

**Oregon State Bar  
Meeting of the Board of Governors  
July 13, 2013  
Cannery Pier Hotel, Astoria, OR  
Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00 a.m. on July 13, 2013.*

**Saturday, July 13, 2013, 9:00 a.m.**

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

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

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | Report of the President [Mr. Haglund]                 | Inform | Exhibit |
| <b>B.</b> | Report of the President-elect [Mr. Kranovich]         | Inform |         |
| <b>C.</b> | Report of the Executive Director [Ms. Stevens]        | Inform |         |
| <b>1.</b> | Request for Study of CLE Effect on Malpractice Claims | Action |         |
| <b>2.</b> | PLF Position on BOG Member Disqualification           | Inform |         |
| <b>3.</b> | Modest Means Program Update                           | Inform | Exhibit |
| <b>4.</b> | Legal Publications Author and Editor Social           | Action | Exhibit |
| <b>D.</b> | Director of Diversity & Inclusion [Ms. Hyland]        | Inform |         |
| <b>E.</b> | MBA Liaison Reports [Mr. Ehlers]                      | Inform |         |

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

- |           |  |        |         |
|-----------|--|--------|---------|
| <b>A.</b> | April 30, 2013 financial statements  | Inform | Exhibit |
| <b>B.</b> | Memo to BOG re OSB Bylaws Section 23.5, Subsection 23.503<br>re: BOG Member Conflict Issue | Inform | Exhibit |
| <b>C.</b> | PLF 2012 Annual Report   | Inform | Exhibit |

**4. Rules and Ethics Opinions**

- |           |  |        |         |
|-----------|--|--------|---------|
| <b>A.</b> | Recommendations from LEC [Ms. Hierschbiel]                             |        |         |
| <b>1.</b> | Proposed Amendment to RPC 8.4 [Robert Burt]                            | Action | Exhibit |
| <b>2.</b> | Proposed Adoption of ABA Commission on<br>Ethics 20/20 Recommendations | Action | Exhibit |
| <b>3.</b> | Proposed Amendments to RPC 1.12(a) & 2.4(c)                            | Action | Exhibit |
| <b>B.</b> | Amendments to Bar Rules of Procedure [Mr. Gleason]                     |        |         |
| <b>1.</b> | 1, 2, 7, 8 and 12  | Action | Exhibit |

**5. ABA House of Delegates**

- |           |  |
|-----------|--|
| <b>A.</b> | 2013 Annual Meeting <a href="#">Resolutions</a> [Ms. Harbur] |
|-----------|--|

- |    |   |        |         |
|----|---|--------|---------|
| 1. | Right to Housing, Co-Occurring Disorders 113B,<br>Gay Panic Defense 113A, Mandatory Reporting | Action | Exhibit |
| 2. | King County Bar Association re: Legalized Marijuana   | Action | Exhibit |

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

- |   |   |        |         |
|---|---|--------|---------|
| <b>A.</b> Minimum Continuing Legal Education Committee [Ms. Hirschbiel] |   |        |         |
| 1.  | Proposed Rule and Regulation Amendments<br>re Filing Deadlines and Notices to Members | Action | Exhibit |
| 2.  | Proposed Amendment to Rule 7.5  | Action | Exhibit |
| <b>B.</b> Oregon New Lawyers Division Report [Mr. Eder]                 |   | Inform | Exhibit |
| <b>C.</b> CSF Claims [Ms. Stevens]                                      |   |        |         |
| 1.  | Claims Recommended for Payment  | Action | Exhibit |
| 2.  | Requests for Review   |        |         |
| a.  | CSF Claim 2011-21 CONNALL (Roelle)  | Action | Exhibit |
| b.  | CSF Claim 2013-01 GATTI (New)   | Action | Exhibit |

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

- |  |   |        |              |
|--|---|--------|--------------|
| <b>A.</b> Board Development Committee [Mr. Kranovich]                    |   |        |              |
| 1.   | Board on Public Safety Standards<br>and Training Appointment Recommendation | Action | Handout      |
| 2.   | Council on Court Procedures Appointments                                    | Action | Handout      |
| 3.   | Update on Committee Actions   | Inform |              |
| <b>B.</b> Budget and Finance Committee [Mr. Knight]                      |   |        |              |
| 1.   | 2014 Executive Summary Budget Report  | Inform | Exhibit      |
| 2.   | Proposed revision to investment policy in bylaw 7.402                       | Action | Exhibit      |
| <b>C.</b> Governance and Strategic Planning Committee [Mr. Wade]         |   |        |              |
| 1.   | Amend OSB Bylaw 2.400-2.404   | Action | Exhibit      |
| 2.   | Amend RPC 4.4(b)  | Action | to be posted |
| <b>D.</b> Public Affairs Committee [Mr. Kehoe]                           |   |        |              |
| 1.   | 2013 Legislative Wrap Up  | Inform | Handout      |
| <b>E.</b> Special Projects Committee [Mr. Prestwich]                     |   |        |              |
| 1.   | Update on Completed and Upcoming Projects                                   | Inform |              |
| <b>F.</b> Centralized Legal Notice System Task Force Update [Mr. Ehlers] |   | Inform |              |
| <b>G.</b> Knowledge Base Task Force Update [Ms. Stevens]                 |   | Inform |              |

**8. Other Action Items**

- |           |   |        |         |
|-----------|---|--------|---------|
| <b>A.</b> | Appointments to Various Bar Committees, Boards, Councils    | Action | Exhibit |
| <b>B.</b> | V. Archer Scholarship Trustee Appointment [Ms. Hierschbiel] | Action | Exhibit |
| <b>C.</b> | 2013 Awards [Ms. Pulju]                                     | Action | Handout |

**9. Consent Agenda**

- |           |                                       |        |         |
|-----------|---------------------------------------|--------|---------|
| <b>A.</b> | Approve Minutes of Prior BOG Meetings |        |         |
| <b>1.</b> | Regular Session – May 3 , 2013        | Action | Exhibit |

**10. Default Agenda**

- |           |                                  |  |         |
|-----------|----------------------------------|--|---------|
| <b>A.</b> | CSF Claims Financial Report      |  | Exhibit |
| <b>B.</b> | Claims Approved by CSF Committee |  | Exhibit |
| <b>C.</b> | PLF Conflict Affidavits          |  | Exhibit |

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

- |           |  |  |
|-----------|--|--|
| <b>A.</b> | Judicial Session (pursuant to ORS 192.690(1)) – Reinstatements                         |  |
| <b>B.</b> | Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report |  |

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

- |           |                      |
|-----------|----------------------|
| <b>A.</b> | Correspondence       |
| <b>B.</b> | Articles of Interest |

## **Report of President Mike Haglund**

### **BOG-related activities, April 20 – June 30, 2013**

April 25	Law firm lunch, Davis Wright
April 30	Law firm lunch, Schwabe Williamson
May 1	OSB Lobby Day, Salem
May 3	BOG Committee and Board meetings
May 6-7	Northwest Bar Conference, Helena, Montana
May 15	Law firm lunch, Ater Wynne
May 16	New Admittee Swearing In Ceremony, Salem
	Meeting with Chief Justice
May 23	Law firm lunch, Buckley Law Group
May 28	MBA Annual Dinner
June 14	BOG Committee Meetings
	BOG Alumni Dinner
June 18-19	Coast Bar Visits
	Lunch, Lincoln County Bar Association, Newport
	Dinner, Coos County Bar Association, Coos Bay
	Lunch, Curry County Bar Association, Brookings



The OSB Legal Opportunities Task Force, which met in late 2012, made a number of recommendations designed to increase employment opportunities for bar members. One of these involved expansion of the Modest Means Program (MMP), which had already been identified as a priority for the Referral & Information Services Department following implementation of a percentage-fee system for the Lawyer Referral Service (LRS). Program staff, along with the volunteer Public Service Advisory Committee (PSAC), have been working with various bar sections, as well as current MMP panelists, to identify and prioritize expansion areas.

Based on leadership priorities, one immediate change will be to expand the income limits for MMP client eligibility from 200% to 225% of the federal poverty level. The goal is to increase access to justice by making affordable legal services available to a larger segment of the public while also increasing referrals to participating MMP lawyers. Still under consideration is whether to add a fourth tier to the fee structure (currently \$60/\$80/\$80 depending on the client's income). Based on leadership priorities and the LRS software development schedule, we are beginning by raising only the income limits of the third tier. This change will be communicated to panelists soon and will be effective August 1.

Areas of law identified as priorities for possible expansion are: Elder Law, Estate Planning, Disability Law, Workers Comp and Immigration. Staff and committee volunteers have been working with the appropriate sections to identify referral categories and any implementation issues, e.g., referral of matters typically handled on a flat-fee basis. At this time, expansion into additional areas of law would be premature due to a number of panelist concerns and technological constraints. The PSAC is advising on a proposed implementation strategy and timeline.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 11 - 13  
**Memo Date:** June 28, 2013  
**From:** Linda L. Kruschke, Ext. 415  
**Re:** Legal Publications Author and Editor Social

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### **Action Recommended**

Add Legal Publications Author and Editor Social to October BOG meeting agenda.

### **Background**

The OSB Legal Publications Department relies heavily on volunteer authors and editors to produce the books that we publish. Between 100 and 200 volunteers write or peer review content for our books each year. The contributions of these volunteers are currently recognized by giving each author and editor a complimentary copy of the book they worked on and a plaque (which holds ten book tabs) thanking them for their efforts. A public thank you to all of our authors and editors is also periodically run in the *OSB Bulletin*.

Legal Publications would like to also provide authors and editors with more public recognition of their efforts, and at the same time provide the board of governors with an opportunity to meet and personally thank our volunteers for their contributions and our volunteers with an opportunity to meet the board of governors. The department has already budgeted in 2013 for a social event at which authors and editors could meet and greet one another, but this event has not yet been held or planned. We would like to combine this social event with the October 25 board of governors' committee meetings.

In addition, for those authors and editors who do not live close enough to the Portland metropolitan area to attend an October 25 social event at the bar center, we would like to implement a process to formally invite authors and editors to the various local bar social events that the board attends in other parts of the state and include recognition of their volunteer activity on their name tags.

# Professional Liability Fund

Ira R. Zarov  
Chief Executive Officer

June 11, 2013

To: Professional Liability Fund Board of Directors  
From: R. Thomas Cave, Chief Financial Officer  
Re: April 30, 2013 Financial Statements

ATC

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I have enclosed April 30, 2013 Financial Statements. These statements show Primary Program net income of \$1.8 million for the first four months of 2013. The major reason for this result is better than expected investment results.

If you have any questions, please contact me.

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
4/30/2013**

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

**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Balance Sheet  
4/30/2013**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$1,324,493.54	\$1,418,682.62
Investments at Fair Value	49,291,732.52	45,740,076.16
Assessment Installment Receivable	6,105,044.88	6,100,499.00
Due from Reinsurers	66,973.96	76,206.02
Other Current Assets	76,607.82	80,957.71
Net Fixed Assets	931,770.53	981,780.90
Claim Receivables	58,890.72	110,869.99
Other Long Term Assets	<u>9,825.00</u>	<u>9,825.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$57,865,338.97</u></b>	<b><u>\$54,518,897.40</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$89,996.85	\$157,481.26
Due to Reinsurers	\$941,779.88	\$826,212.71
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	13,693,964.59	15,474,189.34
Liability for Claim Expense	13,196,655.36	12,404,808.13
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 Commission Allocated for Rest of Year	493,269.71	480,926.27
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,788,036.67</u>	<u>16,634,022.45</u>
<b>Total Liabilities</b>	<b><u>\$52,149,323.57</u></b>	<b><u>\$52,807,945.44</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$4,047,255.11	(\$781,169.42)
Year to Date Net Income (Loss)	<u>1,668,760.29</u>	<u>2,492,121.38</u>
<b>Total Fund Equity</b>	<b><u>\$5,716,015.40</u></b>	<b><u>\$1,710,951.96</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$57,865,338.97</u></b>	<b><u>\$54,518,897.40</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Income Statement  
4 Months Ended 4/30/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$8,264,342.33	\$8,349,666.68	\$85,324.35	\$8,186,067.22	\$25,049,000.00
Installment Service Charge	129,676.00	130,000.00	324.00	130,944.00	390,000.00
Other Income	20,801.00	0.00	(20,801.00)	34,756.57	0.00
Investment Return	<u>2,036,445.05</u>	<u>820,941.00</u>	<u>(1,215,504.05)</u>	<u>2,461,158.25</u>	<u>2,462,823.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$10,451,264.38</u></b>	<b><u>\$9,300,607.68</u></b>	<b><u>(\$1,150,656.70)</u></b>	<b><u>\$10,812,926.04</u></b>	<b><u>\$27,901,823.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$6,680,000.00			\$6,600,000.00	
Coverage Opinions	51,063.24			54,923.52	
General Expense	73,477.33			4,322.60	
Less Recoveries & Contributions	(2,951.28)			(191,483.19)	
Budget for Claims Expense		<u>\$6,908,640.00</u>			<u>\$20,725,920.00</u>
<b>Total Provision For Claims</b>	<b><u>\$6,801,589.29</u></b>	<b><u>\$6,908,640.00</u></b>	<b><u>\$107,050.71</u></b>	<b><u>\$6,467,762.93</u></b>	<b><u>\$20,725,920.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$695,744.96	\$761,067.00	\$65,322.04	\$682,365.69	\$2,283,201.00
Accounting Department	261,578.68	262,074.36	495.68	252,372.68	786,223.00
Loss Prevention Department	592,701.81	634,323.08	41,621.27	579,064.78	1,902,969.00
Claims Department	841,634.34	893,971.36	52,337.02	799,039.66	2,681,914.00
Allocated to Excess Program	<u>(368,368.00)</u>	<u>(368,368.00)</u>	<u>0.00</u>	<u>(366,608.64)</u>	<u>(1,105,104.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$2,023,291.79</u></b>	<b><u>\$2,183,067.80</u></b>	<b><u>\$159,776.01</u></b>	<b><u>\$1,946,234.17</u></b>	<b><u>\$6,549,203.00</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$102,057.32	\$102,057.32	\$33,151.06	\$306,172.00
Depreciation and Amortization	\$56,763.80	\$69,333.32	\$12,569.52	\$58,980.77	\$208,000.00
Allocated Depreciation	<u>(10,018.68)</u>	<u>(10,018.68)</u>	<u>0.00</u>	<u>(11,998.68)</u>	<u>(30,056.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$8,871,626.20</u></b>	<b><u>\$9,253,079.76</u></b>	<b><u>\$381,453.56</u></b>	<b><u>\$8,494,130.25</u></b>	<b><u>\$27,759,239.00</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>\$1,579,638.18</u></b>	<b><u>\$47,527.92</u></b>	<b><u>(\$1,532,110.26)</u></b>	<b><u>\$2,318,795.79</u></b>	<b><u>\$142,584.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
4 Months Ended 4/30/2013**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$334,476.92	\$1,378,683.88	\$1,382,725.00	\$4,041.12	\$1,319,729.44	\$4,148,175.00
Benefits and Payroll Taxes	120,535.48	482,039.02	525,400.76	43,361.74	469,419.91	1,576,202.00
Investment Services	0.00	6,876.75	9,333.32	2,456.57	6,686.25	28,000.00
Legal Services	1,843.00	2,589.50	5,333.32	2,743.82	4,683.50	16,000.00
Financial Audit Services	15,000.00	15,000.00	7,533.32	(7,466.68)	14,000.00	22,600.00
Actuarial Services	0.00	6,448.75	6,333.32	(115.43)	6,337.50	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	3,400.00	0.00
Information Services	9,721.40	32,197.66	32,000.00	(197.66)	35,729.62	96,000.00
Document Scanning Services	1,229.61	1,229.61	25,000.00	23,770.39	5,717.66	75,000.00
Other Professional Services	3,741.82	18,105.20	19,133.36	1,028.16	14,684.50	57,400.00
Staff Travel	461.69	1,306.52	4,150.00	2,843.48	1,879.58	12,450.00
Board Travel	0.00	2,060.17	12,999.96	10,939.79	3,473.07	39,000.00
NABRICO	0.00	100.00	3,500.00	3,400.00	0.00	10,500.00
Training	6,251.69	10,495.04	8,166.68	(2,328.36)	4,106.30	24,500.00
Rent	42,145.08	167,646.08	173,580.32	5,934.24	165,168.50	520,741.00
Printing and Supplies	2,052.24	15,849.65	26,333.36	10,483.71	18,025.16	79,000.00
Postage and Delivery	1,759.51	13,485.11	12,250.00	(1,235.11)	13,895.71	36,750.00
Equipment Rent & Maintenance	2,512.37	16,618.41	12,066.64	(4,551.77)	5,621.65	36,200.00
Telephone	7,528.19	15,829.40	14,333.32	(1,496.08)	10,767.13	43,000.00
L P Programs (less Salary & Benefits)	27,379.74	99,412.07	144,520.08	45,108.01	106,180.36	433,560.00
Defense Panel Training	14.95	49.90	7,700.04	7,650.14	0.00	23,100.00
Bar Books Grant	16,666.67	66,666.68	66,666.68	0.00	66,666.68	200,000.00
Insurance	601.00	8,432.00	30,043.00	21,611.00	8,401.00	90,129.00
Library	2,808.67	10,107.18	11,000.00	892.82	7,275.40	33,000.00
Subscriptions, Memberships & Other	916.78	20,431.21	11,333.32	(9,097.89)	20,993.89	34,000.00
Allocated to Excess Program	(92,092.00)	(368,368.00)	(368,368.00)	0.00	(366,608.64)	(1,105,104.00)
<b>TOTAL EXPENSE</b>	<b><u>\$505,554.81</u></b>	<b><u>\$2,023,291.79</u></b>	<b><u>\$2,183,067.80</u></b>	<b><u>\$159,776.01</u></b>	<b><u>\$1,946,234.17</u></b>	<b><u>\$6,549,203.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Income Statement  
4 Months Ended 4/30/2013**

	<b>YEAR TO DATE <u>ACTUAL</u></b>	<b>YEAR TO DATE <u>BUDGET</u></b>	<b><u>VARIANCE</u></b>	<b>YEAR TO DATE <u>LAST YEAR</u></b>	<b>ANNUAL <u>BUDGET</u></b>
<b><u>REVENUE</u></b>					
Ceding Commission	\$246,634.86	\$248,916.68	\$2,281.82	\$240,463.14	\$746,750.00
Prior Year Adj. (Net of Reins.)	3,371.55	500.00	(2,871.55)	1,369.88	1,500.00
Installment Service Charge	41,433.00	12,666.68	(28,766.32)	37,180.00	38,000.00
Investment Return	<u>209,282.61</u>	<u>61,791.32</u>	<u>(147,491.29)</u>	<u>307,197.36</u>	<u>185,374.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$500,722.02</u></b>	<b><u>\$323,874.68</u></b>	<b><u>(\$176,847.34)</u></b>	<b><u>\$586,210.38</u></b>	<b><u>\$971,624.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$401,581.23	\$407,519.76	\$5,938.53	\$400,886.11	\$1,222,559.00
Allocated Depreciation	<u>\$10,018.68</u>	<u>\$10,018.68</u>	<u>\$0.00</u>	<u>\$11,998.68</u>	<u>\$30,056.00</u>
<b>NET INCOME (LOSS)</b>	<b><u>\$89,122.11</u></b>	<b><u>(\$93,663.76)</u></b>	<b><u>(\$182,785.87)</u></b>	<b><u>\$173,325.59</u></b>	<b><u>(\$280,991.00)</u></b>



**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
4 Months Ended 4/30/2013**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$55,804.48	\$223,217.92	\$223,218.00	\$0.08	\$225,127.04	\$669,654.00
Benefits and Payroll Taxes	20,898.90	83,589.68	84,510.36	920.68	79,605.60	253,531.00
Investment Services	0.00	623.25	1,000.00	376.75	813.75	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	92,958.00	92,958.00	0.00	91,878.32	278,874.00
Reinsurance Placement & Travel	0.00	0.00	1,666.68	1,666.68	2,316.10	5,000.00
Training	0.00	0.00	166.68	166.68	0.00	500.00
Printing and Mailing	92.38	92.38	1,666.68	1,574.30	0.00	5,000.00
Program Promotion	0.00	1,100.00	1,666.68	566.68	1,000.00	5,000.00
Other Professional Services	0.00	0.00	666.68	666.68	145.30	2,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
 <b>TOTAL EXPENSE</b>	 <b><u>\$100,035.26</u></b>	 <b><u>\$401,581.23</u></b>	 <b><u>\$407,519.76</u></b>	 <b><u>\$5,938.53</u></b>	 <b><u>\$400,886.11</u></b>	 <b><u>\$1,222,559.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
4 Months Ended 4/30/2013**

	<b>CURRENT MONTH <u>THIS YEAR</u></b>	<b>YEAR TO DATE <u>THIS YEAR</u></b>	<b>CURRENT MONTH <u>LAST YEAR</u></b>	<b>YEAR TO DATE <u>LAST YEAR</u></b>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$25,820.80	\$90,622.76	\$26,425.86	\$117,342.49
Intermediate Term Bond Funds	23,781.28	73,383.74	22,205.64	86,144.44
Domestic Common Stock Funds	0.00	38,480.25	0.00	7,610.20
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	9,468.82	0.00	48,640.69
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>38,894.23</u>	<u>0.00</u>	<u>39,703.93</u>
<b>Total Dividends and Interest</b>	<b><u>\$49,602.08</u></b>	<b><u>\$250,849.80</u></b>	<b><u>\$48,631.50</u></b>	<b><u>\$299,441.75</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	\$33,985.92	\$23,727.79	\$77,269.81	\$217,964.87
Intermediate Term Bond Funds	73,840.27	73,916.27	90,226.26	241,542.63
Domestic Common Stock Funds	115,066.02	899,057.03	(80,198.44)	885,591.27
International Equity Fund	404,472.85	654,780.05	(88,434.12)	652,503.66
Real Estate	0.00	64,304.55	0.00	42,191.11
Hedge Fund of Funds	35,781.33	226,364.91	(16,830.78)	194,807.67
Real Return Strategy	<u>69,498.16</u>	<u>52,727.26</u>	<u>54,970.37</u>	<u>234,312.65</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$732,644.55</u></b>	<b><u>\$1,994,877.86</u></b>	<b><u>\$37,003.10</u></b>	<b><u>\$2,468,913.86</u></b>
<b>TOTAL RETURN</b>	<b><u>\$782,246.63</u></b>	<b><u>\$2,245,727.66</u></b>	<b><u>\$85,634.60</u></b>	<b><u>\$2,768,355.61</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$4,518.75	\$25,872.67	\$4,838.83	\$34,929.97
Gain (Loss) in Fair Value	<u>66,743.92</u>	<u>183,409.94</u>	<u>3,681.81</u>	<u>272,267.39</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$71,262.67</u></b>	<b><u>\$209,282.61</u></b>	<b><u>\$8,520.64</u></b>	<b><u>\$307,197.36</u></b>

July 1, 2013

To: Oregon State Bar Board of Governors

From: Ira Zarov, PLF Chief Executive Officer

Re: BOG Bylaws Section 23.5, Subsection 23.503 – Member Conflict Issue

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At the May 3, 2013 joint BOG/BOD meeting, the BOG discussed the OSB Bylaw that prohibits BOG members from prosecuting or defending PLF covered claims. The context was a request by a current BOG member to remove the prohibition. The BOG then asked the PLF Board of Directors to respond to the request.

The BOD discussed the request in open session at its June 21, 2013 meeting. After discussion, the PLF Board unanimously recommended that the Bylaw not be changed.

The Board attributes the long term success of the PLF to the confidence Covered Parties have in the integrity of the claims handling system. This confidence is made possible by the thoughtful balance OSB and PLF policies set between the governance role of the OSB and the independence of the PLF. The Board concluded that this particular provision represents an important statement to PLF Covered Parties that the claims handling process is confidential, fair and free of external influences. The BOD strongly recommends the Bylaw remain in place.

The applicable section states:

***Subsection 23.503 Prohibition Against Prosecuting Claims***

(a) Board of Governors members will neither prosecute nor defend PLF covered claims, but may mediate the claims at the request of the parties.

In the BOD's discussion, the Directors found that Subsection 23.503 was drafted to acknowledge the potential for a conflict to exist (or one could be perceived to exist) when a BOG member either defended or prosecuted a PLF claim. The specific concern was that Covered Parties would fear that the BOG member would have access to confidential information or might even affect PLF conduct by leveraging his or her influence as a BOG member. Another concern was that the dynamics of litigation would color the BOG members' view of PLF governance issues if they were directly involved in either pursuing or defending a PLF claim.

The PLF Board of Directors found that the original rationales remain valid and outweigh the reasons for disturbing the current PLF governance structure.

In evaluating the conflict issue, the BOD was cognizant of the fact that malpractice claims are charged events in the lives of Oregon attorneys. Besides the economic issues, claims often are experienced by attorneys as challenges to the attorney's integrity, competence, and reputation. Under the pressure of a malpractice claim, Covered Parties tend to view potential threats with heightened awareness. The current rules demonstrate the commitment of the BOG and PLF to the transparency and integrity of claims handling procedures and, as a corollary, reinforce the confidence Covered Parties have in the PLF's independence.

There are two primary arguments raised for discontinuing the rule. One relates to the Bar's ability to attract attorneys from all disciplines and the second to the ability of clients to retain the attorney of their choice. A corollary to these arguments is that any potential conflict can be handled by prohibiting a BOG member involved in a PLF claim from voting on PLF governance matters.

The PLF BOD believed that potential limitation on the pool of BOG members the Bylaw might create is small and does not warrant changing when balanced against the tested and effective policies that govern the relationship of the PLF and the BOG. As to the argument that clients' access to attorneys would be reduced because of the rule, the Board noted that attorneys voluntarily choose to run for the BOG.

The BOD did not believe that requiring a BOG member involved in a PLF matter to abstain from voting on PLF issues adequately addressed the conflict issue. Even with a prohibition against BOG members voting on PLF governance matters, Covered Parties might assume that the influence of a BOG member on a PLF issue could be exercised in other ways than voting. The language of Subsection 23.503 bars both pursuing and defending malpractice claims.

In addition to the possible perception by a Covered Party who is the subject of a malpractice claim pursued by a member of the BOG, there is a more generalized conflict issue. It is difficult to imagine that the plaintiffs' bar would be comfortable with the member of a defense bar who handled PLF claims to serve on the Board while defending a claim.

Finally, the argument to remove the prohibition notes that the rules permit a BOG member to mediate PLF-related claims and contends that there is no rational basis to differentiate between attorneys representing claimants and mediators. Mediators, however, do not have a

Memo To: Oregon State Bar Board of Governors  
July 1, 2013  
Page 3

financial stake in the outcome of matters before them similar to an advocate making the comparison between BOG members acting as plaintiffs or defense counsel and mediators inapposite.

The OSB Bylaw on conflicts is an important statement that best balances the interests of the OSB and the PLF. Most importantly, the policy maintains the integrity of the PLF and OSB relationship and the claims process in the eyes of Covered Parties. Continued confidence in that integrity is a bedrock condition for the success of the PLF.

# 2012 ANNUAL REPORT

Oregon  
State  
Bar

PROFESSIONAL LIABILITY FUND  
[www.osbplf.org](http://www.osbplf.org)



By Ira R. Zarov  
*PLF Chief Executive  
Officer*

The 2013 assessment for the PLF Primary Claims Made Plan remained unchanged at \$3,500. The assessment's stability over the recent past reflects the PLF Board of Directors' commitment to maintain a predictable cost for PLF coverage despite the inherent volatility of legal malpractice claims. Comparison of the 2011 and 2012 claim years demonstrates the volatility of results. Those two years saw a swing of almost \$2.5 million in claim costs alone. Except in rare years when investment results are either extraordinarily good or extraordinarily bad, the majority of PLF gains and losses are driven by claim results. The cost of claims is approximately three times all other expenses.

The PLF had a strong 2012, posting a gain of \$4.8 million. The gain was primarily the result of a decrease in the number of claims predicted. The financial results also benefitted from robust investment performance. The gain of \$4.8 million has helped the PLF make progress toward the goal of reaching a prudent surplus, which would allow the PLF Board to stabilize the assessment in the event of unexpected poor claim results. Total fund equity is now approximately \$4 million.

In 2012, the PLF had 1030 new claims. But for an unprecedented anomaly, this claim count would be the highest in PLF history by a large margin. The count was distorted by 141 claims made against a

single covered party no longer in the practice of law. Because only one limit was implicated in the 141 claims, they were counted as a single claim. As a result, the claim count chosen for 2012 is 890. While lower than in the past four years, the 890 claims represent an almost 14% increase since 2007. In contrast, the number of covered parties has increased by only 7% since 2007.

While the claim count remains high relative to pre-2007 years, the actuaries did not increase the projected claim cost for 2013. The actuarially determined average cost per claim for the first half

*continued on page 6*

## PLF Statistics

1998 – 2013

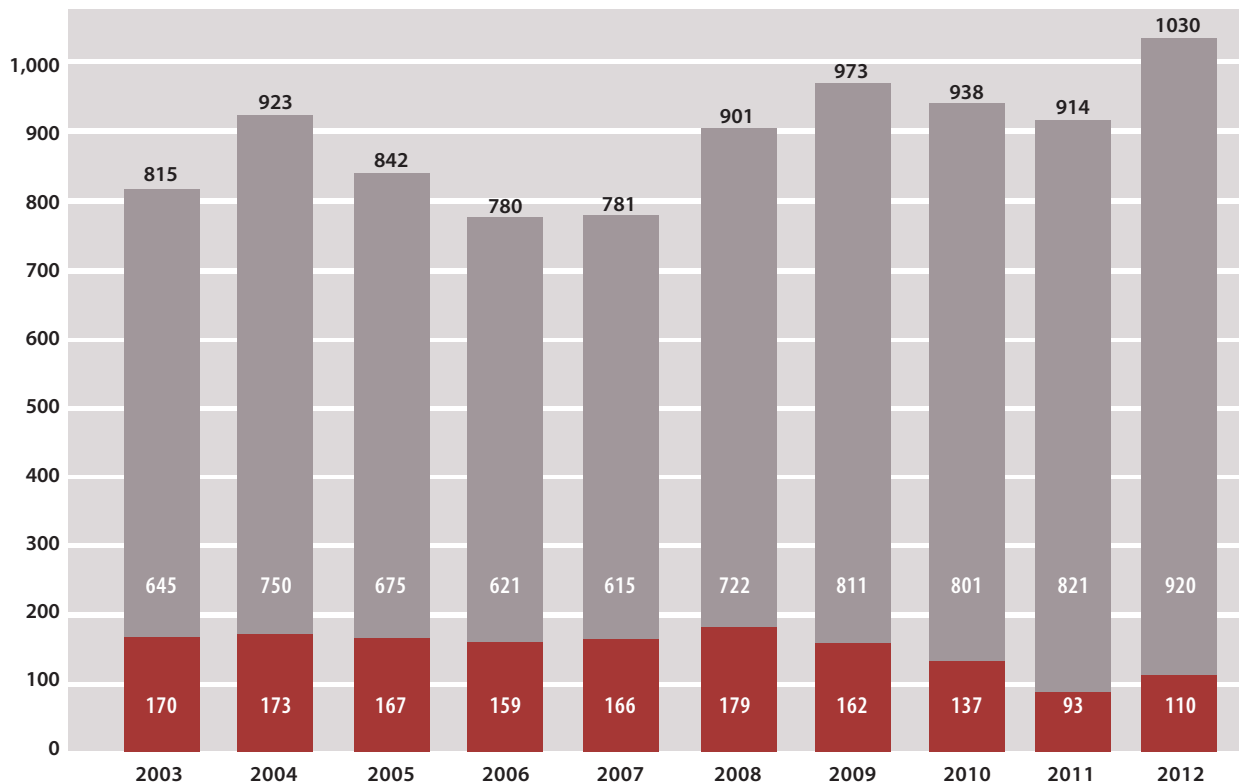
	Assessments	Claims
1998	\$2,100	761
1999	\$1,900	830
2000	\$1,800	798
2001	\$1,800	775
2002	\$2,200	816
2003	\$2,600	815
2004	\$2,600	923
2005	\$3,000	842
2006	\$3,000	780
2007	\$3,200	781
2008	\$3,200	901
2009	\$3,200	973
2010	\$3,200	938
2011	\$3,500	914
2012	\$3,500	890
2013	\$3,500	1,040*

\* Extrapolated

## Number of Claims

By Calendar Year 2003 – 2012

Non-Litigated  
Litigated



## Average Cost per Claim

By Year of Reporting



## SUMMARY FINANCIAL STATEMENTS (Unaudited)

(Primary and Excess Programs Combined)

	<u>12/31/2012</u>	<u>12/31/2011</u>
<b>ASSETS</b>		
Cash and Investments at Market	\$35,198,686	\$32,717,259
Other Assets	<u>2,705,411</u>	<u>1,284,207</u>
<b>TOTAL ASSETS</b>	<b><u>\$37,904,097</u></b>	<b><u>\$34,001,466</u></b>
<b>LIABILITIES AND FUND EQUITY</b>		
Estimated Liabilities for Claim		
Settlements and Defense Costs	\$33,200,000	\$34,100,000
Other Liabilities	656,841	682,634
Fund Equity	<u>4,047,256</u>	<u>(781,168)</u>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$37,904,097</u></b>	<b><u>\$34,001,466</u></b>
<b>For the Year Ending December 31</b>		
	<u>2012</u>	<u>2011</u>
<b>REVENUE</b>		
Assessments	\$24,803,326	\$24,465,415
Investment and Other Income	<u>5,993,767</u>	<u>643,006</u>
<b>TOTAL REVENUE</b>	<b><u>\$30,797,093</u></b>	<b><u>\$25,108,421</u></b>
<b>EXPENSE</b>		
Administrative	\$7,495,588	\$7,302,307
Provision for Settlements	8,346,373	9,649,812
Provision for Defense Costs	<u>10,126,708</u>	<u>11,286,901</u>
<b>TOTAL EXPENSE</b>	<b><u>\$25,968,669</u></b>	<b><u>\$28,239,020</u></b>
<b>NET INCOME</b>	<b><u>\$4,828,424</u></b>	<b><u>(\$3,130,599)</u></b>

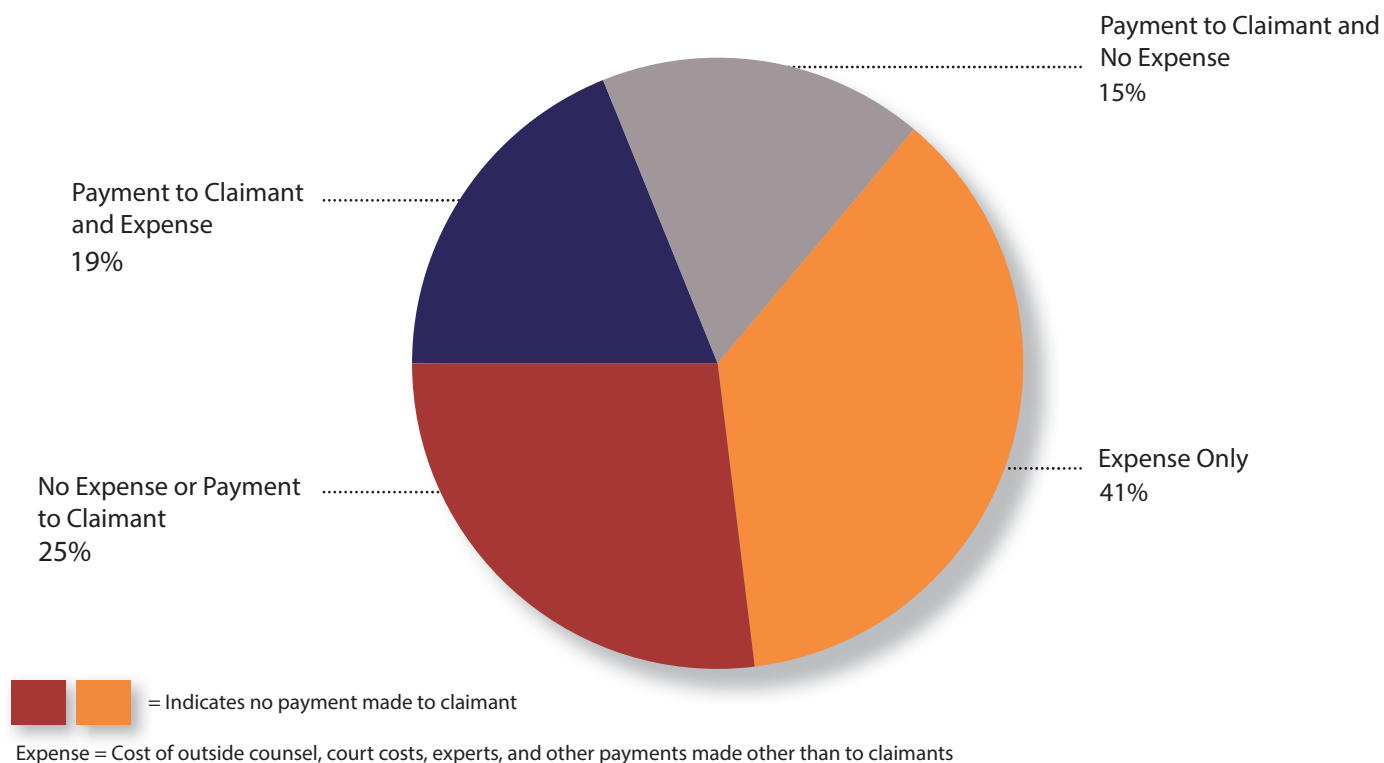
These statements have been adjusted to remove prepaid assessments (e.g., payments of the 2013 assessment received in December of 2012). A complete copy of the December 31, 2011, audit report is available upon request.



