Row Labels	Values Total Amount for the Year	Number of Properties
1985	$130.00	2
1986	$4.48	1
1988	$7.40	2
1989	$115.75	2
1990	$333.95	2
1992	$124.80	3
1993	$1,596.38	2
1994	$71.68	3
1995	$2.20	2
1996	$1,042.41	7
1997	$820.39	7
1998	$1,282.57	7
1999	$5,138.43	15
2000	$14,591.06	44
2001	$6,640.86	32
2002	$7,524.55	25
2003	$9,427.67	34
2004	$15,579.62	79
2005	$46,088.80	57
2006	$31,380.47	61
2007	$57,491.18	102
2008	$104,268.26	122
2009	$37,253.21	66
2010	$20,185.89	96
2011	$1,375.86	4
Grand Total	$362,477.87	777

Row Labels	Values Number of Claims	Sum
(blank)		
0.01-5000.01	758	$134,371.43
5000.01-10000.01	12	$78,111.43
10000.01-15000.01	3	$30,814.72
15000.01-20000.01	1	$16,591.75
25000.01-30000.01	1	$26,259.07
30000.01-35000.01	1	$30,070.42
45000.01-50000.01	1	$46,259.05
Grand Total	**777**	**$362,477.87**

Largest Claims and Dates Abandoned

$	46,259.05	5/2/2008
$	30,070.42	5/27/2005
$	26,259.07	6/27/2008
$	16,591.75	2/14/2007
$	10,528.11	12/31/2006
$	10,218.41	12/4/2009
$	10,068.20	10/9/2009

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Amber Hollister, Deputy General Counsel
Re: Proposed Unauthorized Practice of Law Advisory Opinions: Immigration Practice and Non-Lawyer Representation of Entities

Action Recommended

Approve the Unlawful Practice of Law Committee's advisory opinions regarding unlawful practice of law issues that arise in the context of non-lawyer immigration practice and representation of entities in court.

Background

The Unlawful Practice of Law Committee has drafted two advisory opinions discussing unlawful practice of law issues that arise in the context of non-lawyer immigration assistance and representation of entities in court. At the recommendation of the Unlawful Practice of Law Task Force, the BOG gave the Committee the ability to draft advisory opinions, pursuant to OSB Bylaw 20.704:

> The Committee may also, in its discretion, write informal advisory opinions on questions relating to what activities may constitute the practice of law. Such opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that may be of concern to or investigated by the Committee. All such opinions must be approved by a majority vote and submitted to the Board of Governors for final approval prior to publication.

This is the first time that the BOG has been asked to review and approve UPL advisory opinions. The Committee elected to start with advisory opinions on these topics because of the frequency of complaints it receives involving immigration consultants and non-lawyers attempting to represent entities in court.

UPL Advisory Opinion No. 1, entitled "Immigration Practice: Notarios, Translators, and Accredited Representatives," discusses the prohibition in Oregon against immigration consultants, the propriety of translating immigration forms, and the special exception for federally approved immigration accredited representatives.

UPL Advisory Opinion No. 2, entitled "Non-Lawyer Representation of Corporations, Unincorporated Associations, Nonprofit Corporations, Trusts, and Partnerships," addresses the requirement under Oregon and federal law that entities be represented in court by attorneys (with the exception of small claims court).

The Committee encourages the BOG to approve both advisory opinions to educate the public about the unlawful practice of law. Staff agrees that these opinions would provide a helpful tool in working to prevent the unlawful practice of law.

UPL Advisory Opinion No. 1

Immigration Practice:
Notarios, Translators, and Accredited Representatives

Facts:

A, who is a non-lawyer, studies materials online and at the library and feels confident he can help people who have immigration concerns. He sets up a business called Immigration Forms Oregon, which gives people immigration advice for a modest fee. Immigration Forms Oregon advises its customers about what immigration benefits are available, how to obtain those benefits, what forms to use, and how to deal with immigration proceedings.

B, who is a non-lawyer, agrees to help a friend translate an immigration form into her native language for free. B does not select the form, does not give her friend advice on how to fill out the form, and does not otherwise give her friend any legal advice.

C is an "accredited representative" who provides immigration advice at a nonprofit organization approved by the Board of Immigration Appeals.

Questions:

1. Is A or his business, Immigration Forms Oregon, engaged in the unlawful practice of law?
2. Is B engaged in the unlawful practice of law?
3. Is C engaged in the unlawful practice of law?

Conclusion:

1. Yes. A and his business, Immigration Forms Oregon, are engaged in the unlawful practice of law in violation of ORS 9.160. A and Immigration Forms Online are also in violation of ORS 9.280 because they are acting as immigration consultants.

2. No, qualified. As long as B only translates the forms, but does not select forms, provide advice on how to fill out forms, or otherwise provide her friend with legal advice, she is not engaged in the unlawful practice of law.

3. No, qualified. Assuming C is accredited by the Board of Immigration Appeals to serve as an accredited representative, she is not engaged in the unlawful practice of law.

Discussion:

I. *Question No. 1 (Notario)*

In Question 1, A is engaged in the unlawful practice of law because he is not an lawyer licensed to practice law and he is not otherwise authorized by federal law to provide immigration advice. ORS 9.160; ORS 9.280. A may not (1) give immigration advice to others; (2) select immigration forms for others; or (3) fill in immigration forms for others for compensation.

Generally, non-lawyers are prohibited from providing legal advice on immigration matters to others. ORS 9.160.[1] Immigration matters are complicated. In order to determine whether an individual is entitled to apply for status or other relief, it is necessary to have a thorough understanding of the law. A non-lawyer who selects forms or advises clients in an immigration case would be engaged in the unlawful practice of law, because "no immigration case is routine and immigration law is complex and constantly changing." *Oregon State Bar v. Ortiz*, 77 Or App 532, 713 P2d 1068 (1986).

A is also engaged in the unlawful practice of law because he is improperly acting as an immigration consultant. Under Oregon law, non-lawyers are generally

[1] This prohibition does not apply to any person or qualified designated entity authorized by federal law to represent persons before the United States Department of Homeland Security or the United States Department of Justice. ORS 9.280(3); *see* Question 3.

prohibited from acting as immigration consultants. ORS 9.280(1).[2] A person acts as an immigration consultant when he or she accepts a fee in return for giving "advice on an immigration matter, including but not limited to drafting an application, brief, document, petition or other paper or completing a form provided by a federal or state agency in an immigration matter." ORS 9.280(2)(a).

II. *Question No. 2 (Translator of Immigration Forms)*

In Question 2, B is not likely to be engaged in the unlawful practice of law. The translation of an immigration form for another, without more, does not constitute the unlawful practice of law. *See Oregon State Bar v. Fowler*, 278 Or 169, 563 P2d 674 (1977).

B is not acting as an immigration consultant because she is not charging a fee to help her friend. ORS 9.280(2)(a).

Even so, B is prohibited from selecting the appropriate immigration forms for her friend to use, giving advice on how to fill out the form, and giving legal advice on the friend's immigration matter. *See Ortiz*, 77 Or App at 536.

III. Question No. 3 (*Accredited Representatives*)

In Question 3, C is not engaged in the unlawful practice of law provided that she is an accredited representative of an organization approved by the Board of Immigration Appeals ("BIA"), and she charges only a nominal fee for her immigration services.

Federal regulations allow a person who works for a qualified nonprofit organization and who has been accredited by the BIA to represent another person in immigration matters. 8 CFR 292.1(a)(4). Qualified nonprofit organizations include nonprofit religious, charitable, social service, or similar organizations established in the United States and recognized as such by the BIA. 8 CFR 292.2(a). Qualified nonprofit organizations may apply for accreditation for persons of "good moral character" to serve as their representatives. 8 CFR

[2] *See supra*, footnote 1.

292.2(d). Accreditation is valid for only three years, but may be renewed. *Id.* Accreditation terminates when the BIA's recognition of the accredited organization ceases or when the accredited representative's employment with such organization is terminated. *Id.* The BIA maintains a list of all accredited organizations and representatives.

UPL Advisory Opinion No. 2

Non-Lawyer Representation of Corporations, Unincorporated Associations, Nonprofit Corporations, Trusts, and Partnerships

Facts:

Majority owner, who is a non-lawyer, is the majority owner of a closely held corporation.

President, who is a non-lawyer, is the president of an unincorporated association.

Chairman, who is a non-lawyer, is the chairman of the board of a nonprofit corporation.

Trustee, who is a non-lawyer, is the sole trustee of a trust.

Partner, who is a non-lawyer, is the major partner of a business partnership.

Each of the above non-lawyers is interested in representing his or her respective entity in court.

Questions:

1. May majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in state or federal court?
2. May majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in small claims court?

Conclusion:

1. No.
2. Yes.

Discussion:

I. *Question No. 1 (Entity Representation in State and Federal Court)*

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, who attempts to represent his or her respective entity in state or federal court would likely be engaging in the unlawful practice of law. ORS 9.160; *see Oregon State Bar v. Wright*, 280 Or 693, 573 P2d 283 (1977).

As a general rule, although non-lawyers may represent themselves *pro se*, they may not represent entities in state or federal court. ORS 9.320[1]; 28 U.S.C. §1654.[2] This prohibition against non-lawyers representing entities includes, but is not limited to, the representation of for-profit and nonprofit corporations[3], unincorporated associations[4], partnerships[5], and trusts[6].

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[1] ORS 9.320(1) provides, "Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically provided by law." S*ee Oregon Peaceworks Green*, *PAC v. Secretary of State*, 311 Or 267, 810 P2d 836 (1991) (holding that the combined effect of ORS 9.160 and ORS 9.320 is to provide that persons may appear *pro se*, but entities must be represented by an lawyer); *but see State ex rel. Juvenile Dept. of Lane County v. Shuey*, 119 Or App 185, 850 P2d 378 (1993) (holding that under the Indian Child Welfare Act an Indian tribe need not have a lawyer to intervene in child custody proceeding).

[2] 28 USC §1654 provides, "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Federal courts interpret Section 1654 to prohibit non-lawyer representation of entities. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 US 194, 202, 113 S Ct 716, 721 (1993) ("As the courts have recognized, the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654, providing that 'parties may plead and conduct their own cases personally or by counsel,' does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.") (footnote omitted).

[3] ORS 9.320(1).

[4] *See Oregon Peaceworks Green, PAC,* 311 Or at 271-72 (treasurer of an unincorporated political action committee, a non-lawyer, was not empowered to

II. *Question No. 2 (Small Claims Court Exception)*

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, would likely be permitted to represent his or her respective entity as its legal representative in small claims court. Non-lawyers may represent entities of which they are the legal representative in the small claims department of an Oregon circuit or justice court. *See* ORS 46.415(5); ORS 55.090(2).

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represent political action committee in state court); *Church of the New Testament v. United States*, 783 F2d 771, 773 (9th Cir 1986) ("unincorporated associations, like corporations, must appear through an lawyer").

[5] *See e.g.*, *Rowland*, 506 US at 202; and *First Amendment Found. v. Vill. of Brookfield*, 575 F Supp 1207, 1207 (ND Ill 1983) (holding corporations, partnerships, and unincorporated associations may not appear through an officer or other non-lawyer representative), *cited with approval in Oregon Peaceworks Green, PAC,* 311 Or. at 272.

[6] *See Marguerite E. Wright Trust v. Dep't. of Revenue*, 297 Or 533, 536 (1984) (non-lawyer trustee of the plaintiff trust may not represent a business trust); *Hansen v. Bennett*, 162 Or App 380, 383 n 4, 986 P2d 633, 635 n 4 (1999) (noting that court dismissed an appeal filed on behalf of a corporation and a trust on the ground that an lawyer had not filed the notice of appeal for those entities); *C.E. Pope Equity Trust v. United States,* 818 F.2d 696 (9th Cir 1987) (holding non-lawyer trustee of organization which was alleged to be trustee of trust bringing complaints was two steps removed from the real party in interest and could not appear *pro se* to prosecute suit).

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: David Wade, Chair, Governance & Strategic Planning Committee
Re: Revision of Statements of Mission, Functions and Values

Action Recommended

Consider the Governance & Strategic Planning Committee's recommended revisions to the bar's statements of mission, functions and values.

Background

Attached for the BOG's consideration are some minor revisions to the bar's mission statement and the statements of functions and values. The GSP Committees objective in reviewing the statements was to assure that they align with the OSB's statutory purpose. ORS 9.080(1) charges the BOG to "direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice."[1]

While there is more (and less) that could be said, the mission statement is pretty decent plain-English statement of why the bar exists. The "functions" track the "purposes" that are included in the OSB bylaws. The "values" are a relatively newer statement of what the bar stands for. Most of the changes are to this piece, with an eye toward making it more "active voice" and clear.

[1] Common definitions of "jurisprudence" include "the study and theory of law," and "the science or philosophy of law." The "administration of justice" has been defined in case law variously as the "systematic operation of the courts,'' the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning" of courts and legal systems.

Mission

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

Functions of the Oregon State Bar[1]

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

~~And the bar does this as a "public" corporation — as an instrumentality of the Oregon Supreme Court.~~

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar's values through its actions. ~~The bar's activities will be, in all cases, consistent with its values.~~ The bar strives to adhere to the highest ethical and professional standards in all of its dealings.

Fairness

The bar ~~embraces its diverse constituency and is committed to~~works to ~~the~~ eliminat~~e~~ion of bias in the justice system and to ensure access to justice for all citizens.

Leadership

The bar ~~will~~ actively pursue~~s~~ its ~~vision~~mission and promotes and encourages leadership among its members both to the legal profession and the community. ~~This requires the bar and all individual members to exert leadership to advance their goals.~~

Diversity

The bar is committed to serving and valuing its diverse community, to advancing equality in the justice system, and to removing barriers to that system.

~~**Promote the Rule of the Law**~~Justice

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[1] These are the same as the Purposes set forth in OSB Bylaw 1.2, except they are in different order and the bylaw doesn't include the final statement about the bar's status. Also, the bylaw includes the following purpose: "We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public."

~~The rule of law is the premise of the democratic form of government.~~ The bar promotes the rule of law as the best means to resolve conflict ~~and achieve equality~~in a democratic society. ~~The rule of law underpins all of the programs and services the bar provides~~.

Accountability

The bar is ~~committed to~~ accountab~~ility~~le for its decisions and actions and will be transparent and open in communication with ~~will provide regular means of communicating its achievements to~~ its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of bar programs and services ~~by the bar~~. Since excellence has no boundary, the bar strives for continuous improvement. ~~The bar will benchmark its activities to organizations who exhibit "best practices" in order to assure high quality and high performance in its programs and services.~~

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: HOD Survey

Action Recommended

Consider the recommendation of the Governance and Strategic Planning Committee that the attached survey be sent to all current HOD members to assist the BOG in deciding whether to pursue changes in the HOD governance structure.

Background

The issue of HOD as an effective governance structure arose following the 2011 HOD meeting, when a delegates suggested that modern technology would allow issues to be put before the entire OSB membership on electronic vote. Essentially, the member's suggestion was to abolish the HOD, prompting discussion of the relative merits of the suggestion by the *former* Policy and Governance and the new Governance and Strategic Planning Committees.

Sylvia Stevens' memos of February 9, 2012 and April 27, 2012 provide some background on the development of the HOD and the challenges of it as a governance model.

Staff has developed a brief survey to collect information from HOD members of the pertinent issues. The Governance and Strategic Planning Committee recommends that the BOG authorize the survey.

The BOG is interested in hearing your viewpoints about the continuing viability of the HOD as a governance structure. Following the 2011 HOD meeting, a member suggested that issues should be submitted to the entire membership for electronic vote rather than delegated to the relatively small number of HOD members. Other concerns raised in recent years are that the HOD doesn't fairly reflect the views of out-of-valley members, and that too much time is spent on member resolutions that don't involve bar governance. There is also concern that in the face of the increasing complexity of bar operations and practice issues the HOD may not be the best way to decide important issues such as membership fee increases or disciplinary rule changes. Please help guide the BOG's discussion by completing this short survey, which is open to all current and past HOD members. The results will be shared with the current HOD when the survey is complete, and will be included in a future BOG meeting agenda. You are of course also welcome to share any comments, concerns or suggestions with bar staff or any member of the board.

1. Overall, do you believe the HOD serves a meaningful role in OSB governance?
    - Yes
    - No
    - Not sure

2. Do you think the following changes would have a positive, negative, or no impact on the HOD's effectiveness?
    - Eliminate Section chairs as delegates
    - Increase the number of elected delegates
    - Have more HOD meetings, or more regional HOD gatherings
    - Create an executive committee of the HOD
    - Hold HOD meetings outside of the Portland metro area
    - Limit the number of resolutions any one member can bring
    - Limit the number of resolutions the BOG can bring to the HOD
    - Limit or eliminate resolutions that do not relate to bar governance (e.g., general statements of support for court funding, legal services, etc.)

3. What do you think is the most challenging aspect of service on the HOD?
    - Lack of information on bar programs, policies and budget
    - Lack of information on preferences of constituents
    - Lack of communication among HOD members
    - Meeting location/date is inconvenient
    - Other

4. Who do you think is best suited to represent the membership in deciding membership fees?
    - The HOD
    - The BOG
    - The general membership, through a "town hall" format
    - The general membership, through electronic vote

5. Who do you think is best suited to represent the membership in making changes to the rules of professional conduct for referral to the Oregon Supreme Court?

House of Delegates
Board of Governors
OSB Legal Ethics Committee
Either the HOD or BOG, but the membership should be consulted/surveyed in advance
General membership, through a "town hall" format
General membership, through electronic vote

6. To what degree to you share the following concerns about replacing the HOD with electronic voting by the membership?

Not enough members would vote
Some members will not understand the issues they're asked to decide
Loss of the discussion and debate that informs and improves decision-making at HOD meetings
Too easy for 'special interest' groups to influence voting
Other

7. Please share your comments and suggestions, if any:

OREGON STATE BAR
Policy and Governance Committee Agenda

Meeting Date: April 27, 2012
From: Sylvia E. Stevens, Executive Director
Re: HOD Evaluation Background

Action Recommended

None. This is background information to assist the Committee in deciding how to proceed.

Background

At its February 2012 meeting, the BOG agreed with the Committee that there should be a comprehensive review of the House of Delegates as a governance model for the Oregon State Bar. The BOG authorized the creation of a task force for that purpose and asked the Committee to designate who should serve and also to direct the task force as to the scope and direction of its work. At its March 30, 2012 meeting, the Committee indicated it would like to conduct the review itself, with input from HOD members and others. Staff was asked to provide background information that might be of use to the Committee in undertaking its study of the HOD.

Several documents are attached to this memo that may be of interest:

- Stevens memo of February 9, 2012, briefly outlining the history of the OSB HOD.
- Garst "History of the House of Delegates" (w/o attachments)
- Stevens "Suggested Changes to HOD" memo of March 18, 2011
- Gerking letter of July 19, 2010 "Issues Relating to the House of Delegates"
- Stevens "Limiting Delegate Resolutions" memo of January 15, 2010

Those documents reflect the lengthy analysis and consideration that preceded the creation of the HOD in 1995 as well as some of the discussions that have ensued in response to delegate concerns. Most recently, this Committee reviewed Mr. Gerking's suggestions, but there was no move to examine any of them further or to pursue the issue generally.

The recurring complaint about the HOD is that the agenda isn't compelling and that there doesn't seem to be anything of interest or consequence for the HOD to do. There is some truth to that. The principal responsibilities of HOD (as delegates of the membership) are to approve increases in the annual fees and changes to the Rules of Professional Conduct, neither of which is particularly within the expertise of the delegates. The issues that have generated interesting debate and discussion in recent years include whether to have elimination of bias/diversity/access to justice as an MCLE requirement, whether to use bar funds to purchase alcohol, and whether to allow military ads in the *Bulletin,* all matters of more general policy about what kind of bar we want to be.

In reviewing the history of the HOD, it was interesting to note that one of the arguments in favor was that that Oregon was one of only a few bars that retained a "town hall" style of membership governance. No mention was made about what other bar were doing in lieu of a town hall, but it appears there was an unspoken understanding that they were being replaced by houses of delegates (representative assemblies). Whether that was true in the early 1990's or not, it is certainly not the case now. A 2009 ABA survey showed that only 5 of the 35 unified bars has a representative assembly (HOD), and none of them are in the western states.

Rather, the predominant model of bar governance is a board of governors. Among the western states,[1] board size ranges from 5 (Idaho) to 23 (California). About half have public members on the board and several have designated seats for minority lawyers, young lawyers, and law school representatives. Most meet 6-10 times per year. All but three have an executive committee that handles interim operational matters. Most jurisdictions also have some kind of initiative process by which a specified percentage of members can petition for a bar-wide vote on an issue.

There are three rather obvious options based on the foregoing:

1. Do nothing. Leave the HOD as it is and accept that many members and delegates will find the agendas uninteresting.

2. Leave the HOD structure as it is but explore ways to involve the HOD in meatier or more important issues, even on an advisory basis.

3. Survey the membership about the possibility of eliminating the HOD. Annual fees would be set by the BOG without membership approval. Proposed changes to the rules of professional conduct would go directly from the BOG to the Supreme Court after a reasonable period for member comment and input. The long-standing member initiative process would remain in place, allowing the membership to direct the BOG to future action.

[1] Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington.

OREGON STATE BAR
Policy and Governance Committee Agenda

Meeting Date: February 9, 2012
From: Sylvia E. Stevens, Executive Director
Re: House of Delegates

Action Recommended

Consider whether to recommend that the BOG pursue changes to the structure, processes or authority of the House of Delegates.

Background

At the January 2012 meeting, the Policy and Governance Committee discussed an OSB member's suggestion that governance issues be put to an electronic vote of the membership, now that we have that ability, rather than delegated to a small number of HOD members. In recognition that the member's proposal was in essence to abolish the HOD, the discussion turned to taking a look at the HOD concept to evaluate whether it remains the best method for member governance.

History of the House of Delegates

The first HOD meeting was 1996, but the idea of a House of Delegates was an ongoing discussion at various times beginning in 1938. One thought permeated all of those discussions: there should be a more representative system of governance than placing the decisions in the hands of those who had the time, money and inclination to attend the Annual Meeting. Early efforts to establish a delegate governance model were unsuccessful. Committees were established to study the issue in 1938, 1944, 1956 and 1963. In 1972 the issue was referred to the Committee on Function and Organization of the Bar[1] which studied it for five years before drafting a legislative proposal that was presented at the Annual Meeting in 1977; it was rejected in favor of a study on how to improve the existing "town hall" system. No changes resulted from that study.

Surveys in 1979 and 1983 indicated that the majority of responding members favored the town hall system coupled with mail referenda on some questions. By the latter part of the 1980's, Oregon was one of only a handful of states that retained a town hall membership governance structure. In 1989, the Function and Organization Committee proposed a vote-by-mail procedure by which any proposal (other than one from the BOG) would be submitted to a non-binding vote at the Annual Meeting and then to the entire membership for a binding vote. Nothing came of that proposal, but in 1990 the BOG asked the Committee to develop a model for a House of Delegates.

[1] A predecessor of the Policy and Governance Committee.

The proposal developed by the BOG was submitted to a membership vote in August 1992. Of the 9,346 active members, 36% returned ballots; the proposal was favored by a 2/3 majority. The proposal was submitted to the 1993 Legislature as SB 256. It provided for one elected delegate for every 100 bar members with a minimum of five delegates per region. It also provided that section and committee chairs and BOG members would be ex officio delegates.

The bill passed the Senate with some amendments, but ran into strong opposition in the House from Rep. Del Parks, who was not persuaded that the HOD makeup would fairly reflect the interests of lawyers throughout the state. He proposed reducing the number of elected delegates (from 1:100 to 1:200) and having 2 representatives from each local bar, which would have given much greater power to the rural counties. The bill died in the House.

A revised bill was introduced in 1995, the most fundamental difference in which was the addition of local bar presidents as ex officio members. The bill did not meet the same resistance as its predecessor and it became effective January 1, 1996. The first election were held in April 1996. For the next few months, delegates met with BOG representatives and OSB staff to draft rules of procedure and discuss other potential structural and procedural issues (such as seating in "regional delegations," having an executive committee, and the like). The first meeting of the HOD was held in Medford on September 28, 1996.

Attendance and Participation

HOD attendance has been adequate over the years, with only one year that there was no quorum. Between 1996 and 2011, the attendance of various components of the HOD was as follows:[2]

Category	High	Low
Elected delegates	90%	63%
Public members	83%	17%
Local bar presidents	57%	11%
Committee chairs[3]	90%	30%
Section chairs	79%	13%
BOG	100%	45%

During that same period, overall attendance ranged from a high of 80% (1996) to a low of 52% (2004).[4] HOD members were surveyed in 1998. The reasons given for not attending included "didn't realize I was a member," "on vacation or out of town," "scheduling conflict," "other commitments," and "too expensive." It is unknown whether different responses would be given now that the HOD is a more mature governance structure.

[2] See attached spreadsheet for details.
[3] Eliminated after 2001.
[4] Attendance was 50% in September 2008, insufficient for a quorum, as discussed above.

Anecdotal information suggests that some delegates don't find the agenda compelling. Similarly, there have been some concerns raised in the last couple of years that too much of the HOD meeting is taken up with delegate resolutions on matters not relevant to bar governance.

Various ideas have surfaced from time to time to "enhance" the HOD including having an executive committee, appointing "chief delegates" from each region, and improving member understanding of the HOD's role. The most significant change occurred about five years ago when we changed from having one set of regional meeting in advance of the HOD (after the preliminary agenda had been distributed) to having two regional meetings. The first regional meeting usually takes place in July, well in advance of the resolution filing deadline, and provides an opportunity for delegates to discuss ideas for resolutions and get information about how to submit them.

Over- and Under-Representation

Over the years there has been concern that the HOD was heavily weighted in favor of the metro area or the Willamette Valley because a majority of ex officio delegates (section chairs, local bar presidents and BOG members) reside in the Portland metropolitan area[5] or in the Willamette Valley.[6] Having local bar presidents as ex officio delegates was intended to ameliorate that situation. The HOD will always have the majority of its members in the metro area and Willamette Valley because that is where the majority of lawyers practice. Currently, 82% of section chairs are from those areas. By contrast, only 40% of local bar presidents are from the metro area or the valley:

Total delegates	227 (6 are currently vacant)
Section Chairs	41 (31 from the metro area, 3 from the valley)
Local Bar Presidents	20 (3 from the metro area and 5 from the valley)

Options and Alternatives

While there is no limit to what the BOG can suggest in the way of modifications in to the HOD structure or operations, any significant changes would likely require approval of the legislature or the HOD. The types of delegates, the length of their terms and the representation ratio for elected delegates are all set out in statute and could be changed only through amendments to the Bar Act. Other changes might require an amendment of the HOD rules, which requires HOD approval.

Any thorough consideration of options should involve HOD members and the membership at large. The committee might wish to suggest that the BOG appoint a task force for that purpose.

[5] Multnomah, Washington and Clackamas Counties.
[6] Marion, Polk, Benton, Linn and Lane Counties.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Approval of Bylaw 16.200 Amendment

Action Recommended

Approve the proposed new language for Bylaw 16.200 relating to what is included in complimentary CLE Seminars registration for certain members.

Background

At the February 21, 2013 meeting, the board reviewed staff's interpretation of OSB Bylaw 16.200, which provides in pertinent 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.

Effective January 1, 2013, seminar attendees receive digital versions of written program materials as part of the registration fee and must pay a modest fee for a print version. A 50-year member questioned whether the new policy was consistent with the bylaw. Staff advised him that only the registration fee was complimentary under the bylaw; anything else must be paid for.

The board confirmed the intent of the bylaw as interpreted by staff, but recognized that the language of the bylaw could use clarification (the bylaw pre-dates the change to digital materials).

Staff suggests the following revision to Bylaw 16.200 be amended as shown on the following page. Although this is the board's first look at proposed language, the one-meeting notice requirement in Bylaw 28 for amending the bylaws has been met by the board's prior discussion of the policy behind the change.

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

(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, materials in hard copy for which a fee is charged, ~~or other~~any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available for the following lawyer members: Active Bro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(d) For purposes this policy, "judges" means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(f) Reduced registration, tuition assistance and complimentary copies of programs may be available to certain other attendees, at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Amendment of OSB Bylaw 6.301 (Relating to Reinstatement Applications)

Action Recommended

Approve the revision of OSB Bylaw 6.301 for the reasons set forth below.

Background

At its February 21, 2013 meeting, the BOG approved revisions to the Bar Rules of Procedure that delegated to the Executive Director the authority to review (and forward to the Supreme Court) formal reinstatement applications. The Supreme Court adopted the changes on April 5, 2013, effective on the date of the order.

Bylaw 6.301 currently requires a one-meeting notice before the BOG takes a final vote on formal reinstatement applications. The apparent reason for this was to allow time for a thorough investigation and notice of the reinstatement application to be published in the *Bulletin* to elicit comment from members about the applicant. Since the BOG will not be reviewing the majority of reinstatement applications, the one-meeting notice is no longer necessary. However, staff plans to continue publishing notice to the membership, as that has been a long-standing aspect of the internal process and occasionally produces helpful information about an applicant. The Bar Rules do not have a requirement to publish notice (and we did not include it in the amendments recently approved by the court). Instead, we suggest putting in the bylaws. If the BOG agrees with this approach, Bylaw 6.103 will read as follows:

Subsection 6.103 Reinstatement

Upon receipt of ~~A final vote by the Board on~~ an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the bar's web site for a period of 30 days. ~~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.~~[1]

[1] This is a duplication of the authorization in the Bar Rules of Procedure to recommend retaking the bar exam or completing a course of continuing education as a condition of reinstatement as is not necessary in the bylaws.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: April 19, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

Approve the following recommendations for committee appointments.

