

Oregon State Bar
Meeting of the Board of Governors
November 23, 2013
Brasada Ranch, Powell Butte, OR
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on November 23, 2013. Items on the agenda will not necessarily be discussed in the order as shown.

Saturday, November 23, 2013, 12:00 p.m.

- 1. Call to Order/Finalization of the Agenda**
- 2. Report of Officers & Executive Staff**
 - A. President's Report [Mr. Haglund] Inform Exhibit
 - B. President-elect's Report [Mr. Kranovich] Inform
 - C. Executive Director's Report [Ms. Stevens] Inform Exhibit
 - D. Director of Regulatory Services Report [Mr. Gleason] Inform Exhibit
 - E. Director of Diversity & Inclusion Report [Ms. Hyland]
 1. Consider Adoption of Draft Diversity Action Plan Action Exhibit
 - F. MBA Liaison Reports [Ms. Kohlhoff] Inform
- 3. Professional Liability Fund [Mr. Zarov]**
 - A. Financial statements Inform Exhibit
 - B. Approve Primary, Excess and Pro Bono Plans for 2014 Action Exhibit
 - C. Approve Changes to Policy 3.30 re: Installment Payments Action Exhibit
 - D. Approve Revisions to Bylaw Article 10 re: E&O Coverage Action Exhibit
 - E. Approve PLF Excess Rates Action Exhibit
- 4. ABA House of Delegates February 2014**
 - A. Illinois Resolution re: Fee Sharing with NonLawyers [Ms. Harbur] Inform Exhibit
- 5. OSB Committees, Sections, Councils and Divisions**
 - A. Oregon New Lawyers Division Report [Mr. Eder] Inform Exhibit
 - B. CSF Claims [Ms. Stevens]
 1. Claims Recommended for Payment Action Exhibit
 2. CSF Claim No. 2013-35 BERTONI (Cheadle) Request for Review Action Exhibit

C.	Legal Services Program Committee [Ms. Baker]		
1.	Approve Achievements & Results Report	Action	Exhibit
6. BOG Committees, Special Committees, Task Forces and Study Groups			
A.	Appellate Screening Special Committee [Ms. Billman]	Inform	
B.	Board Development Committee [Mr. Kranovich]		
1.	Update on Committee Actions	Inform	<i>PowerPoint</i>
2.	Appointments to Various Boards, Committees and Councils	Action	Exhibit
C.	Budget and Finance Committee [Mr. Knight]		
1.	Review and Approval of 2014 OSB Budget	Action	Exhibit
2.	Approval of Auditors for 2012-2013 OSB Financial Statements	Action	Exhibit
3.	Fanno Creek Due Diligence [Ms. Kohlhoff]	Inform	Exhibit
D.	Governance and Strategic Planning Committee [Mr. Wade]		
1.	Section Bylaws Amendment re: spouse/guest reimbursement	Action	Exhibit
2.	Committee Assignment Revisions	Action	Exhibit
3.	Bylaw 23.503 Revision re: Representation in PLF Matters	Action	Exhibit
4.	ULTA Bylaw Revisions	Action	Exhibit
E.	Public Affairs Committee [Mr. Kehoe]		
1.	Legislative Update	Inform	
2.	Proposed Limitation on Use of Cash Accounting for Law Firms	Action	Exhibit
F.	Special Projects Committee [Mr. Prestwich]		
1.	Report on Activities for 2013	Inform	
G.	International Trade & Legal Services Task Force [Ms. Hirschbiel]	Action	Handout
H.	CLNS Task Force Report [Mr. Ehlers, Mr. Prestwich]	Action	Exhibit
I.	New Lawyer Mentoring Program Status Report	Inform	Exhibit
7. Other Items			
A.	Reconsideration of Marriage Equality Resolution [Mr. Spier]	Action	Exhibit
B.	HOD Meeting Debrief	Inform	Exhibit
C.	Lawyer Referral Service & Modest Means Program Expansion [Ms. Pulju]	Action	Exhibit
1.	Consider special handling of case referrals for SSI/SSD, VA Benefits and Workers Compensation claims.		

2. Approve expansion of the Modest Means Program through the creation of new subject matter panels.

D. Election of 2014 President-elect Action

8. Consent Agenda

A. Approve Minutes of Prior BOG Meetings

1. Regular Session – September 27 , 2013 Action Exhibit
2. Special Session – October 25, 2013 Action Exhibit

9. Default Agenda

- A. CSF Claims Financial Report Exhibit
- B. Claims Approved by CSF Committee Exhibit

10. Closed Sessions – CLOSED Agenda

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

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

- A. Correspondence
- B. Articles of Interest

Functions of the Oregon State Bar

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.

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.

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar's values through its actions. The bar adheres to the highest ethical and professional standards in all of its dealings.

Fairness

The bar works to eliminate bias in the justice system and to ensure access to justice for all.

Leadership

The bar actively pursues its mission and promotes and encourages leadership among its members both to the legal profession and the community.

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.

Justice

The bar promotes the rule of law as the best means to achieve justice and resolve conflict in a democratic society.

Accountability

The bar is accountable for its decisions and actions and will be transparent and open in communication with its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of bar programs and services. Since excellence has no boundary, the bar strives for continuous improvement.

Sustainability

The bar encourages education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Report of President Mike Haglund

BOG-related activities, September 21, 2013 – November 20, 2013

September 25	Welcoming remarks, NABE Communications Workshop
September 27	BOG Committee and Board meetings, Tigard
October 7	Ninth Circuit portrait unveiling, Judge Susan Graber
October 9	Oregon Area Jewish Committee annual dinner
October 10	Meeting with Chief Justice Remarks, new admittee swearing in, Salem
October 17	Law firm lunch, Cosgrave Vergeer Kester, Portland
October 18	Meeting, Innovation Work Group
October 22-23	Southern Oregon swing, lunch or dinner meetings of Douglas, Josephine, Jackson and Klamath County Bar Associations
October 25	BOG Committee meetings
October 30	Law Firm Lunch, Black Helterline, Portland
November 1	House of Delegates meeting, Wilsonville
November 7	Participant, PLF Learning the Ropes CLE, Portland
November 12	Law firm lunch, Farleigh Wada Witt, Portland
November 13	Lawyer legislators' function, Tonkin Torp, Portland
November 14	Law firm lunch, Klarquist Sparkman, Portland
November 15	OSB Professionalism Commission meeting
November 18	Speaker, Columbia County Bar Association lunch, St. Helens

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
 From: Sylvia E. Stevens, Executive Director
 Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> ▪ Accounting & Finance/ Facilities/IT (Rod Wegener) 	<ul style="list-style-type: none"> ▪ Completing 2014 Budget for BOG approval ▪ Preparing for annual fee billing ▪ Improved the procedures for manually processing LRS percentage fee payments until the new software can be integrated with the accounting program.
<ul style="list-style-type: none"> ▪ Communications & Public Services (includes RIS and Creative Services) (Kay Pulju) 	<ul style="list-style-type: none"> ▪ <i>Bar programs marketing:</i> Staff are continuing development of the new CLE Seminars website, which will be reintegrated into the OSB site with improved search functions, streamlined online registration and enhanced marketing features. Staff have also completed a trial Craig's List promotion for LRS. During the trial period staff posted messages on the Portland metro area list directing users looking for legal information or legal services to the bar's public home page. Site traffic increased nearly 25% during the posting period. Based on these results a complete, statewide and subject-specific campaign will follow. ▪ <i>Events:</i> Preparations are underway for the annual awards luncheon on December 5. The first Law Practice Transitions CLE took place on November 1, and will be followed by a continuing series of short programs. The program was taped and will be available as a video or mp3 download for future use. Staff also coordinated another tree-planting event in November as part of the ABA's One Million Trees campaign. ▪ <i>Member communications:</i> The bar Bulletin has featured articles on law practice transitions and other board priorities. The electronic Bar News and BOG Updates give members updated information on bar activities along with upcoming special messages on regulatory compliance deadlines and use of the online member dashboard. ▪ <i>Public Education:</i> The biennial update process for our public education materials continues as volunteer legal editors review each topic. Staff are bringing back the Legal Links video series as an in-house production. ▪ LRS received \$37,970 in percentage fee revenue for September and \$27,924 for October and projects that it will reach a \$30,000 per month average for percentage fee revenue during the first quarter of 2014. Year-to-date percentage fees revenue is \$302,525. Since the inception of a percentage fees revenue model, LRS has generated \$2,862,792 in business for LRS panelists. ▪ LRS year-to-date registration revenue is \$121,125, exceeding the 2013 budget amount by \$5,625. Panelist attrition during the first two years of

	<p>implementation of the percentage-fee model is less than anticipated.</p> <ul style="list-style-type: none"> ▪ Total RIS call volume from the public is back up to pre-recession 2008 levels, and we are able to service more of those calls and capture more referrals, having driven the abandoned call ratio down from 10.11% (2008) to 3% (2013). ▪ Total call volume from attorneys appears to be stabilizing at an average of 650 calls per month, having spiked as high as 862 calls per month in previous months. Still, the new normal constitutes a 250% increase in attorney call volume when compared to pre-percentage fee implementation levels. ▪ RIS has now filled three half-time positions that opened up due to attrition, e.g., moving away, going to law school, etc.
<ul style="list-style-type: none"> ▪ CLE Seminars (Karen Lee) 	<ul style="list-style-type: none"> ▪ Two new staff were hired to replace the departing Customer Service Specialist and Seminars Program Assistant. Both positions were reconfigured earlier this fall to reduce the department’s overall FTE. ▪ In a nod to the growing use of tablets in the practice of law, the department sponsored the seminar “iPad for Legal Professionals” in September, which was well attended and received very good evaluations. ▪ The department is sponsoring three seminars before the end of the year with access to justice credits: (1) VA service-connected disability claims (Nov. 14); (2) gender equity in partner compensation (Dec. 13); and (2) race myths and realities (Dec. 31).
<ul style="list-style-type: none"> ▪ Diversity & Inclusion (Mariann Hyland) 	<ul style="list-style-type: none"> ▪ BOWLIO was held on November 2nd. There were a total of 169 participants, of which 62 were attorneys, 61 were law students, and 6 were judges; all others were guests. Tom Kranovich was our MC. ▪ We began the third year of our Explore the Law program in collaboration with PSU and the MBA. There are 26 undergraduate students in the program this year. ▪ We are revising our OLIO 1L eligibility criteria so that more people are eligible to apply for the program.
<ul style="list-style-type: none"> ▪ General Counsel (Helen Hierschbiel) 	<ul style="list-style-type: none"> ▪ Chris Mullmann, Client Assistance Office Manager, retired in September after nearly 20 years with the bar and 10 as manager of CAO. His replacement is Scott Morrill, who has worked in CAO since its inception in 2003. We are in the process of recruiting a Client Assistance Office staff attorney to fill the spot left by Scott Morrill’s promotion. ▪ Amber and Helen have been presenting numerous CLEs on lawyer ethics and child abuse reporting. ▪ The International Trade in Legal Services Task Force is concluding its work and will have a draft report for the Board at its November meeting. ▪ The MCLE Committee is considering amendments to the MCLE requirement for child abuse reporting training in light of the 2013 legislative changes to ORS 9.114 and the addition of an elder abuse reporting requirement for lawyers.
<ul style="list-style-type: none"> ▪ Human Resources (Christine Kennedy) 	<ul style="list-style-type: none"> ▪ Hired replacements for the following positions: Legal Publications Attorney Editor, Referral and Information Services Assistant (two part-time positions), CLE Seminars Assistant (part-time), CLE Customer Service Specialist (part-time), Admissions Specialist, Public Affairs Legislative

	<p>Attorney</p> <ul style="list-style-type: none"> ▪ Promoted current staff to fill the following positions: Client Assistance Office Manager and Diversion and Probation Coordinator/Discipline Legal Secretary ▪ Transferred current staff to fill the following position: Referral and Information Services Assistant (part-time) ▪ Active recruiting to replace the following positions: Assistant General Counsel and Client Assistance Office Attorney, Controller ▪ Finalizing the supervisor’s survey to be completed by all employees.
<ul style="list-style-type: none"> ▪ Legal Publications (Linda Kruschke) 	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since my last report: <ul style="list-style-type: none"> ✓ One revised <i>Uniform Criminal Jury Instruction</i>. ✓ Full PDF of <i>Environmental Law vol. 1: Regulation and Permitting</i>. ✓ Seven chapters of <i>Criminal Law, 2013 revision</i>. ▪ <i>Environmental Law vol. 1: Regulation and Permitting</i>, the first in a series of five volumes, went to the printer in September. <ul style="list-style-type: none"> ✓ 2013 Budget = \$6,000; Actual to date = \$6,600. ✓ We saved costs on this book by not including an index. ▪ <i>Criminal Law 2013 revision</i> is currently scheduled to go to the printer by the first week in January. Pre-order marketing has already begun. <ul style="list-style-type: none"> ✓ 2013 Budget = \$37,500; Pre-orders to date = \$6,080 ✓ Note: <i>Criminal Law</i> revenue will be realized in 2014 after the book ships to customers. The 2014 Budget = \$7,000, based on the assumption of a late-December release. ▪ We are working with Tanya Hanson of the PLF to revise the <i>Oregon Statutory Time Limitations</i> book. We have six of sixteen chapters ready to be edited in-house, which will begin next week. ▪ Our e-Books project is well under way, with a planned launch date in January 2014. <ul style="list-style-type: none"> ✓ Amazon account is set up; ✓ Authors have been notified of the plan and given options for contact information to be included; ✓ Eight <i>Family Law Series</i> titles have been planned and drafts created; ✓ Quick Reference Guide with information about Lawyer Referral and Legal Aid has been drafted; ✓ Creative Services is helping to develop the e-Book format for each title. ▪ A new Attorney Editor was hired in September to fill a vacant position. He has already proved to be quite productive and accurate in his editing. ▪ As of the end of October, the department is at 103% of revenue projections for the year.
<ul style="list-style-type: none"> ▪ Legal Services Program (Judith Baker) 	<ul style="list-style-type: none"> ▪ The LSP Achievements and Results Report has been reviewed by the LSP Committee and is being recommended to the BOG for approval at the November meeting. ▪ Unclaimed client funds from IOLTA accounts are reported in October. The funds collected are about 20% lower than last year. ▪ The Pro Bono Fair in October was well-attended, with the venue full. The three CLEs were the most diverse ever—an Intro to Pro Bono Work, a Tax CLE and an Immigration CLE. 21 Providers attended the Fair with four being

	<p>new. In addition, during Pro Bono Week there were panels at two law schools to encourage students to engage in pro bono work when they become lawyers.</p> <ul style="list-style-type: none"> ▪ The LRAP Advisory Committee will meet in December to review possible change to the Policies and Guidelines. The Advisory Committee will as the BOG to approve recommended changes at the BOG’s February meeting. ▪ The OLF will develop a communications plan to address US Bank’s drastic lowering of interest rates and the fiscal impact it has on OLF’s annual revenue. ▪ The OLF Director continues to work with the Director of Public Affairs on HB 2608 (interest on escrow accounts).
<ul style="list-style-type: none"> ▪ Media Relations (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ We are working with Willamette Week to inform their reporting on the issue of Notarios. Putting them in touch with appropriate sources and turning their attention to some angles of interest to consumers. ▪ I am working with Judith and the OLF on a media strategy in support of their efforts to get lawyers to switch to leadership banks in response to the US Bank decision to dramatically drop their IOLTA interest rate. ▪ I continue to be the point person for media on the Centralized Legal Notices issue, and continue to support our relationships with the print media as the Task Force prepares its final report to the BOG. ▪ We responded to multiple media inquiries regarding the loss of quorum at the HOD meeting, most notably, the Steve Duin article. Although he had an error in his reporting, he is very interested in the issue and we are working to direct some of that interest in, hopefully, a more positive article on the issue of diversity in the bar. ▪ We have about six OSB discipline cases being tracked by various media outlets. ▪ We have begun planning the Bar Press Broadcasters Council <i>Building a Culture of Dialogue</i> event, which is being moved this year from May to Saturday March 1.
<ul style="list-style-type: none"> ▪ Member Services (Dani Edwards) 	<ul style="list-style-type: none"> ▪ With the Board Development Committee’s assistance, the number of lawyers who volunteered to serve on a board or committee in 2014 increased 160% from 2013. ▪ The Board of Governors election ended in late October with an 18% vote return. This is a 6% increase from the vote return seen during the election last year. The new board members are John Mansfield and Simon Whang from region 5 and James Chaney from region 2. ▪ The Pro Bono Fair and Awards Ceremony was held on October 21 at the World Trade Center. The event featured three CLE programs, a pro bono provider “vendor fair,” and presentation of awards ceremony to law students, lawyers, and firms that provided numerous hours of pro bono service in 2012.
<ul style="list-style-type: none"> ▪ Minimum Continuing Legal Education (Denise Cline) 	<ul style="list-style-type: none"> ▪ The MCLE Committee will have its next quarterly meeting on December 13. ▪ Processed 7,112 accreditation applications, including 957 applications for other types of CLE credit (teaching, legal research, etc.) since the first of the year. ▪ Sent compliance reports to 4,950 members on October 15. As of November

	<p>5, 397 members have already submitted their compliance reports for the reporting period ending 12/31/2013.</p>
<ul style="list-style-type: none"> ▪ New Lawyer Mentoring (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ Our focus now is on Mentor Recruiting. We have a multi-part recruitment plan we are putting into place which will be a significant focus throughout the winter and spring. BOG members may be enlisted to assist, which they’ll hear more about on Nov. 23. ▪ We presented Movies & Mentoring, a CLE and social on Monday Nov. 18 at the Hollywood Theater in Portland. The movie featured a short panel discussion on ethics & professionalism (Jean Maurer, Larry Matasar, Mitra Shahri), followed by a screening of the 1949 classic “Adam’s Rib.” ▪ We are working with the MBA Mentoring Program to coordinate some events, and to develop some strategies to assure that our respective programs are complementing one another in the best manner possible for participants in both organizations. ▪ We’ve met twice with the DOJ staff overseeing training and mentoring of new lawyers to help them assimilate their internal programs with the curriculum of the NLMP. ▪ We are entering a busy period in the mentoring year, where New Lawyers from 2012 are nearing completion and seeking certification, while our 2013 admittees are just enrolling in the program and seeking mentors.
<ul style="list-style-type: none"> ▪ Public Affairs (Susan Grabe) 	<ul style="list-style-type: none"> ▪ <i>Summary.</i> Since the 2013 Legislative Session ended, the Public Affairs Department has focused on wrapping up the 2013 session and preparing for the short 2014 session in February. The deadline for law improvement proposals for the 2015 session is April 7, 2014, followed by a legislative forum for bar groups to address the merits of their proposed legislation as well as allow for comments from other bar groups regarding concerns raised about a bar group proposal. ▪ <i>Lawyer Legislator lunches.</i> Public Affairs coordinated 2 BOG/lawyer-legislator lunches to discuss ongoing issues such as court funding, as well as emerging issues such as legal technicians, unbundling of legal services and eCourt. The conversations were well-received and helped crystallize some ideas around court funding, outreach and the need to support lawyer legislators in the process. ▪ <i>Legislation Highlights Publication.</i> The 2013 Oregon Legislation Highlights publication, which addresses several hundred pieces of legislation in various practice areas and included practice tips, is nearly ready for distribution. Upon completion, it will be available on BarBooks. ▪ <i>2014 Legislative Task Forces.</i> Public Affairs continues to staff a number of work groups requested by the legislature to address policy issues related to use of alternate jurors in criminal cases, withdrawal of attorneys, motions to disqualify a judge in rural counties and eCourt filing fees. ▪ <i>Interim Legislative Days.</i> Public Affairs is monitoring interim legislative days and other legislative workgroups in preparation for the February short session. ▪ <i>Liaison activities.</i> The PAD continues to monitor and liaison with external stakeholder groups such as the Council on Court Procedures, the various Oregon Law Commission workgroups including judicial selection and

	<p>Probate, as well as the Oregon eCourt Task Force.</p> <ul style="list-style-type: none"> ▪ <i>2015 LIP Prep.</i> The Public Affairs staff is meeting with different bar groups to educate them about the bar’s process for proposing legislation for the 2015 legislative session. ▪
<ul style="list-style-type: none"> ▪ Regulatory Services (John Gleason) 	<ul style="list-style-type: none"> ▪ John Gleason is working on proposals for BOG consideration regarding enhancements to the disciplinary process. ▪ One lawyer has been suspended under the new administrative suspension rule for failing to respond to a disciplinary inquiry. ▪ John continues to reach out to the Oregon legal community and is encouraging his staff attorneys to do the same.

Executive Director’s Activities October 7-November 23, 2013

Date	Event
10/19	Meeting with Chief Justice, Lunch and Swearing-In Ceremony
10/15	HOD Out-of-State and Region 4 Meetings
10/16	EDs Breakfast Group
10/16	Meeting of Host Committee for ABA/NLADA Equal Justice Conference
10/16	HOD Region 5 Meeting
10/17	HOD Region 6 Meeting
10/17	Lunch @ Cosgrave Kester
10/17	Legal Technicians Task Force Meeting
10/18	Innovations Workgroup
10/18	OWLs Fall CLE
10/22-23	Local Bar Tour (Douglas, Josephine, Jackson & Klamath Counties)
10/25	BOG Committees/Legal Publications Author & Editor Reception
10/29	Meet with Retreat Facilitator
10/29	Stoll Berne Fall Open House
10/30	Lunch @ Black Helterline
11/1	HOD Meeting
11/6	BBX Workgroup Meeting
11/7-8	ABA Ctr. For Prof. Responsibility Policy Implementation Committee (Chicago)
11/12	Lunch @ Farleigh Wada Witt
11/14	Lunch @ Klarquist Sparkman
11/15	Legal Technicians Task Force Meeting
11/15	Native American Youth Assoc. Auction & Dinner
11/16	CSF Committee Meeting
11/16	Youth Rights & Justice Wine & Chocolate Event
11/20	EDs Breakfast Group
11/20	Lunch @ Bullivant Houser

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 8, 2013
From: John S. Gleason, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors last met in September 2013, the Supreme Court took the following action in disciplinary matters:

- Issued an opinion in *In re W. Scott Phinney*, disbarring this Tualatin lawyer for admittedly taking substantial funds from the Yale Alumni Association of Oregon. The accused appealed the sanction. The court affirmed the trial panel finding violations of RPC 8.4(a)(2), which prohibits criminal conduct that reflects adversely on a lawyer's honesty and trustworthiness, and RPC 8.4(a)(3), which prohibits conduct involving dishonesty and misrepresentation that reflects adversely on a lawyer's fitness to practice law;
- Issued an order in *In re Robert Andrew Browning*, immediately suspending this Forest Grove lawyer following his conviction on June 3, 2013, of 13 counts of criminal mistreatment in the first degree (a Class C Felony);
- Issued an order in *In re Robert Andrew Browning* of Forest Grove, rejecting his Form B resignation for not complying with the required format set out at BR 12.7 because *Browning* modified the resignation form in a manner that (1) allows him to ostensibly retain custody of completed client files and (2) fails to expressly designate a custodian for all existing files generated by the accused's practice and which are currently in his possession.
- Issued an order in *In re Leodis C. Matthews*, reprimanding this Los Angeles, California lawyer in a reciprocal discipline proceeding following his suspension in California. Matthews stipulated, in California, that his conduct violated California RPC 3-310(C), which prohibits an attorney, without informed consent of each client, from representing more than one client in a matter in which the interests of the clients are in potential or actual conflict. In the bar's BR 3.5 notice to the court, it was argued that the stipulated facts supported a former client conflict violation;

- Issued an order in *In re Earle A. Partington*, suspending this Santa Rosa, California lawyer in a reciprocal discipline proceeding following his suspension in Hawaii arising from Partington's indefinite suspension by the Office of Judge Advocate General, Department of the Navy and one-year suspension by the United States Court of Appeals for the Armed Forces. The Navy JAG undertook a disciplinary investigation in which it was found that Partington filed an appellate brief that contained statements he knew to be false and misleading and had asserted a frivolous issue;
- Accepted the Form B resignation of *Des Connall* from Portland who had numerous matters approved for prosecution alleging neglect of a legal matter, failure to keep a client reasonably informed of the status of a case or promptly respond to requests for information, failure to communicate sufficiently to allow client to make informed decisions regarding the representation, charging or collecting a clearly excessive fee or expense, failure to maintain client property separate from lawyer's own property, failure to deposit client funds into trust and withdraw them only as earned, failure to promptly deliver client property and failure to fully account for client property, upon request, vicarious responsibility for another lawyer's ethics violations, incorrect statement to disciplinary authorities, and misrepresentation;
- Issued an order in *In re Lane D. Lyons*, immediately suspending this Bend lawyer following his conviction on July 3, 2013, of one count of conspiracy to commit wire fraud in violation of 18 USC§1349 and one count of conspiracy to commit money laundering in violation of 18 USC§1956(h);
- Issued an order immediately suspending Bend lawyer *Peter M. Schannauer* during the pendency of disciplinary proceedings;
- Accepted the Form B resignation of *Roy D. Lambert* of Portland during the investigation of a complaint alleging current and former client conflicts of interest; participation in and representation of those entities/clients, and affirmative misrepresentations and misrepresentations by omission regarding transactions with those entities/clients.

b. Disciplinary Board

No appeals were filed in the following cases and those trial panel opinions are now final:

- *In re Vicki R. Vernon* of Hillsboro (90-day suspension). The suspension became final on October 1, 2013.

Disciplinary Board trial panels issued the following opinions since September 2013:

- A trial panel recently issued an opinion in *In re Timothy J. Vanagas* of Portland (reprimand) for collecting a clearly excessive fee.
- Another trial panel issued an opinion in *In re Carla A. Anderson* of Gresham (90-day suspension) for knowingly bringing a proceeding without a non-frivolous basis for doing so; using means with no substantial purpose other than to embarrass, delay, harass, or burden a third person; and knowingly failing to respond to a lawful demand for information.
- Another trial panel issued an opinion in *In re Thomas Ifversen* of Lake Oswego (1-year suspension) for neglect of a legal matter; knowingly failing to respond to the Bar; and engaging in misrepresentation.
- Another trial panel issued an opinion in *In re Susan Ford Burns* of Portland (210-day suspension) for neglect of a legal matter; failure to take reasonably practicable steps to protect a client upon termination of employment; and failure to respond to disciplinary inquiries.
- Another trial panel issued an opinion in *In re Christopher Cauble* of Grants Pass (45-day suspension, with conditions and restitution) for current client conflict of interest involving multiple clients or personal interest of the lawyer; failure to safeguard client funds; and failure to hold client funds in trust until fees earned or costs incurred.
- Another trial panel issued an opinion in *In re Alan G. Seligson* of Eugene (reprimand) for current client conflict of interest involving personal interest of the lawyer; acquiring a security interest adverse to a client; and failure to withdraw upon discharge.

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Rebecca Z. May* of Eugene (reprimand); *In re Robert L. Wolf* of Portland (reprimand); *In re Jerry G. Kleen* of Salem (reprimand); and *In re Timothy R. Strader* of Portland (30-day suspension).

2. Decisions Pending.

The following matters are pending before the Supreme Court:

In re Steven McCarthy – 90-day suspension; accused appealed; under advisement

In re Michael Spencer – 60-day suspension; accused appealed; oral argument

January 16, 2014

In re Daniel J. Gatti – 6-month suspension; accused appealed; under advisement

In re Peter M. Schannauer – 1-year suspension, restitution, 6-month probation;
OSB appealed; submitted on the record; under advisement
In re Barnes H. Ellis and Lois O. Rosenbaum – reprimand; accuseds and
OSB appealed; awaits briefs
In re C. William Rehm – reciprocal discipline matter pending
In re Marc T. Andersen – 3-year suspension, 30 months stayed, probation; accused
appealed; awaits briefs
In re Rick Sanai – reciprocal discipline matter pending
In re Blake Simms – reciprocal discipline matter pending
In re Julie D. Sione – reciprocal discipline matter pending
In re Eric Einhorn – BR 3.1 petition pending

The following matters are under advisement before trial panels of the Disciplinary Board:

In re Eric Kaufman – August 21, 2013 (sanction memo filed)
In re David Herman – August 19-20, 2013
In re Jeff Wilson Richards – October 7, 2013 (sanction memo filed)
In re James C. Jagger – October 14-16, 2013
In re John L. Ballard – October 31-November 1, 2013

3. Trials.

The following matters are on our trial docket in coming weeks/months:

In re Stafanie L. Burke – November 25, 2013
In re Francisco C. Segarra – November 25-26, 2013
In re Montgomery Cobb – December 17-18, 2013
In re Timothy O’Rourke – January 24, 2014

4. Diversions.

The SPRB approved the following diversion agreements:

In re Rodolfo A. Camacho – effective September 23, 2013
In re Kristan K. Finney – effective September 23, 2013
In re Warner E. Allen – effective September 24, 2013
In re George J. Wall – effective October 1, 2013
In re James Brian Shikany – effective October 21, 2013
In re Eric M. Bosse – effective November 1, 2013
In re Jacob Wieselmann – effective November 9, 2013

5. Admonitions.

The SPRB issued 4 letters of admonition in September and October. The outcome in these matters is as follows:

- 3 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyer has asked for reconsideration;
- 1 lawyers have time in which to accept or reject their admonitions.

6. New Matters.

Below is a table of complaint numbers in 2013, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

MONTH	2009	2010	2011	2012	2013
January	42/43	29/29	19/20	46/49	21/21
February	25/25	24/25	35/36	27/27	23/23
March	38/39	26/26	21/25	38/39	30/30
April	39/40	30/30	40/42	35/38	42/43
May	19/21	119/119*	143/146*	19/20	37/37
June	139/142*	23/26	20/20	39/40	31/31
July	16/16	29/34	27/28	22/22	28/30
August	32/35	24/25	22/23	35/35	33/36
September	31/31	33/36	29/29	22/22	26/27
October	33/34	27/33	22/23	23/23	26/26
November	30/31	21/21	27/27	18/18	
December	22/26	24/24	39/40	26/26	
TOTALS	466/483	409/428	444/459	350/359	297/304

* = includes IOLTA compliance matters

As of November 1, 2013, there were 190 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 39% are less than three months old, 25% are three to six months old, and 36% are more than six months old. One of these matters was on the SPRB agenda in November.

7. Reinstatements.

Since the last board meeting, there are no reinstatements ready for board action.

JSG/rh

Diversity of the Oregon Bar and Bench • Engagement by bar leadership for community outreach • **Diversity** of the pool of volunteer bar and community members engaged in OSB activities and leadership • Bar staff diversity and education • **A welcoming and inclusive culture** • **Diversity** of OSB contractors, suppliers, vendors, and renters • Knowledge, education, and advancement of legislation that increases **access to justice** • Public and bar member **education, outreach, and service** • **Representation** of low income Oregonians and **accountability for services** to diverse clients



Oregon
State
Bar

2014–2016
DIVERSITY
ACTION PLAN

DRAFT



Diversity and Inclusion: Making Us Stronger

Welcome from the Board of Governors

A diverse bench and bar is vitally important to Oregon's system of justice. No one has captured the importance of diversity better than U.S. Supreme Court Justice Ruth Bader Ginsberg, who said in a speech in 1998:

A system of justice is the richer for diversity of background and experience. It is the poorer, in terms of appreciating what is at stake and the impact of its judgments, if its members – its lawyers, jurors, and judges – are all cast from the same mold.

I am a longtime supporter of the bar's efforts to promote diversity within the legal profession, and a passionate advocate for the importance of cultural diversity within our community. My law firm, Kranovich & Lucero, promotes diversity and equal opportunities for all regardless of race, ethnicity, gender, sexual orientation and socioeconomic status. Diversity is not merely something we value, it is who we are: A diverse law firm working with diverse clients. If you visit our website you will see that language front and center, with further evidence of our deep commitment to diversity woven throughout.

With this action plan the OSB takes its commitment to diversity front and center, and also weaves it throughout the various programs and services of the bar. It is evidence of our growth as an organization. Where we once had a stand-alone Affirmative Action Program we now have a comprehensive plan to make Diversity & Inclusion a part of every program and service we provide. I could not be more pleased and proud that this plan has come together just as I prepare to take office as President of the Oregon State Bar. I extend my congratulations to the Diversity Advisory Council and pledge my continued support.



Michael E. Haglund
2013 President



Tom Kranovich
2014 President-Elect



Business Case for Diversity

A diverse and inclusive bar is necessary to attract and retain talented employees and leaders; effectively serve diverse clients with diverse needs; understand and adapt to increasingly diverse local and global markets; devise creative solutions to complex problems; and improve access to justice, respect for the rule of law, and credibility of the legal profession.

Overview

Diversity Advisory Council

In 2012, the Oregon State Bar (OSB) Board of Governors created a Diversity Advisory Council (DAC) and directed the DAC to develop a recommended Diversity Action Plan by the end of 2013. This document is the product of the work of the Diversity Action Council, and contains a three-year Diversity Action Plan presented for adoption by the OSB Board of Governors.

Background

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

Charge

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

Membership

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

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

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

Responsibilities

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

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

The DAC makes recommendations for an OSB Diversity Action Plan no later than the end of its first year. Upon approval and adoption of the Plan, the DAC monitors the Plan, and measures and reports on progress toward achieving Plan goals and objectives at least annually. Also, the DAC’s responsibilities include making recommendations concerning the DAC’s charge, membership, and responsibilities.

Diversity Advisory Council Members

Judith Baker – Director of Legal Services Programs
/ OLF Executive Director

Danielle Edwards – Director of Member Services

John Gleason – Disciplinary Counsel
/ Director of Regulatory Services

Susan Grabe – Director of Public Affairs

Helen Hirschbiel – General Counsel

Mariann Hyland – Director of Diversity & Inclusion

Christine Kennedy – Director of Human Resources

Linda Kruschke – Director of Legal Publications

Karen Lee – Director of CLE Seminars

Audrey Matsumonji – BOG Member

Kay Pulju – Director of Communications
and Public Services

Josh Ross – BOG Member

Sylvia Stevens – OSB Executive Director

Kateri Walsh – Director of Media Relations
and New Lawyer Mentoring Program (NLMP)

Rod Wegener – Chief Financial Officer



OSB Diversity Definition

Diversity and inclusion mean acknowledging, embracing, and valuing the unique contributions our individual backgrounds make to strengthen our legal community, increase access to justice, and promote laws and creative solutions that better serve clients and communities. Diversity includes, but is not limited to: age; culture; disability; ethnicity; gender and gender identity; geographic location; national origin; race; religion; sexual orientation; and socio-economic status.

GOAL #1 Increase the diversity of the Oregon Bar and Bench — Page 5

- Strategy 1 – Increase the accuracy of the bar’s diversity demographic membership data
- Strategy 2 – Develop a diverse pipeline of law students who feel supported, welcomed, and encouraged to practice law in Oregon
- Strategy 3 – Encourage a diverse applicant pool for judicial appointments
- Strategy 4 – Ensure the Board of Governors’ judicial appointment recommendations includes candidates who have demonstrated competency in dealing with diverse people and issues

GOAL #2 Increase engagement by bar leadership for community outreach — Page 6

- Strategy 1 – Increase participation in events hosted by diverse organizations

GOAL #3 Increase the diversity of the pool of volunteer bar and community members engaged in OSB activities and leadership — Page 7

- Strategy 1 – Increase the diversity of OSB CLE seminar speaker pool
- Strategy 2 – Increase the diversity of lawyers and community members in Board of Governors appointed volunteer positions and on the Board of Governors
- Strategy 3 – Increase the diversity of the New Lawyer Mentoring Committee and volunteer mentor pool

GOAL #4 Increase bar staff diversity and education, and foster a welcoming and inclusive culture — Page 8

- Strategy 1 – Assess the OSB climate and workforce
- Strategy 2 – Increase outreach to diversify the pool of applicants for vacant positions at the OSB
- Strategy 3 – Provide educational opportunities for OSB staff

GOAL #5 Increase the diversity of OSB contractors, suppliers, vendors, and renters — Page 9

- Strategy 1 – Conduct an assessment and implement a process to increase diversity

GOAL #6 Foster knowledge, education, and advancement of legislation that increases access to justice — Page 10

- Strategy 1 – Increase the participation of all OSB sections in the legislative process
- Strategy 2 – Increase the coverage of diversity- related subjects in the *Capitol Insider* newsletter.