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## Closed Claims

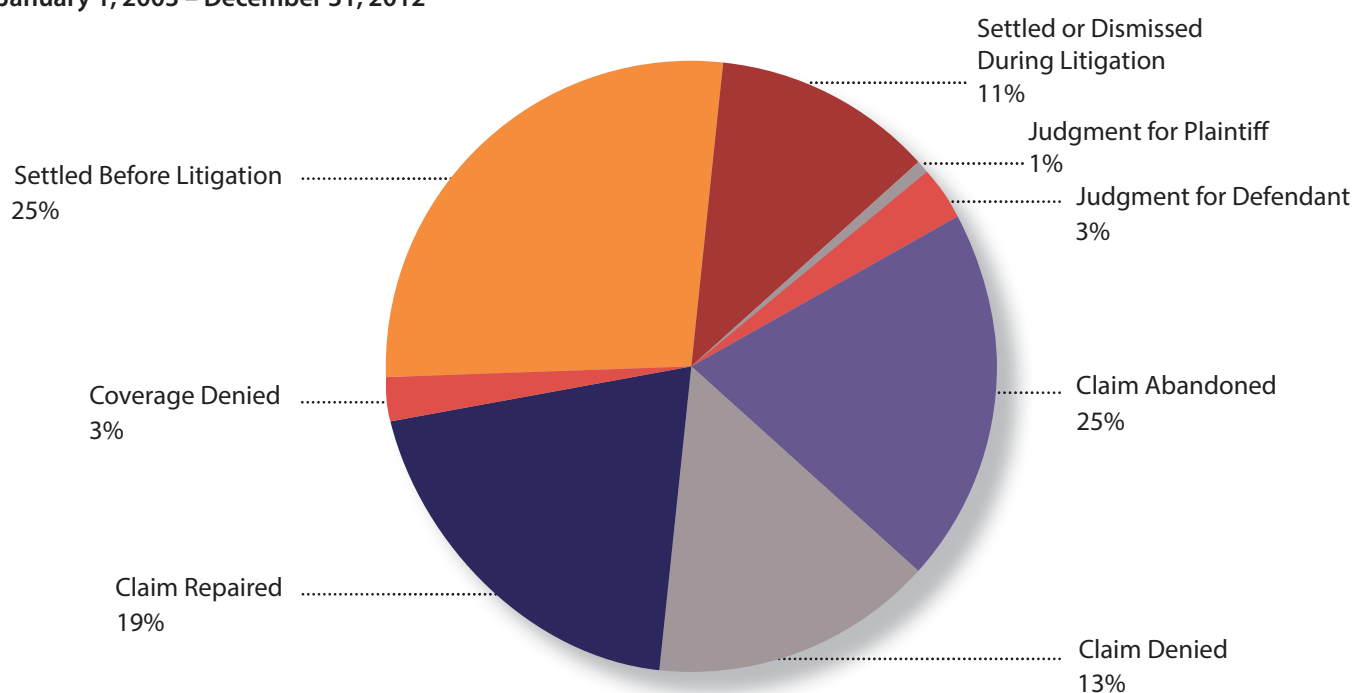
January 1, 2003 – December 31, 2012



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## Disposition of Closed Claims

January 1, 2003 – December 31, 2012



## Cost of Claims by Area of Law

January 1, 2003, to December 31, 2012

AREA OF LAW	PERCENT INDEMNITY PAID	INDEMNITY PAID	PERCENT EXPENSES PAID	EXPENSES PAID	TOTAL PAID
Personal Injury	19%	\$13,171,196	12%	\$7,137,943	\$20,309,139
Business Transactions / Commercial Law	13%	9,306,724	18%	10,618,071	19,924,795
Real Estate	16%	11,023,857	14%	8,226,369	19,250,226
Estate Planning & Estate Tax	12%	8,563,664	10%	5,673,475	14,237,139
Bankruptcy & Debtor-Creditor	10%	6,838,643	10%	6,244,126	13,082,769
Domestic Relations / Family Law	9%	6,507,173	9%	5,145,759	11,652,932
Workers' Compensation / Admiralty	4%	2,731,384	1%	838,203	3,569,587
Securities	2%	1,213,508	4%	2,304,957	3,518,465
Criminal	2%	1,642,197	3%	1,737,712	3,379,909
Tax	1%	828,579	3%	1,793,988	2,622,567
Other	12%	8,942,952	16%	10,007,483	18,950,435
	<b>100%</b>	<b>\$70,769,877</b>	<b>100%</b>	<b>\$59,728,086</b>	<b>\$130,497,963</b>

## Frequency of Closed Claims by Area of Law

January 1, 2003, to December 31, 2012

AREA OF LAW	PERCENT OF CLAIMS	NUMBER OF CLAIMS
Personal Injury	16%	1,306
Domestic Relations / Family Law	16%	1,299
Bankruptcy & Debtor-Creditor	13%	1,018
Real Estate	11%	882
Estate Planning & Estate Tax	10%	840
Business Transactions / Commercial Law	8%	651
Criminal	7%	553
Workers' Compensation / Admiralty	2%	190
Tax	1%	66
Securities	1%	46
Other	15%	1,154
	<b>100%</b>	<b>8,005</b>

of 2013 will remain at \$20,000 despite some indications of increased severity during 2012. Maintaining stability in the claim costs is a positive sign. Of special note, claim expenses – which had been steadily increasing in recent actuarial studies – seem to have stabilized.

In summary, the 2012 results saw claim results better than expected, pending claims did not worsen (unlike in past years), and claim frequency has somewhat moderated.

## **THE 2014 PRIMARY PROGRAM ASSESSMENT**

As in other years, four major objectives are considered in the process of setting the assessment. Those objectives are (1) to provide sufficient income to meet the costs of 2014 claims; (2) to provide sufficient income to fully fund the cost of older pending claims; (3) to provide stability to the assessment as long as possible; and (4) to move the PLF toward the goal of providing a reserve to stabilize future assessments.

As the process of determining the 2014 assessment proceeds, the PLF Board's analysis will benefit from the 2012 financial results, as well as from the current positive investment outlook. On the negative side, claim frequency is exceeding projections as of April 1, 2013.

Despite these crosscurrents, the PLF is cautiously optimistic that the assessment will remain unchanged in 2014. The PLF Board recognizes that economic challenges for lawyers and law firms remain, and the Board is committed to making every effort to maintain the assessment at its current rate in 2014. The 2014 assessment will be determined midyear 2013, when more is known about overall claim development.

## **HOW IS THE PLF DOING WITH CLAIMS HANDLING?**

Historically, covered parties who returned the PLF claims-handling evaluation form have been overwhelmingly satisfied with the performance of the PLF claims department. That result was replicated in 2012.

The claims-handling evaluation form asks whether covered parties were “satisfied,” “very satisfied,” or

“not satisfied.” In 2012, the PLF received 419 responses (45%). The responses gave high ratings to both claims attorneys and defense counsel.

The performance of claims attorneys was particularly noteworthy, with 93.8% of respondents stating that they were “very satisfied” with how their claim was handled, 6% stating that they were “satisfied,” and just 0.2% “not satisfied” – remarkable numbers. In total, 99.8% of the respondents were “very satisfied” or “satisfied” with the PLF claims attorney's handling of the claim.

Covered parties' satisfaction with defense counsel was also very high. Among the 240 covered parties who responded to the questionnaire about defense counsel, 89.5% were “very satisfied,” 8.8% were “satisfied,” and 1.7% “not satisfied.” (The fewer responses regarding defense counsel reflect the fact that many cases are handled by the PLF claims attorneys without being assigned to defense counsel.)

The combined responses for claims attorneys and defense counsel totaled 92.4% “very satisfied” and 7.4% “satisfied” – thus 99.8% either “very satisfied” or “satisfied.”

## **WHAT IS THE PLF DOING IN THE AREAS OF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE?**

The PLF continues to provide free and confidential personal and practice management assistance to Oregon lawyers. These services include legal education, on-site practice management assistance (through the PLF's Practice Management Advisor Program), and personal assistance (through the Oregon Attorney Assistance Program).

Personal and practice management assistance seminars in 2012 included programs on data storage security, Portable Document Format, leveraging technology, metadata, maintaining a profitable law office, paper reduction and document management, hints to effectively run a law office, health insurance, retirement, transitions, and compassion fatigue. In addition, the

*continued on page 7*

PLF continues to offer free audio and video programs (currently 74 programs available), publications (*In Brief* and *In Sight*), over 354 practice aids, and the following handbooks: *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (2011); *A Guide to Setting Up and Running Your Law Office* (2009); *A Guide to Setting Up and Using Your Lawyer Trust Account* (2011); and *Oregon Statutory Time Limitations* (2010). Our practice aids and handbooks are all available free of charge. You can download them at [www.osbplf.org](http://www.osbplf.org), or call the Professional Liability Fund at 503-639-6911 or 800-452-1639.

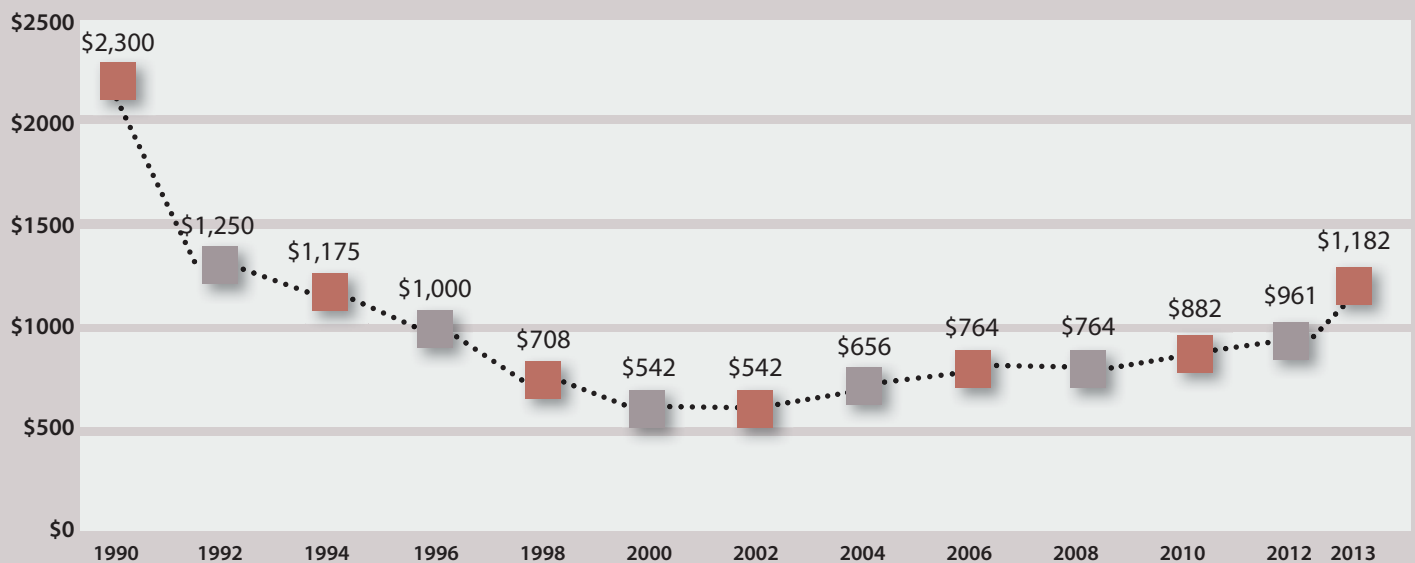
During 2012, the PLF presented video replays of the following programs: Data Storage and Professional Responsibility: Understanding Obligations Imposed by New OSB Ethics Opinion 2011-188; Choice of Entity

for Contract Lawyers and Sole and Small Firm Practitioners; Increasing Revenue: Updated Strategies for Attracting New Clients and More Effectively Managing an Existing Client Base; What Every Lawyer Needs to Know About Bankruptcy; Riding the Waves of Life in the Law; Metadata: Complying with Oregon Formal Opinion 2011-187; PDFing: A Lawyer's Guide to Adobe Acrobat; Law Office Paper Reduction and Document Management; The Attorney as Employer: Employment and Tax Law Considerations; Recognizing Child Abuse and Fulfilling Your Duty to Report; and Transitions: Challenge or Opportunity? These video replays were presented in Astoria, Bend, Coos Bay, Eugene, Grants Pass, Klamath Falls, Medford, Newport, Pendleton, Redmond, Salem, and Vale, Oregon.

*continued on page 8*

## Cost of Excess Coverage – Standard Rates

By Calendar Year 1990 – 2013



Figures are the cost per attorney of \$700,000 PLF excess coverage above the primary limits. Figures for 1995 to 2013 do not include the continuity credit granted to firms for each year of continuous excess coverage with the PLF.

Figures are not adjusted for inflation.

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**Practice Management Advisor Program.** Our practice management advisors (PMAs), Dee Crocker, Beverly Michaelis, and Sheila Blackford, answer practice management questions and provide information about effective systems for conflicts of interest, mail handling, billing, trust accounting, general accounting, time management, client relations, file management, and software. In a recent survey about our PMAs, 100% of those who responded said they would recommend the PLF's PMA services to others. In addition, 100% said they were either "satisfied" or "very satisfied" with reaching a PMA by telephone, amount of time between the request for an appointment and when the appointment took place, the PMA's ability to explain information clearly, how the lawyer was treated by the PMA (patience, courtesy, etc.), helpfulness of the information, follow-up, and overall level of satisfaction with service. In 2012, the PMAs presented seminars all over the state on practice management. In addition to these presentations, the PMAs also provide in-house CLEs for law firms.

**Oregon Attorney Assistance Program.** The Oregon Attorney Assistance Program (OAAP) attorney counselors, Meloney C. Crawford, Shari R. Gregory, Mike Long, and Douglas Querin, continue to provide assistance with alcohol and chemical dependency; burn-out; career change and satisfaction; depression, anxiety, and other mental health issues; stress management; and time management. In 2012, the OAAP sponsored addiction support groups, lawyers-in-transition meetings, career workshops, a depression support group, a support group for lawyers going through divorce, an Inner Peace workshop, a women's support group, a work-life balance workshop for men, a women's wellness retreat, and a group for overcoming procrastination. In addition, the OAAP attorney counselors assisted over 600 lawyers with personal issues in 2012, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

## CHANGES TO THE COVERAGE PLAN

In 2012, the PLF Board and the Oregon State Bar (OSB) Board of Governors approved three changes to the 2013 Coverage Plan. (Additions are noted by bold and underscored; deletions are noted by strikethrough.)

The first change was made in Section I.11 to narrow the definition of "LAW ENTITY" to include those engaged in the private practice of law "in Oregon." The purpose of PLF coverage is to protect Oregon attorneys and their firms. This change helps ensure that out-of-state firms without any Oregon presence are not covered.

Section I.11 was revised as follows:

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

The second change was made to Exclusion 4 in Section V. That Exclusion addresses coverage for punitive damages and sanctions. Subsection (b) bars coverage for sanctions and penalties levied against covered attorneys and "others." The intent of the use of the term "others" is to bar coverage for clients and parties who might seek indemnity from the lawyer for sanctions or penalties imposed on them for their own conduct. The use of the term "others" in this way is not entirely self-evident and could give rise to confusion about who and what is excluded from coverage under Exclusion 4.

Section V.4.b was revised as follows:

**4.** This Plan does not apply to:

- a.** The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or
- b.** Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions ~~on the COVERED PARTY or others~~ imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

The third change addresses the issue of when and how a claim is made and coverage is triggered. This is addressed in two separate places in the Coverage Plan: SECTION VII – NOTICE OF CLAIMS and SECTION IV – GRANT OF COVERAGE. Previously, the language was somewhat inconsistent, so Section VII was changed to reconcile the two sections.

*continued on page 9*

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Section VII was revised as follows (additions in italics and bold; deletions noted by strikethrough). Note that Section IV.1 has been included for reference only; no changes were proposed or adopted.

## SECTION IV — GRANT OF COVERAGE

### 1. Indemnity.

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

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

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

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

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

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

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

(2) Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. This provision will apply to YOU only if YOU have coverage from any source applicable to the earliest such SAME OR RELATED

CLAIM (whether or not the available limits of liability of such prior policy or plan are sufficient to pay any liability or CLAIM).

## SECTION VII — NOTICE OF CLAIMS

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

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

a. The specific act, error, or omission;

b. DAMAGES and any other injury that has resulted or may result; and

c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.

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

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

*continued on page 10*



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

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

### COMMENTS

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

### EXCESS PROGRAM

Participation in the PLF Excess Program remains stable. For the 2012 plan year, 715 firms with a total of 2,313 attorneys purchased excess coverage from the PLF.

The most notable change in PLF excess coverage is the addition of the Cyber Liability and Breach Response Endorsement to the 2013 Excess Claims Made Plan. Claims arising from the loss of confidential data are excluded under the terms of both the PLF's primary and excess coverage plans. However, law firms are becoming aware of the potential danger of these claims, and some clients are now requiring firms to have data breach coverage. The new endorsement has been added to address this need.

The new endorsement provides separate coverage limits and terms from the Excess Coverage Plan itself. The coverage is intended to respond to claims arising from any applicable privacy laws or regulations that require the firm to maintain the confidentiality and security of personal information. Coverage under the endorsement addresses both damages and expense associated with a claim, and, perhaps more significantly, it provides for required privacy breach response services. These services can include notification of affected in-

dividuals, public notices, credit monitoring, and other crisis management activities required when a privacy breach occurs.

Special coverage for website content liability is also included under the endorsement to address a variety of claims (e.g., defamation, copyright infringement, violations of privacy rights) that may arise from publication of information on the firm's website. Coverage also extends to defense of regulatory actions and any resulting penalties. It is worth noting that the coverage has no deductible and applies not only to confidential information in electronic form but traditional paper files as well.

The PLF Excess Program continues to be entirely re-insured and financially independent from the mandatory PLF Primary Coverage Program. We continue to offer accumulating continuity credit discounts of 2% per year (up to 20%).

### CHANGES IN PLF BYLAWS AND POLICIES

No changes were made to the 2012 PLF Bylaws. Several changes were made to the 2012 PLF Policies effective January 1, 2013.

#### Policy 3.150(G)(10) Government Activity Exemption:

Policy 3.150 *et. seq.* specifies exemptions from PLF coverage. Policy 3.150(G)(10) provides that attorneys whose sole employment is on behalf of a public entity are exempt from PLF coverage if their work "comes within the defense and indemnity of requirements of ORS 30.285 and 30.287, or similar state or federal statutes, rule or case law." Those statutes indemnify employees of government agencies. The new wording clarifies the scope of the exemption.

#### **Policy 3.450 PAYMENTS MADE IN ERROR.**

Under PLF Policies, when a payment is made in error to the PLF by an attorney who is exempt from PLF coverage, refunds are available at the discretion of the PLF CEO. These refunds are regularly approved. The revision to Policy 3.450 limits the period of time for which refunds will be made to no more than two years. Under previous wording, refunds were available for a longer period.

*continued on page 11*

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**Policy 3.500(B)(1) Special Underwriting Assessment:**

PLF Policy 3.500 outlines the calculation of the Special Underwriting Assessment (SUA). SUA is a charge of 1% of the amount exceeding a \$75,000 “safe harbor” the PLF pays on behalf of a covered party in settling or defending a claim. The 1% is charged for each of the five years after the claim is closed.

In some instances, when two claims are based on the same subject matter but are brought against two or more covered parties, those covered parties may share a single PLF primary limit. Prior to the revision in 3.500(B)(1), the \$75,000 safe harbor was applicable to the group of related claims. Under the new provision, each covered party sharing a limit will receive his or her own \$75,000 safe harbor before a SUA will accrue.

Other editorial and style changes were made to the PLF policies that do not affect coverage and, as such, are not discussed here.

## **FORECAST FOR THE FUTURE**

Many factors underlie the process of setting the annual PLF assessment – projections of income, operational costs, projections of the number of claims, defense ex-

penses related to claims, and indemnity paid on claims. Of these, only operational costs – a small percentage of the total budget – can be predicted with certainty. At the current time, claim frequency is higher than predicted, and it is too early to predict other trends. The final decision on the 2014 assessment will be made in August 2013, after additional information about claim performance is available.

Over the past several years, a number of experienced PLF staff have retired, and additional retirements are expected in the next several years. In response, the PLF has devoted significant energy and thought to succession issues. That work will ensure that the highest standards of claim representation, practice management assistance, and OAAP assistance will be maintained.

If you have questions or suggestions about the PLF, please contact me.

Ira R. Zarov  
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**PROFESSIONAL LIABILITY FUND**  
[www.osbplf.org](http://www.osbplf.org)



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** June 28, 2013  
**From:** Helen M. Hierschbiel, General Counsel  
**Re:** Amendment to Oregon RPC 8.4

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### **Action Recommended**

Consider the Legal Ethics Committee recommendation that the attached proposed amendment to Oregon RPC 8.4 be forwarded to the House of Delegates for approval and to the Oregon Supreme Court for final adoption thereafter.

### **Background**

At its April 2011 meeting, in response to a request from the Oregon Women Lawyers, the Board of Governors directed the Legal Ethics Committee ("LEC") to establish a special subcommittee, including representatives from OWLS, specialty bars and other stakeholders (collectively "stakeholders"), to evaluate whether discrimination, intimidation and harassment are adequately addressed in the Oregon Rules of Professional Conduct. LEC member Robert Burt was appointed to chair the special subcommittee, designated the Task Force on Discipline for Harassment, Discrimination and Intimidation ("HDI Task Force").

At the September 2011 BOG meeting, Mr. Burt presented the attached HDI Task Force recommendation that the BOG adopt a resolution for an amendment to RPC 8.4. The Board voted unanimously to accept the task force conclusion that the rules should prohibit discrimination, intimidation and harassment in the practice of law. However, because there had not been time for the LEC to thoroughly review the proposed rule and the LEC was evenly divided in a preliminary vote about whether the proposed rule change was appropriate, the Board decided to send the matter back to the LEC to study whether a rule amendment or a formal ethics opinion would be the best vehicle to clarify that discrimination, intimidation and harassment is prohibited by the rules of professional conduct.

After additional study, efforts to draft a formal ethics opinion, and meeting with stakeholders, the LEC now agrees with the HDI Task Force conclusion that a rule change is necessary and appropriate. Oregon is one of a minority of states that does not have either a rule or commentary that specifically prohibits lawyers from engaging in harassment, discrimination or intimidation in the practice of law. The LEC believes the time has come for Oregon to join the majority in expressly prohibiting harassment, discrimination and intimidation by lawyers in the practice of law.

In deciding what form an amendment to the rules should take, the LEC reviewed the HDI Task Force report and the rules and commentary from other jurisdictions. Using the amendment to RPC 8.4 proposed by the HDI Task Force as its starting point, the LEC's primary points of discussion were: what protected classes of individuals should be included in the new rule; what level of intent should be required (knowing or negligent); and, whether the new rule should reach a lawyer's conduct only in the course of representing a client or include conduct when representing the lawyer's own interests.

As to the question of what protected classes should be included in the rule, the LEC adopted the recommendations made by stakeholders, adding color, sex, gender identity, gender expression, and socioeconomic status to the list proposed by the HDI Task Force.<sup>1</sup>

There was significant debate around the issue of whether the level of intent required to violate the rule should be "knowing" or "negligent." The amendment proposed by the HDI Task Force included a "knowing" element; however, several LEC members expressed concern about the difficulty of proving that a lawyer "knowingly manifested" bias or prejudice. Moreover, civil rights laws do not require a showing of intent to prove discrimination. The LEC settled on what it feels is a compromise. The LEC's recommended rule requires a showing that the lawyer "knowingly engage in conduct" that manifests bias or prejudice, as opposed to "knowingly manifest" bias or prejudice. Accordingly, a violation would occur, for instance, when a lawyer knowingly makes a racial slur, regardless of whether the lawyer intended to manifest bias or prejudice by such conduct.

The LEC also struggled with whether the new rule should reach conduct "in the course of representing a client or the lawyer's own interests" or only conduct "in the course of representing a client." Some felt strongly that the rules of professional conduct should not be used to dictate a lawyer's personal conduct or to enforce laws that prohibit employment discrimination, and expressed concern that including "the lawyer's own interests" would open those doors. While mindful of those issues, others were concerned that omitting "the lawyer's own interests" would allow a lawyer to engage in offensive conduct in the course of pursuing his or her own personal legal matters. The LEC's recommended rule applies only "in the course of representing a client."

Overriding all discussions was the desire to ensure that some form of an amendment to RPC 8.4 be approved by the House of Delegates. Thus, while the proposed RPC 8.4 amendment may not be the preferred version for all, compromises were made by many in order create a rule that would demonstrate the bar's intolerance for conduct that manifests bias or prejudice, be enforceable, and be acceptable to the majority of the membership. The LEC acknowledges and is grateful for the stakeholders' contributions in developing and bringing this proposed amendment to the Board of Governors.

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<sup>1</sup> The addition of sex, gender identity and gender expression was based on the U.S. Department of Education Office for Civil Rights guidance relating to Title IX.

The LEC unanimously recommends the attached proposed amendment to RPC 8.4 be forwarded to the House of Delegates for approval and to the Oregon Supreme Court for final adoption thereafter.

## **Legal Ethics Committee Proposed Amendment to Oregon RPC 8.4**

### **RULE 8.4 MISCONDUCT**

(a) It is professional misconduct for a lawyer to:

(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;

(4) engage in conduct that is prejudicial to the administration of justice;

(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(7) in the course of representing a client, knowingly engage in conduct that manifests bias or prejudice based upon race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, disability or socioeconomic status.

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to 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. "Covert activity," as used in this rule, means an 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.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein, or from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16.

## **HDI Task Force Original Proposed Amendment of RPC 8.4**

### **RULE 8.4 MISCONDUCT**

(a) It is professional misconduct for a lawyer to:

- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
- (4) engage in conduct that is prejudicial to the administration of justice;
- (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (7) knowingly manifest by words or conduct, in the course of representing a client or the lawyer's own interests, bias or prejudice based upon race, religion, age, gender, sexual orientation, national origin, marital status, or disability.

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to 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. "Covert activity," as used in this rule, means an 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.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16, or from engaging in legitimate advocacy with respect to the bases set forth therein.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** July 3, 2013  
**From:** Helen M. Hirschbiel, General Counsel  
**Re:** ABA Commission on Ethics 20/20 Recommendations

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### Action Recommended

Consider the recommendation of the Legal Ethics Committee that the attached proposed amendments to Oregon RPC 1.0, 1.6, 1.18, 4.4, 5.3, and 7.3 be submitted to the House of Delegates for approval and to the Oregon Supreme Court for adoption thereafter.

### Background

At the recommendation of the ABA Commission on Ethics 20/20<sup>1</sup>, the ABA House of Delegates in August 2012 adopted several changes to the ABA Model Rules of Professional Conduct. The Legal Ethics Committee reviewed the Model Rule amendments and concluded that similar changes are appropriate for the Oregon RPCs. Most of the proposed amendments are relatively minor and do not change existing obligations. They fall into four categories:

#### Technology and Confidentiality

While advances in technology help lawyers provide more efficient and effective legal services, they can also present risks to clients' confidential information. The proposed amendments are intended to provide a reminder and guidance for lawyers regarding their ethical obligations to protect confidential information when using technology and to reflect the realities of the digital age.

##### Rule 1.0 Terminology

Paragraph (n) was amended to substitute "electronic communications" for "e-mail" in the definition of "writing" so that the rule accurately reflects the full range of ways in which lawyers communicate and memorialize understandings.

##### Rule 1.6 Confidentiality

A new paragraph was added requiring lawyers to "make reasonable efforts<sup>2</sup> to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." This duty is already recognized and described in several ethics

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<sup>1</sup> The ABA Commission on Ethics 20/20 was created in August 2009 to study how globalization and technology are transforming the practice of law and to assess how the ABA Model Rules of Professional Conduct and related ABA policies should be updated in light of 21<sup>st</sup> century realities in the practice of law.

<sup>2</sup> The rules necessarily provide only general guidance because, as noted by the ABA Commission, they are insufficiently nimble to address the constantly changing nature of technology and the regularly evolving security risks associated with that technology."

opinions<sup>3</sup>, but in light of the pervasive use of technology to store and transmit confidential client information, the LEC felt it important that the existing obligation be stated explicitly in the rule.

*Rule 4.4 Respect for Rights of Third Persons*

Paragraph (b) was amended to encompass inadvertently sent “electronically stored information” in addition to “document[s].” Again, while OSB Formal Ethics Op No 2011-187 concluded that the existing rule governs both paper documents as well as electronically stored information, for clarity purposes, the LEC wanted to state this explicitly.

**Technology and Client Development**

These changes were recommended to clarify application of the rules in the context of new electronic forms of marketing.

*Rule 1.18 Duties to Prospective Client*

The word “discusses” is replaced with the word “consults” to make clear that a prospective lawyer-client relationship can arise even when an oral discussion between a lawyer and client has not taken place. The amendment also allows for future new methods of communication between lawyers and the public.

*Rule 7.3 Solicitation of Clients*

The title and the text of the rule have been changed to refer to “solicitation of” rather than “direct contact with” clients. In addition, “prospective clients” are now called the “target of the solicitation.” These changes are intended to clarify that the rule governs only those communications that are targeted to a specific person for the purpose of soliciting business.

*Rule 5.3 Responsibilities Regarding Nonlawyer Assistants*

The Committee recommends that the title be amended to read “Assistance” rather than “Assistants” in order to clarify that the rule applies to lawyers’ use of nonlawyers both within and outside the firm.

**Conflicts of Interest When Moving Firms**

Increased mobility of lawyers has raised questions about the extent to which lawyers in different firms may disclose confidential information in order to detect conflicts that may arise if there is a move, merger, or sale of a law practice. The proposed amendment codifies what

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<sup>3</sup> See, e.g., OSB Formal Ethics Op No 2005-141 (lawyer must make reasonable efforts to ensure that recycling company’s conduct is compatible with lawyer’s obligation to protect client information); OSB Formal Ethics Op No 2005-188 (lawyer must take reasonable steps to ensure that electronic storage company will reliably secure client data and keep information confidential); OSB Formal Ethics Op No 2005-187 (lawyer must use reasonable care to avoid the disclosure of confidential client information).

has long been common practice and recognized in formal ethics opinions as essential, while carefully limiting the scope of disclosures, thereby ensuring greater protection for client confidences.

*Rule 1.6 Confidentiality of Information*

New language is added to the rule that allows a lawyer to reveal client information to detect and resolve conflicts arising from the lawyer's change of employment or a change in ownership or composition of a firm, but only if the disclosure will not compromise attorney-client privilege or otherwise prejudice the client.

Additional new language requires lawyers to make reasonable efforts to prevent inadvertent or unauthorized disclosure of or unauthorized access to information relating to the representation of a client.



## RULE 1.0 TERMINOLOGY

\* \* \*

(q) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostatting, photography, audio or videorecording, and [*e-mail*] **electronic communications**. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## RULE 1.6 CONFIDENTIALITY

\* \* \*

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

\* \* \*

(7) **to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or**

\* \* \*

**(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

## RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who [*discusses*] **consults** with a lawyer **about** the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has [*had discussions with*] **learned information from** a prospective client shall not use or reveal **that** information [*learned in the consultation*], except as Rule 1.9 would permit with respect to information of a former client.

## Rule 4.4 Respect for the Rights of Third Persons; INADVERTENTLY SENT DOCUMENTS

\* \* \*

(b) A lawyer who receives a document **or electronically stored information** relating to the representation of the lawyer's client and knows or reasonably should know that the document **or electronically stored information** was inadvertently sent shall promptly notify the sender.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER [ASSISTANTS] ASSISTANCE

RULE 7.3 [DIRECT CONTACT WITH PROSPECTIVE] SOLICITATION OF CLIENTS

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

(1) is a lawyer; or

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

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

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

(2) the [prospective client] **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.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from [a prospective client] **anyone** 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).

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** June 26, 2013  
**From:** Helen M. Hirschbiel, General Counsel  
**Re:** Amendments to Oregon RPC 2.4 and 2.12

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### Action Recommended

Consider the recommendation of the Legal Ethic Committee that the attached proposed amendments to Oregon RPC 2.4 and RPC 1.12 be submitted to the House of Delegates for approval and to the Oregon Supreme Court for adoption thereafter.

### Background

The proposed amendments to Oregon RPC 2.4 and RPC 1.12 are intended to clarify their relationship to one another and resolve their inconsistent mandates to lawyers who served as a mediator or whose colleague in the lawyer's firm served as a mediator in a matter.

Oregon RPC 2.4(c) allows one lawyer in a firm to represent a party to a mediation even if another member of the firm is or has served as a mediator in the matter, provided all parties to the mediation give their informed consent to the representation:

#### Rule 2.4 Lawyer Serving as Mediator

##### (a) A lawyer serving as a mediator:

- (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
- (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.

##### (b) A lawyer serving as a mediator:

- (1) may prepare documents that memorialize and implement the agreement reached in mediation;
- (2) shall recommend that each party seek independent legal advice before executing the documents; and
- (3) with the consent of all parties, may record or may file the documents in court.

*(c) Notwithstanding Rule 1.10, when a lawyer is serving or has served as a mediator in a matter, a member of the lawyer's firm may accept or continue the representation of a party in the matter in mediation or in a related matter if all parties to the mediation give informed consent, confirmed in writing.*

(d) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.

By contrast, RPC 1.12(c) applies only to situations where a lawyer has previously mediated a matter, and permits any other lawyer in the firm to continue or undertake

representation “in the matter” provided the mediator is screened and the parties and tribunal are given prompt written notice:

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in Rule 2.4(b) and in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) *If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:*

*(1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and*

*(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.*

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment [3] elaborates:

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

## History of the Rules

The inconsistency between RPC 2.4 and 1.12 was not noticed until brought to General Counsel’s attention by a practitioner who wasn’t sure how to proceed in order to represent a client when another lawyer in his firm had previously mediated for the parties in the same or a related matter. The Legal Ethics Committee studied the history of Oregon RPC 2.4 and RPC 1.12 and determined that the inconsistency between the two rules was unintended. Oregon RPC 2.4 was previously codified as DR 5-106. It was initially adopted in 1986, pretty much “out of whole cloth.” It had no ABA Model Rule counterpart. The rule was amended in 1991, 1998 and again in 2000 to correct, clarify or adjust it as the practice developed.

In 2002, the ABA adopted MR 2.4:

Rule 2.4 Lawyer Serving As Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

When the Oregon RPCs were adopted in 2005, the language of *former* DR 5-106 was retained in RPC 2.4 with only minor conforming changes. This was done in large part because the drafting committee wanted to retain rules unique to Oregon and particularly those that had undergone recent review and analysis. The 2000 amendments to *former* DR 5-106 were the result of a comprehensive study by a group of mediators chaired by Judge Kristena LaMar.

Oregon RPC 1.12, on the other hand, was adopted verbatim from the Model Rules; prior to 2005, Oregon had no rule like MR 1.12. The one difference from the Model Rule is the reference to Rule 2.4(b) in RPC 1.12(a). For clarity, the Committee recommends changing the placement of the reference to Rule 2.4(b).

While unintended, the discord between RPC 2.4(c) and 1.12(c) creates uncertainty for practitioners. At the very least, the written notice provision of RPC 1.12(c) is redundant, given the informed consent requirement of RPC 2.4. More important, perhaps, the informed consent requirement of RPC 2.4 is unnecessarily burdensome. It elevates the rights of mediating parties to those of clients for reasons that are not at all clear. If a firm has previously represented a client, there is an obvious justification for requiring (under RPC 1.9) the former client's informed consent if the firm undertakes to represent a new client with adverse interests in a related matter. There is, however, no similar justification for giving a mediating party the same level of veto power over the firm's subsequent representation of clients.

### **Proposed Solution**

After considering a number of different approaches to resolving the conflict, the Legal Ethics Committee opted for the simple approach, which is to simply delete RPC 2.4(c), leaving the rest of the rule intact. The most compelling argument for deleting RPC 2.4(c) is that it is illogical to apply a higher standard to mediators than is applied to other third-party neutrals. Arbitrators, judges, adjudicative officers, law clerks and other neutrals have access to sensitive and sometimes confidential information. RPC 1.12 allows imputed conflicts in those situations to be resolved by screening the neutral and giving notice to affected parties. Under Oregon's unique RPC 2.4, mediator conflicts are elevated to another level.

Concerns about a mediator's duty of confidentiality are adequately addressed by RPC 1.12. Screening ensures that the mediator does not overstep his or her mediator role, and the notice requirement affords concerned parties an opportunity to challenge the other firm

member's participation. Finally, possible conflicts in representing a client who is a party to a matter currently being mediated by a firm member are clearly covered by RPC 1.7(a)(2).

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d) and in Rule 2.4(b) ~~and in paragraph (d)~~, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

- (1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and
- (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### RULE 2.4 LAWYER SERVING AS MEDIATOR

(a) A lawyer serving as a mediator:

- (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
- (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.

(b) A lawyer serving as a mediator:

- (1) may prepare documents that memorialize and implement the agreement reached in mediation;
- (2) shall recommend that each party seek independent legal advice before executing the documents; and
- (3) with the consent of all parties, may record or may file the documents in court.

~~(c) Notwithstanding Rule 1.10, when a lawyer is serving or has served as a mediator in a matter, a member of the lawyer's firm may accept or continue the representation of a party in the matter in mediation or in a related matter if all parties to the mediation give informed consent, confirmed in writing.~~

(c) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.



# OREGON STATE BAR

## BOG Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** July 1, 2013  
**From:** John S. Gleason, Disciplinary Counsel, Ext. 319  
**Re:** Proposed Administrative Suspension Rule: Failing to Respond to a Discipline Investigations

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### Action Recommended

Review amendments to Titles 1, 2, 7, 8, and 12 of the Bar Rules of Procedure ("BRs") for adoption and subsequent filing with the Oregon Supreme Court.