Background

Federal Practice and Procedure Committee
Due to a resignation, the committee needs one member appointed. The committee chair requests the appointment of **Judge Anna J. Brown** (801730). As a US District Court Judge, Anna Brown is located in Portland and has agreed to serve as a committee member.
Recommendation: Judge Anna Brown, member, term expires 12/31/2014

Judicial Administration Committee
Due to a resignation, the committee needs one member appointed. The committee officers and liaison request the appointment of **Terry L. Wright** (814289). Ms. Wright has held numerous volunteer positions with the bar including service on the BOG. She currently holds a region 5 HOD delegate seat and has agreed to serve on the committee if appointed.
Recommendation: Terry L. Wright, member, term expires 12/31/2014

Loan Repayment Assistance Program Committee
The LRAP Committee guidelines require member participation from attorneys practicing specific areas of law. The district attorney seat is vacant and Tim Colohan, President of the Oregon District Attorneys Association, recommends the appointment of **Richard L. Wesenberg** (921553). Mr. Wesenberg currently serves as the Douglas County DA and offers geographic diversity to the committee. The staff liaison supports his appointment.
Recommendation: Richard L. Wesenberg, member, term expires 12/31/2015

Quality of Life Committee
The QOL Committee needs one member and one advisory member appointed. The committee chair recommends **AnneMarie Sgarlata** (065061) for the member seat. Ms. Sgarlata is with the US Attorney's Office in Portland and selected the QOL Committee as her first choice volunteer preference. **Adina Flynn** (962858) is recommended for the advisory member position. Ms. Flynn is an inactive bar member currently working as a financial advisor. The committee plans to utilize her experience on its transitions subcommittee.
Recommendation: AnneMarie Sgarlata, member, term expires 12/31/2015
Recommendation: Adina Flynn, advisory member, term expires 12/31/2015

Uniform Civil Jury Instructions Committee

One committee member position is vacant on the UCJI Committee, as such staff and the committee recommend the appointment of **Tom Powers** (983933). Mr. Powers is a partner at a small Beaverton firm and indicated the UCJI Committee as his first choice preference when volunteering.
Recommendation: Tom Powers, member, term expires 12/31/2015

Unlawful Practice of Law Committee

Due to the resignation of Bronson James, staff and the UPL Committee officers recommend the appointment of **Joel Benton** (110727). Mr. Benton is County Counsel for Jackson County and indicated the UPL Committee as his second choice appointment when he volunteered.
Recommendation: Joel Benton, member, term expires 12/31/2015

red underline indicates link

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: April 19, 2013
From: George Wolff, Referral & Information Services Manager
Re: Implementation of Lawyer Referral Service percentage fee system and future expansion of the Modest Means Program

Action Recommended

Lawyer Referral Service: Adopt revisions to LRS Policies and Operating Procedures.

Modest Means Program: Information only, for policy discussion purposes.

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 (MMP) should occur after the LRS percentage fee model was in place. The new fee model became effective with the LRS program year that began in July of 2012, but due to delays in software development, the program did not begin assessing percentage fees until September. This is a progress report to the BOG as LRS approaches the close of its 2012-2013 program year. It includes both recommendations for immediate consideration as well as information on potential future issues for the BOG.

LRS Percentage Fee Implementation

1. Financials

For the final quarter of 2012, LRS collected $41,010 in percentage fee remittances. For the first quarter of 2013, LRS collected $60,489. This is a total of $101,499 for the first six months of operations under a percentage fee model. These figures represent $845,825 in business generated for panelists, and mean that LRS is on target to have generated over $1,000,000 in business for LRS panelists by the time the BOG meets on May 3.

Due to the typical delay between referral and case resolution in contingency fee matters, budget models that include percentage fee remittances on contingency fee matters will increase in accuracy and begin to stabilize within the next 18-24 months.

2. Implementation issues

Due to software implementation delays, panelist reporting and percentage fee remittance obligations did not begin until September 2012. Although the highest priority components are in place and functional – including an online reporting process that has received positive feedback from panelists and is the envy of other LRS programs – software implementation is

not yet complete. We continue to work with the developers on internal staff applications, as well as debugging as each new phase is developed.

RIS proposes moving its program year to September 1 through August 31 from the current July 1 through June 30 cycle in order to be able to formulate annual budgets on the basis of more complete data. Moreover, extending the 2012-13 program year through August 31, 2013, will compensate those panelists affected by initial software bugs and challenges during the first two months of implementation.

3. LRS Policies and Procedures

Under a separate memorandum, General Counsel is submitting proposed revisions to the LRS Policies and Operating Procedures for BOG approval. The change in the program year cycle is included with a package of proposed clarifications and amendments. In the future, the Public Service Advisory Committee (PSAC) may propose other policy and procedure changes to the BOG that they are currently evaluating, such as whether the LRS should notify LRS-referred clients of emergency disciplinary proceedings, e.g., protective or custodianship proceedings, and what the LRS should do with remittances received from a panelist who has engaged in unethical conduct.

4. Panelist Experience

Apart from panelist concerns fully considered prior to the decision to adopt percentage fees, a number of new and continuing concerns merit future discussion by the BOG. The issues include:

a) Low volume of referrals

- Overall decrease in referral volume. The recession continues to suppress total call volume, with a historically high proportion of low-income callers. RIS is in the midst of an ongoing, grassroots marketing effort designed to help increase the number of LRS referrals. In four months, RIS has now distributed nearly 850 copies of its new public outreach poster promoting RIS programs. Nevertheless, total referral volume is down and additional outreach efforts are being considered.
- Higher than expected panelist participation. Although prior to adoption of a percentage fees model many panelists stated that they would leave LRS, more than expected decided to stay and very few have left since the program year began. In addition, recently admitted bar members are joining both the LRS and MMP, which means more panelists in the system and fewer referrals per panelist.
- Statewide and territory-based registration. A number of panelists opted to register statewide which, although beneficial for the public, has also increased the number of attorneys in each area of law rotation queue and decreased the frequency of referrals for each panelist. This has dramatically increased competition for referrals in areas where there may once have been only one or two participating panelists. There appears to be tension between some rural and urban practices; a few panelists practicing on the coast have attributed the lower number of referrals to the new statewide designation and larger territories, combined with the new competition from Portland metro area

panelists who are willing to utilize technology to increase the geographic territories they service. One or two rural panelists would like the BOG to consider limitations on statewide registration and the reach of urban attorneys in particular.

b) Consideration of a Threshold/Trigger.

After much discussion, the BOG decided that LRS should begin with a $0 threshold or trigger, and a 12% remittance rate. The BOG could consider a trigger, i.e., a total amount of fees earned and collected on a matter, e.g., $200, below which there would be no percentage remittance obligation, but once met or exceeded would trigger application of the 12% remittance rate to all fees earned and collected on the matter. Throughout the year, some panelists have requested reconsideration of a threshold/trigger to reduce the number of small remittances due for legal services offered primarily as a public service. For example, some consumer law panelists routinely draft letters for $50, which translates into a $6 remittance to the LRS.

Modest Means Program

The February 10, 2012 BOG-approved plan included a recommendation that expansion of the MMP into additional areas of law should occur after the LRS percentage fee model was in place. Based on discussions of the October 2012 Legal Opportunities Task Force ideas, OSB President Mike Haglund requested that additional consideration be given to raising the income qualifications for the MMP. He further requested that any recommendations ready for BOG consideration be brought forward as soon as practicable.

The MMP is a statewide program. Current areas of law include: family law, criminal law, landlord-tenant and foreclosures. This application-based program has three tiers at which applicants pre-qualify, based on their income and assets as measured against the Federal Poverty Guidelines (FPG):

Tier:	Tier 1	Tier 2	Tier 3
FPG:	125%	175%	225%
Rate/hour	$60	$80	$100

1. Area of Law Expansion

Public Service Advisory Committee (PSAC) members and/or bar staff met with the Executive Committees of the Elder Law, Estate Planning and Administration, Criminal Law, Disability Law, and Workers Compensation sections at their regular meetings. Most discussions are ongoing. Estate Planning and Elder Law, however, have already endorsed expansion, generally, with next steps to include panelist discussions. In addition, staff invited immigration law practitioners to participate in a focus group, however, it was cancelled due to lack of responses. At this time, MMP expansion recommendations would be premature due to a number of panelist concerns and technological constraints. For example, new and experienced immigration practitioners are already very busy – and may be exceedingly busy in the near future, and major software

development and implementation is not yet finished, meaning the addition of new areas of law increases the risk of system instability. Staff will work with the PSAC to further develop feasible recommendations, including a proposed implementation strategy and timeline.

2. Expansion of Client Base

The Legal Opportunities Task Force suggested that raising the income qualifications for the MMP might help expand the number of potential clients who would qualify for the program and potentially supply much needed work to under-employed and unemployed attorneys. Staff conducted a focus group of MMP panelists to discuss expanding client income/asset qualifications, use of alternative billing arrangements (e.g., reduced flat fees in lieu of reduced hourly rates), as well as existing MMP procedures. Feedback regarding existing MMP procedures – such as public education about retainer deposits, and attorney access to pre-qualified MMP applications online – will be further evaluated with the PSAC, who would benefit from BOG guidance. A summary of points discussed at the focus group follows.

a) Flat Fees, Unbundled Services and Payment Plans

Some areas of law under consideration for expansion into MMP typically involve flat fees. While recognizing that clients like flat fees, the focus group members had unfavorable reactions to their possible inclusion in the MMP. Panelists do sometimes use flat fees in their practices, but believe that they would be unworkable in the MMP. Panelists suggested further that if flat fees were to be incorporated into the MMP, RIS staff should not quote any flat fees to the public; panelists find formulating flat fees is very difficult and based upon many factors particular to the potential client and matter presented.

Participants had mixed feedback regarding limited representation; most had unfavorable experiences and ongoing concerns about the ability to extricate themselves from cases for which they no longer received compensation. Similarly, most did not accept payment plans or disfavored them. Success with payment plans depended upon whether MMP panelists had administrative staff to follow up with clients; those that had staff to follow up were successful with payment plans and those without staff were not.

b) Raising Client Income and Asset Guidelines

Focus group participants did not like the idea of expanding existing Tier 3 to include 250% of the Federal Poverty Guidelines (FPG). The majority did, however, like the idea of adding a fourth tier to the three current qualification tiers, with client income/assets at no more than 250% of the FPG and panelist hourly rates at $120. The consensus was that attracting more clients who can pay, especially those who can pay at the higher tier rates, would benefit the program. However, they raised the following concerns:

- Statewide Implications: If the hourly rates of non-MMP attorneys in rural areas overlap or approach the proposed Tier 4 rate of $120 hour, how would implementation of a fourth tier impact rural attorneys' practices? In addition to the

dilemma of helping MMP panelists at the expense of other bar members, are there issues that would benefit from consultation with General Counsel?

- LRS/MMP Overlap: Would expansion into a fourth tier result in potential LRS clients – who might have been referred to these same panelists through the LRS – being converted into MMP clients, thereby depriving these panelists of charging the $135/hour or $150/hour rates they receive now?

At this point, RIS would greatly appreciate the BOG's preliminary feedback, guidance, and priorities regarding the foregoing. The Public Service Advisory Committee next meets on Saturday, May 4.

In addition, please note that with respect to the LRS, if the BOG approves the change to the LRS program year included in the proposed revisions to LRS Policies and Operating Procedures package, there will be time to make further necessary changes before the new program year begins. And, with respect to the MMP, changes can be made at any time because registration is on a rolling basis and no fees are associated with the program.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: April 23, 2013
From: Helen M. Hierschbiel, General Counsel
Re: Amendments to Lawyer Referral Service Policies and Procedures

Action Recommended

Staff recommends that the Board adopt the attached proposed amendments to the Oregon State Bar Lawyer Referral Service (LRS) Policies and Procedures.

Background

Housekeeping Changes

The proposed amendments to the LRS Policies and Procedure are largely housekeeping changes intended to simply and clarify.

Provisions that are located in the Procedures, but are more appropriately categorized as Policies, have been moved to the Policies, and vice versa. For example, the fees charged for participation in LRS have been moved from the Procedures to the Policies because the Board sets the registration fees and the percentage rate and threshold used to calculate remittances. Redundant provisions have been eliminated and/or consolidated. For example, statements about the bases for removal are found throughout the policies and procedures; these have been consolidated into Policy IV Removal. Provisions that have been the source of some confusion for panelists have been rewritten in an effort to clarify and other sections have been reorganized for simplicity and ease of understanding. For example, the first section in the Procedures titled "How It Works" includes miscellaneous information; that section has been divided into two sections: What LRS Will Do and What Panelists Will Do. Finally, Procedure 3, titled "How to Join the LRS" has been eliminated because it is information that belongs on the OSB website, not in operating procedures.

More significant housekeeping changes relate to the Reporting and Remittance Requirements. The method for calculating remittances has been clarified and moved to the Policies, but the methods for payment and reporting remain in the Procedures. In addition, the payment and reporting requirements have been changed to align with how the software system is designed, both to obviate the need for complicated modifications to the software and to provide opportunities for automation of internal tracking going forward.

Substantive Changes

A few of the proposed amendments reflect substantive changes in policy.

In the Review and Governance Section, paragraph V.B.1. has been eliminated. This section provides for BOG review of the PSAC administrative decisions regarding revision of the procedures and panelist eligibility and removal. Given the Board's expressed interest in leaving administrative decisions to its committees and staff (e.g. reinstatements and CSF claims approval), it seems unlikely that the BOG would want to undertake review of PSAC decisions. Moreover, the proposed amendments include a provision giving the BOG express authority to amend the procedures at any time.

In Policy V.B.1., a clause was added that conditions the issuance of a refund on the panelists having no unpaid balances for LRS registration fees or remittances. Staff believes this change simply reflects common sense and good policy.

In Policy III, a section was added that provides that complaints about panelists' fees will be referred to the OSB Fee Arbitration Program. This provision reflects the current practice and reinforces the expectation that panelists will submit all fee disputes to the Fee Arbitration Program.

Finally, as noted in the RIS Manager's Report, the program year is being changed from July 1—June 30 to September 1—August 31.

Conclusion

The Board should adopt the attached proposed amendments.

Attachments: LRS Policies and Procedures with Proposed Amendments (markup)

LRS Policies and Procedures with Proposed Amendments (clean)

Lawyer Referral Service Policies

I. Goals: The goals of the Lawyer Referral Service (LRS) ~~is~~ are to serve lawyers and the public by referring people who seek and can afford to pay for legal assistance (potential clients) to lawyers who are willing to accept such referrals, and ~~also~~ to provide information and other resources as appropriate. All lawyers participating in the LRS (panelists) agree to abide by these Lawyer Referral Service Policies (Policies) and Lawyer Referral Service Operating Procedures (Procedures).

II. Eligibility: Lawyers ~~satisfying~~ who satisfy the following requirements ~~shall be~~are eligible to apply for participation in the LRS. The lawyer must:

A. ~~Maintain a~~Be in private practice;

B. Be an active member of the Oregon State Bar in good standing;

C. ~~Maintain~~ Have malpractice coverage with the Professional Liability Fund (PLF); and

D. Have no formal disciplinary, protective, or custodianship proceedings pending.

Additional ~~standards apply~~requirements for participation on special subject matter panels~~; the special subject matter panels and qualifications~~ are stated in the Procedures.

III. Complaints about Panelists:

A. Ethics Complaints: Complaints about possible ethical violations by panelists ~~shall~~ will be referred to the Oregon State Bar Client Assistance Office.

B. Fee Complaints: Complaints about panelists' fees will be referred to the Oregon State Bar Fee Arbitration Program.

~~B~~C. Customer Service Complaints: LRS staff monitor complaints concerning the level of customer service provided by panelists. The character, number, and/or frequency of such complaints may result in removal from the LRS~~, with or~~ without prior notice.

IV. Removal: Panelists may be removed from the LRS or any LRS panel without prior notice if they no longer meet the eligibility requirements, if they violate any of the LRS Policies or Procedures, or as otherwise provided in these Policies and Procedures.

~~A.~~ Panelists against whom disciplinary, protective, or custodianship proceedings have been approved for filing ~~shall~~ will be ~~automatically~~ removed from the LRS until those ~~charges~~ matters have been resolved. A matter ~~shall~~ will not be deemed ~~to be~~ resolved

until all ~~matters relating to the disciplinary~~ such proceedings, including appeals, have been concluded and the matter is no longer pending in any form.

~~B. A panelist whose status changes from "active member of the Oregon State Bar who is in good standing" shall be automatically removed from the LRS.~~

~~C. A panelist who leaves private practice, fails to maintain coverage with the PLF, or files an exemption with the PLF shall be automatically removed from the LRS.~~

~~D. A panelist may be removed from the LRS or any LRS panel if the panelist violates these Policies and/or the Procedures.~~

~~E. In all instances in which the panelist is removed, automatically or otherwise, prior notice need not be given to the panelist.~~

V. Fees~~unding~~ & Refunds:

A. Fees~~unding~~: All panelists ~~shall~~ must pay the ~~annual~~ LRS registration fees and percentage remittances set by the Board of Governors (BOG) and provided below. ~~on all attorneys' fees earned and collected from each potential client referred by the LRS and accepted as a client.~~

1. Registration Fees: ~~The Board of Governors (BOG) shall set the registration fees.~~ All panelists ~~shall~~ must pay registration fees annually for each program year and, except as provided in Paragraph ~~(~~V.B.~~)~~ "Refunds" (below), registration fees are nonrefundable and will not be prorated. The registration fees are:

a) Basic Registration Fee (including home territory and up to four panels):

i) $50 for those admitted in Oregon for less than 3 years

ii) $100 for those admitted in Oregon for 3 years or more

b) Enhanced Services Fees:

i) Additional Territories: $50 for each additional geographic territory

ii) Statewide Listing: $300

iii) Additional Panels: $30 for each additional panel beyond the four included in a basic registration

2. Remittances: ~~As provided below and explained further in the Procedures, if a panelist and client enter into an agreement whereby the panelist will provide legal services to the client for which the client will pay a fee, then remittances will be due the LRS upon payment of the fees by the client. The combined fees and expenses charged a client may not exceed the total charges that the client would have incurred had no referral service been involved.~~ Panelists owe the LRS a remittance when: 1) the panelist has earned and collected attorney fees on an LRS-referred matter; and, 2) the amount earned and collected meets or exceeds the threshold set by the BOG. The remittance owed is a percentage of the attorney fees earned and collected by the panelist on the LRS-referred matter. The ~~BOG sets the~~ percentage rate and threshold used to calculate the remittances owed are:

a) Percentage Rate: 12%

b) Threshold: $0

~~(s) to be applied to all panelists' attorneys' fees earned and collected from clients in excess of any applicable threshold. Remittances owed to the LRS are calculated by multiplying the percentage rate(s) by the earned and collected attorney fees. If a panelist fails to pay the appropriate remittance(s) to the LRS in accordance with these Policies and the Procedures, the panelist will be ineligible for referrals until all remittance(s) have been paid in full. A panelist's obligation to pay remittances owed to the LRS continue regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.~~

3. Communications Regarding Remittances: Upon settlement of a matter, the panelist ~~shall be obligated to~~ must include the LRS with those who have a right to know about the terms of a settlement to the extent necessary to allow the LRS to determine the portion of the fees to which it is entitled.

B. Refunds:

1. Upon written request, a panelist who has been ~~automatically~~ removed from the LRS ~~shall be~~is entitled to a prorated refund of registration fees provided that the panelist has no unpaid balances for LRS registration fees or remittances. The amount of the refund ~~shall~~ will be based on the number of full months remaining in the program year for which the fees were paid, as measured from the date the written request is received. A~~n automatically~~ removed panelist who again meets all of the eligibility ~~and registration~~ requirements prior to the expiration of the program year during which the ~~automatic~~ removal occurred

may reapply and be reactivated for the remainder of that program year upon written request and payment of any amount refunded.

2. Upon written request, a panelist who is required to refund to a client a portion of a flat fee that was earned upon receipt will be refunded the percentage paid to LRS of the portion refunded to the client. ~~shall be entitled to a refund of the same portion paid to LRS.~~

VI. Review and Governance:

A. Public Service Advisory Committee (PSAC):

1. The PSAC advises the ~~Board of Governors~~BOG on the operation of the LRS. The PSAC works with LRS staff in the development and revision of these Policies and the Procedures. Amendments to these Policies must be approved by the BOG. Amendments to the Procedures may be approved by ~~a simple majority of~~ the PSAC~~, with the exception that proposed revisions to the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances shall be submitted to the BOG for approval.~~ The BOG may amend these Policies and Procedures at any time. The RIS Manager may waive or suspend Procedures for good cause.

2. Upon written request, the PSAC ~~shall~~ will review ~~an LRS staff~~ a decision to remove a panelist at its next regularly scheduled meeting. Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the ~~LRS staff~~ decision is given to the removed panelist. The PSAC's decision regarding removal is final.

3. Upon written request, the PSAC ~~may~~ will review ~~an LRS staff~~ a decision regarding a panelist's registration, renewal, and/or special subject matter panel registration (collectively, registration issues). Such written request ~~shall~~ must be submitted to the PSAC within 30 calendar days of the date notice of the ~~LRS staff~~ decision is given to the lawyer. The PSAC's ~~review and~~ decision regarding registration issues ~~shall be~~is final.

~~B. Board of Governors (BOG):~~

~~1. Upon written request by any PSAC member or LRS staff, PSAC decisions regarding proposed revisions to the Procedures may be reviewed by the BOG. Upon written request of a panelist, a decision of the PSAC regarding panelist eligibility or removal may be reviewed by the BOG, which shall determine whether the PSAC's decision was reasonable. The written request shall be submitted to the BOG within 30 calendar days of the date notice of the PSAC decision is given to the affected panelist.~~

~~2. The BOG shall set the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances.~~

~~3. These Policies may be amended, in whole or in part, by the BOG.~~

Lawyer Referral Service Operating Procedures

1) ~~How It Works~~What LRS Will Do:

a) ~~Screening~~Referrals: ~~Lawyer Referral Service (~~LRS~~)~~ ~~staff~~ will refer potential clients to panelists based on ~~process referrals using information gathered from the potential client during the screening process —~~ legal need, geographic area, language spoken, and other requested services (credit cards accepted, evening appointments, etc.). ~~— to find a lawyer participating in the LRS (a panelist) who is the best match for each potential client.~~

b) Rotation: Referrals are made in rotation to ensure an equitable distribution of referrals among similarly situated panelists.

c) Processing: Generally, potential clients receive one referral at a time and will not be provided more than three referrals within a 12-month period for the same legal issue. Under certain circumstances, LRS ~~staff~~ may provide more than three referrals and may also provide several referrals at the same time. Such circumstances may include, but are not limited to, emergency hearings, referral requests from those who live out of state~~,~~ and lawyers interviewing panelists to represent their clients in other matters~~, etc~~. LRS tells ~~P~~potential clients ~~are told by LRS~~:

i) To tell the panelist that they have been referred by the LRS ~~Oregon State Bar's Lawyer Referral Service~~;

ii) ~~That t~~They are entitled to an initial consultation of up to 30 minutes for $35;

iii) ~~That t~~The panelist's regular hourly rate will apply after the first 30 minutes; and,

iv) ~~That a~~All fees beyond the initial consultation will be as agreed between the potential client and the panelist.

d) Follow-up: After processing a referral, ~~LRS staff email a referral~~ confirmation is emailed to the panelist. ~~and, if possible, to the potential client as well. A comprehensive status report is sent to panelists on a monthly basis.~~ LRS ~~staff will~~ may also send referral confirmations and follow-up surveys to potential clients ~~and clients~~ referred by the LRS. Any pertinent information from surveys will be forwarded to panelists, and, if deemed

necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.

2) What Panelists Will Do:

~~e~~a) Initial Consultations:

i) Amount: Panelists agree to charge potential clients who live in Oregon and are referred by the LRS no more than $35 for an initial consultation,~~;~~ except that no consultation fee ~~shall~~ may be charged where:

(1) Such charge would conflict with a statute or rule regarding attorneys' fees in a particular type of case (e.g., workers' compensation cases), or

(2) The panelist customarily offers or advertises a free consultation to the public for a particular type of case.

ii) Duration: Potential clients are entitled to an initial consultation of up to 30 minutes for a maximum fee of $35. If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply.

iii) ~~Telephone, Computer and/or Video Consultations~~Communication Method: ~~It is up to the panelist~~ Each panelist may decide whether ~~the panelist will~~ to provide initial consultations in person, by telephone, by video conference, or by some other method of real-time communication. ~~by any communication method other than a face-to-face meeting with the potential client.~~ Panelists may indicate their preferences on their LRS applications.

iv) Location of ~~Face-to-Face~~In-Person Consultations: ~~All lawyer-client meetings~~ In-person consultations between potential clients and panelists must take place in an office, conference room, courthouse, law library, or other mutually agreeable location that will ensure safety, privacy, and professionalism.

~~2~~ b) Fees: Panelists agree not to charge more fees and expenses to an LRS-referred client than they would to a client who is not referred by LRS.

c) Customer Service:

i) Panelists ~~agree to~~will participate only on those panels and subpanels ~~reasonably~~ within the panelist's competence and where the LRS has ~~qualified~~ approved the panelist to participate on one or more special subject matter panels, as applicable~~;~~.

~~In addition, panelists must demonstrate professional reliability and integrity by complying with all LRS Policies and Procedures, including the following customer service standards:~~

~~a~~ii) Panelists will ~~refrain from~~not charg~~e~~~~ing~~ or bill~~ing~~ for any fee beyond the initial consultation fee unless and until the panelist and potential client have agreed to the attorney's fees and costs for additional time or services beyond the initial 30-minute consultation;

~~b~~iii) Panelists will use a written fee agreement~~s~~ for any services ~~performed on behalf of clients that are not completed at~~ provided beyond the initial consultation;

~~c~~iv) Panelists will communicate regularly with LRS staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason; and,

~~d~~v) Panelists will keep clients reasonably informed about the status of their ~~clients' legal~~ matters and respond promptly to reasonable requests for information. Panelists will return calls and emails promptly and will provide clients with copies of important papers and letters.

d) Except as provided below, ~~P~~panelists will refer back to the LRS any potential client with whom the panelist is ~~not able~~unable to conduct an initial consultation ~~in the timeframe requested by the potential client or~~ for any ~~other~~ reason.

i) Panelist Substitution: ~~The~~A panelist may offer the potential client a referral to ~~another~~ a substitute lawyer, provided:

(1) The ~~subsequent~~substitute lawyer is a panelist;
(2) The potential client is informed of the ~~potential client's~~ option to call the LRS back for another referral rather than accepting the offered substitution;
(3) The potential client agrees to the substitution; and
(4) Both ~~the referring~~ panelists ~~and subsequent lawyer keep the~~ notify LRS ~~apprised~~ of the substitution. ~~arrangement and disposition of all referrals, and ensure that all reports to the LRS clarify and document all resulting lawyer-client agreements and relationships, if any.~~

ii) Non-Panelist Referral: A panelist may request LRS to waive this requirement when adherence to this requirement is contrary to the panelist's independent professional judgment.

e) Panelists ~~will submit any fee disputes with LRS-referred clients to~~ will use the Oregon State Bar Fee Arbitration Program for any fee disputes with LRS-referred clients.~~, regardless of who submits the petition for arbitration and regardless of when the dispute arises.~~

f) Panelists must have access to a computer with one of the following internet browsers installed and running the most recent version: Internet Explorer, Chrome, Firefox, or Safari.

~~3) How To Join the LRS:~~

~~a) Before submitting your application and payment, please read through the Lawyer Referral Service Policies (Policies) and these Procedures completely and contact LRS staff with any questions you may have;~~

~~b) Complete and submit the LRS Application Form; log in at www.osbar.org and click on the link for the application;~~

~~c) Complete and submit the Subject Matter Qualification forms for certain designated panels (if required);~~

~~d) Ensure that your Professional Liability Fund (PLF) coverage is current and that all outstanding PLF invoices are paid; and,~~

~~e) Pay all registration fees~~

~~4~~3) Program Year: The LRS operates on a 12-month program year. The program year begins ~~July~~ September 1 and ends ~~June 30~~ August 31. Although the LRS will accept applications at any time, registration fees are not prorated for late registrants. Payment of the registration fee ~~shall~~ entitles the panelist to participation only for the remainder of the applicable program year. The LRS may refund registration fees in full only if requested prior to the beginning of the applicable program year.

~~5~~4) Territories: LRS registration uses geographic territories based upon population density, counties, court locations and potential client and panelist convenience. A chart of the territories and the counties in each territory may be found on the application. Payment of the basice registration fee ~~(see below)~~ includes registration for ~~one territory, which shall be~~ the territory in which a panelist's office is located, known as the panelist's home territory. For an additional fee, panelists may elect to register for additional territories outside of his or her home territory for some or all of the ~~general areas of law~~ panels selected.