GOAL #7 Expand public and bar member education, outreach, and service — Page 10

- Strategy 1 – Increase Access to Justice CLE seminar programs
- Strategy 2 – Increase outreach to diverse communities regarding OSB services to address the unlawful practice of law
- Strategy 3 – Enhance Client Assistance Office to meet the needs of a diverse community
- Strategy 4 – Enhance outreach and services provided to diverse constituents by Discipline and Regulatory Services
- Strategy 5 – Position the OSB to attract new members by adopting the Uniform Bar Exam
- Strategy 6 – Develop and sell e-books adapted for use by underserved individuals and communities
- Strategy 7 – Increase the diversity of the Bar/Press/Broadcasters Council and legal experts available to assist the media
- Strategy 8 – Enhance outreach to underserved communities regarding the modest means and lawyer referral programs

GOAL #8 Increase representation of low income Oregonians and enhance accountability for services to diverse clients — Page 14

- Strategy 1 – Increase funding for The Oregon Law Foundation and the OSB Legal Services Program
- Strategy 2 – Increase pro bono representation of low income Oregonians
- Strategy 3 – Enhance legal services provider accountability for serving diverse clients

GOAL #1**Increase the diversity of the Oregon Bar and Bench****Strategy 1 – Increase the accuracy of the bar’s diversity demographic membership data**

Action Items	Target Measures	Lead	Timeline
1.1 Require bar members to update their demographic information or decline to report this information when they log onto the member dashboard.	Develop and implement a mandatory online demographic data updating mechanism in 2014; 75% of bar members disclose race/ethnicity by 2016	Executive Director	2014 – Develop process 2015–2016 – Implement process
1.2 Create a marketing campaign to encourage bar members to disclose their race and/or ethnicity.	Campaign developed and launched	Director of Communications & Public Services; Director of Diversity & Inclusion	2014

Strategy 2 – Develop a diverse pipeline of law students who feel supported, welcomed, and encouraged to practice law in Oregon

Action Items	Target Measures	Lead	Timeline
2.1 Expand the OLIO orientation 1L eligibility criteria and program to address multiple dimensions of diversity consistent with the bar’s diversity and inclusion definition.	Revised program and criteria used in 2014	Director of Diversity & Inclusion	2014
2.2 Increase the number of 1L program participants.	Develop baseline data after new eligibility criteria is established in 2014	Director of Diversity & Inclusion	2014 – Develop baseline
2.3 Support and encourage OLIO orientation participants to take the Oregon bar exam and practice in Oregon.	35% of OLIO Orientation participants who graduate from law school become Oregon bar members by April of the year after they graduate	Director of Diversity & Inclusion	Yearly for 2014–2016
2.4 Annually award six bar exam grants and an MBE study course to pipeline students.	Bar exam passage rate for recipients meets or exceeds overall bar exam passage rates	Director of Diversity & Inclusion	Yearly for 2014–2016
2.5 Award eight \$2,000 scholarships to support students in the pipeline enrolled in Oregon law schools.	100% of scholarship recipients graduate from law school	Director of Diversity & Inclusion	Yearly for 2014–2016
2.6 Assist students in exploring and obtaining employment by sponsoring an annual employment retreat.	75% of program participants return surveys indicating the program enhanced their skills for seeking employment	Director of Diversity & Inclusion	Yearly for 2014–2016
2.7 Provide 14 annual summer clerkship stipends to subsidize the wages of students who find employment in Oregon.	All stipends awarded are utilized by the 14 recipients	Director of Diversity & Inclusion	Yearly for 2014–2016
2.8 Award six grants annually to fund students in a public employment fellowship.	All fellowships awarded are utilized by the recipients	Director of Diversity & Inclusion	Yearly for 2014–2016

Strategy 3 – Encourage a diverse applicant pool for judicial appointments

Action Items	Target Measures	Lead	Timeline
3.1 Engage in outreach to sections, specialty bars, and bar leaders to encourage candidates interested in serving to apply.	All section chairs and specialty bar leaders notified of judicial vacancies	Executive Director	For each judicial vacancy 2014–2016

Strategy 4 – Ensure the Board of Governors’ judicial appointment recommendations includes candidates who have demonstrated competency in dealing with diverse people and issues

Action Items	Target Measures	Lead	Timeline
4.1 Ask all applicants to address diversity as a key issue during the Board of Governors interview portion of the screening process.	At least one interview question focuses on diversity	Director of Public Affairs	For each judicial vacancy 2014–2016
4.2 Ensure that a diverse group of people are engaged in the interviewing process.	Diverse Board of Governors members are included in the committee conducting interviews	Director of Public Affairs	For each judicial vacancy 2014–2016

GOAL #2

Increase engagement by bar leadership for community outreach

Strategy 1 – Increase participation in events hosted by diverse organizations

Action Items	Target Measures	Lead	Timeline
1.1 Ensure a strong Board of Governors and bar leadership presence at events hosted by diverse law-related organizations, such as the specialty bars, MBA, Campaign for Equal Justice, Classroom Law Project, etc.	Each Board of Governors member attends two diverse law-related events per year; bar directors attend at least two events per year	Executive Director; Board of Governors	Yearly for 2014–2016
1.2 Sponsor one major event annually hosted by each of Oregon’s specialty bars.	Sponsorships occur	Executive Director; Board of Governors	Yearly for 2014–2016
1.3 Ensure a strong presence at events hosted by diverse community-based organizations	Each Board of Governors member attends at least one events per year; bar directors attend at least one event per year	Executive Director; Board of Governors	Yearly for 2014–2016
1.4 The OSB sponsors three major events hosted by diverse community-based organizations annually	Sponsorships occur	Executive Director; Board of Governors	Yearly for 2014–2016

GOAL #3**Increase the diversity of the pool of volunteer bar and community members engaged in OSB activities and leadership****Strategy 1 – Increase the diversity of OSB CLE seminar speaker pool**

Action Items	Target Measures	Lead	Timeline
1.1 Develop a process to evaluate the diversity of section CLE seminar speakers.	Each Board of Governors member attends two diverse law-related events per year; bar directors attend at least two events per year	Director of Member Services	2014
1.2 Encourage and provide resources for OSB sections to diversify their executive committee leadership and CLE seminar speaker pool. <ul style="list-style-type: none"> Enhanced marketing and highlighting programs with diverse speakers, etc. 	Incentives developed and implemented in year one; baseline data and specific target measure developed based on baseline data	Director of Member Services	Yearly for 2014–2016
1.3 Sponsor low cost CLE seminar speaker training workshops marketed to diverse bar members to increase the pool of diverse speakers.	Each Board of Governors member attends at least one event per year; bar directors attend at least one event per year	Director of CLE Seminars; Director of Diversity & Inclusion	Yearly for 2014–2016
1.4 Conduct targeted outreach to specialty bars and diverse bar members to recruit CLE seminar speakers.	Sponsorships occur	Director of CLE Seminars; Director of Diversity & Inclusion	Yearly for 2014–2016

Strategy 2 – Increase the diversity of lawyers and community members in Board of Governors appointed volunteer positions and on the Board of Governors

Action Items	Target Measures	Lead	Timeline
2.1 Revise the lawyer and non-lawyer volunteer application form to request diversity demographic information	Form developed to determine the diversity of the applicant pool	Director of Member Services	2014 – Revise and implement new form 2015 – Develop baseline data
2.2 Collaborate with the Board of Governors and Board Development Committee to conduct targeted outreach to increase the pool of diverse lawyers and non-lawyers for volunteer positions.	The representation of volunteer lawyers and non-lawyers is reflective of their representation in the bar and Oregon	Director of Member Services; Board of Governors members	Yearly
2.3 Collaborate with the Board of Governors and Board Development Committee to increase the diversity of leaders running for election and serving on the Board of Governors.	An increase in candidates from historically underrepresented groups serving on the Board of Governors, including large firm practitioners and racial and ethnic minorities	Director of Member Services; Board of Governors members	Yearly for 2014–2016

Strategy 3 – Increase the diversity of the New Lawyer Mentoring Committee and volunteer mentor pool

Action Items	Target Measures	Lead	Timeline
3.1 Conduct outreach where underrepresentation exists to attract diverse volunteer applicants. Collaborate with the specialty bar associations, Members Services Department, and the Board Development Committee to identify diverse candidates.	Participants are reflective of the demographics of the bar's membership	NLMP Director; Director of Member Services;	Yearly for 2014–2016
3.2 Enhance services to support mentors and their diverse mentees, including posting resources on the bar's website, presenting CLE programming, and incorporating information in the mentoring program newsletter.	Satisfactory evaluations concerning diverse resources provided	NLMP Director	Yearly for 2014–2016

GOAL #4

Increase bar staff diversity and education, and foster a welcoming and inclusive culture

Strategy 1 – Assess the OSB climate and workforce

Action Items	Target Measures	Lead	Timeline
1.1 Engage consultants to conduct an assessment and to make recommendations.	Baseline data gathered	Director of Human Resources; Director of Diversity & Inclusion; Board of Governors members	2014
1.2 Evaluate recommendations and implement a plan to achieve goals based on recommendations.	Plan implemented	Director of Human Resources; Director of Diversity & Inclusion; Board of Governors members	Yearly for 2014–2016

Strategy 2 – Increase outreach to diversify the pool of applicants for vacant positions at the OSB

Action Items	Target Measures	Lead	Timeline
2.1 Track where applicants learned about employment opportunities at the OSB to assess the effectiveness of targeted advertising.	Baseline data gathered	Director of Human Resources	2014

Strategy 3 – Provide educational opportunities for OSB staff

Action Items	Target Measures	Lead	Timeline
3.1 Develop a variety of educational opportunities offered to bar staff on a regular basis, and use data from climate and workforce assessment to determine areas of greatest need.	100% of all staff attend at least one educational opportunity each year	Director of Human Resources; Director of Diversity & Inclusion	Yearly for 2014–2016

GOAL #5**Increase the diversity of OSB contractors, suppliers, vendors, and renters****Strategy 1 – Conduct an assessment and implement a process to increase diversity**

Action Items	Target Measures	Lead	Timeline
1.1 Assess the diversity of current contractors, suppliers, and renters, and develop a process for tracking and encouraging increased diversity.	Baseline data gathered	Chief Financial Officer	2014
1.2 Implement a plan to increase diversity of the OSB's contractor, supplier, and vendor pool.	Baseline data will provide guidance regarding target measures	Chief Financial Officer	2015
1.3 Advertise room availability in diverse newspapers, such as <i>The Asian Reporter</i> , <i>The Skanner</i> , <i>The Portland Observer</i> , <i>Just Out</i> , and <i>El Hispanic News</i> .	One advertisement per year in each publication	Chief Financial Officer	Yearly for 2014–2016
1.4 Advertise room rental availability on the monitor on the first floor of the bar offices during peak times when members of the public are present.	Increase in room rentals by people who saw the monitor	Chief Financial Officer	Yearly for 2014–2016
1.5 Increase the diversity of lawyers retained as OSB outside counsel.	The representation of outside counsel is reflective of their representation in the bar	Chief Financial Officer	Yearly for 2014–2016

GOAL #6

Foster knowledge, education, and advancement of legislation that increases access to justice

Strategy 1 – Increase the participation of all OSB sections in the legislative process

Action Items	Target Measures	Lead	Timeline
1.1 Identify sections that have not historically participated in the legislative process	Baseline data gathered	Director of Public Affairs	2014
1.2 Meet in person with the chair of each section identified as not historically participating to discuss and promote section engagement with the legislative process.	Sections participate by monitoring one legislative item	Director of Public Affairs	Yearly for 2014–2016

Strategy 2 – Increase the coverage of diversity-related subjects in the *Capitol Insider* newsletter

Action Items	Target Measures	Lead	Timeline
2.1 Assess the coverage in past issues of the <i>Capitol Insider</i> for inclusion of diversity-related content, and enhance the diversity of future issues.	Baseline data gathered, which will inform target measure for future issues	Director of Public Affairs	2014 – Develop baseline data 2015–2016 – Enhance coverage

GOAL #7

Expand public and bar member education, outreach, and service

Strategy 1 – Increase Access to Justice CLE seminar programs

Action Items	Target Measures	Lead	Timeline
1.1 Develop a process that allows attorneys throughout Oregon to receive access to justice CLE credits by attending community events where diversity is discussed in conjunction with a program, class, or theatrical performance.	Four programs are approved and implemented in year one, six in subsequent years	Director of CLE Seminars & Director of Diversity & Inclusion	Yearly for 2014–2016
1.2 Collaborate with Race Talks in Portland to pilot the process of offering CLE credits for attending Race Talks programs.	Two Race Talk programs are eligible for access to justice credits	Director of CLE Seminars & Director of Diversity & Inclusion	2014

Action Items	Target Measures	Lead	Timeline
1.3 Include the <i>Race: The Power of an Illusion</i> DVD series and panel CLE speaker presentation as a CLE seminar available for purchase online.	Positive participant evaluations and yearly increase in program usage	Director of CLE Seminars & Director of Diversity & Inclusion	Yearly for 2014–2016
1.4 Develop and foster more access to justice and CLE seminar presenters and programs.	Develop baseline data and goals that are informed by the baseline data	Director of CLE Seminars & Director of Diversity & Inclusion	Yearly for 2014–2016

Strategy 2 – Increase outreach to diverse communities regarding OSB services to address the unlawful practice of law

Action Items	Target Measures	Lead	Timeline
2.1 Identify vulnerable populations targeted for exploitation, such as immigrants, and develop and distribute language appropriate outreach materials.	Develop and implement radio advertising in Russian and Spanish	General Counsel	2014 2015 – Expand coverage
2.2 Enhance outreach to vulnerable populations by strengthening relationships with U.S. Immigration and Customs Enforcement, the Attorney General's Office, and the American Immigration Lawyers Association.	Identify and meet yearly with key officials from these organizations	General Counsel	Yearly for 2014–2016
2.3 Ensure the OSB Unlawful Practice of Law Committee has one member from the Department of Justice.	An attorney from the Department of Justice serves on the Committee	General Counsel; Board of Governors members	Yearly for 2014–2016

Strategy 3 – Enhance Client Assistance Office to meet the needs of a diverse community

Action Items	Target Measures	Lead	Timeline
3.1 Develop a plan to evaluate the accessibility and effectiveness of CAO services in diverse communities.	Plan developed	General Counsel	2014
3.2 Implement plan to evaluate accessibility and effectiveness.	Plan implemented and baseline data gathered	General Counsel	2015

Strategy 4 – Enhance outreach and services provided to diverse constituents by Discipline and Regulatory Services

Action Items	Target Measures	Lead	Timeline
4.1 Survey individuals involved in the disciplinary process to assess services.	Baseline data gathered	Director of Regulatory Services	2014
4.2 Increase outreach by Disciplinary Counsel and Regulatory Services to bar and community members. Ensure outreach occurs in geographically diverse locations and in underserved communities.	100 public contacts	Director of Regulatory Services	Yearly for 2014–2016
4.3 Evaluate feasibility and need for creating and distributing brochures translated into various languages.	Evaluation completed	Director of Regulatory Services	2015

Strategy 5 – Position the OSB to attract new members by adopting the Uniform Bar Exam

Action Items	Target Measures	Lead	Timeline
5.1 Collaborate with the Board of Bar Examiners and others as needed.	Uniform Bar Exam adopted and implemented	Director of Regulatory Services	Feb 2015 bar exam

Strategy 6 – Develop and sell e-books adapted for use by underserved individuals and communities

Action Items	Target Measures	Lead	Timeline
6.1 Start a pilot program to market family law e-books on Amazon with information about lawyer referral and legal services.	Chapters receive a four star rating on Amazon after six month	Director of Legal Publications	2014
6.2 Expand e-book offerings to consumer law topics.	Chapters receive a four star rating on Amazon after six month	Director of Legal Publications	2014
6.3 Expand e-book offerings to other substantive areas of law in high demand by consumers.	Chapters receive a four star rating on Amazon after six months	Director of Legal Publications	2015
6.4 Translate high-demand e-books into Spanish.	Chapters receive a four star rating on Amazon after six months	Director of Legal Publications	2016

Strategy 7 – Increase the diversity of the Bar/Press/Broadcasters Council and legal experts available to assist the media

Action Items	Target Measures	Lead	Timeline
7.1 Recruit and recommend diverse candidates to serve in the 12 OSB appointed positions and in the six television and six print representative positions on the Bar/Press/Broadcasters Council.	The applicant pool contains diverse candidates and the Board of Governors diversifies the appointments	NLMP Director	Yearly for 2014–2016
7.2 Collaborate with Oregon’s specialty bars to diversify the pool of legal experts referred to the media.	Baseline data gathered in year one; develop a target measure informed by the baseline data in 2015	NLMP Director	2014 – Develop baseline data &

Strategy 8 – Enhance outreach to underserved communities regarding the modest means and lawyer referral programs

Action Items	Target Measures	Lead	Timeline
8.1 Develop and implement an assessment process to identify a strategy for public outreach using various means of communication, including individual outreach, public access television, social media, websites, speaker bureaus, and advertising.	Baseline data gathered and assessment developed	Director of Communications & Public Services	2014
8.2 Implement a public outreach plan.	Plan implemented and use of programs increased	Director of Communications & Public Services	2015
8.3 Revise the lawyer referral criteria to give individuals seeking assistance the opportunity to identify diverse attorneys.	A recommendation to the Board of Governors endorsed by the ACDI and PSAC	Director of Communications & Public Services	2014

GOAL #8

Increase representation of low income Oregonians and enhance accountability for services to diverse clients

Strategy 1 – Increase funding for The Oregon Law Foundation and the OSB Legal Services Program

Action Items	Target Measures	Lead	Timeline
1.1 Increase interest earned by IOLTA accounts.	Increase to 80% the total IOLTA deposits that earn .7% to 1% interest	OLF Executive Director	2014
1.2 Develop and implement marketing tools that encourage banks to increase their interest rates.	Marketing tools developed and implemented	OLF Executive Director	2014
1.3 Make banks aware that they can get Community Reinvestment Act credit under the investment test for paying a supportive interest rate on IOLTA accounts.	Document developed and distributed to banks for use as evidence for CRA examiners to obtain Community Reinvestment Act credit	OLF Executive Director	2014
1.4 Continue to explore additional funding opportunities for the OSB Legal Services Program to increase the amount of revenue for legal aid.	Increase funding for legal aid to achieve the goal of having at least two legal aid lawyers per ten thousand low-income clients	Director LSP	Yearly for 2014–2016

Strategy 2 – Increase pro bono representation of low income Oregonians

Action Items	Target Measures	Lead	Timeline
2.1 Assess current reported data to understand trends and develop methods to measure pro bono participation with the goal to implement strategies that increase participation.	Baseline data gathered concerning pro bono participation; action plan developed	Director of LSP	2014
2.2 Increase the number of total pro bono hours that lawyers provide through OSB certified pro bono programs.	Participation increased by 10% annually	Director of LSP	Yearly for 2014–2016

Strategy 3 – Enhance legal services provider accountability for serving diverse clients

Action Items	Target Measures	Lead	Timeline
3.1 Better measure the cultural responsiveness of Legal Aid Service providers to client community by enhancing accountability standards in key areas: 1) staff diversity; 2) community outreach; and 3) staff training to enhance cultural responsiveness.	Assessment conducted and baseline data gathered; new standards implemented	OLF Executive Director	2014 – Data 2015 – Standards



Diversity & Inclusion Department

16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281-1935

**Mariann Hyland
Director of Diversity & Inclusion**

phone: (503) 431-6337 fax: (503) 598-6937
mhyland@osbar.org

**Toni Kelich
Diversity & Inclusion Coordinator**

phone: (503) 431-6338 fax: (503) 598-6938
tkelich@osbar.org

**Benjamin James
Diversity & Inclusion Assistant**

phone: (503) 431-6335 fax: (503) 598-6999
bjames@osbar.org



www.osbar.org/diversity

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

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.

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar's values through its actions. The bar adheres to the highest ethical and professional standards in all of its dealings.

Fairness

The bar works to eliminate bias in the justice system and to ensure access to justice for all.

Leadership

The bar actively pursues its mission and promotes and encourages leadership among its members both to the legal profession and the community.

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.

Justice

The bar promotes the rule of law as the best means to achieve justice and resolve conflict in a democratic society.

Accountability

The bar is accountable for its decisions and actions and will be transparent and open in communication with its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of bar programs and services. Since excellence has no boundary, the bar strives for continuous improvement.

Sustainability

The bar encourages education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

October 2, 2013

To: Professional Liability Fund Board of Directors
From: R. Thomas Cave, Chief Financial Officer *RTC*
Re: August 31, 2013 Financial Statements

I have enclosed August 31, 2013 Financial Statements. The statements show Primary Program net income of \$800,000 for the first eight months of 2013.

Investment returns have been very volatile this year. There have been large gains or losses in several recent months. As of August 31, the investment return was about \$193,000 below budget.

The frequency of new claims continues to be lower than expected.

If you have any questions, please contact me.

**Oregon State Bar
Professional Liability Fund
Financial Statements
8/31/2013**

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
8/31/2013**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$850,821.27	\$1,077,795.56
Investments at Fair Value	43,037,040.31	40,340,502.30
Assessment Installment Receivable	2,746,602.00	2,715,490.00
Due from Reinsurers	18,751.69	132,468.20
Other Current Assets	94,698.10	67,720.74
Net Fixed Assets	896,201.42	996,633.17
Claim Receivables	56,176.92	107,919.13
Other Long Term Assets	<u>9,825.00</u>	<u>9,825.00</u>
TOTAL ASSETS	<u>\$47,710,116.71</u>	<u>\$45,448,354.10</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$196,048.54	\$121,577.13
Due to Reinsurers	\$383,154.46	\$345,169.55
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	13,058,171.80	14,019,104.30
Liability for Claim Expense	13,736,418.04	13,795,428.01
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	247,987.66	242,649.02
Assessment and Installment Service Charge Allocated for Rest of Year	<u>8,450,946.59</u>	<u>8,368,057.89</u>
Total Liabilities	<u>\$43,018,347.60</u>	<u>\$43,722,291.18</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$4,047,255.11	(\$781,169.42)
Year to Date Net Income (Loss)	<u>644,514.00</u>	<u>2,507,232.34</u>
Total Fund Equity	<u>\$4,691,769.11</u>	<u>\$1,726,062.92</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$47,710,116.71</u>	<u>\$45,448,354.10</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
8 Months Ended 8/31/2013**

	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>
REVENUE					
Assessments	\$16,641,161.83	\$16,699,333.36	\$58,171.53	\$16,473,188.45	\$25,049,000.00
Installment Service Charge	260,731.33	260,000.00	(731.33)	263,087.33	390,000.00
Other Income	35,993.54	0.00	(35,993.54)	50,468.17	0.00
Investment Return	<u>1,447,997.64</u>	<u>1,641,882.00</u>	<u>193,884.36</u>	<u>2,746,284.07</u>	<u>2,462,823.00</u>
TOTAL REVENUE	<u>\$18,385,884.34</u>	<u>\$18,601,215.36</u>	<u>\$215,331.02</u>	<u>\$19,533,028.02</u>	<u>\$27,901,823.00</u>
EXPENSE					
Provision For Claims:					
New Claims at Average Cost	\$12,575,500.00			\$14,340,000.00	
Actuarial Adjustment to Reserves	664,997.05			(1,288,663.47)	
Coverage Opinions	105,687.86			87,036.55	
General Expense	78,091.94			36,813.35	
Less Recoveries & Contributions	(4,004.98)			(199,600.98)	
Budget for Claims Expense		<u>\$13,817,280.00</u>			<u>\$20,725,920.00</u>
Total Provision For Claims	<u>\$13,420,271.87</u>	<u>\$13,817,280.00</u>	<u>\$397,008.13</u>	<u>\$12,975,585.45</u>	<u>\$20,725,920.00</u>
Expense from Operations:					
Administrative Department	\$1,443,524.94	\$1,522,134.00	\$78,609.06	\$1,404,028.50	\$2,283,201.00
Accounting Department	515,588.67	524,148.72	8,560.05	500,004.04	786,223.00
Loss Prevention Department	1,178,688.32	1,268,646.16	89,957.84	1,173,769.32	1,902,969.00
Claims Department	1,712,941.59	1,787,942.72	75,001.13	1,592,354.72	2,681,914.00
Allocated to Excess Program	(736,736.00)	(736,736.00)	0.00	(733,217.28)	(1,105,104.00)
Total Expense from Operations	<u>\$4,114,007.52</u>	<u>\$4,366,135.60</u>	<u>\$252,128.08</u>	<u>\$3,936,939.30</u>	<u>\$6,549,203.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$204,114.64	\$204,114.64	\$40,587.55	\$306,172.00
Depreciation and Amortization	\$111,718.55	\$138,666.64	\$26,948.09	\$117,231.70	\$208,000.00
Allocated Depreciation	(20,037.36)	(20,037.36)	0.00	(23,997.36)	(30,056.00)
TOTAL EXPENSE	<u>\$17,625,960.58</u>	<u>\$18,506,159.52</u>	<u>\$880,198.94</u>	<u>\$17,046,346.64</u>	<u>\$27,759,239.00</u>
NET INCOME (LOSS)	<u>\$759,923.76</u>	<u>\$95,055.84</u>	<u>(\$664,867.92)</u>	<u>\$2,486,681.38</u>	<u>\$142,584.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
8 Months Ended 8/31/2013**

<u>EXPENSE:</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
Salaries	\$341,042.77	\$2,721,140.06	\$2,765,450.00	\$44,309.94	\$2,632,974.32	\$4,148,175.00
Benefits and Payroll Taxes	123,966.44	970,940.85	1,050,801.52	79,860.67	943,294.85	1,576,202.00
Investment Services	0.00	13,884.00	18,666.64	4,782.64	13,671.75	28,000.00
Legal Services	504.00	4,919.50	10,666.64	5,747.14	9,628.50	16,000.00
Financial Audit Services	0.00	22,600.00	15,066.64	(7,533.36)	21,700.00	22,600.00
Actuarial Services	0.00	6,448.75	12,666.64	6,217.89	6,337.50	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	3,850.00	0.00
Information Services	44,125.55	97,001.34	64,000.00	(33,001.34)	59,874.30	96,000.00
Document Scanning Services	5,934.44	20,329.02	50,000.00	29,670.98	20,444.88	75,000.00
Other Professional Services	4,603.38	34,958.92	38,266.72	3,307.80	32,253.32	57,400.00
Staff Travel	1,092.13	10,303.16	8,300.00	(2,003.16)	10,959.07	12,450.00
Board Travel	771.21	13,799.67	25,999.92	12,200.25	19,273.05	39,000.00
NABRICO	1,273.60	6,039.52	7,000.00	960.48	6,814.30	10,500.00
Training	3,585.00	17,864.34	16,333.36	(1,530.98)	13,828.32	24,500.00
Rent	42,145.08	352,557.19	347,160.64	(5,396.55)	345,693.29	520,741.00
Printing and Supplies	4,257.71	31,875.86	52,666.72	20,790.86	39,288.84	79,000.00
Postage and Delivery	1,808.24	19,373.46	24,500.00	5,126.54	21,629.24	36,750.00
Equipment Rent & Maintenance	10,507.77	31,102.48	24,133.28	(6,969.20)	26,962.68	36,200.00
Telephone	4,304.56	32,026.39	28,666.64	(3,359.75)	22,972.96	43,000.00
L P Programs (less Salary & Benefits)	30,904.62	200,959.19	289,040.16	88,080.97	222,676.54	433,560.00
Defense Panel Training	44,615.53	46,461.75	15,400.08	(31,061.67)	0.00	23,100.00
Bar Books Grant	16,666.67	133,333.36	133,333.36	0.00	133,333.36	200,000.00
Insurance	6,587.00	15,019.00	60,086.00	45,067.00	8,401.00	90,129.00
Library	833.96	20,040.99	22,000.00	1,959.01	17,825.16	33,000.00
Subscriptions, Memberships & Other	2,219.68	27,764.72	22,666.64	(5,098.08)	36,469.35	34,000.00
Allocated to Excess Program	(92,092.00)	(736,736.00)	(736,736.00)	0.00	(733,217.28)	(1,105,104.00)
TOTAL EXPENSE	<u>\$599,657.34</u>	<u>\$4,114,007.52</u>	<u>\$4,366,135.60</u>	<u>\$252,128.08</u>	<u>\$3,936,939.30</u>	<u>\$6,549,203.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
8 Months Ended 8/31/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$495,975.32	\$497,833.36	\$1,858.04	\$485,298.05	\$746,750.00
Prior Year Adj. (Net of Reins.)	3,371.55	1,000.00	(2,371.55)	1,369.88	1,500.00
Installment Service Charge	41,433.00	25,333.36	(16,099.64)	37,180.00	38,000.00
Investment Return	<u>168,037.81</u>	<u>123,582.64</u>	<u>(44,455.17)</u>	<u>322,523.83</u>	<u>185,374.00</u>
TOTAL REVENUE	<u>\$708,817.68</u>	<u>\$647,749.36</u>	<u>(\$61,068.32)</u>	<u>\$846,371.76</u>	<u>\$971,624.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$804,190.08	\$815,039.52	\$10,849.44	\$801,823.44	\$1,222,559.00
Allocated Depreciation	<u>\$20,037.36</u>	<u>\$20,037.36</u>	<u>\$0.00</u>	<u>\$23,997.36</u>	<u>\$30,056.00</u>
NET INCOME (LOSS)	<u>(\$115,409.76)</u>	<u>(\$187,327.52)</u>	<u>(\$71,917.76)</u>	<u>\$20,550.96</u>	<u>(\$280,991.00)</u>

Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
8 Months Ended 8/31/2013

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
<u>EXPENSE:</u>						
Salaries	\$56,197.34	\$447,614.42	\$446,436.00	(\$1,178.42)	\$450,254.08	\$669,654.00
Benefits and Payroll Taxes	20,929.02	167,275.64	169,020.72	1,745.08	159,206.64	253,531.00
Investment Services	0.00	1,116.00	2,000.00	884.00	1,328.25	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	185,916.00	185,916.00	0.00	183,756.64	278,874.00
Reinsurance Placement & Travel	180.04	369.49	3,333.36	2,963.87	3,832.62	5,000.00
Training	0.00	0.00	333.36	333.36	0.00	500.00
Printing and Mailing	0.00	92.38	3,333.36	3,240.98	515.30	5,000.00
Program Promotion	500.00	1,806.15	3,333.36	1,527.21	2,929.91	5,000.00
Other Professional Services	0.00	0.00	1,333.36	1,333.36	0.00	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>
TOTAL EXPENSE	<u>\$101,045.90</u>	<u>\$804,190.08</u>	<u>\$815,039.52</u>	<u>\$10,849.44</u>	<u>\$801,823.44</u>	<u>\$1,222,559.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
8 Months Ended 8/31/2013**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$4,923.74	\$124,949.37	\$8,190.66	\$172,244.76
Intermediate Term Bond Funds	9,821.34	137,885.85	19,411.58	170,355.73
Domestic Common Stock Funds	0.00	82,719.02	0.00	7,610.20
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	90,808.77	0.00	94,319.52
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>68,496.13</u>	<u>0.00</u>	<u>65,280.47</u>
Total Dividends and Interest	<u>\$14,745.08</u>	<u>\$504,859.14</u>	<u>\$27,602.24</u>	<u>\$509,810.68</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	(\$21,886.34)	(\$157,578.34)	\$1,133.07	\$288,521.90
Intermediate Term Bond Funds	(109,619.86)	(424,850.77)	21,052.26	437,350.65
Domestic Common Stock Funds	(233,882.81)	1,228,906.26	199,255.76	684,757.02
International Equity Fund	(179,493.71)	503,868.81	156,888.03	549,872.91
Real Estate	0.00	134,418.43	0.00	78,332.12
Hedge Fund of Funds	(17,937.46)	229,152.27	41,634.00	156,215.76
Real Return Strategy	<u>(80,318.64)</u>	<u>(402,740.35)</u>	<u>63,267.26</u>	<u>363,946.86</u>
Total Gain (Loss) in Fair Value	<u>(\$643,138.82)</u>	<u>\$1,111,176.31</u>	<u>\$483,230.38</u>	<u>\$2,558,997.22</u>
TOTAL RETURN	<u>(\$628,393.74)</u>	<u>\$1,616,035.45</u>	<u>\$510,832.62</u>	<u>\$3,068,807.90</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$880.28	\$43,027.74	\$1,785.64	\$48,938.49
Gain (Loss) in Fair Value	<u>(38,395.39)</u>	<u>125,010.07</u>	<u>31,258.12</u>	<u>273,585.34</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>(\$37,515.11)</u>	<u>\$168,037.81</u>	<u>\$33,043.76</u>	<u>\$322,523.83</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 21-23
Memo Date: November 5, 2013
From: Ira Zarov
Re: PLF Claims Made Primary Plan, Excess Plan, and Pro Bono Plan

Action Recommended

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2014 PLF Claims Made Plan, Excess Plan and Pro Bono Plan.

Background

There are three operative PLF Coverage Plans -- the Primary Program Coverage Plan, the Excess Plan, and the Pro Bono Plan. The Excess Plan covers firms and individuals who purchase excess coverage from the PLF. The Pro Bono Plan covers lawyers who volunteer for OSB approved legal services programs, but who do not have malpractice coverage either from the PLF or another source.

As in other years, specific changes to the Plans have previously been approved by the BOG at earlier meetings. In addition to that approval, however, the BOG approves the PLF Claims Made Plan, the Excess Plan and Pro Bono Plan in their entireties prior to their effective date of January 1, 2014. (OSB Bylaws Section 23.3)

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND

2014 CLAIMS MADE PLAN

January 1, 2014

2014 CLAIMS MADE PLAN

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**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

~~2013~~2014 CLAIMS MADE PLAN

NOTICE

This Claims Made Plan (“Plan”) contains provisions that reduce the Limits of Coverage by the costs of legal defense. See SECTIONS IV and VI.

Various provisions in this Plan restrict coverage. Read the entire Plan to determine rights, duties, and what is and is not covered.

INTERPRETATION OF THIS PLAN

Preface and Aid to Interpretation. The Professional Liability Fund (“PLF”) is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The statute states in part:

The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer’s professional liability fund.

Pursuant to this statute, the Board of Governors of the Oregon State Bar created a professional liability fund (the Professional Liability Fund) not subject to state insurance law. The initial Plan developed to implement the Board of Governors’ decision, and all subsequent changes to the Plan are approved by both the Board of Directors of the Professional Liability Fund and the Board of Governors.

The Plan is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the Mission and Goals set forth in Chapter One of the PLF Policies, which includes the Goal, “To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention.” The limits, exclusions, and conditions are to be fairly and objectively construed for that purpose. While mandatory malpractice coverage and the existence of the Professional Liability Fund do provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy and is not an adhesion contract.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

Bracketed Titles. The bracketed titles appearing throughout this Plan are not part of the Plan and should not be used as an aid in interpreting the Plan. The bracketed titles are intended simply as a guide to locating pertinent provisions.

Use of Capitals. Capitalized terms are defined in SECTION I. The definition of COVERED PARTY

appearing in SECTION II and the definition of COVERED ACTIVITY appearing in SECTION III are particularly crucial to the understanding of the Plan.

Plan Comments. The discussions labeled "*COMMENTS*" following various provisions of the Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of the Plan.

The Comments are similar in form to those in the Uniform Commercial Code and Restatements. They are intended to aid in the construction of the Plan language. The Comments are to assist attorneys in interpreting the coverage available to them and to provide a specific basis for interpretation by courts and arbitrators.

Attorneys in Private Practice; Coverage and Exemption. Only Oregon attorneys engaged in the "private practice of law" whose principal office is in Oregon are covered by this Plan. ORS 9.080(2). An attorney not engaged in the private practice of law in Oregon or whose principal office is outside Oregon must file a request for exemption with the PLF indicating the attorney is not subject to PLF coverage requirements. Each year, participating attorneys are issued a certificate entitled "Claims Made Plan Declarations." The participating attorney is listed as the "Named Party" in the Declarations.

SECTION I — DEFINITIONS

Throughout this Plan, when appearing in capital letters:

1. "BUSINESS TRUSTEE" means one who acts in the capacity of or with the title "trustee" and whose activities include the operation, management, or control of any business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder.

COMMENTS

The term "BUSINESS TRUSTEE" is used in SECTION III.3 and in SECTION V.5. This Plan is intended to cover the ordinary range of activities in which attorneys in the private practice of law are typically engaged. The Plan is not intended to cover BUSINESS TRUSTEE activities as defined in this Subsection. Examples of types of BUSINESS TRUSTEE activities for which coverage is excluded under the Plan include, among other things: serving on the board of trustees of a charitable, educational, or religious institution; serving as the trustee for a real estate or other investment syndication; serving as trustee for the liquidation of any business or institution; and serving as trustee for the control of a union or other institution.

Attorneys who engage in BUSINESS TRUSTEE activities as defined in this Subsection are encouraged to obtain appropriate insurance coverage from the commercial market for their activities.

2. "CLAIM" means a demand for DAMAGES or written notice to a COVERED PARTY of an intent to hold a COVERED PARTY liable as a result of a COVERED ACTIVITY, if such notice might reasonably be expected to result in an assertion of a right to DAMAGES.

3. "CLAIMS EXPENSE" means:

a. Fees charged by any attorney designated by the PLF;

- b.** All other fees, costs, and expenses resulting from the investigation, adjustment, defense, repair and appeal of a CLAIM, if incurred by the PLF; or
- c.** Fees charged by any attorney designated by the COVERED PARTY with the PLF's written consent.

However, CLAIMS EXPENSE does not include the PLF's costs for compensation of its regular employees and officials or the PLF's other routine administrative costs.

4. "CLAIMS EXPENSE ALLOWANCE" means the separate allowance for aggregate CLAIMS EXPENSE for all CLAIMS as provided for in SECTION VI.1.b of this Plan.

5. "COVERAGE PERIOD" means the coverage period shown in the Declarations under the heading "COVERAGE PERIOD."

6. "COVERED ACTIVITY" means conduct qualifying as such under SECTION III — WHAT IS A COVERED ACTIVITY.

7. "COVERED PARTY" means any person or organization qualifying as such under SECTION II — WHO IS A COVERED PARTY.

8. "DAMAGES" means money to be paid as compensation for harm or loss. It does not refer to fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, accountings, or damages and relief otherwise excluded by this Plan.

9. "EXCESS CLAIMS EXPENSE" means any CLAIMS EXPENSE in excess of the CLAIMS EXPENSE ALLOWANCE. EXCESS CLAIMS EXPENSE is included in the Limits of Coverage at SECTION VI.1.a and reduces amounts available to pay DAMAGES under this Plan.

10. "INVESTMENT ADVICE" refers to any of the following activities:

- a.** Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
- b.** Managing any investment;
- c.** Buying or selling any investment for another;
- d.** (1) Acting as a broker for a borrower or lender, or

(2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;
- e.** Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
- f.** Giving advice of any nature when the compensation for such advice is in whole or in part

contingent or dependent on the success or failure of a particular investment; or

g. Inducing someone to make a particular investment.

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.

12. "PLAN YEAR" means the period January 1 through December 31 of the calendar year for which this Plan was issued.

13. "PLF" means the Professional Liability Fund of the Oregon State Bar.

14. "SAME OR RELATED CLAIMS" means two or more CLAIMS that are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, COVERED ACTIVITIES, damages, liability, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. CLAIMS are related in the following situations:

a. *Secondary or dependent liability.* CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are related to the CLAIMS on which they are based.

b. *Same transactions or occurrences.* Multiple CLAIMS arising out of the same transaction or occurrence or series of transactions or occurrences are related. However, with regard to this Subsection b only, the PLF will not treat the CLAIMS as related if:

(1) The participating COVERED PARTIES acted independently of one another;

(2) They represented different clients or groups of clients whose interests were adverse; and

(3) The claimants do not rely on any common theory of liability or damage.

c. *Alleged scheme or plan.* If claimants attempt to tie together different acts as part of an alleged overall scheme or operation, then the CLAIMS are related.

d. *Actual pattern or practice.* Even if a scheme or practice is not alleged, CLAIMS that arise from a method, pattern, or practice in fact used or adopted by one or more COVERED PARTIES or LAW ENTITIES in representing multiple clients in similar matters are related.

e. *One loss.* When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm or cumulatively enhance their damages or losses, then the CLAIMS are related.

f. *Class actions.* All CLAIMS alleged as part of a class action or purported class action are related.

COMMENTS

SAME OR RELATED CLAIMS. Each PLF Plan sets a maximum limit of coverage per year. This limit defines the PLF's total maximum obligation under the terms of each Plan issued by the PLF.

However, absent additional Plan provisions, numerous circumstances could arise in which the PLF, as issuer of other PLF Plans, would be liable beyond the limits specified in one individual Plan. For example, Plans issued to the same attorney in different PLAN YEARS might apply. Or, Plans issued to different attorneys might all apply. In some circumstances, the PLF intends to extend a separate limit under each Plan. In other circumstances, when the CLAIMS are related, the PLF does not so intend. Because the concept of “relatedness” is broad and factually based, there is no one definition or rule that will apply to every situation. The PLF has therefore elected to explain its intent by listing certain circumstances in which only one limit is available regardless of the number of Plans that may apply. See Subsections 14.a to 14.f above.

Example No. 1: Attorney A is an associate in a firm and commits malpractice. CLAIMS are made against Attorney A and various partners in the firm. All attorneys share one limit. CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are always related to the CLAIMS on which they are based. See Subsection 14.a above. Even if Attorney A and some of the other lawyers are at different firms at the time of the CLAIM, all attorneys and the firm share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE.

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C, with a different law firm, assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2010 and Investor 3 brings a CLAIM in 2011 relating to the offering. No CLAIM is asserted prior to 2010. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2010, pursuant to Section IV.1.b(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

Example No. 3: Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A’s and B’s CLAIMS are not related. A’s and B’s CLAIMS would be related, but for the exception in the second sentence of Subsection 14.b above.

Example No. 4: An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel A, its ERISA lawyer B, the owner, his attorney C, and the plans’ former attorney D, contending there were improprieties in the due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All CLAIMS are related. They arise out of the same transactions or occurrences and therefore are related under Subsection 14.b. For the exception in Subsection 14.b to apply, all three elements must be satisfied. The exception does not apply because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Finally, even if the exception in Subsection 14.b did apply, the CLAIMS would still be related under Subsection 14.d because they involve one loss. Although the CLAIMS are related, if all four attorneys’ firms are sued, depending on the circumstances, up to four total CLAIMS EXPENSE ALLOWANCES might be available under Section VI.2.

Example No. 5: Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. Although the different acts by different lawyers at different times could legitimately be viewed as separate and unconnected, the claimant in this example attempts to tie them together as part of an alleged overall scheme or operation. The CLAIMS are related because the claimants have made them so. See Subsection 14.c above. This will often be the case in securities CLAIMS. As long as such allegations remain in the case, only one limit will be available, even if alternative CLAIMS are also alleged. In this example, although there is only one Limit of Coverage available for all CLAIMS, depending on the circumstances, multiple CLAIMS EXPENSE ALLOWANCES might be available. See Section VI.2.

Example No. 6: Attorneys A, B, and C in the same firm represent a large number of asbestos clients over ten years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation of their cases' values, although the plaintiffs do not allege a common scheme or plan. Because the firm in fact operated a firm-wide formula for handling the cases, the CLAIMS are related based on the COVERED PARTIES' own pattern or practice. The CLAIMS are related because the COVERED PARTIES' own conduct has made them so. See Subsection 14.d above. Attorneys A, B, and C will share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE. LAW ENTITIES should protect themselves from such CLAIMS brought by multiple clients by purchasing adequate excess insurance.

Example No. 7: Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. The CLAIMS are related and only a single Limit of Coverage applies to all CLAIMS. See Subsection 14.e above. When, as in this example, successive or collective errors each cause single or multiple clients and/or claimants harm or cumulatively enhance their damages or losses, then the CLAIMS are related. In such a situation, a claimant or group of claimants cannot increase the limits potentially available by alleging separate errors by separate attorneys. Attorney E, however, may be entitled to a CLAIMS EXPENSE ALLOWANCE separate from the one shared by C and D.

Example No. 8: Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All CLAIMS are related. No class action or purported class action can ever trigger more than one Limit of Coverage. See Subsection 14.f above.

15. "SUIT" means a civil proceeding in which DAMAGES are alleged. SUIT includes an arbitration or alternative dispute resolution proceeding to which the COVERED PARTY submits with the consent of the PLF.

16. "YOU" and "YOUR" mean the Named Party shown in the Declarations.

SECTION II — WHO IS A COVERED PARTY

1. The following are COVERED PARTIES:

- a.** YOU.
 - b.** In the event of YOUR death, adjudicated incapacity, or bankruptcy, YOUR conservator, guardian, trustee in bankruptcy, or legal or personal representative, but only when acting in such capacity.
 - c.** Any attorney or LAW ENTITY legally liable for YOUR COVERED ACTIVITIES, but only to the extent such legal liability arises from YOUR COVERED ACTIVITIES.
- 2.** Notwithstanding Subsection 1, no business enterprise (except a LAW ENTITY) or any partner, proprietor, officer, director, stockholder, or employee of such enterprise is a COVERED PARTY.

SECTION III — WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES, if the acts, errors, or omissions occur during the COVERAGE PERIOD; or prior to the COVERAGE PERIOD, if on the effective date of this Plan YOU have no knowledge that any CLAIM has been asserted arising out of such prior act, error, or omission, and there is no prior policy or Plan that provides coverage for such liability or CLAIM resulting from the act, error, or omission, whether or not the available limits of liability of such prior policy or Plan are sufficient to pay any liability or CLAIM:

[YOUR CONDUCT]

- 1.** Any act, error, or omission committed by YOU that satisfies all of the following criteria:
 - a.** YOU committed the act, error, or omission in rendering professional services in YOUR capacity as an attorney in private practice, or in failing to render professional services that should have been rendered in YOUR capacity as an attorney in private practice.
 - b.** At the time YOU rendered or failed to render these professional services:
 - (1)** YOUR principal office was located in the State of Oregon;
 - (2)** YOU were licensed to practice law in the State of Oregon; and
 - (3)** Such activity occurred after any Retroactive Date shown in the Declarations.