### Discussion

A proposed rule change to establish an administrative suspension for failing to respond to a discipline investigation is before the BOG. The proposed rule addresses the increasing problems related to lawyers who choose not to respond to requests or subpoenas. Typically this is a lawyer experiencing serious professional or personal problems. The lawyer continues to practice while ignoring one or more pending discipline matters. The administrative suspension would remove the lawyer from practice until such time as they respond to inquiries or state a good faith basis for not responding. Upon participating in the investigation, the lawyer is immediately returned to active status. Many states have similar rules. The expectation is that by eliminating the lawyer's ability to practice, the number of clients harmed is reduced and the number of PLF and client security claims is reduced.

The proposed rule is supported by the SPRB and by lawyers who represent lawyers in the discipline system.

Attached, in a red-line format, are the proposed amendments.

ORS 9.542 provides that the Board of Governors may adopt rules of procedure, subject to the approval of the Supreme Court.

JSG

July 1, 2013

**Rule 1.8 Service Methods.**

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on an accused, ~~or applicant, or attorney~~ shall be

(1) sent to the accused, ~~or applicant, or attorney~~, or his or her attorney if the accused, ~~or applicant, or attorney~~ is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

(2) served on the accused, ~~or applicant, or attorney~~ by personal or office service as provided in ORCP 7D(2)(a)-(c).

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or served by personal or office service as provided in ORCP 7D(2)(a)-(c).

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or by personal or office service as provided in ORCP 7D(2)(a)-(c).

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

*(Rule 1.8 amended by Order dated June 30, 1987.)*

*(Rule 1.8(a) amended by Order dated February 23, 1988.)*

*(Rule 1.8(a), (b) and (c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.8(d) amended by Order dated April 26, 2007.)*

#### **Rule 2.4 Disciplinary Board.**

(a) Composition. A disciplinary board shall be appointed by the Supreme Court. The Disciplinary Board shall consist of a state chairperson, 7 regional chairpersons, and 6 additional members for each Board region except for Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board shall be resident attorneys admitted to practice in Oregon at least 3 years. Except for the state chairperson who shall be an at-large appointee, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of 2 attorneys and 1 public member, except as provided in BR 2.4(f)(3). The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.

(b) Term.

(1) Disciplinary Board members shall serve terms of 3 years and may be reappointed. State and regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the Supreme Court.

(2) Notwithstanding BR 2.4(a), the powers, jurisdiction and authority of Disciplinary Board members shall continue beyond the expiration of their appointment or after their relocation to another region for the time required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the Supreme Court. The state chairperson and the regional chairpersons shall serve until a replacement appointment has been made by the Supreme Court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor who shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct shall apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board, the SPRB, or an LPRC shall not serve on the Disciplinary Board during the member's term of office. This disqualification shall also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board, the SPRB or an LPRC.

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to subject matter considered by the Board, the SPRB or an LPRC while a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board, the SPRB or an LPRC.

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until the charges filed against the member have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B) which admonition is thereafter refused by the attorney, authorization by the SPRB to notify the Supreme Court of a criminal conviction pursuant to BR 3.4(a), and authorization by the SPRB to notify the Supreme Court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of State Chairperson.

- (1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board, including the monitoring of timely preparation and filing of trial panel opinions.
- (2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.
- (3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings.
- (4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.
- (5) The state chairperson shall appoint a member of the Disciplinary Board to conduct pre-hearing conferences as provided in BR 4.6.
- (6) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels or to conduct pre-hearing conferences as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.
- (7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.
- (8) In matters involving the filing of a petition for suspension pursuant to BR 7.1, the state chairperson shall promptly review the petition for immediate suspension, the attorney's response, if any, and any reply from Disciplinary Counsel. Upon such review the state chairperson shall promptly issue an order pursuant to BR 7.1(d).

(f) Duties of Regional Chairperson.

- (1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.
  - (2) Except as provided in BR 2.4(e)(3), the regional chairperson shall rule on all challenges to the qualifications of members of the trial panels in his or her region under BR 2.4(g).
  - (3) Upon the stipulation of the Bar and an accused, the regional chairperson shall appoint one attorney member from the regional panel to serve as the sole adjudicator in a disciplinary proceeding. In such case, the member appointed shall have the same duties and authority under these rules as a three member trial panel.
  - (4) The regional chairperson may serve on trial panels during his or her term of office.
  - (5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.
- (g) Challenges. The Bar and an accused or applicant shall be entitled to one peremptory challenge and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules. Any such challenges shall be filed in writing within seven days of written notice of an appointment of a trial panel with the Disciplinary Board Clerk, with copies to the regional chairperson for disciplinary proceedings or to the state chairperson for contested reinstatement proceedings or for challenges to a regional chairperson. Challenges for cause shall state the reason for the challenge. The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, and the regional chairperson or the state chairperson, as the case may be, shall serve copies of the ruling on all parties. These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall

have more than 1 peremptory challenge. The Bar and an accused or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson may convene the parties or their counsel prior to the hearing to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The trial panel chairperson may thereafter issue an order regarding agreements or rulings made at such pre-hearing meeting. The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.

(i) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2)

(A) Opinions. The trial panel shall render a written opinion signed by the concurring members of the trial panel. A dissenting member shall note the dissent and may file a dissenting opinion attached to the majority opinion of the trial panel. The majority opinion shall include specific findings of fact, conclusions and a disposition. The trial panel chairperson shall file the original opinion with the Disciplinary Board Clerk, and serve copies on the parties and the State Court Administrator. It shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the trial panel chairperson pursuant to BR 4.8, whichever is later.

(B) Extensions of Time to File Opinions. If additional time is required by the trial panel to render its opinion, the trial panel chairperson may file a request for an extension of time with the Disciplinary Board Clerk and serve a copy on the state chairperson prior to the expiration of the applicable 28 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request. The state chairperson shall file a written decision on the extension request with the Disciplinary Board Clerk and shall serve copies on all parties.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with the Disciplinary Board Clerk.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the opinion from the trial panel.

(j) Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. The reporter service shall be distributed to all state and county law libraries and members of the Disciplinary Board.

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court contested admission, contested reinstatement and disciplinary decisions and summaries of all Disciplinary Board decisions not reviewed by the Supreme Court.

*(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, nun pro tunc.)*

*(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)*

*(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)*

*(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)*

*(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)*

*(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)*  
*(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*  
*(Rule 2.4(i)(3) amended by Order dated March 20, 1990, effective April 2, 1990.)*  
*(Rule 2.4(a) amended by Order dated January 10, 1991.)*  
*(Rule 2.4(d), (e) and (i) amended by Order dated July 22, 1991.)*  
*(Rule 2.4(b) amended by Order dated December 22, 1992.)*  
*(Rule 2.4(a), (e) and (f) amended by Order dated December 13, 1993.)*  
*(Rule 2.4(i)(3) amended by Order dated June 5, 1997, effective July 1, 1997.)*  
*(Rule 2.4 (a) amended by Order dated July 10, 1998.)*  
*(Rule 2.4(e), (f), (g), (h), (i) and (j) amended by Order dated February 5, 2001.)*  
*(Rule 2.4(b)(2) and (i)(2)(a) and (b) amended by Order dated June 28, 2001.)*  
*(Rule 2.4(b)(1) and (2); (e)(4); (f)(1); (g); (h); and (i)(2)(a) and (b), (3) and (4) amended by Order dated June 17, 2003, effective July 1, 2003.)*  
*(Rule 2.4(d)(3) added by Order dated January 21, 2005.)*  
*(Rule 2.4(b)(2) amended by Order dated April 26, 2007.)*  
*(Rule 2.4(g) and 2.4(h) amended by Order dated October 19, 2009.)*  
*(Rule 2.4(a) amended by Order dated August 23, 2010, effective January 1, 2011.)*

## Rule 2.6 Investigations

### (a) Review by Disciplinary Counsel.

(1) For disciplinary complaints referred to Disciplinary Counsel by the client assistance office pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the complaint, mail a copy of said complaint to the attorney, if the client assistance office has not already done so, and notify the attorney that he or she must respond to the complaint in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the complaint if he or she provided a response to the client assistance office and is notified by Disciplinary Counsel that further information from the attorney is not necessary.

(2) If the attorney fails to respond to Disciplinary Counsel or to provide records requested by Disciplinary Counsel within the time allowed, or fails to comply with a subpoena issued pursuant to BR 2.3(b)(3)(C) or BR 2.3(b)(3)(E), Disciplinary Counsel may file a petition with the Disciplinary Board to suspend the attorney from the practice of law, pursuant to the procedure set forth in BR 7.1. Notwithstanding the filing of a petition under this rule, Disciplinary Counsel may investigate the complaint or refer the complaint to an appropriate LPRC within 14 days of the time set for the response. The pursuant to the procedure set forth in BR 2.3(a) shall be followed. Disciplinary Counsel shall inform the complainant and the attorney in writing of this action.

\* \* \* \*

*(Rule 2.6 amended and 2.6(g)(3) added by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.6 amended by Order dated December 8, 2003, effective January 1, 2004.)*

*(Rule 2.6(g)(1) amended by Order dated March 20, 2008.)*

*(Rule 2.6(f)(2) amended by Order dated October 19, 2009.)*

**Title 7 — ~~{Reserved for expansion}~~ Suspension for Failure to Respond in a Disciplinary Investigation**

**Rule 7.1 Suspension for Failure to Respond or to Comply with Subpoena.**

- (a) Petition for Suspension.** When an attorney fails without good cause to timely respond to a request from Disciplinary Counsel or the LPRC for information or records, or fails to comply with a subpoena issued pursuant to BR 2.3(a)(3), BR 2.3(b)(3)(C), or BR 2.3(b)(3)(E), Disciplinary Counsel may petition the Disciplinary Board for an order immediately suspending the attorney until such time as the attorney responds to the request or complies with the subpoena. A petition under this rule shall allege that the attorney has not responded to requests for information or records or has not complied with a subpoena, and has not asserted a good-faith objection to responding or complying. The petition shall be supported by a declaration setting forth the efforts undertaken by Disciplinary Counsel or the LPRC to obtain the attorney's response or compliance.
- (b) Procedure.** Disciplinary Counsel shall file a petition under this rule with the Disciplinary Board Clerk, with proof of service on the state chairperson, who shall have the authority to act on the matter for the Disciplinary Board. A copy of the petition and declaration shall be served on the attorney as set forth in BR 1.8(a).
- (c) Response.** Within 7 business days after service of the petition, the attorney may file a response setting forth facts showing that the attorney has responded to the requests or complied with the subpoena or the reasons why the attorney has not responded or complied. The attorney shall serve a copy of the answer upon Disciplinary Counsel pursuant to BR 1.8(b). Disciplinary Counsel may file a reply to any response within 2 business days after being served with a copy of the attorney's response. The response and reply shall be filed with the Disciplinary Board Clerk, with proof of service on the state chairperson.
- (d) Review by the Disciplinary Board.** Upon review, the Disciplinary Board state chairperson shall: issue an order: immediately suspending the attorney from the practice of law for an indefinite period; or denying the petition. The state chairperson shall file the order with the Disciplinary Board Clerk, who shall promptly send a copy to Disciplinary Counsel and the attorney.
- (e) Duties upon Suspension.** An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).
- (f) Independent Charges.** Suspension of an attorney under this rule is not discipline. Suspension or reinstatement under this rule shall not bar the SPRB from causing disciplinary charges to be filed against an attorney for violation of RPC 8.1(a)(2) arising



from the failure to respond or comply as alleged in the petition for suspension filed under this rule.

(g) **Reinstatement.** Subject to the provisions of BR 8.1(a)(viii) and BR 8.2(a)(v), any person who has been a member of the Bar but suspended under Rule 7.1 solely for failure to respond to requests for information or records or to comply with a subpoena shall be reinstated by the Executive Director to the membership status from which the person was suspended upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.10.

*-(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987. Rule 7.1 amended by Order dated October 1, 1990. Title 7 amended by Order dated July 22, 1991.)*

*(Rule 7.1 deleted by Order dated October 19, 2009.)*

## 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; or

(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; or

(v) been suspended under BR 7.1 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.

\* \* \* \*

*(Rule 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)*

*(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.2 (a) and (b) amended by Order dated March 20, 1990, effective April 2, 1990.)*

*(Rule 8.2(a) amended by Order dated December 28, 1993.)*

*(Rule 8.2(a) amended by Order dated December 14, 1995.)*

*(Rule 8.2 amended by Order dated December 9, 2004, effective January 1, 2005.)*

*(Rule 8.2(d)(iii) amended by Order dated April 26, 2007.)*

*(Rule 8.2(c) and 8.2(d) amended by Order dated October 19, 2009.)*

*(Rule 8.2(a)(iv) added by Order dated June 6, 2012.)*

**Rule 12.10 Compliance Affidavit.**

A compliance affidavit filed under BR 7.1(g) shall be in substantially the following form:

**COMPLIANCE AFFIDAVIT**

In re: Reinstatement of

\_\_\_\_\_  
(Name of Attorney) (Bar Number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

2. Residence address \_\_\_\_\_ Telephone \_\_\_\_\_

3. I hereby attest that during my period of suspension from the practice of law from  
\_\_\_\_\_ to \_\_\_\_\_, (insert dates),

☐ I did not at any time engage in the practice of law except where authorized to do so.

or

☐ I engaged in the practice of law under the circumstances described on the attached  
[attach an explanation of activities relating to the practice of law during suspension].

4. I hereby attest that I have responded to the requests for information or records by  
Disciplinary Counsel or the Local Professional Responsibility Committee and have complied with  
any subpoenas issued by Disciplinary Counsel or the Local Professional Responsibility  
Committee, or provided good cause for not complying to the request.

\_\_\_\_\_  
I, \_\_\_\_\_, the undersigned, being first duly sworn, depose and say  
that the above answers are true and correct as I verily believe.

(Name)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Public in and for  
the State of Oregon  
My Commission Expires: \_\_\_\_\_

**AMERICAN BAR ASSOCIATION**  
**COMMISSION ON HOMELESSNESS & POVERTY**  
**SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES**  
**CENTER ON HUMAN RIGHTS**  
**FORUM ON AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT LAW**  
**COMMISSION ON DISABILITY RIGHTS**  
**COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY**  
**COMMISSION ON YOUTH AT RISK**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

RESOLVED, That the American Bar Association urges governments to promote the human right to adequate housing for all through increased funding, development and implementation of affordable housing strategies and to prevent infringement of that right.

~~RESOLVED, That the American Bar Association, consistent with its prior endorsement of relevant international instruments, calls upon urges federal, state, local, tribal, and territorial governments to progressively:~~

~~(1) Implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, which, at minimum, includes:~~

~~a. Affordability, habitability, and accessibility;~~

~~b. Provision of security of tenure, access to services, materials, facilities, and infrastructure;~~

~~c. Location proximate to employment, health care, schools, and other social facilities;~~

~~d. Provision of housing in areas that do not threaten occupants' health; and~~

~~e. Protection of cultural identity or diversity;~~

~~(2) Take immediate steps to respect, protect, and fulfill the right to adequate housing and other human rights through measures guaranteeing the availability of affordable, accessible housing to all who require it;~~

~~(3) Recognize that homelessness is a prima facie violation of the right to housing, and to examine the fiscal benefits of implementation of the right to housing as~~

20 compared to the costly perpetuation of homelessness;

21  
22 ~~FURTHER RESOLVED, That the American Bar Association urges the federal~~  
23 ~~government to lead by example through increased its efforts to support and develop the~~  
24 ~~right to housing domestically and at the international level. These efforts include:~~

- 25 ~~a.—Prioritizing funding for housing when making federal budgetary decisions;~~
- 26 ~~b.—Assessing the impact new federal legislation and regulatory decisions will~~  
27 ~~have on the right to housing;~~
- 28 ~~c.—Urging every state, locality, and territory to develop comprehensive affordable~~  
29 ~~housing strategies;~~
- 30 ~~d.—Developing mandates or incentives for housing developers and financial~~  
31 ~~institutions to ensure the right to housing as a priority;~~
- 32 ~~e.—Prohibiting state and local governments, territories, government-owned~~  
33 ~~entities, and substantially government-related entities from violating the right~~  
34 ~~to adequate housing;~~
- 35 ~~f.—Requiring governments and organizations to prevent or mitigate any~~  
36 ~~infringement upon the right to adequate housing;~~
- 37 ~~g.—Leading a shift in discussion of housing services from providing charity to~~  
38 ~~supporting victims of human rights violations;~~
- 39 ~~h.—Reviewing policies that govern the cost of housing to ensure costs do not~~  
40 ~~interfere with a person’s ability to enjoy other human rights such as the right~~  
41 ~~to adequate food or health; and~~
- 42 ~~i.—Supporting the adoption of resolutions, treaties, and other international~~  
43 ~~principles further establishing and promoting the right to housing at the~~  
44 ~~international and regional level and committing to their implementation~~  
45 ~~domestically.~~

46  
47 ~~FURTHER RESOLVED, That copies of this resolution be forwarded by the Secretary of~~  
48 ~~the Association to the President of the United States, the Secretary of State, the Secretary~~  
49 ~~of Housing & Urban Development, the Attorney General, the Senate and House Majority~~  
50 ~~and Minority Leaders, and the members of the House and Senate Committees and~~  
51 ~~Subcommittees responsible for housing policy.~~

## **REPORT**

One of the four goals listed alongside the ABA's mission statement is to Advance the Rule of Law, which includes objectives to hold governments accountable and work for just laws and human rights.<sup>1</sup> The Universal Declaration of Human Rights lists the right to adequate housing as a necessary component of the right to a standard of living that supports one's health and well-being.<sup>2</sup>

Coming out of the Depression, and heading into World War II, President Franklin Roosevelt set out four freedoms essential for world peace in his 1941 State of the Union address: freedom of speech, freedom of religion, freedom from want, and freedom from fear.<sup>3</sup> In his 1944 State of the Union address, President Roosevelt took another bold step, declaring that the United States had accepted a "second Bill of Rights," including the right of every American to a decent home.<sup>4</sup> The U.S. then led the U.N. in drafting and adopting the Universal Declaration on Human Rights, placing civil, political, economic, social, and cultural rights, including the right to adequate housing, on equal footing.<sup>5</sup> The U.S. signed the International Covenant on Economic, Social & Cultural Rights in 1977, which codifies the right to housing. Indeed, the ABA endorsed its ratification in 1979, making the human right to housing part of ABA policy for the past 34 years.<sup>6</sup>

In responding to a U.N. report on the right to housing in the U.S., the State Department in 2010 emphasized that the U.S., has made a "political commitment to a human right related to housing in the Universal Declaration on Human Rights."<sup>7</sup>

### **The Right to Housing Should be Progressively Realized**

Despite recognition of the human right to housing, implementation has not yet occurred. This resolution, as a whole, provides a framework for progressive realization of that right. As such, implementing the human right to housing would not require the government to immediately build a home for each person in America or to provide housing for all free of

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<sup>1</sup> American Bar Association, *ABA Mission and Goals* (last visited Nov. 1, 2012), [http://www.americanbar.org/utility/about\\_the\\_aba/aba-mission-goals.html](http://www.americanbar.org/utility/about_the_aba/aba-mission-goals.html).

<sup>2</sup> Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt. 1, art. 25(1), U.N. Doc. A/810 (1948).

<sup>3</sup> Franklin D. Roosevelt, State of the Union Message to Congress (January 6, 1941).

<sup>4</sup> Franklin D. Roosevelt, State of the Union Message to Congress (January 11, 1944).

<sup>5</sup> See National Law Center on Homelessness & Poverty, *Simply Unacceptable: Homelessness & the Human Right to Housing in the United States 2011*, 16 (2011) [hereinafter "*Simply Unacceptable*"].

<sup>6</sup> See International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976); ABA House Report 690 MY 1979.

<sup>7</sup> Interactive Dialogue following the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/13/20/Add 4 and A/HRC/13/20.

charge overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.<sup>8</sup>

This resolution calls on the U.S. government at all levels to more fully implement the right to housing as a legal commitment. Asserting housing as a human right will create a common goal and a clear framework to:

- a. Help government agencies set priorities to implement the right to housing
- b. Provide support for advocacy groups
- c. Create pressure to end policies which fail to guarantee human rights
- d. Allow us to focus on *how* to solve the problem rather than worrying about whether the U.S. government has a *duty* to solve the problem

### **U.S. Policy Supports the Implementation of the Human Right to Housing Domestically**

Our nation was founded on the principles of the self-evident, unalienable rights to life, liberty and the pursuit of happiness.<sup>9</sup> Yet today, lack of shelter and affordable housing has forced members of our society to live their daily lives in ways that threaten their dignity and sense of worth as a human being as well as their health and safety, contrary those founding principles.

The U.S. commitment to the human right to housing was reaffirmed in its signature to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977. The ICESCR was submitted to the Senate for ratification in late 1978, with an ABA resolution endorsing ratification in early 1979.<sup>10</sup> The ICESCR codifies the right to housing in Article 11, which states, “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing... The States Parties will take appropriate steps to ensure the realization of this right.”<sup>11</sup> Although the Senate has yet to ratify the treaty, law professor David Weissbrodt notes signing a covenant indicates that “the United States accepts the responsibility to refrain from acts calculated to frustrate the

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<sup>8</sup> *Simply Unacceptable*, *supra* note 5, at 8.

<sup>9</sup> The Declaration of Independence, para. 1 (U.S. 1776).

<sup>10</sup> ABA House Report 690 MY 1979.

<sup>11</sup> See International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976).

objects of the treaty.”<sup>12</sup> The U.S. has also already ratified the International Covenant on Civil and Political Rights and the International Covenant on the Elimination of All Forms of Racial Discrimination (both with endorsement from the ABA), both of which recognize the right to be free from discrimination, including in housing.<sup>13</sup>

On the 70<sup>th</sup> Anniversary of President Roosevelt’s “Four Freedoms” speech, in a presentation to the American Society of International Law, Assistant Secretary of State for Democracy, Human Rights, and Labor Michael Posner stated, “there are many ways to think about what should or should not count as a human right. Perhaps the simplest and most compelling is that human rights reflect what a person needs in order to live a meaningful and dignified existence.”<sup>14</sup>

Posner’s speech reflects the increasing importance the Obama Administration has placed on economic and social human rights such as the right to adequate housing. In March 2011, the U.S. acknowledged for the first time that rising homelessness implicates its human rights obligations, and made commitments to the United Nations (U.N.) Human Rights Council to “reduce homelessness,” “reinforce safeguards to protect the rights” of homeless people, and to continue efforts to ensure access to affordable housing for all.<sup>15</sup> In May 2012, the Department of Justice and U.S. Interagency Council on Homelessness issued a joint report recognizing that criminalization of homelessness may not only violate our Constitution, but also the U.S.’s treaty obligations under the International Covenant on Civil & Political Rights, and the Convention Against Torture.<sup>16</sup> The Administration has frequently welcomed both the international community’s input and its obligation to lead by example. The U.S. seems more willing than ever to hold itself to high international standards, and even acknowledge that it may sometimes fall short.

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<sup>12</sup> David Weissbrodt, “United States Ratification of the Human Rights Covenants,” Minn. L. Rev. 63:35 at n. 63, 43, (November 1978), citing Vienna Convention on the Law of Treaties, art. 18, UN Doc. A/Conf. 39/27 (1969).

<sup>13</sup> U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (Article 2(1)); U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (Article 5(e)(i)). *See also*, ABA House Report 700 MY 1979; ABA House Report 921 AM 1978.

<sup>14</sup> The Four Freedoms turn 70, Michael H. Posner, Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law, March 24, 2011.

<sup>15</sup> Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/16/11/Add.1, ¶ 19 (Mar. 8, 2011).

<sup>16</sup> Interagency Council on Homelessness, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 8 (2012) (USICH and the Access to Justice Initiative of the U.S. Dep’t of Justice, with support from the Department of Housing and Urban Development, convened a summit to gather information for this report).



Moreover, the international community has increasingly taken note of America's failure to uphold the right to housing. In 2006, the UN Human Rights Committee expressed concern about the disparate racial impact of homelessness in the U.S. and called for "adequate and adequately implemented policies, to ensure the cessation of this form of racial discrimination."<sup>17</sup> In 2008, the UN Committee on the Elimination of Racial Discrimination again recognized racial disparities in housing and ongoing segregation in the U.S.<sup>18</sup> Since then, numerous U.N. experts, on official missions to the U.S., have addressed U.S. violations of the human right to housing and related rights.<sup>19</sup>

### **The Legal Community has an Important Role to Play in Implementing the Human Right to Housing**

Despite the nation's commitment to human rights ideals, its practices have often fallen short. Families continue to face foreclosures, many as a result of predatory lending practices, but even as homes without families multiply, families without homes cannot access them. Many tenants pay more than 50% of their income toward rent, putting them one paycheck away from homelessness. Without a right to counsel in housing cases, renters must often choose between pushing for basic repairs or facing unjust eviction. When widespread poverty goes unattended, despite the sufficiency of a country's resources, "respect for legal institutions will ultimately be undermined."<sup>20</sup> The legal community has a duty to provide these families with justice, yet we can only do so much in the nation's current legal environment. In this instance, access to justice requires us to advocate for change. That advocacy comes in the form of this resolution, calling upon our government at all levels to implement the human right to housing as a necessary component of ensuring the basic human dignity of every individual.

### **Implementing the human right to adequate housing**

**In implementing the human right to adequate housing, the American Bar Association calls upon federal, state, local, tribal, and territorial governments to**

- (1) Implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, which, at minimum, includes:**

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<sup>17</sup> Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3 (2006), at para. 22.

<sup>18</sup> Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/6 (2008), at para. 9.

<sup>19</sup> See *Simply Unacceptable*, *supra* note 5, at 24-5.

<sup>20</sup> ABA Annual meeting, 1986 at 789.

- a. Affordability, habitability, and accessibility;**
- b. Provision of security of tenure, access to services, materials, facilities, and infrastructure;**
- c. Location proximate to employment, health care, schools, and other social facilities;**
- d. Provision of housing in areas that do not threaten occupants' health; and**
- e. Protection of cultural identity or diversity**

The Committee on Economic, Social and Cultural Rights (CESCR), which oversees implementation of the ICESCR, lists seven elements required for housing to be considered adequate including legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location near employment options, healthcare facilities, schools, child care centers, and other social facilities; and cultural adequacy in housing design.<sup>21</sup> This framework recognizes that each of these elements is interdependent with each other. Adequate housing requires more than four walls and a roof; it requires adequate community resources, supportive legal and policy frameworks, effective access to justice, and a participatory and transparent democratic system to maintain all aspects of the right. It also recognizes that enjoyment of the right to housing is a standard relative to the availability of resources in a given country; here in the U.S., in what remains the wealthiest country in the world, we can and must do more.<sup>22</sup>

In 2010, there were over 10 million very low-income renters and only 4.5 million affordable rental units, 40% of which were occupied by higher-income renters.<sup>23</sup> This lack of availability forced approximately 22 percent of the 36.9 million rental household in the United States to spend more than half of their income on housing.<sup>24</sup> Not only is affordable housing in short supply, but affordable units are often inadequate in other ways based on the CESCR definition. Underfunding for public housing leaves many affordable units in disrepair and lack of meaningful enforcement – including lack of access to legal counsel – has rendered housing codes ineffective, making these units uninhabitable.<sup>25</sup> In urban areas, poor, minority areas have poorer access to basic services, including hospitals.<sup>26</sup> In rural, impoverished areas, access to infrastructure allowing for

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<sup>21</sup> General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

<sup>22</sup> See National Law Center on Homelessness & Poverty, *Human Right to Housing Report Card* (2012).

<sup>23</sup> John Griffith, Julia Gordon & David Sanchez, Center for American Progress, *It's Time to Talk About Housing 7* (August 15, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> *Simply Unacceptable*, *supra* note 5, at 9, 74-79.

<sup>26</sup> *Id.*

basic water and sanitation is limited or unavailable.<sup>27</sup> In suburbs and ex-urban communities, zoning restrictions have prevented construction of (and in some cases, removed) affordable housing.<sup>28</sup> In all areas, the high cost of housing often forces individuals to endure these housing inadequacies, live in overcrowded spaces, and live in areas with failing schools, high crime rates, and increased exposure to environmental pollutants.<sup>29</sup>

Even where needy applicants are able to obtain housing assistance or access affordable housing, they face discrimination in the private housing market on the basis of race, disability, gender, sexual orientation, source of income, criminal background, or other status. Despite some strong de jure protections: over 27,000 complaints were registered in 2011 with housing protection agencies, and many more go unreported.<sup>30</sup> Although this number has decreased slightly since 2009, more work needs to be done to ensure equal access to housing resources. This includes ensuring availability of various types of home and community based support services that enable individuals and families to live independently as long as possible. Additionally, as was seen following Hurricanes Katrina and Sandy, many traditionally marginalized groups feel a disparate impact during natural disasters, and the right to adequate housing must be ensured appropriately in the post-disaster context as well.<sup>31</sup>

The U.S. has a strong tradition of promoting affordable, accessible housing, but programs have been under-funded and under-implemented. Moreover, while the human rights framework demands progressive implementation of the right to housing, and prohibits retrogressive policies, over the past 30 years there has been a significant disinvestment in public and subsidized housing at the federal level.<sup>32</sup> Recent years have seen innovations such as the Rental Assistance Demonstration and Choice Neighborhoods Initiative, which attempt to “do more with less” while preserving important rights and protections for low-income residents, but these programs still fail to meet the need in communities.<sup>33</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> See, e.g. Benjamin Harney, *The Economics of Exclusionary Zoning and Affordable Housing*, 38 *Stetson L. Rev.* 459 (2009); John Hasse, John Reiser & Alexander Pichacz, *Evidence of Persistent Exclusionary Effects of Land Use Policy within Historic and Projected Development Patterns in New Jersey: A Case Study of Monmouth and Somerset Counties*, Rowan University (2011).

<sup>29</sup> *Simply Unacceptable*, *supra* note 5, 51-61

<sup>30</sup> National Fair Housing Alliance, *Fair Housing in a Changing Nation – 2012 Fair Housing Trends Report* (April 30, 2012).

<sup>31</sup> See, e.g. Advisory Group on Forced Evictions, *Mission Report to New Orleans*, (2010).

<sup>32</sup> Western Regional Advocacy Project, *Without Housing 2010 update* (2010), [http://www.wraphome.org/pages/index.php?option=com\\_content&id=376](http://www.wraphome.org/pages/index.php?option=com_content&id=376); National Low Income Housing Coalition, *Changing Priorities: The Federal Budget and Housing Assistance 1976-2007* (2002), <http://nlihc.org/sites/default/files/changingpriorities.pdf>.

<sup>33</sup> See Peter W. Salsich, Jr., *Does America Need Public Housing?*, 19 *Geo. Mason L. Rev.* 689 (2012); Emily Turner, *A Suspect Shift: Public Housing’s Transition to Mixed-Income Housing, A National Analysis- Lessons from Denver* (2010).

Furthermore, many long-term contracts for affordable housing built under the Section 8 program during the 1960's are now coming to term, threatening a further loss of affordable units.<sup>34</sup>

The contours of the human right to adequate housing continue to be developed at the international level by the CESCER and other U.N. experts, and at the regional level by regional human rights bodies, in response to ever-changing conditions. The U.S. should always seek to be a leader in applying these developing standards to its policies.

**(2) Take immediate steps to respect, protect, and fulfill the right to adequate housing and other human rights through measures guaranteeing the availability of affordable, accessible housing to all who require it;**

Progressively realizing the right to adequate housing requires resolutions, recognition, and legislation, but also requires action. In our federal system, states and local communities are often best situated to act quickly to remedy human rights violations in a way that is effective for their area. State and local governments should not wait for the United States to act on the right to adequate housing but should immediately take steps to create local solutions to housing rights violations. Recent positive steps include resolutions recognizing and pledging to implement the human right to housing in Madison and Dane County, WI, and the introduction of a homeless bill of rights referencing human rights standards in California.<sup>35</sup>

**(3) Recognize that homelessness is a prima facie violation of the right to housing, and to examine the fiscal benefits of implementation of the right to housing as compared to the costly perpetuation of homelessness;**

Homelessness is an ongoing and increasingly prevalent violation of the most basic essence of the human right to housing in the United States and requires an immediate remedy. In 2011, cities across the country noted an average 16% increase in the number of homeless families.<sup>36</sup> From the 2009-10 school year to the 2010-11 school year, the

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<sup>34</sup> See, e.g. National Low Income Housing Coalition, *Project-Based Housing* (2013), <http://nlihc.org/issues/project-based>; Rachel Bratt, *A Withering Commitment*, National Housing Institute (1997), <http://www.nhi.org/online/issues/94/bratt.html>.

<sup>35</sup> City of Madison Res. 28925 (Dec. 2011), <http://madison.legistar.com/View.ashx?M=F&ID=1775433&GUID=B82C4409-BF96-4361-A1A1-587ED424E4D6>; Dane County Res. 292, 11-12 (July 2012); R.I. S. 2052 (2012); AB 5 2013-14 Reg. Sess. (Ca. 2012).

<sup>36</sup> The United States Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities* 21 (2011).

number of homeless school children increased by 13% to over one million children.<sup>37</sup> Among other factors contributing to this growth, recent studies have shown that: one out of four homeless women is homeless as a result of domestic violence;<sup>38</sup> 1 in 11 released prisoners end up homeless<sup>39</sup> - with a disparate impact on racial minorities and those who have been criminalized because of their homeless status;<sup>40</sup> and over 1.6 million unaccompanied homeless youth are forced out of home due to physical or sexual abuse, aging out of foster care, or as a result of disagreements with parents or caretakers over sexual orientation.<sup>41</sup> Temporary shelter should only be seen as an interim, emergency response to homelessness. The right to housing demands permanent housing arrangements, with whatever supports are needed to maintain stability, in as short a time as possible.

In a 2007 resolution, equally applicable today, the ABA opposed the enactment of laws criminalizing individuals for “carrying out otherwise non-criminal life-sustaining practices or acts in public spaces, such as eating, sitting, sleeping, or camping, when no alternative private spaces are available.”<sup>42</sup> Instead of providing adequate alternatives, more communities are increasingly turning to these criminalization policies.<sup>43</sup> Criminalization of homelessness, and homelessness itself, injures the dignity and self-worth of the individual, as well as potentially interfering with their health and safety, where individuals are forced into unsafe situations or must face the elements without shelter. Lack of proper identification or generation of a criminal record caused by homelessness may also prevent homeless persons from accessing government support or finding a job.<sup>44</sup> Low-income youth facing inadequate housing conditions or lack of housing have poorer educational outcomes due to high mobility, hunger, and health problems, creating a cycle of poverty and homelessness.<sup>45</sup>

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<sup>37</sup> National Center for Homeless Education, *Education for Homeless Children and Youths Program* 4 (2012).

<sup>38</sup> National Law Center on Homelessness and Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, 5 (Feb. 2007).

<sup>39</sup> Bureau of Justice Statistics, 2009. “*Prisoners In 2008*”, available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763> (last visited Jan. 21, 2011).

<sup>40</sup> *Simply Unacceptable*, *supra* note 5, at 61-73.

<sup>41</sup> James Swift, National Network for Youth, *Experts Address the Legal Problems Surrounding Homeless Youth Services* (Sept. 10, 2012), available at <http://www.nn4youth.org/news/network-news/2012/09/10/experts-address-legal-problems-surrounding-homeless-youth-services>.

<sup>42</sup> ABA House Report 106 MY 2007.

<sup>43</sup> National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness*

*in U.S. Cities* 9-10 (2011) (among the 188 cities reviewed between 2009 and 2011, the report identifies a 7 percent increase in prohibitions on begging or panhandling; a 7 percent increase in prohibitions on camping in particular public places; and a 10 percent increase in prohibitions on loitering in particular public places).

<sup>44</sup> *Simply Unacceptable*, *supra* note 5, at 61-73.

<sup>45</sup> New Housing Normal; *Simply Unacceptable*, *supra* note 5, at 74-79.

Housing is a critical component of overall health, and homeless persons have an average life span of 42-52 years, compared to 78 years for the general population.<sup>46</sup> Indeed, New York City has established a right to housing for those suffering from AIDS, recognizing their “acute needs for safe, clean housing to keep them healthy.”<sup>47</sup>

In 2010, 113 attacks, 24 of which led to the death of the victim, were deemed acts of “bias motivated violence” against homeless individuals.<sup>48</sup> The National Coalition for the Homeless documented hate crimes against homeless persons for twelve years (1999-2010) and noted that fatal attacks on homeless individuals were twice as high each year as fatal attacks on all currently protected classes combined.<sup>49</sup> Although low-income families in affordable housing do not face the “bias motivated violence” perpetrated against those living on the streets, low-income neighborhoods tend to have higher rates of violence than other areas. Students in poor neighborhoods reported fighting in school or the presence of weapons at school twice as often as their wealthier counterparts.<sup>50</sup>

In addition to viewing housing expenditures as obligatory, legislators must also consider the fiscal *benefits* of adequately meeting low-income housing needs. In a 2004 study by the Lewin Group on the costs of serving homeless individuals in nine cities across the U.S., several cities found supportive housing to be cheaper than housing homeless individuals in shelters.<sup>51</sup> That same year, the Congressional Budget Office estimated the cost of a Section 8 Housing Certificate to be \$7,028, approximately \$8,000 less than the cost of an emergency shelter bed funded by HUD’s Emergency Shelter Grants program.<sup>52</sup> A collaborative effort of service and medical providers in San Diego, Project 25, has documented a \$7 million dollar savings to tax payers through reduced emergency care and jail costs by providing permanent housing to 35 homeless individuals, a 70% reduction.<sup>53</sup>

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<sup>46</sup> Nat’l Coalition for the Homeless, Health Care and Homelessness (July 2009), <http://www.nationalhomeless.org/factsheets/health.html>.

<sup>47</sup> New York City Local Law 50 of 2005, Council Int. No. 535-A, (2005).

<sup>48</sup> National Coalition for the Homeless, *Hate Crimes Against the Homeless, Violence Hidden in Plain View* 9 (January 2012), available at <http://www.nationalhomeless.org/publications/hatecrimes/hatecrimes2010.pdf>.