~~6~~5) Special Subject Matter Panel Qualifications: Registration for special subject matter panels requires a separate form and affirmation showing that the panelist meets basic competency standards. The special subject matter panels currently include: felony defense; interstate/independent adoption; deportation; and Department of Labor-referred FMLA/FLSA matters. ~~Additional information and forms are available on the bar's website at www.osbar.org~~

~~7) Registration Fees (effective 07/01/12):~~

~~a) Basic Registration Fee (including home territory and up to four panels or areas of law):~~

~~i) $50 for those admitted in Oregon for less than 3 years.~~

~~ii) $100 for those admitted in Oregon for 3 years or more.~~

~~b) Enhanced Services Fees:~~

~~i) Additional Territories: $50 for each additional geographic territory~~

~~ii) Statewide Listing: $300~~

~~iii) Additional Panels: $30 for each additional panel or area of law beyond the four included in a basic registration)~~

~~8~~6) Reporting and Remittance Requirements:

~~a) Percentage Rate: 12%~~

~~b) Threshold: $0~~

~~c) The Math: Panelists will pay the LRS a remittance on each and every LRS-referred matter in which the earned and collected attorneys' fees meet or exceed the threshold or "deductible." The remittance is a percentage only of the panelist's professional fees and does not apply to any costs advanced and recovered, or the $35 initial consultation fee.~~

~~d~~a) ~~Remittance Payments to the LRS~~Reporting: With limited exception, panelists must regularly report on all LRS-referred matters. Panelists who have not reported on any given LRS-referred matter for more than 60 days are considered past due in their reporting requirements. Panelists whose reporting is past due may be removed from LRS without notice until all reporting is brought up to date.

b) Reporting Payments: Panelists must report payments they receive on LRS-referred matters within 30 days of receipt.

c) Remittance Payments: Panelists must pay remittances when due and owing. Remittances are calculated in accordance with the Policies. The remittance is a percentage only of the panelist's attorney fees and does not apply to any costs advanced and recovered or to the $35 initial consultation fee.

i) Remittances are due to LRS within 30 days of reporting payments received or within 60 days of receiving payment, whichever is sooner.

ii) A panelist who fails to pay remittances when due may be removed from LRS without notice until all remittances are paid in full.

iii) If a panelist fails to pay remittances within 90 days of when they are due, the bar may take any reasonable and financially prudent methods to collect amounts owed to LRS.

iv) A panelist who has been more than 30 days past due in payment three times is subject to permanent removal from the LRS. The PSAC's decision on the removal is final.

v) A panelist's obligation to pay remittances owed to the LRS continues regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.

~~i) Panelists will report and pay remittances to the LRS no later than the last day of the month following the month in which the attorney fees were paid. If a panelist fails to report or pay the appropriate remittances to the LRS as required, LRS staff may remove the panelist from rotation and cease referrals to the panelist until all remittances are paid in full.~~

~~ii) If the panelist fails to pay the appropriate remittance to the LRS within 90 days from the date of payment of attorney fees to the panelist, the bar may take any reasonable and financially prudent methods to collect on amounts owed to LRS.~~

~~iii) A panelist who has been more than 30 days past due in payment three times is subject to permanent expulsion from the LRS. The PSAC's decision on the expulsion is final.~~

~~e~~d) Special Circumstances:

i) If an LRS-referred client puts one or more other potential clients in touch with the panelist for the same matter (e.g., a multiple-victim auto accident or multiple wage claims against the same employer~~, for instance~~), the remittance due to the LRS ~~applies to~~ will be based on a percentage of all fees earned and collected on the new clients' matter in addition to the LRS-referred matter.

ii) If an LRS-referred matter closes and some time later the client contacts the panelist on an unrelated matter, no remittance is due to the LRS on the new, unrelated matter.

iii) If a panelist elects to share or co-counsel an LRS-referred ~~client~~ matter with another lawyer for any reason, the panelist is solely responsible to the LRS for remittances on all fees ~~generated~~ earned and collected during the course of representation of the client in that matter (including any fees paid to the other lawyer brought in on the matter).

e) Remittance Disputes: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists must provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow.

~~9) Renewals: To remain an active panelist in the LRS and continue to receive referrals, panelists must:~~

~~a) Be current with all remittances owed to the LRS and pay all registration fees owed for the upcoming program year by the deadline stated in the renewal notice; and~~

~~b) Continue to be eligible to participate in the LRS and otherwise be in compliance with the Policies and these Procedures.~~

~~10) Reporting: LRS will provide panelists a monthly report listing all the panelist's pending or open referral matters. Panelists will complete the report indicating the status of each matter; failure to complete all such reports within 30 days will be grounds for removal from rotation. Reports are considered delinquent until completed and all remittances are paid.~~

~~11) Follow-up: LRS sends follow-up surveys to clients and potential clients asking if they consulted with the panelist, amounts of fees paid, and if they were satisfied with the LRS process. Any pertinent information will be forwarded to panelists, and, if deemed~~

~~necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.~~

~~12) Remittance Disputes: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists will provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow. Remittance disputes between the LRS and panelists that cannot be resolved are subject to collection action.~~

~~13) Participation in other Referral & Information Services Programs: In addition to administering the LRS, the OSB Referral & Information Services Department also administers the following other programs that provide referrals in the same or similar areas of law: Military Assistance Panel, Problem Solvers Program and Modest Means Program. More information can be found at www.osbar.org/forms.~~

Lawyer Referral Service Policies

I. Goal: The goals of the Lawyer Referral Service (LRS) are to serve lawyers and the public by referring people who seek and can afford to pay for legal assistance (potential clients) to lawyers who are willing to accept such referrals, and to provide information and other resources as appropriate. All lawyers participating in the LRS (panelists) agree to abide by these Lawyer Referral Service Policies (Policies) and Lawyer Referral Service Operating Procedures (Procedures).

II. Eligibility: Lawyers who satisfy the following requirements are eligible to apply for participation in the LRS. The lawyer must:

A. Be in private practice;

B. Be an active member of the Oregon State Bar in good standing;

C. Have malpractice coverage with the Professional Liability Fund (PLF); and

D. Have no formal disciplinary, protective, or custodianship proceedings pending.

Additional requirements for participation on special subject matter panels are stated in the Procedures.

III. Complaints about Panelists:

A. Ethics Complaints: Complaints about possible ethical violations by panelists will be referred to the Oregon State Bar Client Assistance Office.

B. Fee Complaints: Complaints about panelists' fees will be referred to the Oregon State Bar Fee Arbitration Program.

C. Customer Service Complaints: LRS staff monitor complaints concerning the level of customer service provided by panelists. The character, number, and/or frequency of such complaints may result in removal from the LRS without prior notice.

IV. Removal: Panelists may be removed from the LRS or any LRS panel without prior notice if they no longer meet the eligibility requirements, if they violate any of the LRS Policies or Procedures, or as otherwise provided in these Policies and Procedures. Panelists against whom disciplinary, protective, or custodianship proceedings have been approved for filing will be removed from the LRS until those matters have been resolved. A matter will not be deemed resolved until all such proceedings, including appeals, have been concluded and the matter is no longer pending in any form.

V. Fees & Refunds:

A. Fees: All panelists must pay the LRS registration fees and percentage remittances set by the Board of Governors (BOG) and provided below.

1. Registration Fees: All panelists must pay registration fees annually for each program year and, except as provided in Paragraph V.B. “Refunds” (below), registration fees are nonrefundable and will not be prorated. The registration fees are:

a) Basic Registration Fee (including home territory and up to four panels):

i) $50 for those admitted in Oregon for less than 3 years

ii) $100 for those admitted in Oregon for 3 years or more

b) Enhanced Services Fees:

i) Additional Territories: $50 for each additional geographic territory

ii) Statewide Listing: $300

iii) Additional Panels: $30 for each additional panel beyond the four included in a basic registration

2. Remittances: Panelists owe the LRS a remittance when: 1) the panelist has earned and collected attorney fees on an LRS-referred matter, and; 2) the amount earned and collected meets or exceeds the threshold set by the BOG. The remittance owed is a percentage of the attorney fees earned and collected by the panelist on the LRS-referred matter. The percentage rate and threshold used to calculate the remittances owed are:

a) Percentage Rate: 12%

b) Threshold: $0

3. Communications Regarding Remittances: Upon settlement of a matter, the panelist must include the LRS with those who have a right to know about the terms of a settlement to the extent necessary to allow the LRS to determine the portion of the fees to which it is entitled.

B. Refunds:

1. Upon written request, a panelist who has been removed from the LRS is entitled to a prorated refund of registration fees provided that the panelist has no unpaid balances for LRS registration fees or remittances. The amount of the refund will be based on the number of full months remaining in the program year for which the fees were paid, as measured from the date the written request is received. A removed panelist who again meets all of the eligibility requirements prior to the expiration of the program year during which the removal occurred may reapply and be reactivated for the remainder of that program year upon written request and payment of any amount refunded.

2. Upon written request, a panelist who is required to refund to a client a portion of a flat fee that was earned upon receipt will be refunded the percentage paid to LRS of the portion refunded to the client.

VI. Review and Governance:

A. Public Service Advisory Committee (PSAC):

1. The PSAC advises the BOG on the operation of the LRS. The PSAC works with LRS staff in the development and revision of these Policies and the Procedures. Amendments to these Policies must be approved by the BOG. Amendments to the Procedures may be approved by the PSAC. The BOG may amend these Policies and Procedures at any time. The RIS Manager has discretion to waive and suspend Procedures for good cause.

2. Upon written request, the PSAC will review a decision to remove a panelist at its next regularly scheduled meeting. Such written request must be submitted to the PSAC within 30 calendar days of the date notice of the decision is given to the removed panelist. The PSAC's decision regarding removal is final.

3. Upon written request, the PSAC may review a decision regarding a panelist's registration, renewal, and/or special subject matter panel registration (collectively, registration issues). Such written request must be submitted to the PSAC within 30 calendar days of the date notice of the decision is given to the lawyer. The PSAC's decision regarding registration issues is final.

Lawyer Referral Service Operating Procedures

1) What LRS Will Do:

a) Referrals: LRS will refer potential clients to panelists based on legal need, geographic area, language spoken, and other requested services (credit cards accepted, evening appointments, etc.).

b) Rotation: Referrals are made in rotation to ensure an equitable distribution of referrals among similarly situated panelists.

c) Processing: Generally, potential clients receive one referral at a time and will not be provided more than three referrals within a 12-month period for the same legal issue. Under certain circumstances, LRS may provide more than three referrals and may also provide several referrals at the same time. Such circumstances may include, but are not limited to, emergency hearings, referral requests from those who live out of state, and lawyers interviewing panelists to represent their clients in other matters. LRS tells potential clients:

i) To tell the panelist that they have been referred by the LRS;

ii) They are entitled to an initial consultation of up to 30 minutes for $35;

iii) The panelist's regular hourly rate will apply after the first 30 minutes; and,

iv) All fees beyond the initial consultation will be as agreed between the potential client and the panelist.

d) Follow-up: After processing a referral, confirmation is emailed to the panelist. LRS may also send referral confirmations and follow-up surveys to potential clients referred by the LRS. Any pertinent information from surveys will be forwarded to panelists, and, if deemed necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.

2) What Panelists Will Do:

a) Initial Consultations:

i) Amount: Panelists agree to charge potential clients who live in Oregon and are referred by the LRS no more than $35 for an initial consultation, except that no consultation fee may be charged where:

(1) Such charge would conflict with a statute or rule regarding attorneys' fees in a particular type of case (e.g., workers' compensation cases), or

(2) The panelist customarily offers or advertises a free consultation to the public for a particular type of case.

ii) Duration: Potential clients are entitled to an initial consultation of up to 30 minutes for a maximum fee of $35. If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply.

iii) Communication Method: Each panelist may decide whether to provide initial consultations in person, by telephone, by video conference, or by some other method of real-time communication. Panelists may indicate their preferences on their LRS applications.

iv) Location of In-Person Consultations: In-person consultations between potential clients and panelists must take place in an office, conference room, courthouse, law library, or other mutually agreeable location that will ensure safety, privacy, and professionalism.

b) Fees: Panelists agree not to charge more fees and expenses to an LRS-referred client than they would to a client who is not referred by LRS.

c) Customer Service:

i) Panelists will participate only on those panels and subpanels within the panelist's competence and where the LRS has approved the panelist to participate on one or more special subject matter panels, as applicable;

ii) Panelists will not charge or bill for any fee beyond the initial consultation fee unless and until the panelist and potential client have agreed to the attorney's fees and costs for additional time or services beyond the initial 30-minute consultation;

iii) Panelists will use a written fee agreement for any services provided beyond the initial consultation;

iv) Panelists will communicate regularly with LRS staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason; and,

v) Panelists will keep clients reasonably informed about the status of their matters and respond promptly to reasonable requests for information. Panelists will return calls and emails promptly and will provide clients with copies of important papers and letters.

d) Except as provided below, panelists will refer back to the LRS any potential client with whom the panelist is unable to conduct an initial consultation for any reason.

i) Panelist Substitution: A panelist may offer the potential client a referral to a substitute lawyer, provided:

(1) The substitute lawyer is a panelist;
(2) The potential client is informed of the option to call the LRS back for another referral rather than accepting the offered substitution;
(3) The potential client agrees to the substitution; and
(4) Both panelists notify LRS of the substitution.

ii) Non-Panelist Referral: A panelist may request LRS to waive this requirement when adherence to this requirement is contrary to the panelist's independent professional judgment.

e) Panelists will use the Oregon State Bar Fee Arbitration Program for any fee disputes with LRS-referred clients.

f) Panelists must have access to a computer with one of the following internet browsers installed and running the most recent version: Internet Explorer, Chrome, Firefox, or Safari.

3) Program Year: The LRS operates on a 12-month program year. The program year begins September 1 and ends August 31. Although the LRS will accept applications at any time, registration fees are not prorated for late registrants. Payment of the registration fee entitles the panelist to participation only for the remainder of the applicable program year. The LRS may refund registration fees in full only if requested prior to the beginning of the applicable program year.

4) Territories: LRS registration uses geographic territories based upon population density, counties, court locations and potential client and panelist convenience. A chart of the territories and the counties in each territory may be found on the application. Payment of the basic registration fee includes registration for the territory in which a panelist's office is located, known as the panelist's home territory. For an additional fee, panelists may elect to register for additional territories outside of his or her home territory for some or all of the panels selected.

5) Special Subject Matter Panel Qualifications: Registration for special subject matter panels requires a separate form and affirmation showing that the panelist meets basic competency standards. The special subject matter panels currently include: felony defense; interstate/independent adoption; deportation; and Department of Labor-referred FMLA/FLSA matters.

6) Reporting and Remittance Requirements:

a) Reporting: With limited exception, panelists must regularly report on all LRS-referred matters. Panelists who have not reported on any given LRS-referred matter for more than 60 days are considered past due in their reporting requirements. Panelists whose reporting is past due may be removed from LRS without notice until all reporting is brought up to date.

b) Reporting Payments: Panelists must report payments they receive on LRS-referred matters within 30 days of receipt.

c) Remittance Payments: Panelists must pay remittances when due and owing. Remittances are calculated in accordance with the Policies. The remittance is a percentage only of the panelist's attorney fees and does not apply to any costs advanced and recovered or to the $35 initial consultation fee.

i) Remittances are due to LRS within 30 days of reporting payments received or within 60 days of receiving payment, whichever is sooner.

ii) A panelist who fails to pay remittances when due may be removed from LRS without notice until all remittances are paid in full.

iii) If a panelist fails to pay remittances within 90 days of when they are due, the bar may take any reasonable and financially prudent methods to collect amounts owed to LRS.

iv) A panelist who has been more than 30 days past due in payment of remittances three times is subject to permanent removal from the LRS. The PSAC's decision on the removal is final.

v) A panelist's obligation to pay remittances owed to the LRS continues regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.

d) Special Circumstances:

i) If an LRS-referred client puts one or more other potential clients in touch with the panelist for the same matter (e.g., a multiple-victim auto accident or multiple wage claims against the same employer), the remittance due to the LRS will be based on a percentage of all fees earned and collected on the new clients' matter in addition to the LRS-referred matter.

ii) If an LRS-referred matter closes and sometime later the client contacts the panelist on an unrelated matter, no remittance is due to the LRS on the new, unrelated matter.

iii) If a panelist elects to share or co-counsel an LRS-referred matter with another lawyer for any reason, the panelist is solely responsible to the LRS for remittances on all fees earned and collected during the course of representation of the client in that matter (including any fees paid to the other lawyer brought in on the matter).

e) Remittance Disputes: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists must provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow.

Member Benefit Proposal Prepared for the **Oregon State Bar**

LawPay
Member Benefit Program
AffiniPay
6200 Bridge Point Parkway, Suite 250
Austin, Texas 78730
Direct: 512.366.6970
Amy Porter, CEO

LawPay
CREDIT CARD PROCESSING

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Background and Organization

Company History

AffiniPay is a full-service ISO (Independent Sales Organization) registered with Visa and MasterCard to provide merchant account and online payment services. Founded in 2005 by experienced bankcard professionals and a former board member of the Electronic Transactions Association (ETA), AffiniPay has quickly become the leading provider of payment processing for the legal industry.

Unlike traditional ISO groups, AffiniPay is focused on providing custom payment solutions to the legal industry. This narrow focus allows us to provide a deeper level of understanding and expertise to our clients.

With over 15,000 attorneys using the LawPay program, we have unmatched experience working with attorneys.

The LawPay program made Jim Calloway's "Best in Law Office Management and Technology" list for 2007.

Ellen Peck, opinion writer for the State Bar of California wrote that the LawPay program, "… solves the ethical problem raised by Formal Opinion 2007-172" in the January 2008 edition of the California Bar Journal.

LawPay History

The LawPay program, a custom payment solution for attorneys, was developed with the input of bar association partners and their ethics committees. At their request, we examined the requirements for handling client funds and developed a solution to resolve the ethical dilemma attorneys face when processing credit cards. We now offer our LawPay program exclusively through bar and legal associations nationwide. It is the only program currently endorsed and recommended by 34 state and 49 local bar associations.

As the premier provider of electronic payment systems for the legal industry, AffiniPay works with major legal software programs to integrate and adopt our service. We continually monitor and research changes to trust account guidelines and state bar opinions surrounding the issue of credit card acceptance.

As AffiniPay continues to focus on the legal industry, a strategic partnership with Oregon State Bar would enhance our already strong network of attorneys. Attorneys benefit from better pricing, favorable terms, including VIP service and access to enhancements to our systems and reporting.

"It's a pleasure dealing with LawPay! Love your statements, love your customer service and love your techs."
—J. Moore, The Florida Bar

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LawPay Technology

We offer multiple hardware and software options to handle credit and debit card payment processing. Our team works with attorneys to select the option that works best for their business. In addition to traditional credit card terminals, attorneys can take advantage of our proprietary payment technology. This secure, web-based option gives members the ability to accept credit card transactions in the office, over the internet, and on the go through LawPay Mobile.

LawPay Web:

LawPay Mobile – iPhone, iPad, and Android Options:

LawPay
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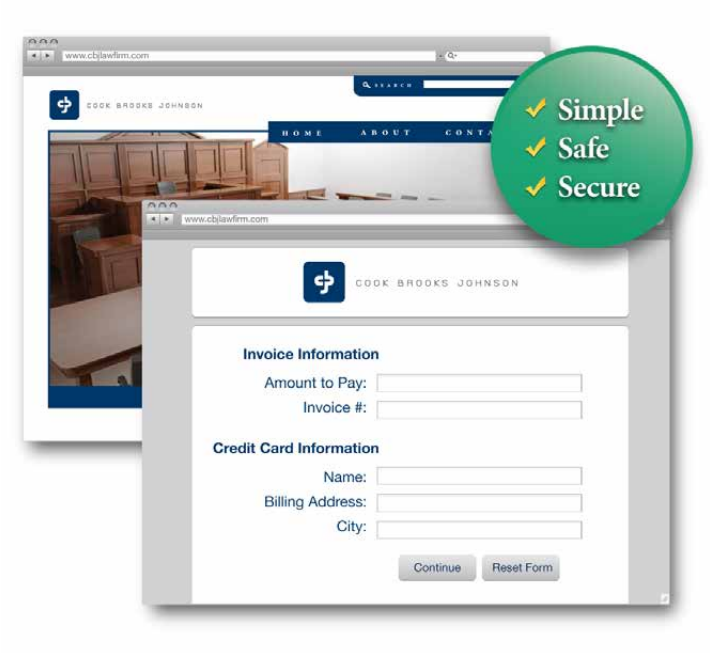
Key Feature – Secure Client-Payment Page

As part of the LawPay program, attorneys can take advantage of our customized payment solution. This technology allows clients to make secure payments from their attorney's website.

Even if an attorney does not have a website, they can send an email containing a secure link. The client enters their credit card information and submits payment. The payment is automatically transferred into the attorney's checking account.



- Easy –One Click Payments
- Secure Page reduces PCI requirements
- Eliminates the need for additional website development
- Hosted Page can link to website or email

This option is not only convenient, it is secure. Using the secure payment page allows clients to enter their own information, eliminating the need for attorneys to collect or store sensitive card information in their office.

> "I will be telling every lawyer I know about the outstanding customer support and service provided by LawPay."
> — L. Piel, State Bar of Nevada

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LawPay Commitment

The LawPay commitment to Oregon State Bar consists of several elements: 1) Advertising, 2) Sponsorship, and 3) Non-dues Revenue.

1) Advertising

AffiniPay shall commit to a minimum of $10,000 in print and/ or electronic advertising per year.

2) Sponsorship

AffiniPay shall commit to a minimum of $2,500 to sponsor programs relevant to the LawPay program including, but not limited to the Annual Meeting and the Sole & Small Firm Practitioners Section Tech Fair.

3) Non-dues Revenue

In addition to advertising and sponsorship, LawPay offers a non-dues revenue. Oregon State Bar has opted to forward all non-dues revenue from the LawPay program to the Multnomah Bar Association. Multnomah Bar Association will receive 7.5 basis points on every dollar in Visa/MasterCard transactions.

	5	members/mo										
	8,000	proc vol										
YEAR 1												
month	mo 1	mo 2	mo 3	mo 4	mo 5	mo 6	mo 7	mo 8	mo 9	mo 10	mo 11	mo 12
new accounts	5	5	5	5	5	5	5	5	5	5	5	5
total accounts	5	10	15	20	25	30	35	40	45	50	55	60
volume	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000
total vol	$ 40,000	$ 80,000	$120,000	$ 160,000	$ 200,000	$ 240,000	$ 280,000	$ 320,000	$ 360,000	$ 400,000	$ 440,000	$ 480,000
Commission to Multnomah Bar Association												
0.000758	$ 30.32	$ 60.64	$ 90.96	$ 121.28	$ 151.60	$ 181.92	$ 212.24	$ 242.56	$ 272.88	$ 303.20	$ 333.52	$ 363.84
											Year 1 Non-Dues Revenue	$2,364.96
YEAR 2												
month	mo 13	mo 14	mo 15	mo 16	mo 17	mo 18	mo 19	mo 20	mo 21	mo 22	mo 23	mo 24
new accounts	5	5	5	5	5	5	5	5	5	5	5	5
total accounts	65	70	75	80	85	90	95	100	105	110	115	120
volume	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000
total vol	$520,000	$ 560,000	$600,000	$ 640,000	$ 680,000	$ 720,000	$ 760,000	$ 800,000	$ 840,000	$ 880,000	$ 920,000	$ 960,000
Commission to Multnomah Bar Association												
0.000758	$394.16	$424.48	$454.80	$485.12	$515.44	$545.76	$576.08	$606.40	$636.72	$667.04	$697.36	$727.68
											Year 2 Non-Dues Revenue	$6,731.04

The revenue projection below is very conservative and is based on our average monthly credit card volume for attorneys. We have found that attorneys process an average of $8,000 per month.

Non-dues revenue is recurring and paid out on a quarterly basis.

LawPay
CREDIT CARD PROCESSING

LawPay's Unique Approach

The Industry

The payment processing industry is populated by thousands of companies that sell payment processing services and equipment. Most of these groups operate as sales arms of larger processing companies or banks. They traditionally target any business that accepts credit card payments - casting their nets wide and focusing on acquiring retail and service sector businesses: restaurants, dry cleaners, gas stations, or car washes. These groups generally offer a standard merchant program and often do not have the knowledge of requirements for handling trust account transactions.

The Program

The LawPay program safeguards and separates client funds into trust and operating accounts in compliance with ABA and state guidelines for credit acceptance. It credits retainers to the trust account and credits regular billing and invoice payments to the operating account. While processing fees for both transaction types are deducted at the end of the month from the operating account. This process eliminates any commingling of client funds and simplifies your accounting. Transactions are handled correctly with a LawPay program.

Protection

More importantly, beyond just separating funds, the LawPay program protects the attorney trust account from all 3rd party "invasion." We restrict the ability of all other banking institutions from debiting monies from an attorney trust or IOLTA account which the attorney is not ethically allowed to grant access.

LawPay
CREDIT CARD PROCESSING

Proven Solution

It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to LawPay and accept credit cards with confidence.

> "I would highly recommend the LawPay program to my colleagues and other members of the Oklahoma Bar Association. Every time I call I get someone on the phone who is helpful and pleasant. I don't have to navigate a complex phone tree to speak to a live human. I appreciate having someone available to answer my questions. I also want to mention that the assistance provided at startup was particularly helpful. My personal account manager walked me through using the credit card machine and then walked my staff through the process. It was easier than I imagined, and the monthly transaction statements are clear and simple to follow."
>
> — C. Christensen
> Board of Governors Member, OBA

Attorney Education

To additionally enhance the LawPay program, we provide attorney education programs through a series of CLE classes, articles, newsletters, and e-Alerts on subject matters such as PCI Compliance, Chargeback Prevention, and Collection Best Practices for law firms.

PCI Compliance Program

In 2008, the Payment Card Industry created specific security standards mandatory for all businesses accepting credit card transactions. **We have developed a unique PCI Compliance program providing attorneys with a simple solution at no cost to becoming compliant.** Our simplified approach to PCI Compliance bundles everything a law firm needs into one program. Not only are our LawPay systems fully PCI compliant, we offer detailed guidance and support on all aspects of PCI Compliance and card security.

Service Level Guarantee

All account management and client support is in-house, allowing us to provide attorneys the highest level of support and satisfaction. Above and beyond providing merchant accounts we frequently assist firms in streamlining their accounting and collection processes. With over 15,000 attorneys using the LawPay program, our account managers have both unmatched bankcard knowledge and experience working with large and small firms.

With the LawPay program, attorneys are provided with a relevant, valuable benefit serviced by a team of experienced professionals. This program was designed with the input of bar associations to specifically address the needs of client-attorney transactions.

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Endorsements

The LawPay program is approved and recommended exclusively by 34 state and 49 local bar associations, including:

Alabama State Bar • Allegheny County Bar Association • Arapahoe County Bar Association • Arkansas Bar Association • Atlanta Bar Association • Austin Bar Association • Bar Association of Erie County • Bar Association of Metropolitan St. Louis • Boulder County Bar Association • Bucks County Bar Association • Chicago Bar Association • Clark County Bar Association • Clearwater Bar Association • Colorado Bar Association • Connecticut Bar Association • Dade County Bar Association • Dallas Bar Association • DeKalb Bar Association • DuPage County Bar Association • El Paso Bar Association • Fairfax Bar Association • Fayette County Bar Association • Florida Association for Women Lawyers • The Florida Bar • Genesee County Bar Association • Hartford County Bar Association • Hidalgo County Bar Association • Hillsborough County Bar Association • Illinois State Bar Association • Indiana State Bar Association • Iowa State Bar Association • Johnson County Bar Association • Kansas City Metropolitan Bar Association • Kentucky Bar Association • Lawyers Club of San Diego • Los Angeles County Bar Association • Louisiana State Bar Association • Macomb County Bar Association • Maine State Bar Association • Maricopa County Bar Association • Maryland State Bar Association • Massachusetts Bar Association • Memphis Bar Association • Minnesota State Bar Association • The Missouri Bar • Montgomery County Bar Association • Multnomah Bar Association • Nebraska State Bar Association • New Hampshire Bar Association • New Haven County Bar Association • New Jersey State Bar Association • New York City Bar Association • North Carolina Advocates for Justice • North Carolina Bar Association • Ohio State Bar Association • Oklahoma Bar Association • Oklahoma County Bar Association • Orange County Bar Association • Palm Beach County Bar Association • Pennsylvania Bar Association • Rhode Island Bar Association • Bar Association of the City of Richmond • Sacramento County Bar Association • San Antonio Bar Association • San Diego County Bar Association • Smith County Bar Association • South Carolina Bar Association • State Bar of Montana • State Bar of New Mexico • State Bar of Nevada • State Bar of Texas • State Bar of Wisconsin • Tarrant County Bar Association • Tennessee Bar Association • Vermont Bar Association • Virginia Bar Association • Washoe County Bar Association • Women Lawyers Association of Michigan • Wyoming State Bar

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CREDIT CARD PROCESSING

Addendum:

1. Pricing
2. Marketing Samples

LawPay
CREDIT CARD PROCESSING

Pricing

Below is a price comparison of a Standard Merchant Account versus the LawPay member benefit program. On average, LawPay reduces overall processing fees by 25%.