[CONDUCT OF OTHERS]

- 2.** Any act, error, or omission committed by a person for whose conduct YOU are legally liable in YOUR capacity as an attorney, provided at the time of the act, error, or omission each of the following criteria was satisfied:
 - a.** The act, error, or omission causing YOUR liability:
 - (1)** Arose while YOU were licensed to practice law in the State of Oregon;
 - (2)** Arose while YOUR principal office was located in the State of Oregon; and

- (3) Occurred after any Retroactive Date shown in the Declarations.
- b. The act, error, or omission, if committed by YOU, would constitute the rendering of professional services in YOUR capacity as an attorney in private practice.
- c. The act, error, or omission was not committed by an attorney who at the time of the act, error, or omission:
 - (1) Maintained his or her principal office outside the State of Oregon; or
 - (2) Maintained his or her principal office within the State of Oregon and either:
 - (a) Claimed exemption from participation in the Professional Liability Fund, or
 - (b) Was not an active member of the Oregon State Bar.

[YOUR CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission committed by YOU in YOUR capacity as a personal representative, administrator, conservator, executor, guardian, guardian *ad litem*, special representative pursuant to ORS 128.179, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above, and the CLAIM is brought by or for the benefit of a beneficiary of the special capacity relationship and arises out of a breach of that relationship.

COMMENTS

To qualify for coverage, a CLAIM must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage including the following:

Principal Office. *To qualify for coverage, a COVERED PARTY'S "principal office" must be located in the State of Oregon at the time specified in the definition. "Principal office" as used in the Plan has the same definition as provided in ORS 9.080(2)(c). For further clarification, see PLF Board of Directors Policy 3.180 (available on the PLF website, www.osbplf.org or telephone the PLF to request a copy).*

Prior CLAIMS. *Section III limits the definition of COVERED ACTIVITY with respect to acts, errors, or omissions that happen prior to the COVERAGE PERIOD, so that no coverage is granted when there is prior knowledge or prior insurance. For illustration of the application of this language, see *Chamberlin v. Smith*, 140 Cal Rptr 493 (1977).*

To the extent there is prior insurance or other coverage applicable to the CLAIM, it is reasonable to omit the extension of further coverage. Likewise, to the extent YOU have knowledge that particular acts, errors, or omissions have given rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered. Such CLAIMS should instead be covered under the policy or PLF PLAN in force, if any, at the time the first such CLAIM was made.

Types of Activity. COVERED ACTIVITIES have been divided into three categories. Subsection 1 deals with coverage for YOUR conduct as an attorney in private practice. Subsection 2 deals with coverage for YOUR liability for the conduct of others. Subsection 3 deals with coverage for YOUR conduct in a special capacity (e.g., as a personal representative of an estate). The term "BUSINESS TRUSTEE" as used in this section is defined in Section I.

Professional Services. To qualify for coverage under Section III.1 and III.2.b, the act, error or omission causing YOUR liability must be committed "in rendering professional services in YOUR capacity as an attorney, or in failing to render professional services that should have been rendered in YOUR capacity as an attorney." This language limits coverage to those activities commonly regarded as the rendering of professional services as a lawyer. This language, in addition to limiting coverage to YOUR conduct as a lawyer, is expressly intended to limit the definition of COVERED ACTIVITY so that it does not include YOUR conduct in carrying out the commercial or administrative aspects of law practice. Examples of commercial or administrative activities could include: collecting fees or costs; guaranteeing that the client will pay third parties (e.g., court reporters, experts or other vendors) for services provided; depositing, endorsing or otherwise transferring negotiable instruments; depositing or withdrawing monies or instruments into or from trust accounts; or activities as a trustee that require no specialized legal skill or training, such as paying bills on time or not incurring unnecessary expenses. The foregoing list of commercial or administrative activities is not exclusive, but rather is illustrative of the kinds of activities that are regarded as part of the commercial aspect of law (not covered), as opposed to the rendering of professional services (covered).

Example. A client purports to hire the Covered Party and provides the Covered Party with a cashier's check, which the Covered Party deposits into her firm's client trust account. The Covered Party, on the client's instructions, wire-transfers some of the proceeds of the cashier's check to a third party. The cashier's check later turns out to be forged and the funds transferred out of the trust account belonged to other clients. The Covered Party is later sued by a third party such as a bank or other client arising out of the improper transfer of funds. The Covered Party's conduct is not covered under her PLF Plan. Placing, holding or disbursing funds in lawyer trust accounts are not considered professional services for purposes of the PLF Plan.

Special Capacity. Subsection 3 provides limited coverage for YOUR acts as a personal representative, administrator, conservator, executor, guardian, or trustee. However, not all acts in a special capacity are covered under this Plan. Attorneys acting in a special capacity, as described in Subsection III.3 may subject themselves to claims from third parties that are beyond the coverage provided by this Plan. For example, in acting as a conservator or personal representative, an attorney may engage in certain business activities, such as terminating an employee or signing a contract. If such actions result in a claim by the terminated employee or the other party to the contract, the estate or corpus should respond to such claims in the first instance, and should protect the attorney in the process. Attorneys engaged in these activities should obtain appropriate commercial general liability, errors and omissions, or other commercial coverage. The claim will not be covered under Subsection III.3.

The Plan purposefully uses the term "special capacity" rather than "fiduciary" in Subsection 3 to avoid any implication that this coverage includes fiduciary obligations other than those specifically identified. There is no coverage for YOUR conduct under Subsection 3 unless YOU were formally named or designated as a personal representative, administrator, conservator, executor, guardian, or trustee (except BUSINESS TRUSTEE) and served in such capacity.

Ancillary Services. *Some law firms are now branching out and providing their clients with ancillary services, either through their own lawyers and staff or through affiliates. These ancillary services can include such activities as architectural and engineering consulting, counseling, financial and investment services, lobbying, marketing, advertising, trade services, public relations, real estate development and appraisal, and other services. Only CLAIMS arising out of services falling within the definition of COVERED ACTIVITY will be covered under this Plan. For example, a lawyer-lobbyist engaged in the private practice of law, including conduct such as advising a client on lobbying reporting requirements or drafting or interpreting proposed legislation, would be engaged in a COVERED ACTIVITY and would be covered. Generally, however, ancillary services will not be covered because of this requirement.*

Retroactive Date and Prior Acts. *Section III introduces the concept of a Retroactive Date. No Retroactive Date will apply to any attorney who has held coverage with the PLF continuously since the inception of the PLF. Attorneys who first obtained coverage with the PLF at a later date and attorneys who have interrupted coverage will find a Retroactive Date in the Declarations. This date will be the date on which YOUR most recent period of continuous coverage commenced. This Plan does not cover CLAIMS arising out of conduct prior to the Retroactive Date.*

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).

c. This Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

d. The amount the PLF will pay for damages is limited as described in SECTION VI.

2. Defense.

a. Until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage extended by this Plan are exhausted, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct defense, repair, or prevention of any CLAIM or potential CLAIM.

b. With respect to any CLAIM or potential CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSE the PLF may incur. All payments for EXCESS CLAIMS EXPENSE will reduce the Limits of Coverage.

c. If the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage extended by this Plan are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

COMMENTS

Claims Made Coverage. *As claims made coverage, this Plan applies to CLAIMS first made during the time period shown in the Declarations. CLAIMS first made either prior to or subsequent to that time period are not covered by this Plan, although they may be covered by a prior or subsequent PLF Plan.*

Damages. *This Plan grants coverage only for CLAIMS seeking DAMAGES. There is no coverage granted for other claims, actions, suits, or proceedings seeking equitable remedies such as restitution of funds or property, disgorgement, accountings or injunctions.*

When Claim First Made. *Subsection 1.b(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection 1.b(1)(c) adopts an objective, reasonable person standard to determine when the PLF's knowledge of facts or circumstances can rise to the level of a CLAIM for purpose of triggering an applicable COVERAGE PERIOD. This subsection is based solely on the objective nature of information received by the PLF. Covered Parties should thus be aware that any information or knowledge they may have that is not transmitted to the PLF is irrelevant to any determination made under this subsection.*

If facts or circumstances meet the requirements of subsection 1.b(1)(c), then any subsequent CLAIM that constitutes a SAME OR RELATED CLAIM under Section 1.14 will relate back to the COVERAGE PERIOD at the time the original notice of information was provided to the PLF.

SAME OR RELATED CLAIMS. Subsection 1.b(2) states a special rule applicable when several CLAIMS arise out of the SAME OR RELATED CLAIMS. Under this rule, all such SAME OR RELATED CLAIMS are considered first made at the time the earliest of the several SAME OR RELATED CLAIMS is first made. Thus, regardless of the number of claimants asserting SAME OR RELATED CLAIMS, the number of PLAN YEARS involved, or the number of transactions giving rise to the CLAIMS, all such CLAIMS are treated as first made in the earliest applicable PLAN YEAR and only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE apply. There is an exception to the special rule in Subsection 1.b(2) for COVERED PARTIES who had no coverage (with the PLF or otherwise) at the time the initial CLAIM was made, but this exception does not create any additional Limits of Coverage. Pursuant to Subsection VI.2, only one Limit of Coverage would be available.

Scope of Duty to Defend. Subsection 2 defines the PLF's obligation to defend. The obligation to defend continues only until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage are exhausted. In that event, the PLF will tender control of the defense to the COVERED PARTY or excess insurance carrier, if any. The PLF's payment of the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage ends all of the PLF's duties.

Control of Defense. Subsection 2.a allocates to the PLF control of the investigation, settlement, and defense of the CLAIM. See SECTION IX—ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY.

Costs of Defense. Subsection 2.b obligates the PLF to pay reasonable and necessary costs of defense. Only those expenses incurred by the PLF or with the PLF's authority are covered.

SECTION V — EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

1. This Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
2. This Plan does not apply to any CLAIM based on or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by YOU or at YOUR direction or in which YOU acquiesce or remain passive after having personal knowledge thereof.

COMMENTS

Exclusions 1 and 2 set out the circumstances in which wrongful conduct will eliminate coverage. An intent to harm is not required.

Voluntary Exposure to CLAIMS. An attorney may sometimes voluntarily expose himself or herself to a CLAIM or known risk through a course of action or inaction when the attorney knows there is a more reasonable alternative means of resolving a problem. For example, an attorney might disburse settlement proceeds to a client even though the attorney knows of valid hospital, insurance company, or

PIP liens, or other valid liens or claims to the funds. If the attorney disburses the proceeds to the client and a CLAIM arises from the other claimants, Exclusion 2 will apply and the CLAIM will not be covered.

Unethical Conduct. *If a CLAIM arises that involves unethical conduct by an attorney, Exclusion 2 may also apply to the conduct and the CLAIM would therefore not be covered. This can occur, for example, if an attorney violates Disciplinary Rule ORPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) or ORPC 5.5(a) (aiding a nonlawyer in the unlawful practice of law) and a CLAIM results.*

Example: Attorney A allows a title company to use his name, letterhead, or forms in connection with a real estate transaction in which Attorney A has no significant involvement. Attorney A's activities violate ORPC 8.4(a)(3) and ORPC 5.5(a). A CLAIM is made against Attorney A in connection with the real estate transaction. Because Attorney A's activities fall within the terms of Exclusion 2, there will be no coverage for the CLAIM. In addition, the CLAIM likely would not even be within the terms of the coverage grant under this Plan because the activities giving rise to the CLAIM do not fall within the definition of a COVERED ACTIVITY. The same analysis would apply if Attorney A allowed an insurance or investment company to use his name, letterhead, or forms in connection with a living trust or investment transaction in which Attorney A has no significant involvement.

3. This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.

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 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.

COMMENTS

A COVERED PARTY may become subject to punitive or exemplary damages, attorney fees, costs, fines, penalties, or other sanctions in two ways. The COVERED PARTY may have these damages assessed directly against the COVERED PARTY or the COVERED PARTY may have a client or other person sue the COVERED PARTY for indemnity for causing the client to be subjected to these damages.

Subsection a of Exclusion 4 applies to direct actions for punitive, exemplary or enhanced damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such CLAIMS do not involve covered DAMAGES as defined in this Plan. If YOU are sued for punitive damages, YOU are not covered for that exposure. Similarly, YOU are not covered to the extent compensatory damages are doubled, trebled or otherwise enhanced.

Subsection b of Exclusion 4 applies to both direct actions against a COVERED PARTY and actions for indemnity brought by others. The courts have become increasingly intolerant of attorneys' improper actions in several areas including trial practice, discovery, and conflicts of interest. Statutes, court rules, and common law approaches imposing various monetary sanctions have been developed to

deter such inappropriate conduct. The purpose of these sanctions would be threatened if the PLF were to indemnify the guilty attorney and pay the cost of indemnification out of the assessments paid by all attorneys.

Thus, if YOU cause YOUR client to be subjected to a punitive damage award (based upon the client's wrongful conduct toward the claimant) because of a failure, for example, to assert a statute of limitations defense, the PLF will cover YOUR liability for the punitive damages suffered by YOUR client. Subsection a does not apply because the action is not a direct action for punitive damages and Subsection b does not apply because the punitive damages suffered by YOUR client are not the type of damages described in Subsection b.

On the other hand, if YOU cause YOUR client to be subjected to an award of attorney fees, costs, fines, penalties, or other sanctions imposed because of YOUR conduct, or such an award is made against YOU, Subsection b applies and the CLAIM for such damages (or for any related consequential damages) will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Plan does not apply to that part of any CLAIM based on or arising out of YOUR conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

COMMENTS

A COVERED PARTY, in addition to his or her role as an attorney, may act as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of an entity. This exclusion eliminates coverage for the COVERED PARTY'S liability while acting in these capacities. However, the exclusion does not apply if the liability is based on such status in a LAW ENTITY.

- 6.** This Plan does not apply to any CLAIM by or on behalf of any business enterprise:
- a.** In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;
 - b.** In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or
 - c.** That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

Ownership interest, for the purpose of this exclusion, does not include an ownership interest now or previously held by YOU solely as a passive investment, as long as YOU, those YOU control, YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, and those with whom YOU are regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

COMMENTS

Intimacy with a client can increase risk of loss in two ways: (1) The attorney's services may be rendered in a more casual and less thorough manner than if the services were extended at arm's length; and (2) After a loss, the attorney may feel particularly motivated to assure the client's recovery. While the PLF is cognizant of a natural desire of attorneys to serve those with whom they are closely connected, the PLF has determined that coverage for such services should be excluded. Exclusion 6 delineates the level of intimacy required to defeat coverage. See also Exclusion 11.

7. This Plan does not apply to any CLAIM made by:
- a. YOUR present, former, or prospective partner, employer, or employee; or
 - b. A present, former, or prospective officer, director, or employee of a professional corporation in which YOU were a shareholder,

unless such CLAIM arises out of YOUR conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

COMMENTS

The PLF does not always cover YOUR conduct in relation to YOUR past, present, or prospective partners, employers, employees, and fellow shareholders, even if such conduct arises out of a COVERED ACTIVITY. Coverage is limited by this exclusion to YOUR conduct in relation to such persons in situations in which YOU are acting as their attorney and they are YOUR client.

8. This Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which YOU participate with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:
- a. A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution; or
 - b. If delivery of a copy of the disclosure form to the PLF within 10 calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, YOU may instead send the PLF an alternative letter stating: (1) the name of the client with whom YOU are participating in a business transaction; (2) that YOU have provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a); (3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within 10 calendar days of execution of the disclosure letter.

COMMENTS

ORPC 1. *Form ORPC 1, referred to above, is attached to this Plan following SECTION XV. The form includes an explanation of ORPC 1.8(a) which should be provided to the client involved in the*

business transaction.

Applicability of Exclusion. *When an attorney engages in a business transaction with a client, the attorney has an ethical duty to make certain disclosures to the client. ORPC 1.0(g) and 1.8(a) provide:*

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

RULE 1.0(g)

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

This exclusion is not intended to be an interpretation of ORPC 1.8(a). Instead, the Plan is invoking the body of law interpreting ORPC 1.8(a) to define when the exclusion is applicable.

Use of the PLF's Form Not Mandated. *Because of the obvious conflict of interest and the high duty placed on attorneys, when the exclusion applies, the attorney is nearly always at risk of being liable when things go wrong. The only effective defense is to show that the attorney has made full disclosure, which includes a sufficient explanation to the client of the potential adverse impact of the differing interests of the parties to make the client's consent meaningful. Form ORPC 1 is the PLF's attempt to set out an effective disclosure which will provide an adequate defense to such CLAIMS. The PLF is sufficiently confident that this disclosure will be effective to agree that the exclusion will not apply if YOU use the PLF's proposed form. YOU are free to use YOUR own form in lieu of the PLF's form, but if YOU do so YOU proceed at YOUR own risk, i.e., if YOUR disclosure is less effective than the PLF's disclosure form, the exclusion will apply. Use of the PLF's form is not intended to assure YOU of compliance with the ethical requirements applicable to YOUR particular circumstances. It is YOUR responsibility to consult ORPC 1.0(g) and 1.8(a) and add any disclosures necessary to satisfy the*

disciplinary rules.

Timing of Disclosure. *To be effective, it is important that the PLF can prove the disclosure was made prior to entering into the business transaction. Therefore, the disclosure should be reduced to writing and signed prior to entering into the transaction. There may be limited situations in which reducing the required disclosure to writing prior to entering into the transaction is impractical. In those circumstances, execution of the disclosure letter after entry into the transaction will not render the exclusion effective provided the execution takes place while the client still has an opportunity to withdraw from the transaction and the effectiveness of the disclosure is not compromised. Additional language may be necessary to render the disclosure effective in these circumstances.*

Delivery to the PLF. *Following execution of the disclosure letter, a copy of the letter or an alternative letter must be delivered to the PLF in a timely manner. Failure to do so will result in any subsequent CLAIM against YOU being excluded.*

Other Disclosures. *By its terms, ORPC 1.8(a) and this exclusion apply only to business transactions with a client in which the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client. However, lawyers frequently enter into business transactions with others not recognizing that the other expects the lawyer to exercise professional judgment for his or her protection. It can be the "client's" expectation and not the lawyer's recognition that triggers application of ORPC 1.8(a) and this exclusion.*

*Whenever YOU enter into a business transaction with a client, former client, or any other person, YOU should make it **clear in writing** at the **start** for YOUR own protection whether or not YOU will also be providing legal services or exercising YOUR professional judgment for the protection of other persons involved in the transaction (or for the business entity itself). Avoiding potential misunderstandings up front can prevent difficult legal malpractice CLAIMS from arising later.*

9. This Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by YOU (or by someone for whose conduct YOU are legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by YOU constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10.

COMMENTS

In prior years, the PLF suffered extreme losses as a result of COVERED PARTIES engaging in INVESTMENT ADVICE activity. It was never intended that the Plan cover such activities. An INVESTMENT ADVICE exclusion was added to the Plan in 1984. Nevertheless, losses continued in situations where the COVERED PARTY had rendered both INVESTMENT ADVICE and legal advice. In addition, some CLAIMS resulted where the attorney provided INVESTMENT ADVICE in the guise of legal advice.

Exclusion 9, first introduced in 1987, represented a totally new approach to this problem. Instead of excluding all INVESTMENT ADVICE, the PLF has clearly delineated specific activities which will not be covered whether or not legal as well as INVESTMENT ADVICE is involved. These specific activities are defined in Section I.10 under the definition of INVESTMENT ADVICE. The PLF's choice of delineated activities was guided by specific cases that exposed the PLF in situations never intended to

be covered. The PLF is cognizant that COVERED PARTIES doing structured settlements and COVERED PARTIES in business practice and tax practice legitimately engage in the rendering of general INVESTMENT ADVICE as a part of their practices. In delineating the activities to be excluded, the PLF has attempted to retain coverage for these legitimate practices. For example, the last sentence of the exclusion permits coverage for certain activities normally undertaken by conservators and personal representatives (i.e., COVERED ACTIVITIES described in Section III.3) when acting in that capacity even though the same activities would not be covered if performed in any other capacity. See the definition of INVESTMENT ADVICE in Section I.10.

Exclusion 9 applies whether the COVERED PARTY is directly or vicariously liable for the INVESTMENT ADVICE.

Note that Exclusion 9 could defeat coverage for an entire CLAIM even if only part of the CLAIM involved INVESTMENT ADVICE. If INVESTMENT ADVICE is in fact either the sole or a contributing cause of any resulting damage that is part of the CLAIM, the entire CLAIM is excluded.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Plan does not apply to any CLAIM:

- a.** For the return of any fees, costs, or disbursements paid to a COVERED PARTY (or paid to any other attorney or LAW ENTITY with which the COVERED PARTY was associated at the time the fees, costs, or disbursements were incurred or paid), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;
- b.** Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or
- c.** For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

COMMENTS

This Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection c, in addition, excludes CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.

Attorneys sometimes attempt to correct their own mistakes without notifying the PLF. In some cases, the attorneys charge their clients for the time spent in correcting their prior mistakes, which can lead to a later CLAIM from the client. The better course of action is to notify the PLF of a potential CLAIM as soon as it arises and allow the PLF to hire and pay for repair counsel if appropriate. In the PLF's experience, repair counsel is usually more successful in obtaining relief from a court or an opposing party than the attorney who made the mistake. In addition, under Subsection a of this exclusion, the PLF does not cover CLAIMS from a client for recovery of fees previously paid by the client to a COVERED PARTY (including fees charged by an attorney to correct the attorney's prior mistake).

Example No. 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under Subsection a, there is no coverage for the CLAIM.

Example No. 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under Subsection a there is no coverage for the CLAIM.

Example No. 3: Attorney C writes a demand letter to Client for unpaid fees, then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the CLAIM. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example No. 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b, there is no coverage for the CLAIM.

Example No. 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c, there is no coverage for the CLAIM. The same is true if Attorney E receives the stock as a fee and later is sued for recovery of the stock or damages.

11. This Plan does not apply to any CLAIM based upon or arising out of YOUR legal services performed on behalf of YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest.

COMMENT

Work performed for family members is not covered under this Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise, will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Plan does not apply to any CLAIM arising out of a COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. This Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of YOUR employee and YOU have no actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCLUSION]

14. This Plan does not apply to any CLAIM arising out of YOUR conduct:

a. As a public official or an employee of a governmental body, subdivision, or agency; or

b. In any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all YOUR rights against the public body.

COMMENTS

Subsection a excludes coverage for all public officials and government employees. The term "public official" as used in this section does not include part-time city attorneys hired on a contract basis. The term "employee" refers to a salaried person. Thus, the exclusion does not apply, for example, to YOU when YOU are hired on an hourly or contingent fee basis so long as the governmental entity does not provide YOU with office facilities, staff, or other indicia of employment.

Subsection a applies whether or not the public official or employee is entitled to defense or indemnity from the governmental entity. Subsection b, in addition, excludes coverage for YOU in other relationships with a governmental entity, but only if statute, rule, or case law entitles YOU to defense or indemnity from the governmental entity.

[HOUSE COUNSEL EXCLUSION]

15. This Plan does not apply to any CLAIM arising out of YOUR conduct as an employee in an employer-employee relationship other than YOUR conduct as an employee for a LAW ENTITY.

COMMENTS

This exclusion applies to conduct as an employee even when the employee represents a third party in an attorney-client relationship as part of the employment. Examples of this application include employment by an insurance company, labor organization, member association, or governmental entity that involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Plan does not apply to any CLAIM against any COVERED PARTY for:

- a.** Bodily injury, sickness, disease, or death of any person;
- b.** Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or
- c.** Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and are, therefore, considered

inappropriate for coverage under the Plan. YOU are encouraged to seek coverage for these CLAIMS through commercial insurance markets.

Prior to 1991 the Plan expressly excluded "personal injury" and "advertising injury," defining those terms in a manner similar to their definitions in standard commercial general liability policies. The deletion of these defined terms from this Exclusion is not intended to imply that all personal injury and advertising injury CLAIMS are covered. Instead, the deletion is intended only to permit coverage for personal injury or advertising injury CLAIMS, if any, that fall within the other coverage terms of the Plan.

Subsection b of this exclusion is intended to encompass a broad definition of property. For these purposes, property includes real, personal and intangible property (e.g. electronic data, financial instruments, money etc.) held by an attorney. However, Subsection b is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event the consequential damages resulting from the loss or damage to property would be covered. For the purposes of this Comment, "consequential damages" means the extent to which the attorney's professional services are adversely affected by the property damage or loss.

Example No. 1: Client gives Attorney A valuable jewelry to hold for safekeeping. The jewelry is stolen or lost. There is no coverage for the value of the stolen or lost jewelry, since the loss of the property did not adversely affect the performance of professional services. Attorney A can obtain appropriate coverage for such losses from commercial insurance sources.

Example No. 2: Client gives Attorney B a defective ladder from which Client fell. The ladder is evidence in the personal injury case Attorney B is handling for Client. Attorney B loses the ladder. Because the ladder is lost, Client loses the personal injury case. The CLAIM for the loss of the personal injury case is covered. The damages are the difference in the outcome of the personal injury case caused by the loss of the ladder. There would be no coverage for the loss of the value of the ladder. Coverage for the value of the ladder can be obtained through commercial insurance sources.

Example No. 3: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C for Client. After the conclusion of handling of the legal matter, the documents are lost or destroyed. Client makes a CLAIM for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this CLAIM, as loss of the documents did not adversely affect any professional services because the professional services had been completed. Again, coverage for loss of the property (documents) itself can be obtained through commercial general liability or other insurance or through a valuable papers endorsement to such coverage.

Child Abuse Reporting Statute. This exclusion would ordinarily exclude coverage for the type of damages that might be alleged against an attorney for failure to comply with ORS 419B.010, the child abuse reporting statute. (It is presently uncertain whether civil liability can arise under the statute.) If there is otherwise coverage under this Plan for a CLAIM arising under ORS 419B.010, the PLF will not apply Exclusion 16 to the CLAIM.

17. This Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and are, therefore, inappropriate for coverage under the Plan.

[PATENT EXCLUSION]

18. This Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error, or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Plan does not apply to any CLAIM for damages consisting of a special underwriting assessment imposed by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

- a.** Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b.** Any costs connected to ORS 20.160 or similar statute or rule;
- c.** For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d.** Claims in contract based upon an alleged promise to obtain a certain outcome or result.

COMMENTS

In the Plan, the PLF agrees to assume certain tort risks of Oregon attorneys for certain errors or omissions in the private practice of law; it does not assume the risk of making good on attorneys' contractual obligations. So, for example, an agreement to indemnify or guarantee an obligation will generally not be covered, except in the limited circumstances described in Subsection a. That subsection is discussed further below in this Comment.

Subsection b, while involving a statutory rather than contractual obligation, nevertheless expresses a similar concept, since under ORS 20.160 an attorney who represents a nonresident or foreign corporation plaintiff in essence agrees to guarantee payment of litigation costs not paid by his or her client.

Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they

are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.

Subsection d involves a specific type of agreement or representation: an alleged promise to obtain a particular outcome or result. One example of this would be an attorney who promises to get a case reinstated or to obtain a particular favorable result at trial or in settlement. In that situation, the attorney can potentially be held liable for breach of contract or misrepresentation regardless of whether his or her conduct met the standard of care. That situation is to be distinguished from an attorney's liability in tort or under the third party beneficiary doctrine for failure to perform a particular task, such as naming a particular beneficiary in a will or filing and serving a complaint within the statute of limitations, where the liability, if any, is not based solely on a breach of the attorney's guarantee, promise or representation.

Attorneys sometimes act in one of the special capacities for which coverage is provided under Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE). If the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20.a does not apply, although b, c, or d of this Exclusion may be applicable.

On the other hand, when an attorney is acting in an ordinary capacity not within the provisions of Section III.3, Exclusion 20 does apply to any CLAIM based on or arising out of any bond or any surety, guaranty, warranty, joint control, indemnification, or similar agreement signed by the attorney or by someone for whom the attorney is legally liable. In these situations, attorneys should not sign such bonds or agreements. For example, if an attorney is acting as counsel to a personal representative and the personal representative is required to post a bond, the attorney should resist any attempt by the bonding company to require the attorney to co-sign as a surety for the personal representative or to enter into a joint control or similar agreement that requires the attorney to review, approve, or control expenditures by the personal representative. If the attorney signs such an agreement and a CLAIM is later made by the bonding company, the estate, or another party, Exclusion 20 applies and there will be no coverage for the CLAIM.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Plan does not apply to any CLAIM arising out of YOUR activity (or the activity of someone for whose conduct you are legally liable) as a bankruptcy trustee.

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

22. This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.

COMMENTS

There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical

information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.

There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.

SECTION VI — LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE

1. Limits for This Plan

a. Coverage Limits. The PLF's maximum liability under this Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under Section XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF's Limit of Coverage.

b. Claims Expense Allowance Limits. In addition to the Limit of Coverage stated in Section VI.1.a above, there is a single CLAIMS EXPENSE ALLOWANCE of \$50,000 for CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under Section XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the CLAIMS EXPENSE ALLOWANCE. In the event CLAIMS EXPENSE exceeds the CLAIMS EXPENSE ALLOWANCE, the Limit of Coverage will be reduced by the amount of EXCESS CLAIMS EXPENSE incurred. The CLAIMS EXPENSE ALLOWANCE is not available to pay DAMAGES or settlements.

c. No Consequential Damages. No person or entity may recover any damages for breach of any provision in this Plan except those specifically provided for in this Plan.

2. Limits Involving Same or Related Claims Under Multiple Plans

If this Plan and one or more other Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES are separate is determined as of the time of the COVERED ACTIVITIES

that are alleged in the CLAIMS. No LAW ENTITY, or group of LAW ENTITIES practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE under this provision. The CLAIMS EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY requesting it.

COMMENTS

This Plan is intended to provide a basic “floor” level of coverage for all Oregon attorneys engaged in the private practice of law whose principal offices are in Oregon. Because of this, there is a general prohibition against the stacking of either Limits of Coverage or CLAIMS EXPENSE ALLOWANCES. Except for the provision involving CLAIMS EXPENSE ALLOWANCES under Subsection 2, only one Limit of Coverage and CLAIMS EXPENSE ALLOWANCE will ever be paid under any one Plan issued to a COVERED PARTY in any one PLAN YEAR, regardless of the circumstances. Limits of Coverage or CLAIMS EXPENSE ALLOWANCES in multiple individual Plans do not stack for any CLAIMS that are “related.” As the definition of SAME OR RELATED CLAIMS and its Comments and Examples demonstrate, the term “related” has a broad meaning when determining the number of Limits of Coverage and CLAIMS EXPENSE ALLOWANCES potentially available. This broad definition is designed to ensure the long-term economic viability of the PLF by protecting it from multiple limits exposures, ensuring fairness for all Oregon attorneys who are paying annual assessments, and keeping the overall coverage affordable.

Anti-stacking provisions in the PLF Plan may create hardships for particular COVERED PARTIES who do not purchase excess coverage. COVERED PARTIES who represent clients in situations in which single or multiple CLAIMS could result in exposure beyond one Limit of Coverage should purchase excess professional liability coverage.

Effective January 1, 2005, the PLF has created a limited exception to the one-limit rule for SAME OR RELATED CLAIMS. When such CLAIMS are asserted against more than one separate LAW ENTITY, and one of the LAW ENTITIES is entitled to and requests a separate defense of the SUIT, then the PLF will allow a separate CLAIMS EXPENSE ALLOWANCE for that LAW ENTITY.

The coverage provisions and limitations provided in this Plan are the absolute maximum amounts that can be recovered under the Plan. Therefore, no person or party is entitled to recover any consequential damages for breach of the Plan.

Example No. 1: Attorney A performed COVERED ACTIVITIES for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 Limit of Coverage and two CLAIMS EXPENSE ALLOWANCES. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate LAW ENTITY from the firm at which she worked. Accordingly, two, not three, CLAIMS EXPENSE ALLOWANCES are potentially available.

Example No. 2: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two CLAIMS EXPENSE ALLOWANCES are potentially available. There are only two separate firms – the BC partnership and D’s firm.

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 facts or circumstances that reasonably could be expected to be the basis of a CLAIM for which coverage may be provided under this Plan, 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.
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.

SECTION VIII — COVERAGE DETERMINATIONS

1. This Plan is governed by the laws of the State of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to the provision of benefits under this Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the State of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that

this Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.

4. The bankruptcy or insolvency of a COVERED PARTY does not relieve the PLF of its obligations under this Plan.

COMMENTS

Historically, Section VIII provided for resolution of coverage disputes by arbitration. After 25 years of resolving disputes in this manner, the PLF concluded it would be more beneficial to YOU and the PLF to try these matters to a court where appeals are available and precedent can be established.

Until the dispute over coverage is concluded, the PLF is not obligated to pay any amounts in dispute. The PLF recognizes there may occasionally be exceptional circumstances making a coverage determination impracticable prior to a payment by the PLF of a portion or all of the PLF's Limit of Coverage toward resolution of a CLAIM. For example, a claimant may make a settlement demand having a deadline for acceptance that would expire before coverage could be determined, or a court might determine on the facts before it that a binding determination on the relevant coverage issue should not be made while the CLAIM is pending. In some of these exceptional circumstances, the PLF may at its option pay a portion or all of the Limit of Coverage before the dispute concerning the question of whether this Plan is applicable to the CLAIM is decided. If the PLF pays a portion or all of the Limit of Coverage and the court subsequently determines that this Plan is not applicable to the CLAIM, then the COVERED PARTY or others on whose behalf the payment was made must reimburse the PLF, in order to prevent unjust enrichment and protect the solvency and financial integrity of the PLF. For a COVERED PARTY'S duties in this situation, see Section IX.3.

SECTION IX — ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY

1. As a condition of coverage under this Plan, the COVERED PARTY will, without charge to the PLF, cooperate with the PLF and will:

- a.** Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
- b.** Attend and testify when requested by the PLF;
- c.** Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
- d.** Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
- e.** Submit to arbitration of any CLAIM when requested by the PLF;

- f.** Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
 - g.** Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
 - h.** Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.
- 2.** To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.
- 3.** The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.
- 4.** In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:
- a.** Agrees to the PLF's proposal, or
 - b.** Objects to the PLF's proposal.

The written response must be made by the COVERED PARTY as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. A response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal

response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

The obligations of the Covered Party under Section IX as well as the other Sections of the Plan are to be performed without charge to the PLF.

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Plan will be brought against the PLF unless the COVERED PARTY has fully complied with all terms of this Plan.
2. The PLF may bring legal action in connection with this Plan against a COVERED PARTY if:
 - a. The PLF pays a CLAIM under another Plan issued by the PLF;
 - b. A COVERED PARTY under this Plan is alleged to be liable for all or part of the damages paid by the PLF;
 - c. As between the COVERED PARTY under this Plan and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY under this Plan for contribution, indemnity, or otherwise, for all or part of the damages paid; and
 - d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Plan.
3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this Subsection will not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery that would entitle the COVERED PARTY to indemnity under this Plan if the PLF's action were successful.

COMMENTS

Under certain circumstances, a CLAIM against YOU may not be covered because of an exclusion or other applicable provision of the Plan issued to YOU. However, in some cases the PLF may be required to pay the CLAIM nonetheless because of the PLF's obligation to another COVERED PARTY under the terms of his or her Plan. This might occur, for example, when YOU are the attorney responsible for a CLAIM and YOU have no coverage due to YOUR intentional or wrongful conduct, but YOUR partner did not engage in or know of YOUR wrongful conduct but is nevertheless allegedly liable. In these circumstances, if the PLF pays some or all of the CLAIM arising from YOUR conduct it is fair that the PLF has the right to seek recovery back from YOU; otherwise, the PLF would effectively be covering YOUR non-covered CLAIMS simply because other COVERED PARTIES were vicariously liable.

Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Plan, but Attorney B has

coverage for her liability under her Plan. The PLF pays the CLAIM under Attorney B's Plan. Section X.2 of Attorney A's Plan makes clear the PLF has the right to sue Attorney A for the damages the PLF paid under Attorney B's Plan.

Example No. 2: Same facts as the prior example, except that the PLF loans funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. Section X.2 of Attorney A's Plan makes clear that the PLF has the right pursuant to such arrangement with Attorney B to participate in her action against Attorney A.

SECTION XI — SUPPLEMENTAL ASSESSMENTS

This Claims Made Plan is assessable. Each PLAN YEAR is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for CLAIMS, CLAIMS EXPENSE, or other expenses arising from or incurred during either this PLAN YEAR or a previous PLAN YEAR, YOU agree to pay YOUR supplemental assessment to the PLF within 30 days of request.

The PLF is authorized to make additional assessments against YOU for this PLAN YEAR until all the PLF's liability for this PLAN YEAR is terminated, whether or not YOU are a COVERED PARTY under a Plan issued by the PLF at the time the assessment is imposed.

SECTION XII — RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If the COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify that also applies to any loss or CLAIM covered by this Plan, the PLF will not be liable under the Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage of this Plan.

COMMENTS

As explained in the Preface, this Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under Lamb-Weston v. Oregon Automobile Ins. Co. 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XIII — WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIV — AUTOMATIC EXTENDED CLAIMS REPORTING PERIOD

1. If YOU:
 - a. Terminate YOUR PLF coverage during the PLAN YEAR, or
 - b. Do not obtain PLF coverage as of the first day of the next PLAN YEAR,

YOU will automatically be granted an extended reporting period for this Plan at no additional cost. The extended reporting period will commence on the day after YOUR last day of PLF coverage and will continue until the expiration of the time allowed for any CLAIM to be made against YOU or any other COVERED PARTY listed in SECTION II of this Plan, or the date specified in Subsection 2, whichever date is earlier. Any extension granted under this Subsection will not increase the CLAIMS EXPENSE ALLOWANCE or the Limits of Coverage available under this Plan, nor provide coverage for YOUR activities which occur after YOUR last day of PLF coverage.

2. If YOU terminate YOUR PLF coverage during this PLAN YEAR and return to PLF coverage later in this same PLAN YEAR:
 - a. The extended reporting period granted to YOU under Subsection 1 will automatically terminate as of the date YOU return to PLF coverage;
 - b. The coverage provided under this Plan will be reactivated; and
 - c. YOU will not receive a new Limit of Coverage or CLAIMS EXPENSE ALLOWANCE on YOUR return to coverage.

COMMENTS

Subsection 1 sets forth YOUR right to extend the reporting period in which a CLAIM must be made. The granting of YOUR rights hereunder does not establish a new or increased CLAIMS EXPENSE ALLOWANCE or Limits of Coverage, but instead merely extends the reporting period under this Plan which will apply to all covered CLAIMS made against YOU during the extended reporting period. The terms and conditions of this Plan will continue to apply to all CLAIMS that may be made against YOU during the extended reporting period. This extended CLAIMS reporting period is subject to other limitations and requirements, which are available from the PLF on request.

Attorneys with PLF coverage who leave the private practice of law in Oregon during the PLAN YEAR are permitted to terminate their coverage mid-year and seek a prorated refund of their annual assessment under PLF Policy 3.400. Attorneys who do so will receive extended reporting coverage under this section effective as of the day following their last day of PLF coverage. For attorneys who engage in the private practice of law in Oregon through the end of the current PLAN YEAR but do not obtain PLF coverage at the start of the next PLAN YEAR, their extended reporting coverage begins on the first day after the current PLAN YEAR.

Example No. 1: Attorney A obtains regular PLF coverage in 2010 with a CLAIMS EXPENSE ALLOWANCE of \$50,000 and Limits of Coverage of \$300,000. One CLAIM is asserted in 2010 for which a total of \$200,000 is paid in indemnity and expense (including the entire \$50,000 CLAIMS EXPENSE ALLOWANCE). The remaining Limits of Coverage under the 2010 Plan are \$150,000. Attorney A leaves the private practice of law on December 31, 2010 and obtains extended reporting

coverage at no charge. The 2010 Plan will apply to all CLAIMS made in 2011 or later years, and only \$150,000 in Limits of Coverage (the balance left under Attorney A's 2010 Plan) is available for all CLAIMS made in 2011 or later years. There is no remaining CLAIMS EXPENSE ALLOWANCE for any new CLAIMS.

Example No. 2: Attorney B obtains regular PLF coverage in 2010, but leaves private practice on March 31, 2010 and obtains a prorated refund of her 2010 assessment. Attorney B will automatically obtain extended reporting coverage under her 2010 Plan as of April 1, 2010. Attorney B returns to PLF coverage on October 1, 2010. Her extended reporting coverage terminates as of that date, and she will not receive new Limits of Coverage or CLAIMS EXPENSE ALLOWANCE. If a CLAIM is made against her in November 2010, her 2010 Plan will cover the CLAIM whether it arises from an alleged error occurring before April 1, 2010 or on or after October 1, 2010.

SECTION XV — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed [specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, [include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable].

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information. If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,

[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing gives the client the opportunity and necessary information to obtain independent legal advice when the

attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a), DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help ensure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

~~PLF Policy 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 or group of related claims (the “Base Amount”) for all claims which are settled or closed by the PLF during the five year period ending September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.~~

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

~~(C) — Reductions to Indemnity and Expense: Net amounts actually received by the PLF (net of collection costs and not including interest or any increase in value) 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. The value of non-cash reductions will be determined by the PLF Board of Directors. Reinsurance payments will not be treated as reductions to indemnity.~~

~~(D) — Allocation and Vicarious Liability:~~

~~(1) — The Covered Party causing or responsible for the claim or group of related claims will be assessed. When more than one PLF covered attorney is involved, SUA will be allocated in proportion to each PLF covered attorney’s degree of responsibility or fault. The SUA allocation will be based on any indemnity payments made and defense costs expended, except that a PLF covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses. SUA may be allocated to a Covered Party even though no claim was made against the Covered Party if it appears that a claim would or could have been made but for the final disposition of the claim giving rise to the SUA under consideration. However, the SUA allocated to such Covered Party will be waived if the Covered Party was not informed by the PLF prior to the final disposition of the claim:~~

~~(a) of the claim giving rise to the SUA;~~

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

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

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

~~SUA allocation:~~

~~(2) Initial Allocation of Responsibility: The Chief Executive Officer 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.~~

~~(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.~~

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

~~(F) Petition for Review:~~

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

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

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

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

~~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.~~

2014

PLF Claims Made Excess Plan

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OREGON STATE BAR PROFESSIONAL LIABILITY FUND

CLAIMS MADE EXCESS PLAN

Effective January 1, 2014

THIS IS A CLAIMS MADE EXCESS PLAN – PLEASE READ CAREFULLY

NOTICE

THIS EXCESS PLAN IS WRITTEN AS SPECIFIC EXCESS COVERAGE TO THE PLF CLAIMS MADE PLAN AND CONTAINS PROVISIONS MORE RESTRICTIVE THAN THE COVERAGE AFFORDED BY THE PLF CLAIMS MADE PLAN. THIS EXCESS PLAN CONTAINS PROVISIONS THAT REDUCE THE LIMITS OF COVERAGE BY THE COSTS OF LEGAL DEFENSE. THIS EXCESS PLAN IS ASSESSABLE.