<sup>49</sup> National Coalition for the Homeless, *Hate Crimes Against the Homeless, Violence Hidden in Plain View* 12 (January 2012), available at <http://www.nationalhomeless.org/publications/hatecrimes/hatecrimes2010.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities* 9-10 (2011).

<sup>52</sup> *Ibid.*

<sup>53</sup> Gary Warth, *San Diego: Homeless program reportedly saved taxpayers \$7M*, North County Times, Apr. 10, 2012, [http://www.nctimes.com/news/local/sdcounty/san-diego-homeless-program-reportedly-saved-taxpayers-m/article\\_85fd9ded-46a4-5e6d-9d0d-83b068acdd1e.html](http://www.nctimes.com/news/local/sdcounty/san-diego-homeless-program-reportedly-saved-taxpayers-m/article_85fd9ded-46a4-5e6d-9d0d-83b068acdd1e.html).

Scotland, France, and South Africa all show that the progressive implementation of the right to housing through legislation and case law is possible where the political will exists. Scotland's Homeless Act of 2003 progressively expanded the right to be immediately housed and the right to long-term, supportive housing for as long as it is needed, starting with target populations, but available to all in need as of 2012. The law also includes a private right of action and requires jurisdictions to plan for development of adequate affordable housing supplies.<sup>54</sup> France created similar legislation in 2007 in response to public pressure and a decision of the European Committee on Social Rights under the European Social Charter.<sup>55</sup> South Africa's constitutional right to housing protects even those squatting in informal settlements, requiring the provision of adequate alternative housing before families and individuals can be evicted.<sup>56</sup> This law has been enforced in local communities to even require rebuilding housing that has been torn down.<sup>57</sup> While not yet perfect, these countries are proving that progressively implementing the right to housing is both economically feasible and judicially manageable.

**Further, the American Bar Association urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level. These efforts include:**

- a. Prioritizing funding for housing when making federal budgetary decisions;**
- b. Assessing the impact new federal legislation and regulatory decisions will have on the right to housing;**
- c. Urging every state, locality, and territory to develop comprehensive affordable housing strategies;**
- d. Developing mandates or incentives for housing developers and financial institutions to ensure the right to housing as a priority;**
- e. Prohibiting state and local governments, territories, government-owned entities, and substantially government-related entities from violating the right to adequate housing;**

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<sup>54</sup> See, e.g. Eric S. Tars and Caitlin Egleson, *Great Scot! The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the U.S.*, 16 GEORGETOWN J. POV. LAW & POLICY 187 (2009).

<sup>55</sup> See, e.g. Eric S. Tars, Julia Lum & E. Kieran Paul, *The Champagne of Housing Rights: France's Enforceable Right to Housing and Lessons for U.S. Advocates*, 4 NE. U. L.J. 429 (2012).

<sup>56</sup> See, e.g. Kate Tissington, [A Review of Housing Policy and Development in South Africa since 1994](#), Social & Economic Rights Institute (2010).

<sup>57</sup> See *Tswelopele Non-Profit Organisation v. City of Tshwane metropolitan Municipality* [2007] SCA 70 (RSA), stating "to be hounded unheralded from the privacy and shelter of one's home, even in the most reduced circumstances, is a painful and humiliating indignity... Placing them on the list for emergency [housing] assistance will not attain the simultaneously constitutional and individual objectives that reconstruction of their shelters will achieve. The respondents should, jointly and severally, be ordered to reconstruct them. And, since the materials belonging to the occupiers have been destroyed, they should be replaced with materials that afford habitable shelters."

- f. Requiring governments and organizations to prevent or mitigate any infringement upon the right to adequate housing;**
- g. Leading a shift in discussion of housing services from providing charity to supporting victims of human rights violations;**
- h. Reviewing policies that govern the cost of housing to ensure costs do not interfere with a person's ability to enjoy other human rights such as the right to adequate food or health; and**
- i. Supporting the adoption of resolutions, treaties, and other international principles further establishing and promoting the right to housing at the international and regional level and committing to their implementation domestically.**

Federal housing assistance provides several million units of housing nationwide but continues to fall far short of adequately addressing the country's low-income housing needs.<sup>58</sup> Under current funding levels, federal assistance is only available for approximately one out of every four eligible low-income families.<sup>59</sup> Framing these expenditures as part of our government's basic obligations to its citizens, the same as its duty to ensure constitutional rights, allows us to establish a new baseline in budgetary debates and planning.<sup>60</sup>

To take some of the burden to support the homeless and low-income populations off the government, the government must include the right to adequate housing in its policy decisions. At the start of the economic downturn in 2007 and 2008, for example, the government provided bailout money to failing banks without requiring protections to help those facing foreclosure remain in their homes.<sup>61</sup> Had protections been included, the government and banks could have worked to keep homeowners in their homes to prevent a massive influx in the number of families requiring affordable housing or homelessness services.<sup>62</sup>

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<sup>58</sup> See *Simply Unacceptable*, *supra* note 5, at 51-61.

<sup>59</sup> *Id.*, at 26.

<sup>60</sup> *Id.*, at 11.

<sup>61</sup> See Emergency Economic Stabilization Act of 2008 (Division A of [Pub.L. 110-343](#), 122 Stat. 3765, enacted October 3, 2008). See also Paul Kiel, *Banks Getting TARP Money Lending Less Than Other Banks*, ProPublica, Feb. 3, 2009, <http://www.propublica.org/article/banks-getting-tarp-money-lending-less-than-other-banks-090203>; Mary Snow, *Where's the bailout money?*, CNN, Dec. 22, 2008, <http://www.cnn.com/2008/US/12/22/bailout.accountability/index.html>.

<sup>62</sup> Preventing foreclosure is far more cost-effective for all stakeholders- banks, individuals, and governments - than incurring losses and government having to provide additional services once a family becomes homeless. See, e.g. Diana Savino, *NYS Foreclosure Prevention Services Campaign*, Feb. 1, 2012, <http://www.nysenate.gov/press-release/nys-foreclosure-prevention-services-program-campaign-0> (estimating \$1 of investment in foreclosure prevention generates a \$68 return); see also, Roberto G. Quercia, Spencer M. Cowan & Ana Moreno, *The Cost-Effectiveness of Community-Based Foreclosure Prevention*, 2005; Ana Moreno, *Cost Effectiveness of Mortgage Foreclosure Prevention*, 1995.



As a leader in the international community, the United States should be on the forefront of the realization of a right to adequate housing.<sup>63</sup> This requires acknowledging housing as a priority in terms of funding, regulation, and enforcement. This also requires a paradigm shift in our society. Provision of housing can no longer be seen as an optional government entitlement program but must be seen as an essential protection of human rights. Overall, we must realize as a country that protecting human rights is not optional and that the violation of one individual's human rights weakens an entire community.

## Conclusion

The U.S. is in the midst of the worst housing crisis since the Great Depression. We need a new framework in which to discuss issues of housing and homelessness; a framework that says everyone has a right to adequate housing. While adopting an explicit human rights framework in the U.S. would represent a shift, the U.S. has a proud history to which it can point, starting from the days of President Roosevelt that demonstrate the human right to housing is not a foreign, but a domestic value.<sup>64</sup> Our current struggle with budget deficits is not a reason to defer actions to improve Americans' access to adequate housing; rather, it is precisely in this time of economic crisis that the need to do so is most acute. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, the ABA calls upon all levels of government to hold itself to a high standard, one that recognizes the full dignity of every human being cannot be guaranteed without enjoying, among all other rights, the human right to adequate housing.

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<sup>63</sup> See Susan Randolph, Sakiko Fukada-Parr & Terra Lawson-Remer, Working Paper Version of Economic and Social Rights Fulfillment Index: Country Scores and Rankings 4, 18 (2010) (working paper) (on file with the Economic & Social Rights Empowerment Initiative), available at <http://www.serfindex.org/research/>, (The Economic and Social Rights Fulfillment Index, an assessment that determines how well countries perform in meeting economic and social rights, such as the right to housing, in light of their available resources, places the U.S. 24th out of 24 high-income countries analyzed.); See The Constitution of the Republic of South Africa, Act 100 of 1996, §§ 26-28, (The Constitution of the Republic of South Africa includes the right of all to access of affordable housing.)

<sup>64</sup> See *Simply Unacceptable*, *supra* note 5, at 93.

## **GENERAL INFORMATION FORM**

Submitting Entity: Commission on Homelessness & Poverty

Submitted By: Antonia Fasanelli, Chair, Commission on Homelessness & Poverty

1. Summary of Resolution(s).

This resolution calls upon local, state, tribal, and federal government to progressively implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, and urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level.

This resolution, as a whole, provides a framework for *progressive realization* of that right. As such, implementing the human right to housing would not require the government to immediately build a home for each person in America or to provide housing for all free of charge overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.

2. Approval by Submitting Entity.

The Commission approved this policy resolution on May 4, 2013.

3. Has this or a similar resolution been submitted to the House or Board previously?

No. Please see response to #4 below.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 1979, the ABA endorsed the U.S. ratification of the International Covenant on Economic, Social & Cultural Rights which codifies the right to housing. (See ABA House Report 690 MY 1979.) Adoption of this policy would build on the ABA's 34 year history of advocacy in the human rights arena.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable)

None at this time.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The United States government has supported the human right to housing in a number of international treaties and other documents, and is increasingly discussing housing and homelessness in terms of human rights. Lawyers across the country are using human rights framing at the federal, state, and local levels as an additional tool in litigation and legislative advocacy to end homelessness and promote the right to adequate housing for all.

8. Cost to the Association. (Both direct and indirect costs)

None. Existing Commission and Governmental Affairs staff will undertake the Association's advocacy on behalf of these recommendations, as is the case with other Association policies.

9. Disclosure of Interest. (If applicable)

There are no known conflicts of interest with this resolution.

10. Referrals.

Administrative Law  
Business Law  
Criminal Law  
Government and Public Sector Lawyers  
Individual Rights and Responsibilities  
International Law  
Law Student Division  
Litigation  
Real Property  
Senior Lawyers  
Solo, Small Firm and General Practice  
State and Local Government  
Young Lawyers Division  
Forum on Affordable Housing and Community Development  
Delivery of Legal Services  
Disaster Response and Preparedness  
Legal Aid and Indigent Defendants  
Pro Bono and Public Service  
Center for Human Rights  
Commission on Disability Rights

Commission on Domestic Violence  
Commission on Immigration  
Commission on Law and Aging  
Commission on Sexual Orientation and Gender Identity  
Commission on Youth at Risk

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Antonia Fasanelli, Chair  
Homeless Persons Representation Project  
201 N Charles St., Ste. 1104  
Baltimore, MD 21201  
(410) 685-6589 x17  
[AFasanelli@hprplaw.org](mailto:AFasanelli@hprplaw.org)

Amy Horton-Newell, Staff Director  
ABA Commission on Homelessness & Poverty  
(202) 662-1693  
[Amy.Hortonnewell@americanbar.org](mailto:Amy.Hortonnewell@americanbar.org)

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Antonia Fasanelli, Chair  
Homeless Persons Representation Project  
201 N Charles St., Ste. 1104  
Baltimore, MD 21201  
(410) 685-6589 x17  
[AFasanelli@hprplaw.org](mailto:AFasanelli@hprplaw.org)

## **EXECUTIVE SUMMARY**

### **1. Summary of the Resolution**

This resolution calls upon federal, state, local, territorial, and tribal governments to progressively implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, and urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level.

This resolution, as a whole, provides a framework for progressive realization of that right. As such, implementing the human right to housing would not require the government to immediately build a home for each person in America or to provide housing for all free of charge overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.

### **2. Summary of the Issue that the Resolution Addresses**

Despite the nation's commitment to human rights ideals, its practices have often fallen short. The U.S. has a strong tradition of promoting affordable, accessible housing, but programs have been under-funded and under-implemented. Furthermore, over the past 30 years there has been a significant disinvestment in public and subsidized housing at the federal level. Families continue to face foreclosures, many as a result of predatory lending practices, but even as homes without families multiply, families without homes cannot access them. Many tenants pay more than 50% of their income toward rent, putting them one paycheck away from homelessness. Homelessness is an ongoing and increasingly prevalent violation of the most basic essence of the human right to housing in the United States and requires an immediate remedy. In 2011, cities across the country noted an average 16% increase in the number of homeless families. From the 2009-10 school year to the 2010-11 school year, the number of homeless school children increased by 13% to over one million children.

### **3. Please Explain How the Proposed Policy Position will address the issue**

This resolution calls on the U.S. government at all levels to more fully implement the right to housing as a legal commitment. Asserting housing as a human right will create a common goal and a clear framework to:

- a. Help government agencies set priorities to implement the right to housing
- b. Provide support for advocacy groups
- c. Create pressure to end policies which fail to guarantee human rights
- d. Allow us to focus on how to solve the problem rather than worrying about whether the U.S. government has a duty to solve the problem

4. Summary of Minority Views

None to date.

TALMADGE/FITZPATRICK  
18010 SOUTHCENTER PARKWAY  
TUKWILA, WASHINGTON 98188  
(206) 574-6661 (206) 575-1397 FAX

April 30, 2013

RECEIVED

MAY 03 2013

Oregon State Bar  
Executive Director

Michael E. Haglund  
Haglund Kelley et al LLP  
200 SW Market Street, Suite 1777  
Portland, OR 97201-5771

Re: KCBA Resolution to House of Delegates  
2013 Annual Meeting

Dear Mr. Haglund:

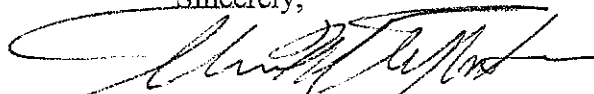
I am the delegate from the King County Bar Association to the House of Delegates. The King County Bar Association represents lawyers who practice in the metropolitan area around Seattle.

Enclosed with this letter is a Resolution and Report that the King County Bar Association is filing so that it will be considered by the ABA House of Delegates at the upcoming Annual Meeting in August in San Francisco. It is being sent to your entity because you may have an interest in the subject matter of the Resolution. If the Oregon State Bar Association can support the Resolution, the King County Bar Association would welcome a public expression of support and communication of that support to the House.

The need for this sort of resolution has become more exigent following the voter approved adoption of the legalization of marijuana in Washington State. Government lawyers need to advise their client governments how to proceed with legal cannabis, as do private lawyers who are called upon to assist clients who want to engage in legal cannabis businesses. As more jurisdictions legalize some form of marijuana, the problem of ethical peril for lawyers because of differing approaches to marijuana will only grow.

If I can answer any questions or assist you in regard to this resolution, please do not hesitate to contact me. In addition to the contact information above, I can be reached by email at [tom@tal-fitzlaw.com](mailto:tom@tal-fitzlaw.com)

Sincerely,



Thomas M. Fitzpatrick

Enc.  
cc w/enc. Sylvia E. Stevens

**AMERICAN BAR ASSOCIATION**

**KING COUNTY BAR ASSOCIATION**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

RESOLVED, That the American Bar Association urges lawyer disciplinary agencies not to take disciplinary action against lawyers for counseling and assisting clients to comply with state and territorial laws legalizing the possession and use of marijuana.



## **REPORT**

### **1. Background**

Eighteen states and the District of Columbia<sup>1</sup> currently have some form of legalized marijuana for medical purposes. At the November 2012 general election, voters in Washington State and Colorado approved initiatives providing for state regulation of the production, processing, distribution, and sale of marijuana for recreation purposes and the taxation of marijuana sold for such purposes. Recent polling by the Pew Research Center indicates a majority of Americans now favor some form of legalization and/or decriminalization of marijuana. It is possible that other jurisdictions may join Washington and Colorado in ending marijuana prohibition and replacing it with comprehensive schemes to regulate and tax this product now legal under state law.

Creating regulations for legal marijuana is a challenging task. Regulations have to deal with what is and is not permissible under new laws, preventing the product from being diverted and used in ways that are not permissible, insuring that marijuana that enters the market is not contaminated and a threat to health, where legal cannabis business may be located, tax reporting and compliance, and a host of other issues. Governments embarking on this process need the assistance of counsel in fashioning the regulatory regime.

Because of the changing legal landscape, investors and those interested in owning or operating need the assistance of lawyers to understand the legal landscape and how to make their businesses compliant with laws and regulations for a cannabis industry legal under state or territorial law.

### **2. The Problem**

Lawyers who are called upon to assist clients, including governments implementing a legal marijuana regime, face an ethical dilemma in responding to their clients' needs. The reason is federal law still criminalizes the possession and use of marijuana. 21 U.S.C.A. Section 812(c)(Schedule 1)(c)(10) lists marijuana as a Schedule 1 drug, making it unlawful to possess, sell or distribute it. *See also* 21 U.S.C.A. §841(a). Consideration must also be given to whether any facilitation of those who do possess, sell or distribute marijuana would run afoul of criminal conspiracy laws such as 18 U.S.C.A. Section 371.

Model Rule 1.2(d) provides:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

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<sup>1</sup> Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

Model Rule 8.4 "Misconduct" also has provisions that could implicate a lawyer counseling and assisting a client on legalized marijuana because of marijuana's continued illegal status under federal law. The Rule defines misconduct in the following ways potentially applicable in dealing with state legal marijuana:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (d) engage in conduct that is prejudicial to the administration of justice.

While these Rules directly address lawyer conduct, any supervisory lawyer approving the work of a subordinate who assists clients in regard to state legal marijuana laws also has a potential exposure under Model Rule 5.3.

### **3. Discussion**

As the Scope section to the Model Rules recognizes: "The Rules of Professional Conduct are rules of reason." However, the Scope section also makes clear that "Failure to comply with an obligation or prohibition imposed by a Rule is a basis for discipline." Obviously, whether a violation should result in a disciplinary proceeding, and what sanction should be imposed, depends on the circumstances and the appropriate discretion of disciplinary officials.

The proponents of this resolution respect those who work in the disciplinary process. However, disciplinary discretion is not always appropriately used. What is known is that with Washington and Colorado now legalizing marijuana and replacing prohibition with a proposed comprehensive scheme of regulation and taxation, a significant shift in the approach toward marijuana has occurred. To date, it is not clear exactly what, if anything, the federal government is going to do now that these states have acted. While medical marijuana has not been a "priority" of this administration, raids on medical marijuana dispensaries have recently occurred.

We are in uncharted waters because of the conflict between state and territorial laws and those of the U.S. government. One thing is certain, in trying to navigate those waters, clients need the assistance of lawyers.

Accordingly, because of the unique circumstances present in this limited area, the ABA is called upon to give policy guidance to appropriate lawyer disciplinary agencies not to institute disciplinary action against lawyers who counsel and assist clients on how to comply with state and territorial laws legalizing the possession and use of marijuana. As the progenitor of the Model Rules, ABA guidance would be particularly beneficial in this area. Passing this resolution would not place the ABA in the position of advocating one way or another in regard to legalization of marijuana. It merely provides guidance and assistance to disciplinary agencies and lawyers who are called upon to assist clients in states and territories that have decided that a new approach should be taken on marijuana, including is legalization.

## GENERAL INFORMATION FORM

Submitting Entity: King County Bar Association

Submitted by: Richard Mitchell, President

1. Summary of Recommendation

The resolution has the ABA urge lawyer disciplinary agencies not to take disciplinary action against lawyers for counseling and assisting clients to comply with state and territorial laws legalizing the possession and use of marijuana.

2. Approval by Submitting Entity

On April 17, 2013, the Board of Trustees of the King County Bar Association during a regularly scheduled meeting, for which the time and agenda had been previously distributed, approved the Recommendation.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption.

None known at the time this report was drafted.

5. What urgency exists which requires action at this meeting of the House?

The voters of Washington State and Colorado in the general election of November 2012 approved initiatives providing for the taxation and regulation of the production and sale of marijuana for recreational purposes. Both states are now in the process of adopting regulations to implement the voter approved laws permitting the taxation of and production and sale of marijuana for recreational purposes. Eighteen states and the District of Columbia have some form of medical marijuana. Possession and sale of marijuana remains illegal under federal law. The United States has the option to take legal action now to preclude state efforts to take an alternate approach to marijuana by legalizing, regulating, and taxing it. The United States has recently raided legal medical marijuana dispensaries in various jurisdictions. The Justice Department has not yet said what it will do in regard to the legalization, regulation, and tax approach now taken by Colorado and Washington. Clients wanting to enter into a legal marijuana business, and governments that must write and implement appropriate regulations for legal marijuana, need counsel now. Because of the continued illegal status of marijuana under federal law, lawyers assisting such clients could be subject to lawyer discipline for assisting

clients to engage in illegal activity. These lawyers need the issue of disciplinary jeopardy for doing their job addressed now by the ABA.

6. Status of Legislation (if applicable)

No legislation on these issues is known to the submitting entity. There is pending in Congress a recently introduced bill which would prohibit the federal government from interfering with state laws that legalize marijuana.

7. Cost to the Association. Both direct and indirect costs.

Adoption of the recommendation will not result in expenditures.

8. Disclosure of Interest (if applicable)

No known conflict of interest exists.

9. Referrals

This Recommendation is being co-sponsored by:

Co-sponsorships are currently being sought.

This Recommendation was circulated to the following Association entities and affiliated organizations:

Administrative Law and Regulatory Practice  
Association of Professional Responsibility Lawyers  
Criminal Justice  
Government Lawyers Division  
Individual Rights and Responsibilities  
Law Student Division  
State and Local Government Law  
Taxation  
Young Lawyers Division

Ethics and Professional Responsibility  
Professional Discipline  
Center for Professional Responsibility  
National Organization of Bar Counsel  
Association of Professional Responsibility Lawyers

Bar Associations

Alaska State Bar Association  
State Bar of Arizona

Maricopa County Bar Association  
State Bar of California  
Alameda County Bar Association  
San Fernando Valley Bar Association  
Beverly Hills Bar Association  
Los Angeles County Bar Association  
Orange County Bar Association  
San Diego County Bar Association  
Bar Association of San Francisco  
Santa Clara County Bar Association  
Colorado Bar Association  
Denver Bar Association  
Connecticut Bar Association  
The District of Columbia Bar  
Hawaii State Bar Association  
Maine State Bar Association  
Massachusetts Bar Association  
Boston Bar Association  
State Bar of Michigan  
Oakland County Bar Association  
State Bar of Montana  
State Bar of Nevada  
Clark County Bar Association  
New Jersey State Bar Association  
Bergen County Bar Association  
Camden County Bar Association  
Essex County Bar Association  
State Bar of New Mexico  
Oregon State Bar  
Multnomah Bar Association  
Rhode Island Bar Association  
Vermont Bar Association  
Washington State Bar Association  
King County Bar Association

10. Contact Person. (Prior to the meeting)

Thomas M. Fitzpatrick  
Talmadge/Fitzpatrick PLLC  
18010 Southcenter Parkway  
Tukwila, WA 98188  
Phone: 206.574.6661  
Email: [tom@tal-fitzlaw.com](mailto:tom@tal-fitzlaw.com)

11. Contact Person. (Who will present the report to the House)

Thomas M. Fitzpatrick  
Talmadge/Fitzpatrick PLLC  
18010 Southcenter Parkway  
Tukwila, WA 98188  
Phone: 206.574.6661  
Email: [tom@tal-fitzlaw.com](mailto:tom@tal-fitzlaw.com)

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** June 10, 2013  
**From:** MCLE Committee  
**Re:** Proposed Rule and Regulation Amendments re Filing Deadlines and Notices to Members

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### Action Recommended

Consider amending Rules 7.4(b), 7.5(a) and (b) and 8.1(c), and Regulations 1.115(a) and (b), 7.200(a) and (b) in an effort to 1) align the delinquency dates for MCLE noncompliance with the delinquency dates for payment of fees and IOLTA compliance, and 2) allow the bar to send notices of noncompliance by e-mail rather than by certified mail.

### Background

During the 2013 Legislative session, ORS 9.200 and ORS 9.675 were amended in order to align the delinquency dates for payment of fees and IOLTA compliance, and allow the bar to send notices of delinquency/noncompliance by e-mail rather than by certified mail. The proposed amendments to the MCLE Rules and Regulations below will align all three deadlines (MCLE compliance, member fees and IOLTA compliance). Our goal is to eliminate confusion among bar members.

#### MCLE Rule 7.4 Noncompliance.

(a) Grounds. The following are considered grounds for a finding of non-compliance with these Rules:

- (1) Failure to complete the MCLE requirement for the applicable reporting period.
- (2) Failure to file a completed compliance report on time.
- (3) Failure to provide sufficient records of participation in CLE activities to substantiate credits reported, after request by the MCLE Administrator.

(b) Notice. In the event of a finding of noncompliance, the MCLE Administrator shall send ~~certified mail~~ a written notice of noncompliance ~~on~~ to the affected active member. The notice shall ~~be sent via email 30 days after the filing deadline and shall~~ state the nature of the noncompliance and ~~shall~~ summarize the applicable rules regarding noncompliance and its consequences.

#### MCLE Rule 7.5 Cure.

(a) Noncompliance for failure to file a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified in MCLE Regulation 7.200, no

more than ~~within 63~~ 60 days after the email following mailing of the notice of noncompliance was sent.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following ~~within 63~~ no more than 60 days after the email following mailing of the notice of noncompliance was sent:

- (1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable reporting period;
- (2) Filing the completed compliance report; and
- (3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE Administrator with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE Administrator with sufficient records, together with the late fee specified in MCLE Regulation 7.200, no more than 60 days after the email notice of noncompliance was sent ~~within the time established by the MCLE Administrator and paying the late fee specified in MCLE Regulation 7.200.~~

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE Administrator shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period.

#### **MCLE Regulation 1.115 Service ~~By Mail~~ Method.**

(a) MCLE Compliance Reports and Notices of Noncompliance ~~Anything transmitted by mail to a member shall be sent to the member's email address on file with the bar on the date of the notice, except that notice shall be sent by first-class mail (to the last designated business or residence address on file with the Oregon State Bar) to any member who is exempt from having an email address on file with the bar. by first class mail, or certified mail if required by these rules, addressed to the member at the member's last designated business or residence address on file with the Oregon State Bar. Certified mail will not be sent "Return Receipt Requested". Members who are sent certified mail will also be notified about the certified mailing via e-mail or regular mail (for those members who do not have e-mail).~~

~~(b) Service by mail shall be complete on deposit in the mail.~~

#### **MCLE Regulation 7.200 Late Fees.**

(a) The late fee for curing a failure to timely file a completed compliance report is \$50 if the report is filed and the late fee is paid within 30 days of the filing deadline and \$100 if the report is filed and the late fee is paid more than 30 days after the filing deadline but within the ~~63~~ 60 day cure period; if additional time for filing is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.



(b) The late fee for not completing the MCLE requirement during the applicable reporting period is \$200 if the requirement is completed after the end of the reporting period but before the end of the ~~with the~~ 63 60 day cure period; if additional time for meeting the requirement is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.

Rule 8.1 (c) Suspension Recommendation of the MCLE Administrator. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

1) A copy of the MCLE Administrator's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by email ~~certified mail~~ to the member. ~~Within 14 days of the date of the mailing, the member recommended for suspension may file with the State Court Administrator and the MCLE Administrator a petition for review of the recommended suspension. The petition shall set forth a concise statement of each reason asserted for review of the MCLE Administrator's recommendation and may be accompanied by one or more supporting affidavits.~~

~~(2) Within 14 days after a petition for review is filed by a member recommended for suspension, the MCLE Administrator shall file with the State Court Administrator a response and may submit one or more supporting affidavits. Further submissions by the parties shall not be allowed unless the court so requests.~~

~~(2) (3) The court may review the MCLE Administrator's recommendation, petition for review and response without further briefing or oral argument. The court may, however, request either further briefing or oral argument, or both. Thereafter, the court shall enter its order. If the court approves the recommendation of the MCLE Administrator~~ is approved, the court shall enter its order and an effective date for the member's suspension shall be stated therein.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** June 10, 2013  
**From:** MCLE Committee  
**Re:** Proposed Amendment to Rule 7.5

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### **Action Recommended**

Amend Rule 7.5 to clarify that compliance reports may be audited after noncompliance has been cured.

### **Background**

A member whose reporting period ended 12/31/2011 was sent a Notice of Noncompliance in February 2012. He cured his noncompliance in April 2012 and his report was processed. Due to questions regarding the accuracy of the report, the MCLE Program Manager forwarded his report and her concerns to Disciplinary Counsel's office in accordance with MCLE Rule 7.3(d).

The disciplinary matter is currently pending. However, in communications with Disciplinary Counsel's office, the member asked why he was being investigated when he was deemed to be in compliance with the MCLE Rules pursuant to the notice he received from the MCLE Department after his compliance report had been processed.

In order to clarify that reports may be referred to Disciplinary Counsel's office even though the member has cured the noncompliance issue, the MCLE Committee recommends amending Rule 7.5 (e) as suggested below:

#### **7.5 Cure.**

(a) Noncompliance for failure to file a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified MCLE Regulation 7.200, within 63 days following mailing of the notice of noncompliance.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following within 63 days following mailing of the notice of noncompliance:

(1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable reporting period;

(2) Filing the completed compliance report; and

(3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE Administrator with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE Administrator with sufficient records within the time established by the MCLE Administrator and paying the late fee specified in MCLE Regulation 7.200.

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE Administrator shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period. Curing noncompliance does not prevent subsequent audit and action specified in Rule 7.3.

MCLE Rule 7.3:

**7.3 Audits.**

(a) The MCLE Administrator may audit compliance reports selected because of facial defects or by random selection or other appropriate method.

(b) For the purpose of conducting audits, the MCLE Administrator may request and review records of participation in CLE activities reported by active members.

(c) Failure to substantiate participation in CLE activities in accordance with applicable rules and regulations after request by the MCLE Administrator shall result in disallowance of credits for the reported activity and assessment of the late filing fee specified in 7.5(f).

(d) The MCLE Administrator shall refer active members to the Oregon State Bar Disciplinary Counsel for further action where questions of dishonesty in reporting occur.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**Memo Date:** June 26, 2013  
**From:** Ben Eder, Oregon New Lawyers Division Chair-Elect  
**Re:** ONLD Report

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The ONLD met in May to conduct business. Below is a list of updates on the ONLD's work since the last BOG meeting.

- Conducted a successful high school essays contest focusing on the 4<sup>th</sup> Amendment. 71 students participated in the program; an increase of nearly 40% compared to last year's contest.
- Sponsored informal social events in May and June in Portland.
- Hosted a sole and small firm dinner for new lawyers to network with seasoned practitioners. 13 seasoned attorneys and 32 new lawyers participated in this free event.
- Held monthly brown bag lunch CLE programs in Portland on Employment Law, Cross Examination Tips, and American Indian Constitutions.
- Launched a series of CLE programs geared toward the "older new lawyer" or those members nearing the end of their ONLD membership. Thank you to Rich Spier for his participation in the first program of the series. Two additional programs are scheduled for July and August.

Upcoming events include:

- An OLIO session on speed networking. We've participated in OLIO for the past few years and we are excited to continue being a part of the OLIO program. Our session will include an overview on professional networking and information interviewing before launching into a speed networking session.
- A half-day practical skills program in Salem with dual-track CLE programming followed by a social with local attorneys and law students. Similar to the program held in Eugene last April.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Client Security Fund Award Recommendations

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### Action Recommended

Consider the recommendation of the Client Security Fund Committee that awards be made in the following claims:

GRUETTER (McClain)	\$23,767.96
GRUETTER (Mosley)	\$16,675.00
McBRIDE (Luna Lopez)	\$9,500.00
HORTON (Calton)	\$5,739.07 <sup>1</sup>
<b>TOTAL</b>	<b>\$55,682.03</b>

### Background

#### **GRUETTER (McClain) - \$23,767.96**

Kathryn McClain hired Bryan Gruetter in early 2008 to pursue a claim for serious injuries sustained in an automobile accident. Because her damages exceeded the limits of the at-fault driver's policy, McClain wanted to also assert an underinsured motorist claim and PIP waiver from her own insurer.

In August 2010, McClain settled with the at-fault driver's insurer for the policy limits of \$100,000. After paying himself for fees and costs and distributing nearly \$32,000 to McClain, Gruetter should have held the balance of \$23,767.96 in trust pursuant to McClain's arrangement with her own insurer that the funds would be so held their negotiations on the PIP lien.

Over the next year McClain made many unsuccessful efforts to get information from Gruetter about his progress resolving the PIP lien waiver issue. In late December 2011, she hired another lawyer to help her complete the matter, but his demands to Gruetter also went unanswered.

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<sup>1</sup> This matter was reviewed by the BOG in May 2013 on the claimant's request for review of the CSF Committee's denial of the claim. The BOG referred the claim back to the CSF Committee for further consideration. At its May 11 meeting, the CSF concluded that the claim was eligible for an award from the Fund.

McClain's funds were not in his trust account at the time his office was closed in early 2012. Her uninsured motorist and PIP lien waiver claims are pending in Multnomah County Circuit Court. The CSF Committee recommends that McClain be awarded \$23,767.96. She has agreed that the funds should be delivered to her new counsel to hold pending the outcome of the pending litigation.

**GRUETTER (Mosley) - \$16,675**

Amanda Mosley hired Bryan Gruetter to handle her personal injury claim after a December 2009 accident. Because her medical expenses alone exceeded the at-fault driver's policy limits, Mosely planned to make a claim on her own uninsured motorist policy and seek a waiver of the PIP reimbursement.

Gruetter settled Mosley's claim with the driver's carrier in January 2011 for the policy limits of \$25,000. Mosley's insurer consented to the settlement on condition that the funds be held in trust pending resolution of the underinsured/PIP waiver dispute. After receiving the settlement, Gruetter did nothing concerning Mosley's UIM/PIP claims and denied her requests for any portion of the settlement funds.

Mosley's funds were not in Gruetter's trust account when his office was closed in early 2012. Mosley retained Joe Walsh<sup>2</sup> to pursue her UIM/PIP claims, which he ultimately resolved in her favor so that no reimbursement to her own insurer is required. Mosley requested an award of the entire \$25,000 settlement in part because her claim was settled quickly for the policy limits and also because she contends the entire amount was subject to the UIM/PIP lien. The committee disagreed, concluding that Gruetter would have been entitled to his fee and Mosley's insurer would have been entitled only to the remaining funds, \$16,675.

The committee recommends an award of \$16,675 and a waiver of the requirement that Mosley have a civil judgment against Gruetter.

**McBRIDE (Luna Lopez) - \$9,500**

In 2003 the Department of Homeland Security began deportation proceedings against Alberto Lopez and his daughter Carmen Lopez, who had entered the US illegally in 1989 when Carmen was a young girl. Alberto and Carmen conceded removability and were ordered to leave the country within 60 days, but they did not. Alberto appealed his case to the Board of Immigration Appeals and then the Ninth Circuit but was unsuccessful and in April 2008 was again ordered to leave the country. Alberto and Carmen remained in the US in violation of their agreements and the court orders.

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<sup>2</sup> Walsh was a contract attorney who worked on many of Gruetter's cases. He had no involvement with the handling of client funds and there is no evidence to suggest he participated in, knew about or benefitted from Gruetter's misconduct.

In January 2010, Alberto and Carmen were arrested in an ICE raid of their employer's workplace. They were taken to Tacoma for detention pending deportation. On January 20, 2010 Jennifer Luna Lopez (Alberto's younger daughter who was born in the US) met with Jason McBride, seeking help for her father and sister, disclosing their history and deportation orders. McBride agreed to take on both cases for \$8000. He assured Jennifer that he could obtain lawful residency for her father and sister despite the prior deportation orders. On January 22, McBride submitted preliminary papers to stop the deportation; however, the filings were rejected because they were received after Alberto and Carmen had been deported back to Mexico.

It is not clear when McBride learned that his filing has been rejected. However, on several occasions over the next two years he assured Jennifer that he was waiting for notice of a hearing that would be scheduled in Tijuana. His files don't reflect any activity after the January 22 filings. He made no refund to Jennifer for the unearned portion of his fees.

In March 2012, Jennifer and her husband Gabino retained McBride to help Gabino obtain lawful residency (he had entered the US illegally at age 15 in 2002). McBride agreed to handle the matter for a flat fee of \$3000 and told Jennifer and Gabino it would take about 18 months. McBride did not disclose to Jennifer and Gabino that he was being prosecuted by the bar and that the bar had petitioned for an interim suspension order.

Within a few days, Jennifer and Gabino delivered documents and other background information requested by McBride. They also paid \$1500 toward McBride's fee (the balance was to be paid in monthly installments). Despite several calls to inquire about the status of the matter, Jennifer and Gabino never heard anything more from McBride and no further payments were made. McBride's file contains nothing other than routine intake forms and the documents Jennifer and Gabino delivered, and there is no evidence that he did anything on their behalf.

McBride stipulated to the interim suspension effective June 14, 2012; the PLF assisted with the closure of his office sometime in July and he submitted a Form B resignation in August 2012.

From consultations with other immigration attorneys, Jennifer learned that nothing could have been done to prevent Alberto from being deported and that they would not have accepted his case. (It appears that Carmen might have been eligible for some relief as a victim of domestic violence, but McBride took no action in that regard after his initial notice of appearance was rejected.)

While McBride might (and has in similar situations) ascribed his conduct to malpractice, the Committee concluded that McBride (who held himself out as an experienced immigration attorney) was dishonest in agreeing to and accepting an \$8000 fee when he knew or should have known that he could not help Alberto or Carmen. Even if he hadn't known when he took on the case, he should have refunded the unearned fees once he understood the situation. As for taking Gabino's case, the Committee also found fraud in the inducement by McBride's

taking a matter he knew (or should have known) he wouldn't be able to complete. In both cases, McBride performed virtually no service in exchange for the fees paid.

#### **HORTON (Calton) - \$5,739.07**

Christopher Calton hired William 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<sup>3</sup> 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 had been convicted and jailed shortly after retaining Horton). 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.<sup>4</sup>

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.