	Standard Merchant Account	LawPay Program
Fees		
Application Fee	$75 - $195	None
Contract Terms	1 - 3 years	None
Cancellation Fee	$70 - $300	None
Set Up Fees	$100 - $300	None
Annual Fee	$50 - $200	None
Monthly Minimum Fee	$20+	None
Service		
Processing Rate for Swipe (In Person) Debit	1.69%	1.59%
Processing Rate for Swipe (In Person) Transactions	1.85%	1.79%
Processing Rate Keyed (Internet/Mail/Phone)	2.65%	2.19%
Processing Rate Mid & Non-Qualified (Corp, Biz, Pur. Cards)	1.50%	.86%
Transaction Fee (Includes authorization and settlement)	25 - 35 ¢	20 ¢
Monthly Statement/Service Fee	$10 - $15	WAIVED
Monthly Online Secure Gateway (Virtual Terminal)	$30 - $50	$5 - $30
Features		
QuickBooks Module	No	Yes
Billing Presentment and Electronic Invoices	No	Yes
Online Bill Pay for Clients	No	Yes
PCI Compliance		
PCI Annual Fee	$79 - $200	None
Monthly Compliance Fee	$20 - $30	None

Based on card type accepted

THE CORRECT WAY TO ACCEPT PAYMENTS!

Trust your credit card transactions to the only merchant account provider recommended by 34 state and 49 local bar associations!

- ✓ Separate earned and unearned fees
- ✓ 100% protection of your Trust or IOLTA account
- ✓ Complies with ABA & State Bar guidelines
- ✓ Safe, simple, and secure!

Reduce processing fees and avoid commingling funds through LawPay.

VISA MasterCard AMERICAN EXPRESS DISCOVER

Process all major card brands through LawPay

Secure web payments

Mobile Swiper iPhone, iPad, Android

866.376.0950
LawPay.com/MaineBar

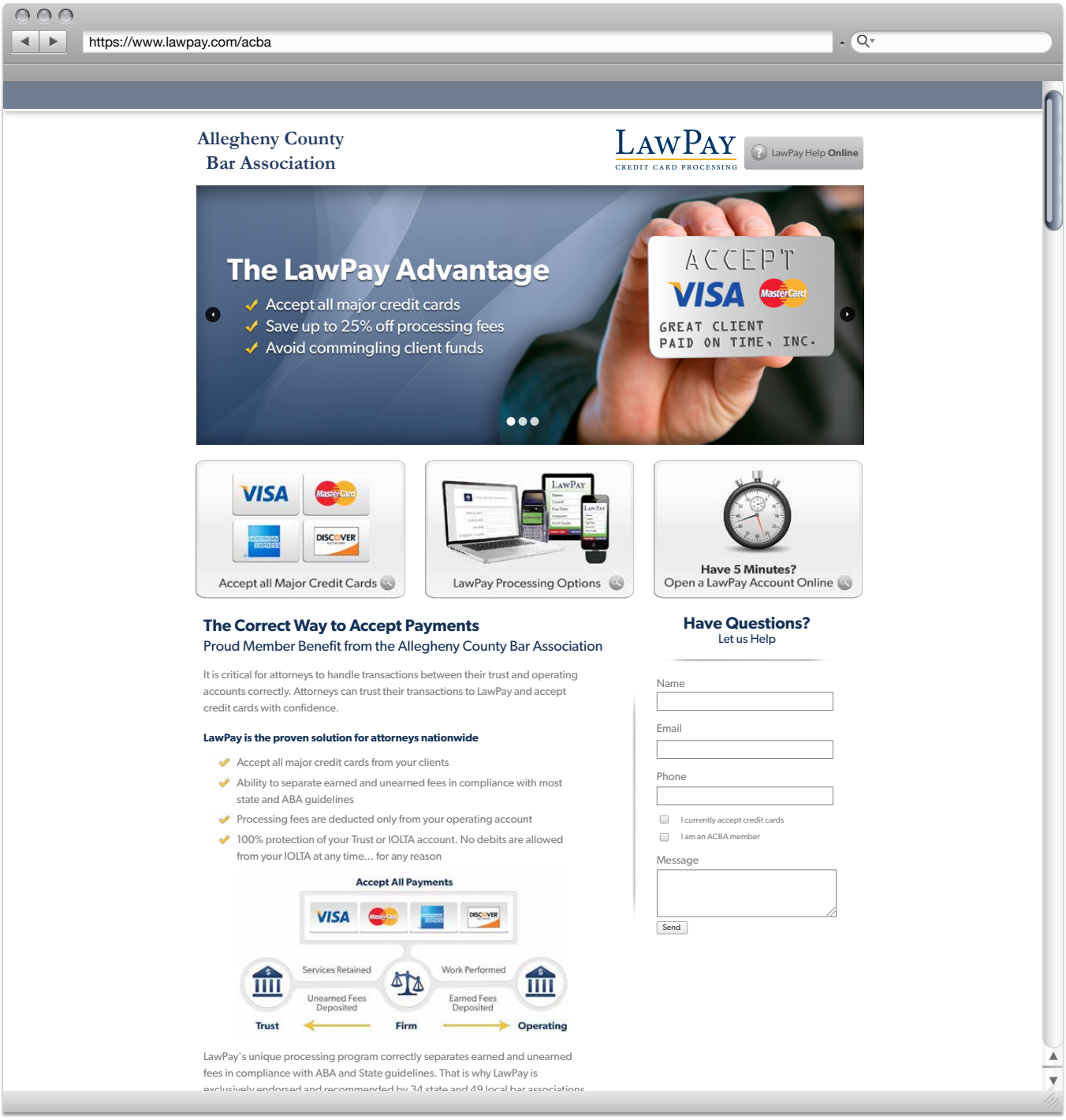
Proud Member Benefit Provider Maine State Bar ASSOCIATION

AVAILABLE EXCLUSIVELY THROUGH
THE MAINE STATE BAR ASSOCIATION

AffiniPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL

We create custom marketing materials designed to target your membership and increase awareness. Promotional materials are branded with your association's logo. We track responses and continually refine our content and design.

Custom Landing Pages



A custom information page for members. The purpose is to generate interest and leads. The form is used to collect member contact information.

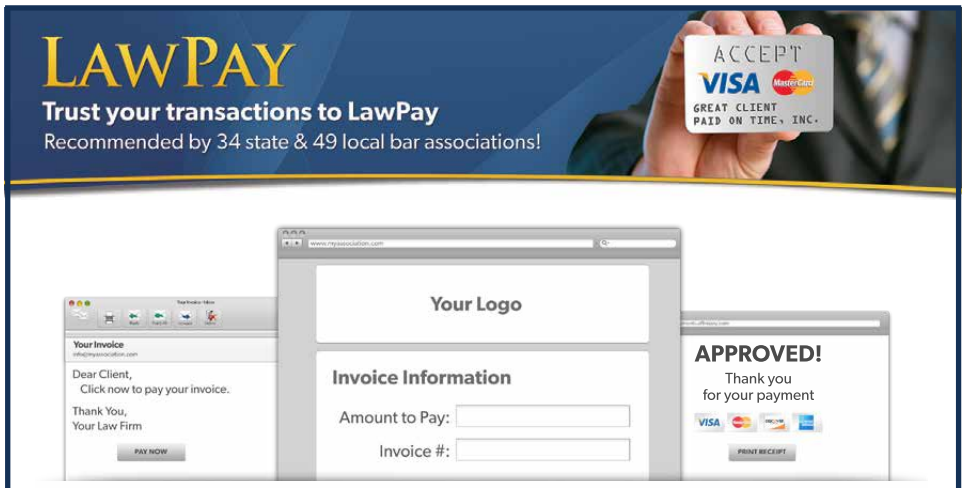
LawPay
CREDIT CARD PROCESSING

Special Promotions for Members

Recommended by Over 80 Bar Associations

Reply Reply All Forward Junk Print Delete To Do Categories Projects Links

From: info@lawpay.com
Reply-To: info@lawpay.com
Date: Thursday, February 13, 2013 9:44 AM
To: mlindemann@affinipay.com
Subject: Recommended by Over 80 Bar Associations



The Easiest Way to Get Paid

LawPay's Secure Client-Payment Page is a great tool for getting paid! The secure link is created and hosted by LawPay, reducing the need for costly shopping cart systems and development time. The LawPay Secure Client-Payment Page eliminates the need to handle or store sensitive client card information. Simply plug the secure link into your website, invoices, or email, giving clients the ability to enter their own credit card information... anytime!

The Premier Credit Card Processor for the Legal Industry

Trust Your Transactions to LawPay

It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to LawPay and accept credit cards with confidence.

Unlike typical merchant accounts, LawPay allows you to:

LawPay is Coming to a Show Near You!

Date	Show
Mar 13 - 15	ABA Leaders
Apr 4 - 6	ABA Tech Show
Apr 12	Dallas Minority Attorney Program

A customized email sent to members.

Special Promotions for Members

Recommended by Over 80 Bar Associations

Reply | Reply All | Forward | Junk | Print | Delete | To Do | Categories | Projects | Links

From: amber@lawpay.com
Reply-To: amber@lawpay.com
Date: Thursday, March 5, 2013 9:44 AM
To: mlindemann@affinipay.com
Subject: Recommended by Over 80 Bar Associations

Thanks for stopping by our booth at the DBA Minority Attorney Program!

Trust your transactions to the premier payment processor for the legal industry. It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to LawPay and accept credit cards with confidence.

Unlike typical merchant accounts, LawPay allows you to:

- Accept Visa, MasterCard, Discover, and Amex
- Save up to 25% off standard fees
- Accept credit cards for retainers
- Avoid commingling client funds

LawPay's unique processing program correctly separates earned and unearned fees in compliance with ABA and State guidelines. That is why LawPay is endorsed and recommended by 34 State and 49 Local Bar Associations.

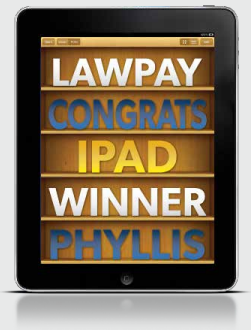
! Special Conference Offer

Today through April 30, 2013, the $150 web-based terminal start-up fee is waived for all DBA Minority Attorney Program Attendees.

In addition, if you open a LawPay account by April 30, 2013, I will waive your program fee for 3 months!

We Have a Winner!

Congratulations to Phyllis Lister Brown for winning the LawPay iPad giveaway! Thanks to all who participated.



Currently Accepting Credit Cards? Let's Compare!

I would love to compare your current processing rates with our program. On average we have saved attorneys between 20-25%!

A custom tradeshow follow-up email to conference attendees with a special offer to generate interest.

BESTPRACTICES

Boost the Bottom Line

Accepting Credit and Debit Cards Pays Dividends for Law Firms

BY AMY PORTER

LAWPAY ACCOUNT SERVICES ARE AVAILABLE TO NJSBA MEMBERS AT SPECIAL RATES

The ongoing recession has all law firms concerned about their fiscal health – and legal administrators worldwide are looking for ways to boost their firms' bottom lines. Fortunately, one simple process is guaranteed to make you and your firms more successful by attracting clients, increasing cash flow, and reducing collection efforts. Credit and debit card acceptance is an essential practice management tool that is often overlooked as a means to increase revenue. Today, many clients and prospective clients prefer the convenience of paying with credit or debit cards as opposed to checks. Why turn away a prospective client who wants to use your law firm's services and has the means to pay promptly?

Credit card acceptance is an essential law practice management tool.

CASH FLOW 101

Once considered taboo, acceptance of credit cards for payment is allowing a growing number of law firms to benefit from immediate cash flow and to eliminate "the check is in the mail" syndrome. Clients turn to your firm for help with legal matters. However, it's not your firm's responsibility to extend credit to clients, and that is exactly what happens every time an invoice goes unpaid. Let MasterCard and Visa manage your clients' credit lines and worry about collections, while you save your time and energy for operating, managing, and growing the firm's practice.

PAYMENT PRE-AUTHORIZATIONS

Avoid the hassle of chasing down delinquent payments by providing a credit pre-authorization form with all letters of engagement. Several types of pre-authorization forms exist for accepting clients' credit or debit card payments. One option is for a payment plan or recurring charge billed to the client's credit or debit card for a set amount on a weekly or monthly basis. You can also arrange to automatically bill any past due balance over 30, 60, or 90 days to the client's credit card on file.

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BESTPRACTICES

Amy Porter, Chief Executive Officer, AffiniPay Credit Card Processing

It's not your firm's responsibility to extend credit to clients, and that is exactly what happens every time an invoice goes unpaid. Let MasterCard and Visa manage your clients' credit lines and worry about collections, while you save your time and energy for operating, managing, and growing the firm's practice.

One California law firm reduced its outstanding collections from 25 percent to less than 5 percent when it began including a pre-authorization form with all new paperwork that went into the client file and a credit authorization form with each invoice giving the firm permission to charge the client's credit card on record. Similar to the pre-authorization form, a credit authorization form gives your law firm permission to charge a client's credit or debit card for a certain amount. Avoid late and no-pay pay clients entirely by including a credit card authorization with all invoices.

Even a small change such as adding the option to enter a credit card number and signature on your current invoices will help to reduce late payments.

PAYMENT INCENTIVES

Many firms offer incentives for timely payments and benefit from substantially reduced collections files. For example, a 15 attorney firm in Austin, Texas, offers 10 percent discounts to clients who pay within 10 days of receiving their invoices. The thought process is simple: The firm would rather have 90 percent of its money in 10 days than 100 percent in 60, 90, or even 120 days. What matters most is that the cash flows into firm in a timely manner so that all of the firm's bills – including staff salaries – are paid on time.

Similarly, a firm in Oklahoma City offers 25 percent discounts when clients pay within 10 days. The law firm adjusted its budgets to accommodate such large discounts and made sure to keep its pricing competitive. The method is clearly a powerful incentive; in fact, many of the firm's clients now insist on paying their bills right away. In both of the aforementioned situations, the ability to accept credit cards creates an efficient way to implement and streamline these programs.

WEB SITES AS PAYMENT CENTERS

Law firms should consider adding payment portals to their Web sites. By simply adding a "Pay Bill" link, your firm can offer clients a convenient and fast way for them to pay you at any time.

One firm in Montana added a "Pay Bill" link to its Web site. In subsequent invoices and letters, the firm communicated to clients that they could go online at any time and simply click a button to pay for their legal services immediately. The firm also includes a link in a monthly e-mail to each client.

The cost of adding a payment center to a Web site is minimal, and compared to the costs incurred to utilize a third-party billing provider or collections agency it is a veritable bargain. (To see an example of a simple yet successful bill payment link, visit www.teaselaw.com.)

PROCEED WITH CAUTION

If your firm is considering or is already taking advantage of credit card payment options, ensure you have the proper procedures in place to handle such transactions. This includes compliance with trust account guidelines, proper documentation for chargeback prevention, and basic security procedures to protect cardholder information.

One of the most common concerns with credit card acceptance is the risk of a chargeback, which occurs when the cardholder files a dispute with his or her credit card issuing bank. To successfully defend an unfounded dispute, your law firm must prove two things: that the work was performed and that the client gave his or her permission to charge the credit card to pay for that work.

Proving that your law firm's services were provided is often the easiest part. Clearly documenting and tracking every minute of work performed is a standard part of performing the business of law.

Surprisingly, where law firms often fall short is in obtaining a client signature for a credit card transaction. One large law firm was recently involved in a $25,000 chargeback case. The firm's leaders believed the chargeback was initiated simply because the client was unhappy with the outcome of the case. The firm quickly produced documentation that legal services were provided and that the work was performed. However, it lost the chargeback dispute because a signature authorizing the firm to charge the credit card was never obtained.

The engagement letter was agreed to, and the fee arrangement was in place. In fact every important piece of paper was signed except for the credit authorization form that specifically states the firm could charge the client's credit card. If the firm had been able to show the bank a legitimate authorization, it could have easily won the chargeback case.

CARDHOLDER SECURITY

In addition to documentation, you must have a procedure in place to handle and store client credit card information. All card information should be kept under lock and key, with access provided to authorized staff members only. Card information should never be shared electronically, including via e-mail.

Common sense should dictate when client information may be at risk. You should give credit card data the same level of confidentiality afforded to other sensitive client information. (For more detail on card security, visit the PCI Security Standards Council Web site at www.pcisecuritystandards.org.)

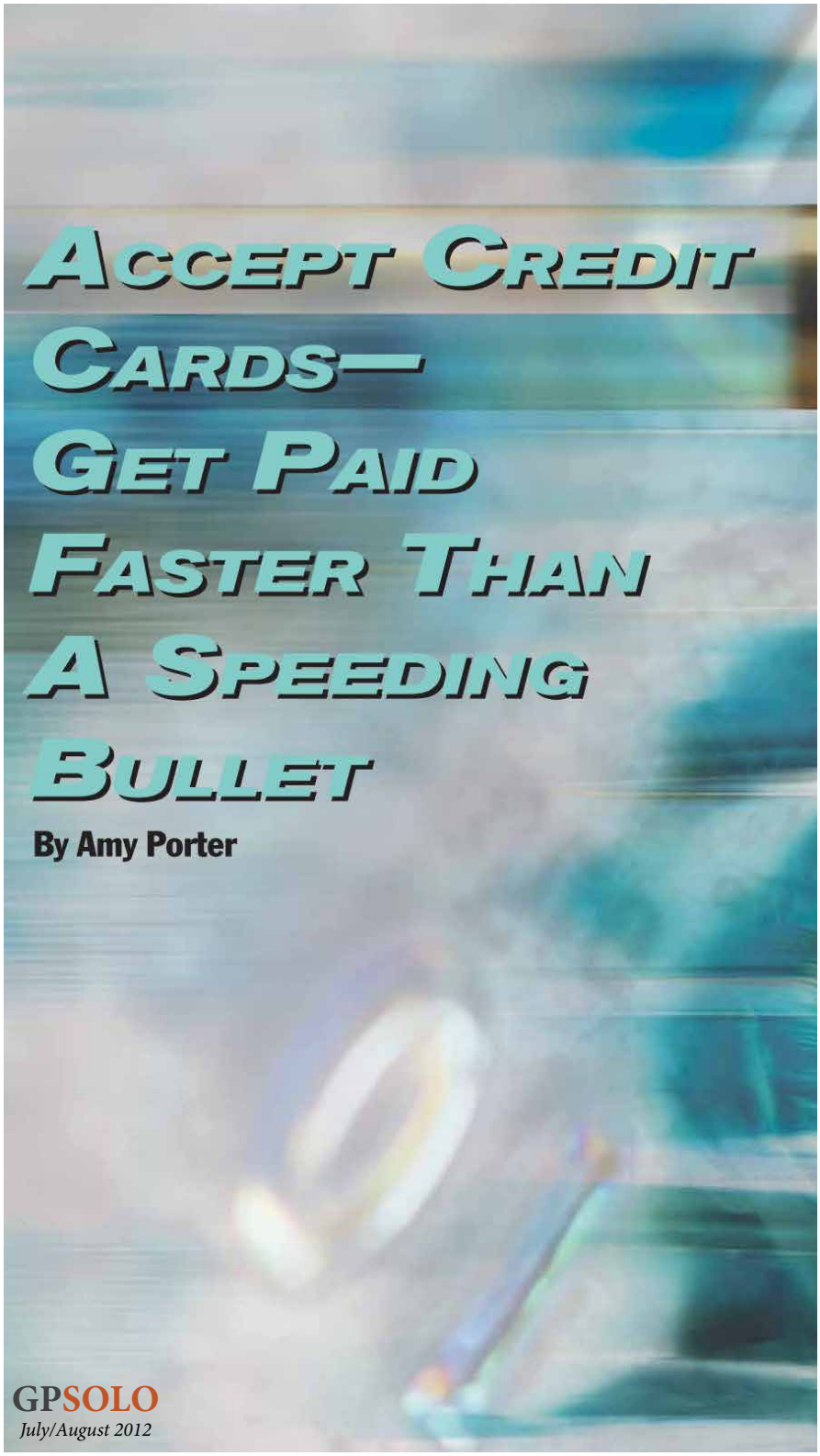
THE BOTTOM LINE

Incorporating credit card acceptance into your law firm's payment process enables clients to pay their bills promptly and frees your firm from much of the responsibility of collections. The beneficial results include increased cash flow and reduced receivables. Let Visa and MasterCard focus on collecting payments, while you and your staff focus on the business of running the firm.

about the author

Amy Porter is the Founder and Chief Executive Officer of AffiniPay, the exclusive provider of LawPay, a professional payment solution for attorneys and their clients. For more information visit www.LawPay.com.

Article Placement



Technology and trends are changing faster than most non-superheroes can keep up with, much less an attorney attempting to run both a law practice and a business. How do you defend yourself against the onslaught of new technology with options changing on a weekly basis? Many attorneys are completely overwhelmed, becoming paralyzed with indecision. Others simply choose to ignore technology and change altogether, hoping it will all just go away.

One of the most critical areas of changing technology is payment methods, especially with regard to credit card processing. Historically, many lawyers have not set up the means of accepting credit card payments because they do not see their practices as "traditional businesses"; instead, they see themselves as "professionals." Although it is true that attorneys have an ethical duty to their clients—even a higher calling to uphold justice—in reality, they have to run a successful business first, which involves getting compensated for their work. If not, their ability to successfully practice law may be in peril.

Money Talks

Cash flow has long been known as the key to running a business effectively. With recent technological advances, attorneys finally have the ability to control cash flow through the use of credit cards and electronic payments. Gain control of your accounts receivables, and you gain control of your overall practice. If your practice currently maintains a significant outstanding amount of receivables, then

Amy Porter is the CEO of AffiniPay, provider of the LawPay program, recommended by more than 80 bar associations as the correct way to handle credit cards in a law firm. She may be reached at 866/376-0950 or info@lawpay.com

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Make sure the processing company you choose understands the specific needs of a law firm.

you are effectively extending credit to your clients. In most cases, law firms do not have an "underwriting" process to determine the creditworthiness of their clients and have little insight into their ability to pay fees. Traditionally, law firms do not perform credit checks or report delinquent clients to credit agencies. By allowing your firm to accept credit card payments, you can effectively shift your receivables to the card-issuing banks. Visa- and MasterCard-issuing banks have already established the creditworthiness and financial capability of your clients. They are in the business of issuing credit, collecting debt, and monitoring credit, so you don't have to be. You can stick to the practice of law.

Credit cards and debit cards are becoming the payment of choice among consumers. According to a March 2009 report of the American Bankers Association, credit cards are responsible for more than $2.5 trillion in transactions a year, accepted at more than 24 million locations, and used in more than 200 countries and territories. Some 10,000 payment card transactions are made every second around the world. Based on these trends, attorneys can no longer ignore the importance of accepting credit cards, nor the risks associated with bad debts.

How Do I Get Started?

If you are considering accepting credit cards in your practice, make sure the credit card processing company you choose understands the specific needs of a law firm. Most attorneys prefer to accept payment in a professional manner. As such, law firms do not have a checkout lane or ATMs stationed in their reception area. There are many custom payment options available to law firms, including credit card terminals and web-based solutions specifically designed for attorneys and their business. The total cost of a credit card transaction typically averages between 2 percent and 3.5 percent of the payment amount.

Separating Earned and Unearned Fees

One key feature to consider when opening your merchant account is the ability to separate earned and unearned fees when accepting credit cards. In order to stay in compliance with the guidelines of the American Bar Association and most state bars for accepting for credit cards, a merchant account must correctly separate earned and unearned fees into operating and trust accounts to prevent the commingling of funds. In addition, a compliant merchant account should enable an attorney to designate which account should be used for withdrawals of all processing fees.

The Law Firm Merchant

In the world of merchant accounts, law firms are unique business entities. Unlike a restaurant or retail store, law firms have special considerations when dealing with credit cards and client funds. Whether you are considering accepting credit cards or already offer an electronic payment option, using state-of-the-art technology will ensure you are paid quickly and securely. Some other tips to ensure a successful transition to the modern ways of getting paid as a law firm merchant:

1. Protect your trust and IOLTA accounts. Do not allow your merchant provider access to your trust account. Most merchant agreements will require you to give access to this account in the event of a charge back or fraud. There are merchant services specific to law firms that correctly protect and safeguard your trust accounts.

2. Avoid storing credit card information. If you bill clients on a monthly basis, you will potentially need the ability to recharge their credit cards. Accepting credit cards through a secure web-based solution will allow you to avoid keeping sensitive credit card information within the walls of your office. Modern law firms are quickly moving away from the traditional credit card machines, which sometimes require paper storage of client credit card numbers. This also limits the liability and risk to your firm of credit card information falling into the wrong hands.

3. Communicate to your clients. Let clients know what your payment expectations are on the front end by

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You don't have to be a computer science engineer to embrace credit card payments.

4. including due dates, late fees, and payment options as part of your fee agreement. It is much easier to establish these guidelines while your client is new and eager to get started. More importantly, continue to communicate to your clients what payment options you provide by including credit card logos or adding "Major Credit Cards Accepted" to your invoices and website. Clients will commonly look for an attorney who provides credit card options. Even popular legal websites such as Martindale-Hubbell have specific search criteria to find attorneys who accept credit cards.

5. Use the technology you have. Once you make the decision to accept credit cards, be sure to use the payment option that best suits your needs. Depending on your area of practice—and, more importantly, where you interact with your client—there are different choices to accept payment. For example, there are many options to accept credit cards with smartphones, including iPads and laptops.

6. Let your clients do the work. By taking time to establish payment options on your website, clients can run their own credit cards. Not only does this provide a convenience to clients, but it frees up the time you otherwise would spend processing credit card payments. This also allows you to avoid ever seeing credit card numbers, eliminating any responsibility to accept, store, shred, or protect credit card numbers.

7. PCI compliance. When you accept credit cards in your office, you also accept the responsibility of protecting cardholder data. Be sure your merchant solution is PCI compliant. PCI-DSS is the payment card industry's security guidelines for merchants. More information can be found on the PCI Security Standards Council website or the websites of other PCI specialists, such as PCICentral.

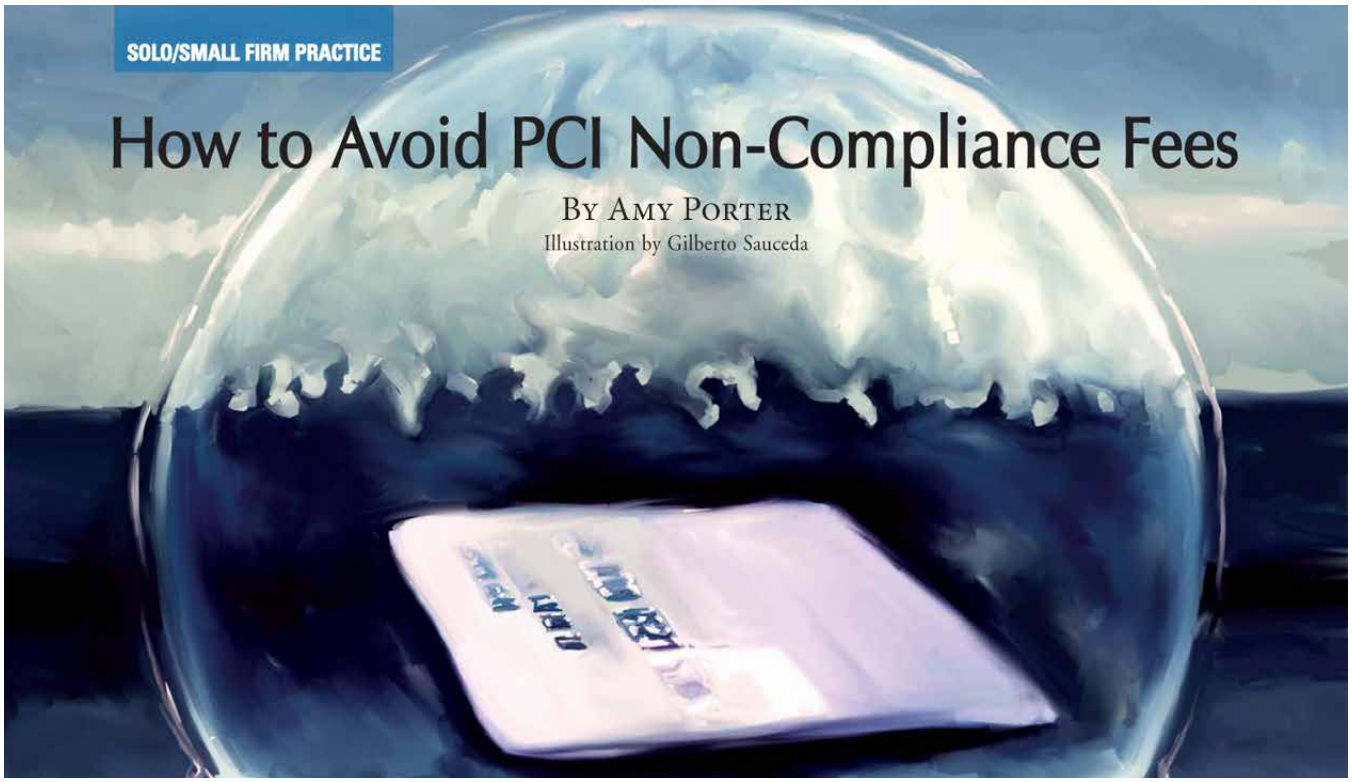
What Checkbook?

If you thought the Internet was a fad or swore you would never carry a cell phone, then you are likely thinking that you will never accept credit card payments from your clients. But, as with those other two "fads," you'd be well advised to reconsider. Credit cards and other forms of electronic payments have become an integral part of our nation's commerce and the way many people prefer to pay. In 2009 credit cards officially surpassed paper check transactions in the United States. Perhaps it is time to rethink the way your firm handles billing and collections.