Various provisions in this Excess Plan restrict coverage. Read the entire Excess Plan to determine rights, duties and what is and is not covered.

INTERPRETATION OF THIS EXCESS PLAN

Bracketed Titles. The bracketed titles appearing throughout this Excess Plan are not part of the Excess Plan and should not be used as an aid in interpreting the Excess Plan. The bracketed titles are intended simply as a guide to aid the reader in locating pertinent provisions.

Plan Comments. In contrast, the discussions labeled "COMMENTS" following various provisions of this Excess Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of this Excess Plan.

Use of Capitals. Capitalized terms are defined in Section I of this Excess Plan and the PLF CLAIMS MADE PLAN. The definition of COVERED PARTY appearing in Section II and the definition of COVERED ACTIVITY appearing in Section III are particularly crucial to the understanding of the coverage grant.

COMMENTS

History. *Through the issuance of separate PLF PLANS to each individual attorney, the PLF provides primary malpractice coverage to all attorneys engaged in the private practice of law in Oregon. This Excess Plan was created pursuant to enabling legislation empowering the Board of Governors of the Oregon State Bar to establish an optional, underwritten program of excess malpractice coverage through the PLF for those attorneys and firms which want higher coverage limits. See ORS 9.080 (2) (a) and its legislative history. The PLF has been empowered to do whatever is necessary and convenient to achieve*

this objective. See, e.g., Balderree v. Oregon State Bar, 301 Or 155, 719 P2d 1300 (1986). Pursuant to this authority, the PLF has adopted this Excess Plan.

Claims Made Form. *This Excess Plan is a claims made coverage plan. This Excess Plan is a contractual agreement between the PLF and THE FIRM.*

Interpretation of the Excess Plan. *This Excess Plan is to be interpreted throughout in a manner consistent with the interpretation of the PLF CLAIMS MADE PLAN. Accordingly, Comments to language in the PLF PLAN apply to similar language in this Excess Plan.*

Purpose of Comments. *These Comments are similar in form to the UCC and Restatements. They are intended to aid in the construction of the language of this Excess Plan. By the addition of these Comments, the PLF hopes to avoid the existence of any ambiguities, to assist attorneys in interpreting the coverage available to them, and to provide a specific basis for interpretation.*

SECTION I – DEFINITIONS

1. Throughout this Excess Plan, the following terms, when appearing in capital letters, mean the same as their definitions in the PLF CLAIMS MADE PLAN:

- a. PLF
- b. SUIT
- c. CLAIM
- d. SAME OR RELATED CLAIMS
- e. DAMAGES
- f. BUSINESS TRUSTEE
- g. CLAIMS EXPENSE
- h. COVERAGE PERIOD
- i. INVESTMENT ADVICE
- j. LAW ENTITY

2. Throughout this Excess Plan, when appearing in capital letters:

- a. The words “THE FIRM” refer to the law entities designated in Sections 1 and 11 of the Declarations.
- b. “COVERED PARTY” means any person or organization qualifying as such under Section II – WHO IS A COVERED PARTY.
- c. “COVERED ACTIVITY” means conduct qualifying as such under Section III -- WHAT IS A COVERED ACTIVITY.
- d. “PLAN YEAR” means the period January 1 through December 31 of the calendar year for which this Excess Plan was issued.
- e. The words "PLF CLAIMS MADE PLAN" or "PLF PLAN" refer to the PLF Claims Made Plan issued by the PLF as primary coverage for the PLAN YEAR.
- f. The words "APPLICABLE UNDERLYING LIMIT" mean the aggregate total of (1) the amount of the coverage afforded by the applicable PLF PLANS issued to all persons qualifying as COVERED PARTIES under the terms of this Excess Plan, plus (2) the amount of any other coverage available to any COVERED PARTY with respect to the CLAIM for which coverage is sought.
- g. “FIRM ATTORNEY” means an attorney listed in Section 10 of the Declarations.
- h. “FORMER ATTORNEY” means an attorney listed in Section 12 of the Declarations.

- i. “NON-OREGON ATTORNEY” means an attorney listed in Section 14 or 15 of the Declarations.
- j. “EXCLUDED ATTORNEY” means an attorney listed in Section 16 of the Declarations.
- k. “EXCLUDED FIRM” means a LAW ENTITY listed in Section 17 of the Declarations.

SECTION II – WHO IS A COVERED PARTY

The following are COVERED PARTIES:

1. THE FIRM, except that THE FIRM is not a COVERED PARTY with respect to liability arising out of conduct of an attorney who was affiliated in any way with THE FIRM at any time during the five years prior to the beginning of the COVERAGE PERIOD but is not listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations.

2. Any person listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM.

3. Any former partner, shareholder, member, or attorney employee of THE FIRM, or any person formerly in an “of counsel” relationship to THE FIRM, who ceased to be affiliated in any way with THE FIRM more than five years prior to the beginning of the COVERAGE PERIOD, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM and only for COVERED ACTIVITIES that took place while a PLF CLAIMS MADE PLAN issued to that person was in effect.

4. In the event of death, adjudicated incapacity, or bankruptcy, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of any COVERED PARTY listed in Subsections 1 to 3 but only to the extent that such COVERED PARTY would otherwise be provided coverage under this Excess Plan.

5. Any attorney who becomes affiliated with THE FIRM after the beginning of the COVERAGE PERIOD who has been issued a PLF PLAN by the PLF, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM. However, newly affiliated attorneys are not automatically COVERED PARTIES under this Subsection if: (a) the number of FIRM ATTORNEYS increases by more than 100 percent; (b) there is a firm merger or split; (c) an attorney joins or leaves a branch office of THE FIRM outside Oregon; (d) a new branch office is established outside Oregon; (e) THE FIRM or a current attorney with THE FIRM enters into an “of counsel” relationship with another firm or with an attorney who was not listed as a current attorney at the start of the COVERAGE PERIOD; or (f) THE FIRM hires an attorney who is not eligible to participate in the PLF’s CLAIMS MADE PLAN.

COMMENTS

Firms are generally not required to notify the PLF if an attorney joins or leaves THE FIRM after the start of the COVERAGE PERIOD, and are neither charged a prorated excess assessment nor receive a prorated refund for such changes. New attorneys who join after the start of the COVERAGE PERIOD are covered for their actions on behalf of THE FIRM during the remainder of the year. All changes after the start of the COVERAGE PERIOD should be reported to the PLF in THE FIRM’S renewal application for the next year.

Firms are required to notify the PLF after the start of the COVERAGE PERIOD, however, if any of the six circumstances listed in Subsection 5 apply. Under these circumstances, THE FIRM'S coverage will be subject again to underwriting, and a prorated adjustment may be made to THE FIRM'S excess assessment.

Please note also that FIRM ATTORNEYS, FORMER ATTORNEYS, and NON-OREGON ATTORNEYS have coverage under this Excess Plan only for CLAIMS which arise out of work performed for THE FIRM. For example, there is no coverage for CLAIMS which arise out of work performed for another firm before an attorney began working for THE FIRM; the attorney will have coverage, if at all, only under any Excess Plan or policy maintained by the other firm.

SECTION III – WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES:

[COVERED PARTY'S CONDUCT]

1. Any act, error, or omission by an attorney COVERED PARTY in the performance of professional services in the COVERED PARTY'S capacity as an attorney in private practice, as long as the act, error, or omission was rendered on behalf of THE FIRM and occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations.

[CONDUCT OF OTHERS]

2. Any act, error, or omission by a person, other than an EXCLUDED ATTORNEY, for whose conduct an attorney COVERED PARTY is legally liable in the COVERED PARTY'S capacity as an attorney for THE FIRM provided each of the following criteria is satisfied:

a. The act, error, or omission causing the attorney COVERED PARTY'S liability occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations;

b. The act, error, or omission, if committed by the attorney COVERED PARTY, would constitute the providing of professional services in the attorney COVERED PARTY'S capacity as an attorney in private practice; and

c. The act, error, or omission was not committed by an attorney who either (1) was affiliated in any way with THE FIRM during the five years prior to the COVERAGE PERIOD but was not listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations; or (2) ceased to be affiliated with THE FIRM more than five years prior to the beginning of the COVERAGE PERIOD but was not covered by a PLF CLAIMS MADE PLAN at the time of the act, error, or omission.

[COVERED PARTY'S CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission by an attorney COVERED PARTY in his or her capacity as a personal representative, administrator, conservator, executor, guardian, special representative pursuant to ORS 128.179 or similar statute, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above; the CLAIM is brought by or for the benefit of a beneficiary of the special

capacity relationship and arises out of a breach of that relationship; and such activity occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations.

COMMENTS

To qualify for coverage a claim must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage. For additional Comments and examples discussing this requirement, see the Comments to Section III in the PLF CLAIMS MADE PLAN.

Retroactive Date. *This Section introduces the concept of a Retroactive Date. If a Retroactive Date applies to a CLAIM to place it outside the definition of a COVERED ACTIVITY, there will be no coverage for the CLAIM under this Excess Plan as to any COVERED PARTY, even for vicarious liability.*

Example: *Attorneys A and B practice as partners and apply for excess coverage from the PLF for Year 1. A has had several recent large claims arising from an inadequate docket control system, but implemented an adequate system on July 1 of the previous year. For underwriting reasons, the PLF decides to offer coverage to the firm under this Excess Plan with a Retroactive Date of July 1 of the previous year. A CLAIM is made against Attorney A, Attorney B, and the firm during Year 1 arising from conduct of Attorney A occurring prior to July 1 of the previous year. Because the conduct in question occurred prior to the firm's Retroactive Date under this Excess Plan, the CLAIM does not fall within the definition of a COVERED ACTIVITY and there is no coverage for the CLAIM for Attorney A, B, or the firm.*

SECTION IV – GRANT OF COVERAGE

1. Indemnity.

a. The PLF will pay those sums in excess of any APPLICABLE UNDERLYING LIMITS or applicable Deductible that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Excess 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 Excess Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD, except as provided in this Subsection. A CLAIM will be deemed to have been first made at the time it would be deemed first made under the terms of the PLF PLAN. Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time they are deemed first made under the terms of the applicable PLF PLAN; provided, however, that a CLAIM that is asserted against a COVERED PARTY during the COVERAGE PERIOD will not relate back to a previous SAME OR RELATED CLAIM if prior to the COVERAGE PERIOD (1) none of the SAME OR RELATED CLAIMS were made against any COVERED PARTY in this Excess Plan and (2) no COVERED PARTY had knowledge of any facts reasonably indicating that any CLAIM could or would be made in the future against any COVERED PARTY.

c. This Excess Plan applies only if the COVERED ACTIVITY giving rise to the CLAIM happens:

(1) During the COVERAGE PERIOD, or

(2) Prior to the COVERAGE PERIOD, provided that both of the following conditions are met:

(a) Prior to the effective date of this Excess Plan no COVERED PARTY had a basis to believe that the act, error, or omission was a breach of professional duty or may result in a CLAIM; and

(b) There is no prior policy or policies or agreements to indemnify which provide coverage for such liability or CLAIM, whether or not the available limits of liability of such prior policy or policies or agreements to indemnify are sufficient to pay any liability or CLAIM or whether or not the underlying limits and amount of such policy or policies or agreements to indemnify are different from this Excess Plan.

Subsection c(2)(a) of this Section will not apply as to any COVERED PARTY who, prior to the effective date of this Excess Plan, did not have a basis to believe that the act, error, or omission was a breach of professional duty or may result in a CLAIM, but only if THE FIRM circulated its Application for coverage among all FIRM ATTORNEYS listed in Section 10 of the Declarations and Current NON-OREGON ATTORNEYS listed in Section 14 of the Declarations before THE FIRM submitted it to the PLF.

d. This Excess Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe within the United States. This Excess Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe within the United States.

e. The amount the PLF will pay is limited as described in SECTION VI.

f. Coverage under this Excess Plan is conditioned upon full and timely payment of all assessments.

COMMENTS

Claims Made Form. *This is a claims made Excess Plan. It applies to CLAIMS first made during the COVERAGE PERIOD shown in the Declarations. CLAIMS first made either prior to or subsequent to the COVERAGE PERIOD are not covered by this Excess Plan.*

When Claim First Made; Multiple Claims. *Except as specifically provided, this Excess Plan does not cover CLAIMS made prior to the COVERAGE PERIOD. The Excess Plan is intended to follow the terms of the PLF CLAIMS MADE PLAN with respect to when a CLAIM is first made and with respect to the treatment of multiple CLAIMS. See Section I.8, IV.1(b)(2), and VI.2, and related Comments and Examples in the PLF PLAN. However, because of the exception in Subsection 1.b. in this Excess Plan, CLAIMS made during the COVERAGE PERIOD will not relate back to previously made CLAIMS that were made against other attorneys or firms, as long as THE FIRM did not reasonably know that a CLAIM would be made under this Excess Plan.*

Example: *Firm G does not maintain excess coverage. Firm G and one of its members, Attorney A, are sued by Claimant in Year 1. The claim is covered under Attorney A's Year 1 primary PLF PLAN. Claimant amends the complaint in Year 2, and for the first time asserts the same claim also against Firm H and one of its members, Attorney B. Neither Firm H nor Attorney B had previously been aware of the potential claim, and no notice of a potential claim against Attorney B or Firm H had previously been given to the PLF or any other carrier. Firm H carried its Year 1 excess coverage*

with Carrier X and carries its Year 2 excess coverage with the PLF. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in Year 1 and did not purchase tail coverage from Carrier X. Under the terms of Subsection b.1, in these limited circumstances, Firm H's Year 2 Excess Plan would become excess to the Year 1 PLF CLAIMS MADE PLAN issued by the PLF as primary coverage to Attorney B.

Covered Activity During Coverage Period. To the extent that any COVERED PARTY under this Excess Plan has knowledge prior to the COVERAGE PERIOD that particular acts, errors, or omissions have given rise or could give rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered under this Excess Plan. Such CLAIMS should instead be covered under the policy or plan in force, if any, at the time the first such CLAIM was made or notice of a potential CLAIM could have been given under the terms of the prior policy or plan. Subsection (c) achieves these purposes by limiting the terms of the Coverage Grant with respect to acts, errors, or omissions which happen prior to the COVERAGE PERIOD so that no coverage is granted where there is prior knowledge, prior insurance or other coverage.

Example: Law firm maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year, and could report it as a suspense matter or incident report to Carrier X at that time and obtain coverage under the firm's excess policy. The firm does not report the potential claim to Carrier X in Year 1. The firm obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 Excess Plan with the PLF. This is true whether or not Carrier X provides coverage for the claim.

Example: Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities, but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm, but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the Coverage Period, and because the firm did not circulate its application among the FIRM ATTORNEYS and Current NON-OREGON ATTORNEYS before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.

Example: Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Subsection c(2) will not be applied to deny coverage for the CLAIM as to Attorneys A and B and THE FIRM. However, there will be no coverage for Attorney C because the CLAIM falls outside the coverage grant under the terms of Subsection c(2)(b) and because Attorney C made a material misrepresentation to the PLF in the application.

2. Defense

a. After all APPLICABLE UNDERLYING LIMITS have been exhausted and the applicable Deductible has been expended, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies until the Limits of Coverage extended by this Excess Plan are exhausted. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct defense, repair, or prevention of any CLAIM or potential CLAIM.

b. With respect to any CLAIM or potential CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSES the PLF may incur. All payments will reduce the Limits of Coverage.

c. If the Limits of Coverage stated in the Declarations are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

SECTION V – EXCLUSIONS FROM COVERAGE

COMMENTS

Although many of the Exclusions in this Excess Plan are similar to the Exclusions in the PLF CLAIMS MADE PLAN, the Exclusions have been modified to apply to the Excess Plan and should be read carefully. For example, because the Excess Plan is issued to law firms rather than to individual attorneys, the Exclusions were modified to make clear which ones apply to all firm members and which apply only to certain firm members. Exclusions 22 (office sharing), 23 (excluded attorney), and 24 (excluded firm) are not contained in the PLF CLAIMS MADE PLAN.

[WRONGFUL CONDUCT EXCLUSIONS]

1. This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
2. This Excess Plan does not apply to any COVERED PARTY for any CLAIM based upon or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by that COVERED PARTY or at the direction of that COVERED PARTY, or in which that COVERED PARTY acquiesces or remains passive after having personal knowledge thereof.
3. This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought by the Oregon State Bar or any similar entity.
4. This Excess 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 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.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Excess Plan does not apply to that part of any CLAIM based upon or arising out of any COVERED PARTY'S conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

6. This Excess Plan does not apply to any CLAIM by or on behalf of any business enterprise:

a. In which any COVERED PARTY has an ownership interest or had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;

b. In which any COVERED PARTY is a general partner, managing member, or employee, or was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions upon which the CLAIM is based; or

c. That is controlled, operated, or managed by any COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.

Ownership interest, for purposes of this exclusion, will not include any ownership interest now or previously held solely as a passive investment as long as all COVERED PARTIES, those they control, spouses, parents, step-parents, children, step-children, siblings, or any member of their households, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

7. This Excess Plan does not apply to any CLAIM made by:

a. THE FIRM'S present, former, or prospective partner, employer, or employee, or

b. A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY was a shareholder,

unless such CLAIM arises out of conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

8. This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless disclosure in the form of Disclosure Form ORPC 1, attached as Exhibit A to this Excess Plan, has been properly executed prior to the occurrence giving rise to the CLAIM and either:

a. A copy of the executed disclosure form is forwarded to the PLF within ten (10) calendar days of execution, or

b. If delivery of a copy of the disclosure form to the PLF within ten (10) calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, the COVERED PARTY may instead send the PLF an alternative letter stating: (1) the name of the client with whom the COVERED PARTY is participating in a business transaction; (2) that the COVERED PARTY has provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a) or their equivalents; (3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within ten (10) calendar days of execution of the disclosure letter.

9. This Excess Plan does not apply to any CLAIM based upon or arising out of any act, error, or omission in the course of providing INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all of the INVESTMENT ADVICE constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10 of the PLF CLAIMS MADE PLAN.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Excess Policy does not apply to any CLAIM:

- a.** For the return of any fees, costs, or disbursements, including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;
- b.** Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements; or
- c.** For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

11. This Excess Plan does not apply to any CLAIM based upon or arising out of an attorney COVERED PARTY'S legal services performed on behalf of the attorney COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest, based upon or arising out of the acts, errors, or omissions of that COVERED PARTY.

COMMENTS

Work performed for family members is not covered under this Excess Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Excess Plan does not apply to any CLAIM arising out of any COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM'S employee and no COVERED PARTY has actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCUSION]

14. This Excess Plan does not apply to any CLAIM arising out of any conduct:

- a.** As a public official or an employee of a governmental body, subdivision, or agency; or
- b.** In any other capacity which comes within the defense and indemnity requirements of ORS 30.285 and 30.287 or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all rights against the public body.

[HOUSE COUNSEL EXCLUSION]

15. This Excess Plan does not apply to any CLAIM arising out of any conduct as an employee in an employer-employee relationship other than as an employee for a LAW ENTITY.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Excess Plan does not apply to any CLAIM against any COVERED PARTY for:

- a.** Bodily injury, sickness, disease, or death of any person;
- b.** Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or
- c.** Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

17. This Excess Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

[PATENT EXCLUSION]

18. This Excess Plan does not apply to any CLAIM based upon or arising out of professional services performed or any act, error, or omission committed in relation to the prosecution of a patent if the COVERED PARTY who performed the services was not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Excess Plan does not apply to any CLAIM arising out of a special underwriting assessment by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

- a.** Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b.** Any costs connected to ORS 20.160 or similar statute or rule;
- c.** For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d.** Claims in contract based upon an alleged promise to obtain a certain outcome or result.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Excess Plan does not apply to any CLAIM arising out of any COVERED PARTY'S activity as a bankruptcy trustee.

[OFFICE SHARING EXCLUSION]

22. This Excess Plan does not apply to any CLAIM alleging the vicarious liability of any COVERED PARTY under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom THE FIRM or attorney COVERED PARTIES shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

[EXCLUDED ATTORNEY EXCLUSION]

23. This Excess Plan does not apply to any CLAIM against any COVERED PARTY:

a. Arising from or relating to any act, error, or omission of any EXCLUDED ATTORNEY in any capacity or context, whether or not the COVERED PARTY personally participated in any such act, error, or omission or is vicariously liable, or

b. Alleging liability for the failure of a COVERED PARTY or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any EXCLUDED ATTORNEY.

[EXCLUDED FIRM EXCLUSION]

24. This Excess Plan does not apply to any CLAIM made against a COVERED PARTY:

a. Which arises from or is related to any act, error, or omission of:

(1) An EXCLUDED FIRM, or

(2) A past or present partner, shareholder, associate, attorney, or employee (including any COVERED PARTY) of an EXCLUDED FIRM while employed by, a partner or shareholder of, or in any way associated with an EXCLUDED FIRM,

in any capacity or context, and whether or not the COVERED PARTY personally participated in any such act, error, or omission or is vicariously liable therefore, or

b. Alleging liability for the failure of a COVERED PARTY or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any EXCLUDED FIRM or any person described in Subsection a(2) above.

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

25. This Excess Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.

COMMENTS

There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party

or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.

There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.

SECTION VI – LIMITS OF COVERAGE AND DEDUCTIBLE

1. Limits of Coverage

a. Regardless of the number of COVERED PARTIES under this Excess Plan, the number of persons or organizations who sustain damage, or the number of CLAIMS made, the PLF's maximum liability for indemnity and CLAIMS EXPENSE under this Excess Plan will be limited to the amount shown as the Limits of Coverage in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of CLAIMS against more than one COVERED PARTY does not increase the PLF's Limit of Coverage.

b. If the SAME OR RELATED CLAIMS are made in the PLAN YEAR of this Excess Plan and the PLAN YEARS of other Excess Plans issued to THE FIRM by the PLF, then only a single Limit of Coverage will apply to all such CLAIMS.

2. Deductible

a. The Deductible for COVERED PARTIES under this Excess Plan who are not also covered under the PLF CLAIMS MADE PLAN is either the maximum Limit of Liability for indemnity and Claims Expense under any insurance policy covering the CLAIM or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.

b. THE FIRM is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or CLAIMS EXPENSE as a result of a CLAIM for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each CLAIM, except for SAME OR RELATED CLAIMS. The Deductible amount must be paid by THE FIRM as CLAIMS EXPENSES are incurred or a payment of indemnity is made. At the PLF's option, it may pay such CLAIMS EXPENSES or indemnity, and THE FIRM will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

COMMENTS

The making of the SAME OR RELATED CLAIMS against one or more lawyers in THE FIRM will not "stack" or create multiple Limits of Coverage. This is true even if the CLAIMS are made in different Plan Years. In that event, the applicable limit will be available limits from the Excess Plan in effect in the Plan Year in which the SAME OR RELATED CLAIMS are deemed first made. In no event will more than one Limit of Liability be available for all such CLAIMS.

Under the PLF CLAIMS MADE PLAN, the SAME OR RELATED CLAIMS will result in only one Limit of Coverage being available, even if CLAIMS are made against COVERED PARTIES in different LAW ENTITIES. The Excess Plan works differently. The limits of Excess Plans issued to different firms

may, where appropriate, “stack”; Excess Plans issued to any one firm do not. If SAME OR RELATED CLAIMS are made against COVERED PARTIES under Excess Plans issued by the PLF to two or more Law Firms, the available Limit of Coverage for THE FIRM under this Excess Plan will not be affected by the Limits of Coverage in other Excess Plans. THE FIRM, however, cannot “stack” limits of multiple Excess Plans issued to it for the SAME OR RELATED CLAIMS.

SECTION VII – NOTICE OF CLAIMS

1. THE FIRM must, as a condition precedent to the right of protection afforded any COVERED PARTY by this coverage, give the PLF, at the address shown in the Declarations, written notice of any CLAIM that is reasonably likely to involve any of the coverages of this Excess Plan. In the event a SUIT is brought against any COVERED PARTY, which is reasonably likely to involve any of the coverages of this Excess Plan, THE FIRM 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 during the COVERAGE PERIOD, any COVERED PARTY becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM for which coverage may be provided under this Excess Plan, THE FIRM must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:
 - a. The specific act, error, or omission;
 - b. The injury or damage that has resulted or may result; and
 - c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.
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.

SECTION VIII – COVERAGE DETERMINATIONS

1. This Excess Plan is governed by the laws of the State of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Excess Plan. Any dispute as to the applicability, interpretation, or enforceability of this Excess Plan, or any other issue pertaining to the provision of benefits under this Excess Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.

2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Excess Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.
4. The bankruptcy or insolvency of a COVERED PARTY will not relieve the PLF of its obligations under this Excess Plan.

SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY

As a condition of coverage under this Excess Plan, every COVERED PARTY must satisfy all conditions of the PLF CLAIMS MADE PLAN.

COMMENTS

Among the conditions of coverage referred to in this section are the conditions of coverage stated at Section IX of the PLF PLAN.

The obligations of the COVERED PARTIES under this section as well as the other sections of the Excess Plan are to be performed without charge to the PLF.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Excess Plan may be brought against the PLF unless all COVERED PARTIES have fully complied with all terms of this Excess Plan.
2. The PLF may bring an ACTION against a COVERED PARTY if:
 - a. The PLF pays a CLAIM under this Excess Plan or any other Excess Plan issued by the PLF;
 - b. The COVERED PARTY under this Excess Plan is alleged to be liable for all or part of the damages paid by the PLF;

c. As between the COVERED PARTY and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY for contribution, indemnity, or otherwise, for all or part of the damages paid; and

d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Excess Plan.

3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate up to the full amount the PLF has paid. However, this section shall not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery which would entitle the COVERED PARTY to indemnity under this Excess Plan if the PLF's action were successful.

COMMENTS

Under certain circumstances, a claim against a COVERED PARTY may not be covered because of an exclusion or other applicable provision of the Excess Plan issued to a firm. However, in some cases the PLF may be required to pay the claim nonetheless because of its obligation to another COVERED PARTY under the terms of the firm's Excess Plan or under another Excess Plan issued by the PLF. This might occur, for example, when the attorney responsible for a claim has no coverage due to his or her intentional wrongful conduct, but his or her partner did not engage in or know of the wrongful conduct but is nevertheless allegedly liable. In these circumstances, if the PLF pays some or all of the claim arising from the responsible attorney's conduct, it is only fair that the PLF have the right to seek recovery back from that attorney; otherwise, the PLF would effectively be covering the attorney's non-covered claims under this Excess Plan simply because other COVERED PARTIES were also liable.

Example: Attorney A misappropriates trust account funds belonging to Client X.

Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the claim under his applicable PLF PLAN or the firm's Excess Plan, but Attorney B has coverage for her liability under an Excess Plan issued by the PLF. The PLF pays the claim. Section X.2 makes clear the PLF has the right to sue Attorney A for the damages the PLF paid.

Example: Same facts as prior example, except that the PLF loans funds to the person or entity liable under terms which obligate the borrower to repay the loan to the extent the borrower recovers damages from Attorney A in an action for indemnity. Section X.2 makes clear the PLF has the right pursuant to such arrangement to participate in the borrower's indemnity action against Attorney A.

SECTION XI – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each PLAN YEAR is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for CLAIMS, CLAIMS EXPENSE, or other expenses arising from or incurred during either this PLAN YEAR or a previous PLAN YEAR, THE FIRM agrees to pay its supplemental assessment to the PLF within thirty (30)

days of request. THE FIRM further agrees that liability for such supplemental assessments shall be joint and several among THE FIRM and the partners, shareholders, and professional corporations listed as FIRM ATTORNEYS in the Declarations.

The PLF is authorized to make additional assessments for this PLAN YEAR until all its liability for this PLAN YEAR is terminated, whether or not any COVERED PARTY maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

COMMENTS

This section is limited to a statement of the COVERED PARTIES' contractual obligation to pay supplemental assessments should the assessments originally levied be inadequate to pay all claims, claims expense, and other expenses arising from this PLAN YEAR. It is not intended to cover other assessments levied by the PLF, such as the assessment initially paid to purchase coverage under this Excess Plan or any regular or special underwriting assessment paid by any member of THE FIRM in connection with the primary PLF PLAN.

SECTION XII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self insurance, which also applies to any loss or CLAIM covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the Limits of Coverage of this Excess Plan.

COMMENTS

This Excess Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Excess Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under Lamb-Weston v. Oregon Automobile Ins. Co., 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XIII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Excess Plan, nor shall the terms of this Excess Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIV – EXTENDED REPORTING COVERAGE

THE FIRM becomes eligible to purchase extended reporting coverage after 24 months of continuous excess coverage with the PLF. Upon termination or cancellation of this Excess Plan by either THE FIRM or the PLF, THE FIRM, if qualified, has the right to purchase extended reporting coverage for one of the following periods for an additional assessment equal to the percent shown below of the assessment levied against THE FIRM for this Excess Plan (as calculated on an annual basis).

Extended Reporting Coverage Period	Additional Assessment
12 Months	100 percent
24 Months	160 percent
36 Months	200 percent
60 Months	250 percent

THE FIRM must exercise this right and pay the assessment within 30 days after the termination or cancellation. Failure to exercise THE FIRM'S right and make payment within this 30-day period will result in forfeiture of all THE FIRM'S rights under this Section.

If THE FIRM qualifies for extended reporting coverage under this Section and timely exercises its rights and pays the required assessment, it will be issued an endorsement extending the period within which a CLAIM can be first made for the additional reporting period after the date of termination or cancellation which THE FIRM has selected. This endorsement will not otherwise change the terms of this Excess Plan. The right to extended reporting coverage under this Section will not be available if cancellation is by the PLF because of:

- a. The failure to pay when due any assessment or other amounts to the PLF; or
- b. The failure to comply with any other term or condition of this Excess Plan.

COMMENTS

This section sets forth THE FIRM'S right to extended reporting coverage. Exercise of the rights hereunder does not establish new or increased limits of coverage and does not extend the period during which the COVERED ACTIVITY must occur to be covered by this Excess Plan.

Example: A firm obtains excess coverage from the PLF in Year 1, but discontinues coverage in Year 2. The firm exercises its rights under Section XIV of the Year 1 Excess Plan and purchases an extended reporting coverage period of 36 months during the first 30 days of Year 2. A CLAIM is made against THE FIRM in March of Year 3 based upon a COVERED ACTIVITY of a firm member occurring in October of Year 1. Because the claim was made during the 36-month extended reporting coverage period and arose from a COVERED ACTIVITY occurring during the COVERAGE PERIOD, it is covered under the terms and within the remaining Limits of Coverage of THE FIRM'S Year 1 Excess Plan.

Example: Same facts as prior example, except the claim which is made against THE FIRM in March of Year 3 is based upon an alleged error of a firm member occurring in January of Year 2. Because the alleged error occurred after the end of the COVERAGE PERIOD for the Year 1 Excess Plan, the claim does not fall within the terms of the extended reporting coverage and so there is no coverage for the claim under THE FIRM'S Year 1 Excess Plan.

SECTION XV – ASSIGNMENT

THE FIRM'S interest hereunder and the interest of any COVERED PARTY is not assignable.

SECTION XVI – OTHER CONDITIONS

1. Application

A copy of the Application which THE FIRM submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide THE FIRM with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- a. Are contained in the Application;
- b. Are material and have been relied upon by the PLF; and
- c. Are either:
 - (1) Fraudulent; or
 - (2) Material either to the acceptance of the risk or to the hazard assumed by the PLF.

2. Cancellation

a. This Excess Plan may be canceled by THE FIRM by surrender of the Excess Plan to the PLF or by mailing or delivering written notice to the PLF stating when thereafter such cancellation will be effective. If canceled by THE FIRM, the PLF will retain the assessment on a pro rata basis.

b. This Excess Plan may be canceled by the PLF for any of the following reasons:

(1) IF THE FIRM has failed to pay an assessment when due, the PLF may cancel the Excess Plan by mailing to THE FIRM written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

(2) Other than for nonpayment of assessments as provided for in Subsection b(1) above, coverage under this Excess Plan may be canceled by the PLF prior to the expiration of the COVERAGE PERIOD only for one of the following specific reasons:

- a. Material misrepresentation by any COVERED PARTY;
- b. Substantial breaches of contractual duties, conditions, or warranties by any COVERED PARTY; or
- c. Revocation, suspension, or surrender of any COVERED PARTY'S license or right to practice law.

Such cancellation may be made by mailing or delivering of written notice to THE FIRM stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

The time of surrender of this Excess Plan or the effective date and hour of cancellation stated in the notice shall become the end of the COVERAGE PERIOD. Delivery of a written notice either by THE FIRM or by the PLF will be equivalent to mailing. If the PLF cancels, assessments shall be computed and refunded to THE FIRM pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter.

3. Termination

This Excess Plan is non-renewable. This Excess Plan will automatically terminate on the date and time shown as the end of the COVERAGE PERIOD in the Declarations unless canceled by the PLF or by THE FIRM in accordance with the provisions of this Excess Plan prior to such date and time.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed **[specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]**. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, **[include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable]**.

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information.

If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,

[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing gives the client the opportunity and necessary information to obtain independent legal advice when the attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a),

DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help ensure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

CYBER LIABILITY AND BREACH RESPONSE ENDORSEMENT

NOTICE

COVERAGE AGREEMENTS I.A., I.C. AND I.D. OF THIS ENDORSEMENT PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST A COVERED PARTY DURING THE COVERAGE PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. OF THIS ENDORSEMENT. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS ENDORSEMENT SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY.

COVERAGE AGREEMENT I.B. OF THIS ENDORSEMENT PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY A COVERED PARTY AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD.

THIS ENDORSEMENT IS INTENDED TO COVER CERTAIN CLAIMS EXCLUDED UNDER THE PLF CLAIMS MADE PLAN AND PLF CLAIMS MADE EXCESS PLAN. HOWEVER, THE COVERAGE TERMS OF THIS ENDORSEMENT ARE DIFFERENT FROM THE PLF PLANS AND SHOULD BE REVIEWED CAREFULLY. THIS ENDORSEMENT DOES NOT MODIFY IN ANY RESPECT THE TERMS OF THE PLF CLAIMS MADE PLAN OR CLAIMS MADE EXCESS PLAN.

THIS IS A CLAIMS MADE AND REPORTED ENDORSEMENT.

SCHEDULE

Item 1. **The Firm and Covered Parties** qualifying as such under Section II - WHO IS A COVERED PARTY of the applicable PLF Claims Made Excess Plan and Declarations Sheet to which this endorsement is attached.

Item 2. **Coverage Period:** see Section 3 of the Declarations to which this endorsement is attached.

Item 3. **Limits of Liability:**

Endorsement Aggregate Limit of Liability for Coverage Agreements I.A. (Information Security & Privacy Liability), I.B. (Privacy Breach Response Services), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations):

1-10 attorneys	USD 100,000
11+ attorneys:	USD 250,000

But sublimited to:

A. Aggregate sublimit of liability applicable to Coverage Agreement I.B. (Privacy Breach Response Services)	USD 100,000
B. Aggregate sublimit of liability applicable to Coverage	USD 50,000

- Agreement I.B.1 (legal and forensic) USD 50,000
- C. Aggregate sublimit of liability applicable to Coverage Agreement I.C. (Regulatory Defense & Penalties): USD 10,000
- D. Aggregate sublimit applicable to Coverage Agreement I.E. (Crisis Management & Public Relations):

Item 4. **Retentions:**

- A. Coverage Agreements I.A. (Information Security & Privacy Liability), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations): USD 0
- B. Coverage Agreement I.B. (Privacy Breach Response Services):
Each Incident, event or related incidents or events giving rise to an obligation to provide **Privacy Breach Response Services**:
 - 1. Costs for services provided under Coverage Agreements I.B.1. (legal and forensic services) and I.B.2. (notification costs) combined: USD 0
 - 2. Services provided under I.B.3. (Call Center Services) and I.B.4. (Credit Monitoring Program): Breaches involving an obligation to notify fewer than 100 individuals

Item 5. **Endorsement Retroactive Date:** see Section 7 of the Declarations to which this endorsement is attached.

In consideration for the premium charged for the **PLF Claims Made Excess Plan**, the following additional coverages are added to the **FIRM's PLF Claims Made Excess Plan**. The following provisions in the **PLF Claims Made Excess Plan** shall also apply to this Endorsement: SECTION II – WHO IS A COVERED PARTY, SECTION VIII – COVERAGE DETERMINATIONS, SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY, paragraphs 1. to 3. of the PLF Claims Made Plan only, SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES, SECTION XII – RELATION OF THE PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE, SECTION XIII – WAIVER AND ESTOPPEL and SECTION XV – ASSIGNMENT. Except as otherwise specifically set forth herein, no other provisions in the **PLF Claims Made Excess Plan** shall apply to this Endorsement.

I. COVERAGE AGREEMENTS

A. **Information Security & Privacy Liability**

To pay on behalf of a **Covered Party**:

Damages and Claims Expenses, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for:

1. (a) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**; or
 (b) theft or loss of **Third Party Corporate Information**;
 that is in the care, custody or control of **The Firm**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** or **Third Party Corporate Information** **The Firm** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
 (a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;
 (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
 (c) the participation by **The Firm's Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;
3. **The Firm's** failure to timely disclose an incident described in Coverage Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to **The Firm's** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
4. failure by a **Covered Party** to comply with that part of a **Privacy Policy** that specifically:
 (a) prohibits or restricts **The Firm's** disclosure, sharing or selling of a person's **Personally Identifiable Non-Public Information**;
 (b) requires **The Firm** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
 (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;
 provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**, and a **Covered Party** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

B. Privacy Breach Response Services

To provide **Privacy Breach Response Services** to a **Covered Party** in excess of the **Retention** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period** and is discovered by a **Covered Party** and is reported to the PLF during the **Coverage Period**.

Privacy Breach Response Services means the following:

1. Costs incurred:
 - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require a **Covered Party** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
 - (b) for fees charged by an attorney to determine the applicability of and actions necessary by a **Covered Party** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;provided amounts covered by (a) and (b) in this paragraph combined shall not exceed the amount set forth in Item 3.B. of the Schedule in the aggregate for the **Coverage Period**.
2. Costs incurred to provide notification to:
 - (a) individuals who are required to be notified by a **Covered Party** under the applicable **Breach Notice Law**; and
 - (b) in the PLF's discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.
3. The offering of **Call Center Services to Notified Individuals**.
4. The offering of the **Credit Monitoring Product to Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. **The Firm** will be provided with access to educational and loss control information provided by or on behalf of the PLF at no charge.

Privacy Breach Response Services and the conditions applicable thereto are set forth more fully in Clause XIII. of this Endorsement, Conditions Applicable to Privacy Breach Response Services.

Privacy Breach Response Services shall not include any internal salary or overhead expenses of a **Covered Party**.

C. **Regulatory Defense and Penalties**

To pay on behalf of a **Covered Party**:

Claims Expenses and **Penalties** in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise

provided in Clause IX. of this Endorsement, resulting from a violation of a **Privacy Law** and caused by an incident described in Coverage Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**.

D. Website Media Content Liability

To pay on behalf of a **Covered Party**:

Damages and Claims Expenses, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay resulting from any **Claim** first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for one or more of the following acts first committed on or after the **Retroactive Date** and before the end of the **Coverage Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

E. Crisis Management and Public Relations

To pay **Public Relations and Crisis Management Expenses** incurred by **The Firm** resulting from a **Public Relations Event**. **Public Relations Event** means:

1. the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Endorsement; or
2. an incident described in Coverage Agreement I.A.1. or I.A.2. which results in the provision of **Privacy Breach Response Services**, or which reasonably may result in a covered **Claim** under this Endorsement and which **The Firm** has notified the PLF as a circumstance under Clause IX.C. of this Endorsement.

Public Relations and Crisis Management Expenses shall mean the following costs, if agreed in advance by the PLF in its reasonable discretion, which are directly related to mitigating harm to **The Firm's** reputation or potential **Loss** covered by this Endorsement resulting from a covered **Claim** or incident:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the event;

3. costs to provide notifications to clients where such notifications are not required by law (“voluntary notifications”), including notices to non-affected clients of **The Firm**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act (“HITECH”));
5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the PLF.

Public Relations and Crisis Management Expenses must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the PLF and, with respect to clauses 1. and 2., within ninety (90) days following the first publication of such **Claim** or breach event.