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<sup>3</sup> 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.

<sup>4</sup> Horton took his own life on January 29, 2009 following his admission in a fee arbitration proceeding to have misappropriated another client's settlement funds. In 2009 and 2010, the CSF paid a total of \$86,718 to four of Horton's former clients.



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, \$5,739.07 remains unaccounted for.

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 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.

The CSF Committee concluded that the claim is eligible for reimbursement in the amount of \$5,739.07 and that no judgment should be required because Horton died insolvent more than four years ago. The Committee also found that Calton's claim was filed within the Fund's six-year "statute of ultimate repose."<sup>5</sup>

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<sup>5</sup> CSF Rule 2.8 provides that claims must be filed "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.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2011-21 CONNALL (Roelle) Request for Review

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### Action Recommended

Consider the claimant's request for BOG review of the Client Security Fund Committee's denial of his claim for reimbursement.

### Background

Brian Roelle submitted a claim for reimbursement with the Client Security Fund for \$23,000.

Roelle retained Des Connall P.C.<sup>1</sup> in September 2010 to defend Roelle on 18 criminal counts including assault, rape, drug possession, and unlawful use of a weapon arising out of an incident with the mother of his children. Roelle also wanted assistance with related restraining order and custody proceedings. His understanding was that Des would handle the criminal matter and Shannon would handle the domestic matters. Roelle agreed to a \$35,000 fee for all the services.

Roelle delivered an initial payment of \$23,000 to Shannon Connall in mid-September 2010. The remaining \$12,000 was paid sometime later. Roelle says he never saw or heard from Shannon after delivering the initial payment and he believes she misappropriated the funds. (Whatever Shannon might have done with the funds, the Connall firm's records, show, that all payments from Roelle were deposited into the general business account.)

The case proceeded to trial and Roelle was acquitted of 13 of the 18 charges. Nevertheless, Roelle complains about the quality of Des' representation, and asserts that the \$12,000 was paid directly to Des was more than enough for the value of services he received. Roelle also alleges that Des and Shannon were so distracted by their own legal problems<sup>2</sup> that they were unable to focus on his case.

The CSF Committee denied this claim on the ground that it was, at best, a fee dispute. Connall acknowledges that no work was done on the domestic matters but claims it was because they became moot upon Roelle's conviction and incarceration. The Committee didn't necessarily disagree that Roelle might be entitled to some refund from Connall for the portion of the fee that would have covered the domestic relations matter. However, no written fee agreement has been found and Roelle has not claimed any portion for the uncompleted work.

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<sup>1</sup> The firm consisted of Des Connall and his daughter Shannon.

<sup>2</sup> The first disciplinary complaint against Des or Shannon Connall was received in August 2010; by late October 2010 there were eight or ten investigations pending. Shannon Connall resigned Form B on December 23, 2010; at the time of this writing, Des is negotiating the terms of his Form B resignation.

Moreover, a claim is eligible for reimbursement from the Fund only if the loss results from the lawyer's dishonest conduct. With regard to unearned fees, "dishonest conduct" means either "(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." The evidence in this case does not support a conclusion that Des or Shannon took fees without the intention to provide legal services or that they wrongfully failed to deposit the funds in trust.

Even if the advanced fee should have been held in trust, Rule 2.2.3 also limits eligibility:

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.

Des Connall provided more than minimal or insignificant services for Roelle, including meetings with the client and witnesses, obtaining discover, negotiating with the prosecutor, and ultimately handling a complex trial over seven days.

Attachments: Roelle Request for Review  
Investigator's report

**CLIENT SECURITY FUND  
INVESTIGATIVE REPORT**

**FROM:** Erin Scheurer, Legal Intern  
Theresa L. Wright, Supervising Attorney  
Lewis and Clark Legal Clinic

**DATE:** October 27, 2012

**RE:** Client Security Fund Claim No. 2011-21  
Claimant: Brian David Roelle  
Attorney: Des and Shannon Connall

**Investigator's Recommendation**

We recommend denial of the claim.

**Statement of the Claim**

Brian David Roelle<sup>1</sup> filed a claim with the CSF on August 3, 2011, against Des Connall.

Brian was charged in Washington County with 18 criminal counts on November 8, 2010, for incidents arising from July 16, 2010. Brian's charges included Assault IV, Strangulation, Coercion, Interference with Making a Report, Delivery & Possession of Marijuana, Attempted Assault II, Unlawful Use of a Weapon, Menacing, Rape I, Sodomy I, Sexual Abuse I & II. Brian also contested a Restraining Order in Washington County before retaining representation by the Connalls. Brian also faced a pending criminal case in Tillamook County.

Brian's father, David Lynn Roelle, wired Des and Shannon Connall on September 9, 2010, to represent his son in the Washington County criminal and domestic cases. Joanne Beagle, Brian's biological mother, provided monetary support in retaining the Connalls.

We corresponded with Brian, David, Ms. Beagle and Mr. Connall to investigate the case. Mr. Connall provided responses to all inquiries through his attorneys at Wayne Mackeson, PC (WMPC).

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<sup>1</sup>Multiple parties in this case have the same last name. This report will reference Brian and David Roelle by their first names to avoid confusion.

According David, Brian, and Ms. Beagle, the scope of the Connalls representation was twofold: (1) Mr. Connall would assist Brian with his criminal case; and, (2) Ms. Connall would assist Brian in any family law issues related to the Washington County RO and the children. The Connalls never represented Brian in any family law cases. Brian alleges the Connalls failed to represent him in any family law issues.

In a letter dated February 8, 2012, Mr. Mackeson wrote that Mr. Connall “understood that the firm had been retained to defend Brian Roelle in Washington County on an eighteen-count criminal indictment, as well as assist Brian Roelle with a domestic relations issue pertaining to his children.” According to Mr. Mackeson, the domestic relations issues depended upon the outcome of the criminal case. Because Brian was convicted of various charges in his criminal case, the family law issues became moot.

The parties do not dispute the fee agreement, which was a flat \$35,000. It is also undisputed that David executed the fee agreement with the Connalls.

Neither the Roelles, nor Mr. Connall could provide us with a copy of the fee agreement. Brian apparently never signed a copy; and David apparently never kept a copy. Mr. Connall kept the fee agreement in Brian’s trial notebook, which he has been “unable to locate” (July 28, 2012, letter from WMPC).

David paid the \$23,000 retainer fee to the Connalls with three checks made out to Des Connall PC. The first two checks are dated August 30, 2010. One is in the amount of \$650, and is from Wells Fargo Bank. The other is in the amount of \$4,350, and is from Ms. Beagle’s bank, Rivermark Community Credit Union. The last retainer fee check is dated September 13, 2010, and is from Wells Fargo Bank.

Ms. Beagle gave David the final amount in a cashier’s check made out to Des Connall PC for \$12,000. David delivered this check to the Connalls. This payment was through Rivermark Credit Union and is dated November 29, 2010 (check no. 000539712).

Brian alleges that the \$23,000 retainer that David paid never reached Mr. Connall and that the case suffered as a result. Brian, David, and Ms. Beagle believe that Ms. Connall deposited the \$23,000 retainer directly into her personal account.

Amber Bevacqua-Lynott, Assistant Disciplinary Counsel OSB, wrote to Ms. Wright on November 22, 2011, stating that the first three checks written by David to the Connalls were never deposited in either the trust or business accounts. This appears to be only partially accurate. Mr. Connall provided us with the firm’s general business account bank records for the times in question, as well as check images for each of the Roelle deposits. It appears from these records that all the Roelle checks were properly deposited into the firm’s account.

Mr. Mackeson states that Mr. Connall opened the file in the “usual manner,” deposited the funds into the firm’s general account, and filed a 8300 Form with the IRS acknowledging the funds. Kelly Jaske from WMPC states that Ms. Connall’s role in the case was “limited” (letter dated July 28, 2012). Ms. Jakse states that “Shannon conducted the initial interview with David . . .” and that she “brought a contract with her to the meeting, but David did not execute [it] at that time, [and] instead [took] it home to consider. Shannon had no further substantive involvement in the representation.”

Brian further alleges that even if Mr. Connall received the retainer fee, the quality of representation was inadequate. Brian claims the following against Mr. Connall’s representation: failure to investigate his case thoroughly; failure to collect requested evidence; failure to file a critical motion; inadequate communications; and loss of Ms. Connall’s assistance with the case. Brian believes that Mr. Connall dishonestly portrayed his ability to allocate time to the case and failed to inform the Roelles of the firm’s own legal entanglements.

Mr. Connall represented Brian during the criminal trial, which lasted seven days. Brian was found not guilty on thirteen of the criminal counts, and guilty of five. Mr. Connall met multiple times with Brian and David to discuss the case.

Brian claims a loss of \$23,000. Brian claims the loss occurred when the contract was signed, September 9, 2010; he discovered the loss during his trial, December 8 through 14, 2010.

### **Findings and Conclusions**

1. Mr. Connall was admitted to practice law in Oregon in 1957. He is listed as an active member of the Bar in the OSB member directory; however he does not appear to maintain an office in Oregon at this time, as he only lists a P.O. Box address and his website has been disabled.
2. Ms. Connall was admitted to practice law in Oregon in December of 1997. Ms. Connall resigned from the Bar on December 23, 2010, with a Form B resignation. Ms. Connall was involved in formal proceedings brought by the Bar alleging violations of the RPC 1.15-1(a), (c), and (d), 8.4(a)(3), 8.1(a)(1), and other trust account rules.
3. Mr. Connall represented Brian Roelle in a criminal case from September 9, 2010, to December 14, 2010. Brian was charged with eighteen criminal counts. Mr. Connall represented Brian throughout the trial, which lasted from December 8, 2010, through December 14, 2010. Brian was convicted of five criminal counts.

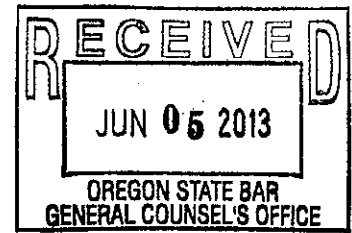
4. Mr. Connall does not appear to have committed any dishonesty during his representation of Brian. Mr. Connall spent a significant amount of time on Brian's case, including meetings with the client, witnesses, and the client's seven day trial.
5. Ms. Connall was not substantially involved in Brian's case.
6. Since the family law cases were dependent on the outcome of the criminal case, it does not appear that the Connalls failed to represent Brian in such matters.
7. Mr. Connall and Brian had an established lawyer-client relationship. The parties agree the \$35,000 fee agreement was earned on receipt (retainer \$23,000; remainder \$12,000).
8. The fee was deposited into Des Connall, PC's general business bank account. There does not appear to be any mishandling of the client's funds.
9. Brian claims a loss of \$23,000. Brian failed to comply with Section 2.6 of the Client Security Fund Rules.

Section 2.6 requires that 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.

None of these requirements are met.

10. The client filed a claim with the CSF without first demanding repayment, seeking a civil judgment, or attempting in any way to collect the funds. The client failed to comply with Section 2.7, because the client inadequately attempted recovery of the alleged "loss."
11. The claim was filed within two years after the client believed the funds were mishandled.
12. This case does not appear to possess any extreme hardship or special circumstances that warrant repayment of the fees in face of noncompliance of the CSF Rules. Mr. Connall's conduct appears to be proper.



Sylvia Stevens,  
Client Security Fund Claim No. 2011-21

I Brian D. Roelle formally request the Oregon State Bar Board of Governors review my claim against Des and Shannon Connall.

Furthermore, it is difficult to understand the committee's vote: "that there was no evidence of dishonesty, that services were provided, and that it is a fee dispute." When the contract supplied by Des Connall shows otherwise. The contract states "that he will 'prepare and file all necessary and appropriate legal documents', yet he failed to file a 412 motion on a sex offense case, knowing I wanted to testify. The contract states he will 'perform full investigation' and yet again he failed to investigate numerous aspects of the case, including the alleged victim's prior false accusations against her prior boyfriend.

In light of Des and Shannon Connall's ongoing issues that occurred during the time they were being retained to represent me, issues reported on by the Oregonian, issues which resulted in Shannon Connall's license to practice law in Oregon being revoked, how can their claim to have "plenty of time" to work on my case be considered anything other than dishonesty?

How can it not be considered dishonest to tell a client you will provide services related to their children, as mentioned in the contract, then provide absolutely no services related to the children?

Sincerely

Brian Roelle sid 12020174



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2013-01 GATTI (New) Request for Review

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### Action Recommended

Consider claimant's request for review of the CSF Committee's denial of his request for reimbursement.

### Discussion

Earl New submitted a claim for reimbursement of "either \$7,500 or \$85,000" arising out of his representation by Daniel Gatti, claiming he should have received more from the settlement of his sex abuse claims.

In July 2002, Gatti undertook to represent New and fourteen other client in sex abuse claims against the Archdiocese of Portland and various entities of the State of Oregon for abuse allegedly committed by a priest who worked at MacLaren School for Boys. A joint representation agreement signed by all fifteen clients provided that all clients would have to agree to the allocation of any lump sum settlement offer and that Gatti would not participate in determining the allocation.

In September 2005, following mediation, the Archdiocese offered what it considered a "nuisance settlement" of \$7,500 to each of Gatti's clients. New told Gatti he would accept the offer, but for reasons that are not entirely clear, the case was not settled and the Archdiocese later indicated the offer was withdrawn.

A second mediation was scheduled for October 2006. Before the mediation, Gatti obtained from each client the minimum acceptable settlement (New's minimum was the \$7,500 he had previously been willing to take). During the mediation the Archdiocese offered to settle all the claims for a total of \$600,00, which was nearly double the total of Gatti's minimum settlement authority. The Archdiocese wanted to issue individual checks to each of Gatti's clients and asked him to identify the amount each client should receive.

For fourteen of the clients, Gatti calculated their shares by determining the percentage each one's minimum authority bore to the aggregate minimum authority and then allocating that percentage against the \$600,000 (net of his costs and fees). Gatti didn't include New's claim in the allocation formula. Rather, he allocated only \$7,500, which he took "off the top" of the settlement before deduction of fees and costs.<sup>1</sup> Had New's share been calculated as the others' shares were, he would have received more than \$15,000.

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<sup>1</sup> In response to New's disciplinary complaint, discussed infra, Gatti justified his allocation on the ground that \$7,500 was the exact amount New had previously agreed to take and based on his assessment that New's case wasn't worth any more.

Sometime later, Gatti tried a “test case” involving three of his clients against the State. The jury found in favor of two of the clients, but rendered a defense verdict on the third client’s claims. Thereafter, the State agreed to an aggregate settlement with all of Gatti’s clients of \$1,050,000. Gatti used a different method to allocate the second settlement, but again gave New only \$7,500.

New requested an accounting and when Gatti refused, he filed a complaint with the Bar. In an opinion issued January 22, 2013, the trial panel suspended Gatti for six months, finding that he failed to communicate adequately with his clients, violated the aggregate settlement rule, improperly represented clients who had directly conflicting interests, and misrepresented to New the amount of the settlements.<sup>2</sup> On the last point, the opinion says:

“While not dealing dishonesty to line his own pockets the Accused was, nevertheless, dishonest with his clients. His selfish motive was to dispose of the matter without relinquishing representation or taking more time.”

The CSF Committee denied New’s claim. CSF Rule 2.2 says a loss of money is eligible for reimbursement if “caused by the lawyer’s dishonest conduct.” Dishonesty is defined in Rule 1.8 as “a lawyer’s willful act against a client’s interest by defalcation, by embezzlement, or by other wrongful taking.” Notwithstanding the trial panel’s conclusion that Gatti engaged in dishonesty, the CSF Committee concluded that his conduct did not constitute dishonesty within the meaning of the CSF Rules because it did not involve defalcation,<sup>3</sup> embezzlement<sup>4</sup> or wrongful taking.<sup>5</sup> In other words, Gatti did not “take” New’s funds; rather, by withholding material information Gatti persuaded New to accept less than his fair share from the global settlements.

In his request for review, New points to the fact that Gatti was “found guilty of ethical violations” by the bar. As explained above, however, the CSF Committee does not believe that Gatti’s conduct is the type the Fund was designed to address.

Attachments: New Request for BOG Review  
Trial Panel Opinion in *In re Gatti*

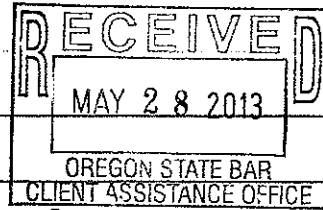
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<sup>2</sup> The trial panel decision is currently on appeal to the Supreme Court.

<sup>3</sup> “Withholding or misappropriating funds held for another,” according to Law.com.

<sup>4</sup> “The fraudulent conversion of another’s property by a person who is in a position of trust,” according to Justia.com, or “misappropriating money or assets held in trust,” according to Law.com.

<sup>5</sup> “The act of wrongfully taking anything without the consent of the possessor,” according to Uselegal.com.



5-21-13

Dear Ms. Stevens

Yes, I would like my Claim (NO. 2013-01) reviewed by the Oregon State Bar Board of Governors. Mr. Gatti was found guilty of ethical violations where he was being dishonest and even lying to the Bar so I have no idea where the Committee came to the conclusion he wasn't being dishonest.

Once again, please have my Claim reviewed and the findings of the Bars Trial panel included in that review.

Thank you for your time.

Carl New  
# 4440796  
777 Stanton Blvd  
Ontario, OR 97914

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	Case No. 10-60
	)	
Complaint as to the Conduct of	)	
	)	
DANIEL J GATTI	)	
	)	
Accused.	)	

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Bar Counsel: Charles L. Best and Linn D. Davis

Disciplinary Board: Sydney Eddy Brewster, Esq. Chair; Robert C. McCann, Esq. Member; Vaughn Stanley Edsall, Public Member.

Disposition: Trial Panel Opinion: Six Month Suspension

Effective Date of Opinion: January 22, 2013

**OPINION OF TRIAL PANEL**

This matter came on regularly before a Trial Panel of the Disciplinary Board consisting of Sydney Eddy Brewster, Chair; Robert C. McCann, Member and Vaughn Stanley Edsell, Public Member, at a hearing held on September 12 and 13, 2012 in Marion County Circuit Court. The Oregon State Bar was represented in this matter by Charles L. Best and Linn D. Davis. The Accused was represented by Mark J. Fucile. The Trial Panel has considered the stipulations, pleadings, exhibits, testimony, trial memoranda, arguments of counsel and closing briefs.

Based upon the findings and conclusions made below, we find that the Accused has violated RPC 1.49(a)(b), RPC 1.7(a)(1), RPC 1.8(g), and RPC 8.4(a)(3). The Oregon State Bar has proved its case at trial. We further determine that the Accused should be suspended from the practice of law for a period of six months.

**INTRODUCTION**

The Oregon State Bar is and at all times mentioned herein was, authorized to carry out the provisos of ORS Chapter 9 relating to the discipline of attorneys.

The Bar filed its Formal Complaint against the Accused on September 16, 2010. The Accused timely filed an Answer. The matter went to trial on the Bar's Second Amended Complaint to which the Accused had timely filed an answer.

## **GENERAL FACTUAL FINDINGS**

### **BURDEN OF PROOF/EVIDENTIARY STANDARD**

The Bar has the burden of establishing the Accused's misconduct in this proceeding by clear and convincing evidence. BR 5.2. Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In Re Taylor*, 319 OR 595, 600, 878 P2d 1103 (1994) The documents in this case are not disputed and the documents support every allegation that the bar has made.

### **FIRST CAUSE OF COMPLAINT**

At all relevant times, the Accused, Daniel J. Gatti, was an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and was a member of the Bar, having his office and place of business in the County of Marion, State of Oregon.

Beginning in or about July 2002, the Accused undertook to represent Earl New (hereinafter, "New") and fourteen other clients (hereinafter "other abuse clients") in the pursuit of claims against the Archdiocese of Oregon (hereinafter, "the Archdiocese") and various entities of the State of Oregon (hereinafter, "the State") arising from abuse alleged to have been committed by Father Michael Sprauer (hereinafter, "Sprauer") while Sprauer was working with the MacLaren School for Boys. The other abuse clients were known to the Accused as Randy Sloan, Norman Klettke, Robert Paul, Curtis Grecco, Rodney Kessler, Douglas DeJong, Bradley Vollmer, Don Steffan, Charles Naylor, Michael Cassidy, Randy Brandon, Richard Wilcox, Douglas Moore and Ricky DuHaime.

At the Accused's request, New and the other abuse clients signed a Joint Representation Agreement (hereinafter "JRA"). The JRA stated that:

- (a) the values of the clients' individual cases might differ;
- (b) in the event of an aggregate settlement (defined by the JRA as "a lump sum fund to be shared by all the clients"), the Accused could play no role in allocating proceeds among the clients because that would involve a current client conflict of interest;
- (c) if the clients agreed to accept an aggregate settlement, they would have to decide amongst themselves how to apportion the proceeds; and
- (d) if the clients couldn't themselves agree on apportionment, that issue would have to be arbitrated by a third person. The JRA described the arbitration procedure that would be used and included a list of potential arbitrators.

1.

In or about July 2004, the Archdiocese filed for bankruptcy and the abuse claims were stayed.

In or about August through September 2005, the Accused represented New and the other abuse clients in a mediation with the Archdiocese (hereinafter, “the first mediation”) at which the Archdiocese offered New and the other abuse clients individual settlements. The claims of New and the other abuse clients were not settled at the first mediation.

1.

In or about October 2006, the Accused represented New and the other abuse clients in another mediation with the Archdiocese (hereinafter, “the second mediation”). In advance of the mediation, the Accused obtained New’s authority to settle his lawsuit for a minimum of \$7,500. The Accused also obtained minimum settlement authority from the other abuse clients.

2.

At the second mediation, the Archdiocese offered to settle all the abuse lawsuits for a lump sum of \$600,000. The Archdiocese expressed no preference or concern over how New and the other abuse clients divided the settlement proceeds so long as the claims of New and the other abuse clients were all settled. The \$600,000 lump sum exceeded the combined minimum settlement authority granted the Accused by New and the other abuse clients. The Accused therefore accepted the Archdiocese’s settlement offer (hereinafter “Archdiocese settlement”).

3.

Because of the pending bankruptcy, the Archdiocese informed the Accused that it preferred to write individual checks to New and the other abuse clients. The Archdiocese therefore asked the Accused to decide and identify the dollar amount each client should receive.

4.

Despite what the Accused had, in the JRA, told New and the other abuse clients about the Accused’s ethical inability to himself determine what portion of a lump sum settlement each of his settling clients would receive, the Accused directed the Archdiocese to issue a check to New in the amount of \$7,500, and to the other abuse clients funds in amounts ranging from \$21,621.65 to \$100,608.11. The Accused himself determined how much New and each of the other abuse clients would receive.

The Accused failed to disclose information New and the other abuse clients needed to make informed decisions regarding the Archdiocese settlement and the Accused’s ability to adequately represent them in the settlement process, including but not limited to the following facts:

- (a) the Archdiocese settlement was a settlement of New’s claims and the claims of the other abuse clients for a single lump sum amount;
- (b) the Archdiocese settlement was conditioned upon the settlement of New’s claims and the claims of all the other abuse clients;

(c) the Archdiocese did not specify or require that any particular amount from the settlement proceeds be paid to any particular client;

(d) after the lump sum settlement from the Archdiocese was accepted the proceeds had to be divided between the Accused's clients;

## **SECOND CAUSE OF COMPLAINT**

### **1. The Accused violated RPC 1.4 (b)**

RPC 1.4 (b) provides in relevant part:

“(b) . . . Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive, and on request by the client or third person, shall promptly render a full accounting regarding such property.

The Accused does not take responsibility for the plain language of his own retainer agreement. Witnesses for the Accused testified as to the source of the form used for the retainer agreement. The implication of that testimony seemed to be that since it was prepared by an ethics attorney it was a good agreement. That does nothing to explain why the agreement was not adhered to by the drafter. The fact that a firm uses a form from another attorney does not absolve the user from understanding and adhering to the plain language of the form, in this case the agreement between lawyer and clients. The Accused testified that the agreement did not mean what it said. Or that he did not understand what it meant. Both of which are unethical and untenable positions for an attorney with the years of experience which the Accused possesses.

Because the Accused is a victim of child sex abuse himself and displays very credible feeling and passion for the work he did for the clients in the cases in question and for the complainant he seems to believe that he was empowered to stand in the shoes of his clients and be

on both sides of the table. This is a clear violation of RPC 1.6(g). The retainer agreement stated that if the situation arose where a global or aggregate or lump sum settlement <sup>1</sup>were offered and accepted the Accused would have to relinquish representation and all plaintiffs would be involved in determining distribution of the settlement funds. This did not occur. Accused own testimony (TR at Page 430 lines 16-20; Page 431 line 23 to 432 line 3) demonstrates he never considered it. It is and was an unwaivable conflict.

In his case the Accused asked the panel to examine the Complainant's lack of credibility. The complainant is not the most likeable or credible witness. Nevertheless, that credibility is irrelevant to a determination because, by his own admission the Accused is guilty of that which the Bar has accused him of doing.

Instead of adhering to the plain language of his own contract the Accused failed to provide his clients with information regarding the actual settlement terms, The defense made much of the hard work that Mr. Gatti put into this case. "Dan Gatti got fantastic results for all of his clients in this Sprauer cases including Earl New." Opening statement page 29 lines 4 and 5 characterizing the testimony of witnesses to come. The problem is that the nature of the results as to all plaintiffs was not done as promised to the Plaintiffs in their agreements with the accused.

The Defense would also have us believe that "we have a very, very complex rule, the Aggregate settlement rule. This is not a complex rule in spite of the Defense's apparent difficulty with it. The defense admits it applies to 'largely at this point undisputed facts' Page 30 line 21

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<sup>1</sup>In his pleadings and at trial the Accused made much of the definition of "aggregate settlement." , calling the rule about the same "complex." The panel finds that the definition is clear and interchangeable with the terms above, that is lump sum or global settlement. One amount was settled upon for all plaintiffs in the matter. That is what was contemplated in the plain language of the retainer agreement with the complainant and the other plaintiffs represented by the Accused.



The defense argued Constitutional claims under both the US and Oregon constitutions that somehow the rule alleged to be violated did not give Mr. Gatti adequate notice of the conduct prohibited. This argument fails. Mr. Gatti did not follow the plain language of his own documents. His documents are not vague, nor is the rule in question. There is no due process violation here nor is the rule, RPC 1.6 (g), void for vagueness. It reads in pertinent as follows:

(g) A lawyer who represents two or more client's shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty of nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or please involved and of the participation of each person in the settlement.

There is nothing vague here. And Mr. Gatti knew what an aggregate settlement was. He notified his clients that they must all agree for him to continue representing them on the second settlement. He simply chose to ignore his own agreements and the Rules under which members of the Oregon Bar are required to practice

2. **The Accused violated RPC 1.7 (a)(1)**
3. **The Accused violated RPC 1.8(g)**

### **THIRD CAUSE OF COMPLAINT**

1. **The Accused violated RPC 1.4 (b)**
2. **The Accused violated RPC 8.4(a)(3)**

### **SANCTION**

The ABA *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (hereinafter, "*Standards*") are considered in determining the appropriate sanction. *In re Spencer*, 335 Or 71, 85-86, 58 P3d 228 (2002). The *Standards* require that the Accused's conduct be analyzed by

the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, §3.0.

Applying those standards to the instant action it is clear that:

1. The Accused violated duties to his client, the public, and the profession. *Standards*, §§ 4.1 (Failure to Preserve the Client's Property), 5.0 (Violations of Duties Owed to the Public), 5.1 (Failure to Maintain Personal Integrity), and 7.0 (Violations of Duties Owed as a Professional).

2. The Accused's conduct demonstrates both intent and knowledge. He knew he was not adhering to his own agreements.

**Preliminary Sanction Analysis.** Without considering aggravating and mitigating circumstances, the following *Standards* are applicable:

*Standard* § 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client

*Standards* § 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. .

The final criteria to be considered before imposing sanctions are the existence of any aggravating or mitigating factors. *Standards*, §9.22 and §9.32, respectively. In the instant action, several aggravating factors are present including:

- a. Dishonest or selfish motive. *Standards* § 9.22(b). While not dealing dishonestly to line his own pockets the Accused was, nevertheless, dishonest with his clients. His selfish motive was to dispose of the matter without relinquishing representation or taking more time.
- b. Vulnerability of the victim. *Standards* § 9.22(h). The complainant, New, and the other clients in the present case are all vulnerable because of their incarceration, history of incarceration and the multiple issues arising from the abuse for which they were suing.
- c. Refusal to acknowledge wrongful nature of conduct. *Standards* § 9.22(g).
- d. Substantial experience in the practice of law. *Standards* § 9.22(j).

In the instant matter there are mitigating factors.

The accused cooperated with the Bar's investigation. Although unenthusiastically, he gave what was needed. But even at trial it was clear that he felt there was a bias against him and that the charges were unfair and unfounded. Yet his own documents were sufficient to demonstrate that he violated the above referenced Rules of Professional Conduct.

The Accused's failure is troubling in this case Mr. Gatti has a long career in this state. He clearly cares for his clients. Yet he feels no compunction about substituting his judgment for the clear terms of the JRAs in his cases. He failed to inform, failed to confer and failed to step away


when a clear conflict arose between his clients. Even at trial he was adamant that he had done the right thing (cite to transcript)

### CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. *Standards*, §1.1, p 7. It is not intended to be punitive but to deter future wrongful conduct.

Mr. Gatti has not remorse nor does he acknowledge any wrong doing. He seems unable to comprehend his ethical responsibilities and his failure to comply with the RPCs. Accordingly, the Panel suspends the Accused for a period of six months.

Dated this 22 day of January, 2013.

  
\_\_\_\_\_  
Sydney Eddy Brewster  
Trial Panel Chair

  
\_\_\_\_\_  
Robert C. McCann  
Trial Panel Member

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Vaughn Stanley Edsall  
Trial Panel Member

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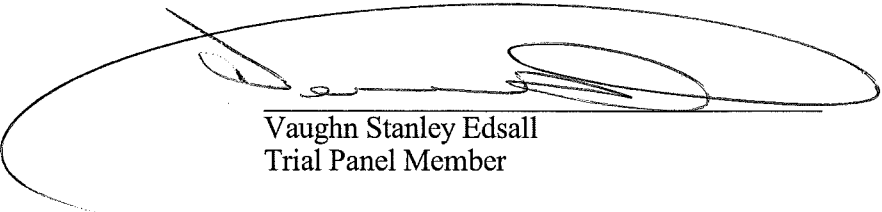
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Vaughn Stanley Edsall  
Trial Panel Member

# 2014 EXECUTIVE SUMMARY BUDGET



June 27, 2013

Report to the Budget & Finance Committee

## PURPOSE OF THIS REPORT

This 2014 Executive Summary Budget Report and the related forecasts are developed on anticipated trends, percentage increases, and various assumptions with the 2013 budget as the base. This report gives only a “first look” toward developing the final 2014 budget.

**The 2014 BUDGET column on Exhibit A forecasts a Net Revenue of \$17,900 for 2014.**

This is before any bar staff manager or department has prepared his/her line item budget, but that net revenue number becomes a target for the final 2014 budget.

All forecasts incorporated herein include no changes to program service and activity from the current budget.

## CONTENTS

1. Assumptions - Revenue
2. Assumptions - Expenditures
3. Diversity & Inclusion
4. Client Security Fund Assessment
5. Fanno Creek Place
6. The Five Years After 2014
7. Budget Development Calendar
8. Recommendations of the Budget & Finance Committee to the Board of Governors

Exhibit A - 2014 Budget and Five-Year Forecast

Exhibit B - Memo from John Gleason

Exhibit C1 – Chart: Mandatory Services Fee

Exhibit C2 – Chart: Voluntary Services Fee

Exhibit C3 - Summary of Fee

Exhibit D - Email Comments from Committee Member

The positive “bottom line” for 2014 is the result of a change in many factors from the \$400,000 deficit mentioned at the previous Committee meetings. The reasons for the positive swing to a \$17,900 Net Revenue are numerous (and explained in more detail later):

- **Membership growth** is the lowest in many years, but slightly higher than anticipated
- Sales of **print Legal Publications** are historically exceeding projections
- **Admissions** revenue shows an increase over 2012, rather than a decline
- Revenue from the **new Lawyer Referral funding model** is far exceeding expectations
- The employer’s **rates for PERS** declined by 4.4% of eligible payroll due to legislative action
- **Non-personnel costs** continue to decline

The Net Expense in 2012 was \$2,641 and the Net Revenue projected for 2013 is \$6,331. The forecast for 2014 without any detailed analysis is a similarly small \$17,900 leaving little margin for error, variances, or changes.

#### This forecast projects:

- **no member fee increase in 2014**
- **not transferring any reserves to revenue for general operations.**

## Assumptions

Here are the assumptions factored into this 2014 budget summary

### 1. Revenue . . .

#### ■ Membership Fees

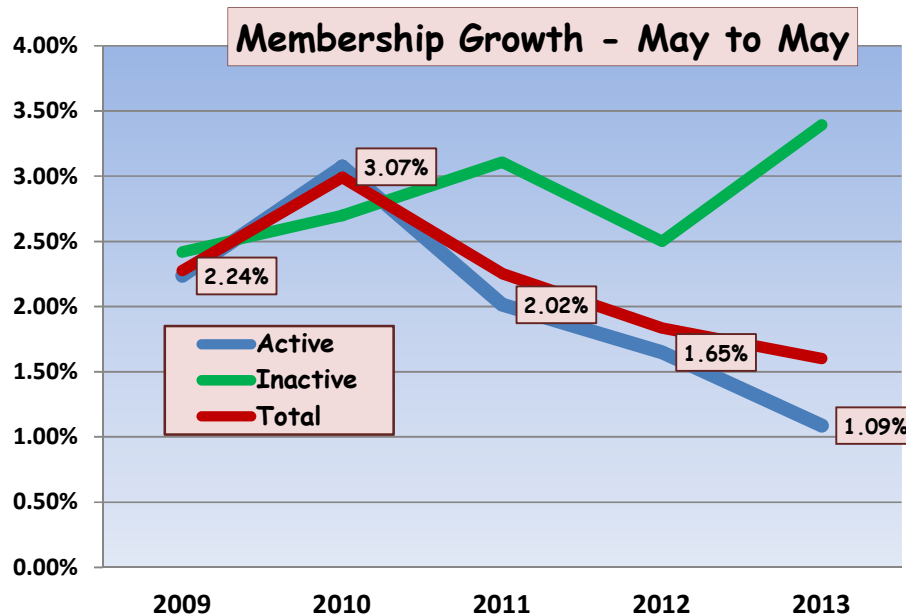
This forecast includes no increase in the active membership fee for 2014. This would be the ninth consecutive year of no active member fee increase.

The forecast includes a 1% growth in membership fees, and is a reasonable increase based on the growth of membership from May 2012 to May 2013 (*see chart on next page*). Also Admissions anticipates slightly more bar exam applications this year than last, which should trend to anticipating at least the 1% growth.

#### ■ Admissions

Admissions revenue is exceeding the budget by 26% after five months this year. That is due to slightly more bar exam applications, but primarily due to raising the investigation fee by \$175.00 to \$425.00. In spite of those increases, the 2014 forecast includes a 5% revenue decline.

Member Fee Revenue History			
Year	Actual	\$ Chg YOY	% YOY
<b>2014 P</b>	<b>\$7,081,110</b>	<b>\$70,110</b>	<b>1.00%</b>
<b>2013 B</b>	<b>\$7,011,000</b>	<b>\$51,300</b>	<b>0.74%</b>
2012	\$6,959,700	\$145,657	2.14%
2011	\$6,814,043	\$183,588	2.77%
2010	\$6,630,455	\$153,872	2.38%
2009	\$6,476,583	\$159,808	2.53%
2008	\$6,316,775	\$127,911	2.07%
2007	\$6,188,864	\$156,947	2.60%
2006	\$6,031,917		
<b>Average 2007 to 2012</b>			<b>2.41%</b>



#### ■ CLE Seminars

CLE Seminars has consistently declined the past few years and the 2014 forecast includes a 5% decline from the 2013 budget.

#### ■ Legal Publications

Sales of Legal Publications books have exceeded expectations significantly. Sales in 2012 were \$216,238, which was more than twice the revenue budgeted. After five months in 2013, sales are already \$171,955 and the Publications manager projects 2013 sales to reach \$262,000. The manager projects 2014 sales to be \$235,000 based on the books anticipated to come to market in 2014.

#### ■ Lawyer Referral

The bar was not expecting revenue from the new Lawyer Referral funding model until this year. Then the budget was only \$55,000. The bar received three months of revenue in 2012 and for the first five months of 2013 already has received \$123,521. Admittedly the five month history does not necessarily mean that trend will continue through the rest of 2013, but if it did, revenue for 2013 would be \$296,000.

For the purpose of the 2014 forecast, the 2013 projection is lowered to \$266,000. Assuming a 10% growth in 2014, revenue projects to \$293,000 - a significant change from the forecast a year ago, but not an unattainable number.

*In summary, the 2014 forecast for all revenue is \$135,000 more than the 2013 budget – not an impractical increase based on current activity. A 1% reduction in all forecast revenue would still allow a break-even budget assuming expenses would not change.*

## 2. Expenditures . . .

### ■ Salaries, Taxes & Benefits

A significant change from the forecast made a year ago is in Personnel costs. The 2014 forecast is \$222,000 less than the forecast a year ago – even though a 2% salary pool is included in the 2014 forecast.