Hall, Arbery & Gilligan LLP, an Atlanta, Georgia, law firm, recently embraced payment technology and immediately saw a decrease in the number of days their invoices were outstanding. The firm administrator decided to take it one step further and add a payment option to their website. Jeannie Johnston, the firm manager and paralegal at Hall, Arbery & Gilligan, says that by adding a Secure Payment Link to their website, they've seen an increase in payments by individuals who would typically make multiple payments via check. Johnston indicates one of the biggest benefits to using technology to get paid is the convenience and the ability to collect a full balance from clients. When asked if she would recommend using technology as a form of payment, Johnston says, "I would absolutely recommend attorneys using technology to get paid. I believe this is the road attorneys are going down. Firms that haven't previously considered using technology as a payment option should reconsider their decision."

You Don't Have to Be Superman to Be a Super Lawyer

It is not necessary to be a website developer or a computer science engineer to embrace credit card payments, just a smart attorney who knows how to get paid. By using technology as a payment tool, you give clients flexible payment options while allowing yourself to get paid quickly and securely. So, with technology moving at a rate that is "faster than a speeding bullet," throw on your Super Lawyer cape and take back control of your receivables—and, ultimately, your practice.



How to Avoid PCI Non-Compliance Fees

By Amy Porter

Illustration by Gilberto Sauceda

If your law firm accepts credit card payments, you should have received information from your merchant provider regarding the recent updates to Payment Card Industry Data Security Standard (PCI-DSS) compliance requirements. When you accept credit card payments, you also accept the responsibility of protecting cardholder information. As of July 1, any firm accepting credit cards is required to comply with the PCI security standards. (Check with your merchant bank for deadlines and fees.)

In addition to the new requirements, most major processors have started implementing non-compliance fees. It may be helpful to review a recent merchant statement for those charges, which typically range from $15 to $25 per month. To avoid non-compliance fees, you will need to take steps to become PCI compliant. You may have received calls regarding non-compliance fees or enticements to switch to other processors; however, use caution as these calls may just be ambush marketing techniques. Please check with your acquiring bank for specific deadlines and fees.

What Is PCI?

In 2006, the major credit card brands (Visa, Mastercard, Discover, American Express, and JCB) formed a security council. The council's goal was to ensure the safe handling of cardholder data at all times and to reduce credit card fraud by developing a standardized set of regulations for the entire credit card processing industry. The resulting Payment Card Industry Data Security Standard, Payment Application Data Security Standard, and the PIN Transaction Security Standard work together to achieve that goal.

Payment Card Industry Data Security Standards are focused on protecting credit card information at the merchant level by implementing basic procedures to protect cardholder data. The new regulations will make protecting sensitive card information a priority, thus reducing identity theft and credit card fraud.

Regardless of how many transactions you accept or process, PCI is an important step in protecting the security of merchant account. To ensure credit card transactions are secure through every step of the payment process, all parties in the payment industry are now required to be PCI compliant.

Doing Your Part

PCI compliance is composed of two areas: How credit cards are processed through our systems and how you handle credit card information within the walls of your office. The security of your office is paramount for compliance. For example, do you store paper copies of credit card data in a secure way? Do you

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use a payment gateway or a terminal to process credit cards? These are practical security points addressed by the PCIDSS and apply to any business that processes, stores, or transmits credit card data (www.pcisecuritystandards.org).

Until recently, most of the focus has been on major retailers that process in excess of 6 million Visa transactions per year. All merchants — regardless of credit card processing volume — must now comply with the regulations. Failure to meet requirements can result in security breaches, costly fines, and forensic audits.

Twelve Requirements Of PCI-DSS

Depending on how you process credit cards, some of these requirements may not apply to your business. Most small businesses that use a swipe machine (terminal) or payment gateway focus on Requirements 3, 9, and 12. These requirements will also be the basis for developing strong security policies and procedures for how your business handles credit card data.

Build and Maintain a Secure Network

Requirement 1: Install and maintain a firewall configuration to protect cardholder data.

Requirement 2: Do not use vendor-supplied defaults for system passwords and other security parameters.

Protect Cardholder Data

Requirement 3: Protect stored cardholder data.

Requirement 4: Encrypt transmission of cardholder data across open, public networks.

Maintain a Vulnerability Management Program

Requirement 5: Use and regularly update anti-virus software.

Requirement 6: Develop and maintain secure systems and applications.

Implement Strong Access Control Measures

Requirement 7: Restrict access to cardholder data by business need-to know.

Requirement 8: Assign a unique ID to each person with computer access.

Requirement 9: Restrict physical access to cardholder data.

Regularly Monitor and Test Networks

Requirement 10: Track and monitor all access to network resources and cardholder data.

Requirement 11: Regularly test security systems and processes.

Maintain an Information Security Policy

Requirement 12: Maintain a policy that addresses information security.

Becoming PCI Compliant

There are several steps every merchant must complete to become PCI compliant:

- **Complete a Self-Assessment Questionnaire (SAQ)** — The SAQ is a set of questions you need to answer about how your business processes credit cards;
- **Implement Changes** — Make the necessary changes to your standard operating procedures;
- **Develop Security Policies** — Update or create security policies and procedures for how your office handles credit card data;
- **Conduct Vulnerability Scan (when applicable)** — This step applies to all merchants transmitting credit card data over the Internet; and
- **Get Certified** — Complete "Attestation of Compliance" to confirm your business meets all PCI regulations.

Credit Card Compliance For Attorneys

Even though the PCI-DSS is not a federal law, several states have started mandating compliance to many provisions of the PCI standards. In 2007, Minnesota became one of the first states to adopt a set of enforceable standards that protect credit card data. Since then, Nevada, Washington, and Massachusetts have adopted similar laws.

Implementing small changes can have a big impact on your security. There are guidelines in the PCI-DSS that address Internet security and payment applications and also guidelines that address how businesses handle credit card data on a physical level. Assessing your vulnerabilities is a great way to fix potential issues and educate your staff. According to some reports, the majority of credit card fraud is caused by simple carelessness and theft **(www.datalossdb.org/statistics).** Office security policies that define procedures for changing passwords, storing information, and disposing of credit card data can make the difference between compliance and non-compliance.

AMY PORTER Amy Porter is the Founder and Chief Executive Officer of AffiniPay, the exclusive provider of LawPay, a professional payment solution for attorneys and their clients. For more information visit www.LawPay.com.

SOLO/SMALL FIRM PRACTICE

To address the unique practice issues of solo and small firm lawyers, the *Texas Bar Journal* has developed this special series of articles that will appear regularly in the magazine. If you would like to see a particular topic covered, please send your story ideas to Associate Editor **Patricia L. Garcia** at **pgarcia@texasbar.com**.

New IRS Section 6050W

What is it, and How it Affects Attorneys

It is estimated there are over 10,000 credit card transactions made every second around the world. This astonishing number results in over $7.5 trillion in credit card payments per year (American Bankers Association). If you are one of the lucky businesses processing these transactions, congratulations, you are now subject to the newest IRS requirement – Section 6050W.

What is 6050W?

Section 3091(a) of the Housing Assistance Tax Act of 2008 (the "Act") added section 6050W to the Code requiring merchant acquiring entities and third party settlement organizations to file an information return for each calendar year reporting all payment card transactions and third party network transactions with participating payees occurring in that calendar year. It was created in an effort to further reduce the estimated $345 billion tax gap from the business sector by providing additional information to the IRS on aggregate credit card transactions. Effective January 2012, all credit card processors (i.e. LawPay, First Data, TSYS, etc) and 3rd party payment aggregators (PayPal & Square) will be required to report gross card transactions to the IRS. This means the gross dollar amount of all transactions will be reported on a special 1099-K, regardless of returns or any processing fee deductions.

> *The amount to be reported to the IRS with respect to each lawyer is the total gross amount of all of the transaction made for that lawyer in the calendar year. The preamble to the final regulations under section 6050W makes clear that the amount reported is to be the total gross amount "without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts." 75 FR 49821-01, 2010 WL 3207681 (August 16, 2010).*
>
> *Commentators on the final regulations had suggested "defining 'gross amount' as net sales, taking into account credit transactions, chargebacks and other adjustments, on the ground that gross amount is not a true indicator of revenue." Id. The Treasury rejected these suggestions because "[t]he information reported on the return required under these regulations is not intended to be an exact match of the net, taxable, or even the gross income of a payee." Id*

What about my IOLTA?

In the case of attorneys, Section 6050W does not make a distinction between credit card transaction deposits made to a trust or IOLTA bank account and an attorney's operating bank account. This has many attorneys concerned the IRS will view these transactions incorrectly as income. However, there are two important items to note: (1) the new 1099-K is only intended to be "informational", (2) your processor should include a merchant industry code on your 1099-K identifying you as a law firm or provider or legal services. The reporting requirements under section 6050W require credit card processors to report to the IRS on Form 1099-K the total gross amount of payment card transactions processes for each client over the calendar year, without reduction to account for amounts deposited into IOLTAs. Although there are few instructions from the IRS informing taxpayers on how to account for discrepancies between 1099-Ks issued to them and amounts reported on the taxpayer's return, it is clear that the IRS does not intend the Form 1099-K to match net, taxable, or even gross income. Thus, the amount shown on the Form 1099-K will not in all instances be required to be reported as income.

Match or Mis-Match?

In addition to the gross volume reporting, Section 6050W also requires processors to verify and match your federal tax ID and legal name to IRS records. 6050W requires an exact match on both items to file your 1099-K correctly. Due to technology limitations with most Visa & MasterCard processors, merchant statements are usually limited to only 25-35 characters. As such, many law firms merchants have either abbreviated their name or used an acronym for their merchant account.

If this is the case, you will need to contact your processor to assure that your legal name on your merchant exactly matches the legal name you use to file your tax returns (at least within the maximum number of characters provided by your merchant processor).

Painful Penalty

First the good news…. Originally set to begin January 2012, the IRS has decided to use the 2011 tax year as a "trial run" for reporting on 1099-Ks. Due to system and reporting limitations with both the IRS and virtually all card processors, the timeline for matching legal names and TINs has been extended until the 2012 tax year. The bad news however, is beginning January 2013, the IRS will impose a 28% withholding penalty on all credit card transactions if the merchant information on file is not an exact match with their records. It is still unclear what steps merchants will need to take to reclaim held funds, even if the legal name and TIN information is corrected.

Due to the steep withholding penalty, it is imperative that you confirm the information on your 1099-K this year. If you have not yet received a 1099-K from your processor, call and request a copy. All 1099-Ks should have been sent out in late January for a "trial run." You will notice there is nothing further that needs to be done for the current 2011 tax year.

Fees for 6050W?

It seems anytime the IRS changes a policy or tax requirement, a new fee is created by the banking institutions to reclaim their own costs. As a merchant, you will be happy to know Section 6050W specifically states processors may not charge for implementing the 1099-K process. Beware of new 6050W charges disguised as "Government Fees" or "Tin-Matching Fees" that may have been recently added to your merchant account.

No Need for Alarm

The intent of Section 6050W is to assist the IRS in identifying businesses not filing accurate tax returns. In other words, the IRS appears to be targeting businesses most likely to omit or avoid reporting correct tax information. Requiring a taxpayer to account for discrepancies between amounts reported on Form 1099-K and the taxpayer's return would be consistent with reporting on Form 1099-Misc. In the case of Form 1099-Misc, a taxpayer reporting business income on Form 1040 reports only amounts that are "properly shown" on the 1099-Misc. In the case of deviations, the taxpayer is instructed to "attach a statement explaining the difference" (See 2010 Instructions for Schedule C: Profit or Loss From Business). Thus, it would be consistent with IRS policy in other areas to similarly require a taxpayer reporting a return amount different from the amount shown on Form 1099-K to attach a statement showing the reason for the difference. In the case of a lawyer depositing amounts into an IOLTA, the statement would show the amount of such deposits over the year which is excludable from gross income.

Fortunately, the IRS has recently provided guidance for the 2011 tax filing year through a notice to Tax Filers dated January 31, 2012 entitled "Clarification to the instructions for Schedule C, E & F on Reporting 1099-K Amounts" (http://www.irs.gov/formspubs/article/0,,id=253098,00.html). Not only has the requirement to report the amounts of Gross Credit Card Transactions been deferred for the tax Year 2011, there are other indications that the IRS may NOT require small business tax filers to reconcile the differences between 1099-K amount and income for future tax years.

Lastly, if come January 2013, you have still not matched your legal name and TIN with your processor, my advice is to stop accepting credit cards until you verify your legal name and federal Tax ID names match. There is no reason to risk a 28% withholding penalty when it is so easily avoidable. While LawPay is taking a very proactive approach to these new rules from the IRS by validating all Attorney Merchants, not every processor is following suit. Don't wait for your credit card processor to contact you! The IRS has assigned the reporting requirements on the credit card processors, but the ultimate liability lies squarely with you and your firm.

For more information on Section 6050W visit www.IRS.gov or consult directly with your tax advisor.

About AffiniPay/ LawPay

The LawPay program is a custom payment solution designed by AffiniPay for attorneys. LawPay complies with ABA and state requirements for managing client funds.

Oregon State Bar
Meeting of the Board of Governors
February 22, 2013
Open Session Minutes

The meeting was called to order by President Michael Haglund at 9:30 a.m. on February 22, 2013. The meeting adjourned at 1:50 p.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Caitlin Mitchel-Markley, Maureen O'Connor, Joshua Ross, Richard Spier, David Wade, Charles Wilhoite and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hierschbiel, Kay Pulju, Susan Grabe, Mariann Hyland, Catherine Petrecca, Dani Edwards and Camille Greene. Also present was David Eder, ONLD Chair, and Mark Comstock, Oregon eCourt Task Force member.

1. Report of Officers & Executive Staff

A. Report of the President

Mr. Haglund reported that changes to the Modest Means Program recommended by the Job Opportunities Task Force will be ready for BOG consideration in May . Members of the Legal Job Opportunities Task Force will meet with law schools in March.

The Citizen's Coalition for Court Funding will send a letter to legislators in the next week and is working with the Public Affairs Committee to take action in Salem during the legislative session.

Mr. Haglund also reported that he has been attending lunches with Portland's largest law firm as well as some local bar meetings. He believes these are effective outreach to help members understand the Bar and encourage them to participate in Bar governance.

B. Report of the President-elect

Mr. Kranovich reported that he met with the Clackamas County Bar Association to encourage its grassroots efforts to lobby for court funding.

C. Report of the Executive Director

ED Operations Report as written. Ms. Stevens announced that new Disciplinary Counsel, John Gleason, will take his position at the bar in early March. The November 1 BOG meeting has been moved to October 25. Ms. Stevens also reported on her attendance at the ABA Mid-year meeting in Dallas, TX, where there was much talk about the challenges facing state bars and the movement to "de-unify" the Washington State Bar Association. There is also growing recognition that state bars need to be proactive in regulating the increasing number of law service providers who are not lawyers. Mr. Haglund will work with the board to look at the prospect of creating a task force to look at this issue.

D. Director of Diversity & Inclusion

Ms. Hyland reported on the Diversity Advisory Council's background, charge, membership and responsibilities. The OSB Diversity Action Plan is a work in progress that will be presented to the

board for approval this year. The bar's relationship with the diverse community is important and board members are encouraged to attend the diverse events offered to them. The annual Diversity Section / Diversity & Inclusion Advisory Committee retreat was successful in focusing on the different responsibilities of the two groups. Ms. Hyland also reported that the expense budget for the OLIO Orientation has been reduced by thirty percent, consistent with the BOG's direction to limit the use of mandatory fees for the event.

E. MBA Liaison Reports

Ms. Kohlhoff and Mr. Knight reported on the January 2, and February 6, 2013 MBA meetings, respectively. Mr. Knight noted an increased concern regarding court funding in Multnomah County. Ms. Kohlhoff reminded the board that Ms. Hierschbiel is on the MBA board and is an excellent resource.

2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update, financial report and goals for 2013. **[Exhibit A]**

3. Rules and Ethics Opinions

A. Proposed Formal EOP: Social Media

Ms. Stevens presented the proposed formal opinion addressing social media. The opinion makes three points: passively viewing publicly available information is not communication within the meaning of the rule; requesting access to non-public information does not imply "disinterest"; and a lawyer may not make a request for information using an alias. **[Exhibit B]**

Motion: Mr. Knight moved, Mr. Kehoe seconded, and the board voted to approve the LEC's opinion. Mr. Emerick was opposed.

B. Proposal to Amend RPC 1.10

Ms. Stevens presented the LEC's recommendation that the BOG submit an amendment of ORPC 1.10(b) to the HOD in November 2013 to correct a deficiency in the current rule. **[Exhibit C]**

Motion: Mr. Wade moved, Mr. Ross seconded, and the board voted unanimously to submit the amendment to the HOD in November 2013.

C. Proposed Amendments to Advertising Rules

Ms. Stevens presented the LEC's recommendation that the BOG submit amendments to Oregon's advertising rules to the HOD in November 2013. **[Exhibit D]**

Motion: Mr. Spier moved, Mr. Heysell seconded, and the board voted unanimously to submit the advertising rule amendments to the HOD in November 2013 and to publish them in the *Bulletin* sufficiently in advance of the meeting to allow for comments from members.

4. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

Mr. Eder reported on a variety of ONLD projects and events described in his written report. The Practical Skills and Public Services program will change to an open enrollment from an application process to provide agencies more time to train members on a staggered basis. The ONLD is working with the law schools to focus on practical skills training through complimentary CLEs provided by the ONLD utilizing the "Law Firm on a Flashdrive" it has created.

B. MCLE Committee

Ms. Hierschbiel presented the committee's request for the board to review and approve the proposed amendments to Rules 5.2(c)(1)(ii) and (g) and Regulation 5.250. **[Exhibit E]**

Motion: Mr. Williams moved, Mr. Ross seconded, and the board voted unanimously to approve the MCLE rule changes as requested.

C. Loan Repayment Advisory Committee

The Loan Repayment Advisory Committee recommended the Board of Governors approve a decrease in the maximum allowed debt 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. **[Exhibit F]**

Motion: Mr. Kehoe moved, Mr. Wade seconded, and the board voted unanimously to approve the decrease in debt requirement and change the LRAP policies and guidelines as requested

D. CSF Claims

Ms. Stevens presented the CSF claims recommended for payment other than the McBride claims. She explained that some of the McBride claimants are being assisted by the PLF and until that process is completed, the CSF cannot make recommendations. **[Exhibit G]**

Motion: Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to approve payments totaling $120,700.80, plus an additional $550 for the Roccasalva claim due to miscalculation. Mr. Williams abstained.

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

Motion: Mr. Wade moved, Mr. Emerick seconded, and the board voted unanimously to affirm the CSF's denial of Mr. Flanakin's claim.

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

Motion: Mr. Wade moved, Mr. Ehlers seconded, and the board voted unanimously to affirm the CSF's denial of Mr. Flores-Salazar's claim.

5. BOG Committees, Special Committees, Task Forces and Study Groups

A. Board Development Committee

Mr. Kranovich reviewed the OSB House of Delegates vacancies and asked the board to identify and recruit possible candidates to run in the election.

B. Budget and Finance Committee

Mr. Knight gave a financial update and informed the board that action will be taken at the next board meeting to approve the bar's financial advisors.

C. Governance and Strategic Planning Committee

Motion: The board voted unanimously to approve the committee recommendation to resume conducting preference polls for circuit court appointments.

Motion: The board voted unanimously to approve the committee recommendation that the Client Security Fund be authorized to give final approval to awards of less than $5,000. **[Exhibit H]**

Motion: The board voted unanimously to approve the committee recommendation to the Supreme Court that the Executive Director have authority to review formal reinstatement applications in certain cases and to publish applicant names on the OSB web site at least 30 days prior to reinstatement. **[Exhibit I]**

Motion: The board voted unanimously to approve the committee recommendation that Section 8 of the Fee Arbitration Rules be amended as discussed. **[Exhibit J]**

D. Public Affairs Committee

Mr. Kehoe gave an update on the legislative session and court funding. He also informed the board of the UPL Task Force's memo re: HB 2573 (Unauthorized practice violates Unlawful Trade Practice Act.) Ms. Grabe reported 15 of 17 OSB bills have had hearings and moved out of first house.

E. Special Projects Committee

Ms. O'Connor reported on the progress of current board projects for 2013, including the tree planning project scheduled for March 2. Mr. Haglund encouraged BOG members to participate if they are able.

F. Centralized Legal Notice System Task Force

Mr. Ehlers informed the board the task force is looking at Utah's notice system which uses a website instead of newspapers for legal notices. He reported on his recent testimony before the legislature on a pending bill that, if successful, could derail the CLNS project and encouraged the BOG to take a position in opposition if necessary.

G. Knowledge Base Task Force

Ms. Stevens informed the board that the task force is studying the feasibility of providing some method for members to access information the bar produces. The current scope of the project is broad and still in progress.

H. Oregon eCourt

Mr. Comstock informed the board on the progress of the Oregon eCourt Implementation Task Force and the status of the Oregon eCourt system. It will be rolled out in Multnomah County in the spring of 2014. By the end of 2015 the $100 million e-filing system should be statewide and is scheduled to be mandatory for lawyers six months later. Active members will have heightened access to documents. Transaction fees will be $5 per packet of documents.

6. Other Action Items

Ms. Stevens presented the request for the board to approve the proposed revision of the Model Explanation of Contingent Fee Agreement to conform to the recent amendment of Oregon RPC 1.8(e). **[Exhibit K]**

Motion: Mr. Spier moved, Mr. Kehoe seconded, and the board voted unanimously to approve the revisions to the agreement as presented.

Ms. Stevens presented Mr. Charles Isaak's request to receive free printed CLE materials and asked the board to confirm her understanding of OSB Bylaw 16.200.

Motion: The board unanimously confirmed the intent of the BOG policy as interpreted by Ms. Stevens, but approved revising the language of the bylaw to be more clear.

7. Consent Agenda

Motion: Mr. Kehoe moved, Mr. Spier seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes and various appointments **[Exhibit L].**

8. Closed Sessions – see CLOSED Minutes

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

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

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

None.

EXHIBIT A

Oregon State Bar

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 RTC

Re: Draft December 31, 2012 Financial Statements

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.

Processed on 2/11/2013

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

TABLE OF CONTENTS

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

ASSETS

	THIS YEAR	LAST YEAR
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	13,919.48	13,939.81
TOTAL ASSETS	**$48,000,360.53**	**$43,748,949.65**

LIABILITIES AND FUND EQUITY

	THIS YEAR	LAST YEAR
Liabilities:		
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)	2,400,000.00	2,300,000.00
Total Liabilities	**$43,987,471.08**	**$44,530,084.07**
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	($781,169.42)	$2,349,430.48
Year to Date Net Income (Loss)	4,794,058.87	(3,130,599.90)
Total Fund Equity	**$4,012,889.45**	**($781,169.42)**
TOTAL LIABILITIES AND FUND EQUITY	**$48,000,360.53**	**$43,748,914.65**

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

	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
REVENUE					
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	4,295,120.03	2,628,331.00	(1,666,789.03)	(590,228.90)	2,628,331.00
TOTAL REVENUE	**$29,562,944.87**	**$27,936,831.00**	**($1,626,113.87)**	**$24,306,357.42**	**$27,936,831.00**
EXPENSE					
Provision For Claims:					
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		$21,189,000.00			$21,189,000.00
Total Provision For Claims	**$18,473,080.04**	**$21,189,000.00**	**$2,715,919.96**	**$20,936,712.77**	**$21,189,000.00**
Expense from Operations:					
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	(1,099,825.92)	(1,099,826.00)	(0.08)	(1,350,103.80)	(1,099,826.00)
Total Expense from Operations	**$6,087,834.85**	**$6,226,711.00**	**$138,876.15**	**$5,587,204.17**	**$6,226,711.00**
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	(35,996.04)	(35,996.00)	0.04	(43,635.96)	(35,996.00)
TOTAL EXPENSE	**$24,724,112.41**	**$27,762,856.00**	**$3,038,743.59**	**$26,743,129.92**	**$27,762,856.00**
NET INCOME (LOSS)	**$4,838,832.46**	**$173,975.00**	**($4,664,857.46)**	**($2,436,772.50)**	**$173,975.00**

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

DRAFT

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
EXPENSE:						
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)
TOTAL EXPENSE	**$565,140.89**	**$6,087,834.85**	**$6,226,711.00**	**$138,876.15**	**$5,587,204.17**	**$6,226,711.00**

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

	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
REVENUE					
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	429,190.43	228,551.00	(200,639.43)	22,315.28	228,551.00
TOTAL REVENUE	**$1,200,013.31**	**$973,651.00**	**($226,362.31)**	**$802,063.01**	**$973,651.00**
EXPENSE					
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	**$35,996.04**	**$35,996.00**	**($0.04)**	**$43,635.96**	**$35,996.00**
NET INCOME (LOSS)	**($44,773.59)**	**($276,987.00)**	**($232,213.41)**	**($693,827.40)**	**($276,987.00)**

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

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
EXPENSE:						
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	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL EXPENSE	**$103,852.70**	**$1,208,790.86**	**$1,214,642.00**	**$5,851.14**	**$1,452,254.45**	**$1,214,642.00**

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

	CURRENT MONTH THIS YEAR	YEAR TO DATE THIS YEAR	CURRENT MONTH LAST YEAR	YEAR TO DATE LAST YEAR
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	169,213.58	270,621.57	247,563.88	475,267.39
Total Dividends and Interest	**$677,659.62**	**$1,325,050.09**	**$649,675.23**	**$1,439,342.12**
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	(134,459.99)	326,434.90	(246,839.83)	(281,900.31)
Total Gain (Loss) in Fair Value	**($91,512.14)**	**$3,297,496.79**	**($361,019.61)**	**($2,007,255.74)**
TOTAL RETURN	**$586,147.48**	**$4,622,546.88**	**$288,655.62**	**($567,913.62)**
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	(5,176.58)	326,194.67	(29,314.79)	(106,522.19)
TOTAL ALLOCATED TO EXCESS PROGRAM	**$37,944.79**	**$429,190.43**	**$23,438.84**	**$22,315.28**

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.[1]

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

[1] 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.[2]

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.[3] 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 do 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.

[3] 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.[4]

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.[5] A simple request to access non-public information is 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.[6] By contrast, if

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[4] 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 * * *."

[5] 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).

[6] *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.[7] *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."[8] *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.[9]

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

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

[9] 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").

> 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.

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
INFORMATION ABOUT LEGAL SERVICES		
Rule 7.1 Communications 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	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.	*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.* *The remaining specific prohibitions are eliminated, with the exception of (a)(4), which is now found in Rule 7.4.* *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.* *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.*

Current ORPC	Proposed ORPC	Explanation
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.		*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.*
(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being		*This prohibition is now found in Rule 7.2(c).*

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.		*This provision adds nothing and is duplicative of Rule 7.2, where to and is addressed more particularly.*
(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.		*This is nothing more than another statement that communications are not permitted if the violate the "false or misleading" standard. It is an unnecessary duplication, particularly with reference to the provisions of Rules 7.2 and 7.3.*
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	(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.	*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.* *The current prohibition against paying someone else to recommend or secure employment is found in (b).*

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
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.	(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and (3) pay for a law practice in accordance with Rule 1.17.	*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.* *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).* *New (b)(3) reiterates language in current ORPC 1.5(e).* *The committee believes that the structure of the new rule is clearer.* *[Note: the proposal differs from ABA MR 7.2(b)in two significant respects. MR*

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		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).]
(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		*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.*

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.	*This paragraph retains what is currently Oregon RPC 7.1(c).*
Rule 7.3 [*Direct Contact with Prospective*] <u>Solicitation of</u> 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.	(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.	*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.*
(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	*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).* *The proposed rule also retains Oregon's (b)(1), which was eliminated from the Model*

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
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.	mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer; (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or (3) the solicitation involves coercion, duress or harassment.	*Rule several years ago for reasons that are not entirely clear.*
(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).	(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).	*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.*
(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an	(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an	*The new rule is identical to the current rule.*

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.	
Rule 7.4 (Reserved)		
		ABA MR 7.4 provides: ***Rule 7.4 Communication of Fields of Practice and Specialization*** *(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.* *(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.* *(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.* *(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:* *(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* *(2) the name of the certifying organization is clearly identified in the communication.*

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		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.
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.	(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.	*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).*
(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.	*The LEC recommends deleting currrent(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*

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.		*requirement of current Oregon RPC 7.5(f).*
(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.	(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.	*The new rule is similar to the prohibition in current RPC 7.5(d), except that is applies only to lawyer holding public office.* *Current (c)(1) is essentially the same as new 7.5(d).* *Current (c)(2) is covered in new 7.5(a).* *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.*
(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	*The new rule is a succinct but broad statement that covers much of what is currently in*

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
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.	organization only when that is a fact.	*7.5(c),(d) and (e).*
(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.		*See proposed new 7.5(b) above.*

EXHIBIT E

Meeting Date: February 22, 2013

From: MCLE Committee
Re: Proposed amendments to Rules 5.2(c) (1)(ii) and (g) and Regulation 5.250

...

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.

…

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.

EXHIBIT F

OREGON STATE BAR
Board of Governors Agenda

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

Action Recommended

Consider the CSF Committee's recommendation that awards be made in the following matters:[1]

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
TOTAL	**$161,450.80**

[1] 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.

EXHIBIT G

Loan Repayment Assistance Program

Policies and Guidelines

Adopted by the Board of Governors
November 18, 2006

Revised January 1, 201~~2~~3

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 a 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 forgivibility 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.