II. DEFENSE AND SETTLEMENT OF CLAIMS

- A. The PLF shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Endorsement:
 1. any **Claim** against a **Covered Party** seeking **Damages** which are payable under the terms of this Endorsement, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
 2. under Coverage Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.
- B. With respect to any **Claim** against a **Covered Party** seeking **Damages** or **Penalties** which are payable under the terms of this Endorsement, the PLF will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.
- C. If a **Covered Party** shall refuse to consent to any settlement or compromise recommended by the PLF and acceptable to the claimant under this Endorsement and elects to contest the **Claim**, the PLF’s liability for all **Damages**, **Penalties** and **Claims Expenses** shall not exceed:
 1. the amount for which the **Claim** could have been settled, less the remaining **Retention**, plus the **Claims Expenses** incurred up to the time of such refusal; plus
 2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to a **Covered Party** plus fifty percent (50%) of any **Damages** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses** and **Damages** must be borne by **The Firm** at its own risk and would not be covered;

or the applicable Limit of Liability, whichever is less, and the PLF shall have the right to withdraw from the further defense thereof by tendering control of said defense to a **Covered Party**. The portion of any proposed settlement or compromise that requires a **Covered Party** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Coverage Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

III. TERRITORY

This Coverage applies only to **Claims** brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Coverage does not apply to **Claims** brought in any other jurisdiction, or to **Claims** brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

IV. EXCLUSIONS

The coverage under this Coverage does not apply to any **Claim** or **Loss**;

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. For, arising out of or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under the Coverage Agreement I.A.1., I.A.2., or I.A.3. by a current or former employee of **The Firm**; or to the providing of **Privacy Breach Response Services** involving current or former employees of **The Firm**;
- C. For, arising out of or resulting from any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the **Firm**, a subsidiary, or any principals, directors, officers, members or employees of the **Firm**.
- D. For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply:
 - 1. only with respect to the coverage provided by Coverage Agreement I.A.1., to any obligation of **The Firm** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
 - 2. only with respect to Coverage Agreement I.D.4., for misappropriation of ideas under implied contract; or
 - 3. to the extent a **Covered Party** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any liability or obligation under a **Merchant Services Agreement**;
- F. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- G. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:
 - 1. any **Claim** covered under Coverage Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
 - 2. the providing of **Privacy Breach Response Services** covered under Coverage Agreement I.B.,

that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** provided that no **Covered Party** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

- H. For, arising out of or resulting from:
1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** or other personal information by, on behalf of, or with the consent or cooperation of **The Firm**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of a **Covered Party**; or
 2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of a **Covered Party**;
- I. For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the **Endorsement Retroactive Date**:
1. if any **Covered Party** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**; or
 2. in respect of which any **Covered Party** has given notice of a circumstance, which might lead to a **Claim** or **Loss**, to the insurer of any other coverage in force prior to the **Endorsement Retroactive Date**;
- J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Endorsement Retroactive Date**;
- K. For, arising out of resulting from any of the following:
1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
 2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
 3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any

amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or

4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;

however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to providing **Privacy Breach Response Services** covered under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of **The Firm's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by a **Covered Party**, or by others if the **Covered Party** colluded or participated in any such conduct or activity; provided this Endorsement shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Covered Party**, or written admission by the **Covered Party**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time **The Firm** shall reimburse the PLF for all **Claims Expenses** incurred defending the **Claim** and the PLF shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Endorsement would be excluded, suspended or lost because of this exclusion relating to acts or violations by a **Covered Party**, and with respect to which any other **Covered Party** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the PLF agrees that such Coverage as would otherwise be afforded under this Endorsement shall cover and be paid with respect to those **Covered Parties** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in above.

- N. For, arising out of or resulting from any actual or alleged:
 1. infringement of patent or patent rights or misuse or abuse of patent;
 2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Covered Party** or employee of **The Firm**;

3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate Information** (i) by, or on behalf of, **The Firm**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a **Covered Party**;
 4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director, **member**, principal, partner or subsidiary of **The Firm**; or
 5. under Coverage Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;
- O. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Coverage Agreement I.C. or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B. to the extent such services are legally required to comply with a **Breach Notice Law**;
- P. Reserved.
- Q. For, arising out of or resulting from:
1. any **Claim** made by any business enterprise in which any **Covered Party** has greater than a fifteen percent (15%) ownership interest or made by **The Firm**; or
 2. a **Covered Party's** activities as a trustee, partner, member, manager, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of **The Firm**;
- R. For, arising out of or resulting from any of the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of **The Firm**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of a **Covered Party** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- S. With respect to Coverage Agreements I.A., I.B. and I.C., any **Claim** or **Loss** for, arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:
1. broadcasts, by or on behalf of, or with the permission or direction of any **Covered Party**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
 2. publications, by or on behalf of, or with the permission or direction of any **Covered Party**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
 3. advertising by or on behalf of any **Covered Party**;
- provided however this exclusion does not apply to the publication, distribution or display of **The Firm's Privacy Policy**;

- T. With respect to Coverage Agreement I.D., any **Claim** or **Loss**:
1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
 2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by a **Covered Party** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;
 3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;
 4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
 5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
 6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
- U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- V. For, arising out of or resulting from a Claim covered by the PLF Claims Made Excess Plan or any other professional liability Coverage available to any **Covered Party**, including any self insured retention or deductible portion thereof;
- W. For, arising out of or resulting from any theft, loss or disclosure of **Third Party Corporate Information** by a **Related Party**;
- X. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
 2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any

party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

the PLF will have no duty or obligation to defend any **Covered Party** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that a **Covered Party** or anyone acting under the direction or control of a **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

v. DEFINITIONS

As used in this Endorsement:

- A. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- B. **Breach Notice Law** means any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

Breach Notice Law also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; provided, however, that the **Credit Monitoring Product** provided by Coverage Agreement I.B.4. shall not apply to persons notified pursuant to any such foreign statute or regulation.

- C. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Coverage Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.
- D. **Claim** means:

1. a written demand received by any **Covered Party** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;
2. with respect to coverage provided under Coverage Agreement I.C. only, institution of a **Regulatory Proceeding** against any **Covered Party**; and
3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Endorsement, irrespective of the number of claimants or **Covered Parties** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

E. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the PLF, or by a **Covered Party** with the PLF's prior written consent; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against a **Covered Party**; provided the PLF shall have no obligation to appeal or to obtain bonds.

Claims Expenses do not include any salary, overhead, or other charges by a **Covered Party** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments.

F. **Computer Security** means software, computer or network hardware devices, as well as **The Firm's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a **Denial of Service Attack** against **Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.

G. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to **The Firm**; or
2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to **The Firm** or for processing, maintaining, hosting or storing **The Firm's** electronic data, pursuant to written contract with **The Firm** for such services.

H. **Coverage Period** means the Coverage period as set forth in Item 2. of the Schedule.

I. Reserved.

- J. **Covered Media Activities** means the display of **Media Material** on **The Firm's** web site.
- K. **Covered Party** has the same meaning as set forth in Section II – WHO IS A COVERED PARTY in the PLF Claims Made Excess Plan.
- L. **Credit Monitoring Product** means a credit monitoring product that provides daily credit monitoring from the following credit bureaus: Experian, TransUnion and Equifax.

Notified Individuals who subscribe to the **Credit Monitoring Product** shall also receive:

1. access to their credit report from one of the three credit bureaus at the time of enrollment;
2. ID theft insurance for certain expenses resulting from identity theft;
3. notification of a critical change to their credit that may indicate fraud (such as an address change, new credit inquiry, new account opening, posting of negative credit information such as late payments, public record posting, as well as other factors); and
4. fraud resolution services if they become victims of identity theft as a result of the incident for which notification is provided pursuant to Coverage Agreement I.B.2.

If the Credit Monitoring Product becomes commercially unavailable, it shall be substituted with a similar commercial product that provides individual credit monitoring for potential identity theft. The **Credit Monitoring Product** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- M. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by **The Firm** in its ordinary course of business.
- N. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:
 1. future profits, restitution, disgorgement of unjust enrichment or profits by a **Covered Party**, or the costs of complying with orders granting injunctive or equitable relief;
 2. return or offset of fees, charges, or commissions charged by or owed to a **Covered Party** for goods or services already provided or contracted to be provided;
 3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
 4. punitive or exemplary damages;
 5. discounts, coupons, prizes, awards or other incentives offered to a **Covered Party's** customers or clients;
 6. liquidated damages to the extent that such damages exceed the amount for which a **Covered Party** would have been liable in the absence of such liquidated damages agreement;
 7. fines, costs or other amounts a **Covered Party** is responsible to pay under a **Merchant Services Agreement**; or

8. any amounts for which a **Covered Party** is not liable, or for which there is no legal recourse against a **Covered Party**.
- O. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- P. **Endorsement Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3. of the Schedule.
- Q. **Endorsement Retroactive Date** means the date specified in Section 7 of the Declarations Sheet attached to this Endorsement.
- R. **The Firm** means the entities as defined in Section I – Definitions of the applicable Claims Made Excess Plan and Declarations Sheet to which this Endorsement is attached.
- S. **Loss** means **Damages, Claims Expenses, Penalties, Public Relations and Crisis Management Expenses** and **Privacy Breach Response Services**.
- T. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- U. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- V. **Merchant Services Agreement** means any agreement between a **Covered Party** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling a **Covered Party** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- W. Reserved.
- X. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Coverage Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- Y. **Optional Extension Period** means the period of time after the end of the **Coverage Period** for reporting **Claims** as provided in Clause VIII., Optional Extension Period, of this Endorsement.
- Z. **Penalties** means:
1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; and
 2. amounts which a **Covered Party** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund"); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Coverage Agreements A.1., A.2. or A.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

AA. **Personally Identifiable Non-Public Information** means:

1. information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. the individual’s drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

BB. Reserved.

CC. **Privacy Law** means a federal, state or foreign statute or regulation requiring **The Firm** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.

DD. **Privacy Policy** means **The Firm’s** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Non-Public Information**.

EE. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.

FF. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity’s regulatory or official capacity in connection with such proceeding.

GG. Reserved.

HH. **Retention** means the applicable retention for each Coverage Agreement as specified in Item 4. of the Schedule.

II. Reserved.

JJ. **Security Breach** means:

1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Covered Party**;
2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**;
or
3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

KK. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by a **Covered Party**; and (2) does not include computer systems of a third party on which a **Covered Party** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.

LL. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not covered under this Endorsement which is not available to the general public and is provided to a **Covered Party** subject to a mutually executed written confidentiality agreement or which **The Firm** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.

MM. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.

NN. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by **The Firm** and is without knowledge of, consent, or acquiescence of any **Covered Party**.

VI. LIMIT OF LIABILITY AND COVERAGE

A. The **Endorsement Aggregate Limit of Liability** stated in Item 3. of the Schedule is the PLF's combined total limit of liability for all **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses and Claims Expenses** payable under this Endorsement. The **Endorsement Aggregate Limit of Liability** is in addition to the Limit of Coverage under the PLF Claims Made Excess Plan.

The sublimit of liability stated in Item 3.A. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B. Privacy Breach Response Services of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.B. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B.(1) of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.C. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.C. Regulatory Defense and Penalties of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.D. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.E. Crisis Management and Public Relations of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

Neither the inclusion of more than one **Covered Party** under this Endorsement, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Endorsement Aggregate Limit of Liability**.
- C. The PLF shall not be obligated to pay any **Damages, Penalties**, Privacy Breach Response Services, Public Relations and Crisis Management Expenses or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding, after the **Endorsement Aggregate Limit of Liability** has been exhausted by payment of **Damages, Penalties**, Public Relations and Crisis Management Expenses or **Claims Expenses**, or after deposit of the **Endorsement Aggregate Limit of Liability** in a court of competent jurisdiction. Upon such payment, the PLF shall have the right to withdraw from the further defense of any **Claim** under this Endorsement by tendering control of said defense to a **Covered Party**.

VII. RETENTION

- A. The **Retention** amount set forth in Item 4.A. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by **The Firm** of **Damages, Claims Expenses**, Public Relations and Crisis Management Expenses or **Penalties**.
- B. The **Retention** amount set forth in Item 4.B. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide Privacy Breach Response Services. Services under Coverage Agreements I.B.3. and I.B.4. will only be provided for incidents requiring notification to 100 or more individuals..

VIII. OPTIONAL EXTENSION PERIOD

- A. In the event **The Firm** purchases Extended Reporting Coverage for its Excess Plan, as provided for in Section XIV of the Excess Plan, **The Firm** will also be provided a corresponding **Optional Extension Period** under this Endorsement. If such **Optional Extension Period** is provided, then the time period for **Claims** to be made and reported to the PLF and Beazley Group will be extended by the same Extended Reporting Coverage Period purchased in the Extended Reporting Coverage; provided that such **Claims** must arise out of acts, errors or omissions committed on or after the **Endorsement Retroactive Date** and before the end of the **Coverage Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the applicable Limit of Liability of the PLF for the **Coverage Period** and the exercise of the **Optional Extension Period** shall not in any way increase the **Endorsement Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Coverage Agreement I.B.
- C. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the PLF and Beazley Group.

- D. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event **The Firm** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the PLF will not be liable to return any premium paid for the **Optional Extension Period**.

IX. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against a **Covered Party**, the **Covered Party** shall forward as soon as practicable to both the PLF and Beazley Group, 1270 Avenue of the Americas, 12th Floor, New York, NY 10020, Tel: (646) 943-5912 or Tel: (866) 567-8570, Fax: (646) 378-4039, Email: tmbclaims@beazley.com written notice of such **Claim** in the form of a telecopy, email or express or certified mail together with every demand, notice, summons or other process received by a **Covered Party** or a **Covered Party's** representative. In no event shall such notice be later than the end of the **Coverage Period** or the end of the **Optional Extension Period** (if applicable).
- B. With respect to Coverage Agreement I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2., such incident or reasonably suspected incident must be reported as soon as practicable to the persons in paragraph A. above during the **Coverage Period** after discovery by a **Covered Party**.
- C. If during the **Coverage Period**, a **Covered Party** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to both the PLF through and Beazley Group in the form of a telecopy, email or express or certified mail as soon as practicable during the **Coverage Period**. Such a notice must include:
1. the specific details of the act, error, omission, or **Security Breach** that could reasonably be the basis for a **Claim**;
 2. the injury or damage which may result or has resulted from the circumstance; and
 3. the facts by which a **Covered Party** first became aware of the act, error, omission or **Security Breach**.

Any subsequent **Claim** made against a **Covered Party** arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the PLF.

An incident or reasonably suspected incident reported to both the PLF and Beazley Group during the **Coverage Period** and in conformance with Clause IX.B shall also constitute notice of a circumstance under this Clause IX.C.

- D. A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the PLF when written notice is first received by both the PLF or Beazley Group in the form of a telecopy, email or express or certified mail or email through persons named in paragraph A. above of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

X. MERGERS AND ACQUISITIONS

If during the **Coverage Period** **The Firm** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Endorsement shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the

date of the consolidation, merger or acquisition. There shall be no coverage provided by this Endorsement for any other **Claim** or **Loss**.

XI. THE FIRM AS AGENT

The Firm shall be considered the agent of all **Covered Parties**, and shall act on behalf of all **Covered Parties** with respect to the giving of or receipt of all notices pertaining to this Endorsement, the acceptance of any endorsements to this Endorsement, and **The Firm** shall be responsible for the payment of all premiums and **Retentions**.

XII. AUTHORIZATION

By acceptance of this Endorsement, the **Covered Parties** agree that **The Firm** will act on their behalf with respect to the giving and receiving of any notice provided for in this Endorsement, the payment of premiums and the receipt of any return premiums that may become due under this Endorsement, and the agreement to and acceptance of endorsements.

XIII. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES

The availability of any coverage under Coverage Agreement I.B. for Privacy Breach Response **Services** (called the “Services” in this Clause) is subject to the following conditions.

In the event of an incident (or reasonably suspected incident) covered by Coverage Agreement I.B of this Endorsement, the PLF (referred to as “we” or “us” in this Clause) will provide **The Firm** (referred to as “you” in this Clause) with assistance with the Services and with the investigation and notification process as soon as you notify us of an incident or reasonably suspected incident (an “Incident”).

- A. The Services provided under the Endorsement have been developed to expedite the investigation and notification process and help ensure that your response to a covered Incident will comply with legal requirements and will be performed economically and efficiently. It is therefore important that in the event of an Incident, you follow the program’s requirements stated below, as well as any further procedures described in the *Information Packet* provided with this Endorsement, and that you communicate with us so that we can assist you with handling the Incident and with the Services. You must also assist us and cooperate with us and any third parties involved in providing the Services. In addition to the requirements stated below, such assistance and cooperation shall include, without limitation, responding to requests and inquiries in a timely manner and entering into third party contracts required for provision of the Services.
- B. If the costs of a computer security expert are covered under Coverage Agreement I.B.1, you must select such expert, in consultation with us, from the program’s list of approved computer security experts included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The computer security expert will require access to information, files and systems and you must comply with the expert’s requests and cooperate with the expert’s investigation. Reports or findings of the expert will be made available to you, us and any attorney that is retained to provide advice to you with regard to the Incident.
- C. If the costs of an attorney are covered under Coverage Agreement I.B.1., such attorney shall be selected by you from the program’s list of approved legal counsel included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The attorney will represent you in determining the applicability of, and the actions necessary to comply with, **Breach Notice Laws** in connection with the Incident.

- D. If notification to individuals in connection with an Incident is covered under Coverage Agreement I.B.2., such notice will be accomplished through a mailing, email, or other method if allowed by statute and if it is more economical to do so (though we will not provide notice by publication unless you and we agree or it is specifically required by law), and will be performed by a service provider selected by us from the program's list of approved breach notification service providers included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The selected breach notification service provider will work with you to provide the required notifications.

Our staff will assist you with the notification process, but it is important that you timely respond to requests, approve letter drafts, and provide address lists and other information as required to provide the Services. It will be your responsibility to pay any costs caused by your delay in providing information or approvals necessary to provide the Services, mistakes in information you provide, changes to the letter after approval, or any other failure to follow the notification procedure if it increases the cost of providing the Services in connection with an Incident.

- E. If **Call Center Services** are offered under Coverage Agreement I.B.3., such services shall be performed by a service provider selected by us who will work with you to provide the **Call Center Services** as described in Clause V.C. above.
- F. If a **Credit Monitoring Product** is offered under Coverage Agreement I.B.4, such product shall be provided by a service provider selected by us.
-

PLF  Excess Coverage

t: (503) 639-6911 | (800) 452-1639

f: (503) 684-7250

16037 SW Upper Boones Ferry Rd., Suite 300
PO Box 231600
Tigard, OR 97281-1600

excess@osbplf.org | www.osbplf.org

OREGON STATE BAR

PROFESSIONAL LIABILITY FUND

2014 PRO BONO PROGRAM

CLAIMS MADE MASTER PLAN

January 1, 2014

2014 PRO BONO CLAIMS MADE PLAN

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**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

**2014 PRO BONO PROGRAM
CLAIMS MADE MASTER PLAN**

NOTICE

This Pro Bono Program Claims Made Master Plan (“Master Plan”) contains provisions that reduce the Limits of Coverage by the costs of legal de-fense. See SECTIONS IV and VI.

Various provisions in this Master Plan restrict coverage. Read the entire Master Plan to determine rights, duties, and what is and is not covered.

INTERPRETATION OF THIS MASTER PLAN

Bracketed Titles. The bracketed titles appearing throughout this Master Plan are not part of the Master Plan and should not be used as an aid in interpreting the Master Plan. The bracketed titles are intended simply as a guide to locating pertinent provisions.

Use of Capitals. Capitalized terms are defined in SECTION I. The definition of COVERED PARTY appearing in SECTION II and the definition of COVERED ACTIVITY appearing in SECTION III are particularly crucial to the understanding of the Master Plan.

Master Plan Comments. The discussions labeled "*COMMENTS*" following various provisions of the Master Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of the Master Plan.

The Comments are similar in form to those in the Uniform Commercial Code and Restatements. They are intended to aid in the construction of the Master Plan language. The Comments are to assist attorneys in interpreting the coverage available to them and to provide a specific basis for interpretation by courts and arbitrators.

SECTION I — DEFINITIONS

Throughout this Master Plan, when appearing in capital letters:

1. "BUSINESS TRUSTEE" means one who acts in the capacity of or with the title "trustee" and whose activities include the operation, management, or control of any business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder.

COMMENTS

The term "BUSINESS TRUSTEE" is used in SECTION III.3 and in SECTION V.5. This Master Plan is intended to cover the ordinary range of activities in which attorneys typically engage while providing services through a PRO BONO PROGRAM. The Master Plan is not intended to cover BUSINESS TRUSTEE activities as defined in this Subsection. Examples of types of BUSINESS TRUSTEE activities for which coverage is excluded under the Master Plan include, among other things:

...serving on the board of trustees of a charitable, educational, or religious institution; serving as the trustee for a real estate or other investment syndication; serving as trustee for the liquidation of any business or institution; and serving as trustee for the control of a union or other institution.

2. “CLAIM” means a demand for DAMAGES or written notice to a COVERED PARTY of an intent to hold a COVERED PARTY liable as a result of a COVERED ACTIVITY, if such notice might reasonably be expected to result in an assertion of a right to DAMAGES.

3. "CLAIMS EXPENSE" means:

- a.** Fees charged by any attorney designated by the PLF;
- b.** All other fees, costs, and expenses resulting from the investigation, adjustment, defense, repair, and appeal of a CLAIM, if incurred by the PLF; or
- c.** Fees charged by any attorney designated by the COVERED PARTY with the PLF’s written consent.

However, CLAIMS EXPENSE does not include the PLF’s costs for compensation of its regular employees and officials or the PLF’s other routine administrative costs.

4. "CLAIMS EXPENSE ALLOWANCE" means the separate allowance for aggregate CLAIMS EXPENSE for all CLAIMS as provided for in SECTION VI.1.b. of this Master Plan.

5. "COVERAGE PERIOD" means the coverage period shown in the Declarations under the heading "COVERAGE PERIOD."

6. "COVERED ACTIVITY" means conduct qualifying as such under SECTION III — WHAT IS A COVERED ACTIVITY.

7. "COVERED PARTY" means any person or organization qualifying as such under SECTION II — WHO IS A COVERED PARTY.

8. “DAMAGES” means money to be paid as compensation for harm or loss. It does not refer to fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, accountings or damages and relief otherwise excluded by this Plan.

9. "EXCESS CLAIMS EXPENSE" means any CLAIMS EXPENSE in excess of the CLAIMS EXPENSE ALLOWANCE. EXCESS CLAIMS EXPENSE is included in the Limits of Coverage at SECTION VI.1.a and reduces amounts available to pay DAMAGES under this Master Plan.

10. "INVESTMENT ADVICE" refers to any of the following activities:

- a.** Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
- b.** Managing any investment;

- c. Buying or selling any investment for another;
 - d. (1) Acting as a broker for a borrower or lender, or
 (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;
 - e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
 - f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or
 - g. Inducing someone to make a particular investment.
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.
12. "MASTER PLAN YEAR" means the period January 1 through December 31 of the calendar year for which this Master Plan was issued.
13. "PLF" means the Professional Liability Fund of the Oregon State Bar.
14. "SAME OR RELATED CLAIMS" means two or more CLAIMS that are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, COVERED ACTIVITIES, damages, liability, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. CLAIMS are related in the following situations:
- a. *Secondary or dependent liability.* CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are related to the CLAIMS on which they are based.
 - b. *Same transactions or occurrences.* Multiple CLAIMS arising out of the same transaction or occurrence or series of transactions or occurrences are related. However, with regard to this Subsection b only, the PLF will not treat the CLAIMS as related if:
 - (1) the participating COVERED PARTIES acted independently of one another;
 - (2) they represented different clients or groups of clients whose interests were adverse; and
 - (3) the claimants do not rely on any common theory of liability or damage.
 - c. *Alleged scheme or plan.* If claimants attempt to tie together different acts as part of an alleged overall scheme or operation, then the CLAIMS are related.
 - d. *Actual pattern or practice.* Even if a scheme or practice is not alleged, CLAIMS that arise from a method, pattern, or practice in fact used or adopted by one or more COVERED PARTIES or LAW ENTITIES in representing multiple clients in similar matters are related.

- e. *One loss.* When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm or cumulatively enhance their damages or losses, then the CLAIMS are related.
- f. *Class actions.* All CLAIMS alleged as part of a class action or purported class action are related.

COMMENTS

SAME OR RELATED CLAIMS. *Each PLF Master Plan and PLF Claims Made Plan sets a maximum limit of coverage per year. This limit defines the PLF's total maximum obligation under the terms of each Plan issued by the PLF. However, absent additional Plan provisions, numerous circumstances could arise in which the PLF, as issuer of other PLF Master Plans and PLF Claims Made Plans, would be liable beyond the limits specified in one individual Plan. For example, Plans issued to the same attorney in different years might apply. Or, Plans issued to different attorneys might all apply. In some circumstances, the PLF intends to extend a separate limit under each Plan. In other circumstances, when the CLAIMS are related, the PLF does not so intend. Because the concept of "relatedness" is broad and factually based, there is no one definition or rule that will apply to every situation. The PLF has therefore elected to explain its intent by listing certain circumstances in which only one limit is available regardless of the number of Plans that may apply. See Subsections 14.a to 14.f above.*

Example No. 1: Attorney A is an associate in a firm and commits malpractice. CLAIMS are made against Attorney A and various partners in the firm. All attorneys share one limit. CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are always related to the CLAIMS on which they are based. See Subsection 14.a above. Even if Attorney A and some of the other lawyers are at different firms at the time of the CLAIM, all attorneys and the firm share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE.

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C with a different law firm assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2010 and Investor 3 brings a CLAIM in 2011 relating to the offering. No CLAIM is asserted prior to 2010. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2010, pursuant to Section IV.1.b.(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

Example No. 3: Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's CLAIMS are not related. A's and B's CLAIMS would be related, but for the exception in the second sentence of Subsection 14.b above.

Example No. 4: An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel A, its ERISA lawyer B, the owner, his attorney C, and the plans' former attorney D, contending there were improprieties in the due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All CLAIMS are related. They arise out of the same transactions or occurrences and therefore are related under Subsection 14.b. For the exception in Subsection 14.b to apply, all three elements must be satisfied. The exception does not apply because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Finally, even if the exception in Subsection 14.b did apply, the CLAIMS would still be related under Subsection 14.d because they involve one loss. Although the CLAIMS are related, if all four attorneys' firms are sued, depending on the circumstances, up to four total CLAIMS EXPENSE ALLOWANCES might be available under Section VI.2.

Example No. 5: Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. Although the different acts by different lawyers at different times could legitimately be viewed as separate and unconnected, the claimant in this example attempts to tie them together as part of an alleged overall scheme or operation. The CLAIMS are related because the claimants have made them so. See Subsection 14.c above. This will often be the case in securities CLAIMS. As long as such allegations remain in the case, only one limit will be available, even if alternative CLAIMS are also alleged. In this example, although there is only one Limit of Coverage available for all CLAIMS, depending on the circumstances, multiple CLAIMS EXPENSE ALLOWANCES might be available. See Section VI.2.

Example No. 6: Attorneys A, B, and C in the same firm represent a large number of asbestos clients over ten years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation of their cases' values, although the plaintiffs do not allege a common scheme or plan. Because the firm in fact operated a firm-wide formula for handling the cases, the CLAIMS are related based on the COVERED PARTIES' own pattern or practice. The CLAIMS are related because the COVERED PARTIES' own conduct has made them so. See Subsection 14.d above. Attorneys A, B, and C will share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE. LAW ENTITIES should protect themselves from such CLAIMS brought by multiple clients by purchasing adequate excess insurance.

Example No. 7: Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. The CLAIMS are related and only a single Limit of Coverage applies to all CLAIMS. See Subsection 14.e above. When, as in this example, successive or collective errors each cause single or multiple clients and/or claimants harm or cumulatively enhance their damages or losses, then the CLAIMS are related. In such a situation, a claimant or group of claimants cannot increase the limits potentially available by alleging separate errors by separate attorneys. Attorney E, however, may be entitled to a CLAIMS EXPENSE ALLOWANCE separate from the one shared by C and D.

Example No. 8: Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All CLAIMS are related. No class action or purported class action can ever trigger more than one Limit of Coverage. See Subsection 14.f above.

15. "SUIT" means a civil proceeding in which DAMAGES are alleged. "SUIT" includes an arbitration or alternative dispute resolution proceeding to which the COVERED PARTY submits with the consent of the PLF.
16. "YOU" and "YOUR" mean the PRO BONO PROGRAM shown in the Declarations.
17. "PRO BONO PROGRAM" means the Pro Bono Program shown in the Declarations under the heading "PRO BONO PROGRAM."
18. "VOLUNTEER ATTORNEY" means an attorney who meets all of the following conditions:
 - a. The attorney has provided volunteer pro bono legal services to clients without compensation through the PRO BONO PROGRAM;
 - b. At the time of providing the legal services referred to in Subsection a above, the attorney was not employed by the PRO BONO PROGRAM or compensated in any way by the PRO BONO PROGRAM;
 - c. At the time of providing the legal services referred to in Subsection a above, the attorney was eligible under Oregon State Bar Rules to volunteer for the certified PRO BONO PROGRAM.

SECTION II — WHO IS A COVERED PARTY

1. The following are COVERED PARTIES:
 - a. YOU.
 - b. Any current or former VOLUNTEER ATTORNEY, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY.
 - c. In the event of death, adjudicated incapacity, or bankruptcy, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of any COVERED PARTY listed in Subsection b, but only to the extent that such COVERED PARTY would otherwise be provided coverage under this Master Plan.
 - d. Any attorney or LAW ENTITY legally liable for YOUR COVERED ACTIVITIES, but only to the extent such legal liability arises from YOUR COVERED ACTIVITIES.

COMMENTS

Please note that VOLUNTEER ATTORNEYS have coverage under this Master Plan only for CLAIMS which arise out of work performed for YOU. For example, there is no coverage for CLAIMS which arise out of work performed for another organization or program, for a client

outside of YOUR program, or for a COVERED PARTY'S private practice, employment, or outside activities.

SECTION III — WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES, if the acts, errors, or omissions occur during the COVERAGE PERIOD; or prior to the COVERAGE PERIOD, if on the effective date of this Master Plan YOU have no knowledge that any CLAIM has been asserted arising out of such prior act, error, or omission, and there is no prior policy, PLF Claims Made Plan or Master Plan that provides coverage for such liability or CLAIM resulting from the act, error, or omission, whether or not the available limits of liability of such prior policy or Master Plan are sufficient to pay any liability or CLAIM:

[VOLUNTEER ATTORNEY'S CONDUCT]

1. Any act, error, or omission committed by a VOLUNTEER ATTORNEY which satisfies all of the following criteria:

a. The VOLUNTEER ATTORNEY committed the act, error, or omission in rendering professional services in the VOLUNTEER ATTORNEY'S capacity as an attorney, or in failing to render professional services that should have been rendered in the VOLUNTEER ATTORNEY'S capacity as an attorney.

b. At the time the VOLUNTEER ATTORNEY rendered or failed to render these professional services:

(1) The VOLUNTEER ATTORNEY was providing services to a client served by YOUR program and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU, and

(2) Such activity occurred after any Retroactive Date shown in the Declarations to this Master Plan.

[CONDUCT OF OTHERS]

2. Any act, error or omission committed by a person for whom a VOLUNTEER ATTORNEY is legally liable in the VOLUNTEER ATTORNEY'S capacity as an attorney while providing legal services to clients through YOU; provided each of the following criteria is satisfied:

a. The act, error, or omission causing the VOLUNTEER ATTORNEY'S liability:

(1) Occurred while the VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU, and

(2) Occurred after any Retroactive Date shown in the Declarations to this Master Plan.

- b. The act, error, or omission, if committed by the VOLUNTEER ATTORNEY, would constitute a COVERED ACTIVITY under this Master Plan.

[VOLUNTEER ATTORNEY'S CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission committed by the VOLUNTEER ATTORNEY in the capacity of personal representative, administrator, conservator, executor, guardian, special representative pursuant to ORS 128.179, or trustee (except BUSINESS TRUSTEE); provided, at the time of the act, error, or omission, each of the following criteria was satisfied:

- a. The VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU.
- b. Such activity occurred after any Retroactive Date shown in the Declarations to this Master Plan.

COMMENTS

To qualify for coverage, a CLAIM must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage including the following:

Prior CLAIMS. *Section III limits the definition of COVERED ACTIVITY with respect to acts, errors, or omissions that happen prior to the COVERAGE PERIOD, so that no coverage is granted when there is prior knowledge or prior insurance. For illustration of the application of this language, see Chamberlin v. Smith, 140 Cal Rptr 493 (1977).*

To the extent there is prior insurance or other coverage applicable to the CLAIM, it is reasonable to omit the extension of further coverage. Likewise, to the extent YOU or the VOLUNTEER ATTORNEY have knowledge that particular acts, errors, or omissions have given rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered. Such CLAIMS should instead be covered under the policy or Master Plan in force, if any, at the time the first such CLAIM was made.

VOLUNTEER ATTORNEY. *For a VOLUNTEER ATTORNEY'S actions to constitute a COVERED ACTIVITY, the VOLUNTEER ATTORNEY must have been performing work or providing services with the scope of activities assigned to the VOLUNTEER ATTORNEY by YOU.*

Types of Activity. *COVERED ACTIVITIES have been divided into three categories. Subsection 1 deals with coverage for a VOLUNTEER ATTORNEY'S own conduct as an attorney. Subsection 2 deals with coverage for a VOLUNTEER ATTORNEY'S liability for the conduct of others. Subsection 3 deals with coverage for a VOLUNTEER ATTORNEY'S conduct in a special capacity (e.g. as a personal representative of an estate). The terms "BUSINESS TRUSTEE" and "VOLUNTEER ATTORNEY" as used in this section are defined at SECTION I – DEFINITIONS.*

Special Capacity. *Subsection 3 provides limited coverage for VOLUNTEER ATTORNEY acts as a personal representative, administrator, conservator, executor, guardian, or trustee. However, not all acts in a special capacity are covered under this Master Plan. Attorneys acting in a special capacity described in Subsection 3 of Section III may subject themselves to claims from third parties that are beyond the coverage provided by this Master Plan. For example, in acting as a conservator or personal representative, an attorney may engage in certain business activities, such as terminating an employee or*

signing a contract. If such actions result in a claim by the terminated employee or the other party to the contract, the estate or corpus should respond to such claims in the first instance, and should protect the attorney in the process. Attorneys engaged in these activities should obtain appropriate commercial general liability, errors and omissions, or other commercial coverage. The claim will not be covered under Subsection 3 of Section III.

The Master Plan purposefully uses the term "special capacity" rather than "fiduciary" in Subsection 3 to avoid any implication that this coverage includes fiduciary obligations other than those specifically identified. There is no coverage for VOLUNTEER ATTORNEY'S conduct under Subsection 3 unless VOLUNTEER ATTORNEY was formally named or designated as a personal representative, administrator, conservator, executor, guardian, or trustee (except BUSINESS TRUSTEE) and served in such capacity.

Retroactive Date. *This section introduces the concept of a Retroactive Date. A PRO BONO PROGRAM may have a Retroactive Date in its Master Plan which may place an act, error, or omission outside the definition of a COVERED ACTIVITY, thereby eliminating coverage for any resulting CLAIM under the Master Plan for the PRO BONO PROGRAM and its VOLUNTEER ATTORNEYS. If a Retroactive Date applies to a CLAIM to place it outside the definition of a COVERED ACTIVITY herein, there will be no coverage for the CLAIM under this Master Plan as to any COVERED PARTY, even for vicarious liability.*

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 Master 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 Master 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.

c. This Master Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Master Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

d. The amount the PLF will pay for damages is limited as described in SECTION VI.

e. Coverage under this Master Plan is conditioned upon compliance with all requirements for Pro Bono Programs under PLF Policy 3.800 and all terms and conditions of this Master Plan.

2. Defense.

a. Until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage extended by this Master Plan are exhausted, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct defense, repair, or prevention of any CLAIM or potential CLAIM.

b. With respect to any CLAIM or potential CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSE the PLF may incur. All payments for EXCESS CLAIMS EXPENSE will reduce the Limits of Coverage.

c. If the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage extended by this Master Plan are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

COMMENTS

Claims Made Coverage. *As claims made coverage, this Master Plan applies to CLAIMS first made during the time period shown in the Declarations. CLAIMS first made either prior to or subsequent to that time period are not covered by this Master Plan, although they may be covered by a prior or subsequent Master Plan.*

Damages. *This Master Plan grants coverage only for CLAIMS seeking DAMAGES. There is no coverage granted for other claims, actions, suits, or proceedings seeking equitable remedies such as restitution of funds or property, disgorgement, accountings or injunctions.*

When Claim First Made. *Subsection 1.b(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection 1.b(1)(c) adopts an objective, reasonable person standard to determine when the PLF's knowledge of facts or*

circumstances can rise to the level of a CLAIM for purpose of triggering an applicable COVERAGE PERIOD. This subsection is based solely on the objective nature of information received by the PLF. Covered Parties should thus be aware that any information or knowledge they may have that is not transmitted to the PLF is irrelevant to any determination made under this subsection.

If facts or circumstances meet the requirements of subsection 1.b(1)(c), then any subsequent CLAIM that constitutes a SAME OR RELATED CLAIM under Section I.14 will relate back to the COVERAGE PERIOD at the time the original notice of information was provided to the PLF.

SAME OR RELATED CLAIMS. *Subsection 1.b(2) states a special rule applicable when several CLAIMS arise out of the SAME OR RELATED CLAIMS. Under this rule, all such SAME OR RELATED CLAIMS are considered first made at the time the earliest of the several SAME OR RELATED CLAIMS is first made. Thus, regardless of the number of claimants asserting SAME OR RELATED CLAIMS, the number of Master Plan Years involved, or the number of transactions giving rise to the CLAIMS, all such CLAIMS are treated as first made in the earliest applicable Master Plan Year and only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE apply. There is an exception to the special rule in Subsection 1.b(2) for COVERED PARTIES who had no coverage (with the PLF or otherwise) at the time the initial CLAIM was made, but this exception does not create any additional Limits of Coverage. Pursuant to Subsection VI.2, only one Limit of Coverage would be available.*

Scope of Duty to Defend. *Subsection 2 defines the PLF's obligation to defend. The obligation to defend continues only until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage are exhausted. In that event, the PLF will tender control of the defense to the COVERED PARTY or excess insurance carrier, if any. The PLF's payment of the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage ends all of the PLF's duties.*

Control of Defense. *Subsection 2.a allocates to the PLF control of the investigation, settlement, and defense of the CLAIM. See SECTION IX—ASSISTANCE, COOPERATION AND DUTIES OF COVERED PARTY.*

Costs of Defense. *Subsection 2.b obligates the PLF to pay reasonable and necessary costs of defense. Only those expenses incurred by the PLF or with the PLF's authority are covered.*

SECTION V – EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

- 1.** This Master Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
- 2.** This Master Plan does not apply to any CLAIM based on or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by YOU or at YOUR direction or in which YOU acquiesce or remain passive after having personal knowledge thereof;

COMMENTS

Exclusions 1 and 2 set out the circumstances in which wrongful conduct will eliminate coverage. An intent to harm is not required.

Voluntary Exposure to CLAIMS. An attorney may sometimes voluntarily expose himself or herself to a CLAIM or known risk through a course of action or inaction when the attorney knows there is a more reasonable alternative means of resolving a problem. For example, an attorney might disburse settlement proceeds to a client even though the attorney knows of valid hospital, insurance company, or PIP liens, or other valid liens or claims to the funds. If the attorney disburses the proceeds to the client and a CLAIM arises from the other claimants, Exclusion 2 will apply and the CLAIM will not be covered.

Unethical Conduct. If a CLAIM arises that involves unethical conduct by an attorney, Exclusion 2 may also apply to the conduct and the CLAIM would therefore not be covered. This can occur, for example, if an attorney violates Disciplinary Rule ORPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) or ORPC 5.5(a) (aiding a nonlawyer in the unlawful practice of law) and a CLAIM results.

Example: Attorney A allows a title company to use his name, letterhead, or forms in connection with a real estate transaction in which Attorney A has no significant involvement. Attorney A's activities violate ORPC 8.4(a)(3) and ORPC 5.5(a). A CLAIM is made against Attorney A in connection with the real estate transaction. Because Attorney A's activities fall within the terms of Exclusion 2, there will be no coverage for the CLAIM. In addition, the CLAIM likely would not even be within the terms of the coverage grant under this Plan because the activities giving rise to the CLAIM do not fall within the definition of a COVERED ACTIVITY. The same analysis would apply if Attorney A allowed an insurance or investment company to use his name, letterhead, or forms in connection with a living trust or investment transaction in which Attorney A has no significant involvement.

3. This Master Plan does not apply to any CLAIM based on or arising out of a proceeding brought against a COVERED PARTY by the Oregon State Bar or any similar entity.

4. This Master Plan does not apply to:

- a. That 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 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.

COMMENTS

A COVERED PARTY may become subject to punitive or exemplary damages, attorney fees, costs, fines, penalties, or other sanctions in two ways. The COVERED PARTY may have these damages assessed directly against the COVERED PARTY or the COVERED PARTY may have a client or other person sue the COVERED PARTY for indemnity for causing the client to be subjected to these damages.

Subsection a of Exclusion 4 applies to direct actions for punitive, exemplary or enhanced damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such CLAIMS do not involve covered DAMAGES as defined in this Master Plan. If YOU are sued for punitive

damages, YOU are not covered for that exposure. Similarly, YOU are not covered to the extent compensatory damages are doubled, trebled or otherwise enhanced.