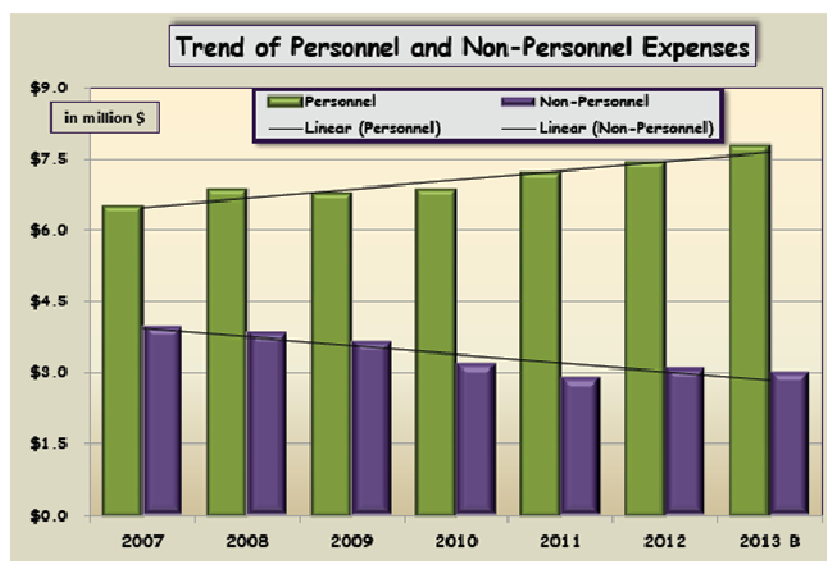
- Previous salary pool increases have been: 2013 – 2%; 2012 – 2%; 2011 – 3%.
- The employer's rate for PERS changed July 1, 2013. The bar had expected an 8-10% cost increase in benefits due entirely to the cost of PERS. In June, all PERS employers were informed that SB 822 decreased the employer rate and the bar will pay 4.4% less than what was forecast. As a result, the total 2014 cost of Taxes & Benefits is projected to be slightly less than the 2013 budget.
- With the rate change the bar's 2013 cost for PERS is projected to be \$90,000 to \$95,000 below the amount budgeted.

*The chart indicates the impact of including a salary increase in the 2014 budget. The highlighted row contains the amounts included in this forecast.*

Estimated Impact of Salary Pool on 2014 Forecast		
Per Cent Change	Dollar Amount	Revised Net Revenue (Expense)
No change	\$ 0	\$ 147,200
1%	\$ 64,300	\$ 82,200
2%	<b>\$ 129,300</b>	<b>\$ 17,900</b>
3%	\$ 194,500	\$ (47,300)

### ■ Changing Trends

The chart below shows the total cost of Personnel and Non-Personnel since 2007. The trends move in two different directions and the summaries on the next page indicate their impact.





### From 2007 to 2013 . . .

- **Non-Personnel** costs have decreased \$964,000. This is a 24.2% decrease, i.e. reducing operational and administrative expenses by a fourth. Some of the drop is due to the on line availability of the Legal Publications library causing the printing of far fewer pages. However, the 24.2% decline is impressive regardless of the reasons.
- **Personnel** costs (salary increases, taxes, and benefits) have gone up \$1.28 million over the six years - an average increase of only 3.3% a year.
- **All** costs are only \$317,000 more than 2007, or an average increase of ½ of 1% a year.

### ■ Direct Program & Administrative Expenses

Direct Program and Administrative costs are expected to be the same as the 2014 budget. Any change may be caused by a change in revenue – for example, CLE Seminars generating more or less registration revenue or Legal Publications printing and selling more or less books than projected.

Any indirect cost increase probably will be offset by the decrease in the cost of the new lease for copiers and facilities management in mid 2013.

Potential changes in operational costs for Admissions and Disciplinary Counsel are addressed in a memo from John Gleason in **Exhibit B**. If the circumstances in the memo occur, revenue for Admissions and membership fees also will be impacted.

## 3. Diversity & Inclusion

The Diversity & Inclusion assessment has been \$30.00 since 1990. This program is a standalone budget that maintains its own fund balance.

2013 Diversity & Inclusion Budget			
	Total	Diversity & Inclusion	OLIO
<b>Revenue</b>	\$ 478,200	\$ 428,200	\$ 50,000
<b>Expenses</b>			
Personnel Costs	295,300	295,300	
Program & Administration	164,850	114,950	49,900
Indirect Costs	78,441	78,441	
<b>Total Expenses</b>	538,591	488,691	49,900
<b>Net Expense</b>	<b>\$ (60,391)</b>	<b>\$ (60,491)</b>	<b>\$ 100</b>

Revenue comes from the assessment, interest on the fund balance, and registration or contributions for special events like BOWLIO. The amount of revenue from the \$30.00 assessment in the 2013 budget is \$419,700.

The fund balance at the beginning of 2013 was \$62,672. By the end of this year after the current year net expense, there will be approximately \$2,200 in the fund balance.

Thus, to continue with the programming at the 2013 level in 2014 without dipping into general member fees, there must be significant amounts of additional revenue or significant expense reductions.

## 4. Client Security Fund

For 2013 the Client Security Fund assessment was raised from \$15.00 to \$45.00 to offset the large volume and size of claims. The increase was warranted as from July 1, 2012 to June 30, 2013 the bar paid \$1,125,404 in 88 claims.

At the end of June, the fund balance is approximately \$300,000. If all claims currently being processed are paid, the fund balance would be wiped out, pushing payments into 2014.

The \$45.00 assessment generates \$675,000 in revenue, so the chance of reaching the current reserve goal of \$500,000 by the end of 2014 is unlikely.

## 5. Fanno Creek Place

Little change is expected in the Fanno Creek Place budget from 2013 to 2014. The projected net expense is \$683,000 and the cash flow is a negative \$395,000 – both of which are in line with expectations (see page 2 of **Exhibit A**).

Currently, only 2,091 s.f. is vacant at the bar center and the forecast assumes a tenant in place midyear. A current lease expires in April 2014, but that tenant is expected to renew. Operating costs are expected to be in line with current operations.

## 6. The Five Years After 2014

There are numerous “IF’s” factored into the forecast for the five years beginning 2015. Here are IF’s that could delay the member fee increase even beyond 2015.

- ... **IF** member fee growth increases by at least 1%;
- ... **IF** Admissions revenue can return to the 2012 budgeted revenue;
- ... **IF** CLE Seminars revenue stops declining;
- ... **IF** CLE Publication sales continue comparable to current levels;
- ... **IF** the percentage funding from Lawyer Referral continues to grow substantially to breaking even by 2016;
- ... **IF** the investment portfolio avoids a major decline;
- ... **IF** salary increases don’t exceed 2%;
- ... **IF** PERS rates don’t exceed the increase already factored into the forecasts;
- ... **IF** non-personnel costs remain at no change;
- ... **IF** the net revenue for 2013 is attained or exceeded and 2014 attains the \$17,900 projected net revenue.

Those are a lot of **IF’s**.

If some or all of those don’t materialize:

- a \$50 member fee increase raises enough revenue to keep the fee constant for at least 3 years;

- a \$70 member fee increase raises enough revenue to keep the fee constant for at least 5 years.

Note that the forecast includes the \$200,000 grant from the PLF from 2014 to 2016. This is due to the action of the PLF board committing the grant only for those three years.

#### ■ Exhibits C1, C2, and C3

These exhibits were shared with the Committee at the June meeting. They allocate the current active membership fee of \$522.00 to the mandatory and the voluntary services provided by the bar and the anticipated cost of each activity as a portion of the member fee. These charts are helpful if the Committee and BOG were to evaluate eliminating certain services as limited value to the membership for the purpose of balancing or reducing the budget.

#### ■ Exhibit D

These are the comments from the Committee members in response to Chair Knight's request "to gather preferences from the committee regarding potential programming cuts." They are included as reference to the review of this phase of the 2014 budget development process.

## 7. 2014 BUDGET DEVELOPMENT CALENDAR

Date	Process
July 12	<b>Budget &amp; Finance Committee</b> reviews the 2014 Executive Summary Budget; shares review with the <b>Board of Governors</b>
August 23	The <b>Budget &amp; Finance Committee</b> will not meet unless additional budget review is needed.
September 27	<b>Budget &amp; Finance Committee</b> recommends member fee for 2014; the <b>Board of Governors</b> acts on fee recommendation
Early to mid October	Bar <b>staff</b> prepare 2014 line by line program/department budgets
October 25	<b>Budget &amp; Finance Committee</b> reviews the 2014 Budget Report.
Early to mid November	Bar <b>staff</b> refine 2014 budget
November 1	<b>House of Delegates</b> meeting. Action on Fee resolution (if increase approved by the BOG).
November 22	<b>Budget &amp; Finance Committee</b> review revised 2014 Budget Report
November 22-23	<b>Board of Governors</b> reviews and approves 2014 Budget

## **8. RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE TO THE BOARD OF GOVERNORS**

Although no specific recommendations are necessary with this report (the committee will meet twice before a recommendation on the 2014 fee is needed and three times before the final budget approval), the Committee can provide direction on the following:

- the general membership fee currently at \$447.00
- the Diversity & Inclusion assessment currently at \$30.00;
- the Client Security Fund assessment currently at \$45.00;
- changes on the revenue projections
- changes to program or policy considerations
- the 2014 salary pool
- guidance/direction to bar staff budget preparers of the 2014 line item budget
- other \_\_\_\_\_

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 12, 2013  
**Memo Date:** July 8, 2013  
**From:** Rod Wegener, CFO  
**Re:** Revision of the Bar's Investment Policy

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### Action Recommended

Approve the revision (listed below) to the investment policy in bylaw 7.402

### Background

This topic has been on the Budget & Finance Committee's agenda for the past several meetings as the Committee works with Washington Trust Bank to revise the bar's investment policy specifically the list of approved investments in bylaw 7.402. The board approved a revision to the policy at its May 3, 2013 meeting, but after further discussions with the bank, the Committee is recommending the policy be revised slightly

On July 1, Budget & Finance Committee members Knight, Wade, and Wilhoite and the bar's CFO met via conference call with Rick Cloutier and Sarie Crothers of Washington Trust Bank to clarify a number of items on the bar's investment policy and the Investment Policy Statement as directed at the June 14 Committee meeting.

After relevant discussion and the bank explaining its position, the Committee members agreed to these revisions in the policy, which will be acted upon at its meeting prior to the board meeting:

Mutual funds investing in infrastructure, commodities, and instruments such as high yield bonds, adjustable rate bonds, derivatives, futures, currencies, **mortgage backed securities**, and ETFs, but not swaps or speculative instruments, and only for the purpose of both managing risk and diversifying the portfolio and not at all for the purpose of leveraging, with all such investments in total not to exceed ~~10%~~ **35%** of the total invested assets.

The Committee also will address a slight change to the Investment Policy Statement (ISP) to conform with the list of approved investments that has been made to the investment policy.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** David Wade, Chair, Governance & Strategic Planning Committee  
**Re:** OSB Bylaw 2.4 BOG Special and Emergency Meetings

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### Action Recommended

Approve the Committee's recommendation to amend OSB Bylaw 2.400-2.404 relating to special and emergency Board of Governors meetings to conform them to the Public Meetings Law. Also move one sentence relating to the effective date of BOG terms from Bylaw 2.401 to 2.101.

### Discussion

Pursuant to ORS 9.010, the bar is subject to ORS 192.610 - .690, the "Oregon Public Meetings Law." The purpose of the OPML is to ensure "an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made." The OPML provides for three kinds of meetings: regular, special and emergency, and specifies the kind of notice that must be given for each. For reasons lost to history, Bylaw 2.4 imposes more restrictive notice requirements on special and emergency meetings of the BOG. While it is likely not a violation of the OPML to have stricter notice requirements, there is no evident compelling reason for them. Moreover, the stricter notice requirements in the Bylaw could conceivably prevent the BOG from meeting quickly in the event of a true emergency.

#### *Regular Meetings*

The OPML requires that public bodies give "public notice reasonably calculated to give actual notice to interested persons...of the time and place for holding regular meetings." No specific time is required for giving notice of a regularly scheduled meeting so long as it is *reasonably calculated* to give actual notice of the time and place of the meeting.<sup>1</sup>

#### *Special Meetings*

Under the OPML, a governing body can call special meetings on at least 24 hours' notice. No specific manner of giving notice is required, although the Attorney General<sup>2</sup> suggests notice by facsimile or telephone to wire services and other media in addition to members of the governing body and other interested persons. Presumably, an e-mail would also suffice.

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<sup>1</sup> The OSB generally issues a public meeting notice to the media approximately three weeks in advance of regularly scheduled meetings, and we have never been challenged that this is not sufficient to give interested persons actual notice.

<sup>2</sup> §II.D.1.b., Attorney General's Public Records and Public Meetings Manual, 2010.

As with regular meetings, the notice of a special meeting must include a list of the principal subjects anticipated to be considered at the meeting. Minor matters of business to be discussed need not be included in the notice, and a public body may take up additional “principal subjects” that arise too late to be included in the notice.

Bylaw 2.402 contemplates special meetings of the BOG, but allows them to be called only on 5 days’ notice. The Bylaw also requires the ED to sign the special meeting notice and limits issues to those in the notice. Some of the other language in the bylaw is unnecessarily duplicative of the OPML.

### *Emergency Meetings*

The OPML also allows for emergency meetings, which are actually a type of special meeting. An emergency meeting may be called on less than 24 hours’ notice if there is a “compelling reason” why the meeting could not be delayed to allow at least 24 hours’ notice. In other words, an actual emergency must exist and the minutes of the meeting must describe the emergency that justified less than 24 hours’ notice. The Court of Appeals<sup>3</sup> has noted that:

An actual emergency, within the contemplation of the statute, must be dictated by events and cannot be predicated solely on the convenience or inconvenience of members of the governing body.

OSB Bylaw 2.403 seems not to allow a true “emergency” meeting within the meaning of the OPML, as it requires 24 hours’ notice. It also requires ratification of actions if the entire board is not present at the emergency meeting. This is not required by the OPML, presumably because no action can be taken even at an emergency meeting in the absence of a quorum. The bylaw requirement makes no particular sense as well because there is no guarantee that the next board meeting would have all members present. As with the special meeting bylaw, much of what else is in this bylaw is redundant of the requirements of the OPML.

Accordingly, the Governance & Strategic Planning Committee recommends that the Bylaws be amended as follows:

### **Section 2.4 Meetings**

#### ***Subsection 2.400 Robert’s Rules of Order***

~~Subject to ORS Chapter 9 and these Policies, the conduct and voting at b~~Board meetings are governed by ORS Chapter 9, these bylaws, and the most recent edition of Robert’s Rules of Order.

#### ***Subsection 2.401 Regular Meetings***

Meetings of the Board ~~must be~~ held at such times and places as the Board determines. ~~and t~~The Executive Director ~~must will~~ provide notice of the time and place

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<sup>3</sup> *Oreg. Assoc. of Classified Emp. v. Salem-Keizer*, 95 Or App 28, 32, 767 P2d 1365, rev den 307 Or 719 (1989) (no “actual emergency” justified the city holding a special meeting without notice because it had changed the agenda for the regularly scheduled meeting)

~~of all meetings in accordance with ORS 192.610 to 192.690. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.~~<sup>4</sup>

#### ***Subsection 2.402 Special Meetings***

A special meeting of the Board may be called by the President or by three Governors filing a written request with the Executive Director. If, within five days after a written request by three Governors ~~is filed with the Executive Director~~, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the Executive Director ~~or some other person designated by the three Governors joining in the request, may set a time for and give notice of the meeting. The date fixed for the meeting may be no less than five nor more than ten days from the date of the notice. The Executive Director shall~~ must call the meeting and provide at least 24 hours' notice of the time and place of the special meeting in accordance with ORS 192.610 to 192.690. ~~or the person designated by the three Governors in their request must sign the notice of a special meeting. The notice must set forth the day, hour, place and purpose of the meeting. The notice must be in writing and be communicated to each Governor at his or her principal office address. Notice must be given to each Governor, unless waived. A written waiver by or actual attendance of a Governor is the equivalent of notice to that Governor. Special meetings may consider only the matters set forth in the notice of the meeting.~~

#### ***Subsection 2.403 Emergency Meetings***

When the President determines that a matter requires immediate attention of the Board, an emergency meeting ~~or conference call~~ may be called ~~with on less than 24-hours' notice to members of the Board.~~ Notice ~~shall~~ must be given to members of the board, the media and other interested persons as may be appropriate under the circumstances. ~~The notice shall~~ must indicate the subject matter to be considered. ~~Conference calls and emergency meetings can consider only~~ Only the matters for which notice is given the emergency meeting is called may be considered at the meeting. ~~If all members of the Board are present at the meeting or participating in the conference call, any actions taken are final. If any member does not participate or receive notice, the matters decided must be ratified at the next Board meeting.~~

#### ***Subsection 2.404 Minutes***

~~The Executive Director or his or her designee must keep a~~ Accurate minutes of all board meetings must be preserved in writing or in a sound, video or digital recording. The minutes ~~shall~~ must reflect at least the following information: members present, motions or proposals and their disposition, the substance of any discussion on any matter, and a reference to any document discussed at the meeting. The minutes must reflect the vote

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<sup>4</sup> This sentence should be moved to Bylaw 2.101(a):

#### ***Subsection 2.101 Election***

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws.

Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

(b) Candidate statements for the office of Governor from a region must be in writing. The Executive Director will prepare the forms for the candidate statements and supply the forms to the applicants. Applicants must complete and file the form with the Executive Director by the date set by the Board. The Executive Director must conduct elections in accordance with the Bar Bylaws and the Bar Act.



of each member of the Board ~~by name, on any matter considered by it, must be recorded in the minutes~~ if the vote is not unanimous. ~~Draft minutes, identified as such, will be available to the public within a reasonable time after the meeting. Final minutes will be available to the public within a reasonable time after approval by the Board. The minutes of executive sessions will be available to the public except where disclosure would be inconsistent with the purpose of the executive session.~~

***Subsection 2.405 Oregon New Lawyers Division Liaison<sup>5</sup>***

The Oregon New Lawyers Division ("ONLD") has a non-voting liaison to the Board, who must be a member of the ONLD Executive Committee. The ONLD liaison is appointed by the chair of the ONLD Executive Committee to serve for a one-year term. No person may serve more than three terms as ONLD liaison. If the ONLD liaison is unable to attend a meeting of the Board, the ONLD chair may appoint another member of the ONLD Executive Committee to attend the meeting.

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<sup>5</sup> This provision was apparently added here because it didn't fit neatly into other parts of the bylaws.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 12, 2013  
**Memo Date:** July 27, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Volunteer Appointments

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### Action Recommended

Review and approve the following appointment recommendations.

### Background

#### Advisory Committee on Diversity and Inclusion

Due to a resignation, the committee needs one member appointed to fill a partial term. The committee and staff liaison recommend **Jacqueline Lizeth Alarcon** (116073). Ms. Alarcon is a 2010 Willamette University graduate practicing in Portland with Yates, Matthews & Eaton.

**Recommendation:** Jacqueline Lizeth Alarcon, member, term expires 12/31/2015

#### Legal Services Program Committee

A member of the committee was removed due to a lack of participation. As such, the committee staff liaison recommends the appointment of Judge Timothy C. Gerking (792345) to fill the vacant seat. In addition to his ongoing access to justice support, Judge Gerking offers a rural area perspective.

**Recommendation:** Judge Timothy C. Gerking, member, term expires 12/31/2014

#### Pro Bono Committee

The chair of the committee moved out of state and resigned from the committee. Current committee member, **Beverly A. West** (085076) agreed to serve as chair the remainder of the year.

**Recommendation:** Beverly A. West, chair, term expires 12/31/2013

#### Unlawful Practice of Law Committee

Staff and the UPL Committee officers recommend the appointment of **Karen M. Oakes** (984631). Ms. Oakes served a two-year term on the committee but is willing to be reappointed. She is a solo practitioner located in Klamath Falls.

**Recommendation:** Karen M. Oakes, member, term expires 12/31/2016

### **House of Delegates**

The following regions have vacant seats due to resignations or region changes. In most cases, the candidate recommended below is the 2013 HOD Election runner-up.

**Region 1:** M. Kathryn Olney, term expires 4/19/2016

**Region 3:** J. Ryan Kirchoff, term expires 4/19/2016

**Region 4:** Manvir Sekhon, term expires 4/19/2016

**Region 5:** Courtney C. Dippel, term expires 4/19/2016

**Region 5:** Jaimie A. Fender, term expires 4/20/2015

**Region 6:** Ryan Hunt, term expires 4/20/2015

**Out of State Region:** Jennifer M. Geiger, term expires 4/20/2015

**Out of State Region:** Nathan Voegeli, term expires 4/20/2015

### **Disciplinary Board**

Two public member seats are vacant in region 5 of the Disciplinary Board. The staff liaison recommends **Virginia Symonds** and **Michael Wallis** for appointment and both have agreed to serve. Ms. Symonds has experience serving as a fee arbitrator and mediator with the bar and has proven to be dependable, intelligent, and even keeled. Mr. Wallis is new to bar volunteering but has exhibited enthusiasm at the opportunity to participate on the Disciplinary Board.

**Nomination:** Virginia Symonds, public member, term expires 12/31/2015

**Nomination:** Michael Wallis, public member, term expires 12/31/2015

### **Oregon Elder Abuse Work Group**

During the 2013 legislative cycle, HB 2205 created the Oregon Elder Abuse Work Group, consisting of 22 members. The group is to study and make recommendations on defining "abuse of vulnerable persons". The definition will be relevant to lawyers, who will become mandatory elder abuse reporters effective January 1, 2015. The work group is to recommend legislation to the 2014 legislature. The Board of Governors has two appointments to the work group: a lawyer whose practice is concentrated on elder law and a criminal defense lawyer.

**Lara C. Johnson** (933230), of Corson & Johnson in Eugene, is recommended for the elder law practitioner position. OCDLA will provide a recommendation for the criminal defense lawyer position during the July 13 meeting.

**Recommendation:** Lara C. Johnson, Elder Law Practitioner

**Recommendation:**

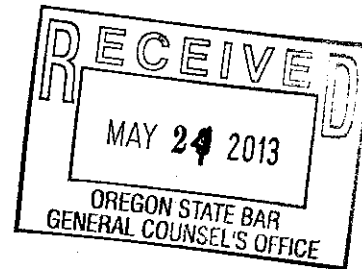
# **NICHOLS & ASSOCIATES**

ATTORNEYS AT LAW

Craig A. Nichols  
David R. Kracke

May 23, 2013

Helen Hierschbiel  
General Counsel  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935



Re: *Virginia Archer Scholarship*

Dear Ms. Hierschbiel:

The Virginia Archer Scholarship Trust was established by Virginia Archer's estate in 1976. Ralph Shepherd, a long-time Portland attorney was the first trustee and upon his death in 1996, the Oregon State Bar Board of Governors appointed Mr. Shepherd's widow, Laura Shepherd, as the successor trustee according to the terms of Virginia Archer's Will, which provides that successor trustees will be appointed by the Oregon State Bar Board of Governors. (See Section 7 of the Will attached hereto).

I have enclosed correspondence to and from the bar in 1997, when Mrs. Shepherd was appointed successor trustee, for your convenience. This correspondence also provides more background regarding the Trust. I have also included a copy of Virginia Archer's Will and the most recent tax return for the Trust showing \$176,860.00 as the total assets of the Trust.

Mrs. Shepherd died on January 22, 2012, and it is necessary to appoint a successor trustee. This letter is a request that the Board of Governors appoint a new trustee, William Close, Laura Shepherd's son-in-law, the husband of Susan Shepherd-Close. Mr. Close assisted Mrs. Shepherd with her duties as trustee for several years before her death and is very familiar with the purpose and operation of the Virginia Archer Scholarship Trust.

Helen Hierschbiel  
Re: Virginia Archer Scholarship  
May 23, 2013  
Page 2

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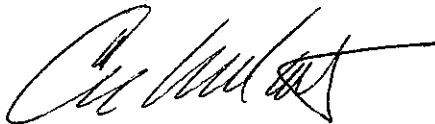
Mr. Close is now in possession of all of the records of the Trust including names and addresses of students currently receiving scholarship funds as well as new applications for scholarships. Mr. Close will gladly provide the Board any information it might need to consider him for the position of trustee.

I would request that choosing a successor trustee for the Virginia Archer Scholarship Trust be on the Board's agenda as soon as possible as there are several students who are patiently waiting for scholarship proceeds they are counting on to continue their education.

If you or the Board have any further questions about the Trust or this request, please do not hesitate to contact me.

Thank you and the Board in advance of yours and their assistance in this matter.

Sincerely,



Craig A. Nichols  
Nichols & Associates  
Attorneys at Law

CAN/gc

cc: William Close

Encl.: Copy of Virginia Archer's Will and Trust

Trust Tax Return (December 12, 2012)

Copy of January 27, 1997 letter from Craig Nichols to George Reimer (OSB)

Copy of February 10, 1997 letter from Karen Garst to Craig Nichols

# FILE COPY

920 SPALDING BUILDING  
319 S.W. WASHINGTON STREET  
PORTLAND, OREGON 97204  
TELEPHONE (503) 224-3018  
FACSIMILE (503) 228-6032

**NICHOLS & ASSOCIATES**  
ATTORNEYS AT LAW

CRAIG A. NICHOLS  
MARK H. JOCKIN

January 27, 1997

George Reimer  
Director/General Counsel  
Executive Services  
Oregon State Bar  
5200 S.W. Meadows Road  
P.O. Box 1689  
Lake Oswego, Oregon 97035

Re: Virginia Archer Scholarship Trust

Dear Mr. Reimer:

I am writing as a friend of Ralph J. Shepherd, a Portland attorney who served as trustee of the Virginia Archer Scholarship Trust for more than 20 years until his death in December of 1996. The Virginia Archer Scholarship Trust provides that upon the death of the trustee, the Board of Governors of the Oregon State Bar shall appoint a new trustee. This letter is to request that the Board of Governors appoint a new trustee and that Mr. Shepherd's widow, Laura Shepherd, be selected by the Board as the new trustee.

Virginia Archer was a long-time friend and client of Mr. Shepherd who wished to have a significant portion of her estate go to a scholarship fund established in her name to assist graduating high school seniors in Multnomah County attend a university or technical school in the State of Oregon. A copy of Virginia Archer's Will and Trust are enclosed with this letter for your review.

Mr. Shepherd administered this trust as trustee for over 20 years. I shared office space with Mr. Shepherd for more than 10 years and through the years, he took particular pleasure in interviewing each applicant and following the progress of each recipient of the scholarship in their journey through higher education. Although he spent a great deal of time on his duties as trustee, he took very little in compensation as trustee.

George Reimer  
Director/General Counsel  
Executive Services  
Oregon State Bar  
January 27, 1997  
Page 2

The trust principal and income are managed by Chinook Capital. The current balance of the trust account is the sum of \$227,951.00. I have enclosed the latest account statement from Chinook Capital.

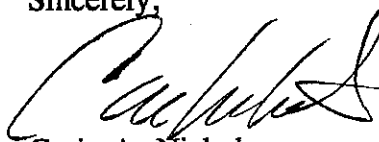
Mrs. Laura Shepherd now is in possession of all of the records of the trust including names and addresses of students currently receiving scholarship funds as well as new applications for scholarships. It is her desire to be considered for the position of trustee to carry on Mr. Shepherd's work with the trust. Mrs. Shepherd will gladly provide the Board with any information they might need to consider her for the position of trustee.

It is my understanding from our recent telephone conversation that the Board meets again in February. I would request that choosing a successor trustee for the Virginia Archer Scholarship Trust be on the agenda for the February meeting. There are a number of students who are patiently waiting for a new trustee to be appointed so distribution of their winter term scholarship funds can occur.

If you or the Board have any further questions about the trust or Mrs. Shepherd's request, please do not hesitate to contact me.

Thank you and the Board for yours and their assistance in this matter.

Sincerely,



Craig A. Nichols  
Nichols & Associates  
Attorneys at Law

CAN:lm1

Enclosure(s): Copy of Virginia Archer's Will and Trust  
Account Statement from Chinook Capital

cc: Laura Shepherd (w/out enclosures)



**COPY**

5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889  
(503) 620-0222 or WATS 1-800-452-8260, FAX: (503) 684-1366

February 10, 1997

Craig A Nichols  
Nichols & Associates  
Suite 920  
319 SW Washington St  
Portland, OR 97204

Dear Mr. Nichols:

This is to notify you that at its meeting on February 8, 1997, the Board of Governors approved the appointment of Mrs. Laura Shepherd as trustee of the Virginia Archer Scholarship Trust.

Thank you for allowing the Oregon State Bar to participate, even though in a small way, in continuing the scholarship funds to assist graduating high school seniors in Multnomah County.

Sincerely,

Karen L. Garst  
Executive Director



FILED

FEB 6 1975

DEPT. JUSTICE SERVICES  
DIV. COURTS PROCESS  
Multnomah County, Oregon

LAST WILL AND TESTAMENT

OF

VIRGINIA A. ARCHER

BOOK 1414 PAGE 1172

122272

KNOW ALL MEN, That I, VIRGINIA A. ARCHER, of 1300 N.E. 16th Avenue, City of Portland, County of Multnomah and State of Oregon, of legal age and being of sound and disposing mind and memory, do make, publish and declare this my Last Will and Testament.

FIRST: I hereby revoke all former Wills and Codicils by me at any time heretofore made.

SECOND: It is my Will and I do order that all my just debts and expenses be duly paid and satisfied as soon as conveniently can be done after my demise. I direct my Executor, hereinafter named, to treat as an obligation of my estate and to pay without any apportionment thereof, all estate, inheritance or other death taxes or duties imposed and made payable by reason of my death by the laws of the United States or of any state, and if any person shall pay any such tax, my Executor shall reimburse such person.

THIRD: I wish my remains to be cremated without funeral services and my ashes to be disposed of by my Executor.

FOURTH: I give and bequeath the sum of \$10,000.00 to each of the following firms or organizations:

1. WEAVERLY CHILDREN'S HOME, 3550 S.E. Woodward Street, Portland, Oregon.
2. BOY'S CLUBS OF PORTLAND, 9204 S.E. Harold Street, Portland, Oregon.
3. PARRY CENTER FOR CHILDREN, 3415 S.E. Powell Boulevard, Portland, Oregon.

FIFTH: I give and bequeath the sum of \$5,000.00 to each of the following persons and/or organizations:

Page One  
Last Will and Testament of  
VIRGINIA A. ARCHER

*Virginia A. Archer*  
Signature to Page One

1. MT. TABOR PRESBYTERIAN CHURCH of Portland, Oregon, 5441 S.E. Belmont Street, Portland, Oregon.
2. VOLUNTEERS OF AMERICA CHILD CENTER NURSERY, 234 S.E. 7th Avenue, Portland, Oregon.
3. TUCKER-MAZON SCHOOL FOR DEAF CHILDREN, 2860 S.E. Holgate Boulevard, Portland, Oregon.
4. SUE ANN SHEPHERD, 945 N.E. 108th Avenue, Portland, Oregon, with the hope that the said funds be used for a college education.
5. SHRINERS' HOSPITAL FOR CRIPPLED CHILDREN, 8200 N.E. Sandy Boulevard, Portland, Oregon, to be used in the Portland unit.
6. GRAND LODGE OF ANCIENT FREE AND ACCEPTED MASONS OF OREGON, a corporation, to be used exclusively for the benefit of the MASONIC and EASTERN STAR HOMES at Forest Grove, Oregon.

SIXTH: I give and bequeath the sum of \$1,000.00 to each of the following persons and/or organizations:

1. TEMPLE CHOIR of the MOUNT TABOR PRESBYTERIAN CHURCH of Portland, Oregon, at 5441 S.E. Belmont Street, Portland, Oregon.
2. TERRELL STANLEY, c/o his mother, Mrs. Arthur Stanley, 1439 Fulton Avenue, Schenectady, New York 12308.
3. ETHEL E. GRIFFITH, Aunt, 456 S.E. 68th Avenue, Portland, Oregon 97215.

✓ SEVENTH: All of my clothing I give and bequeath to the YOUNG WOMEN'S CHRISTIAN ASSOCIATION, 1111 S.W. 10th Avenue, Portland, Oregon, for their THRIFT SHOP.

✓ EIGHTH: I give and bequeath all of my jewelry, jewelry case and furs to MRS. ANN ROBINSON, c/o her mother, Mrs. Frank Carman, 2480 Walker Lane, Salt Lake City, Utah, and my grandmother chime clock I give and bequeath to MRS. WARREN CHARLESTON, 455 S.E. 68th Avenue, Portland, Oregon 97215.

NINTH: It is my desire that all of my furniture and household belongings not heretofore or hereinafter bequeathed be sold by my Executor at public auction for the best possible price available and that all proceeds therefrom become a part of

the residue of my estate.

300-1414 PAGE 1174

TENTH: All the rest, residue and remainder of my estate, both real and personal, of which I die seized or possessed or to which I may be entitled, I devise and bequeath to my Trustee, RALPH J. SHEPHERD, Attorney at Law, Portland, Oregon, however, not for his own use and benefit, but in trust only for the uses and purposes and under the terms and conditions as hereinafter set forth.

The trust bequeathed to my said Trustee shall be known as the "VIRGINIA ARCHER SCHOLARSHIP TRUST FUND", which shall be a perpetual trust and shall be held by my Trustee in trust as follows:

1. I direct that my Trustee use the annual net income of my trust estate for the payment of scholarship gifts to male and female students graduating from Multnomah County high schools in the State of Oregon, regardless of race, color or creed to those students who would be unable to attend college in Oregon but for this scholarship fund.
2. The said scholarship funds shall be expended from time to time for the tuition, board, lodging, school supplies and living expenses each year until said student attains a college degree, but not to exceed four years. The Trustee shall follow a general policy of distributing the net income of the scholarship fund each year, but in carrying out this policy, it shall not be necessary that all the net income available for distribution in a particular year be distributed and used in that year. Any portion of the annual income not used in a particular year should be accumulated and retained for further use the following year.
3. At a convenient time each year, the Trustee shall estimate the amount of annual income of the trust estate for the succeeding year available for distribution for scholarship

gifts as a guide for the following year's number of scholarships to be considered.

BOOK 1414 PAGE 1175

4. The Trustee shall not be required to account for the proceeds of the scholarship fund after it has been paid to or on behalf of the individual selected for scholarship. A student who has received a scholarship in any one year shall nevertheless be eligible to receive a scholarship in a succeeding year or years if an award to that student is deemed by the Trustee to be appropriate.

5. For a student to qualify, he or she must graduate from an accredited high school in Multnomah County, Oregon, and work toward a college degree offered by any college, university or technical school in the State of Oregon, except REED COLLEGE, which he or she attends or plans to attend, and the selection of the said student shall be in the sole discretion of the Trustee based upon scholastic grade-point average, character, reputation and a desire to attend college.

6. The Trustee shall receive a commission for his services equivalent to the current fee charged by banks in Portland, Oregon, for the handling of similar trust estates. A compensation shall be paid in addition for services performed for investigating, interviewing and selecting students and similar incidental services, which shall be equal to the commission above stated.

7. In the event my said Trustee shall predecease me, or upon the death of said Trustee or his inability or incapacity to act, a new Trustee shall be appointed by the Board of Governors of the Oregon State Bar in office at the time of said death or incapacity. Upon the death or incapacity of each successive Trustee hereinafter appointed, the same procedure will then be followed as hereinafter stated for the appointment of the new Trustee.

Page Four

Last Will and Testament of  
VIRGINIA A. ARCHER

*Virginia A. Archer*  
Signature to Page Four

ELEVENTH: I nominate, constitute and appoint my friend and stock broker, ROBERT ALBRICH, of Portland, Oregon to be Executor of this, my Last Will and Testament and request that he be permitted to act without bond.

BOOK 1414 PAGE 1176

In the event the said ROBERT ALBRICH shall predecease me or if he is unable or unwilling to act as such Executor, I then nominate and appoint my attorney, RALPH J. SHEPHERD, as such Executor to serve without bond.

IN WITNESS WHEREOF, I have hereunto signed my name this 8 day of February, 1971.

Virginia A. Archer  
Testatrix

The foregoing instrument, consisting of this page and four others, was signed, sealed, published and declared by the said VIRGINIA A. ARCHER, the Testatrix, as and for her Last Will and Testament, in the presence of us, who at her request, in her presence and in the presence of each other have hereunto subscribed our names as witnesses thereto.

Ralph J. Shepherd residing at 345 NE 10th Ave.  
Portland, Oregon

Paul [unclear] residing at 2545 NE 43rd  
Portland, Oregon

**Oregon State Bar**  
**Meeting of the Board of Governors**  
May 3, 2013  
**Open Session Minutes**

The meeting was called to order by President Michael Haglund at 12:35 p.m. on May 3, 2013. The meeting adjourned at 4:45 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, Audrey Matsumonji, Caitlin Mitchel-Markley, Maureen O'Connor, Travis Prestwich, Joshua Ross, Richard Spier, David Wade and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, John Gleason, Kay Pulju, Susan Grabe, Mariann Hyland, Kateri Walsh, Dani Edwards, Judith Baker, George Wolff, and Camille Greene. PLF Board of Directors present were Laura Rackner, Guy Greco, John Berge, Valerie Saiki, Bob Newell, Julia Manela, Teresa Statler. PLF staff present were Ira Zarov, CEO, Bruce Schafer, Barbara Fishleder, Tom Cave, Steve Carpenter, Jeff Crawford, Emilee Preble, Madeleine Campbell, Dee Crocker, and Cindy Hill. Also present was David Eder, ONLD Chair.

**1. Introduction of John Gleason**

Mr. Gleason, Disciplinary Counsel and Director of Regulatory Services, introduced himself to the board and thanked them for their volunteerism. He described his experience regulating lawyers for the Supreme Court in Colorado where he handled or oversaw 50,000 complaints during his tenure. He emphasized that integrity in the discipline system is critical in maintaining self-regulation. His goals are: strive to know the lawyers he is regulating; meet with relevant citizen organizations to educate them about the system; speed up the current system of regulation in Oregon; and propose rule changes to address the lawyers who ignore the discipline system. He encouraged board members to invite him to events in their respective regions to meet their members.

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

**A. Report of the President**

Mr. Haglund reported on a successful May 1, 2013 Day at the Capitol and meeting with the Citizens Coalition for Court Funding.