Meeting Date: February 22, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: CSF Authority to Resolve Small Awards

To effect the proposed change, the GSP Committee recommends that the CSF Rule 4.11[1] 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*]**c**laims 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.

[1] The text of preceding and following rules are included for context.

EXHIBIT I

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.

EXHIBIT J

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

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).

EXHIBIT K

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

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~~1/20/96~~02/22/13 Revision

EXHIBIT L

Meeting Date: February 22, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Federal Practice and Procedure Committee
Recommendation: Marjorie A. Elken, Secretary, term expires 12/31/2013

Legal Heritage Interest Group
Recommendation: Mary L. Dougherty, Chair, term expires 12/31/2013

Loan Repayment Assistance Program Committee
Recommendation: Russell Barnett, member, term expires 12/31/2015
Recommendation: Suzannah E. Newman, member, term expires 12/31/2015

Minimum Continuing Legal Education Committee
Recommendation: Claudia Pieters, public member, term expires 12/31/2015

Pro Bono Committee
Recommendation: Kristina Faricy, member, term expires 12/31/2013
Recommendation: Joshua R. Orem, member, term expires 12/31/2014

Quality of Life Committee
Recommendation: Cody Elliott, member, term expires 12/31/2015

Disciplinary Board
Nomination: Dr. John H. Kilian, public member, term expires 12/31/2015

Local Professional Responsibility Committee
Recommendation: Cynthia Phillips, Chair, term expires 12/31/2013

Oregon State Bar
Board of Governors Meeting
February 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. William R. Bloom – 780192

Mr. Knight presented information concerning the BR 8.1 reinstatement application of Mr. Bloom to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Bloom's application will be placed on a future agenda for consideration and action.

2. Adam P. Karp – 011336

In Ms. O'Connor's absence, Ms. Steven's presented information concerning the BR 8.1 reinstatement application of Mr. Karp to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Karp's application will be placed on a future agenda for consideration and action.

3. Sheryl Manley – 963341

In Mr. Ehlers' absence, Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Manley to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Manley's application will be placed on a future agenda for consideration and action.

4. John M. Mann – 933530

In Mr. Kehoe's absence, Ms. Stevens presented information concerning the BR 8.1 reinstatement application of Mr. Mann to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Mann's application will be placed on a future agenda for consideration and action.

5. Michael J. Moiso– 930802

Mr. Spier presented information concerning the BR 8.1 reinstatement application of Mr. Moiso to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Moiso's application will be placed on a future agenda for consideration and action.

6. Mark L. Runnels – 803666

Mr. Wade presented information concerning the BR 8.1 reinstatement application of Mr. Runnels to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Runnels' application will be placed on a future agenda for consideration and action.

7. Ann E. Setty-Rosevear – 971347

Motion: Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Ms. Setty-Rosevear. Mr. Kranovich moved, and Mr. Emerick seconded, to recommend to the Supreme Court that Ms. Setty-Rosevear's reinstatement application be approved, temporarily effective today. The motion passed unanimously.

8. Su K. Suh – 983521

In Ms. Kohlhoff's absence, Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Suh to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Suh's application will be placed on a future agenda for consideration and action.

9. Jenifer M. Willer – 971766

Motion: Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Ms. Willer to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Emerick moved, and Mr. Wade seconded, to waive the one meeting notice and recommend to the Supreme Court that Ms. Willer's reinstatement application be approved after the completion of 45 MCLE credits. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

Oregon State Bar
Board of Governors Meeting
February 22, 2013
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 UPL Committee recommended the Board seek injunctive relief against Ms. Jan Hope aka Janice Niemann to prevent her continued unlawful practice of law.

Motion: Mr. Heysell moved and Mr. Emerick seconded to accept the recommendation that the Board approve the initiation of the lawsuit. The board unanimously approved the motion.

2. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Ms. Ernst.

Motion: Mr. Spier moved and Mr. Knight seconded to accept the recommendation that the Board approve the negotiated agreement with Ms. Ernst. The board unanimously approved the motion.

3. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Ms. Benson.

Motion: Mr. Knight moved and Ms. Mitchel-Markley seconded to accept the recommendation that the Board approve the negotiated agreement with Ms. Benson. The board unanimously approved the motion.

B. Pending or Threatened Non-Disciplinary Litigation

The BOG received status reports on the non-action items.

C. Other Matters

Washington State Taxes

Motion: Mr. Spier moved and Mr. Knight seconded, to give Ms. Hierschbiel discretion pursuing action in this matter.

Oregon State Bar
Special Open Meeting of the Board of Governors
April 4, 2013
Minutes

The meeting was called to order by President Michael Haglund at 8:00 a.m. on April 4, 2013. The meeting adjourned at 9:00 a.m. Members present from the Board of Governors Patrick Ehlers, Hunter Emerick, Ray Heysell, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Joshua Ross, Richard Spier, David Wade, Charles Wilhoite and Timothy Williams. Staff present were Sylvia Stevens, Susan Grabe and Kateri Walsh.

1. Public Affairs Committee Recommendation

A. Mr. Haglund explained that the issue before the BOG was whether to take a position on HB 2822. The Public Affairs Committee discussed the bill at its meeting on April 3, but did not have a recommendations for the BOG. Mr. Haglund reported that, while the chair of the Committee on Consumer Protection and Government Efficiency is interested in the CLNS Task Force work, he has indicated that he wants the bill to move forward. Mr. Haglund suggested it would be futile to oppose the bill and doing so might jeopardize the success of the Bar's pending legislative agenda. He also pointed out that some members of the CLNS Task Force would be upset if the Bar opposes HB 2822 before the Task Force completes its work.

There followed a vigorous discussion of the relative advantages and risks to opposing HB 2822 or even asking the Committee to defer action until the CLNS Task Force makes its recommendations. The was general agreement that HB 2822 is bad policy because it will increase the cost of foreclosure notices, but also that the timing is unfortunate.

Motion: Mr. Prestwich moved, Mr. Kranovich seconded, and the board voted to take no position on HB 2822. (Wade and Kohlhoff opposed; all others in favor.)

CLAIM No.		NAME	ATTORNEY	CLAIM	PENDING	ASSIGNED TO	STATUS
2009	39	Pottle, John	Ryan, T. Michael	200.00	200.00	Franco	
2010	31	Johns, Chongnak and Frank	Connall, Des	25,300.00		BOG	Paid
2011	2	Risch, Stephen R	Connall, Des & Shannon	57,000.00	50,000.00	Wright	Going to BOG
2011	5	Raske, Karen	Connall, Shannon	3,250.00		Wright	Denied
2011	7	Stratton, Laurence Eugene	Connall, Shannon and Des	10,000.00		Wright	Denied
2011	21	Roelle, Brian D	Connall, Des	23,000.00	23,000.00	Wright	Tabled
2012	10	Schnee, Cynthia	Hammond, Paula	1,500.00	1,500.00	Brown	
2012	15	Gordon, Tae Mee	Gruetter, Bryan	66,504.14		Kekel	Paid
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	10,747.46	Eggert	Going to BOG
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		Franco	Paid
2012	35	Martrinez, Deborah	Gruetter, Bryan	15,000.00	15,000.00	Franco	
2012	37	Andrach, Theordore Wells, Lauran	Gruetter, Bryan	4,800.00		Kekel	Paid
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	46	Ramirez, Angel	Bertoni, Gary	15,000.00	15,000.00	Bennett	Going to BOG
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 to May 11
2012	56	Olivier, Johannes and Jacomina	McBride, Jason	3,000.00	3,000.00	Monson	
2012	57	Maldonado Herrera, Reybel and Garcia,	McBride, Jason	4,500.00		Miller	Denied
2012	58	Gutierrez Lopez, Gabriel	McBride, Jason	2,500.00	2,500.00	Franco	Deferred to May 11
2012	59	Marquez, Alberto Luis and Talamantes, E	McBride, Jason	500.00	500.00	Franco	
2012	61	Carosella, Ken and Maria Luciana	McBride, Jason	3,500.00		Atwood	Paid
2012	62	Chavez, Francisco and Mendoza, Esmera	McBride, Jason	4,000.00	4,000.00	Monson	
2012	63	Lua, Nancy Perez	McBride, Jason	2,500.00		Cousineau	Paid
2012	65	Torres, Gonzalo-Vargas	Bertoni, Gary	15,000.00	15,000.00	Bennett/Calderon	Going to BOG
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		Cousineau	Denied
2012	77	Parra-Navarro, Alan Gerardo	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	78	Hernandez-Cortez, Rafael (aka Thomas M	McBride, Jason	4,200.00		Cousineau	Denied
2012	79	Sherman, Tim L and Sanchez, Laura Y	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	81	Torres-Zuniga, Fabian	McBride, Jason	5,000.00	5,000.00	Calderon	Deferred to May 11
2012	83	Alatorre, Elizabeth	McBride, Jason	3,500.00	3,500.00	Monson	

2012	84	Bothwell, Christopher Charles(rep Greg I	Gruetter, Bryan	100,000.00	446,907.77	Kekel	Going to BOG
2012	85	Valdivia, Sandra	McBride, Jason	3,000.00		Calderon	Paid
2012	88	Palacios-Rodriguez. Isidrio	McBride, Jason	1,500.00		Calderon	Denied
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		Angus	Paid
2012	92	Lucas-Lepe, Juan Carlos	McBride, Jason	5,000.00		Angus	Paid
2012	93	Ramirez, Abelardo Silva	McBride, Jason	5,500.00		Angus	Paid
2012	94	Keiper, Alma	McBride, Jason	4,500.00		Angus	Paid
2012	95	Castillo-Rodriguez, Miriam	McBride, Jason	2,500.00	2,500.00	Calderon	Deferred to May 11
2012	96	Echevarria-Maldonado, Jose Elihel	McBride, Jason	3,700.00		Calderon	Denied
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		Miller	Denied
2012	100	Lopez, Juan	McBride, Jason	1,500.00		Angus	Paid
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		Atwood	Paid
2012	103	Richmond, Doug	Gruetter, Bryan	13,425.84	13,425.84	Bennett	Going to BOG
2012	104	Calton, Christopher	Horton, William	90,000.00		Bennett	Denied
2012	105	Cisneros, Javier Ramirez	McBride, Jason	4,000.00	4,000.00	Miller	
2012	106	Cisneros, Juana Flores	McBride, Jason	4,250.00		Calderon	Paid
2012	107	Lopez, Jennifer Luna	McBride, Jason	9,500.00	9,500.00	Angus	
2012	108	Vazquez, Froylan Marquez	McBride, Jason	5,000.00		Atwood	Paid
2012	109	De Jesus Garibay, Maria	McBride, Jason	1,500.00		Atwood	Paid
2012	110	Melchor, Dolores Velazquez	McBride, Jason	5,000.00		Angus	Paid
2012	111	Dawson, Marlene	McBride, Jason	3,000.00		Angus	Paid
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	Angus	
2012	114	Estrada, Sonia E	McBride, Jason	5,000.00		Atwood	Paid
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	Going to BOG
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		Reinecke	Paid
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	Deferred to May 11
2013	9	Delhorno Duran, Jose Carmen	McBride, Jason	3,850.00	3,850.00	Calderon	Denied
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	Goff, Daniel	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	
2013		18	Robles Lopez, Francisco Javier	McBride, Jason	5,000.00	5,000.00	Angus	
2013		19	Campos, Fabiola	McBride, Jason	4,720.00	4,720.00	Calderon	
2013		20	Maldonado, Laura	McBride, Jason	2,800.00	2,800.00	Atwood	
2013		21	Urbina, Teresa	McBride, Jason	2,540.00	2,540.00	Cousineau	
2013		22	Sabine, Michael James	Mahr, Theodore	1,100.00	1,100.00	Angus	
2013		23	Jimenez, Angel Ruis	McBride, Jason	4,500.00	4,500.00	Calderon	
2013		24	Mantell, Ellitott J	Goff, Daniel	47,609.00	47,609.00	Davis	
2013		25	Norris, Jill and David	Hammond, Paula	1,100.00	1,100.00	Brown	
2013		26	Farrar, Bryan	Gruetter, Bryan	15,694.70	15,694.70	Bennett	
2013		27	Farrar, Maureen	Gruetter, Bryan	28,984.53	28,984.53	Bennett	
2013		28	Findling, Karl Jean	Sheasby, Robert	13,000.00	13,000.00	Reinecke	
2013		29	Ramriez, Ignacio Cruz	McBride, Jason	4,400.00	4,400.00	Reinecke	
2013		30	Villazana, Olga and Cesar	McBride, Jason	4,675.00	4,675.00	Kekel	
2013		31	Almonza, Clemente Vazquez	McBride, Jason	10,600.00	10,600.00	Kekel	
2013		32	Conley, Kimberly	Kaufman, Eric	600.00	600.00	Brown	
2013		33	Garibay, Jose Luis	McBride, Jason	5,100.00	5,100.00	Atwood	
2013		34	Guevara, Elisendo De Dios	McBride, Jason	5,100.00	5,100.00	Eggert	
						$ 1,220,839.11		
		Funds available for claims and indirect costs allocation as of March 2013			**l in CSF Account**	$ 548,227.00		
					Fund Excess	**$ 672,612.11**		

OREGON STATE BAR
Client Security - 113
For the Three Months Ending March 31, 2013

Description	March 2013	YTD 2013	Budget 2013	% of Budget	March Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	$313	$659	$3,100	21.3%	$335	$921	-28.4%
Judgments	25	9,252	4,000	231.3%	375	760	1117.4%
Membership Fees	1,170	645,705	675,000	95.7%	345	215,415	199.7%
TOTAL REVENUE	**1,508**	**655,616**	**682,100**	**96.1%**	**1,055**	**217,096**	**202.0%**
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	2,201	7,704	28,200	27.3%	3,195	7,455	3.3%
Employee Taxes & Benefits - Reg	816	2,690	11,200	24.0%	877	2,313	16.3%
TOTAL SALARIES & BENEFITS	**3,017**	**10,394**	**39,400**	**26.4%**	**4,072**	**9,768**	**6.4%**
DIRECT PROGRAM							
Claims	131,001	211,655	200,000	105.8%	1,945	1,945	10782.0%
Collection Fees	746	4,452	1,000	445.2%	46	46	9556.4%
Committees			250				
Pamphlet Production			150			11	-100.0%
Travel & Expense		125	1,400	8.9%			
TOTAL DIRECT PROGRAM EXPENSE	**131,747**	**216,232**	**202,800**	**106.6%**	**1,991**	**2,003**	**######**
GENERAL & ADMINISTRATIVE							
Messenger & Delivery Services			50				
Office Supplies			150				
Photocopying			150				
Postage	90	154	500	30.8%	65	164	-6.1%
Professional Dues			200				
Telephone		21	150	14.2%		6	245.8%
Training & Education		425	600	70.8%			
Staff Travel & Expense			874				
TOTAL G & A	**90**	**600**	**2,674**	**22.4%**	**65**	**170**	**253.0%**
TOTAL EXPENSE	**134,853**	**227,225**	**244,874**	**92.8%**	**6,129**	**11,940**	**1803.0%**
NET REVENUE (EXPENSE)	**(133,345)**	**428,391**	**437,226**		**(5,074)**	**205,156**	**108.8%**
Indirect Cost Allocation	1,219	3,657	14,625		1,119	3,357	8.9%
NET REV (EXP) AFTER ICA	**(134,564)**	**424,734**	**422,601**		**(6,193)**	**201,799**	**110.5%**
Fund Balance beginning of year		123,493					
Ending Fund Balance		**548,227**					
Staff - FTE count		**.35**	**.00**			**.35**	

2013 JUDGMENTS COLLECTED

Date	Attorney	Payment Received
1/25/2013	Shinn, Michael	50.00
2/11/2013	Anunsen, Roger	27.00
2/28/2013	Shinn, Michael	50.00
2/26/2013	McBride (from PLF)	9050.00
3/15/2013	Anunsen, Roger	25.00

	TOTAL	**$9,202.00**

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Claims Approved by Client Security Fund Committee

Action Recommended

None. This report is for the BOG's information pursuant to CSF Rule 4.11.

Discussion

The CSF Committee met on March 8, 2013 and approved awards on the following claims:

Claim No.	*Claimant*	*Attorney*	*Amt. Awarded*
2012 - 37	Andrach, Theordore Wells, Lauran	Gruetter, Bryan	$4,800.00
2012 - 61	Carosella, Ken and Maria Luciana	McBride, Jason	$3,350.00
2012 - 63	Lua, Nancy Perez	McBride, Jason	$2,500.00
2012 - 85	Valdivia, Sandra	McBride, Jason	$1,500.00
2012 - 91	Garibay, Rodolfo	McBride, Jason	$1,500.00
2012 - 92	Lucas-Lepe, Juan Carlos	McBride, Jason	$4,900.00
2012 - 93	Ramirez, Abelardo Silva	McBride, Jason	$700.00
2012 - 94	Keiper, Alma	McBride, Jason	$4,000.00
2012 - 100	Lopez, Juan	McBride, Jason	$1,500.00
2012 - 102	Vera, Pio Hernandez	McBride, Jason	$4,650.00
2012 - 106	Cisneros, Juana Flores	McBride, Jason	$1,350.00
2012 - 108	Vazquez, Froylan Marquez	McBride, Jason	$3,250.00
2012 - 109	De Jesus Garibay, Maria	McBride, Jason	$1,500.00
2012 - 110	Melchor, Delores	McBride, Jason	$4,500.00
2012 - 111	Dawson, Marlene	McBride, Jason	$1,100.00
2012 - 114	Estrada, Sonia E	McBride, Jason	$625.00
2012 - 115	Manriquez, Maria Luz	McBride, Jason	$3,600.00
	Total		*$45,325.00*

In the State of Oregon,)
) ss
For the County of Multnomah)

I, Elizabeth Welch, do depose and say that I am making this affidavit in compliance with Subsection 23.503 of Bar Bylaws, Prohibition Against Prosecuting Claims. My partner, Theresa M. Kohlhoff, is a current member of the Board of Governors, term ending 2015. I acknowledge that there is a ban against her prosecuting or defending PLF covered claims.

Our firm, Kohlhoff and Welch, is being asked to represent a plaintiff, Leroy Kuntzman against C. David Hall. I have agreed to look into the matter as of February 27, 2013. Theresa M. Kohlhoff originally spoke to the Plaintiff and told him that depending on what his court file showed, she would either go forward on his behalf, or he would be my client. He agreed to this procedure. I attest that I am aware of the requirement that Theresa M. Kohlhoff will be screened from participating in or discussing the matter or other representation. I agree to prepare and submit a compliance affidavit to the Executive Director of the Bar describing my actual compliance with these undertakings promptly on final disposition of the matter or representation.

I am aware of my ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

DATED this ~~February 28~~ March 1, 2013.

Elizabeth Welch

SUBSCRIBED and sworn to before me this ~~February 28~~ March 1, 2013.

Notary Public for Oregon
My commission expires: Sept 6th 2014

OFFICIAL SEAL
DAVID A SCHLEIGER
NOTARY PUBLIC-OREGON
COMMISSION NO. 451925
MY COMMISSION EXPIRES SEPTEMBER 06, 2014

Kohlhoff & Welch, Theresa M. Kohlhoff, Attorneys at Law A Mother Daughter Partnership
OSB #80398
5828 North Lombard, Portland, Oregon 97203
Phone: 503.286.7178 Fax: 503.286.3788 theresakohlhoff@

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. 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 16th day of April, 2013.

OFFICIAL SEAL
ANNE M BUCK
NOTARY PUBLIC-OREGON
COMMISSION NO. 466474
MY COMMISSION EXPIRES MARCH 07, 2016

Notary Public for Oregon
My commission expires: 03-07-2016

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.

Gary Berne and Scott Shorr of our firm represent Metro in a matter involving a possible Professional Liability Fund covered claim.

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 16th day of April, 2013.

OFFICIAL SEAL
ANNE M BUCK
NOTARY PUBLIC-OREGON
COMMISSION NO. 466474
MY COMMISSION EXPIRES MARCH 07, 2016

Notary Public for Oregon
My commission expires: 03-07-2016

RECEIVED

MAR 04 2013

Oregon State Bar
Executive Director

In the State of Oregon,)
) ss
For the County of Multnomah)

I, Theresa M. Kohlhoff, do depose and say that I am making this affidavit in compliance with Subsection 23.503 of Bar Bylaws, Prohibition Against Prosecuting Claims. I am a current member of the Board of Governors, term ending 2015 and acknowledge that there is a ban against me prosecuting or defending PLF covered claims.

Our firm, Kohlhoff and Welch, is being asked to represent a plaintiff, Leroy Kuntzman against C. David Hall. Elizabeth Welch is my partner and has agreed to look into the matter as of February 27, 2013. I originally spoke to the Plaintiff and told him that depending on what his court file showed, I would either go forward on his behalf, or he would be Ms. Welch's client. He agreed to this procedure. I will be screened from any form of participation or representation in the matter. To ensure such screening I agree that I will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with Elizabeth Welch. I agree to prepare and submit a compliance affidavit to the Executive Director of the Bar describing my actual compliance with these undertakings promptly on final disposition of the matter or representation. I am aware of my ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

DATED this ~~February 28~~ March 1, 2013.

Theresa M. Kohlhoff
Theresa M. Kohlhoff

SUBSCRIBED and sworn to before me this ~~February 28~~ March 1, 2013.

OFFICIAL SEAL
DAVID A SCHLEIGER
NOTARY PUBLIC-OREGON
COMMISSION NO. 451925
MY COMMISSION EXPIRES SEPTEMBER 06, 2014

David A Schleiger
Notary Public for Oregon
My commission expires: Sept 6th 2014

Kohlhoff & Welch, Theresa M. Kohlhoff, Attorneys at Law A Mother Daughter Partnership
OSB #80398
5828 North Lombard, Portland, Oregon 97203
Phone: 503.286.7178 Fax: 503.286.3788 theresakohlhoff@

Oregon State Bar

2012 Disciplinary Counsel's Office Annual Report

March 2013

Jeffrey D. Sapiro
Disciplinary Counsel

TABLE OF CONTENTS

I. INTRODUCTION

This is the Annual Report of the Oregon State Bar Disciplinary Counsel's Office for 2012. The report provides an overview of Oregon's lawyer discipline system, an analysis of the caseload within the system, along with the dispositions in 2012, and a discussion of significant developments over the last year.

II. STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)

The principal responsibility of Disciplinary Counsel's Office is to serve as counsel to the State Professional Responsibility Board (SPRB), the body to which the investigative and prosecutorial functions within the discipline system are delegated by statute. The SPRB seeks to enforce the disciplinary rules in the Rules of Professional Conduct (the RPCs), while operating within the procedural framework of the Bar Rules of Procedure (the BRs). The SPRB is a ten-member board of unpaid volunteers, consisting of one lawyer each from Board of Governors (BOG) Regions 1 through 4, 6, and 7, two lawyers from Region 5 and two public members.

The SPRB met 12 times in 2012. With regular meetings and conference calls combined, the SPRB considered approximately 286 case-specific agenda items during the year. This does not include the many policy matters also considered by the board.

The Bar was fortunate to have the following individuals on the SPRB in 2012:

Peter R. Chamberlain (Portland) – Chairperson
Chelsea Dawn Armstrong (Salem)
Whitney Patrick Boise (Portland)
Judy Clarke (Portland) – Public Member
Danna Fogarty (Eugene)
Michael G. Gentry (Lake Oswego)
Greg Hendrix (Bend)
Timothy L. Jackle (Medford)
William B. Kirby (Beaverton)
Dr. S. Michael Sasser (Medford) – Public Member

The terms of Peter Chamberlain and William Kirby expired at the end of 2012. The new appointments for 2013 are Blair Henningsgaard (Astoria) and E. Bradley Litchfield (Eugene). Greg Hendrix is the SPRB Chairperson for 2013.

III. SYSTEM OVERVIEW

A. Complaints Received

The Bar's Client Assistance Office (CAO) handles the intake of all oral and written inquiries and complaints about lawyer conduct. Only when the CAO finds that there is sufficient evidence to support a reasonable belief that misconduct may have occurred is a matter referred to Disciplinary Counsel's Office for investigation. *See* BR 2.5.

The table below reflects the number of files opened by Disciplinary Counsel in recent years, including the 359 files opened in 2012.

Files Opened by Disciplinary Counsel					
Month	**2008**	**2009**	**2010**	**2011**	**2012**
January	30	43	29	20	49
February	39	25	25	36	27
March	36	39	26	25	39
April	26	40	30	42	38
May	35	21	119*	146*	20
June	30	142*	26	20	40
July	37	16	34	28	22
August	38	35	25	23	35
September	125*	31	36	29	22
October	27	34	33	23	23
November	15	31	21	27	18
December	29	26	24	40	26
TOTAL	**467**	**483**	**428**	**459**	**359†**

*includes IOLTA compliance matters.

†Effective in 2012, failing to file an annual IOLTA compliance report is a statutory, not disciplinary, requirement. This accounts for the reduction in files opened in 2012.

Of the 359 files opened in 2012, 245 were referrals from the Client Assistance Office and 91 were trust account overdraft notices from financial institutions that came directly to Disciplinary Counsel's Office. Disciplinary Counsel opened another 23 matters on its own initiative.

For 2012, statistical information regarding complainant type and complaint subject matter is found in Appendix A to this report. Similar information for 2011 is found in Appendix B for comparison purposes.

Every complaint Disciplinary Counsel's Office received in 2012, was acknowledged in writing by staff, analyzed and investigated to varying degrees depending on the nature of the allegations. As warranted, staff corresponded with the complainant and the responding attorney, and obtained relevant information from other sources, to develop a "record" upon which a decision on merit could be made.

If, after investigation, staff determined that probable cause did not exist to believe that misconduct had occurred, the matter was dismissed by Disciplinary Counsel. BR 2.6(b). Complainants have the right under the rules of procedure to contest or appeal a dismissal by Disciplinary Counsel staff. In those cases, the matters are submitted to the SPRB for review. The SPRB considered thirty-six such appeals in 2012.

When Disciplinary Counsel determined from an investigation that there may have been probable cause of misconduct by a lawyer, the matter was referred to the SPRB for review and action. Each matter was presented to the board by means of a complaint summary (factual review, ethics analysis and recommendation) prepared by staff. Each file also was made available to the

SPRB. In 2012, the SPRB reviewed 161 of these probable cause investigations. The following section describes that process of review in more detail.

B. SPRB

The SPRB acts as a grand jury in the disciplinary process, determining in each matter referred to it by Disciplinary Counsel whether probable cause of an ethics violation exists. Options available to the SPRB include dismissal if there is no probable cause of misconduct; referral of a matter back to Disciplinary Counsel or to a local professional responsibility committee (LPRC) for additional investigation; issuing a letter of admonition if a violation has occurred but is not of a serious nature; offering a remedial diversion program to the lawyer; or authorizing a formal disciplinary proceeding in which allegations of professional misconduct are litigated. A lawyer who is offered a letter of admonition may reject the letter, in which case the Rules of Procedure require the matter to proceed to a formal disciplinary proceeding. Rejections are rare.

A lawyer who is notified that a formal disciplinary proceeding will be instituted against him or her may request that the SPRB reconsider that decision. Such a request must be supported by new evidence not previously available that would have clearly affected the board's decision, or legal authority not previously known to the SPRB which establishes that the decision to prosecute is incorrect.

In 2012, the SPRB made probable cause decisions on 13 reports submitted by investigative committees and 197 matters investigated by Disciplinary Counsel staff. Action taken by the SPRB in recent years and in 2012 is summarized in the following table:

Action Taken by SPRB					
Year	Pros.	Admon. Offered	Admon. Accepted	Dismissed	Diversion
2008	123	31	30†	90	2
2009	128	29	28†	59	5
2010	72	34	34	38	5
2011	98	34	34	46	4
2012	90	47	46†	73	7

† One admonition letter offered was later reconsidered by the SPRB and the matter was dismissed.

Note that the figures for prosecutions reflect the number of complaints that were authorized for prosecution, not necessarily the number of lawyers being prosecuted. One lawyer may be the subject of numerous complaints that are consolidated into one disciplinary proceeding.

In addition to the normal complaint review process, the SPRB also is responsible for making recommendations to the Supreme Court on matters of urgency including temporary and immediate suspensions of lawyers who have abandoned their practices, are suffering under some disability, have been convicted of certain crimes, or have been disciplined in another jurisdiction subjecting them to reciprocal discipline here in Oregon. The SPRB reviewed seven (7) such matters in 2012.

C. Local Professional Responsibility Committee (LPRCs)

Most complaints are investigated in-house by Disciplinary Counsel staff. However, some matters that require in-depth field investigation are referred by staff or the SPRB to local professional responsibility committees (LPRCs). There are seven such committees throughout the state. Total membership for all LPRCs is approximately 42.

Each year LPRC members are provided with a handbook prepared and updated by the Disciplinary Counsel's Office. The handbook describes in detail the responsibilities each LPRC member is asked to undertake. It also provides practical suggestions in conducting an LPRC investigation, contains copies of resource materials including the applicable statutes and procedural rules, and includes examples of final LPRC reports in a standardized format requested by the SPRB.

Under the applicable rules of procedure, Disciplinary Counsel staff arranges for an assignment to be made to an individual committee member, and the committee member is authorized to report back his or her findings without going through the entire committee. A committee member has 90 days to complete an assignment, with one extension of 60 days available. If an investigation is not completed by then, the rules require the matter to be referred back to Disciplinary Counsel for completion. BR 2.3(a)(2)(C). Sixteen (16) matters were referred to LPRCs in 2012.