Subsection b of Exclusion 4 applies to both direct actions against a COVERED PARTY and actions for indemnity brought by others. The courts have become increasingly intolerant of attorneys' improper actions in several areas including trial practice, discovery, and conflicts of interest. Statutes, court rules, and common law approaches imposing various monetary sanctions have been developed to deter such inappropriate conduct. The purpose of these sanctions would be threatened if the PLF were to indemnify the guilty attorney and pay the cost of indemnification out of the assessments paid by all attorneys.

Thus, if a COVERED PARTY causes the COVERED PARTY'S client to be subjected to a punitive damage award (based upon the client's wrongful conduct toward the claimant) because of a failure, for example, to assert a statute of limitations defense, the PLF will cover a COVERED PARTY'S liability for the punitive damages suffered by the client. Subsection a does not apply because the action is not a direct action for punitive damages and Subsection b does not apply because the punitive damages suffered by YOUR client are not the type of damages described in Subsection b.

On the other hand, if a COVERED PARTY causes the COVERED PARTY'S client to be subjected to an award of attorney fees, costs, fines, penalties, or other sanctions imposed because of the COVERED PARTY'S conduct, or such an award is made against the COVERED PARTY, Subsection b applies and the CLAIM for such damages (or for any related consequential damages) will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Master Plan does not apply to that part of any CLAIM based on or arising out of a COVERED PARTY'S conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

COMMENTS

A COVERED PARTY, in addition to his or her role as an attorney, may clothe himself or herself as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of an entity. This exclusion eliminates coverage for the COVERED PARTY'S liability while acting in these capacities. However, the exclusion does not apply if the liability is based on such status in a LAW ENTITY.

6. This Master Plan does not apply to any CLAIM by or on behalf of any business enterprise:

a. In which a COVERED PARTY has an ownership interest, or in which a COVERED PARTY had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;

b. In which a COVERED PARTY is a general partner, managing member, or employee, or in which a COVERED PARTY was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or

c. That is controlled, operated, or managed by a COVERED PARTY, either individually or

in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by a COVERED PARTY at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

Ownership interest, for the purpose of this exclusion, does not include an ownership interest now or previously held by a COVERED PARTY solely as a passive investment, as long as a COVERED PARTY, those a COVERED PARTY controls, a COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of a COVERED PARTY'S household, and those with whom a COVERED PARTY is regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

COMMENTS

Intimacy with a client can increase risk of loss in two ways: (1) The attorney's services may be rendered in a more casual and less thorough manner than if the services were extended at arm's length; and (2) After a loss, the attorney may feel particularly motivated to assure the client's recovery. While the PLF is cognizant of a natural desire of attorneys to serve those with whom they are closely connected, the PLF has determined that coverage for such services should be excluded. Exclusion 6 delineates the level of intimacy required to defeat coverage. See also Exclusion 11.

7. This Master Plan does not apply to any CLAIM made by:

- a.** A COVERED PARTY'S present, former, or prospective partner, employer, or employee; or
- b.** A present, former, or prospective officer, director, or employee of a professional corporation in which YOU were a shareholder, unless such CLAIM arises out of a COVERED PARTY'S conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

COMMENTS

The PLF does not always cover a COVERED PARTY'S conduct in relation to the COVERED PARTY'S past, present, or prospective partners, employers, employees, and fellow shareholders, even if such conduct arises out of a COVERED ACTIVITY. Coverage is limited by this exclusion to a COVERED PARTY'S conduct in relation to such persons in situations in which the COVERED PARTY is acting as their attorney and they are the COVERED PARTY'S client.

8. This Master Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) in which a COVERED PARTY participates with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Master Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:

- a.** A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution, or
- b.** If delivery of a copy of the disclosure form to the PLF within 10 calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client

confidences and secrets, the COVERED PARTY may instead send the PLF an alternative letter stating: (1) the name of the client with whom the COVERED PARTY is participating in a business transaction; (2) that the COVERED PARTY has provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a); (3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within 10 calendar days of execution of the disclosure letter.

COMMENTS

ORPC 1. *Form ORPC 1, referred to above, is attached to this Master Plan following SECTION XIV. The form includes an explanation of ORPC 1.8(a) which should be provided to the client involved in the business transaction.*

Applicability of Exclusion. *When an attorney engages in a business transaction with a client, the attorney has an ethical duty to make certain disclosures to the client. ORPC 1.0(g) and 1.8(a) provide:*

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

RULE 1.0(g)

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

This exclusion is not intended to be an interpretation of ORPC 1.8(a). Instead, the Master Plan is invoking the body of law interpreting ORPC 1.8(a) to define when the exclusion is applicable.

Use of the PLF's Form Not Mandated. *Because of the obvious conflict of interest and the high duty placed on attorneys, when the exclusion applies, the attorney is nearly always at risk of being liable when things go wrong. The only effective defense is to show that the attorney has made full disclosure, which includes a sufficient explanation to the client of the potential adverse impact of the differing interests of the parties to make the client's consent meaningful. Form ORPC 1 is the PLF's attempt to set out an effective disclosure which will provide an adequate defense to such CLAIMS. The PLF is sufficiently confident that this disclosure will be effective to agree that the exclusion will not apply if YOU use the PLF's proposed form. YOU are free to use YOUR own form in lieu of the PLF's form, but if YOU do so YOU proceed at YOUR own risk, i.e., if YOUR disclosure is less effective than the PLF's disclosure form, the exclusion will apply. Use of the PLF's form is not intended to assure YOU of compliance with the ethical requirements applicable to YOUR particular circumstances. It is YOUR responsibility to consult ORPC 1.0(g) and 1.8(a) and add any disclosures necessary to satisfy the disciplinary rules.*

Timing of Disclosure. *To be effective, it is important that the PLF can prove the disclosure was made prior to entering into the business transaction. Therefore, the disclosure should be reduced to writing and signed prior to entering into the transaction. There may be limited situations in which reducing the required disclosure to writing prior to entering into the transaction is impractical. In those circumstances, execution of the disclosure letter after entry into the transaction will not render the exclusion effective provided the execution takes place while the client still has an opportunity to withdraw from the transaction and the effectiveness of the disclosure is not compromised. Additional language may be necessary to render the disclosure effective in these circumstances.*

Delivery to the PLF. *Following execution of the disclosure letter, a copy of the letter or an alternative letter must be delivered to the PLF in a timely manner. Failure to do so will result in any subsequent CLAIM against YOU being excluded.*

Other Disclosures. *By its terms, ORPC 1.8(a) and this exclusion apply only to business transactions with a client in which the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client. However, lawyers frequently enter into business transactions with others not recognizing that the other expects the lawyer to exercise professional judgment for his or her protection. It can be the "client's" expectation and not the lawyer's recognition that triggers application of ORPC 1.8(a) and this exclusion.*

9. This Master Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by a COVERED PARTY (or by someone for whose conduct a COVERED PARTY is legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by the COVERED PARTY constitutes a COVERED ACTIVITY described in SECTION III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f. or g of the definition of INVESTMENT ADVICE in SECTION I.10.

COMMENTS

In prior years, the PLF suffered extreme losses as a result of COVERED PARTIES engaging in INVESTMENT ADVICE activity. It was never intended that the PLF cover such activities. An

INVESTMENT ADVICE exclusion was added to the Claims Made Plan in 1984. Nevertheless, losses continued in situations where the COVERED PARTY had rendered both INVESTMENT ADVICE and legal advice. In addition, some CLAIMS resulted where the attorney provided INVESTMENT ADVICE in the guise of legal advice.

Exclusion 9, first introduced to the Claims Made Plan in 1987, represented a totally new approach to this problem. Instead of excluding all INVESTMENT ADVICE, the PLF has clearly delineated specific activities which will not be covered whether or not legal as well as INVESTMENT ADVICE is involved. These specific activities are defined in Section I under the definition of INVESTMENT ADVICE. The PLF's choice of delineated activities was guided by specific cases that exposed the PLF in situations never intended to be covered. The PLF is cognizant that COVERED PARTIES doing structured settlements and COVERED PARTIES in business practice and tax practice legitimately engage in the rendering of general INVESTMENT ADVICE as a part of their practices. In delineating the activities to be excluded, the PLF has attempted to retain coverage for these legitimate practices. For example, the last sentence of the exclusion permits coverage for certain activities normally undertaken by conservators and personal representatives (i.e., COVERED ACTIVITIES described in Section III.3) when acting in that capacity even though the same activities would not be covered if performed in any other capacity. See the definition of INVESTMENT ADVICE in Section I.

Exclusion 9 applies whether the COVERED PARTY is directly or vicariously liable for the INVESTMENT ADVICE.

Note that Exclusion 9 could defeat coverage for an entire CLAIM even if only part of the CLAIM involved INVESTMENT ADVICE. If INVESTMENT ADVICE is in fact either the sole or a contributing cause of any resulting damage that is part of the CLAIM, the entire CLAIM is excluded.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

- 10.** This Master Plan does not apply to any CLAIM:
- a.** For the return of any fees, costs, or disbursements paid to a COVERED PARTY (or paid to any other attorney or LAW ENTITY with which the COVERED PARTY was associated at the time the fees, costs, or disbursements were incurred or paid), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;
 - b.** Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or
 - c.** For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

COMMENTS

This Master Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Master Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection c, in addition, excludes

CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.

Attorneys sometimes attempt to correct their own mistakes without notifying the PLF. In some cases, the attorneys charge their clients for the time spent in correcting their prior mistakes, which can lead to a later CLAIM from the client. The better course of action is to notify the PLF of a potential CLAIM as soon as it arises and allow the PLF to hire and pay for repair counsel if appropriate. In the PLF's experience, repair counsel is usually more successful in obtaining relief from a court or an opposing party than the attorney who made the mistake. In addition, under Subsection a of this exclusion, the PLF does not cover CLAIMS from a client for recovery of fees previously paid by the client to a COVERED PARTY (including fees charged by an attorney to correct the attorney's prior mistake).

Example No. 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under Subsection a, there is no coverage for the CLAIM.

Example No. 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under Subsection a there is no coverage for the CLAIM.

Example No. 3: Attorney C writes a demand letter to Client for unpaid fees, then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b., there is no coverage for the CLAIM. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example No. 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b., there is no coverage for the CLAIM.

Example No. 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c., there is no coverage for the CLAIM. The same is true if Attorney E receives the stock as a fee and later is sued for recovery of the stock or damages.

11. This Master Plan does not apply to any CLAIM based upon or arising out of a COVERED PARTY'S legal services performed on behalf of a COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of a COVERED PARTY'S household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest.

COMMENTS

Work performed for family members is not covered under this Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise, will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar Master Plan.

13. This Master Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of a COVERED PARTY'S employee and the COVERED PARTY has no actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCLUSION]

14. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct:

a. As a public official or an employee of a governmental body, subdivision, or agency; or

b. In any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all of the COVERED PARTY'S rights against the public body.

Subsection a applies whether or not the public official or employee is entitled to defense or indemnity from the governmental entity. Subsection b, in addition, excludes coverage for COVERED PARTIES in other relationships with a governmental entity, but only if statute, rule, or case law entitles a COVERED PARTY to defense or indemnity from the governmental entity.

[HOUSE COUNSEL EXCLUSION]

15. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct as an employee in an employer-employee relationship.

COMMENTS

This exclusion applies to conduct as an employee even when the employee represents a third party in an attorney-client relationship as part of the employment. Examples of this application include employment by an insurance company, labor organization, member association, or governmental entity that involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Master Plan does not apply to any CLAIM against any COVERED PARTY for:

a. Bodily injury, sickness, disease, or death of any person;

b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or

- c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and were, therefore, considered inappropriate for coverage under the Master Plan. YOU are encouraged to seek coverage for these CLAIMS through commercial insurance markets.

Prior to 1991 the Claims Made Plan expressly excluded "personal injury" and "advertising injury," defining those terms in a manner similar to their definitions in standard commercial general liability policies. The deletion of these defined terms from this Exclusion is not intended to imply that all personal injury and advertising injury CLAIMS are covered. Instead, the deletion is intended only to permit coverage for personal injury or advertising injury CLAIMS, if any, that fall within the other coverage terms of the Master Plan.

Subsection b of this exclusion is intended to encompass a broad definition of property. For these purposes, property includes real, personal and intangible property (e.g. electronic data, financial instruments, money etc.) held by an attorney. However, Subsection b is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event a CLAIM resulting from the loss or damage would not be excluded by Exclusion 16.

Example No. 1: Client gives Attorney A valuable jewelry to hold for safekeeping. The jewelry is stolen or lost. There is no coverage for the value of the stolen or lost jewelry, since the loss of the property did not adversely affect the performance of professional services. Attorney A can obtain appropriate coverage for such losses from commercial insurance sources.

Example No. 2: Client gives Attorney B a defective ladder from which Client fell. The ladder is evidence in the personal injury case Attorney B is handling for Client. Attorney B loses the ladder. Because the ladder is lost, Client loses the personal injury case. The CLAIM for the loss of the personal injury case is covered. The damages are the difference in the outcome of the personal injury case caused by the loss of the ladder. There would be no coverage for the loss of the value of the ladder. Coverage for the value of the ladder can be obtained through commercial insurance sources.

Example No. 3: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C for Client. After conclusion of handling of the legal matter, the documents are lost or destroyed. Client makes a CLAIM for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this CLAIM, as loss of the documents did not adversely affect any professional services because the professional services had been completed. Again, coverage for loss of the property (documents) itself can be obtained through commercial general liability or other insurance or through a valuable papers endorsement to such coverage.

***Child Abuse Reporting Statute.** This exclusion would ordinarily exclude coverage for the type of damages that might be alleged against an attorney for failure to comply with ORS 419B.010, the child abuse reporting statute. (It is presently uncertain whether civil liability can arise under the statute.) If*

there is otherwise coverage under this Master Plan for a CLAIM arising under ORS 419B.010, the PLF will not apply Exclusion 16 to the CLAIM.

17. This Master Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and are, therefore, inappropriate for coverage under the Master Plan.

[PATENT EXCLUSION]

18. This Master Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error, or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Master Plan does not apply to any CLAIM for damages consisting of a special underwriting assessment imposed by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Master Plan does not apply to any CLAIM:

- a.** Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b.** Any costs connected to ORS 20.160 or similar statute or rule;
- c.** For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d.** Claims in contract based upon an alleged promise to obtain a certain outcome or result.

COMMENTS

In the Plan, the PLF agrees to assume certain tort risks of Oregon attorneys for certain errors or omissions in the private practice of law; it does not assume the risk of making good on attorneys' contractual obligations. So, for example, an agreement to indemnify or guarantee an obligation will generally not be covered, except in the limited circumstances described in Subsection a. That subsection is discussed further below in this Comment.

Subsection b, while involving a statutory rather than contractual obligation, nevertheless expresses a similar concept, since under ORS 20.160 an attorney who represents a nonresident or foreign corporation plaintiff in essence agrees to guarantee payment of litigation costs not paid by his or her client.

Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.

Subsection d involves a specific type of agreement or representation: an alleged promise to obtain a particular outcome or result. One example of this would be an attorney who promises to get a case reinstated or to obtain a particular favorable result at trial or in settlement. In that situation, the attorney can potentially be held liable for breach of contract or misrepresentation regardless of whether his or her conduct met the standard of care. That situation is to be distinguished from an attorney's liability in tort or under the third party beneficiary doctrine for failure to perform a particular task, such as naming a particular beneficiary in a will or filing and serving a complaint within the statute of limitations, where the liability, if any, is not based solely on a breach of the attorney's guarantee, promise or representation.

Attorneys sometimes act in one of the special capacities for which coverage is provided under Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE). If the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20.a does not apply, although b, c, or d of this Exclusion may be applicable.

On the other hand, when an attorney is acting in an ordinary capacity not within the provisions of Section III.3, Exclusion 20 does apply to any CLAIM based on or arising out of any bond or any surety, guaranty, warranty, joint control, indemnification, or similar agreement signed by the attorney or by someone for whom the attorney is legally liable. In these situations, attorneys should not sign such bonds or agreements. For example, if an attorney is acting as counsel to a personal representative and the personal representative is required to post a bond, the attorney should resist any attempt by the bonding company to require the attorney to co-sign as a surety for the personal representative or to enter into a joint control or similar agreement that requires the attorney to review, approve, or control expenditures by the personal representative. If the attorney signs such an agreement and a CLAIM is later made by the bonding company, the estate, or another party, Exclusion 20 applies and there will be no coverage for the CLAIM.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Master Plan does not apply to any CLAIM arising out of YOUR activity (or the activity of someone for whose conduct you are legally liable) as a bankruptcy trustee.

22. This Master Plan does not apply to any CLAIM against a COVERED PARTY arising from or related to work or services beyond the scope of activities assigned to the COVERED PARTY by the PRO BONO PROGRAM.

COMMENTS

Activities by a volunteer lawyer which are outside of the scope of activities assigned to the lawyer by the pro bono program for which the lawyer has volunteered do not constitute a COVERED ACTIVITY under this Master Plan and will also be excluded by this exclusion. The term “PRO BONO PROGRAM” as used in this exclusion is defined at SECTION I – DEFINITIONS.

The various exclusions which follow in this subsection were adopted from the PLF’s standard Coverage Plan. Many of the exclusions are, by their nature, unlikely to apply to a volunteer attorney working for a pro bono program. The fact that a type of activity is mentioned in these exclusions does not imply that such activity will be a COVERED ACTIVITY under this Master Plan.

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

23. This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.

COMMENTS

There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.

There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.

SECTION VI – LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE

1. Limits for This Master Plan

a. Coverage Limits. The PLF's maximum liability under this Master Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF's Limit of Coverage.

b. Claims Expense Allowance Limits. In addition to the Limit of Coverage stated in SECTION VI.1.a above, there is a single CLAIMS EXPENSE ALLOWANCE of \$50,000 for CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the CLAIMS EXPENSE ALLOWANCE. In the event CLAIMS EXPENSE exceeds the CLAIMS EXPENSE ALLOWANCE, the Limit of Coverage will be reduced by the amount of EXCESS CLAIMS EXPENSE incurred. The CLAIMS EXPENSE ALLOWANCE is not available to pay DAMAGES or settlements.

c. No Consequential Damages. No person or entity may recover any damages for breach of any provision in this Master Plan except those specifically provided for in this Master Plan.

2. Limits Involving Same or Related Claims Under Multiple PLF Plans

If this Master Plan and one or more other Master Plans or Claims Made Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, PRO BONO PROGRAMS, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES or PRO BONO PROGRAMS, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES or PRO BONO PROGRAMS requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES or PRO BONO PROGRAMS are separate is determined as of the time of the COVERED ACTIVITIES that are alleged in the CLAIMS. No LAW ENTITY, PRO BONO PROGRAM, or group of LAW ENTITIES or PRO BONO PROGRAMS practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE under this provision. The CLAIMS EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY or PRO BONO PROGRAM requesting it.

COMMENTS

The PLF Claims Made Plan is intended to provide a basic "floor" level of coverage for all Oregon attorneys engaged in the private practice of law whose principal offices are in Oregon. Likewise, the Pro Bono Master Plan is intended to provide basic limited coverage. Because of this, there is a general prohibition against the stacking of either Limits of Coverage or CLAIMS EXPENSE ALLOWANCES. Except for the provision involving CLAIMS EXPENSE ALLOWANCES under Subsection 2, only one Limit of Coverage and CLAIMS EXPENSE ALLOWANCE will ever be paid under any one Claims Made Plan or Pro Bono Master Plan issued to a COVERED PARTY in any one MASTER PLAN YEAR, regardless of the circumstances. Limits of Coverage or CLAIMS EXPENSE ALLOWANCES in multiple individual Claims Made Plans and Pro Bono Master Plans do not stack for any CLAIMS that are "related." As the definition of SAME OR RELATED CLAIMS

and its Comments and Examples demonstrate, the term “related” has a broad meaning when determining the number of Limits of Coverage and CLAIMS EXPENSE ALLOWANCES potentially available. This broad definition is designed to ensure the long-term economic viability of the PLF by protecting it from multiple limits exposures, ensuring fairness for all Oregon attorneys who are paying annual assessments, and keeping the overall coverage affordable.

The Limits of Coverage apply to claims against more than one COVERED PARTY so that naming more than one VOLUNTEER ATTORNEY, the PRO BONO PROGRAM, or other COVERED PARTIES as defendants does not increase the amount available.

Effective January 1, 2005, the PLF has created a limited exception to the one-limit rule for SAME OR RELATED CLAIMS. When such CLAIMS are asserted against more than one separate LAW ENTITY or PRO BONO PROGRAM, and one of the LAW ENTITIES or PRO BONO PROGRAMS is entitled to and requests a separate defense of the SUIT, then the PLF will allow a separate CLAIMS EXPENSE ALLOWANCE for that LAW ENTITY or PRO BONO PROGRAM.

The coverage provisions and limitations provided in this Master Plan are the absolute maximum amounts that can be recovered under the Master Plan. Therefore, no person or party is entitled to recover any consequential damages for breach of the Master Plan.

Example No. 1: Attorney A performed COVERED ACTIVITIES for a client while she was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 Limit of Coverage and two CLAIMS EXPENSE ALLOWANCES. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate LAW ENTITY from the firm at which she worked. Accordingly, two, not three, CLAIMS EXPENSE ALLOWANCES are potentially available.

Example No. 2: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two CLAIMS EXPENSE ALLOWANCES are potentially available. There are only two separate firms – the BC partnership and D’s firm.

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 facts or circumstances that reasonably could be expected to be the basis of a CLAIM for which coverage may be provided under this Master Plan, 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.
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.

SECTION VIII – COVERAGE DETERMINATIONS

1. This Master Plan is governed by the laws of the state of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Master Plan. Any disputes as to the applicability, interpretation, or enforceability of this Master Plan, or any other issue pertaining to the provision of benefits under this Master Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the state of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Master Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.
4. The bankruptcy or insolvency of a COVERED PARTY does not relieve the PLF of its obligations under this Master Plan.

COMMENTS

Historically, Section VIII provided for resolution of coverage disputes by arbitration. After 25 years of resolving disputes in this manner, the PLF concluded it would be more beneficial to COVERED PARTIES and the PLF to try these matters to a court where appeals are available and precedent can be established.

Until the dispute over coverage is concluded, the PLF is not obligated to pay any amounts in dispute. The PLF recognizes there may occasionally be exceptional circumstances making a coverage determination impracticable prior to a payment by the PLF of a portion or all of the PLF's Limit of

Coverage toward resolution of a CLAIM. For example, a claimant may make a settlement demand having a deadline for acceptance that would expire before coverage could be determined, or a court might determine on the facts before it that a binding determination on the relevant coverage issue should not be made while the CLAIM is pending. In some of these exceptional circumstances, the PLF may at its option pay a portion or all of the Limit of Coverage before the dispute concerning the question of whether this Master Plan is applicable to the CLAIM is decided. If the PLF pays a portion or all of the Limit of Coverage and the court subsequently determines that this Master Plan is not applicable to the CLAIM, then the COVERED PARTY or others on whose behalf the payment was made must reimburse the PLF, in order to prevent unjust enrichment and protect the solvency and financial integrity of the PLF. For a COVERED PARTY'S duties in this situation, see Section IX.3.

SECTION IX - ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY

1. As a condition of coverage under this Master Plan, the COVERED PARTY will, without charge to the PLF, cooperate with the PLF and will:

- a.** Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
- b.** Attend and testify when requested by the PLF;
- c.** Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
- d.** Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
- e.** Submit to arbitration of any CLAIM when requested by the PLF;
- f.** Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
- g.** Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
- h.** Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.

2. To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

3. The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment,

assume any obligation, or incur any expense with respect to a CLAIM.

4. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Master Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:

- a. Agrees to the PLF's proposal, or
- b. Objects to the PLF's proposal.

The written response must be made by the COVERED PARTY as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. A response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

The obligations of the Covered Party under Section IX as well as the other Sections of the Master Plan are to be performed without charge to the PLF.

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

- 1. No legal action in connection with this Master Plan will be brought against the PLF unless the COVERED PARTY has fully complied with all terms of this Master Plan.
- 2. The PLF may bring legal action in connection with this Master Plan against a COVERED PARTY if:
 - a. The PLF pays a CLAIM under another Master Plan issued by the PLF;
 - b. A COVERED PARTY under this Master Plan is alleged to be liable for all or part of the damages paid by the PLF;

c. As between the COVERED PARTY under this Master Plan and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY under this Master Plan for contribution, indemnity, or otherwise, for all or part of the damages paid; and

d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Master Plan.

3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Master Plans issued by the PLF. However, this Subsection will not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery that would entitle the COVERED PARTY to indemnity under this Master Plan if the PLF's action were successful.

COMMENTS

Under certain circumstances, a CLAIM against a COVERED PARTY may not be covered because of an exclusion or other applicable provision. However, in some cases the PLF may be required to pay the CLAIM nonetheless because of the PLF's obligation to another COVERED PARTY under the terms of his or her Claims Made Plan or Pro Bono Master Plan.

Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Master Plan, but Attorney B has coverage for her liability under her Master Plan. The PLF pays the CLAIM under Attorney B's Master Plan. Section X.2 of Attorney A's Master Plan makes clear the PLF has the right to sue Attorney A for the damages the PLF paid under Attorney B's Master Plan.

Example No. 2: Same facts as the prior example, except that the PLF loans funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. Section X.2 of Attorney A's Master Plan makes clear that the PLF has the right pursuant to such arrangement with Attorney B to participate in her action against Attorney A.

SECTION XI - RELATION OF PRO BONO MASTER PLAN COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

1. If the COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify that also applies to any loss or CLAIM covered by this Master Plan, the PLF will not be liable under the Master Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage of this Master Plan.

2. This Master Plan shall not apply to any CLAIM which is covered by any PLF Claims Made Plan which has been issued to any COVERED PARTY, regardless of whether or not the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage available to defend against or satisfy such CLAIM are sufficient to pay any liability or CLAIM or whether or not the underlying limits or terms of such PLF

Claims Made Plan are different from this Master Plan.

COMMENTS

As explained in the Preface, this Master Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Master Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under the Lamb-Weston v. Oregon Automobile Ins. Co. 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF’s representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Master Plan nor will the terms of this Master Plan be waived or changed except by written endorsement issued and signed by the PLF’s authorized representative.

SECTION XIII — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

SECTION XIV – TERMINATION

This Master Plan will terminate immediately and automatically in the event YOU are no longer certified as an OSB Pro Bono Program by the Oregon State Bar.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed [specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, [include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable].

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information. If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,

[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing gives the client the opportunity and necessary information to obtain independent legal advice when the

attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a), DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help ensure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 21-23, 2013
Memo Date: November 5, 2013
From: Ira Zarov – CEO Professional Liability Fund
Re: Installment Payments

Action Recommended

The PLF BOD requests that the proposed change to PLF Policy 3.300, Installment Privileges, be adopted. The change lowers the participation fee in the Installment Plan from \$25.00 to \$10.00.

Background

In December of last year, a number of posts on the Small Firm Listserv were made which questioned various PLF policies relating to installment payments and fees connected to the PLF assessment. The concern expressed on the Listserv was what charges connected to the installment plan were arbitrary and punitive. At the June 21, 2013 Board of Directors meeting, the Board discussed the issues raised.

The \$25.00 Participation Charge: As a result of the Listserv concerns, the PLF Board of Directors elected to reduce the \$25.00 charge to participate in the installment plan to \$10.00. The change from \$25.00 is the only change requiring BOG approval. The change is possible because of the option to send electronic notices to covered parties electing the Installment Plan. Recent changes in the law made this possible.

As noted, the Listserv concerns enumerated a number of other issues. Those issues were the \$35.00 credit card charge, the 7% interest rate charged to participants in the installment plan, the request to allow payments to be made monthly rather than quarterly, and finally, that the PLF consider changing due dates for assessment payments.

The PLF BOD made the following decisions on the other matters raised.

The 7% Interest Charge: The 7% interest charge would remain in force. The 7% charge was characterized “a stiff penalty.” The charge reflects the fiscal costs of the installment policy. Approximately 3400 (of 7400) covered parties have elected to pay by installment. As a result, the PLF received \$8.9 million dollars less to invest than if there was only a full pay option. The PLF budgets a 7% annual gain for its investment portfolio. Investment returns are reduced by the amount of money the \$8.9 million would produce during the time it is unavailable to the PLF. Without the 7% charge, the installment program would cost all covered parties who elect

to pay the full assessment at the start of the year approximately \$45.00. (The \$45 takes into account all variables.) The 7% is charged only on the amount of the assessment outstanding.

The VISA Charge: The \$35 charge for use of the VISA will be discontinued and a straight percentage pass through based on the actual credit card company charge will be substituted. The straight pass through was not an available option until recently.

Monthly Payments: Allowing monthly payments proved not to be a viable option. On a trial basis, the PLF accepted some monthly payments. Problems occur when monthly payments are elected but a default occurs. The accounting difficulties that arose when the monthly payments were defaulted were difficult and created a significant amount of time to manage.

All in all, accepting monthly payments presents complications and is of arguable value. The PLF is aware of Covered Parties who wish to pay monthly accomplishing their goal by putting a check in an envelope every month and at the end of the quarter to sending the envelope to the PLF. We then process the three checks.

Due Dates for PLF Payments: Changing the date of payment given the suspension process which requires notice and a time to cure, is not feasible.

Attachment: PLF Policy 3.300

3.300 INSTALLMENT PRIVILEGES

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

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

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

(D) Attorneys who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining balance before the default dates shall not be entitled to a partial or full refund of any installment service charge previously paid.

(E) Attorneys employed by OSB-certified pro bono programs may elect to pay the annual assessment in quarterly installments without paying the installment service charge described in subsection (A).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 22-23, 2013
Memo Date: November 5, 2013
From: Ira Zarov, PLF CEO
Re: Article 10 – PLF Defense and Indemnity Responsibilities

Action Recommended

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed changes to Article 10 of the PLF Bylaws. Article 10 relates to the indemnification of PLF Board members and employees.

Background

Article 10 of the PLF Bylaws set out the circumstances in which the PLF will provide indemnity and defenses to the PLF Board members and claims attorneys from individual financial responsibility in the event that they are sued for actions taken within the scope of their duties. Because of the increased litigiousness of recent litigation and the growing willingness of some Courts to allow the inclusion of punitive damages in matters in which punitive damages had not previously been permitted, the indemnity provisions were reviewed. The review focused on the adequacy of Article 10 to accomplish its intended goal of indemnifying Board members and claims attorneys in matters where there are allegations of conduct giving rise to “bad faith” claims.¹

The review determined that the protections in Article 10 which are tied to ORS 30.285 created a lack of certainty and clarity regarding the defense in suits that alleged conduct which could be the basis for “bad faith” claims and which included a prayer for punitive damages. In the view of the Board, the Bylaw therefore fell short of the goal of providing a defense in matters that involved decisions made within the scope of employment or Board service.

As noted above, the concern addressed with this Bylaw change did not arise in a vacuum. In a recent “bad faith” lawsuit against the PLF, the court allowed plaintiff to add a claim for punitive damages. In addition, in the course of other litigation, representations have been made by opposing counsel that they intended to add the Claims Attorney and the Director of Claims as individual defendants.

¹ Although called “bad faith” claims, the claims are based on the alleged negligent handling of a claim which results in damage to the policy holder. Actual “bad faith” is not an element of the claim.

In addition, the linkage to ORS 30.285 is confusing because significant portions of the provision relate to procedures not applicable to the PLF. For example, the Attorney General's office is not involved in providing defense counsel to PLF or Bar staff although the statute discusses the involvement of the Attorney General. And furthermore, the applicability of the State Tort Claims provisions to the PLF has been challenged by opposing counsel.

This change in the defense provision is important. The PLF frequently receives claims in which the prayer exceeds the available limit and a bad faith claim would be theoretically possible. In fact, there are dozens of such claims every year. (That said, to put the risk in context, in the 35 years of the PLF's existence, there has been one bad faith claims.) It is in the fiscal interest of the PLF that the Board and employees not be fearful of personal liability resulting from performance of their duties and responsibilities.

The intent of the change in the Bylaw is to make clear that the PLF will defend Board members, officers, and claims attorneys for conduct in the performance of their duties, not to shelter anyone from improper conduct. The change does not intend to expand the duty of the PLF to indemnify from the previous provision. Under the revised provision, there is no duty to indemnify if the acts complained of are "the result of dishonest, fraudulent, criminal, intentionally malicious, or knowingly wrongful conduct...."

ARTICLE 10
LIABILITY OF DIRECTORS

10.1 A Director will perform the duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve in good faith, in a manner such Director believes to be in the best interests of the PLF and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

10.2 In performing the duties of a Director, a Director will be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(A) One or more officers or employees of the PLF whom the Director believes to be reliable and competent in the matters presented,

(B) Counsel, independent accountants, actuaries, computer analysts, or other persons as to matters which the Director believes to be within such person's professional or expert competence, or

(C) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

10.3 A person who performs the duties of a Director in accordance with section 10.1 will have no liability based upon any alleged failure to discharge such person's obligations as a Director.

10.4 Indemnification and defense of directors, officers, employees or agents against certain expenses, judgments, fines or settlements; conditions:

(A) The PLF must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ~~law. ORS Chapter 30 relating to indemnification of public bodies, especially the provisions of ORS 30.285.~~ The term "officers, board members, directors, employees and agents" of the ~~Bar-PLF~~ includes subordinate groups established by the ~~Bar-PLF~~ to perform its authorized functions. This provision does not apply to outside counsel retained by the PLF. The right to defense and indemnity is set forth below, and ~~method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.~~

(B) The PLF has a duty to defend any past or present: officer; board member; director; employee; or agent (hereinafter "Defendant") against any claim or suit arising from any act, error or omission that occurred in the performance of such Defendant's duties on behalf of the PLF, or arising from such Defendant's employment with the PLF.

(C) The PLF has a duty to indemnify any Defendant for any and all damages awarded against such Defendant arising from any act, error or omission that occurred in the course and scope of such Defendant's performance of duties for the PLF, or employment with the PLF, whether or not such damages are awarded as a result of any claim for "bad faith" and/or punitive damages, unless the act, error or omission on which any such damages are based was the result of dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful conduct on the part of the Defendant. In the event the PLF denies any duty to indemnify, the Defendant shall be entitled to seek a declaratory judgment in a Court of Law whereby the Court will make a separate determination, independent of any findings in the underlying litigation, as to whether any acts, errors or omissions by the Defendant, resulting in the damage award, were dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful.

10.5 Defense and Indemnity relating to disciplinary matters.~~Methods of indemnification; not exclusive of other rights; insurance against liability:~~

(A) The PLF will defend any of its current and former officers, and employees (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the PLF as provided in this bylaw.

(B) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

(C) If any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on its face falls within the provisions of subsection (A) of this bylaw, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the PLF and not within the scope of subsection (B) of this bylaw, the Accused may file a written request for a defense with the Chief Executive Officer, or if the request is by the Chief Executive Officer, the Chair of the Board of Directors. The CEO or Chair, as the case may be, will thereupon present his or her recommendations to the Board of Directors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Directors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to selection counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the PLF, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

(D) If the Board agrees to pay for the defense of a complaint or disciplinary proceeding, the Accused shall cooperate fully with the lawyer(s) hired by the PLF to defend the Accused. If the Board determines that the Accused has not cooperated with defense counsel or has otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter for which a defense is provided, the Board may at any time terminate the continued defense of the matter and require the Accused to reimburse the PLF for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith

determination that the Accused has failed to cooperate with defense counsel or otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter.

(E) If the Board concludes, after undertaking to pay for the Accused's defense, that the conduct was malfeasance, grossly negligent, or the willful or wanton neglect of duty, the Board will terminate the continued defense of the matter and require the Accused to reimburse the PLF for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has engaged in such conduct.

(F) If the Accused in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the PLF for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Accused. Discipline for purposes of this bylaw should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the Board may waive the reimbursement requirement. When considering whether to waive the reimbursement requirement the Board of Directors will consider as a mitigating factor whether the action upon which the reprimand is based was a policy or procedure of the PLF.

(G) If the Board denies an Accused a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Accused is found in any disciplinary proceeding for which a defense was denied or terminated not to have violated any rule of professional conduct or disciplinary statute or regulation, the PLF will reimburse the Accused for his or her reasonable attorney fees and costs in defense of such matter so long as the Accused's conduct occurred in the performance of official duties on behalf of the PLF and did not separately constitute malfeasance, gross negligence or willful or wanton neglect of duty as, in good faith, is determined by the Board. Pro se representation does not qualify for the reimbursement of reasonable attorney fees and costs under this subsection.

2011 ORS § 30.285¹

Public body shall indemnify public officers

- **procedure for requesting counsel**
- **extent of duty of state**
- **obligation for judgment and attorney fees**

- (1) The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.
- (2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.
- (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent which on its face falls within the provisions of subsection (1) of this section, or which the state officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the state officer, employee or agent may, after consulting with the Oregon Department of Administrative Services file a written request for counsel with the Attorney General. The Attorney General shall thereupon appear and defend the officer, employee or agent unless after investigation the Attorney General finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall reject defense of the claim.
- (4) Any officer, employee or agent of the state against whom a claim within the scope of this section is made shall cooperate fully with the Attorney General and the department in the defense of such claim. If the Attorney General after consulting with the department determines that such officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the Attorney General may at any time reject the defense of the claim.

(5)

If the Attorney General rejects defense of a claim under subsection (3) of this section or this subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Attorney General shall not prejudice the right of the officer, employee or agent to assert and establish an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against liability and reasonable costs of defending the claim, cost of such indemnification to be a charge against the Insurance Fund established by ORS 278.425 (Insurance Fund).

- (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of liability of any public officer, agent or employee under ORS 30.260 (Definitions for ORS 30.260 to 30.300) to 30.300 (ORS 30.260 to 30.300 exclusive), or obviate the necessity of compliance with ORS 30.275 (Notice of claim) by any claimant, nor to affect the liability of the state itself or of any other public officer, agent or employee on any claim arising out of the same accident or occurrence.
- (7) As used in this section, state officer, employee or agent includes district attorneys and deputy district attorneys, special prosecutors and law clerks of the office of district attorney who act in a prosecutorial capacity, but does not include any other employee of the office of district attorney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the county. [1967 c.627 §7; 1975 c.609 §16; 1981 c.109 §5; 1981 c.913 §2; 1985 c.731 §22; 1987 c.763 §1; 2009 c.67 §11]

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 21-23, 2013
Memo Date: November 5, 2013
From: Ira Zarov – CEO Professional Liability Fund
Re: 2014 Excess Rates

Action Recommended

The PLF BOD requests that rate increases for 2014 Excess Coverage be approved. The rates are included in the accompanying materials.

Background

In addition to its primary coverage, the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers.

This year, there were robust negotiations because recent PLF experience has been worse than expected and the projected increases in premium based on an increase in the premium rate in 2013 were less than expected. The shortfall was the result of increased competition from other providers of excess insurance.

There are four classes of Excess Program rates. Class 1 rates are the standard rates for covered party firms for which there are no underwriting issues. Class 2 rates are charged for covered parties that practice in higher risk areas such as securities and real estate or firms that have a history of claims that meet certain criteria. Out-of-State Class 1 and 2 represent the same division as in-state classes but are for out-of-state firms.¹

The rate increases differ from coverage level to coverage level. The increases are set out in the enclosed Exhibit. The range of Class 1 in-state increases are from 5.9% to 7.95%. The range for Class 2 increases is 4.79% to 8.17%. For Class 1 out-of-state increases, increases are from 2.01% to 3.4% and Class 2 from 2.95% to 3.43%.

¹ The PLF Primary program does not insure out-of-state attorneys. Firms that have out-of-state offices that meet certain criteria can purchase coverage for attorneys in those offices through the Excess Program. The cost of that coverage is calculated by adding the cost of the primary program assessment and the excess rates. There is a \$5,000 deductible with out-of-state excess coverage as well.

Professional Liability Fund

Ira R. Zarov

2014 Excess Program Rates

----- CLASS 1 -----				With Endorsement 2014	
Coverage Level	2013 Rates	2014 Rates	Change	Rates	Change
\$700,000	\$1,145	\$1,241	8.38%	\$1,276	7.95%
\$1,700,000	\$2,030	\$2,172	7.00%	\$2,207	6.77%
\$2,700,000	\$2,782	\$2,963	6.52%	\$2,998	6.36%
\$3,700,000	\$3,136	\$3,336	6.37%	\$3,371	6.23%
\$4,700,000	\$3,358	\$3,569	6.27%	\$3,604	6.14%
\$9,700,000	\$5,392	\$5,692	5.56%	\$5,727	5.49%

----- CLASS 2 -----				With Endorsement 2014	
Coverage Level	2013 Rates	2014 Rates	Change	Rates	Change
\$700,000	\$1,947	\$2,111	8.42%	\$2,146	8.17%
\$1,700,000	\$3,360	\$3,595	6.99%	\$3,630	6.86%
\$2,700,000	\$4,561	\$4,856	6.48%	\$4,891	6.38%
\$3,700,000	\$5,126	\$5,450	6.32%	\$5,485	6.24%
\$4,700,000	\$5,480	\$5,821	6.22%	\$5,856	6.14%
\$9,700,000	\$8,781	\$9,205	4.83%	\$9,240	4.79%

----- OUT OF STATE CLASS 1 -----				With Endorsement 2014	
Coverage Level	2013 Rates	2014 Rates	Change	Rates	Change
\$700,000	\$4,645	\$4,741	2.07%	\$4,776	2.01%
\$1,700,000	\$5,530	\$5,672	2.57%	\$5,707	2.51%
\$2,700,000	\$6,282	\$6,463	2.89%	\$6,498	2.84%
\$3,700,000	\$6,636	\$6,836	3.01%	\$6,871	2.96%
\$4,700,000	\$6,858	\$7,069	3.07%	\$7,104	3.02%
\$9,700,000	\$8,892	\$9,192	3.37%	\$9,227	3.34%

----- OUT OF STATE CLASS 2 -----				With Endorsement 2014	
Coverage Level	2013 Rates	2014 Rates	Change	Rates	Change
\$700,000	\$5,447	\$5,611	3.01%	\$5,646	2.95%
\$1,700,000	\$6,860	\$7,095	3.43%	\$7,130	3.38%
\$2,700,000	\$8,061	\$8,356	3.66%	\$8,391	3.62%
\$3,700,000	\$8,626	\$8,950	3.76%	\$8,985	3.72%
\$4,700,000	\$8,980	\$9,321	3.80%	\$9,356	3.76%
\$9,700,000	\$12,281	\$12,705	3.45%	\$12,740	3.43%



Whittington, Brock & Swayze

ATTORNEYS AT LAW

EST. 1915

WILL M. WHITTINGTON (1878-1962)

W.M. WHITTINGTON, JR (1914-2002)

H. DONALD BROCK

CHARLES J. SWAYZE, JR.