Mr. Haglund proposed a task force on licensing legal technicians as a proactive approach in which the developments throughout the country will be studied, recommendations made to the Oregon Supreme Court, and an OSB legislative package developed if that is the consensus view of the proposed task force and meets with BOG approval. Mr. Greco reminded the board that a similar task force, twenty years ago, declined to pursue this matter due to insurance complications. Discussions ensued regarding market pricing, degrees of limited licenses, and regulation of these technicians.

**Motion:** Mr. Kranovich moved, Ms. Billman seconded, and the board voted unanimously to approve the formation of a Task Force to explore this issue.

Mr. Haglund also proposed a task force on foreign lawyer practice to address challenges of globalization and international legal practice. He stressed the economic advantages to being proactive in welcoming foreign lawyers.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the formation of a Task Force to explore the direction Oregon should take.

**B. Report of the President-elect**

Mr. Kranovich reported on his activities, including attending the ABA BLI conference in Chicago and the Western States Bar Conference in Hawaii. Locally he has attended several diversity and legislative events.

**C. Report of the Executive Director**

ED Operations Report as written. Ms. Stevens reported that section administrative fees will increase from \$5.00 to \$8.00 January 1, 2014. She explained how the amount is calculated and what it covers so that BOG members can respond helpfully if their constituents inquire about the change.

**D. Director of Diversity & Inclusion**

Ms. Hyland reported on the inaugural issue of the Diversity & Inclusion Newsletter, which included profiles of two lawyers who previously served in the military. The Diversity Storywall will be finished within the next year and about half of the necessary funds have been raised. The OLIO orientation program will take place in Hood River in August. BOG members are encouraged to attend as much of the event as possible. Ms. Hyland thanked the PLF's excess program for supporting OLIO.

**E. MBA Liaison Reports**

Mr. Spier reported on the March 2013 MBA meeting; he described the group as welcoming and involved in interesting projects.

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

Mr. Zarov provided a general update and Mr. Cave gave a financial report. The increased frequency of claims is a concern and an increase in assessments may be warranted. Mr. Cave is retiring in November. He will begin training replacement(s) in June. Questions have been raised about installment payments by the Sole & Small Firm Section. Mr. Wade commended the PLF for the successful management of their budget.

**4. PLF / BOG Issues of Common Interest**

**A. Prohibition Against BOG Members Prosecuting or Defending PLF Claims**

Mr. Wade, Chair of the Governance and Strategic Planning Committee, raised the issue for consideration and suggested that BOG members play such a limited role in PLF affairs that concerns about influence or the appearance of it can be easily addressed by requiring recusal from any BOG decision involving the PLF while the matter is pending. Mr. Zarov said the issue will be discussed at the next PLF board meeting and report back to the BOG.

**B. Special Underwriting Assessments**

Mr. Zarov presented the PLF Board's request that the BOG approve the discontinuation of PLF Policy 3.500 which provides for the Special Underwriting Assessment (SUA). There are three accepted principles or goals for SUA: create an incentive for lawyers to practice more carefully; require attorneys who are a higher risk to pay more; and create a perception that there is a moral hazard for lawyers who fall below the accepted standard of care. However, the PLF experience is that the SUA doesn't accomplish those goals and can't be administered fairly. For those reasons, the PLF Board concluded the SUA should be eliminated. **[Exhibit A]**

**Motion:** Ms. Billman moved, Mr. Prestwich seconded, and the board voted unanimously to approve the PLF Board's request to discontinue the Special Underwriting Assessment.

**C. Mr. Haglund presented the bar's request for BarBooks funding from the PLF.**

**Motion:** Ms. Mitchel-Markley moved, Mr. Knight seconded, and the board voted unanimously to request \$200,000 from the PLF to fund BarBooks in 2014.

Mr. Zarov will take this request to the PLF board and report back to the BOG.

**D. Ms. Fishleder presented an overview of the Oregon Attorney Assistance Program and its commitment to confidentiality.**

**5. ABA House of Delegates**

The ABA Annual Meeting agenda was previewed as an information item.

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

**A. Oregon New Lawyers Division**

Mr. Eder reported on a variety of ONLD projects and events described in his written report including the lack of practice-ready lawyers coming out of law school. The ONLD will provide more CLEs at the law schools to help remedy this issue. They hosted a successful discussion over dinner with new Sole & Small Firm attorneys.

Mr. Eder asked the board to consider the Oregon New Lawyers Division request for an exemption from the CLE Seminars Department event registration services fee for its Brown Bag CLE series and for any CLE held outside of the Portland area in conjunction with ONLD meetings.

**Motion:** Mr. Ehlers moved, Mr. Wade seconded, and the board voted in favor of waiving the CLE Seminar's registration fee as requested. Mr. Kranovich was opposed.

**Motion:** Mr. Ehlers moved, Mr. Spier seconded, and the board voted unanimously to make the approved ONLD fee exemption retroactive to January 1, 2013.

**B. CSF Claims**

Ms. Stevens presented the CSF claims recommended for payment. **[Exhibit B]**

**Motion:** Mr. Kehoe moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve payments totaling \$194,424.



Ms. Stevens presented the claimants request for review of the CSF Committee's denial of the HORTON (Calton) claim for reimbursement.

**Motion:** Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to send the case back to the CSF Committee for a full investigation of Mr. Calton's claim.

Ms. Stevens presented the claimant's request for review of the CSF Committee's denial of the CONNALL (Raske) claim for reimbursement. The issue was whether more than *de minimis* services had been provided by the Connalls.

**Motion:** Mr. Knight moved, Mr. Kehoe seconded, and the board voted to affirm the CSF's denial of Ms. Raske's claim. Mr. Wade and Mr. Ross were opposed. Mr. Emerick and Mr. Spier recused themselves.

Ms. Stevens presented the CSF Committee recommendation 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. The Committee believes that the program is better served by retaining as much flexibility as possible rather than binding the Committee and BOG to any particular limitations.

**Motion:** Mr. Haglund recommended the formation of a board subcommittee, consisting of Mr. Emerick, Mr. Kehoe, Mr. Knight and Ms. Mitchel-Markley, to further consider amending the CSF rules to limit the Fund's exposure to significant claims..

**C.** Legal Services Program Committee

Ms. Baker presented the committee's recommendation that the board approve disbursing \$137,000 from the unclaimed client fund to the legal aid programs for 2013. **[Exhibit C]**

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the disbursement of funds.

**D.** Unlawful Practice of Law

Ms. Hierschbiel presented two UPL advisory opinions:

Advisory Opinion No. 1 – Notarios and Immigration Consultants **[Exhibit D]**, and  
Advisory Opinion No. 2 – Entity Representation **[Exhibit E]**.

**Motion:** Mr. Prestwich moved, Mr. Wade seconded, and the board voted unanimously to approve the two UPL advisory opinions.

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

**A.** Board Development Committee

Mr. Kranovich reported on the committee's progress on identifying candidates for various appointment positions and also on recruiting candidates for the BOG and HOD.

**B.** Budget and Finance Committee

Mr. Knight gave a 2014 budget update and deferred to Mr. Wade to present the investment policy revision recommendations to the board. **[Exhibit F]**

**Motion:** Mr. Knight moved, Mr. Wade seconded, and the board voted unanimously to waive the one-meeting notice to amend the investment policy bylaw.

**Motion:** The board voted unanimously to approve the committee recommendation to accept the investment policy revision recommendations as presented by Mr. Wade.

Mr. Knight reported on the committee's discussion about section fund balances and its decision to post them in the *Bulletin* annually. Mr. Knight also reported that the committee will begin discussing the 2014 budget and whether a fee increase will be needed at the July board meeting.

**C.** Governance and Strategic Planning Committee

**Motion:** The board voted unanimously to approve the committee recommendation to revise the bar's statements of mission, functions and values to make them "linguistically more elegant," in the words of Mr. Wade. **[Exhibit G]**

**Motion:** The board voted unanimously to approve the committee recommendation to send a HOD survey to all 2011-2013 HOD members to assist the BOG in deciding whether to pursue a comprehensive study of the OSB governance structure. **[Exhibit H]**

**Motion:** The board voted unanimously to approve the proposed new language for Bylaw 16.200 to clarify what is included in complimentary CLE Seminars registration for certain members. **[Exhibit I]**

**Motion:** The board voted unanimously to approve the committee recommendation for the revision of OSB Bylaw 6.103 regarding notice to the membership of reinstatement applications. **[Exhibit J]**

**Motion:** The board voted unanimously to approve the committee recommendation that the CLE Seminars department present a program on gender equality (using the ABA Toolkit).

**D.** Public Affairs Committee

Mr. Kehoe deferred to Ms. Grabe who gave an update on the legislative session and court funding. Three OSB bills have passed.

**E.** Special Projects Committee

Mr. Prestwich reported on the progress of current board projects for 2013. The tree planting project was a success. There is a committee proposal to study the SOLACE network where lawyers help other lawyers when natural disasters or other tragedies strike. The process of pairing retiring lawyers with new lawyers with the intention to pass on the practice is under discussion with no current proposals.

**F.** Appellate Screening Committee

Ms. Billman reported that the Governor has extended the date for submitting applications. The committee will receive the applications in early July and the governor wants the board's

recommendations by the end of the month. The Committee will have to conduct interviews either July 18-21 or 25-28. She asked that more board members help with the committee's screening efforts. Ms. Billman will prepare a message for board members to receive via email.

**G. Centralized Legal Notice System Task Force**

Mr. Ehlers updated the board on the task force's efforts to find a way to run a centralized notice system. A presentation at the last meeting demonstrated that the technology exists and a self-funded model may be possible. At its next meeting, the task force will look at what is financially at stake for the newspapers and attempt to find common ground.

**H. Knowledge Base Task Force**

Ms. Stevens reminded the board that the task force was created by a HOD resolution to find an enhanced way members can access information the bar produces. The project is in progress.

**8. Other Action Items**

- A.** Ms. Edwards presented the recommendations for committee appointments. **[Exhibits K & L]**

**Motion:** Mr. Prestwich moved, Mr. Ross seconded, and the board unanimously approved the appointments as presented.

- B.** Mr. Wolff presented the Lawyer Referral Service recommended revisions to LRS Policies and Operating Procedures and an update on the Modest Means Program. Mr. Haglund emphasized the need to implement the Legal Jobs Opportunities task force recommendation to expand the Modest Mean Program to include clients with higher incomes as soon as possible.

- C.** Ms. Hirschbiel recommended the board adopt the proposed amendments to the Lawyer Referral Service Policies and Procedures. **[Exhibit M]**

**Motion:** Mr. Kehoe moved, Mr. Heysell seconded, and the board unanimously approved the amendments as presented.

- D.** Ms. Stevens presented a LawPay proposal, which she, General Counsel and Disciplinary Counsel agree will facilitate members' acceptance of credit card payments consistent with the Rules of Professional Conduct. Participation will be open to any OSB member; the bar would receive sponsorship dollars for certain events, but the bar's revenue share would be appropriated to the MBA. **[Exhibit N]**

**Motion:** Mr. Emerick moved, Mr. Kranovich seconded, and the board unanimously approved the proposal as presented.

**9. Consent Agenda**

**Motion:** Mr. Spier moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

**10. 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

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

None.

### **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:

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

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

(D) Form of SUA Petition:

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

(2) The petition for relief from SUA submitted by the Covered Party may be in any form the Covered Party chooses. The Covered Party is responsible for attaching to the SUA petition or submitting therewith all correspondence, documents, and other written materials from the PLF claim file or other sources which the Covered Party wishes the Board of Directors or Board of Governors to consider. The Covered Party is required to provide 10 copies of the SUA petition and all supporting documents for an appeal to the 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)

# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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
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### 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 Kliwer to take possession of his files and be the contact for clients needing their files during his suspension. On March 26, 2012, Kliwer was substituted as attorney of record in a 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**

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**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

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### **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
<b>\$237,500.39</b>	<b>Funds Available</b>

## 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

## **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.<sup>1</sup> 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

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<sup>1</sup> 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).<sup>2</sup> 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

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<sup>2</sup> *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<sup>1</sup>; 28 U.S.C. §1654.<sup>2</sup> This prohibition against non-lawyers representing entities includes, but is not limited to, the representation of for-profit and nonprofit corporations<sup>3</sup>, unincorporated associations<sup>4</sup>, partnerships<sup>5</sup>, and trusts<sup>6</sup>.

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<sup>1</sup> 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.” *See 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).

<sup>2</sup> 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).

<sup>3</sup> ORS 9.320(1).

<sup>4</sup> *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 F.2d 771, 773 (9th Cir 1986) ( “unincorporated associations, like corporations, must appear through an lawyer”).

<sup>5</sup> 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.

<sup>6</sup> 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 P.2d 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).

## Section 7.4 Investment Policy

### ***Subsection 7.400 Purpose***

This investment policy is established to provide direction and limits for the Bar's investment manager in investing all cash assets held by the Bar. The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The objective of the **Short-term Investment** policy is to provide for short-term investment of cash to be used within the Bar's current fiscal year, generally one year or less. The objective shall be to minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The objective of the **Long-term Investment** policy is to provide for long-term growth and stability of all reserves, designated, and contingency funds. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. This investment fund shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the Bar. Long-term investment strategy should achieve reasonable yields while minimizing exposure to risk.

### ***Subsection 7.401 Investment Management***

The Executive Director or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as he or she may require. The Bar will maintain a list of all authorized institutions that are approved for investment purposes.

### ***Management and Monitoring of Performance***

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall monitor the investment policy and portfolio.

Investment(s). The Committee may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of this policy and the specific direction of the Committee. The investment managers may contact the designated liaison of the Committee, who shall be the Bar's Chief Financial Officer between meetings of the Committee to implement or suggest changes in investments or strategy. If necessary, the Committee may meet by telephone to consider changes in investments or strategies. The selection and allocation of funds to individual statement managers will be made by the Committee.

Committee Meetings. The investment manager(s) shall prepare quarterly reports of the portfolio's performance. The Committee will meet at least quarterly to monitor the performance of the assets.

Performance Standards. The investment committee will evaluate investment managers using a number of factors including performance relative to the most applicable benchmarks, quality of communications with the investment committee, and adherence to the Bar's investment policy.

Annual Review. This investment guidelines and policies shall be reviewed at least annually by the Budget & Finance Committee.

### **Subsection 7.402 Approved Investments**

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments, or securities meeting the minimum credit quality standards of this policy.
- (g) Mutual funds of U.S. and foreign equities.
- ~~(h) Mutual funds in these asset classes: high-yield bonds, emerging market bonds, international small capitalization equities, and diversified commodities.~~
- ~~(h) Federal deposit insurance corporation insured accounts.~~
- ~~(i) Individual public-traded stocks, excluding margin transactions, and, short sales, and derivatives.~~

(j) Mutual funds investing in infrastructure, in commodities, and in instruments such as high yield bonds, adjustable rate bonds, derivatives, futures, currencies, and ETFs, but not swaps or speculative instruments or mortgage backed securities, and only for the purpose of both managing risk and diversifying the portfolio and not at all for purposes of leveraging, with all such investments in total not to exceed 10% of the total invested assets."

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A3 as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A3 as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A3 as defined by Standard & Poor's and Moody's

### **Subsection 7.403 Limitations**

At the discretion of the Budget & Finance Committee, the entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

***Subsection 7.404 Prudent Person Standard***

The standard of prudence to be used by the investment manager in managing the overall portfolio will be the prudent investor rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

## 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<sup>1</sup>

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 elimination of bias in the justice system and to ensure access to justice for all citizens.

### Leadership

The bar ~~will actively pursue~~ 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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<sup>1</sup> 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~~ accountability 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.~~

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:

***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 Pro 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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.~~<sup>1</sup>

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<sup>1</sup> 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

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

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### 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

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** May 3, 2013  
**Memo Date:** May 2, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Additional Volunteer Appointments

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### Action Recommended

Approve the following recommendations for committee appointments.

### Background

#### Client Security Fund Committee

Due to the removal of a non-participating committee member, one appointment is necessary. The committee staff liaison requests the appointment of **Bradley V. Timmons** (903941). Mr. Timmons practices in The Dalles and would bring geographic diversity to the committee's membership.

**Recommendation:** Bradley V. Timmons, member, term expires 12/31/2014

#### Public Service Advisory Committee

Due to the resignation of one committee member the staff liaison recommends the appointment of **Bruce B. Harrell** (921886). Mr. Harrell recently served a shortened term on the committee and offers geographic diversity to its membership. Recently a significant amount of the committee's work has focused on the Referral and Information Services percentage fee model transition, Mr. Harrell has experience in this area based on his Lawyer Referral Service and Modest Means Program participation.

**Recommendation:** Bruce B. Harrell, member, term expires 12/31/2014

#### Uniform Civil Jury Instructions Committee

Due to a resignation, one additional member appointment needs to be made. The committee officers and staff liaison recommend **Timothy J. Heinson** (872480). Mr. Heinson is a partner at a small Portland firm and primarily handles personal injury cases. Mr. Heinson has been contacted in is willing to serve.

**Recommendation:** Timothy J. Heinson, member, term expires 12/31/2015

## 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.

~~BC.~~ 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. Feesunding & Refunds:

A. Feesunding: 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~~ 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. ~~An 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:

### ea) 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:~~

~~aii)~~ Panelists will ~~refrain from not~~ charging or billing 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;

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

~~eiv)~~ 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,

~~elv)~~ 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~~ panelist s ~~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~~

**43)** 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 entitle~~ 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.

**54)** 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 base 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.

~~65) 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](http://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)~~

~~86) 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.~~

~~da) Remittance Payments to the LRSReporting: 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.~~



ed) 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](http://www.osbar.org/forms).~~

# 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



Information contained in this proposal shall not be used or disclosed, except for evaluation purposes to members of the Oregon State Bar staff, membership benefits evaluation committee and/or review board. © 2013 AffiniPay

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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.

### 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.

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.

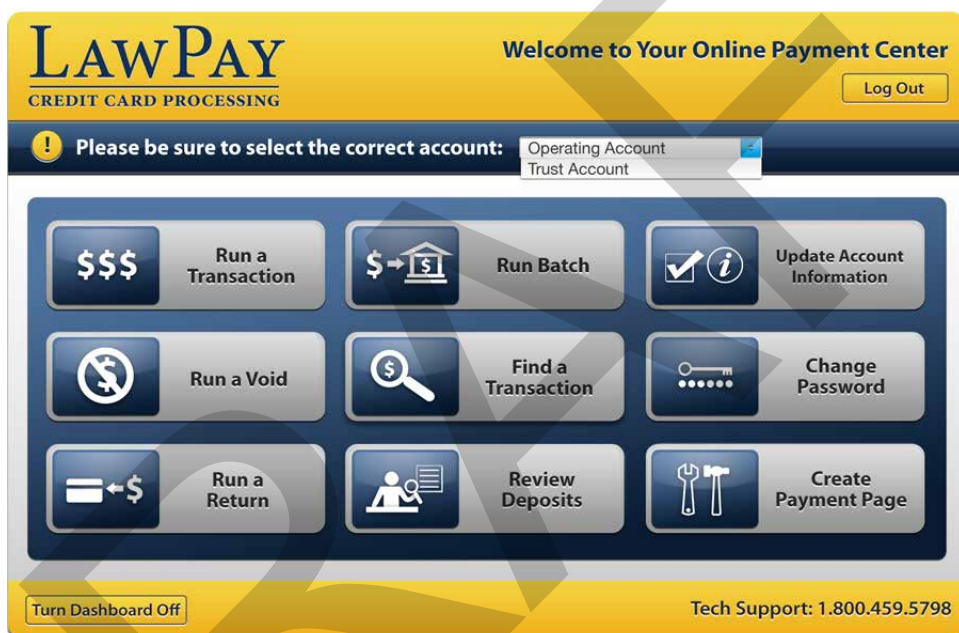
"It's a pleasure dealing with LawPay! Love your statements, love your customer service and love your techs."

—J. Moore, The Florida Bar

## 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:



## 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.

www.cbjlawfirm.com

COOK BROOKS JOHNSON

HOME ABOUT CONTACT

Amount to Pay:

Invoice #:

**Credit Card Information**

Name:

Billing Address:

City:

Simple  
Safe  
Secure

- ✓ 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

## 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.

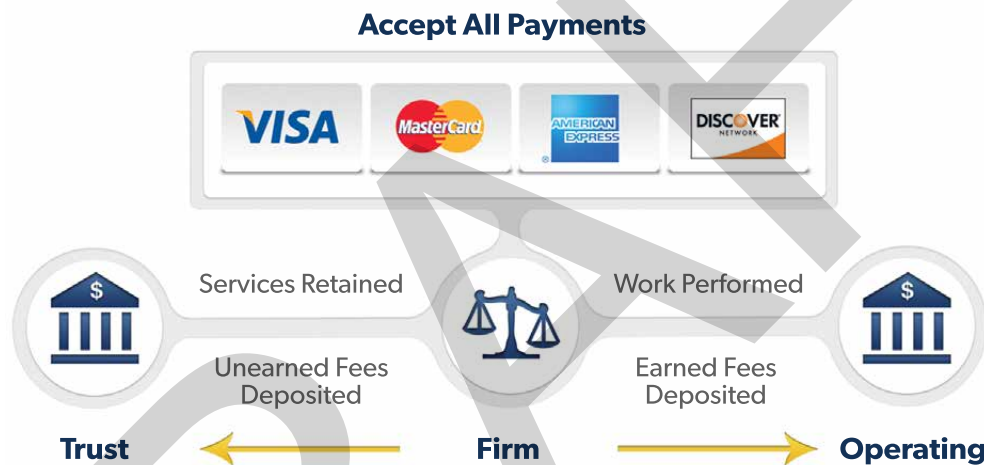
Non-dues revenue is recurring and paid out on a quarterly basis.



## LawPay'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.

## 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.

### 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.

"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

## 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

**Addendum:**

1. Pricing
2. Marketing Samples

DRAFT

## 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
<b>Fees</b>		
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
<b>Service</b>		
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
<b>Features</b>		
QuickBooks Module	No	Yes
Billing Presentment and Electronic Invoices	No	Yes
Online Bill Pay for Clients	No	Yes
<b>PCI Compliance</b>		
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.



Process all major card brands through LawPay



Secure web payments

Mobile Swiper  
iPhone, iPad, Android

866.376.0950

[LawPay.com/MaineBar](http://LawPay.com/MaineBar)

Proud Member  
Benefit Provider



Maine State Bar  
ASSOCIATION

**AVAILABLE EXCLUSIVELY THROUGH  
THE MAINE STATE BAR ASSOCIATION**

AttorPay is a registered trademark of AttorPay 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.

https://www.lawpay.com/acba

Allegheny County Bar Association

**The LawPay Advantage**

- ✓ Accept all major credit cards
- ✓ Save up to 25% off processing fees
- ✓ Avoid commingling client funds

**LAWPAY**  
CREDIT CARD PROCESSING

LawPay Help Online

Accept all Major Credit Cards

LawPay Processing Options

**Have 5 Minutes?**  
Open a LawPay Account Online

**The Correct Way to Accept Payments**  
Proud Member Benefit from the Allegheny County Bar Association

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.

**LawPay is the proven solution for attorneys nationwide**

- ✓ Accept all major credit cards from your clients
- ✓ Ability to separate earned and unearned fees in compliance with most state and ABA guidelines
- ✓ Processing fees are deducted only from your operating account
- ✓ 100% protection of your Trust or IOLTA account. No debits are allowed from your IOLTA at any time... for any reason

**Have Questions?**  
Let us Help

Name

Email

Phone

☐ I currently accept credit cards

☐ I am an ACBA member

Message

**Accept All Payments**

Trust

Firm

Operating

Services Retained: Unearned Fees Deposited (Trust to Firm)

Work Performed: Earned Fees Deposited (Firm to Operating)

LawPay's unique processing program correctly separates earned and unearned fees in compliance with ABA and State guidelines. That is why LawPay is exclusively endorsed and recommended by 34 state and 49 local bar associations.

A custom information page for members. The purpose is to generate interest and leads. The form is used to collect member contact information.



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

**LAWPAY**  
Trust your transactions to LawPay  
Recommended by 34 state & 49 local bar associations!

**Your Logo**

**Invoice Information**

Amount to Pay:

Invoice #:

**APPROVED!**  
Thank you for your payment

**Send**

Email a secure link to your clients

**Click**

Clients pay with the the click of a button

**Paid!**

Payment deposits directly to your bank account

**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.



Recommended by Over 80 Bar Associations

From: [amber@lawpay.com](mailto:amber@lawpay.com)  
 Reply-To: [amber@lawpay.com](mailto:amber@lawpay.com)  
 Date: Thursday, March 5, 2013 9:44 AM  
 To: [mlindemann@affinipay.com](mailto:mlindemann@affinipay.com)  
 Subject: Recommended by Over 80 Bar Associations

**FREE**  
 Web-Based  
 TERMINAL  
 — PLUS —  
 PROGRAM FEE  
**WAIVED**  
 for the FIRST  
**3 MONTHS**  
 \*Offer expires  
 April 30, 2013

**DBA Minority Attorney  
 Program Attendees Get  
 Paid with LawPay!**

- ✓ Lower fees by up to 25%
- ✓ Reduce collections
- ✓ Increase cash flow
- ✓ Get paid on time

Member Benefit

**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.

**BEST PRACTICES**

# 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?

### 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.



**Credit card acceptance is an essential law practice management tool.**

## BEST PRACTICES

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](http://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](http://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](http://www.LawPay.com).



# **ACCEPT CREDIT CARDS— GET PAID FASTER THAN A SPEEDING BULLET**

**By Amy Porter**

**GPSOLO**  
July/August 2012

**T**echnology 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

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**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](mailto:info@lawpay.com)**

**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

## **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.



SOLO/SMALL FIRM PRACTICE

# How to Avoid PCI Non-Compliance Fees

BY AMY PORTER

Illustration by Gilberto Saucedo

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



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](http://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](http://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](http://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](mailto:pgarcia@texasbar.com).

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## 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, re-funded 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](http://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  
Board of Governors Meeting  
May 3, 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. Mark L. Runnels – 803666

Mr. Wade presented information concerning the BR 8.1 reinstatement application of Mr. Runnels.

**Motion:** Mr. Wade moved, and Mr. Spier seconded, to recommend to the Supreme Court that Mr. Runnels' reinstatement application be approved. The motion passed. Ms. O'Connor and Mr. Ehlers were opposed.

2. Jonathan P. Sushida – 031469

Mr. Prestwich presented information concerning the BR 8.1 reinstatement application of Mr. Sushida to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Sushida's application will be placed on a future agenda for consideration and action.

**B. Disciplinary Counsel's Report**

As written.

**Oregon State Bar  
Board of Governors Meeting  
May 3, 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 Litigation**

The BOG received status reports on the non-action items.

**B. Pending or Threatened Non-Disciplinary Litigation**

The BOG received status reports on the non-action items.

**C. Other Matters**

The BOG received a status report on this non-action item.

CLAIM No.		NAME	ATTORNEY	CLAIM	PENDING	ASSIGNED TO	STATUS
2013	6	Power, Jody	Groh, Phillip	4,000.00	4,000.00	Angus	
2012	25	McClain, Kathryn A	Gruetter, Bryan	23,767.96	23,767.96	Angus	Waiting on Civil Decision
2012	43	Mosley, Amanda Nicole	Gruetter, Bryan	25,000.00	25,000.00	Angus	Waiting on Civil Decision
2013	22	Sabine, Michael James	Mahr, Theodore	1,100.00	1,100.00	Angus	
2012	97	Reyes-Escobedo, Jose and Reyes, Rosa M	McBride, Jason	5,000.00	5,000.00	Angus	
2012	113	Cervantes Garcia, Juan Manual	McBride, Jason	5,500.00	5,500.00	Angus	
2012	107	Lopez, Jennifer Luna	McBride, Jason	9,500.00	9,500.00	Angus	Going to BOG
2012	68	Romero, Oscar G	McBride, Jason	10,000.00	10,000.00	Angus	
2012	90	Vega de Garibay, Maria Sela	McBride, Jason	10,000.00	10,000.00	Angus	
2013	10	Mercado, Francisco	McBride, Jason	2,500.00	2,500.00	Angus	
2013	14	Valadez, Pedro	McBride, Jason	4,000.00	4,000.00	Angus	
2013	3	Domingues, Abimael Moreno	McBride, Jason	5,000.00	5,000.00	Angus	
2013	18	Robles Lopez, Francisco Javier	McBride, Jason	5,000.00	5,000.00	Angus	
2013	7	Olvera, Jose Alvarado	McBride, Jason	5,100.00	5,100.00	Angus	
2013	36	Chaves Ramirez, Aquilino	McBride, Jason	2,600.00	2,600.00	Angus	
2013	37	Martinez, Maria	McBride, Jason	2,600.00	2,600.00	Angus	
2012	101	Balderas, Jennie and Alfredo	McBride, Jason	3,700.00	3,700.00	Atwood	
2012	74	Alonso-Vasquez, Alejandro	McBride, Jason	5,700.00	5,700.00	Atwood	
2013	20	Maldonado, Laura	McBride, Jason	2,800.00	2,800.00	Atwood	
2013	33	Garibay, Jose Luis	McBride, Jason	5,100.00	5,100.00	Atwood	
2013	35	Cheadle, Joseph	Bertoni, Gary	6,500.00	6,500.00	Bennett	
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	38	Bullwinkel, David	Gruetter, Bryan	53,950.15	50,000.00	Bennett	
2012	83	Alatorre, Elizabeth	McBride, Jason	3,500.00	3,500.00	Bennett	
2012	89	Grana, Marta	McBride, Jason	3,500.00	3,500.00	Bennett	
2013	13	Wright, Jacinta	McBride, Jason	2,100.00	2,100.00	Bennett	
2012	10	Schnee, Cynthia	Hammond, Paula	1,500.00	1,500.00	Brown	
2012	23	Leece, Gerald and Kimberly	Hammond, Paula	2,699.00	2,699.00	Brown	
2013	25	Norris, Jill and David	Hammond, Paula	1,100.00	1,100.00	Brown	
2012	24	Steinbeck, Theodore C	Howlett, Bruce	950.00	950.00	Brown	
2013	32	Conley, Kimberly	Kaufman, Eric	600.00	600.00	Brown	
2012	56	Olivier, Johannes and Jacomina	McBride, Jason	3,000.00	3,000.00	Calderon	
2012	62	Chavez, Francisco and Mendoza, Esmera	McBride, Jason	4,000.00	4,000.00	Calderon	
2013	23	Jimenez, Angel Ruis	McBride, Jason	4,500.00	4,500.00	Calderon	
2013	19	Campos, Fabiola	McBride, Jason	4,720.00	4,720.00	Calderon	
2012	71	Sanchez-Serrano, Jonathan Alejandro	McBride, Jason	4,950.00	4,950.00	Cousineau	
2013	21	Urbina, Teresa	McBride, Jason	2,540.00	2,540.00	Cousineau	
2013	11	Lopez Lopez, Edith S	McBride, Jason	4,000.00	4,000.00	Cousineau	
2013	1	New, Earl Lawrence	Gatti, Daniel	85,000.00	50,000.00	Davis	Appealed
2013	2	Steidley, James J	Goff, Daniel	40,000.00	40,000.00	Davis	
2013	24	Mantell, Ellitott J	Goff, Daniel	47,609.00	47,609.00	Davis	

2013	15	Rivas, Raul Ruiz	McBride, Jason	4,300.00	4,300.00	Davis	
2012	77	Parra-Navarro, Alan Gerardo	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	79	Sherman, Tim L and Sanchez, Laura Y	McBride, Jason	3,000.00	3,000.00	Eggert	
2012	75	Javier, Zulema	McBride, Jason	4,100.00	4,100.00	Eggert	
2012	115	Manriquez, Maria Luz	McBride, Jason	4,900.00	4,900.00	Eggert	
2013	34	Guevara, Elisendo De Dios	McBride, Jason	5,100.00	5,100.00	Eggert	
2012	59	Marquez, Alberto Luis and Talamantes, E	McBride, Jason	500.00	500.00	Franco	
2009	39	Pottle, John	Ryan, T. Michael	200.00	200.00	Franco	
2012	70	Steers, Penelope Ann	Connall, Des	21,000.00	21,000.00	Kekel	
2013	17	Elizarraras, Victoria Ysassi	McBride, Jason	2,325.00	2,325.00	Kekel	
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	
2012	54	Lupton, Lela Mae	Gruetter, Bryan	20,500.00	20,500.00	Miller	
2013	4	Bispham, Lorrain Elizabeth	Kleen, Jerry			Miller	
2012	98	Santos, Hector Reyes	McBride, Jason	2,000.00	2,000.00	Miller	
2012	105	Cisneros, Javier Ramirez	McBride, Jason	4,000.00	4,000.00	Miller	
2013	29	Ramriez, Ignacio Cruz	McBride, Jason	4,400.00	4,400.00	Reinecke	
2013	28	Findling, Karl Jean	Sheasby, Robert	13,000.00	13,000.00	Reinecke	
2012	44	Cheney, Perry M	Jagger, James C	4,500.00	4,500.00	Timmons	
2012	29	Estate of Melvin Johnson	La Follett, Thomas	37,371.92	37,371.92	Timmons	
2011	21	Roelle, Brian D	Connall, Des	23,000.00	23,000.00	Wright	CSF Denied/ Appealed
2013	39	Watkins, Sandra and Ronald	Handy, Paul	3,800.00	3,800.00	Reinecke	
					\$ 596,687.11		
	Funds available for claims and indirect costs allocation as of May 2013			<b>Total in CSF Account</b>	\$ 407,944.00		
				<b>Fund Excess</b>	<b>\$ 188,743.11</b>		

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Five Months Ending May 31, 2013**

Description	May 2013	YTD 2013	Budget 2013	% of Budget	May Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$253	\$1,150	\$3,100	37.1%	\$358	\$1,632	-29.5%
Judgments	45	9,397	4,000	234.9%	(4,078)	(2,923)	-421.5%
Membership Fees	3,825	650,610	675,000	96.4%	2,100	217,890	198.6%
<b>TOTAL REVENUE</b>	<b>4,123</b>	<b>661,157</b>	<b>682,100</b>	<b>96.9%</b>	<b>(1,620)</b>	<b>216,599</b>	<b>205.2%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,201	12,105	28,200	42.9%	2,130	11,715	3.3%
Employee Taxes & Benefits - Reg	758	4,309	11,200	38.5%	864	3,892	10.7%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>2,958</b>	<b>16,415</b>	<b>39,400</b>	<b>41.7%</b>	<b>2,994</b>	<b>15,607</b>	<b>5.2%</b>
<b>DIRECT PROGRAM</b>							
Claims	112,858	348,038	200,000	174.0%		1,945	17794.0%
Collection Fees	667	5,119	1,000	511.9%		46	11003.9%
Committees			250				
Pamphlet Production			150			11	-100.0%
Travel & Expense		125	1,400	8.9%			
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>113,525</b>	<b>353,282</b>	<b>202,800</b>	<b>174.2%</b>		<b>2,003</b>	<b>#####</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Messenger & Delivery Services			50				
Office Supplies			150				
Photocopying			150				
Postage	38	207	500	41.5%	34	218	-4.8%
Professional Dues		200	200	100.0%		200	
Telephone		21	150	14.2%		15	37.8%
Training & Education		425	600	70.8%		425	
Staff Travel & Expense	60	60	874	6.9%			
<b>TOTAL G &amp; A</b>	<b>98</b>	<b>914</b>	<b>2,674</b>	<b>34.2%</b>	<b>34</b>	<b>858</b>	<b>6.5%</b>
<b>TOTAL EXPENSE</b>	<b>116,581</b>	<b>370,610</b>	<b>244,874</b>	<b>151.3%</b>	<b>3,028</b>	<b>18,468</b>	<b>1906.8%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(112,459)</b>	<b>290,547</b>	<b>437,226</b>		<b>(4,648)</b>	<b>198,131</b>	<b>46.6%</b>
Indirect Cost Allocation	1,219	6,095	14,625		1,119	5,595	8.9%
<b>NET REV (EXP) AFTER ICA</b>	<b>(113,678)</b>	<b>284,452</b>	<b>422,601</b>		<b>(5,767)</b>	<b>192,536</b>	<b>47.7%</b>
	=====		=====		=====	=====	=====
Fund Balance beginning of year		123,493					
<b>Ending Fund Balance</b>		<b>407,944</b>					
		=====					
<b>Staff - FTE count</b>		<b>.35</b>	<b>.00</b>			<b>.35</b>	