D. Formal Proceedings

(1) Prosecution Function

After the SPRB authorizes formal proceedings in a given matter, attorneys in Disciplinary Counsel's Office draft a formal complaint and may, but don't always, arrange for volunteer bar counsel to assist at trial. Bar Counsel are selected from a panel of lawyers appointed by the Board of Governors.

Discovery methods in disciplinary proceedings are similar to those in civil litigation. Requests for admission, requests for production, and depositions are common. Disputes over discovery are resolved by the trial panel chairperson assigned to a particular case.

Pre-hearing conferences to narrow the issues and to explore settlement are available at the request of either party. Such conferences are held before a member of the Disciplinary Board who is not a member of the trial panel in that case.

(2) Adjudicative Function

Members of the Disciplinary Board, appointed by the Supreme Court, sit in panels of three (two lawyers, one non-lawyer) and are selected for each disciplinary case by a regional chairperson. The panel chair rules on all pretrial matters and is responsible for bringing each case to hearing within a specific time frame established by the rules.

After hearing, the panel is required to render its decision within 28 days (subject to time extensions), making findings of fact, conclusions of law and a

disposition. Panels rely on the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law in determining appropriate sanctions when misconduct has been found.

Fifteen (15) disciplinary cases were tried in 2012. Some were single-day hearings; others were multi-day hearings extending over several weeks; still others went by default and did not require a full evidentiary hearing at all.

E. Dispositions Short of Trial

Fortunately, many of the disciplinary proceedings authorized by the SPRB are resolved short of trial with resignations or stipulations. Form B resignation (resignation "under fire") does not require an admission of guilt by an accused lawyer but, because charges are pending, is treated like a disbarment such that the lawyer is not eligible for reinstatement in the future. Thirteen (13) lawyers submitted Form B resignations in 2012, thereby eliminating the need for further prosecution in those cases. While a resignation ends a formal proceeding, it is often obtained only after a substantial amount of investigation, discovery and trial preparation. For example, one lawyer resigned in 2012, but not until a trial panel recommended his disbarment.

A significant number of cases are resolved by stipulations for discipline in which there is no dispute over material fact and both the Bar and the accused lawyer agree on the violations committed and appropriate sanction. Stipulations must be approved by the SPRB or its chairperson on behalf of the Bar. Once that approval is obtained, judicial approval is required from the state and regional chair of the Disciplinary Board in cases where sanctions do not exceed a 6-month suspension, or from the Supreme Court for cases involving greater sanctions. Judicial approval is not always given, in which case the parties must negotiate further or proceed to trial.

F. Appellate Review

The Supreme Court does not automatically review discipline cases in Oregon. Trial panel decisions, even those imposing disbarment, are final unless either the Bar or the accused lawyer seeks Supreme Court review. Appellate review by the court is mandatory if requested by a party.

When there is an appeal, lawyers in Disciplinary Counsel's Office prepare the record for submission to the court, draft and file the Bar's briefs and present oral argument before the court. The SPRB decides for the Bar whether to seek Supreme Court review.

In 2012, the Supreme Court rendered three (3) discipline opinions in contested cases. The court also approved six (6) stipulations for discipline, imposed reciprocal discipline in four (4) cases, suspended one (1) lawyer on an interim basis while disciplinary proceedings were pending, and suspended another (1) lawyer for failing to attend mandatory ethics school.

Regarding the disciplinary system overall, 63 disciplinary proceedings were concluded in 2012: 12 by decision in a contested case; 28 by stipulation; 13 by Form B resignation; six (6) by diversion; and four (4) by reciprocal discipline order.

G. Contested Admissions/Contested Reinstatements

Disciplinary Counsel's Office also represents the Board of Bar Examiners (BBX) in briefing and arguing before the Supreme Court those cases in which the BBX has made an adverse admissions recommendation regarding an applicant. The actual investigation and hearing in these cases are handled by the BBX under a procedure different from that applicable to lawyer discipline cases.

For reinstatements, Disciplinary Counsel's Office is responsible for processing and investigating all applications. Recommendations are then made to either the bar's Executive Director or the Board of Governors, depending on the nature of the application. Many reinstatements are approved without any further level of review. For reinstatement applicants who have had significant, prior disciplinary problems or have been away from active membership status for more than five years, the Board of Governors makes a recommendation to the Supreme Court. In cases when the board recommends against reinstatement of an applicant, the Supreme Court may refer the matter to the Disciplinary Board for a hearing before a threemember panel much like a lawyer discipline matter, or may direct that a hearing take place before a special master appointed by the court. Disciplinary Counsel's Office has the same responsibilities for prosecuting these contested cases as with disciplinary matters and handles the appeal of these cases, which is automatic, before the Supreme Court. Four (4) of these proceedings were concluded in 2012, the applicant ultimately withdrawing his petition in each case.

IV. DISPOSITIONS

Attached as Appendix C is a list of disciplinary dispositions from 2012. The following table summarizes dispositions in recent years:

SANCTION TYPE	2008	2009	2010	2011	2012
Disbarment	5	1	2	5	2
Form B Resignation	18	8	7	7	13
Suspension	22	18	23	19	20
Suspension stayed/probation	2	0	5	1	3
Reprimand	23	12	16	15	17
Involuntary inactive Transfer	1	0	0	0	0
TOTAL Lawyer Sanctions	71	39	53	47	55
Dismissals after Adjudication	2	0	2	4	2
Dismissed as moot	1	1	0	0	0
Diversion	2	5	4	4	6
Admonitions	30	28	34	34	46

In conjunction with a stayed suspension or as a condition of admission or reinstatement, it is common for a period of probation to be imposed upon a lawyer. Disciplinary Counsel's Office was monitoring ten (10) lawyers on probation at the end of 2012, along with eight (8) lawyers in diversion. Most probations and diversions require some periodic reporting by the lawyer. Some

require more active monitoring by a probation supervisor, typically another lawyer in the probationer's community or a member of the State Lawyers Assistance Committee.

The types of conduct for which a disciplinary sanction was imposed in 2012, or a Form B resignation was submitted, varied widely. The following table identifies the misconduct most often implicated in those proceedings that were concluded by decision, stipulation, order, or resignation in 2012:

Type of misconduct	% of cases in which type of misconduct was present
Neglect of legal matter	32%
Failure to respond to OSB	30%
Dishonesty or misrepresentation	29%
Inadequate client communication	29%
Trust account violation	29%
Excessive or illegal fees	24%
Improper withdrawal	21%
Conduct prejudicial to justice	21%
Failure to return property or funds	17%
Criminal conduct	14%
Incompetence	13%
Multiple client conflicts	8%
Unauthorized practice	8%
Inadequate accounting records	6%
Self-interest conflicts	6%
Disregarding a court rule or ruling	3%
Improper communication	3%
Advertising	3%
Disclosing confidential information	2%
Other	2%

V. SUMMARY OF CASELOAD

A summary of the pending caseload in Disciplinary Counsel's Office at the end of 2012 follows:

New complaints pending 159

Pending LPRC investigations 4

Pending formal proceedings 67*

Probation/diversion matters 18

Contested admission/contested reinstatement matters 0

TOTAL 248

*Reflects no. of lawyers; no. of complaints is greater.

In addition to disciplinary matters, Disciplinary Counsel's Office processed and investigated 216 reinstatement applications in 2012; processed approximately 715 membership status changes (inactive and active pro bono transfers and voluntary resignations); issued 868 certificates of good standing; and responded to 2,364 public record requests during the year.

VI. STAFFING/FUNDING

In 2012, Disciplinary Counsel's Office employed fifteen staff members (14.25 FTE), along with occasional temporary help. In addition to Disciplinary Counsel, there were seven staff lawyer positions. Support staff included one investigator, one office administrator, one regulatory services coordinator, three secretaries, and one public records coordinator. Current staff members include:

Disciplinary Counsel
Jeffrey D. Sapiro

Assistants Disciplinary Counsel	**Support Staff**
Amber Bevacqua-Lynott	Lynn Bey-Roode
Mary A. Cooper	Jennifer Brand
Susan R. Cournoyer	Karen L. Duncan
Linn D. Davis	Sandy L. Gerbish
Stacy J. Hankin	Vickie R. Hansen
Martha M. Hicks	R. Lynn Haynes
Kellie F. Johnson	Christopher Ouellette

Disciplinary Counsel's Office is funded out of the Bar's general fund. Revenue is limited (roughly $95,000 for 2012) and comes from cost bill collections, reinstatement fees, a fee for good standing certificates and *pro hac vice* admissions, and photocopying charges for public records.

Expenses for 2012 were $1,776,000 with an additional $438,000 assessed as a support services (overhead) charge. Of the actual program expenses, 88.5% consisted of salaries and benefits. An additional 8% of the expense budget went to out-of-pocket expenses for court reporters, witness fees, investigative expenses and related items. 3.5% of the expense budget was spent on general and administrative expenses such as copying charges, postage, telephone and staff travel expense.

VII. OTHER DEVELOPMENTS

A. Ethics School

Lawyers who have been reprimanded or suspended are required to attend a oneday course of study presented by the Bar on topics of legal ethics, professional responsibility, and law office management. Two such programs were offered in 2012, one in May and one in November. Presenters included staff from the Client Assistance Office, Disciplinary Counsel's Office, and the Professional Liability Fund.

B. Trust Account Overdraft Notification Program

The Oregon State Bar has a Trust Account Overdraft Notification Program, pursuant to ORS 9.132 and RPC 1.152. Under the program, lawyers are

required to maintain their trust accounts in financial institutions that have agreed to notify the Bar of any overdraft on such accounts. Approximately 63 banks have entered into notification agreements with the Bar.

In 2012, the Bar received notice of 91 trust account overdrafts. For each overdraft, Disciplinary Counsel staff requested a written explanation and supporting documentation from the lawyer, and made follow-up inquiries as necessary. Many overdrafts were the result of bank or isolated lawyer error and, once confirmed as such, were dismissed by staff. If circumstances causing an overdraft suggested an ethics violation, the matter was referred to the SPRB. A minor violation leading to an overdraft typically results in a letter of admonition issued to the lawyer. More serious or on-going violations result in formal disciplinary action. A summary of the disposition of trust account overdrafts received in 2012 follows:

2012 Trust Account Overdrafts	
Dismissed by staff	80
Dismissed by SPRB	1
Referred to LPRC for further investigation	0
Closed by admonition letter	6
Closed by diversion	3
Formal charges authorized	0
Closed by Form B resignation	0
Pending (as of 2/2012)	1
Total Received	**91**

C. Public Records

In Oregon, lawyer discipline files are public record with very limited exceptions. Disciplinary Counsel staff responds to an average of 200 public records requests each month. These requests come from members of the public who inquire into a lawyer's background or from other Bar members who have a need to examine these records.

Disciplinary history data is stored electronically such that many disciplinary record inquires can be answered without a manual review of a lawyer's file. A significant number of requests, however, require the scheduling of appointments for file review.

Disciplinary Counsel's Office has document management and retention policies. Ethics complaints dismissed for lack of probable cause more than ten (10) years ago are destroyed. Retained records were scanned and maintained in electronic format, thereby reducing the physical file storage needs of the Bar.

D. *Pro Hac Vice* Admission and Arbitration Registration

Uniform Trial Court Rule 3.170 provides that all applications by out-of-state lawyers for admission in a single case in Oregon (*pro hac vice* admission) must first be filed with the Oregon State Bar, along with a fee of $250. Disciplinary Counsel's Office is responsible for reviewing each application and

supporting documents (good standing certificate, evidence of professional liability coverage, etc.) for compliance with the UTCR. The filing fees collected, after a nominal administrative fee is deducted, are used to help fund legal service programs in Oregon.

In 2012, the Bar received and processed 460 *pro hac vice* applications, collecting $115,000 for legal services.

In addition, RPC 5.5(e) requires outofstate lawyers who intend to participate in an Oregon arbitration to pay a fee and file a certificate with the Bar similar to that required for *pro hac vice* admission. Disciplinary Counsel's Office administers this process, as well.

E. Custodianships

ORS 9.705, *et. seq*., provides a mechanism by which the Bar may petition a circuit court for the appointment of a custodian to take over the law practice of a lawyer who has abandoned the practice or otherwise is incapable of carrying on. In 2012, Disciplinary Counsel's Office initiated such a custodianship in Deschutes County, and thereafter closed down an active practice (more than 200 clients) of a lawyer who was no longer available to his clients. The custodianship was successful in getting file material to clients or new lawyers, and was concluded within a matter of months.

F. Continuing Legal Education Programs

Throughout 2012, Disciplinary Counsel staff participated in numerous CLE programs dealing with ethics and professional responsibility issues. Staff spoke to law school classes, local bar associations, Oregon State Bar section meetings, specialty bar organizations and general CLE audiences.

VIII. CONCLUSION

In 2012, the Oregon State Bar remained committed to maintaining a system of lawyer regulation that fairly but effectively enforces the disciplinary rules governing Oregon lawyers. Many dedicated individuals, both volunteers and staff, contributed significantly toward that goal throughout the year.

Respectfully submitted,

Jeffrey D. Sapiro

Disciplinary Counsel

APPENDIX A - 2012

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	16	4.4%
Client	127	35.4%
Judge	8	2.2%
Opposing Counsel	25	7.0%
Opposing Party	32	9.0%
Third Party	42	11.7%
Unknown	0	0.0%
OSB	109	30.3%
TOTAL	359	100.0%
COMPLAINT SUBJECT MATTER	**NUMBER**	**PERCENTAGE**
Adoption	1	0.3%
Advertisement	0	0.0%
Arbitration	2	0.5%
Bankruptcy	6	1.7%
Business	2	0.5%
Civil dispute (general)	20	5.6%
Conservatorship	1	0.3%
Criminal	55	15.3%
Domestic Relations	43	12.0%
Estate Planning	9	2.5%
Guardianship	1	0.3%
Immigration	12	3.4%
Juvenile	0	0.0%
Labor Law	2	0.5%
Litigation (general)	14	3.9%
Land Use	0	0.0%
Other	38	10.6%
Paternity	0	0.0%
Personal injury	34	9.5%
Probate	8	2.2%
Real Estate	6	1.7%
Social Security	1	0.3%
Tenant/landlord	2	0.5%
Tax	8	2.2%
Trust Account Overdraft	92	25.7%
Workers Comp.	0	0.0%
Unknown	2	0.5%
TOTAL	359	100.0%

APPENDIX B - 2011

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	13	2.9%
Client	118	25.7%
Judge	7	1.5%
Opposing Counsel	48	10.5%
Opposing Party	41	8.9%
Third Party	36	7.8%
Unknown	2	0.4%
OSB	103	22.5%
OSB (IOLTA Compliance)	91	19.8%
TOTAL	459	100.0%
COMPLAINT SUBJECT MATTER	**NUMBER**	**PERCENTAGE**
Adoption	2	0.4%
Advertisement	0	0%
Arbitration	1	0.2%
Bankruptcy	11	2.4%
Business	7	1.5%
Civil dispute (general)	32	7.0%
Conservatorship	2	0.4%
Criminal	50	10.9%
Domestic Relations	52	11.3%
Estate Planning	6	1.3%
Guardianship	3	0.7%
Immigration	10	2.2%
Juvenile	1	0.2%
Labor Law	0	0%
Litigation (general)	26	5.7%
Land Use	0	0%
Other	27	5.9%
Paternity	0	0%
Personal injury	19	4.1%
Probate	15	3.3%
Real Estate	4	0.9%
Social Security	5	1.1%
Tenant/landlord	1	0.2%
Tax	2	0.4%
Trust Account (IOLTA)	91	19.8%
Trust Account Overdraft	88	19.2%
Workers Comp.	3	0.7%
Unknown	1	0.2%
TOTAL	459	100.0%

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
1	11-28	Milo Petranovich 26 DB Rptr __	60-day suspension	Stip	DB	1/4/12	3/1/12	1.3, 1.4(a), 8.1(a)(2), 8.4(a)(3)	Feb/Mar 2012
2	11-51	Ann Highet SC S059984 26 DB Rptr __	One-year suspension, all but 90 days stayed, plus probation	Stip	S Ct	1/12/12	1/12/12	8.4(a)(2), ORS 9.527(2)	Feb/Mar 2012
3	11-121	Michael M. Pacheco SC S059953	Form B resignation	--	S Ct	1/12/12	1/12/12	8.1(a)(1), 8.4(a)(3)	Feb/Mar 2012
4	07-03	John S. Marandas 351 Or 521, 270 P3d 231	Dismissal	CC	S Ct	1/12/12	5/2/12	NG – 1-102(A)(3), 1-102(A)(4), 7-102(A)(2), 3.1, 8.4(a)(3), 8.4(a)(4)	April 2012
5	10-73	David R. Ambrose 26 DB Rptr __	Reprimand	Stip	DB	1/25/12	1/25/12	1.7(a)(2), 1.8(a)	April 2012
6	09-30	Gary B. Bertoni 26 DB Rptr __	150-day suspension	Stip	DB	1/27/12	3/27/12	1.15-1(a), 1.15-1(b), 1.15-1(c)	Feb/Mar 2012
7	11-25 11-26 11-27	Jason D. Castanza SC S060028	Form B resignation	--	S Ct	2/2/12	2/2/12	8.4(a)(3), 8.4(a)(4)	April 2012
8	11-73	Ronlon W. Sydow SC S060092	Form B resignation	--	S Ct	2/16/12	2/16/12	Oregon 1.6(a), 3.4(c), 8.4(a)(4) Florida 4-1.6(a), 4-3.5(b), 4-8.4(d)	April 2012
9	SC S060019	Paula M. B. Hammond SC S060019	Form B resignation	--	S Ct	2/16/12	2/16/12	1.1, 1.3, 1.4(a), 1.4(b), 1.5(a), 1.151(d), 1.16(a)(2), 1.16(d), 3.4(c), 8.4(a)(3), 8.4(a)(4)	April 2012
10	11-15	Steven D. Gerttula 26 DB Rptr __	Reprimand	Stip	DB	2/27/12	2/27/12	5-105(E), 1.9(a)	May 2012

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
11	SC S059576	Michael M. Pacheco SC S059576	Contested reinstatement-stipulated dismissal	CC	S Ct	3/7/12	3/7/12	BR 8.1(b)	No
12	11-109 11-110	William E. Carl SC S060104	18-month suspension, consecutive to existing suspension	Stip	S Ct	3/8/12	11/14/12	8.4(a)(2), ORS 9.527(2)	May 2012
13	11-98	Gail Mara Gurman 26 DB Rptr __	Reprimand	Stip	DB	3/8/12	3/8/12	1.15-2(m), 8.1(a)(2)	May 2012
14	11-12	Laura J. Ireland 26 DB Rptr __	30-day suspension	CC	DB	1/17/12	3/24/12	1.15-1(a), 1.15-1(c)	June 2012
15	10-109 10-112	Jessica S. Cain 26 DB Rptr __	Reprimand	Stip	DB	3/28/12	3/28/12	1.5(a), 7.5(d)	June 2012
16	10-110 10-133	Kevin J. Kinney 26 DB Rptr __	Reprimand	Stip	DB	3/28/12	3/28/12	1.5(a), 7.5(d), 8.4(a)(4)	June 2012
17	12-34	Claud A. Ingram 26 DB Rptr __	Reprimand	Stip	DB	3/29/12	3/29/12	1.2(a), 1.4(a)	June 2012
18	SC S060139	L. Ross Brown SC S060139	Contested reinstatement - dismissed as moot	CC	S Ct	3/30/12	3/30/12	BR 8.2(b)	No
19	11-108	Bryan Hunt 26 DB Rptr __	Reprimand	Stip	DB	4/4/12	4/4/12	1.15-2(m), 8.1(a)(2)	Aug/Sept 2012
20	11-117	Karen A. Bishop 26 DB Rptr __	Reprimand	Stip	DB	4/2/12	4/2/12	1.15-2(m), 8.1(a)(2)	June 2012
21	SC S060254	Theresa I. Soto SC S060254 26 DB Rptr __	Seven-month suspension	Stip	S Ct	4/5/12	4/5/12	1.1, 1.3, 1.4(a), 1.4(b), 1.15-1(a), 1.15-1(b), 1.15-1(d), 1.15-2(l), 1.16(a)(2), 1.16(d), 8.1(a)(2)	June 2012
22	10-130	Lynn M. Murphy 26 DB Rptr __	270-day suspension	CC	DB	2/2/12	4/11/12	1.16(d), 8.1(a)(2)	July 2012

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OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
23	SC S059560	Brian J. Dobie SC S059560	Contested reinstatement – application withdrawn	CC	S Ct	4/12/12	4/12/12	BR 8.1(b)	No
24	12-30	James E. Leuenberger	Diversion	–	SPRB	1/14/12	4/13/12	1.15-1(a), 1.15-1(c)	No
25	12-01 12-02 12-03 12-04 12-05 12-06 12-07 12-08 12-09 12-10 12-11 12-12 12-13 12-14 12-15 12-16 12-35 12-36 12-37 12-44 12-45 12-46 12-47 12-48 12-49 12-50	Bryan W. Gruetter SC S060197	Form B resignation	–	S Ct	4/19/12	4/19/12	1.3, 1.4(a), 1.5(a), 1.15-1(a), 1.151(c), 1.15-1(d), 1.15-1(e), 1.16(d), 8.4(a)(2), 8.4(a)(3)	July 2012
26	10-149	William N. Later SC S060093	Form B resignation	–	S Ct	4/19/12	4/19/12	1.3, 1.4(a), 1.5(a), 1.15-1(c), 1.16(d)	July 2012
27	11-67	J. Stefan Gonzalez 26 DB Rptr __	Six-month suspension	Stip	DB	4/27/12	4/28/12	1.3, 1.4(a), 1.15-1(d), 8.1(a)(2)	July 2012

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
28	10-103	John P. Eckrem 26 DB Rptr __	90-day suspension, stayed pending 180 day probation	CC	DB	2/24/12	4/28/12	1.15-1(c)	July 2012
29	10-39	James J. Stout 26 DB Rptr __	Dismissal	CC	DB	2/28/12	5/1/12	NG – 3.3(a)(1), 3.3(d), 3.5(b), 8.4(a)(3), 8.4(a)(4)	July 2012
30	11-56	Lyle Bosket	Diversion	–	SPRB	4/12/12	5/19/12	Wash RPC 1.3, 1.4(a)(3), 1.4(b), 1.16(a)(1), 8.4(d)	No
31	11-54	Richard D. Franklin 26 DB Rptr __	30-day suspension	Stip	DB	5/29/12	6/6/12	6-101B, 1.3, 1.4(a), 1.16(c), 1.16(d)	Aug/Sept 2012
32	10-115	Carol J. Fredrick 26 DB Rptr __	Reprimand	CC	DB	3/28/12	5/30/12	6-101(A) NG – 5-105E, 7-104A2	Aug/Sept 2012
33	11-41 11-42 11-43 11-44 11-45 11-46 11-47 11-80 11-81 12-43	Marsha M. Morasch SC S 060403 26 DB Rptr __	Two-year suspension	Stip	S Ct	5/31/12	5/31/12	1.3, 1.4(a) & (b), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(2), 1.16(d), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4)	July 2012
34	11-69	Shelley L. Fuller 26 DB Rptr __	90-day suspension	Stip	DB	6/8/12	7/1/12	8.4(a)(3)	Aug/Sept 2012

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
35	08-143 09-12 09-53 10-14	Daniel W. Goff 352 Or 104, 280 P3d 984	18-month suspension	CC	S Ct	6/14/12	8/13/12	1-102A3, 6-101B, 9-101A, 9101C3, 1.4(a), 1.15-1(d), 1.151(e), 8.1(a)(1), 8.1(a)(2), 8.4(a)(3)	Dec 2012
36	12-23 12-24 12-25 12-26 12-27 12-28 12-29	Jason C. McBride	BR 3.1 suspension	Stip	S Ct	6/14/12	6/14/12	1.1, 1.3, 1.4(a), 1.4(b), 1.5(a), 1.151(c), 1.15-1(d), 1.16(d), 8.4(a)(3)	No
37	10-150 10-151	Lawrence P. Cullen 26 DB Rptr __	Disbarment	CC	DB	4/24/12	6/26/12	1.3, 1.4(a), 1.15-1(a), 1.15-1(d), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	Aug/Sept 2012
38	10-59 10-102	Robert A. Browning 26 DB Rptr __	120-day suspension	CC	DB	5/16/12	7/17/12	1.3, 1.4(a), 1.4(b), 1.7(a)(2), 8.1(a)(2) NG – 1.15-1(c)	Oct 2012
39	09-107	Roger Lee Clark SC S060392	Ethics School suspension	CC	S Ct	7/19/12	7/19/12	BR 6.4	No
40	08-134 09-123	Mark G. Obert 352 Or 231, 282 P3d 825	Six-month suspension	CC	S Ct	7/19/12	9/17/12	1.1, 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 3.1, 8.1(a)(2) NG – 1.4(a), 8.4(a)(3)	Nov 2012
41	12-54	Marlee James Buckson SC S060306	BR 3.5 reciprocal discipline – disbarment	CC	S Ct	7/19/12	7/19/12	Del. 8.4(b); Or 8.4(a)(2), 8.4(a)(3), ORS 9.527(2)	Oct 2012

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
42	12-82	Stephen D. Petersen 26 DB Rptr __	Reprimand	Stip	DB	7/23/12	7/23/12	1.15-1(e)	Oct 2012
43	12-17	James D. Berrien SC S060543	Form B resignation	--	S Ct	8/16/12	8/16/12	1.3, 1.4(a), 1.4(b), 1.5(a), 1.7(a)(2), 1.15-1(a), 8.4(a)(3), 1-102(A)(3), 2106(A), 6-101(B)	Nov 2012
44	10-11	L. Ross Brown SC S060454	Form B resignation	--	S Ct	8/16/12	8/16/12	1.15-1(a), (c) and (d), 8.1(a)(1), 8.1(a)(2), 8.4(a)(3)	Oct 2012
45	12-57	Jeffrey Allen Cancilla SC S060443	BR 3.5 reciprocal discipline – 90-day suspension	CC	S Ct	8/16/12	8/16/12	Cal 1-310, 1-320(A), 3-700(A)(2), §2944.7(a) Or 1.5(a), 1.16(d), 5.4(a), 5.4(b)	Nov 2012
46	SC S058935	Allan F. Knappenberger SC S058935	Contested reinstatement - stipulated dismissed	CC	S Ct	8/16/12	8/16/12	BR 8.1(b)	No
47	12-93 12-94	Gerald Noble	Diversion	--	SPRB	7/21/12	8/1/12	1.15-1(a)	No
48	11-55	Erin C. Walters	Diversion	--	SPRB	7/21/12	8/1/12	1.1, 1.15-1(d)	No
49	10-106 10-107	Keith G. Jordan SC S060557	18-month suspension	Stip	S Ct	8/16/12	8/23/12	1.3, 1.4(a), 1.4(b), 1.5(a), 1.16(c), 1.16(d), 5.5(a), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4)	Nov 2012
50	12-95	Lee Ogden Tyler	Diversion	--	SPRB	8/17/12	9/1/12	1.15-1(a), 1.15-1(c)	No

OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
51	12-100	Nathan L. Garcia	Diversion	--	SPRB	8/17/12	8/17/12	8.4(a)(2)	No
52	12-108	Arthur P. Stangell 26 DB Rptr __	Reprimand	Stip	DB	822/12	8/22/12	4.2	Nov 2012
53	12-59	Kevin M. McCallie 26 DB Rptr __	120-day suspension	Stip	DB	8/27/12	8/27/12	5.5(a), 8.4(a)(3), ORS 9.160	Nov 2012
54	10-122	William R. Goode 26 DB Rptr __	120-day suspension	CC	DB	6/29/12	8/29/12	1.8(j), 4.2 NG – 1-102(A)(3)	Oct 2012
55	11-68 11-118	Ginger Lee Kocurek 26 DB Rptr __	Six-month suspension	CC	DB	6/28/12	9/1/12	3.3(a)(1), 8.1(a)(1), 8.4(a)(3), 8.4(a)(4)	Nov 2012
56	11-105	Daniel Krege Christensen 26 DB Rptr __	Reprimand	Stip	DB	10/1/12	10/1/12	8.4(a)(4)	Dec 2012
57	12-23 12-24 12-25 12-26 12-27 12-28 12-29 12-90 12-113 12-114 12-115 12-116	Jason C. McBride SC S060667	Form B resignation	--	S Ct	10/1/12	10/1/12	1.1, 1.2(a), 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15-1(a), 1.15-1(c), 1.151(d), 1.16(d), 5.5(a), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	Dec 2012
58	11-113 11-114	John D. Curtis SC S060646	Form B resignation	--	S Ct	10/4/12	10/4/12	1.1, 1.3, 1.4(a), 1.5(a), 1.7(a)(2), 1.15-1(a), 1.151-(c), 1.16(a)(2), 5.5(a), ORS 9.160	Dec 2012
59	11-38 11-40	Robert G. Klahn 26 DB Rptr __	90-day suspension	Stip	DB	10/2/12	11/1/12	1.4(a), 1.4(b), 8.4(a)(4)	Dec 2012