H. DONALD BROCK, JR.

CHARLES J. SWAYZE III

October 9, 2013

TO: Members of the
National Caucus of State Bar Associations

Re: ABA Standing Committee on Ethics & Professional Responsibility
Formal Opinion 464 (Fee Splitting)

Dear fellow caucus:

Since the issue of greater involvement of non-lawyers in the practice of law has been of significant interest to many in our Caucus, I am advising you of the August 19, 2013, Formal Opinion 464 by the ABA Standing Committee on Ethics & Professional Responsibility. http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_464.authcheckdam.pdf. This Opinion provides that it is permissible for a lawyer in a jurisdiction prohibiting fee splitting to nonetheless split fees with a lawyer in a jurisdiction where such a practice is allowed, e.g. D.C. and the UK where non-lawyer ownership of law firms is permitted.

You may recall that this subject was an issue with Resolution 10A when it was before the House in August, 2012. It prompted considerable discussion at the Caucus meeting. Since 10A was presented to the House by our Caucus' immediate past president, John Thies, I have asked John to provide a report on its recent history. The report is attached.

President-elect Nate Alder and I will continue to monitor developments on this issue and will keep you informed as we prepare for our February meeting in Chicago.

Very truly yours,

Whittington, Brock & Swayze, Jr.

By: 

Charles J. Swayze, Jr.

President, National Caucus of
State Bar Associations

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Whittington, Brock & Swayze

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CHARLES J. SWAYZE, JR.

H. DONALD BROCK, JR.

CHARLES J. SWAYZE III

October 29, 2013

TO: Members of the National Caucus of State Bar Associations

Re: Formal Opinion 464/Illinois Resolution

Dear Colleagues:

As President of the National Caucus of State Bar Associations, I am attaching a copy of the *Illinois State Bar Association Resolution Regarding ABA Ethics Opinion 464 Permitting Certain Fee Splitting with Non-Lawyers*. This is a topic that will be discussed at our Caucus meeting in Chicago. I consider this to be relevant information to keep you apprised of the upcoming discussion at the Caucus meeting and/or at the House of Delegates meeting.

If any state bar association has relevant information on this ethics opinion or any other anticipated topic of discussion at the Caucus meeting, please do not hesitate to send it to me for dissemination to our members.

Thank you very much for your attention to this matter.

Very truly yours,

WHITTINGTON, BROCK & SWAYZE

By: 

Charles J. Swayze, Jr.
National Caucus President

CJSiii:lm
Attachment

[Approved October 18, 2013]

ILLINOIS STATE BAR ASSOCIATION
RESOLUTION REGARDING ABA ETHICS OPINION 464
PERMITTING CERTAIN FEE SPLITTING WITH
NON-LAWYERS

WHEREAS, it is the policy of the Illinois State Bar Association (ISBA) that “. . . permitting the sharing of legal fees with non-lawyers or permitting ownership and control of the practice of law by non-lawyers threatens the core values of the legal profession.”

WHEREAS, the issue of greater involvement by non-lawyers in the practice of law is and has been of significant concern to ISBA members.

WHEREAS, in 2012, the ISBA participated in a coalition of state bar associations and others to contest efforts within the American Bar Association’s (ABA) Commission on Ethics 20/20 to effect change in Model Rule 1.5(e) to permit fee sharing by a lawyer with another firm that has non-lawyer partners and owners when one of the firms (or lawyers) is in a jurisdiction that allows non-lawyer ownership.

WHEREAS, on October 29, 2012, the Ethics 20/20 Commission issued a release announcing that the Commission had decided not to recommend that the House adopt its proposal on fee splitting (either inter or intra firm). In this release, the Commission characterized the fee division choice of law issue as "narrow and technical;" and the Commission had concluded that (where multiple firms were involved) there are "very few occasions" when fee splitting would be necessary as separate firms "can simply send separate invoices to the client for their work in the matter." The Commission further stated that this issue was not "worthy of debate and consideration in the House" and not "capable of making a difference for the profession," and said it was referring the fee-splitting issue --both inter and intra firm -- to the ABA's Standing Committee on Ethics and Professional Responsibility for further review.

WHEREAS, on August 19, 2013, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility released Formal Opinion 464, which opinion states that it is permissible for a lawyer in a jurisdiction prohibiting fee splitting with non-lawyers to nonetheless split fees with a lawyer in a jurisdiction where such a practice is allowed (e.g., in the District of Columbia or the United Kingdom where non-lawyer ownership of law firms is permitted).

WHEREAS, Formal Opinion 464 is a violation of ABA Policy which states that:

"The sharing of legal fees with non-lawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised." This ABA Policy is known as the

"MacCrate Resolution."

WHEREAS, on September 20, 2013, ISBA President Paula H. Holderman sent correspondence to the chair of the ABA's Standing Committee on Ethics and Professional Responsibility, registering her concerns as to such opinion as a "new interpretation of the Model Rules. . . conflict[ing] with ABA policy . . ." and stating that an even "more troubling" aspect is the Committee's "apparent disregard for the policy-making authority of the House of Delegates on an important and controversial policy issue." The Chair responded to President Holderman's correspondence stating that the committee disagrees that their opinion violates ABA policy.

WHEREAS, the sharing of legal fees with non-lawyers, and non-lawyer ownership or control of law firms directly and adversely impacts core values of the U.S. legal profession, including but not limited to, the exercise of independent professional judgment and regulation by the judicial branch of government.

NOW THEREFORE BE IT RESOLVED, that the Illinois State Bar Association reaffirms its existing policies stated herein, and its objection to ABA Formal Opinion 464 as such opinion: (1) creates new policy bypassing the ABA House of Delegates (i.e., the policy making body of the ABA); (2) is a violation of existing ABA Policy; and (3) is inconsistent with ISBA Policy; and further directs that this resolution be transmitted to the American Bar Association and the National Caucus of State Bar Associations.

REPORT

Colleagues --

Resolution 10A was proposed in the summer of 2012 by a broad coalition of Caucus members (and others) in response to an effort within the ABA's Commission on Ethics 20/20 to effect a change in Model Rule 5.4(a) to permit fee sharing by a lawyer with another firm that has non-lawyer partners and owners when one of the firms (or lawyers) is in a jurisdiction that allows non-lawyer ownership.

10A sought to reaffirm existing ABA Policy that:

"The sharing of legal fees with non-lawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised." This ABA Policy is known as the "MacCrate Resolution."

At its August 2012 meeting, the House postponed Resolution 10A indefinitely to permit the Ethics 20/20 to complete its work. Those seeking postponement argued that this was necessary because the Commission had not made a final decision as to whether to bring the fee-splitting resolution to the House (and should have a chance to do this). **There is little doubt that, had there been a vote on the merits, Resolution 10A reaffirming the long standing ABA policy quoted above would have been passed with overwhelming support.**

On October 29, 2012, the Ethics 20/20 Commission issued a release announcing that the Commission had decided not to recommend that the House adopt its proposal on fee splitting (either inter or intra firm). In this release, the Commission characterized the fee division choice of law "issue" as "narrow and technical;" and that, in actuality, the Commission had concluded that (where multiple firms were involved) there are "very few occasions" when fee splitting would be necessary as separate firms "can simply send separate invoices to the client for their work in the matter." The Commission further stated that this issue was not "worthy of debate and consideration in the House" and not "capable of making a difference for the profession," and said it was referring the fee-splitting issue --both inter and intra firm -- to the ABA's Standing Committee on Ethics and Professional Responsibility for further review.

Thus, with this history, this new Ethics Opinion is a clear and remarkable "end run" around the House of Delegates. Incredibly, there is no reference in the Opinion to (or effort to distinguish) the MacCrate Resolution of the House (as if this policy does not exist). Moreover, this Opinion ignores the plain language of Rule 5.4.

The actions of the Standing Committee on Ethics & Professional Responsibility present two important questions for Caucus members.

First, as the leaders of state bar associations whose members are particularly threatened by the encroachment of outsiders that are not subject to our rules and special fiduciary duties, what can we do to minimize the impact of this new Opinion?

Second, as members of the ABA House of Delegates, what steps should we take to respond to this clear challenge to the House as the policy making body of the ABA? As stated in the Green Book, "The House of Delegates has the ultimate responsibility for establishing Association policy on professional and public issues."

Why do we prohibit lawyers from sharing fees with non-lawyers? Because when we allow non-lawyers to be involved in the practice of law, either as passive or active investors, we lose our independence. - with a share of our fees comes control of the enterprise. Thus, when the same forces came forward thirteen years ago preaching the value of multi-disciplinary practice, the House fought back and proclaimed the importance of Rule 5.4, saying it was not enough simply to tell lawyers that they should remain independent. It was one of the House's finest hours.

With this background, the Standing Committee cannot have the last word on this topic. Accordingly, it is important that - as we work toward the next meeting of the House in February -- members of the Caucus again work together in this battle to maintain the integrity of our profession. I hope you will join us in these efforts, and invite you to direct any comments you may have on this subject to me at jthies@webberthies.com.

Best regards,
John E. Thies,
Immediate Past President, Illinois State Bar Association
Immediate Past President, National Caucus of State Bar Associations

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 6, 2013
From: David Eder, Oregon New Lawyers Division Chair
Re: ONLD Report

The following is a list of ONLD activities since the July BOG meeting:

- In the ONLD's pursuit to offer new lawyers and law students practical skills training the CLE and Law School Outreach Subcommittees co-sponsored a two-hour jury selection CLE at Lewis & Clark law School on October 15. A social for students and local attorneys to network was held after the program. The event was well received by attendees, the school, and the law student body association. 65 lawyers or law students attended.
- Held five one-hour noontime CLE programs in Multnomah County. Topics included ethics, construction liens, prosecuting national security cases, and two access to justice programs. Thank you to Ethan Knight for presenting one of these programs. The CLE Subcommittee also sponsored Super Saturday, the division's annual full day multi-track CLE program.
- Hosted a panel presentation for the students at Willamette and U of O focusing on employment searches after passing the bar exam. ONLD representatives also participated in the Lewis & Clark's first "bar prowl" event for students to learn what each bar related organization offers students and new members.
- Executed the Pro Bono Fair, Awards Ceremony, and three free CLE programs. This year's event resulted in 20 provider "fair booth" tables. Thank you to Tom Kranovich for speaking and presenting the awards during this event. For the second year in a row, the Pro Bono Celebration Week events were expanded to include U of O and Willamette University events for law students.
- Hosted a reception for the newest bar members and their families after the swearing in ceremony at Willamette University.
- In October the ONLD launch its fourth round of open enrolment for the award-winning Practical Skills through Public Service Program. Volunteer positions are available in Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties.
- Held the division's annual meeting to elect the 2014 executive committee officers and members. During the annual meeting the following awards were also given to members of the division:
 - Member Services Award: Laura Salerno Owens and Ryan Vanden Brink
 - Public Service Award: Danielle Hunsaker
 - Volunteer of the Year: Joe Kraus
 - Project of the Year Award: Traci Ray for the Wills for Heroes Project

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2013-02 GOFF (Steidley) Recommended for Payment

Action Recommended

Consider the CSF Committee's recommendation that the claimant be awarded \$25,000.

Discussion

Claimant retained Eugene attorney Daniel Goff in September 2011 for representation in an acrimonious marital dissolution, advancing a flat fee of \$10,000 for Goff's services plus a deposit of \$5,000 toward costs. The case went to trial in 2012 and consumed three days of court time over a span of several months. Claimant has many concerns about Goff's handling of the matter and particularly trial, but makes no allegations of dishonesty. At the end of the dissolution trial, the court awarded wife a judgment for her attorney fees in the amount of \$70,000.

One reason for the breakdown of Claimant's marriage was his alleged infidelity. Wife presented the infidelity allegations to the elders of the parties' church, who in turn shared the information with the congregation and ex-communicated Claimant.

While the dissolution case was pending, Goff and Claimant also discussed bringing a defamation case against Claimant's former church and the elders at the conclusion of the dissolution case. In April 2012, Claimant and Goff entered into a hybrid fixed/contingent fee for the defamation case. Claimant paid a fixed non-refundable sum of \$20,000 (plus deposited \$5,000 for costs), which was to be applied against a 1/3 contingent fee in the event of a successful outcome.

Unbeknownst to Claimant, during the time Goff had been handling Claimant's legal matters he had also been responding to disciplinary proceedings involving unrelated complaints of four clients. On June 14, 2012, the Supreme Court issued an order suspending Goff for 18 months, effective August 13, 2012.¹

Claimant paid \$25,000 to Goff for the defamation case on June 20, 2012. Nothing was done on the case during the next months, although Goff assured Claimant he would find another attorney to handle the defamation case and would assist with it. Goff and Claimant apparently met two or three times with Larry Gildea, but he declined to become involved in the case. In late September, Goff advised Claimant that his only option was to file suit immediately to avoid the running of the statute of limitations. Goff drafted a complaint that Claimant filed

¹ Goff subsequently submitted a Form B resignation in December 2012.

pro se in October 2012. Claimant says Goff continued to advise him about the defamation case over the next several weeks, including drafting an amended complaint a response to a Rule 21 motion. The defamation case was ultimately dismissed, with Claimant being assessed \$11,000 in attorney fees.

The CSF Committee concluded that Claimant should be awarded the entire \$25,000 paid to Goff for the defamation case. The Committee believes Goff was dishonest in taking the fee when he knew he would be unable to practice after 53 days. The Committee was unpersuaded by Goff's claim that he was entitled to retain the fee because continued working out the final details of the marital dissolution case between June and August 2012 and the two cases were factually and legally intertwined.² The Committee also rejected the idea that Goff was entitled to legal fees for any services (i.e., assistance to Gildea) provided after his August 2012 suspension. The Claimant received no more than *de minimis* services for the \$25,000 paid in advance to Goff.

The Committee also recommends waiving the requirement that Claimant obtain a civil judgment against Goff, as it would be a hardship to require Claimant to expend the money to obtain a judgment. Additionally, Goff's ability to satisfy a judgment is questionable.³

² Larry Gildea stepped in to represent Claimant in the dissolution between Goff's suspension in August 2012 and the final resolution, after hearings on costs and attorney fees, in December 2012.

³ Goff filed a Chapter 11 bankruptcy in 2010, which was converted to a Chapter 7 in mid-2011. Claimant's name does not appear on the schedules, so the Chapter 7 discharge would not apply. If judgment against Goff is desired, it can be pursued by the OSB as assignee of Claimant's rights against Goff.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2013-35 BERTONI (Cheadle) Request for Review

Action Recommended

Review the CSF Committee's denial of Mr. Cheadle's application for reimbursement, as timely requested by the claimant.

Background

Joseph Cheadle submitted what he characterizes as two claims to the Client Security Fund. The first claim is for \$1,500, representing half of the cost of a psychological exam that was never used for the client's benefit; the second is for a refund of the \$5,000 fee paid to attorney Gary Bertoni.

Cheadle hired Bertoni in February 2007 to resolve some problems with Cheadle's 1994 sentence for burglary and aggravated murder.¹ For a flat fee of \$5,000, Bertoni agreed to try to fix the problem through negotiation or, if negotiation failed, a post-conviction proceeding.

In 2008, Cheadle complained to the bar that Bertoni was not communicating with him, but the issue was resolved to the satisfaction of Cheadle. Cheadle complained to the bar again in January 2010 and again the problem was resolved between Cheadle and Bertoni.

In July 2011, Cheadle filed a pro-se petition for post-conviction relief and shortly after complained to the bar a third time that Bertoni was neglecting his matter. The result of the third complaint was a new agreement in December 2011 between Bertoni and Cheadle and Bertoni formally substituting in as Cheadle's counsel in the post-conviction case.

The December 2011 fee agreement provided that Cheadle's payment of \$5,000 was for "past and future services" relating to the sentencing issue and that if Bertoni became "unable to complete the [representation] because of a nonwaivable conflict of interest, retirement, or disbarment" Bertoni would refund \$3,500 of the fee.

The December agreement also provided that Bertoni would refund \$1,500 of the money advanced for the psychological exam. Bertoni claimed to have sent a check in January 2012, but Cheadle didn't receive it. A replacement check sent by Bertoni on March 6, 2012 was

¹ Cheadle pleaded guilty to the burglary at age 17 and was sent to McLaren. The hope was that he could demonstrate rehabilitation while at McLaren and get a lighter sentence on the aggravated murder. After six months at McLaren, Cheadle pleaded guilty to the aggravated murder and was sentenced to a minimum of 30 years with the possibility of parole. As it turned out the final judgment did not give Cheadle credit for the six months he had served at McLaren, which would have made him eligible for Parole Board review in November 2013 instead of July 2014.

dishonored due to insufficient funds. In August 2012, Bertoni promised to reimburse Cheadle by the end of September, but he has not done so.

Bertoni's affidavit in the post-conviction case (to show that Cheadle had pursued his claims timely) omitted many representations Bertoni had made to Cheadle about the matter; for example, there was no mention of negotiations with the state. Bertoni also failed to tell Cheadle that in 2001 the state had obtained an amended judgment against Cheadle that imposed lifetime post-prison supervision. Additionally, Bertoni failed to inform Cheadle that he had been suspended for 150 days on unrelated charges effective March 27, 2012. (Another lawyer handled Bertoni's client matters during his suspension, but it is not clear that she ever met with Cheadle.)

Upon learning of Bertoni's suspension, Cheadle fired him. Through his new counsel, D. Olcott Thompson, Cheadle may be able ultimately to achieve some of his objectives. Thompson acknowledged that the file indicates Bertoni did some work on Cheadle's matter, although he also contends that Bertoni made errors and then spent years hiding his errors while trying to find a possible solution.

The CSF Committee denied Cheadle's claim. As to the \$1,500, the committee concluded that Bertoni didn't misappropriate the money (it was paid directly to the consulting psychologist) and his inability to make good on a promised refund is not dishonesty within the meaning of the CSF rules.

As for the \$5,000 paid in 2012 for "past and future" services relating to Cheadle's sentence, the Committee concluded that Cheadle's claim does not meet the requirement of the pertinent rules:

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

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

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

The Committee concluded unanimously that Bertoni performed more than *de minimis* services, notwithstanding that the services may have been of limited value to the client. The Committee also concluded that even if a refund of some amount was due, there was no independent assessment of what that should be. The December 2011 agreement suggests Bertoni contemplated a refund of \$3,500 if he couldn't continue (although his inability to

continue was not for one of the reasons listed in the Agreement), yet Cheadle is asking for the entire \$5,000, allowing no credit for any services performed by Bertoni.

One issue not addressed by the Committee whether Bertoni “wrongly fail[ed] to maintain the advance payment in a lawyer trust account” within the meaning of Rule 2.2.1(ii). The December agreement provided that the \$5,000 was a “flat fee, earned upon receipt” and therefore not required to be placed in trust. However, effective December 1, 2010, Oregon RPC 1.5(c)(3) requires that “earned on receipt” fee agreements include additional language explaining that the money will not be placed in a trust account and that the client will be entitled to a refund if the services for which the fee was paid are not complete. Bertoni’s December 2011 agreement does not comply with the technical requirements of RPC 1.5(c)(3), even though it does provide for a refund if Bertoni is unable to complete the representation due to a conflict, retirement or disbarment.

If the BOG concludes that Bertoni’s non-compliant fee agreement means that he “wrongfully fail[ed]” to maintain Cheadle’s fund in his trust account, that constitutes dishonesty under the CSF rules. The next step in the analysis would be whether Bertoni’s work was more than *de minimis*. If the BOG agrees with the Committee’s conclusion on this point, that ends the analysis. Otherwise, if the BOG concludes that Bertoni’s work was *de minimis* or insignificant, Cheadle would be entitled to a refund of, arguably, the entire \$5,000 or some lesser portion the BOG deems appropriate.

Attachments: Cheadle Request for BOG Review
Cheadle Application for Reimbursement

September 25, 2013

Sylvia Stevens
Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

RECEIVED

SEP 27 2013

Oregon State Bar
Executive Director

RE: Client Security Fund Claim No. 2013-35
Lawyer: Gary Bertoni

Dear Ms. Stevens:

I am writing to request that the Oregon State Board of Governors review the September 9, 2013 Client Security Fund Committee denial of my claims against the above-referenced attorney.

The Client Security Fund Committee apparently denied my claims “conclud[ing] that there was insufficient evidence of dishonesty (either a false promise to provide services or wrongful failure to deposit prepared fees in trust)” by Mr. Bertoni. I respectfully disagree with the Committee’s conclusion.

One of my claims is premised upon Mr. Bertoni’s agreement in the “Attorney-Client Fee Agreement” (Ex. 1 of claim) “[t]o reimburse CLIENT \$1,500 for Dr. Bolstad’s fee, Payment to be made within 21 days of the date of the execution of this Fee Agreement to a bank account of CLIENT’S choosing[.]” (Ex. 1, p. 1). The Agreement was signed by Mr. Bertoni on December 5, 2011 (Ex. 1, p. 2) but he has never – to this date – reimbursed the agreed upon sum. *See e.g.*, (Ex. 10)(admitting 10/16/12 that he has not reimbursed the fee). Mr. Bertoni’s failure reimburse the agreed upon sum, after repeatedly telling me that he would, but repeatedly failing to do so, constitutes dishonesty. *See* (Ex. 1-10).

My other claim is premised upon Mr. Bertoni’s express agreement that “Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, . . . upon CLIENT’S request, will reimburse \$3,500.00 of the fees paid to date.” (Ex. 1, p. 2 of Claim). A conflict of interest arose between the parties, forcing Mr. Bertoni to withdraw as counsel in a trial court proceeding. *See e.g.*, (Ex. 4 & 5). By the express terms of the “Attorney-Client Fee Agreement” (Ex 1) that Mr. Bertoni entered into on December 5, 2011 (Ex. 1, p. 2), he was required to reimburse \$3,500 of his \$5,000 fee. As of this writing, he has repeatedly failed to do so. This constitutes dishonesty.

It is unclear to me from your September 9, 2013 letter if the Client Security Fund Committee intended to deny both claims, given that your letter lists only a single case number and does not reference the basis of the claim that is being denied anywhere in the body of your letter. I submitted both claims simultaneously under an April 30, 2013 cover letter (a copy of which is enclosed) so I am concerned that perhaps the Client Security Fund Committee may not have

Sylvia E. Stevens
September 25, 2013
Page 2 of 2

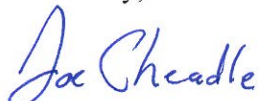
understood that I was intending to file two separate claims. It is also not clear to me at this point if, perhaps, one of the two claims I filed is still pending before the Committee. Therefore, it is difficult for me to know what to argue as a basis for finding that the Committee erred.

The Oregon State Bar website posting concerning the OSB Client Security Fund reports that “[a] claimant who would like assistance in presenting a claim may ask the bar to supply the name of a volunteer lawyer.” Given that I am a *pro se* prisoner, who is untrained in the law, I respectfully request that the Bar request that a volunteer lawyer assist me in presenting my claims for the Board of Governor’s review, or in seeking reconsideration by the Client Security Fund Committee.

The Bar has filed a formal complaint against Mr. Bertoni related to his conduct in my case (and several others). The OSB Client Security Fund web posting states that “[d]elays are sometimes the result of . . . pending legal or disciplinary proceedings.” I respectfully request that the Board of Governors delay making a final decision on this matter until the Bar disciplinary proceedings against Mr. Bertoni have reached conclusion. That proceeding is being prosecuted by Stacy J. Hankin, Assistant Disciplinary Counsel, ext. 347. I’m sure she would explain the basis of those claims to you.

Thank you for your time and hopeful consideration. I look forward to hearing from you at year earliest convenience.

Sincerely,



Joseph A. Cheadle
SID # 10973334
3405 Deer Park Drive SE
Salem, OR 97310

cc. Stacy J. Hankins
Assistant Disciplinary Counsel

(enclosure)

April 30, 2013

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

RE: Two Separate Client Security Fund Claims - Enclosed

Dear Client Security Fund:

Enclosed you will find two **separate** Client Security Fund claims resulting from the conduct of Gary B. Bertoni (OSB # 78141): 520 SW Yamhill Street, Suite 430, Portland, OR 97204, gbertoni@gbertonilaw.com, (503)243-2035.

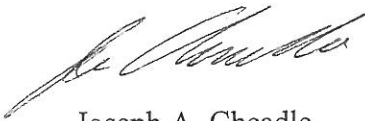
In the first claim, I seek \$1,500.00 related to the cost of a psychological evaluation, which Mr. Bertoni repeatedly promised to reimburse me but has failed to return, despite numerous requests that he do so.

In the second claim, I seek \$5,000.00 related to Mr. Bertoni's retainer which he failed to do anything to earn, and which, under the terms of our agreement, he promised to reimburse \$3,500.00. Mr. Bertoni has failed to return that retainer, or any portion thereof.

As noted in the attached claim forms, Disciplinary Counsel of the Oregon State Bar has brought disciplinary proceedings against Mr. Bertoni in Case No. 13-28, related to, *inter alia*, the conduct which forms the basis of these claims. That matter is being handled by Assistant Disciplinary Counsel Stacy J. Hankins, at (503)620-0222, ext 347.

Please let me know if you need any further information. I would be happy to provide any other documents within my custody and control. Thank you for your time and attention. I look forward to hearing from you at your earliest convenience.

Sincerely,

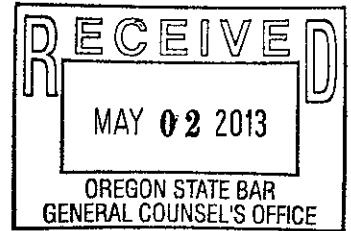


Joseph A. Cheadle
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

(enclosures)

April 30, 2013

Case # 2013-35



Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

RE: Two Separate Client Security Fund Claims - Enclosed

Dear Client Security Fund:

Enclosed you will find two **separate** Client Security Fund claims resulting from the conduct of Gary B. Bertoni (OSB # 78141): 520 SW Yamhill Street, Suite 430, Portland, OR 97204, gbertoni@gbertonilaw.com, (503)243-2035.

In the first claim, I seek \$1,500.00 related to the cost of a psychological evaluation, which Mr. Bertoni repeatedly promised to reimburse me but has failed to return, despite numerous requests that he do so.

In the second claim, I seek \$5,000.00 related to Mr. Bertoni's retainer which he failed to do anything to earn, and which, under the terms of our agreement, he promised to reimburse \$3,500.00. Mr. Bertoni has failed to return that retainer, or any portion thereof.

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Please let me know if you need any further information. I would be happy to provide any other documents within my custody and control. Thank you for your time and attention. I look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph A. Cheadle".

Joseph A. Cheadle
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

(enclosures)

Oregon
State
Bar

Client Security Fund Application for Reimbursement

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 2399
Tigard, OR 97281-1935

RECEIVED
MAY 02 2013
OREGON STATE BAR
GENERAL COUNSEL'S OFFICE

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

*Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.*

1. Information about the client(s) making the claim:

a. Full Name: Joseph Aaron Cheadle

b. Street Address: SID # 10973334, Oregon State Correctional Institution, 3405 Deer Park Dr., SE

c. City, State, Zip: Salem, Oregon 97310

d. Phone: (Home) Na (Cell) NA

(Work) _____ (Other) An appointment may be scheduled to speak

with me by telephone at the Oregon State Correctional Institution (OSCI), by calling Mrs. Laura Ellison at (503)373-0125.

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

a. Lawyer's Name Gary B. Bertoni, (OSB # 78141)

b. Firm Name Bertoni & Associates

c. Street Address: 520 SW Yamhill Street, Suite 430

d. City, State, Zip: Portland, Oregon 97204

e. Phone: (503)243-2035

f. Email: gbertoni@gbertonilaw.com

3. Information about the representation:

a. When did you hire the lawyer? 2007. Renewed, with a signed fee agreement on December 5, 2011

b. What did you hire the lawyer to do? I hired Mr. Bertoni to negotiate with the Clackamas County District Attorney's Office to obtain specific performance of the terms of my 1994 plea agreement, and if the prosecutors did not agree to specific performance of the agreement, to file a post-conviction relief proceeding, pursuant to ORS 138.510 to 138.680 to obtain specific performance of the agreement.

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

"1. For all of ATTORNEY'S past and future services in these pending matters, CLIENT has paid ATTORNEY the fee of \$5,000.00 for legal representation. Said fee specified is a non-refundable minimum flat fee, earned upon receipt, and was paid on or about September 14, 2007." (Ex. 1, p. 1)

"5. CLIENT may discharge ATTORNEY at any time upon telephone notice followed by a written, signed notice from my new attorney or me. Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date." (Ex. 1, p. 2)

"4. I understand ATTORNEY will use best efforts in representing CLIENT. ATTORNEY has given me no assurances regarding the outcome of matters being handled by ATTORNEY. Best efforts to include the following:

* * * * *

- To reimburse CLIENT \$1,500 for Dr. Bolstad's fee. Payment to be made within 21 days from the date of the execution of this Fee Agreement to a bank account of CLIENT'S choosing;" (Ex. 1, p. 1)

d. Did anyone else pay the lawyer to represent you? Yes

e. If yes, explain the circumstances (and complete item 10B on page 3): Payment was facilitated through a family friend

f. How much was actually paid to the lawyer? \$5,000.00 for attorney fees; \$3,000.00 for psychological evaluation, for total of \$8,000.00.

g. What services did the lawyer perform? None

h. Was there any other relationship (personal, family, business or other) between you and the lawyer? No

4. Information about your loss:

a. When did your loss occur? December 26, 2011 to the present

b. When did you discover the loss? October 16, 2012

c. Please describe what the lawyer did that caused your loss He has repeatedly failed to fulfill his written agreements to reimburse the money that he has repeatedly acknowledged that he owes me. See (Ex. 1 to Ex.)

d. How did you calculate your loss? Mr. Bertoni agreed to reimburse the amount of \$1,500.00 (Ex. 1, p. 1).

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* No.

b. Do you have insurance, indemnity or a bond that might cover your loss? *If yes, please explain.* No.

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.*

I have repeatedly requested in writing, by telephone and in personal visits that Mr. Bertoni immediately reimburse the agreed upon sum of \$1,500.00. See e.g., See e.g., (Ex. 1 to Ex. 10)

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:*
Yes. Mr. Bertoni has repeatedly acknowledged in writing that he owes me and will repay the agreed upon sum of \$1,500.00. See, e.g., (Ex. 1, p. 1; Ex. 2, p.1 & 2; Ex. 5; Ex. 8; Ex. 9; & Ex. 10).

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* I have filed a Complaint with the Oregon State Bar which is currently under investigation by Disciplinary Counsel in Disciplinary Case No. 13-28. (Ex. 11, p. 3). I have not yet filed a law suit against Mr. Bertoni in any court.

f. Have you obtained a judgment? *If yes, please provide a copy* NA

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No.

6. Information about where you have reported your loss:

XX Oregon State Bar Client Assistance Office/Disciplinary Counsel, Case No. 13-28 (Ex. 11, p. 3)

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:*

The Marion County Circuit Court granted my motion for substitution of counsel and appointed D. Olcott Thompson, Attorney at Law, 270 Cottage Street NE, PO Box 1062, Salem, OR 97308-1062. o.Thompson@comcast.net, (503)581-6881 to represent me at state expense in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C19137 in place of Mr. Bertoni.

8. Please give the name and the telephone number of any other person who may have information about this claim:

Stacy J. Hankin, Assistant Disciplinary Counsel, Oregon State Bar, (503)620-0222, ext. 347

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer of any other person or entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. XX Release of Files. I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of Oregon)
) ss
 County of Marion)


Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

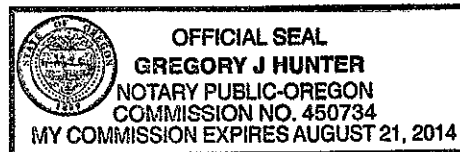


 Joseph Aaron Cheadle, Claimant Pro Se

Signed and sworn before me this 30th day of April, 2013.



 NOTARY PUBLIC FOR OREGON
 My Commission Expires: 2014



ATTORNEY-CLIENT FEE AGREEMENT

I, JOSEPH CHEADLE, (CLIENT), retain GARY B. BERTONI (ATTORNEY) and the law offices of BERTONI & ASSOCIATES to represent me in my post conviction relief petition in JOSEPH A. CHEADLE v. ROB PARSONS, Marion County Case No 11C19137 and in regards to resentencing in STATE v. JOSEPH A. CHEADLE, Clackamas County Case No. 94-0524.

1. For all of ATTORNEY'S past and future services in these pending matters, CLIENT has paid ATTORNEY the fee of \$5,000.00 for legal representation. Said fee specified is a non-refundable minimum flat fee, earned upon receipt, and was paid on or about September 14, 2007.

2. In addition to the above fee, I agree to pay for reasonable and necessary Non-Routine Expenses should Oregon Public Defense not authorize such expenses. Non-Routine Expenses is defined by Public Defense Payment Policies and Procedures 3.2.3. Routine expenses such as copy costs, long distance telephone charges, postage, legal assistant or paralegal time are to be borne by ATTORNEY.

3. I understand ATTORNEY will be present at all court appearances and will personally handle the case and will not reschedule any hearing date presently set or file any substantive or dispositive motion, or response without prior consent of CLIENT. I further understand that ATTORNEY will immediately file a substitution of attorney in the above matter. CLIENT agrees and consents that portions of the work may be performed by associate lawyers, paralegals or others working under ATTORNEY'S supervision.

4. I understand ATTORNEY will use best efforts in representing CLIENT. ATTORNEY has given me no assurances regarding the outcome of matters being handled by ATTORNEY. Best efforts to include the following:

- To keep CLIENT informed of all developments in the case;
- To maintain regular phone contact with CLIENT, a minimum of one phone update per month, and phone contact as required by daily developments in the case;
- To confirm conversations and case developments in writing;
- To sent monthly statements detailing time and events for the month, said statement to be mailed to CLIENT by the 15th of the following month;
- To meet with CLIENT at OSCI as required;
- To reimburse CLIENT \$1,500 for Dr. Bolstad's fee, Payment to be made within 21 days from the date of the execution of this Fee Agreement to a bank account of CLIENT'S choosing;
- To review with CLIENT case progress every three months; and
- To provide an affidavit or declaration confirming all events transpiring in case since September 14, 2007.

Client Security Fund Claim

Exhibit 1, p. 1 of 2

Bertoni & Associates

5. CLIENT may discharge ATTORNEY at any time upon telephone notice followed by a written, signed notice from my new attorney or me. Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date.

6. CLIENT reserves all rights to take any legal action against ATTORNEY or file a complaint with the Oregon State Bar should CLIENT reasonably determine that ATTORNEY'S past and future actions have harmed or jeopardized CLIENT'S case. Further, ATTORNEY acknowledges that failure of CLIENT at any time to require strict performance of any provision of this agreement shall not limit CLIENT'S right to enforce the provision, nor shall any waiver by CLIENT of any breach of any provision constitute a waiver of or prejudice CLIENT'S right otherwise to demand strict performance of the provision or any other provision of this agreement.

7. CLIENT acknowledges that failure of ATTORNEY at any time to require strict performance of any provision of this agreement shall not limit ATTORNEY'S right to enforce the provision, nor shall any waiver by ATTORNEY of any breach of any provision constitute a waiver of or prejudice Attorney's right otherwise to demand strict performance of the provision or any other provision of this agreement.

I HAVE READ THIS AGREEMENT, HAVE RECEIVED A COPY OF IT, AND AGREE TO THE TERMS AND CONDITIONS AS STATED. THERE ARE NO VERBAL AGREEMENTS BETWEEN CLIENT, ATTORNEY, AND MYSELF MODIFYING OR EXPANDING THE TERMS OF THIS AGREEMENT.

By: Joe Cheadle 12-1-2011
Joseph A. Cheadle Date

By: Gary B. Bertoni 12-5-2011
Gary B. Bertoni Date
Bertoni & Associates

GARY B. BERTONI
LIVIA E. RILEY
KRISTINE M. ALMQUIST
MATTHEW J. WASHCUK
CORY NEIS

**BERTONI &
ASSOCIATES**
ATTORNEYS AT LAW

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204



TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

November 7, 2011

Joe Cheadle
#10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

RE: *State v. Joseph Cheadle*

Dear Joe:

Thank you for meeting with me on Friday. I know you could have refused the visit and appreciate you allowing me to talk to you and explain my thoughts on your case.

As stated, I am motivated to repair your case and still believe I have the ability and tools to accomplish a positive result in your case. Understanding that the lack of timely communication has been an underlying issue, I propose the following:

- To renew my representation of you in your case, to include filing a substitution of attorney in *Cheadle v. Parsons*, Marion County Case 11C19137.
- To attend all hearings in the above matter and not reschedule any matter without your prior consent.
- To keep you informed of all developments in the case.
- To maintain regular phone contact with you, a minimum of one phone update per month, and phone contact as required by daily developments in the case.
- To confirm conversations and case developments in writing.
- To send monthly statement detailing time and events for the month, the statement to be mailed 14 days after the end of each month.
- To meet with you at OSCI a minimum of once every two months or as required.
- To reimburse you \$1500 for Dr. Bolstad's fee, payment to be made within 21 days into an account of your choosing.
- To not charge any additional fee for services rendered except for necessary and reasonable expenses incurred in representing you in this matter that are not paid by the Oregon Public Defense.
- To review case progress every three months.

**Client Security Fund Claim
Exhibit 2, p. 1 of 2**

- To withdraw as requested.
- To pay you \$1500 as a partial reimbursement of fees paid me to date if I fail to comply with the above and you ask me to withdraw.
- To prepare and execute a fee agreement that details the above.

This proposal is not exclusive and can be revised to address your concerns.

I have inspected my current files and do not have a transcript of the plea hearing. I have ordered the old files and should have them by Wednesday. I'll let you know what I find.

I spoke to Mr. Scott Morrell last Friday and told him I met with you and would be sending a proposal directly to you. I told him I would not send the proposal through the Oregon State Bar in response to your complaint because our letters are public record, as is your complaint. Mr. Morrell said he would send you a letter confirming my Friday conversation with him and that unless he hears from you within three weeks he will close the case.

Finally, I spoke to Mr. Thompson this morning and told him I spoke to you last Friday and that I am sending you a retainer proposal. We agreed to talk next week.

I truly believe that I can help you and hope I will have the opportunity to prove it.

Very truly yours,


Gary B. Bertoni

GBB:rak
cc: file

November 14, 2011

Gary B. Bertoni
Bertoni & Associates
430 Pacific Building
520 SW Yamhill St. Suite 430
Portland, Oregon 97204

RE: *Proposed Retainer Agreement*

Dear Mr. Bertoni:

I have received your letter dated November 7, 2011, setting forth terms for a new retainer agreement. I do appreciate your attempt to address past problems by presenting those terms as a way to move us forward with my case. I believe that we can continue to work together.

However, as much as I would like to move forward, there are real and potential problems that I now face due to your conduct over the last four years. To protect my interests, both financial and legal, I need to be very clear with you about what my concerns are and what I reserve the right to do even if I agree to a new retainer agreement with you.

First, we previously agreed that you would represent me in the enforcement of my plea agreements for the flat fee of \$5,000.00. I told you that this was the limit of my financial resources. We agreed that you would first try to address the breach of my plea agreements with the DAs to see if they would cooperate with us in enforcing my rights. We also agreed that, in the event that the DAs did not want to work with us, you would represent me in a Post Conviction Relief (PCR) proceeding and/or some other court action to enforce the plea deals.

That was our agreement. And I am unwilling to release you from your obligations under that agreement. The fact is I would not have retained you for \$5,000.00 had I known that you would not be able to complete the PCR process. I would have, and was prepared to, retain other suitable counsel for that task. It is my position that you have a responsibility under our retainer agreement to either (1) represent me in the enforcement of my plea agreements in whatever proceeding or action is required until final resolution of those issues, or (2) refund my \$5,000.00 retainer for services unfulfilled.

Because I do not release you from our agreement, I reject any new terms under the proposed retainer agreement that would suggest otherwise or burden me with additional financial obligations to you. This includes the proposed terms providing that (1) you may "charge . . . additional fees for services rendered . . . that are not paid by the Oregon Public Defense" and (2) "pay [me] \$1,500.00 as a partial reimbursement of fees paid [to you] if [you] fail to comply with" the terms of the new agreement. I do not agree to paying you additional fees with my case. And, if you fail to fulfill our original agreement, I will seek full reimbursement of the \$5,000.00 retainer.