## 113 Detail

Account Number	Account Description	Date	Vendor	Reference	Debit Amount	Credit Amount
113-4310-000	Interest - Fund Balance	5/31/2013		Alloc of interest on savings	\$0.00	\$252.73
113-4340-000	Judgments Collected	5/1/2013	Roger Anunsen	Bank Transaction Entry	\$0.00	\$45.00
113-4405-000	Membership Fees - CSF Assessment	5/10/2013		DUES	\$0.00	\$90.00
113-4405-000	Membership Fees - CSF Assessment	5/13/2013		DUES	\$0.00	\$135.00
113-4405-000	Membership Fees - CSF Assessment	5/14/2013		DUES	\$0.00	\$90.00
113-4405-000	Membership Fees - CSF Assessment	5/14/2013		DUES	\$45.00	\$0.00
113-4405-000	Membership Fees - CSF Assessment	5/15/2013		DUES	\$0.00	\$90.00
113-4405-000	Membership Fees - CSF Assessment	5/17/2013		DUES	\$0.00	\$720.00
113-4405-000	Membership Fees - CSF Assessment	5/17/2013		DUES	\$0.00	\$2,655.00
113-4405-000	Membership Fees - CSF Assessment	5/17/2013		DUES	\$0.00	\$45.00
113-4405-000	Membership Fees - CSF Assessment	5/31/2013		DUES	\$90.00	\$0.00
113-4405-000	Membership Fees - CSF Assessment	5/31/2013		DUES	\$0.00	\$45.00
113-4405-000	Membership Fees - CSF Assessment	5/31/2013		DUES	\$0.00	\$90.00
113-6100-000	Employee Salaries - Regular	5/9/2013	ADP Payroll Services	Payroll EFT's & Checks	\$1,081.04	\$0.00
113-6100-000	Employee Salaries - Regular	5/9/2013	ADP Payroll Services	Payroll EFT's & Checks	\$19.30	\$0.00
113-6100-000	Employee Salaries - Regular	5/23/2013	ADP Payroll Services	Payroll EFT's & Checks	\$41.02	\$0.00
113-6100-000	Employee Salaries - Regular	5/23/2013	ADP Payroll Services	Payroll EFT's & Checks	\$1,059.32	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/1/2013	Northwest Employee Benefits	Health Insurance May 2013	\$366.00	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/1/2013	Mutual Of Omaha	Ins Premium - May 2013	\$15.82	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/1/2013	Mutual Of Omaha	Ins Premium - May 2013	\$0.00	\$0.72
113-6105-000	Employee Taxes & Benefits - Regular	5/9/2013	ADP Payroll Services	Payroll EFT's & Checks	\$0.38	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/9/2013	ADP Payroll Services	Payroll EFT's & Checks	\$68.22	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/9/2013	ADP Payroll Services	Payroll EFT's & Checks	\$15.96	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/8/2013	EBMS, Inc.	April 2013 Admin Fee	\$0.83	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/8/2013	Cascade Centers, Inc.	Employee Assist. Prog-May 2013	\$1.11	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/15/2013	Lincoln Financial Group	0013019551	\$0.00	\$0.42
113-6105-000	Employee Taxes & Benefits - Regular	5/15/2013	Oregon Dept of Administrative Services	PensionBondAsses4/25/13PERS	\$60.80	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/23/2013	ADP Payroll Services	Payroll EFT's & Checks	\$0.37	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/23/2013	ADP Payroll Services	Payroll EFT's & Checks	\$15.96	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/23/2013	ADP Payroll Services	Payroll EFT's & Checks	\$68.22	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/29/2013	PERS	May 9 PR/April Adj.	\$84.50	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/31/2013	Oregon Dept of Administrative Services	Pension Bond Asses 5-9/13 PERS	\$60.66	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/31/2013		Reverse DAS & PERS accl 4/25	\$0.00	\$86.18
113-6105-000	Employee Taxes & Benefits - Regular	5/31/2013		Reverse DAS & PERS accl 4/25	\$0.00	\$60.80
113-6105-000	Employee Taxes & Benefits - Regular	5/31/2013		PERS & DAS on 5/23/2013 P/R	\$86.12	\$0.00
113-6105-000	Employee Taxes & Benefits - Regular	5/31/2013		PERS & DAS on 5/23/2013 P/R	\$60.79	\$0.00
113-7185-000	Claims	5/8/2013	Bothwell, Christopher Charles	CSFCImGRUETTER-Bothwell2012-84	\$29,942.82	\$0.00
113-7185-000	Claims	5/8/2013	Bothwell, Christopher Charles	CSF Claim Gruetter 2012-84	\$14,747.95	\$0.00
113-7185-000	Claims	5/9/2013	Bothwell, Christopher Charles	CSF Claim Gruetter 2012-84	\$14,747.95	\$0.00
113-7185-000	Claims	5/8/2013	Bothwell, Christopher Charles	Void Open Trx	\$0.00	\$14,747.95
113-7185-000	Claims	5/9/2013	Bothwell, Christopher Charles	Void Open Trx	\$0.00	\$29,942.82
113-7185-000	Claims	5/9/2013	Bothwell, Christopher Charles	CSF Claim Gruetter 2012-84	\$29,942.82	\$0.00
113-7185-000	Claims	5/23/2013	Carosella, Kenneth Anthony	CSF Claim-McBride 2012-61	\$3,350.00	\$0.00
113-7185-000	Claims	5/23/2013	Estate of Samuel Bartow Jr	CSF Claim HANDY 2012-116	\$45,500.00	\$0.00
113-7185-000	Claims	5/23/2013	Boyer, Robbyn Lynn	CSF Claim GRUETTER 2012-27	\$10,747.46	\$0.00
113-7185-000	Claims	5/29/2013	Wright, Jacinta	CSF Clm MCBRIDE 2012-19	\$1,700.00	\$0.00
113-7185-000	Claims	5/29/2013	Schnee, Cynthia L	CSF Clm MCBRIDE 2012-10	\$1,414.28	\$0.00
113-7185-000	Claims	5/29/2013	Zuniga, Fabian Torres	CSF Clm MCBRIDE 2012-81	\$1,900.00	\$0.00
113-7185-000	Claims	5/29/2013	Ramirez, Ignacio Cruz	CSF Clm MCBRIDE 2013-29	\$475.00	\$0.00
113-7185-000	Claims	5/29/2013	Castillo, Miriam Rodriguez	CSF Clm MCBRIDE 2012-95	\$1,100.00	\$0.00
113-7185-000	Claims	5/29/2013	Rangel, Ever Alexis	CSF Clm GRUETTER 2012-112	\$1,980.47	\$0.00
113-7190-000	Collection Fees	5/29/2013	Greene & Markley PC	CSF Jason McBride Cases	\$667.30	\$0.00
113-9000-000	Indirect Cost Allocation	5/31/2013		2013 ICA per budget	\$1,219.00	\$0.00
113-9620-000	Postage	5/31/2013		Postage USM/UPS	\$37.88	\$0.00
113-9850-000	Travel & Expense - Staff	5/15/2013	National Client Protection Organization	Dinner for Sylvia Stevens	\$60.00	\$0.00

# **2013 JUDGMENTS COLLECTED**

<b>Date</b>	<b>Attorney</b>	<b>Payment Received</b>
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
4/29/2013	Shinn, Michael	50.00
5/1/2013	Anunsen, Roger	45.00
5/28/2013	Shinn, Michael	50.00
6/13/2013	Koch, Jacqueline	7833.83

**TOTAL**

**\$17,180.83**

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Claims Approved by Client Security Fund Committee

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### Action Recommended

None. This report is for the BOG's information pursuant to CSF Rule 4.11.

### Discussion

The CSF Committee met on May 11, 2013 and approved awards on the following claims:

Claim No.		Attorney	Claimant	Amt. Awarded
2012-	61	McBride	Carosella	\$3,500.00
2012-	63	McBride	Lua	\$2,500.00
2012-	81	McBride	Torres Zuniga	\$1,900.00
2012-	85	McBride	Valdivia	\$1,500.00
2012-	91	McBride	Garibay, Rudolfo	\$1,500.00
2012-	92	McBride	Lucas-Lepe	\$4,900.00
2012-	93	McBride	Ramirez, A.	\$700.00
2012-	94	McBride	Keiper	\$4,000.00
2012-	95	McBride	Rodriguez Castillo	\$1,100.00
2012-	110	McBride	Melchor	\$4,500.00
2013-	13	McBride	Wright	\$1,700.00
2013-	14	McBride	Valadez	\$4,000.00
2013-	15	McBride	Rivas, R.	\$3,000.00
2013-	29	McBride	Ramirez, I.	\$475.00
2013-	12	Goff	Dial	\$3,750.00
2012-	10	Hammond	Schnee	\$1,414.28
2012-	112	Rangel	Gruetter	\$1,980.47
Total				\$42,419.75

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 13, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Client Security Fund Committee Final Awards

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### Action Recommended

None. This report is for the BOG's information pursuant to CSF Rule 4.11.

### Discussion

The CSF Committee met on May 11, 2013 and gave final approval to awards on the following claims:

2013-12	GOFF (Dial)	\$3,750.00
2012-10	HAMMOND (Schnee)	\$1,414.28
2012-112	GRUETTER (Rangel)	\$1,980.47
2013-29	McBRIDE (Ramirez)	\$475.00
2013-19	McBRIDE (Rivas)	\$3,000.00
2012-81	McBRIDE (Torres Zuniga)	\$1,900.00
2012-95	McBRIDE (Castillo)	\$1,100.00
2013-14	McBRIDE (Valadez)	\$4,000.00
2013-13	McBRIDE (Wright)	\$1,700.00
2012-61	McBRIDE (Carosella)	\$3,350.00
2012-63	McBRIDE (Lua)	\$2,500.00
2012-85	McBRIDE (Valdivia)	\$1,500.00
2012-91	McBRIDE (Garibay, R.)	\$1,500.00
2012-92	McBRIDE (Lucas Lepe)	\$4,900.00
2012-93	McBRIDE (Ramirez, A.)	\$700.00
2012-94	McBRIDE (Keiper)	\$4,000.00
2012-110	McBRIDE (Melchor)	\$4,500.00
2013-05	GINSLER (Mays)	\$1,100.00
	TOTAL	\$43,369.75

## DECLARATION OF COMPLIANCE

I, Theresa M. Kohlhoff, hereby declare that the following declaration is true to the best of my knowledge and belief and that I understand it is made for use as evidence in court and is subject to the penalty for perjury. I am making this declaration 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, was asked to represent a plaintiff, Leroy Kuntzman against C. David Hall. Elizabeth Welch is my partner and agreed to look into the matter as of February 27, 2013. I was screened from any form of participation or representation in the matter. I did not participate in any manner in the matter or the representation and did not discuss the matter or the representation with Elizabeth Welch. This declaration attests to my actual compliance with these undertakings now that the representation is terminated. I am aware of my ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

DATED this June 20, 2013.

  
Theresa M. Kohlhoff

**RECEIVED**

JUN 24 2013

Oregon State Bar  
Executive Director

## 1 - DECLARATION OF COMPLIANCE

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

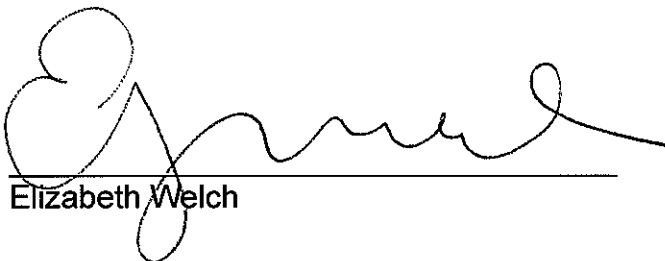
## DECLARATION OF COMPLIANCE

I, Elizabeth Welch, hereby declare that the following declaration is true to the best of my knowledge and belief and that I understand it is made for use as evidence in court and is subject to the penalty for perjury. I am making this declaration 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, was asked to represent a plaintiff, Leroy Kuntzman against C. David Hall. I attest that I screened Theresa M. Kohlhoff from participating in or discussing the matter or other representation. I submit this declaration of compliance to the Executive Director of the Bar attesting to my actual compliance with these undertakings now that the representation has been terminated.

I am aware of my ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

DATED this June 20, 2013.



Elizabeth Welch

**RECEIVED**

JUN 24 2013

Oregon State Bar  
Executive Director

## 1 - DECLARATION OF COMPLIANCE

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

May 23, 2013

Richard L. Wolf  
Attorney at Law  
Richard L. Wolf PC  
12940 NW Marina Way, Slip A  
Portland, OR 97231

Re: Your representation of David J. Pedersen

Dear Mr. Wolf:

Enclosed is a letter the bar received regarding your representation of David J. Pedersen. It is ironic that Mr. Pedersen used our complaint form for this communication, because it is clear that he holds your representation in high regard. It is infrequent for a client to take the time to write the bar commending a lawyer on his or her exemplary professional services. As you can see, your client truly appreciates your competence, diligence and professionalism.

Most clients meet only a few lawyers during their lives and their impressions from those encounters color their view of the profession as a whole. I am confident that Mr. Pedersen has a more positive view about lawyers from his experience with you. I commend you for exhibiting the best values of our profession.

Mr. Pedersen's letter will be placed in your permanent membership file and I will present this matter to our Executive Director, Sylvia Stevens. Ms. Stevens will bring this communication to the attention of the Board of Governors at their next meeting.

Sincerely,

Troy J. Wood  
Assistant General Counsel  
Ext. 366

TJW/jmm  
Enclosure

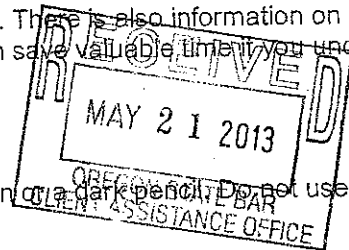
cc: David J. Pedersen  
cc w/encl: Regulatory Services  
Sylvia E. Stevens, Attorney at Law

# OREGON STATE BAR COMPLAINT FORM

Fill out this form to the best of your ability and return it in an envelope to:  
Client Assistance Office, Oregon State Bar  
16037 SW Upper Boones Ferry Rd., PO Box 231935, Tigard, OR 97281  
Telephone: (503) 620-0222; Toll Free in Oregon: (800) 452-8260

## General Instructions

- ♦ Read the Oregon State Bar's pamphlets about the Client Assistance Office. There is also information on our website that you may find helpful ([www.osbar.org](http://www.osbar.org)). It is information that can save valuable time if you understand how the bar functions.
- ♦ No particular form is required. This form is provided for your convenience.
- ♦ **Please type your complaint or print clearly.** If you print, please use a pen or a dark pencil. Do not use highlighters on this form. Do not write on the back side of any pages.
- ♦ Please note that all materials received by the bar are considered public record. A copy of your complaint will be provided to the attorney and a copy retained by the bar in accordance with current OSB records retention policy. Retained records are available for public inspection through the OSB public records clerk.



Date

Name and Address of Complainant		Name and Address of Attorney	
Name	Pedersen, David J.	Name	RICHARD L. WOLF
Address	1120 SW 3rd	Address	12940 NW MARINA WAY, SLIP
City/State/Zip	Portland, OR 97204	City/State/Zip	PORTLAND, OR 97204
Telephone	N/A	Telephone	503-384-0910

## WHAT IS YOUR COMPLAINT?

Please be as specific yet concise as possible and remember to specify **what** your complaint is, when it happened, **where** the incident occurred, **why** you went to the attorney and any other factors you can think of which are relevant to your complaint. Use additional sheets of paper if you wish and attach them to this form.

I have had Richard Wolf assigned as counsel to me for approximately one year now, and I have known him for a bit longer than that. In the time I have known Mr. Wolf he has attempted, despite my protestations, to provide me with excellent representation.

He has ignored every order of mine to simply "take it easy," and "enjoy yourself"; and continues to not only take this case far too serious, but to go far above and beyond what is required of an attorney in representing a defendant in a criminal matter.

He is, in short, too professional, too diligent, too actively involved—



Mr. Wolf has even gone so far as to suggest that it might be prudent for me to submit mitigation in this case; and, though I am fully aware of the sheer outlandishness of the following claim, nevertheless, I must tell you that Mr. Wolf has even spoken of the possibility of "putting up a defense". And not just any defense, oh no — but a good one.

This runs contrary to every ideal, every value, upheld by the justice system here in America. It makes a mockery of the very mediocrity towards which the majority of lawyers here in Oregon and, indeed, all of America, strive. And I feel compelled by my conscience to report this scandalous activity.

I sincerely hope that this complaint will be taken seriously. It has crossed my mind that there exists the possibility that you folks may consider this complaint "frivolous". That would aggravate me sorely, though I do take some comfort in the knowledge that this will not be the first frivolous bar complaint filed. Heck, Marquis is personally responsible for a large number of them, huh? Kind of strange to me that people actually take him serious. But that is a story for some other time.

yours, In Jest...

David J. Pedersen

668888

David J. Pedersen  
MCDC 668888

1120 SW 3rd

Portland, OR 97204



Oregon Hispanic Bar Association | PO BOX 3986 | Portland, OR 97208 | [www.oregonhispanicbar.org](http://www.oregonhispanicbar.org)

May 3, 2013

Ms. Mariann Hyland  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97224

**RECEIVED**

JUN 05 2013

Oregon State Bar  
Executive Director

Dear Mariann:

On behalf of the OHBA Board of Directors, I wanted to thank you for sponsoring the OHBA's annual dinner this past February. Thanks to the help of our sponsors, the 2013 OHBA Annual Dinner was by far our most successful. With your support, we were able to raise more funds to support the OHBA's mission to encourage Latinos to become attorneys, retain Latino legal professionals, raise the awareness of Latino legal issues, and support Latino law students and legal professionals.

With the money that we raised at the Dinner, we are providing scholarships to Latino law students in Oregon, and we plan to provide the financing to send several law students to the Hispanic National Bar Association's annual conference in Denver, Colorado. It is due in significant part to contributions from organizations like Oregon State Bar that we are able to support these students and promote our mission.

We are also engaging in outreach activities for Latino attorneys in Oregon, organizing with other specialty bars to ensure that the voices of our diverse community are heard on a broad range of issues. With the support of our sponsors, we are able to engage fully on behalf of our community.

Once again, thank you so much for your support. We look forward to continuing our work with you in the future.

Sincerely,



Ramón A. Pagán  
OHBA President

Oregon Hispanic Bar Association | PO BOX 3986 | Portland, OR 97208 | [www.oregonhispanicbar.org](http://www.oregonhispanicbar.org)

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FAX (503) 635-1526

June 24, 2013

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

Via Certified Mail  
Return receipt requested

Re: Attached Membership Fee and Assessment

Dear Sylvia:

In response to your letter of May 2, 2013, I am enclosing a copy of my check No. 16808 in the amount of \$ 50.00 in payment of the second penalty assessed on this matter. I am mailing you a copy of the assessment and my check with this letter, and sending the check directly to the Accounting Department.

I am certain that I mailed the original dues assessment at least four to five business days prior to the due date last winter by depositing it with the U.S. Post Office in Lake Grove, Oregon. I was chagrined to receive the initial penalty notice, and that assessment was mailed a day or two before the due date. The original assessment was in my view therefore paid on time, although the first penalty may have arrived after the due date. We can surmise that either the mail service between Lake Grove and Tigard is more leisurely than we wish, or that my payment arrived on time and was sitting in someone's in box. I prefer to think that the initial late fee assessment reflected late opening, rather than late mailing.

I would guess that this is one of the less enjoyable tasks which you perform for the Oregon State Bar. From the perspective of 39 years membership, the practice adopted here is one more instance in which the Bar has ceased to become a self-governing organization of its members, and has become a locked down agency of the State of Oregon. Most of those transitions occurred during the prior administrations of Karen Garst and her predecessor, who seemed to regard Oregon lawyers as a group to be governed, rather than as a group to be enlisted in a cooperative effort for the common good of the people of the State of Oregon. Practices like this are destructive of the good will which members have to an organization, and are regrettable.

My comments are not personal to yourself. However, they are the product of hard experience in this and other interactions with the Oregon State Bar, which I now avoid if I can.

Very truly yours,

ROGER J. LEO

RJL:gdg

Attached: May 2 Second Late Fee Notice  
Copy of Check 16808

RECEIVED

JUN 25 2013

Oregon State Bar  
Executive Director

**The New York Times**

May 27, 2013

# Racial Diversity Efforts Ebb for Elite Careers, Analysis Finds

By **NELSON D. SCHWARTZ** and **MICHAEL COOPER**

HOUSTON — As a partner and chief diversity officer at Thompson & Knight, Pauline Higgins was not afraid to press the issue of hiring minorities at the 126-year-old Texas law firm. But when she left in 2008, she was replaced by an associate with less influence.

Now, current and former partners say, the diversity committee meets less often, and the firm has fewer black lawyers than before. It is a trajectory familiar in many elite realms of American professional life. Even as racial barriers continue to fall, progress for African-Americans over all has remained slow — and in some cases appears to be stalling.

“You don’t want to be a diversity officer who only buys tables at events and seats people,” Ms. Higgins said recently. “It’s about recruiting and inclusion and training and development, with substantive work assignments.”

Nearly a half-century after a Texan, President Lyndon B. Johnson, helped usher in the era of affirmative action, the Supreme Court is poised to rule as early as this week on whether the University of Texas can continue to consider race as one of many factors in its admissions policy. It is a case that could have a profound impact on race-based affirmative action programs across the nation, and it has reignited a discussion of how much progress minorities, blacks in particular, have made in integrating into some of the most sought-after professions, especially since the recession.

Only a little more than 1 percent of the nation’s Fortune 500 companies have black chief executives, although there are some prominent exceptions, like Kenneth I. Chenault of American Express and Ursula M. Burns of Xerox. At the nation’s biggest companies, about 3.2 percent of senior executive positions are held by African-Americans, according to an estimate by the Executive Leadership Council, an organization of current and former black senior executives.

While about 12 percent of the nation’s working-age population is black, about 5 percent of physicians and dentists in the United States are black — a share that has not grown since 1990, according to an analysis of census data that was prepared for The New York Times by sociologists at Queens College of the City University of New York. The analysis found that 3 percent of American architects are black, another field where the share has not increased in more than two decades.

The share of the nation’s lawyers who are minorities and women, which had been growing slowly but steadily for years, [fell](#) in 2010 for the first time since NALP, the National Association for Law

Placement, began keeping statistics in 1993. The deep recession not only [disproportionately hurt](#) African-Americans in many fields, but it also led businesses to make diversity programs less of a priority. And a growing number of states — including Arizona, Michigan, Nebraska, New Hampshire and Oklahoma — have moved to ban race-based affirmative action in recent years. California, Florida and Washington did so in the 1990s.

Such numbers raise the question of whether the private sector's commitment to affirmative action and diversity programs is eroding, even as the Supreme Court again considers a high-profile case involving a public university.

"We're at a precipice," said John Page, the president of the National Bar Association, an 88-year-old group representing black lawyers and judges. "There is diversity fatigue. We could fall backwards very quickly."

Even more worrisome to some people than the small number of African-Americans at the upper echelons of many organizations is a lack of progress at entry levels. In Texas legal circles, there have been some notable symbolic gains for black lawyers at the top of the profession; both the State Bar of Texas and the Houston Bar Association just elected their first black presidents. But many black lawyers said they worried that there were fewer young black lawyers in the pipeline for future leadership roles.

While blacks made up only 2.65 percent of the partners at Houston firms last year, that figure represents progress as the share of black partners more than doubled over the past decade, according to statistics kept by NALP, the law placement association. At the lower levels of firms, black lawyers have lost some ground, however. Houston firms reported that 4.74 percent of their associates last year were black, down from 4.96 percent in 2002, the association said.

Lisa Tatum, the black lawyer who will take over the presidency of the Texas bar next month, said there was concern that firms were not pursuing diversity as aggressively as they did before.

"There's no question there's been some pullback," said Ms. Tatum, who works in San Antonio. "There are some firms that look at what they have done, they look at President Obama, and they say we're there."

The recession set back diversity efforts in many fields. After the financial crisis hit in 2008, the Conference Board, a business membership and research organization, asked senior executives how the downturn was changing their priorities. Among the several challenges they deemed less pressing was "achieving diversity and representation in the cross-cultural work force."

Somewhat lost in the legal arguments over affirmative action are the less tangible, more subtle forces that can determine professional success, more than a dozen black lawyers here, in San Antonio and elsewhere in Texas said in interviews. Social rituals can play a big role in determining

who makes it on to the partnership track in the exclusive world of white-shoe firms, and whether those partners can bring in business as rainmakers.

Gerald Roberts, a black lawyer who was a partner at Thompson & Knight before leaving in 2010, said that social relationships left some black lawyers at a distance from their white colleagues and potential clients. "For the most part, they don't go to church together on Sunday enough, they don't have dinner together enough, and they don't play enough golf together to develop sufficiently strong relationships of trust and confidence," he said.

A black associate at one Houston firm, who requested anonymity so as not to jeopardize his chances of making partner, used a familiar legal term to describe his unease at work, saying he sometimes felt there was a "rebuttable presumption" that he was there to fill a quota and was not as qualified as white colleagues.

Many black lawyers leave big firms to strike out on their own or to join the public sector.

By the end of Catina Haynes's first year in 2006 at one big Houston law firm, she said, many of the minority lawyers who had started with her were gone, along with the lawyer who recruited her. Billable hours shrank as the economy weakened, and Ms. Haynes said black lawyers did not always have advocates. "It took someone in power to pull other people in and say, 'I want them on cases,' " Ms. Haynes said. She left the firm in 2010 and now works in the Harris County District Attorney's Office.

Thompson & Knight currently has eight black lawyers, down from 17 in 2008. The overall size of the firm declined during that period as well, but the portion of minority lawyers has fallen, too. In 2008, 15 percent of its lawyers were minorities, according to the Diversity Scorecard, an annual survey by The American Lawyer, but in 2011, the year covered by the most recent scorecard, 10 percent were minorities.

"The firm genuinely had a very strong diversity commitment when I joined," said one current partner, who requested anonymity because he was not authorized to speak publicly. He added that Ms. Higgins's exit in 2008, the death of the firm's former managing partner and the recession hurt the momentum. When Ms. Higgins was at the firm, he recalled, the diversity committee sat down together regularly. "You were scared not to attend," he said.

Emily Parker, the managing partner at Thompson & Knight, said the firm was proud of its black partners and worked hard to promote diversity, but she noted that many top law firms had struggled to retain minority lawyers in recent years. She pointed out that the Diversity Scorecard survey had reported a decrease in the number of minority lawyers at top firms since 2008, even as more firms responded to the survey.

“Even though the number of surveyed law firms increased by 10 percent, the overall number of minority attorneys decreased by approximately 3 percent, which is a convincing statistical illustration of the minority-retention problem faced by Thompson & Knight and practically every law firm in the country,” Ms. Parker said in a statement. She said the firm remained focused on fostering diversity, providing law school scholarships for minority students and internships for students from historically black institutions.

Despite the challenges, some lawyers at Thompson & Knight said they saw signs of renewed progress. Ms. Parker, who was the [first female lawyer](#) hired by the firm in 1973, last year became the first woman to lead it. This spring, Marlen Whitley, who is black, was named hiring partner in the firm’s office here in Houston, and a black associate is scheduled to join the Dallas office this fall.

The firm has five black partners, more than many others and an increase from three in 2008. Still, only two are equity partners, who share in the profits of the firm. “Being an equity partner means you’ve arrived, that you have clout,” the current partner said. “It’s the brass ring.”

*Nelson D. Schwartz reported from Houston, and Michael Cooper from New York.*





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## Survey: Firm Leaders Admit Downturn's Permanent Impact

Tom Huddleston Jr.

The Am Law Daily

05-21-2013

Most law firm leaders admit that recession-driven changes to both their pricing practices and their clients' expectations that work be done efficiently are likely here to stay, according to a new survey from legal consultancy Altman Weil.

At the same time, a majority of firm leaders responding to Altman Weil's fifth annual Law Firms in Transition Survey, [which was released Tuesday](#), acknowledge being slow to alter their long-term strategies to address those changes.

The survey queried firm leaders at 238 firms—all of which have at least 50 attorneys—on legal industry trends, as well as on issues related to law firm growth and economic performance. Thirty-four percent of the respondents came from within the ranks of The Am Law 200.

Of the survey's respondents, 95.6 percent said they view increased pricing competition as an ongoing trend, while 80 percent expect shifts to nonhourly billing structures to continue. But only 29 percent of respondents said their firms had made significant changes to their own pricing practices in the wake of the recession.

Altman Weil principal Thomas Clay, who authored the survey, tells *The Am Law Daily* that the results suggest that too many firms are "almost operating like Corporate America, in other words, managing the firm quarter-to-quarter by earnings per share." Clay says such firms are taking a shortsighted approach. "I feel like we're not taking the long view enough about things like truly changing the way you do things to improve the client value and things of that nature."

For instance, Clay says most firms have responded to pricing pressures by simply offering discounts. Altman Weil's survey found a median range of between 21 and 30 percent of legal fees at all responding firms are discounted, while the median range at responding firms with at least 250 lawyers is 31 to 40 percent. Those discounts may help firms keep clients happy now, Clay says, but they can create challenges in the future considering that major discounts can cut into profit margins while making it hard for firms to ever bring rates back to their prerecession levels.

Says Clay: "I see that as an insidious long-term issue. . . . Believe me, once you add discounts, [clients] never come back and say, 'Oh, business is better, can we restore your price?'"



Nearly 96 percent of the survey's respondents said the focus on improved practice efficiency is another trend that has become entrenched, while 78.6 percent said they expect to face increased competition from such nontraditional sources as Internet-based legal providers and project outsourcing companies. Nonetheless, only 45 percent of respondents said their firms have made significant changes to improve efficiency. According to Clay, firms may need to rely on more contract attorneys in order to increase efficiency, improve profit margins, and reducing client costs.

Clay also notes what he sees as a troubling trend in firm leaders' responses to an open-ended question the survey asked about the greatest challenges they expect to face over the next two years. The challenge cited most often, by 15.2 percent of respondents, was increasing revenue. Generating new business, firm growth, and improving profitability rounded out the top four. Delivering value to clients ranked eighth on the list, mentioned by 5.6 percent of respondents, while improving efficiency was mentioned by 2.8 percent, ranking eleventh.

"Revenue growth was just so far ahead of anything else. [And], I understand it, but I think it's a short-term thing. I'd much rather say satisfying clients . . . and, one could argue that, if you do that, you will grow revenue," Clay says.

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June 26, 2013

# How the Web and an Attitude of Sharing Helped a Law Firm Take Off

By ADRIANA GARDELLA

When it comes to making use of the Web, law firms generally have not been pioneers. The [Murthy Law Firm](#), which handles immigration matters, is an exception.

Founded in 1994 by Sheela Murthy, an Indian immigrant, the firm introduced a site that provided legal information that same year. “So few law firms were even on the Internet, it was considered weird,” Ms. Murthy said.

From the beginning, her strategy was to post lots of information about immigration. And today, by at least [one ranking](#), [murthy.com](#) is the world’s most visited law firm site.

Based in Owings Mills, Md., the firm has managed this despite its modest size — more than \$10 million in annual revenue and about 110 employees, 20 of whom are in India and 27 of whom are lawyers, including five nonequity partners. Ms. Murthy, 51, is the sole owner.

In a recent conversation that has been edited and condensed, Ms. Murthy discussed why she decided to give away legal information online, how she discovered that she was a terrible boss, and what she thinks immigration reform would mean for businesses.

**Q.** *How did you end up in Maryland?*

**A.** I was born in Baroda, India, and attended University Law College in Bangalore. There, I met my husband, Vasant Nayak, a photographer and digital artist. He was studying in the United States and encouraged me to apply to law school here. I graduated from Harvard Law in 1987, worked for big firms in New York and Baltimore and started my own firm in 1994.

**Q.** *What got you interested in immigration law?*

**A.** I went through hell to get my green card. The process of becoming a citizen was painful, stressful and took 12 years. I’d wake up in a cold sweat panicking about my life, my attorney’s lack of sensitivity and how little he cared. He only called when he was raising his fees.

**Q.** *What led you to create a Web site back in 1994?*



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**A.** My husband, who built our site and today serves as a technology, marketing and operations consultant to the firm, insisted the Internet was the wave of the future. He suggested I grow the business by offering free legal information online. I thought, “If I didn’t love this man, I’d think he wants to bankrupt me.” But I was so frustrated by my own immigrant experience that I decided to start a Web site partly to make people feel empowered and respected.

**Q.** *How did your early site do that?*

**A.** Each day, I answered about 100 questions from immigrants. It helped familiarize me with real-life issues. I also started the weekly [Murthy Bulletin](#) soon after starting the firm. It’s an e-mail newsletter, which lawyers weren’t really doing then. Today, it has about 43,000 subscribers. Around 1995, we started accepting credit card payments — another thing almost no law firms were doing. But it was the only way I could help a client in California. There was no time to wait for a check in the mail.

**Q.** *What type of reception did the Web site get?*

**A.** It was like, build it and they will come — it caught on like wildfire.

**Q.** *What resources are available on your current site?*

**A.** It’s aimed at building an online immigrant community. There’s no hard sell — its priority is not to bring in clients but to help and show we care and know our stuff. We clarify the most complicated laws, using tools like teleconferences, podcasts and blogging.

Our moderated bulletin board has over 165,000 members who share information and knowledge about visa processing trends and related matters. On Monday nights, we have a real-time chat where one of our senior attorneys explains immigration law and processes. Every two or three years, we redo the site from scratch, working with a Web development firm.

**Q.** *How’s business?*

**A.** Clients are banging down the door. They throw themselves at our feet asking us to take them on. The feeling is, “If they give this much away for free, what must it be like if you pay them?”

**Q.** *Given your site’s popularity, have you tried to generate income from its visitors?*

**A.** No. We’ve kept it very pristine. We’ve been approached by insurance companies, travel agencies and airlines about doing ads. While we like the idea of getting \$5,000 a month with no effort, we don’t want clients wasting time looking at a bunch of ads before they get the

information they need.

**Q.** *What has been your biggest challenge as a business owner?*

**A.** I'm intense. I work 12 to 18 hours a day, no lunch break, bathroom breaks of less than 30 seconds. In the beginning, I assumed my staff shared my vision and passion and expected them to be excited just because I was. I worried about overpaying people, and worked them to death. I expected them to be my slaves, whipping limping horses. I was such a moron, I don't think I even knew the Department of Labor laws.

**Q.** *How did your staff respond?*

**A.** Around 1997, three out of four of my paralegals walked off the job within a week of each other. It was like a bucket of water thrown at my face. I hired new paralegals, and my husband started coming into the office. The new paralegals started taking their problems to him. I'd be on the phone all day. I had a don't-waste-my-time-with-this attitude. I'm not touchy-feely and sensitive like my husband. But I knew I had to reinvent myself.

**Q.** *Did you?*

**A.** I've come a long way, but I'm a slow learner. I still expect a lot from people, but I've had a reality check. I understand how important it is that they understand my vision and feel like partners. Now, all new employees meet with me for an hour. I share my background, and my experience with an uncaring lawyer. I explain that, as a client, I don't care how much you know, I care how much you care. Today, 50 percent of my employees have been with the firm for more than five years.

**Q.** *Why do you think they stay?*

**A.** During interviews, I ask how I can create their dream job. If someone says they would rather write all day instead of talk to clients, I work it so they can — and vice versa. I try to capitalize on my attorneys' strengths. If I can create that ideal job, you'll stay until you're dead or retired.

**Q.** *How do you think immigration reform would affect businesses?*

**A.** Reform would just offer a faster track for certain people — like immigrants with science, technology and math skills. This is good for employers because we're not producing enough of these employees in the United States. Ultimately, talented immigrants would be encouraged to stay, jobs would be created, and the United States would continue to lead the world in innovation.

**Q.** *How would it affect your business?*

**A.** It wouldn't make much difference for us — though we'd be busier because more of our clients would be eligible for a visa under the newly created EB-6, or start-up, visa category.

**Q.** *What's next for the firm?*

**A.** We're torn between maintaining our size and growing. Growth means more stress — more employees, more cases and more work. But we struggle with this.

# Clogged Pipeline: Lack of Growth at Firms Has Women Skipping Law School

By Hollee Schwartz Temple

**Phoenix attorney Stephanie McCoy Loquvam** faces a tough audience when she tries to sell female undergraduates on legal careers. “They’re assessing whether the investment in law school will be worthwhile, and the bottom line is that the legal profession is not doing a very good job of convincing qualified women,” says Loquvam, who practices commercial litigation with Aiken Schenk Hawkins & Ricciardi and is an adjunct professor at Paradise Valley Community College.

While the general downward trend in law school applications (down 14 percent for this fall) has been well-documented, legal industry experts are especially concerned about women’s enrollment, which has been on a steady decline since 2002. Law School Admission Council statistics tracked women at 46.8 percent of first-year students for 2011; that’s down from the all-time female enrollment high of more than 50 percent in 1993. But at some schools, particularly those outside urban areas, the split is more pronounced, with women taking about 40 percent of the seats.

“Because women are now a higher percentage of the undergraduate population, people assume that they will follow through at the same percentages in graduate and professional schools,” says Darby Dickerson, dean of Texas Tech University School of Law. As a member of the Association of American Law Schools’ membership review committee for the past two years, Dickerson reviewed the diversity statistics submitted by law schools across the country; she was surprised by how many showed only about 40 percent women in first-year classes.

Lauren Stiller Rikleen, a Wayland, Mass.-based industry consultant and expert on the millennial generation, says word has trickled down to undergraduate students that despite decades of discussion and initiatives, female lawyers aren’t making much headway compared with their male counterparts when it comes to compensation and leadership opportunities.

“These young women are saying, ‘Why should I choose a pipeline where I won’t be as successful when I can choose another one where the culture is more committed to my success?’ ”

Rikleen says. “Women are paying close attention to the data with respect to women’s advancement.”

**BEYOND LITIGATION**

**Dickerson notes that law schools could do more** to show that litigation is not the only career option available to lawyers; the adversarial stereotype may be a particular deterrent to women, she says.

As Loquvam's law graduation approached in May 2011, she found her female classmates clamoring for nontraditional jobs. Concerned about law's lack of flexibility, the gender-based pay differential and a dearth of female role models, Loquvam's classmates were "very tempted to see where else they might apply their talents."

A top-down cultural change is the law's best hope for reversing the trend, Rikleen says. Law firms should look to other industries and recognize that in a global market-

place, a diverse and inclusive workforce is essential, she says. To make that happen, legal employers must develop and fund comprehensive programs for female lawyers that tie their progress at the firms to metrics that measure women's success. "If a law firm says we have a great women's initiative and we care about opportunities for women, but the women's initiative has no budget and no one is measured on how well women are doing in their practice groups, then it's not going to be particularly effective," says Rikleen, executive-in-residence at Boston College's Center for Work and Family.

Law schools can do their part by making students more practice-ready. To that end, Dickerson encourages female students and young lawyers to seek mentors, and she hopes more experienced members of the bar realize how much the newest lawyers need their encouragement. "We have to convey to young women attorneys and law students that they should strive for leadership positions," Dickerson says. "If you give them encouragement and let them know you believe in them, they will take that step. If you say nothing, they won't take the shot."