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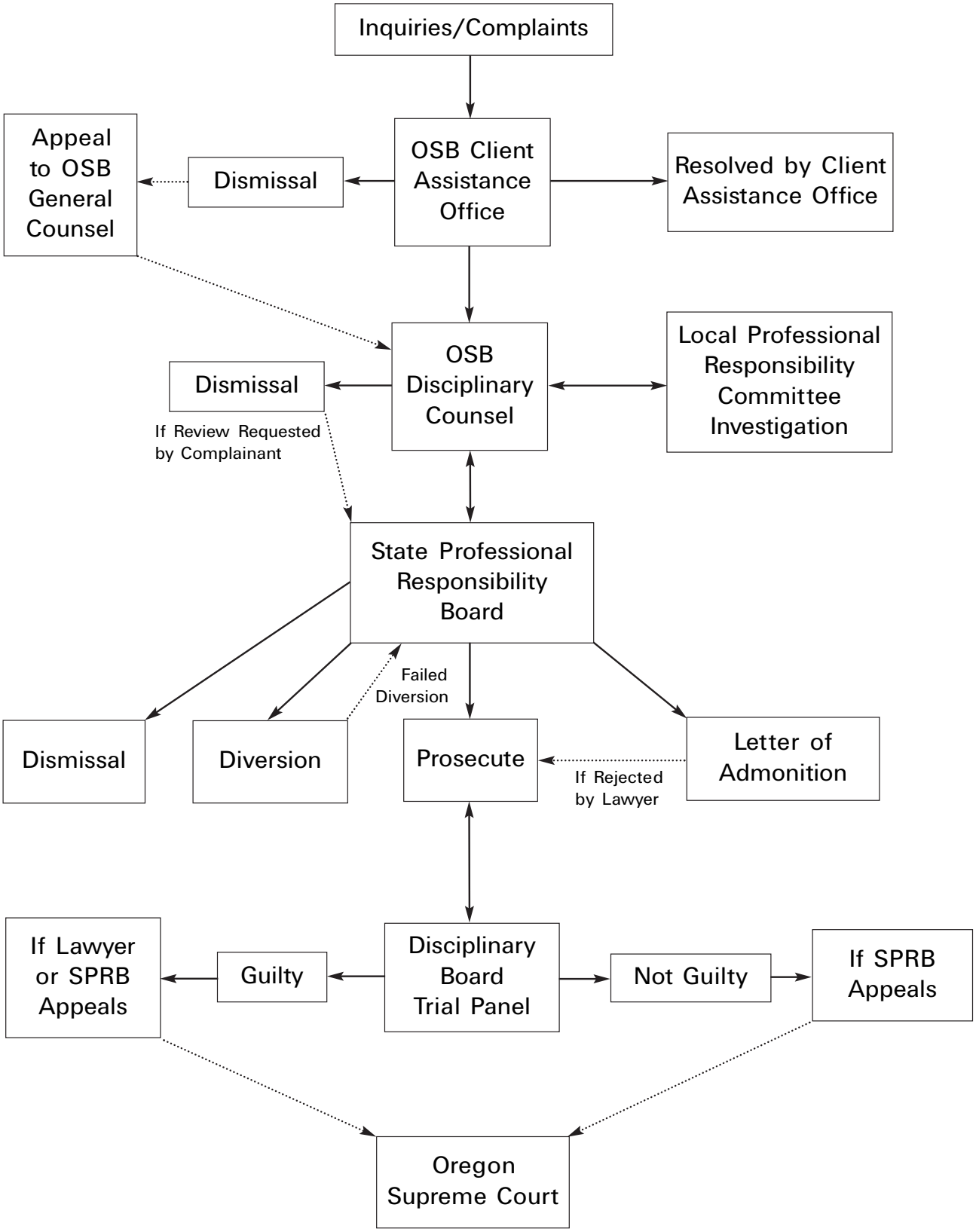
OSB Disposition List 2012

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
60	12-70	Everett Walton 352 Or 548, 287 P3d 1098	BR 3.5 reciprocal discipline – Reprimand	CC	S Ct	10/11/12	10/11/12	Hawaii – 8.4(a), 8.4(c) Oregon - 8.4(a)(1), 8.4(a)(3)	Jan 2013
61	11-79	Michael Nesheiwat 26 DB Rptr __	Reprimand	Stip	DB	10/15/12	10/15/12	1.5(a), 8.4(a)(4)	Dec 2012
62	11-102 12-136	Trevor Robins 26 DB Rptr __	Six-month suspension, all stayed, two-year probation	Stip	DB	10/25/12	10/25/12	1.3, 1.16(a)(2), 1.16(d), 5.5(a), 8.1(a)(2), 8.4(a)(4)	Dec 2012
63	11-125	David Moule 26 DB Rptr __	Reprimand	Stip	DB	11/5/12	11/5/12	1.7(a)(1), 1.7(a)(2)	Dec 2012
64	11-49	Marianne G. Dugan 26 DB Rptr __	Reprimand	Stip	DB	11/5/12	11/5/12	8.4(a)(4)	Jan 2013
65	12-150	Steven L. Dalton SC S060812	Form B resignation	--	S Ct	11/21/12	11/21/12	8.4(a)(3)	Feb/Mar 2013
66	12-154	Daniel W. Goff SC S060842	Form B resignation	--	S Ct	12/13/12	12/13/12	1.1, 1.3, 1.5(a), 1.8(a), 1.8(e)	Feb/Mar 2013
67	11-60 11-61 11-62 11-63	Charles L. Lisle SC S060731	Form B resignation	--	S Ct	12/13/12	12/13/12	1.15-2(m), 8.1(a)(2)	Feb/Mar 2013
68	11-93 11-94 12-83 12-109	Susan C. Steves SC S060775	One-year suspension	Stip	S Ct	12/13/12	12/15/12	1.3, 1.4(a), 1.5(a), 1.15-1(d), 8.1(a)(2), 8.4(a)(2)	Feb/Mar 2013
69	12-117	C. William Rehm SC S060711	BR 3.5 reciprocal discipline - reprimand	CC	S Ct	12/27/12	12/27/12	1.3, 1.4(a), 1.15-1(d)	Feb/Mar 2013
70	09-107	Roger Lee Clark 353 Or 105, __ P3d __	Supplemental cost judgment affirmed	CC	S Ct	12/28/12	12/28/12	BR 10.7	No

OREGON STATE BAR DISCIPLINARY PROCESS



APPENDIX D

ULTA 2012 Annual Report

Statistics since inception of program

	Total	2010	2011	2012
Submitted Unclaimed Property	$ 366,784.10	$ 148,911.56	$ 94,020.70	$ 123,851.84
Claimed Property	$ 2,685.88		$ 1,539.49	$ 1,146.39
Property Forward to Other Jurisdictions	$ 17,305.91		$ 14,108.62	$ 3,197.29
Funds Distribututed to Programs	$ 125,000.00			$ 125,000.00
Balance of Funds on Hand	$ 221,792.31			

Claimed Fund Detail

Claimed By	Date Paid	Amount
Holder	5/23/2011	$ 305.00
Law Firm reclaimed closed IOLTA	6/28/2011	$ 10.09
Estate	6/28/2011	$ 1,212.15
Owner	8/29/2011	$ 12.25
Holder	1/9/2012	$ 999.80
Owner	5/15/2012	$ 6.00
Owner	7/31/2012	$ 50.00
Attorney reclaimed closed IOLTA	7/31/2012	$ 52.55
Owner	11/14/2012	$ 38.04

Northwestern School of Law
of Lewis & Clark College

Office of the Dean

10015 S.W. Terwilliger Blvd.
Portland, Oregon 97219-7799
Phone 503-768-6601
Fax 503-768-6671
law.lclark.edu

March 21, 2013

Re: Graduating Class of 2013

Dear Alumni:

You all know from recent press reports that the legal market is difficult right now. The problem is especially acute on the West Coast, where most of our graduates plan to work.

Over the short term and long term, we are taking a variety of measures to address the job market. Most importantly, we are significantly shrinking the size of the law school (reducing the targeted size of the incoming class from 225 to 190). Of course, the effects of these efforts will not be felt right away.

The class of 2013 will be one of the largest in the school's history, with over 270 students likely to be graduating and looking for work. In addition to these new graduates, we have amazing alums from other recent classes who graduated in the wake of the recession and are still struggling to find the right job. We are doing everything possible to help these graduating students and recent alums. Our Career and Professional Development Center is working individually with recent alums and future graduates, but we need your support as well. I am urging you to help us with this critical effort.

If there is any possibility that you could hire one of our graduates for any kind of position – – whether full-time, part-time, long-term, or temporary – – the law school would greatly appreciate it. Our students are extraordinary, and you will not be disappointed. Times are much tougher than when many of us hit the job market. You can "pay it forward" by giving our students the initial boost they need to develop their credentials and experience.

Alternatively, if you have extra office space that you could rent to a recent graduate at a below-market rate, such an arrangement could help those graduates who are interested in starting a solo practice. The law school will be offering mentoring to these new solo practitioners.

Please contact me if you have any job openings or space available (klonoff@lclark.edu or 503-768-6601). You can also contact Associate Dean Libby Davis in the Career and Professional Development Center (eadavis@lclark.edu or 503-768-6610).

We look forward to hearing from you.

Warm regards.

Sincerely,

Robert H. Klonoff
Dean and Professor of Law

LANE POWELL
ATTORNEYS & COUNSELORS

LEWIS M. HOROWITZ
206.223.7401
horowitzl@lanepowell.com

April 4, 2013

Sylvia E. Stevens, Esq.
Oregon State Bar Executive Director
16037 SW Upper Boones Ferry Road
PO Box 231935
Tigard, OR 97281-1935

Michael E. Haglund, Esq.
President, Oregon State Bar
200 SW Market Street, Suite 1777
Portland, OR 97201-5771

Dear Sylvia and Mike:

Thank you so much for speaking to our attorneys about the Oregon State Bar agenda and the state of the profession. Your presentation was excellent, and the mere fact that you cared enough to show up is appreciated because of the respect it demonstrates.

Very truly yours,

LANE POWELL PC

Lewis M. Horowitz
President

LMH:jc

999999.2013/5641368.1

Oregon State Bar

March 11, 2013

Jonathan T. Sarre
Attorney at Law
741 SW Lincoln Street
Portland, OR 97201

Re: Letter of appreciation from Barry Eisenman

Dear Mr. Sarre:

This is a follow-up to a recent telephone conversation you had with Assistant General Counsel Chris Mullmann concerning an e-mail the bar received regarding your recent representation of Barry Eiseman. It is infrequent that a client takes the time to write the bar commending a lawyer on his or her exemplary professional representation. This is especially true of court appointed criminal defense attorneys. As you can see from the enclosed copy of the e-mail, your client truly appreciated the professional approach you took to his case and the work you did for him.

If you continue to represent your clients as you did with Mr. Eisenman, you have a bright future ahead of you. I have taken the liberty to see that the e-mail is placed in your permanent membership file and I will also bring it to the attention of the Board of Governors at their next meeting.

On behalf of the entire bar, thank you for your good work.

Sincerely,

Sylvia E. Stevens

Sylvia E. Stevens
Executive Director

SES/jmm
Enclosure

cc w/encl: Paul E. Levy, Attorney at Law
cc: Barry Eisenman

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon 97281-1935
(503) 620-0222 *toll-free in Oregon* (800) 452-8260 *fax* (503) 684-1366 www.osbar.org

Barry Eisenman
18801Willamina Creek Road
Willamina OR 997396
barryeisenman@gmail.com

03/05/2013

Oregon State Bar
Client Assistance Office
PO Box 231935
Tigard, OR 97281-1935
cmullmann@osbar.org

To Whom it may concern:

I am writing in response to my recently appointed attorney Jonathan T Sarre. I was represented by Mr. Sarre in my case(s) in a Tillamook county criminal case starting in November of 2012. In dealing with my case, and with my observation / conversation of his work with other cases while I was in Tillamook county jail I found Mr. Sarre most professional and efficient with all matters regarding the handling of our respective matters. Mr. Sarre, undauntedly steadfast in his resolve to resolve, still kept the personal approach of his profession at hand. His communication was timely and effective, while his patience with my personal barrage of requests and questioning was admirable to say the least. I would ***highly*** recommend Mr. Sarre to all and any faced with the smallest of matters to those with potentially life changing consequences.

Sincerely,
Barry J Eisenman

cc jtsarre@gmail.com
cc wporter@co.tillamook.or.us

The Future of Law as Seen from Silicon Valley

Aric Press

The Am Law Daily

03-10-2013

What does the future of law practice look like?

It will be user-friendly and accessible via bright and fresh retail shops with the ambiance of Apple stores. It will be data-driven, with litigators turning to enormous databases capable of predicting results and guiding strategy. It will have the charm of an assembly line that parcels work out across time zones and specialties in structured processes certain to warm the hearts of project managers. And it will be beautiful. Imagine strings of case citations rendered as computer-generated graphics as appealing to the eye as they are to the analytical mind.

These were among the compelling visions that emerged last week from a remarkable conference in Silicon Valley. Called ReinventLaw, the daylong meeting featured 40 speakers who described a series of digital, regulatory, and engineering changes that are redefining law as lawyers and their clients now know it.

Two young Michigan State University law professors, Daniel Martin Katz and Renee Newman Knake, organized the session, versions of which are scheduled for London in June and New York in November. At MSU Katz and Knake run the Reinvent Law program, which they call "A Law Laboratory," a set of classes and experiments devoted to harnessing digital-age technology to the practice of law. This Kauffman Foundation–funded effort rests on a simple concept: "We believe lawyers can change the world, but to change the world we must first change ourselves."

The meeting was patterned after the famous TED conferences, forums for provocative ideas that have grown into an Internet sensation. With 400 or so lawyers, academics, vendors, technologists, and various Valley hangers-on crowded into the Computer History Museum in Mountain View, California, Katz declared what everyone now accepts as conventional wisdom: "There's a storm brewing," across the legal landscape.

What united the day were the convictions that ranged from, at worst, both Big and Small Law are "broken," to, at best, the time has come to unleash the wonders of 21st century technology on an aging, expensive, and remote legal system. The day was one part idea exchange, one part trade show for new companies, and one part revival meeting. Whatever their other ideas, speaker after speaker expressed certainty about three things:

• Clients were either unhappy or unserved.

• The law itself could be seen as a massive, beautiful set of data ripe for reorganizing.

• And the answers to the crisis come in digital form.

The speakers presented in six- to 12-minute bursts, most of them accompanied by slide decks. The affect was casual (jeans, no power ties). But the ideas were serious.

“Disruption will come to the U.S. legal market because it’s too big to ignore,” said Ajaz Ahmed, a prominent British Internet promoter who operates legal365.com in collaboration with an English firm, Last Cawthra Feather in Yorkshire. The site provides online legal services to consumers and businesses, in a combination of do-it-yourself forms and lawyer-assisted work.

Richard Granat, who runs a company called DirectLaw that helps small firms deliver on-line legal services, also had disruption in mind. “We have a moral issue about serving the American people,” Granat told the audience. “If the legal profession can’t figure it out, we should deregulate the whole thing. Let capitalism work its magic.” With that, the room burst into applause.

During his brief talk, MSU's Katz provided a diagnosis of the problem ReInventLaw was addressing. In brief:

1. As partnerships, law firms won’t invest—or invest enough—in new ways of doing business or delivering service.

2. Lawyers continue to compete based on one characteristic—professional expertise—when the times and clients demand other measures, all based on effective process and design.

3. Clients are more sophisticated, with many essentially functioning as “legal supply chain managers.”

4. Prohibitions on outside investment in law firms hinder innovation.

5. Technology and legal process outsourcing companies are taking work away from traditional law firms.

6. The legal market is ready for new providers who will look freshly at the problems, apply new technologies, and drive innovation.

“We have a delivery-of-services challenge,” says MSU’s Knake. “We’re still struggling to provide affordable and accessible services to this (vast) market.” To that end, she points to the ReinventLaw work she and Katz are leading under the banner of “Law. Technology. Design. Delivery.” “We’re the garage for the new models. We’re the R&D department.” Their mission is to invent and then train “talented curators of information, not simply advisers.”

Portions of the talks will be posted online next month at ReInventLaw.com. A complete list of speakers can be found here. A lively, contemporaneous Twitter chain is available by searching #ReInventLaw.

THE AM LAW DAILY

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Page printed from: *The Am Law Daily*

Back to Article

Three Embarrassing Data Points

Steven J. Harper

The Am Law Daily

04-19-2013

Three recently released statistics tell an unhappy tale of what ails the legal profession in particular and society in general. Specifically, those data points reveal profound intergenerational antagonisms that are getting worse.

Dismal Job Prospects Persist

The first troubling number comes from the ABA, which reports that only 56 percent of law school graduates from the class of 2012 secured full-time, long-term jobs requiring a legal degree. The good news is that this ratio is no worse than last year's. The bad news is the number of 2012 law graduates reached an all-time record high—more than 46,000. The even worse news is that the graduating class of 2013 is expected to be even larger.

Sure, the number of students taking the LSAT has trended downward, as has the number of law school applicants. But students seeking to attend law school still outnumber the available places in first-year classes. Meanwhile, the number of attorneys working in big law firms has not yet returned to pre-recession levels of 2007. If, as many hope, the market for attorneys is moving toward an equilibrium between supply and demand, it has a long way to go.

Law School For All the Wrong Reasons

The second significant data point is even more distressing. According to a survey by test-prep company Kaplan Inc., 43 percent of college pre-law students plan to use their degrees to find jobs in the business world, rather than in the legal industry. Even more poignantly, 42 percent said they would opt for business school if they were not already "set to go to law school."

I don't know what "set to go" means to these individuals, but if they want to go into business, spending more than $100,000 and three years of their lives on a legal degree before doing so makes no sense. That's especially true in light of another of the survey's findings: that only 5 percent of respondents said they were pursuing a career primarily for the money, while 71 percent said they were "motivated by pursuing a career they are passionate about."

Maybe these conflicted pre-law students are confused by the chorus of law school deans now writing regularly that a legal degree is a valuable vehicle to other pursuits. Let's hope not. Many deans are simply trying to drum up student demand for their schools in the face of declining applicant pools.

Follow the Money

The third critical data point relates to the money that fuels this dysfunctional system: federal loan dollars that are disconnected from law school accountability for student outcomes. *The New York Times* recently reported that the interest rate on many student loans is set to double—from 3.4 percent to 6.8 percent—as of July 1.

Young law school graduates are among what might be considered the unenviable 1-percenters among those affected by this change because 85 percent of them hold, on average, more than $100,000 in debt (compared to the overall average of $27,000 among all students). Like all other educational loans, those debts survive a bankruptcy filing.

In the current economic environment, an investor would search in vain for a guaranteed 6.8 percent return and virtually no risk. According to one estimate cited in the *Times* article, the federal government makes 36 cents on every student loan dollar it puts out.

Kids as Profit Centers

Ironically, those who favor raising the current interest rate on many federal student loans from 3.4 percent to 6.8 percent are the same people who express concerns that growing federal deficits will crush the next generation. The reality is that we already treat that generation as a profit center. For too many people, there's money to be made in sustaining the lawyer bubble.

Until it bursts.

Steven J. Harper is an adjunct professor at Northwestern University and author of The Lawyer Bubble: A Profession in Crisis *(Basic Books, April 2013), and other books. He retired as a partner at Kirkland & Ellis in 2008, after 30 years in private practice. His blog about the legal profession, The Belly of the Beast, can be found at http://thebellyofthebeast.wordpress.com/. A version of this column was first published on The Belly of the Beast.*

The New Normal

Why 'Tomorrow's Lawyers' is required reading

Posted Mar 27, 2013 8:45 AM CDT
By Paul Lippe

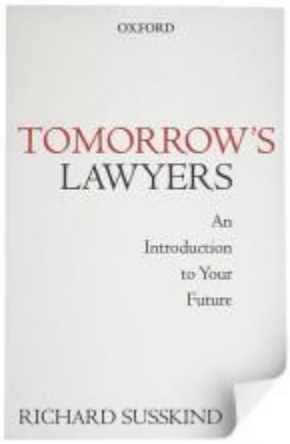
Far and away the best analyst and predictor of the evolution of the legal marketplace is Richard Susskind, the U.K.-based academic and futurist.

Richard has a new book out called *Tomorrow's Lawyers: An Introduction to Your Future*.

It is a slim and readable volume, laying out the case why law will be in a period of accelerating change, driven by technology (Richard tends to look at law through an IT lens), client demand and now opening up the legal provider market, led by the U.K.'s Clementi reforms which allow for non-lawyer ownership of law firms.

If you're in any kind of management or leadership role in law (or you just care about your own career), I would say it's a prerequisite to read *Tomorrow's Lawyers*.

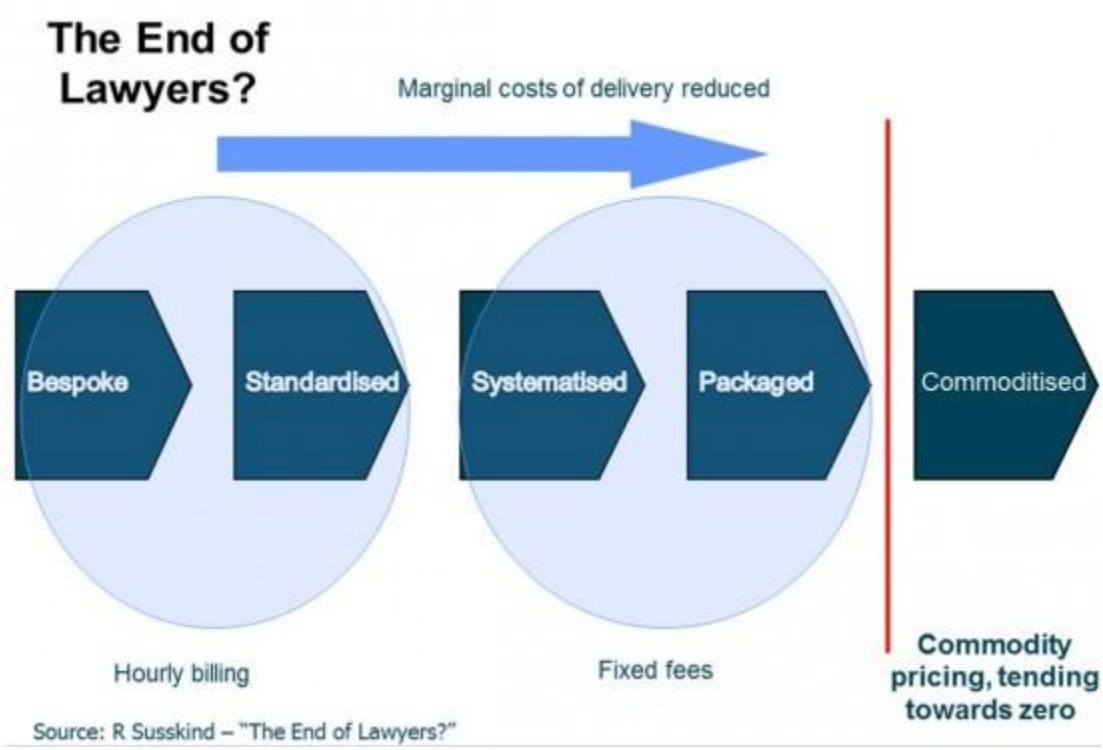
When I spoke to a meeting of law school Deans last month, several deans told me they had made *Tomorrow's Lawyers* required reading for faculty, in part because they suspected students were already familiar, if not with the book, then certainly with the underlying theses.



Tomorrow's Lawyers

My orientation has always been a little different from Richard's, emphasizing more how law will "Normalize" to conform to other processes that clients manage and other markets for services. But in any event, we both certainly diverge from "Old Normal" law thinking, which emphasizes over and over again the uniqueness of lawyers and the uniqueness of every problem that lawyers face (what Richard calls "*bespoke*" or custom work).

The core idea in Richard's book (so rooted in IT thinking that when I showed it to a friend he said "yeah, that's the slide we had in IT in 1996") is that legal work will migrate from the *bespoke* (an elegant English word that seems to add 5 IQ points to anyone who says it) to *commodity* work (a dumb and counterproductive word which is only used to dismiss certain work as beneath the speaker's dignity), evolving through intermediate stages of Standardisation (I'll use his spelling, maybe I'll get the 5 IQ point bonus as well), Systematisation and Packaging before reaching Commoditisation.



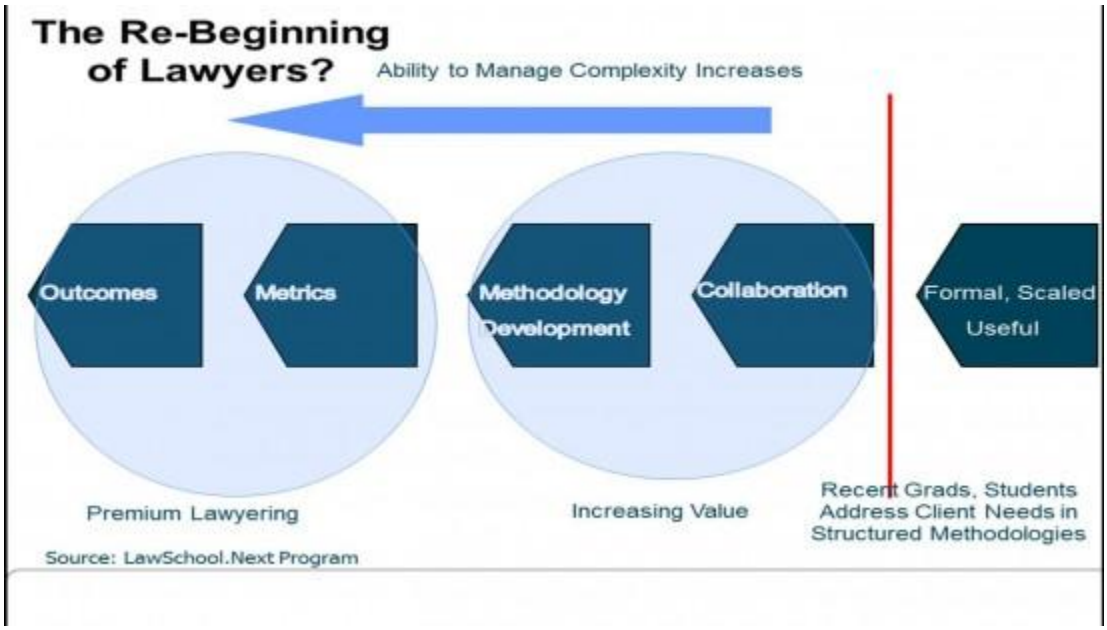
Lawyers deeply resist this notion, perhaps because our intellectual training in the Socratic method leads us to treat every issue as unique and requiring an individualized thought process, and because our ethical training emphasizes the intent of the lawyer, not the effect of the action.

Most folks who go in-house (as I did in 1988) experience a "now I get it" moment when they realize (i) most legal problems are quite similar to other legal problems, and so the best way to solve a problem is not by reference to their own thinking, but by understanding how that related problem was solved and (ii) if they want to be effective in an organization, they can't adopt a posture of being ethically superior to other people, and so have to ground their recommendations in organizational long-term self-interest, not lawyer ethics.

Let me suggest that today's "crisis" in legal education is rooted in law schools' clinging to these twin beliefs in uniqueness, which are fine as a fundamental core, but which are very limiting if they are the extent of your thinking.

But what if we turn things around, what if we Run Richard in Reverse? Could we embrace the reality that much in law is repetitive, but that reality doesn't denigrate the profession in any way? If we start by assuming most problems are alike and then move enthusiastically up the complexity ladder (as opposed to moving reluctantly down it, as we do today), perhaps both legal practice and legal education can unlock some opportunities. I'll tweak Richard's terms and say that the Susskind in Reverse hierarchy for legal education is:

- Formal
- Collaboration
- Methodology Development
- Assessment
- Outcomes



I'll save discussion of the individual elements in the flow for another day, but let's explore a specific problem for which Formal competence is a requirement, Dodd-Frank and its non-U.S. cousins.

One requirement in Dodd-Frank is for "living wills," (PDF) by which all "Systematically Important Financial Institutions" must come up with a "Resolution and Recovery Plan (RRPs)," explaining how they could either (i) be broken up or (ii) survive the failure of one part of the bank.

There are interesting arguments on both sides of the "too big to fail" debate, but in the end they are all pretty indeterminate, and certainly don't address the questions of how you would actually break up the banks without disrupting the economy (by the way, I was in favor of the break-up of IBM in the '70's and Microsoft in the '90's so I'm not an anti-breakup guy per se),

keep them from re-assembling (see, e.g., AT&T) or how the U.S. or U.K. would be better off if all the big banks in the world were in China.

So I'm always less interested in abstract, Socratic-method fueled debates, and much more interested in the question of how to do you actually make things work, which brings me back to Formal work.

In order to develop the RRPs, banks will have to do some very Formal work to capture all the needed contract information. We are working with a number of banks which realize Dodd-Frank compliance (like most legal work) is a mix of bespoke and Formal work. Historically, the bespoke advisers have tried to do the Formal work as well, albeit at a premium price and not necessary premium level of execution. So banks are beginning to "unbundle," and give work to different kinds of services providers.

As one customer put it to me "Long gone are the days when relationship (or panel) law firms can expect all work (or even all types of work in their category) to come their way. Clients are constantly looking to re-engineer how legal services are done to increase the yield for every dollar spent. Firms that try to hold onto work because they view it as bespoke will soon become irrelevant as in-house lawyers find other smarter ways to get the same outcome for less. It is the firms that embrace this New Normal who will succeed, by demonstrating their value to the client."

From an educational standpoint, developing students' competencies in Formal work will give them entree to large-scale projects, and they can quickly migrate up the complexity curve; from a client and societal outcome standpoint, "big enough to be efficient and compliant" is a much better place to get to than "too big to fail."