November 14, 2011
Re: Proposed Retainer
Page 2 of 3

Second, I am concerned that many of the events over the last four years, which your said occurred in the course of the "plea discussions" with the DAs Office, were not accurately described to me. I have repeatedly asked you to verify those events -- e.g., an affidavit or letter for use in the PCR proceeding -- but you have failed doing so. To be clear, my understanding of those events is described in detail in my letter to DA Gregory D. Horner, dated June 22, 2011. Further, my PCR petition alleges these events and others, including the transaction between DA Horner and yourself regarding the enforcement of my plea deals. Please review those documents. If there are any inaccuracies, I would ask you to identify them to me.

I have three real concerns about those events. First, those events may become a material issue in my PCR proceeding with respect to the timeliness of my claims. My defense against a statute of limitations argument will potentially turn on those events, because it will show that I was in meaningful discussions with the DAs Office, which had a duty to honor the pleas. Second, my parole related claims are premised on an "anticipatory breach of plea" theory, which I based on your representation that the DAs Office told you that they would not honor the parole component of the plea. Third, as you know, I contracted Dr. Bolstad based on your representation to me that it would be used, and was suggested by, the DAs and Judge Maurer in your discussions with them about my plea agreement. Again, with those points in mind, I would ask that you review my letter to the DAs and the PCR petition and if you identify any inaccuracies, please identify them to me.

If you have misrepresented those events to me, I reserve the right to take legal or state bar action against you, in the event I am harmed. Should we agree to a new retainer, I am unwilling to waive that right.

Those things not being a problem, I am willing to continue to work with you on my case under the additional terms you proposed, with the following modifications:

- To renew your representation of me in my case, to include filing a substitution of attorney in *Cheadle v. Parsons*, Marion County Circuit Court Case No. 11C19137.
- To attend all hearings in the above matter and not reschedule any matter or file any substantive or dispositive motion or response with the court, without my prior consent.
- To keep me informed of all developments in the case.
- To maintain regular phone contact with me, a minimum of one phone update per month, and phone contact as required by daily developments in the case.
- To confirm conversations and case developments in writing.
- To send monthly statements detailing time and events for the month, the statement to be mailed 14 days after the end of each month.
- To meet with me at OSCI as required.
- To reimburse me \$1,500.00 for Dr. Bolstad's fee, payment to be made within 21 days into an account of my choosing.
- To not charge any additional fees for services incurred in representing me in this matter.
- To review case progress every three months.

**Client Security Fund Claim
Exhibit 3, p. 2 of 3**

November 14, 2011
Re: Proposed Retainer
Page 3 of 3

- To provide an affidavit or declaration confirming all events transpiring in case since 2007, as described above.
- To withdraw as requested.
- Upon the event you should retire or be unable to otherwise complete my case (i.e., due to conflict of interest, disbarment) to pay me \$3,500.00 as partial reimbursement of fees paid you to date.
- To prepare and execute a fee agreement that details the above.

I hope you see these additional terms to be reasonable. I am willing to talk with you about those terms if you have any concerns.

As I have said to you before, I believe in your ability to represent me in this matter. It is not, and has never been, my intention to cause you any problems with the state bar.

Mr. Scott Morrell has asked me to respond to him by November 30, 2011. Please let me know where you are at with what I have proposed before that date.

Sincerely,



Joseph A. Cheadle
SID #10973334
OSCI-3405 Deer Park Drive SE
Salem, Oregon 97310

December 1, 2011

Gary B. Bertoni
Bertoni & Associates
430 Pacific Building
520 SW Yamhill St. Suite 430
Portland, Oregon 97204

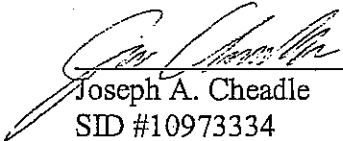
RE: *Retainer Agreement*

Dear Mr. Bertoni:

Enclosed please find a signed copy of the retainer agreement. Upon receipt of the final signed retainer, I will provide you with information for where you can send the \$1,500.

I am excited to proceed with the case. I look forward to hearing from you soon.

Sincerely,



Joseph A. Cheadle
SID #10973334
OSCI-3405 Deer Park Drive SE
Salem, Oregon 97310

GARY B. BERTONI
LIVIA E. RILEY
KRISTINE M. ALMQUIST
MATTHEW J. WASHCUK
CORY NEIS

**BERTONI &
ASSOCIATES**
ATTORNEYS AT LAW

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204

◆ ◆ ◆

TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

January 6, 2012

Joe Cheadle #10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

RE: *Joseph Cheadle v. Rob Parsons*
Marion County Circuit Court No. 11C19137

Dear Joe:

This will confirm that a check made payable to you in the amount of \$1500.00 was mailed to Glenn Engweiler at 17650 Mountain View Rd, Sisters, OR 97759.

This will also confirm that I am scheduled to meet with you on Wednesday, January 11, 2012, at 1:30 p.m. I have blocked out the entire afternoon for the meeting.

See you next Wednesday.

Very truly yours,



Gary B. Bertoni

GBB:rak

cc: file

Client Security Fund Claim
Exhibit 5, p. 1 of 1

February 13, 2012

Gary B. Bertoni
Attorney at Law
520 SW Yamhill St. Suite 430
Portland, Oregon 97204

RE: *Cheadle v. Persson, Marion County Circuit Court Case No. 11C19137*

Dear Mr. Bertoni:

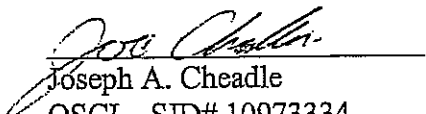
Would you please review your mail records to see if the check made payable to me in the amount of \$1500.00 that was mailed on or about January 6, 2012, to Glenn Engweiler at 17650 Mountain View Rd., Sisters, OR 97759, was returned to you.

Mr. Engweiler has informed me that he has never received a letter or check from you.

In addition, as I mentioned in my last letter, I want you to contact me at the law library before the status conference this week.

Thanks.

Sincerely,



Joseph A. Cheadle
OSCI - SID# 10973334
3405 Deer Park Drive
Salem, Oregon 97310

March 2, 2012

Gary B. Bertoni
Attorney at Law
520 SW Yamhill St. Suite 430
Portland, Oregon 97204

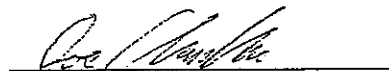
RE: Refunded Money

Dear Mr. Bertoni:

I have not heard a response from you regarding the \$1,500.00 you were to mail Glenn Engweiler. Yesterday I was informed that Mr. Engweiler has still not received any letter or check from you. I would appreciate it if you examine your records to verify that a check was mailed. Because Mr. Engweiler did not receive a check, I would ask that you resend him the \$1,500.00. Please note that I would like for you to make the check payable to him.

Thanks.

Sincerely,



Joseph A. Cheadle
OSCI - SID# 10973334
3405 Deer Park Drive
Salem, Oregon 97310

BERTONI LAW, P.C.

DEFENSE ATTORNEYS

GARY B. BERTONI

CORY NEIS
OF COUNSEL

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204

TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

March 6, 2012

Joe Cheadle #10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

RE: *Joseph Cheadle v. Rob Parsons*
Marion County Circuit Court No. 11C19137

Dear Joe:

A check of \$1,500.00 made payable to Glenn Engweiler was mailed. He should receive it within the next two days.

Very truly yours,



Gary B. Bertoni

GBB:rak
Enclosure

Client Security Fund Claim
Exhibit 8, p. 1 of 3

BERTONI LAW, P.C.

DEFENSE ATTORNEYS

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204

TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

GARY B. BERTONI

CORY NEIS
OF COUNSEL

March 6, 2012

Glenn Engweiler
17650 Mountain View Rd.
Sisters, OR 97759

RE: *Joseph Cheadle v. Rob Parsons*
Marion County Circuit Court No. 11C19137

Dear Mr. Engweiler:

Per instructions from Mr. Cheadle, I have enclosed a check of \$1,500.00 made payable to you to hold on behalf of Mr. Cheadle.

Very truly yours,


Gary B. Bertoni

GBB:rak
Enclosure

Client Security Fund Claim
Exhibit 8, p. 2 of 3

BERTONI & ASSOCIATES
520 SW YAMHILL ST. STE 430
PORTLAND, OR 97204
503-243-2035

Bank of America
ACH R/T 323070380

2384

24-7038/3230 OR
2681

3/6/2012

PAY TO THE
ORDER OF Glen Engweiler

\$ **1,500.00

One Thousand Five Hundred and 00/100***** DOLLARS

Glen Engweiler

MEMO



AUTHORIZED SIGNATURE

⑈002384⑈ ⑆323070380⑆ 004540712485⑈

Glen Engweiler

3/6/2012

2384

1,500.00

Main Acct #2485

1,500.00

Glen Engweiler

3/6/2012

2384

1,500.00

Main Acct #2485

Client Security Fund Claim

Exhibit 8, p. 3 of 3

1,500.00

FULFILLMENT OF TERMS OF AGREEMENT

I, GARY B. BERTONI, (OSB # 78414), hereby declare and agree that:

1) In 2007, I entered into an attorney-client relationship with JOSEPH CHEADLE, SID #10973334;

2) In 2010, Mr. Cheadle deposited \$3,000 in trust with me for the purpose of obtaining a psychological evaluation report from Dr. Orin Bolstad, PhD for use in the legal matter I was retained to represent Mr. Cheadle;

3) I have previously agreed that I would return to Mr. Cheadle, \$1,500 of the \$3,000 referenced in paragraph 2, above;

4) In approximately March, 2012, I made out a check in Mr. Cheadle's behalf in the amount of \$1,500, in accordance with the agreement referenced in paragraph 3, above;

5) The \$1,500 check referenced in paragraph 4, above, was returned due to insufficient funds;

6) As of this 29th day of August, 2012, I have not returned the \$1,500 to Mr. Cheadle as I previously agreed to;

7) I agree that on or before the 30th day of September, 2012, I will deposit \$1,500 in the Oregon Department of Corrections (ODOC) inmate trust account of JOSEPH CHEADLE, SID # 10973334, by sending a cashier's check or money order payable to:

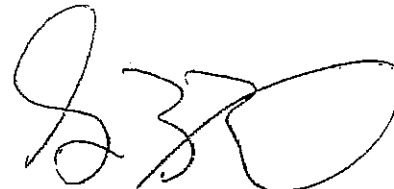
DEPARTMENT OF CORRECTIONS,
for JOSEPH CHEADLE, SID # 10973334

and mailing said cashier's check or money order to:

DEPARTMENT OF CORRECTIONS
CENTRAL TRUST ACCOUNTS UNIT
PO BOX 14400
Salem, Oregon 97309-5077

I hereby declare that the above statement is true and correct to the best of my knowledge
and belief.

EXECUTED this 29th day of August, 2012.



GARY B. BERTONI, (OSB# 78414)

BERTONI LAW, P.C.

500 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204
TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

October 16, 2012

Joe Cheadle #10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

RE: *Joseph Cheadle v. Rob Parsons*
Marion County Circuit Court No. 11C19137

Dear Joe:

On this date I received the enclosed Defendant's Reply Memorandum with attachments. I was somewhat surprised to receive anything in your case since I incorrectly assumed your motion to proceed *pro se* was or would be granted. Not so according to OJIN.

I immediately called Conrad in hopes of scheduling a teleconference or meeting so we can address my status and your upcoming hearing scheduled for next Monday, October 22, 2012. In spite of the bar complaint, I think there are several things I can do for you case and cause. I am hoping we can talk about that.

In the meantime, I have put together a draft of an affidavit for you review. This affidavit addresses the letter and amended judgment that DDA David Paul sent me in April 2001.

Another issue that needs to be addressed is the \$1,500.00 I promised to pay you to help with your expenses. I told you I would pay that to you by September 30, 2012. I did not. You probably figured that out already. At the moment, my business finances are very tenuous. It is taking longer to rebound from the suspension than ever expected. All I can tell you right now is that you are at the top of the list. I hope that can be done shortly. Finally, my IRS situation, as reported in the *Oregonian*, does not have any bearing on my promise to you.

I hope we talk tomorrow.

Very truly yours,


Gary B. Bertoni

GBB:rak

Client Security Fund Claim
Exhibit 10, p. 1 of 1

September 24, 2012

Scott A. Morrill
Assistant General Counsel
16037 Upper Boones Ferry Rd.,
PO Box 231935
Tigard, OR 97281-1935

**RE: RENEWED COMPLAINT IN RE CONDUCT OF
GARY B. BERTONI (OSB #78141)**

Dear Mr. Morrill:

I am writing to bring a formal complaint against my attorney Gary B. Bertoni (OSB # 78141). You previously assisted me in 2008, 2010 and 2011, with complaints against him related to the same matter I now seek assistance with. In fact, some of the issues I now have a problem with relate to Mr. Bertoni's breach – from day one – of the 2011 agreement we entered to resolve the 2011 Bar complaint. This Complaint is supported by the Affidavit of Joseph A. Cheadle, (Aff.) submitted herewith and incorporated herein by this reference.

I. Summary of Attorney-Client Relationship

In 1993 and 1994, Mr. Bertoni represented me in a criminal proceeding which was resolved through my entry of a plea agreement with the State of Oregon, by and through Clackamas County Deputy District Attorney David F. Paul. (Aff., ¶¶ 3-10).

In 2007, I learned of the potential breach of my 1994 plea agreement and other sentencing problems (Aff., ¶¶ 11 & 15). So I contacted Mr. Bertoni, who agreed that there appeared to be a problem with my plea and sentence. (Id., ¶¶ 12-16). He agreed to represent me in correcting the plea breach and sentencing issues by first attempting to negotiate a correction with DDA Paul, and to assist me in filing a post-conviction relief (pcr) action to correct the errors if the prosecutor was unwilling or unable to correct those problems. (Id., ¶ 17). He agreed to represent me in both the negotiation and potential pcr action for a flat fee retainer of \$5,000 (Id.), which I paid on or about September 9, 2012. (Id., ¶ 18).

Between June 22, 2007 and June 15, 2011, Mr. Bertoni repeatedly claimed to be in serious negotiations with DAs Paul, Gregory Horner and John Foote and Clackamas County Circuit Court Judge Steven L. Maurer, to resolve my plea and sentencing problems. (Aff., ¶¶ 12-109). However, on or about June 15, 2011, Mr. Bertoni claimed that after four years of purported negotiations and meetings, the prosecutors inexplicably broke off talks with no agreement to resolve my plea and sentencing issues. (Id., ¶ 100).

On or about July 26, 2011, I filed a *pro se* petition for pcr in *Joseph A. Cheadle v. Rob Parsons*, Marion County Circuit Court No. 11C-19137, to resolve my plea and sentencing issues. (Aff., ¶

**Client Security Fund Claim
Exhibit 11, p. 1 of 14**

112). On December 12, 2011, Mr. Bertoni was substituted as attorney of record in *Cheadle v. Parsons*, (Id., ¶ 143). On or about February 2, 2012, it was reported, however, that Mr. Bertoni had agreed to a 150-day suspension of his license to practice law, beginning March 27, 2012. (Id., ¶ 150). On March 26, 2012, Mr. Bertoni substituted Ronnee S. Kliewer, (OSB # 933319) as attorney of record in *Cheadle v. Parsons*, (Id., ¶ 178).

During the course of Mr. Bertoni's suspension, he remained involved in *Cheadle v. Parsons*, (Aff., ¶¶ 185, 217-250; 260-265; 268, 274-276, and 291-292). Mr. Bertoni's 150-day suspension ended on or about August 23, 2012. The trial court then substituted Mr. Bertoni for Ms. Kliewer as the attorney of record in *Cheadle v. Parsons* on September 4, 2012. (Id., ¶ 295). As of this writing, Mr. Bertoni remains the attorney of record in that action. (Id., ¶¶ 296-312).

II. Summary of Previous Bar Complaints Against Mr. Bertoni

I have previously sought the assistance of the Oregon State Bar (OSB) in addressing problems with Mr. Bertoni's representation in relation to the matters summarized in Section I, supra. Specifically, on or about May 29, 2008, I first wrote the OSB concerning Mr. Bertoni's lack of communication (Aff., ¶24). You resolved that problem for me on or about June 3, 2008. (Id., ¶¶ 25-28). Unbeknownst to me, on that same date, Mr. Bertoni's former office manager, Cynthia Stratham had filed a Bar complaint against Mr. Bertoni, accusing him of stealing \$69,826.80 from his client trust accounts. (Id., ¶ 40). That complaint was first reported in the media on November 26, 2008 (Id.) and ultimately resulted in his 150-day suspension from March 27, 2012 to August 23, 2012. (Id., ¶¶ 90 & 150).

On or about January 15, 2010, I sent you second complaint letter seeking assistance in "bring[ing] a resolution to the matters for which I hired [Mr. Bertoni]." (Aff., ¶ 60). On February 2, 2010, you wrote to me, stating that you had again spoken with Mr. Bertoni about my concerns (Id., ¶¶ 61-62) and we ultimately resolved our differences and continued our attorney-client relationship (Id., ¶¶ 64-65).

On or about August 17, 2011, I sent you a third complaint letter concerning Mr. Bertoni's representation of me. (Aff., ¶ 116). Ultimately, with your assistance, Mr. Bertoni and I entered into negotiations to resolve our dispute. (Id., ¶¶ 117, 119-130). These negotiations resulted in a "new" Attorney-Client Fee Agreement between Mr. Bertoni and I, which was fully executed on December 5, 2011 (Id., ¶¶ 131-132 & 134). There had been no written agreement between us before this agreement. As a result of this "Attorney-Client Fee Agreement," I wrote you on December 15, 2011 to "confirm . . . that Mr. Bertoni and I have resolved our issues." (Id., ¶ 144).

III. Mr. Bertoni's Immediate and Repeated Breach of the December 5, 2011 Attorney-Client Fee Agreement

Mr. Bertoni signed and returned the Attorney-Client Fee Agreement to me on December 5, 2011. (Aff., ¶ 134). I am enclosing the signed copy of that agreement for your review. (Ex. 1). Mr. Bertoni immediately and repeatedly breached, and continues to breach, the express terms of that agreement as discussed herein.

A. Reimbursement of \$1,500.00 for Dr. Bolstad's Fee

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed “[t]o reimburse CLIENT \$1,500 for Dr. Bolstad’s fee, Payment to be made within 21 days from the date of the execution of this Fee Agreement to a bank account of CLIENT’S choosing[.]” (Ex. 1, p. 1). The Attorney-Client Fee Agreement was fully executed as of December 5, 2011 (Ex. 1, p. 2), making the \$1,500 payment due on or before December 26, 2011. (Ex. 1). Mr. Bertoni failed to reimburse the agreed upon sum on or before December 26, 2011 (Aff., ¶ 136). In fact, as of this writing, Mr. Bertoni has never reimbursed that sum, (Id., ¶ 137) despite my repeated efforts to get him to do so.

On or about January 6, 2012, Mr. Bertoni claimed to have sent “a check payable in the amount of \$1,500.00” to the person I requested him to send that money to. (Aff., ¶ 148). However, that check was never received by the intended recipient. (Id., ¶ 149). On or about February 13, 2012, I wrote Mr. Bertoni, informing him that the check had not been received and asking him to review his mail records and see if the check was returned to him (Id., ¶ 153). Mr. Bertoni wrote to me on February 17, 2012 but said nothing about the missing \$1,500.00 check (Id., ¶ 155).

On or about March 2, 2012, I wrote Mr. Bertoni, stating “I have not heard a response from you regarding the \$1,500.00 you were to mail.” (Aff., ¶ 156). On or about March 6, 2012, Mr. Bertoni sent the \$1,500.00 reimbursement check to the party that I asked him to send it to. (Id., ¶ 157). However, that check was returned as uncashable due to insufficient funds. (Id., ¶ 158). As of this writing, Mr. Bertoni has never resent that \$1,500.00 reimbursement check (Id., ¶ 159).

On or about August 29, 2012, Mr. Bertoni met with me at the Oregon State Correctional Institution (OSCI)(Aff., ¶ 274). During that visit, I again requested that Mr. Bertoni send me the \$1,500.00 that he promised to reimburse me by December 26, 2011. (Id., ¶ 277). I asked him if he could get the money to me by mid-September, 2012. (Id.). He claimed that he could not and asked that I give him until September 30, 2012. (Id.).

During the August 29, 2012 visit I presented Mr. Bertoni with a document that I entitled a “Fulfillment of Terms of Agreement” and asked him to sign it. (Aff., ¶ 278). That signed document is attached hereto as (Ex. 2). In that document Mr. Bertoni acknowledges that he has failed to reimburse the \$1,500.00 as of August 29, 2012 and agrees to do so on or before September 30, 2012. (Ex. 2). See also (Aff. ¶¶ 278-279).

On or about September 7, 2012, *The Oregonian* reported that one week after Mr. Bertoni’s 150-day suspension ended, the OSB received three new complaints against Mr. Bertoni, including one that alleges that he failed to pay payroll taxes for 2 ½ years and owes the Internal Revenue Service (IRS) in excess of \$380,000 in back taxes and penalties. (Ex. 3). As such, I fear that Mr. Bertoni likely has little intention of paying – or ability to pay -- the \$1,500.00 that he agreed on December 5, 2011 to reimburse within 21 days.

B. Failure to Provide Affidavit or Declaration Confirming Events Transpiring in Case Since September 14, 2007

In our negotiation of the last complaint I filed against Mr. Bertoni, on November 14, 2011, I stated:

. . . I am concerned that many of the events over the last four years, which your [sic] said occurred in the course of the 'plea discussions' with the DAs Office, were not accurately described to me. I have repeatedly asked you to verify those events – e.g., an affidavit or letter for use in the PCR proceeding – but you have failed doing so. To be clear, my understanding of those events is described in detail in my letter to DA Gregory D. Horner, dated June 22, 2011. Further, my PCR petition alleges these events and others, including the transaction between DA Horner and yourself regarding the enforcement of my plea deals. Please review those documents. If there are any inaccuracies, I would ask you to identify them to me.

I have three real concerns about those events. First, those events may become a material issue in my PCR proceeding with respect to the timeliness of my claims. My defense against a statute of limitations argument will potentially turn on those events, because it will show that I was in meaningful discussions with the DAs Office, which had a duty to honor the pleas. Second, my parole related claims are premised on an 'anticipatory breach of plea' theory, which I based on your representation that the DAs Office told you that they would not honor the parole component of the plea. Third, as you know, I contracted Dr. Bolstad based on your representation to me that it would be used, and was suggested by, the DAs and Judge Maurer in your discussions with them about my plea agreement. Again, with those points in mind, I would ask that you review my letter to the DAs and the PCR petition and if you identify any inaccuracies, please identify them to me.

If you have misrepresented those events to me, I reserve the right to take legal or state bar action against you, in the event I am harmed.

(Aff., ¶ 129). To address these concerns, Mr. Bertoni expressly agreed in the December 5, 2011 Attorney-Client Fee Agreement "[t]o provide an affidavit or declaration confirming all events transpiring in case since September 14, 2007." (Ex. 1, p. 1). As of this writing, however, Mr. Bertoni has repeatedly failed "[t]o provide [me with] an affidavit or declaration confirming all events transpiring in case since September 14, 2007." (Aff., ¶ 139). Those events, as Mr. Bertoni represented them to me are set forth in my affidavit (Aff., ¶¶ 18-112). I have grave concerns that Mr. Bertoni has, in fact, repeatedly and continually misrepresented those facts to me, and I now request the OSB's assistance in ascertaining – through discussions with District Attorneys David Paul, Gregory Horner, John Foote, Judge Steven Maurer and Mr. Bertoni -- whether the facts averred to in my affidavit accurately depict the ongoing discussions, negotiations, meetings and other efforts to resolve my plea and sentencing issues between June 22, 2007 and July 7, 2011. (Aff., ¶¶ 12-112).

Mr. Bertoni's breach of this term of the December 5, 2011 Attorney-Client Fee Agreement has harmed me. On or about August 10, 2012, the Defendant filed an Answer and a Response/Cross-Motion for Summary Judgment in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. (Aff., ¶ 259). Defendants now assert the statute of limitation defense (Id., ¶¶ 285, 287, and 289) that I repeatedly expressed concern about (Id., ¶¶ 20, 53, 102 and 129). Mr. Bertoni did submit a June 22, 2012 affidavit in support of the summary judgment motion that was filed that day (Id., ¶ 251). This is not the same "affidavit or declaration" that he promised on December 5, 2011 "[t]o provide . . . confirming all events transpiring in case since September 14, 2007." (Ex. 1, p. 1). The June 22, 2012 summary judgment affidavit omits many of the facts he represented to me concerning his supposed discussions, negotiations, meetings and other efforts with Judge Maurer and/or DAs Paul, Horner and/or Foote, to resolve my plea and sentencing issues between June 22, 2007 and July 7, 2011, as averred to in (Aff., 18-113).

Assuming, as I now must, that Mr. Bertoni misrepresented those facts between June 22, 2007 and July 7, 2011, I have been harmed by those misrepresentations insofar as Mr. Bertoni represented to me that the prosecutors and judge wanted to me submit to a current psychological evaluation, at additional financial expense to my family. See (Aff., ¶¶ 75, 77-85, 102, 115 and 129). However, that evaluation was never utilized in the phantom efforts to resolve my plea and sentencing issues. (Id., ¶¶ 75-102 & 115). In the event that Mr. Bertoni misrepresented the facts concerning the request of the judge and prosecutors that I submit to a psychological evaluation, I request reimbursement of the full \$3,000 paid to obtain that evaluation.

C. Failure to Provide Monthly Statements

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed "[t]o sent [sic] monthly statements detailing time and events for the month, said statement to be made to CLIENT by the 15th of the following month[.]" (Ex. 1, p. 1). Between December 5, 2011 and this writing, Mr. Bertoni has never "sent [me] monthly statements detailing time and events for the month . . . mailed . . . by the 15th of the following month," or otherwise. (Aff., ¶¶ 140-141)

D. Failure to Keep Client Informed and Provide Written Confirmation of Conversations & Case Developments

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed "[t]o keep CLIENT informed of all developments in the case" and "[t]o confirm conversations and case developments in writing[.]" (Ex. 1, p. 1). Mr. Bertoni repeatedly failed to provide written confirmation to me of conversations and case developments in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. Mr. Bertoni failed to confirm in writing: what occurred and was discussed at the March 9, 2012 status conference. OJIN # 26. (Aff., ¶ 162); the March 2012 summary judgment filing deadline in *Cheadle v. Parsons*. (Id., ¶ 164); the reset of the summary judgment deadline to June 15, 2011 (Id., ¶ 176); that he had filed a March 26, 2012 motion and affidavit for substitution of counsel (Id., ¶¶ 178-181); the April 2, 2012 order substituting Ronnee S. Kliewer as attorney of record (Id., ¶¶ 182-183); the April 12, 2012 notice establishing an April 26, 2012 status conference (Id., ¶¶ 186-187); what occurred and was

discussed at the April 26, 2012 status conference (Aff., ¶ 189); the April 26, 2012 notice establishing an May 4, 2012 status conference (Id., ¶¶ 190-191); his April 26, 2012 email to Ms. Kliewer that was provided to me by your office on September 13, 2012 (Ex. A); what occurred and was discussed at the May 4, 2012 status conference (Aff., ¶ 194); his May 14, 2012 email to Ms. Kliewer that your office provide me on September 13, 2012 (Ex. C); the June 15, 2012 motion for extension of time (Aff., ¶¶ 239 & 246); the court's order granting the June 15, 2012 motion for extension of time; the August 10, 2012 Defendant's Answer and Response/Cross-Motion for Summary Judgment (Id., ¶¶ 259-260, 262-263, 265 & 268); the August 30, 2012 motion to substitute attorney, motion for extension of time and affidavit of counsel (Id., ¶¶ 291-293); the trial court's order on the August 30, 2012 motions (Id., ¶¶ 294-297); what occurred and was discussed at the September 7, 2012 status conference (Id., ¶¶ 311-312); and other, unknown conversations and case developments.

IV. Neglect of Legal Matter and Assistance of Unauthorized Practice of Law Before March 27, 2012 Suspension

Mr. Bertoni was appointed as attorney of record in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137 on December 12, 2011. (Aff., ¶¶ 142-143). Prior to his formal appointment, the attorney of record made Mr. Bertoni aware that the trial court had set a February 7, 2012 deadline for filing an Amended Petition for Post-Conviction Relief (Id., ¶¶ 145-146). With the assistance of an untrained prison law clerk, I prepared a draft amended petition for post-conviction relief and sent it to Mr. Bertoni on January 6, 2012 (Id., ¶ 147). Mr. Bertoni did not file an Amended Petition for Post-Conviction Relief on or before the February 7, 2012 filing deadline (Id., ¶ 152). Ultimately, Mr. Bertoni photocopied my January 6, 2012 draft amended petition onto his pleading paper and filed it on February 17, 2012 – ten days late – as if it were his own work product, despite having taken no part in the preparation thereof. (Id., ¶ 154). In his April 26, 2012 email to Ms. Kliewer that I first became aware of, and received a copy of from you, on September 13, 2012, Mr. Bertoni states:

Joe filed his own PCR in August 2011. He was appointed counsel . . . and I substituted in on December 12, 2011. . . . Joe prepared and I reviewed and filed an Amended PCR petition on Feb. 17, 2011. . . .

(Ex. A, p. 1), and: “Anyway, as I said, Joe does all the work. . . .” (Id., p. 2). This is the clearest expression of Mr. Bertoni's intention to perform no work as attorney of record in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. This clearly violates ORS 9.160(1) and the Rules of Professional Conduct (RPC) 5.5(a), by aiding, and compelling, parties who are not active members of the Oregon State Bar (OSB), in the unauthorized practice of law. *In re Jones*, 308 Or 306, 310-11, 799 P2d 1016, 1018 (1989)(En Banc)(“Permitting pleadings to bear [attorney's] name, although he took no part in their preparation, misled both the court and [the attorney's] clients. Such conduct was prejudicial to the administration of justice. Moreover, it was a deception practiced both on the court and the clients.”). *See also Taub v. Weber*, 366 F3d 966, 970 (9th Cir. 2004); *OSB v. Taub*, 190 Or App 280, 78 P3d 114 (2003); and *In re Morin*, 319 Or 547, 878 P2d 393 (1994)(In Banc).

Between his December 12, 2011 substitution as attorney of record and his March 27, 2012 suspension, Mr. Bertoni took no action to advance my claims. (Aff., ¶¶ 151, 165-168 & 177)

V. Failure to Protect Client's Interests Upon Termination of Representation

Oregon State Bar Rule of Procedure 6.3(a) requires that [a] . . . suspended attorney shall not practice law after the effective date of . . . suspension" and Rule 6.3(b) mandates that "[i]t shall be the duty of a . . . suspended attorney to take all reasonable steps to avoid foreseeable prejudice to any client[.]" RPC 1.16(d) also mandates "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests. . . ." Taking Ms. Kliewer at her word, it appears that Mr. Bertoni violated these Rules in relation to his March 27, 2012 suspension. Specifically, in her undated letter that I received on August 29, 2012 and which she submits to Bar Counsel as (Ex. D), Ms. Kliewer claims:

As you know, I assumed responsibility for certain of Mr. Bertoni's cases during his suspension from the practice of law for 150 days. When I agreed to take on Mr. Bertoni's caseload, it was my understanding I would be handling his delinquency and Measure 11 caseload, and a few criminal matters. *I was unaware, at the time, that I would be assuming responsibility for your post-conviction matter.* Mr. Bertoni advised me that all client [sic] for whom he filed substitutions had consented. If this is not the case, you may raise that concern with Mr. Bertoni.

* * * * *

During our initial telephone conference, . . . we also discussed the status of your case. *I had not yet received a copy of your file from Mr. Bertoni, so much of our conversation was spent getting me 'up to speed.'*

(Ex. D)(emphasis added). In fact, during that initial, May 4, 2012 telephone conference, Ms. Kliewer: (1) claimed that she had "just" received my file from Mr. Bertoni but the file did not contain my post-conviction relief petition." (Aff., ¶ 197); (2) claimed to be unaware of the June 15, 2012 filing deadline for my summary judgment motion (Id., ¶ 200); and (3) said that she would speak with Mr. Bertoni about what he had done prior to her April 2, 2012 appointment as attorney of record, to secure the needed affidavits from Judge Maurer and DAs Paul, Horner and Foote (Id., ¶ 204), implying that Mr. Bertoni had never previously informed her of those "efforts." (Id., ¶ 205). *See generally*, (Id., ¶¶ 195-208).

On September 13, 2012, you sent me a September 11, 2012 letter and four supporting exhibits submitted by Ms. Kliewer's attorney, Allison D. Rhodes (Rhodes Ltr). In that letter, Ms. Rhodes claims:

. . . Ms. Kliewer was literally blindsided by Mr. Bertoni's cases upon his suspension and had to beg and cajole for the most basic of cooperation associated with that transition. . . .

Mr. Cheadle's was one of the many files upon which Mr. Bertoni subbed Ms. Kliewer without telling her. The certificates of services associated with this and all other substitutions omitted Mr. Kliewer and the affected clients.¹

. . . the fact is that he did not provide this file until May 3, 2012, five weeks after he filed (but did not serve) the substitution in this case. He provided the first written details on April 26, 2012, when he wrote her about a status hearing that was to occur a few hours later. (That email is attached as Exhibit A.) As you can see, and although apparently a motion to extend time had been sent over to her office, she had no file and no basis upon which to discuss the matter with her client.

Although Mr. Bertoni reports meetings where Ms. Kliewer 'went over the files,' he also acknowledged that he unilaterally subbed her in on 130 cases. (I have included a redacted excerpt from Mr. Bertoni's response to Ms. Hankin's request for information regarding his cooperation with file transition as Exhibit B). . . . The majority of Mr. Cheadle's complaints belong in an analysis of the larger (130 case) mismanaged file transition associated with his suspension. . . .

(Rhodes Ltr, p. 1). Taking these facts as true, Mr. Bertoni violated OSB Rule of Procedure 6.3(b) and RPC 1.16(d) by failing "to take all reasonable steps to avoid foreseeable prejudice to any client[.]" or "take steps to the extent reasonably practicable to protect a client's interests." As a result of Mr. Bertoni's failing, Ms. Kliewer failed to communicate with me, or take *any* action on my behalf between her April 2, 2012 appointment as attorney of record and our initial May 4, 2012 telephone conversation – at my initiation. *See* (Aff., ¶¶ 182-195)

VI. Continued Practice of Law During March 27, 2012 to August 23, 2012 Suspension

Mr. Bertoni's 150-day suspension commenced on March 27, 2012 and ended on or about August 23, 2012. During that time, Ronnee S. Kliewer was the attorney of record in *Cheadle* from April 2, 2012 until September 4, 2012. OJIN # 31 & 52. However, in that time, Ms. Kliewer did not write me a single letter, never visited me and spoke to me on the phone just twice (Aff., ¶¶ 300-301). She filed a single motion for a one-week extension of time (Id., ¶ 298) and filed a summary judgment motion and memorandum that was prepared by an untrained prison law clerk and which she took no part in preparing (Id.). She did not file a response to Defendant's August 10, 2012 Cross-Motion for Summary Judgment or a motion for extension of time to do so. (Id., ¶ 299). Mr. Bertoni, not Ms. Kliewer, came to the prison on June 13, 2012 to get the motion the prison law clerk had prepared (Id., ¶¶ 234-237). When he did so, he told prison officials he was an attorney, not Ms. Kliewer's legal assistant (Id., ¶ 235). He also did not inform prison officials that he was on suspended status. (Id.). Mr. Bertoni, not Ms. Kliewer, "edited" the prison law clerk's draft summary judgment motion and memorandum. (Id., ¶ 249). Mr. Bertoni, not Ms. Kliewer, met with me at OSCI on August 29, 2012 (Id., ¶ 274). He signed in as my attorney, not

¹ Neither Mr. Bertoni nor Ms. Kliewer consulted with me before moving to substitute Ms. Kliewer as attorney of record (Aff., ¶ 179) and neither of them have ever sent me copies of the motion, affidavit or order of substitution. (Id., ¶¶ 181 & 183).

as Ms. Kliewer's legal assistant. (Id., ¶ 275). Mr. Bertoni, not Ms. Kliewer, took my telephone calls (Id., ¶¶ 192, 213, 232, 234, 247-250, 254-256 and 261-265). On August 29, 2012, Mr. Bertoni, not Ms. Kliewer, finally gave me copies of: the June 22, 2012 summary judgment motion and supporting affidavit; Defense Counsel's August 10, 2012 email to Ms. Kliewer; and Defendant's August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment (Id., ¶ 277). Mr. Bertoni, not Ms. Kliewer, sought additional time to file a response to Defendant's cross-motion for summary judgment (Id., ¶¶ 272, 291-292 & 299). Ms. Kliewer has failed to send copies of court notices and filings to me (Id., ¶¶ 179, 183, 185, 189, 194, 210, 239, 246, 251-252, 260, 269, 291-293, 295-297 and 302-303) and to keep me apprised of what occurs at court hearings (Id., ¶¶ 189, 194 and 201). Clearly, Ms. Kliewer did not act as the attorney of record in *Cheadle*. Rather, she has served only "as a 'front' to cover [Mr. Bertoni's] unauthorized practice of law" during his 150-day suspension. *State ex. Rel Oregon State Bar v. Lenske*, 284 Or 23, 31, 584 P2d 759, 763 (1978)(In Banc). Of course, this violates ORS 9.160(1) and RPC 5.5(a).

VII. Neglect of Legal Matter and Assistance of Unauthorized Practice of Law During March 27, 2012 Suspension

During his suspension, Mr. Bertoni, in conjunction with Ms. Kliewer, forced me to prepare my own summary judgment motion and memorandum of law, without any of the necessary supporting evidence that both Mr. Bertoni and Ms. Kliewer had repeatedly promised to secure for purposes of submitting with that motion.

During our initial May 4, 2012 telephone conversation, I alerted Ms. Kliewer to the June 15, 2012 filing deadline for my summary judgment motion (Aff., ¶ 200). I stressed that in support of that summary judgment motion, I needed affidavits from Clackamas County District Attorneys David Paul, Gregory Horner and/or John Foote, Clackamas County Circuit Court Judge Steven Maurer and Mr. Bertoni concerning the purported discussions, negotiations, meetings and other efforts of those parties between June 22, 2007 and July 7, 2011 to resolve my plea and/or sentencing issues. (Id., ¶ 202). Ms. Kliewer assured me that she would: obtain those affidavits (Id., ¶ 203); speak with Mr. Bertoni about what he had done prior to her April 2, 2012 appointment to secure that evidence (Id., ¶ 204); and speak with DA Horner – whom she knows personally – and use her investigator to obtain those affidavits (Id., ¶ 203).

After my May 4, 2012 telephone conversation with Ms. Kliewer, I fully expected and believed that she would be obtaining the evidence in support thereof and preparing and filing that motion between May 4, 2012 and June 15, 2012. (Aff., ¶¶ 215-216). That belief proved mistaken.

After the May 4, 2012 telephone conversation, the next thing I heard from Ms. Kliewer was when she and Mr. Bertoni placed a conference call to me on Friday, June 8, 2012. (Aff., ¶ 217). In her undated letter that I received on August 29, 2012 and the Bar received as (Ex. D) to the Rhodes letter, Ms. Kliewer characterizes Mr. Bertoni's role as her "unpaid legal assistant." She also mischaracterizes the purpose of the June 8, 2012 call (Ex. D, p. 2).

On June 8, 2012 – seven days before the filing deadline -- Ms. Kliewer and Mr. Bertoni asked me to have an untrained prison law clerk prepare my summary judgment motion and memorandum and send it to Mr. Bertoni by Monday, June 11, 2012, because Ms. Kliewer would be out of the office between June 13, 2012 and the June 15, 2012 filing deadline. (Aff., ¶¶ 220-223). Ms. Kliewer and Mr. Bertoni expected me to prepare that summary judgment motion without any of the affidavits of DAs Paul, Horner and/or Foote, Judge Maurer and/or Mr. Bertoni that I needed in support of, and as the basis of, that motion. (Aff., ¶¶ 224-233). *See also* (Rhodes Ltr., Ex. A, p. 2)(Bertoni: “. . . as I said, Joe does all the work . . .”).

The untrained prison law clerk called Mr. Bertoni on June 11, 2012 to tell him that his June 8, 2012 request was unreasonable and impossible to comply with. He told Mr. Bertoni that he could not possibly complete a draft of the summary judgment motion and memorandum until June 13, 2012. (Aff., ¶ 234). Mr. Bertoni then agreed to meet with the law clerk here at OSCI, outside my presence, on June 13, 2012 to pick up the prison law clerk’s draft motion and memorandum and to discuss my case. (Id., ¶¶ 234-236). Ms. Kliewer was not present for that visit, (Id., ¶ 236). Mr. Bertoni represented himself to prison officials as an attorney, not as Ms. Kliewer’s legal assistant. (Id., ¶ 235). He also did not inform prison officials that he was on suspended status (Id., ¶ 235). Mr. Bertoni claimed that *he* spent approximately six hours “editing” the draft summary judgment motion and memorandum that he picked up from the untrained prison law clerk on June 13, 2012 (Aff., ¶ 249) and that *he* needed a one-week extension of time to complete that edit and file the motion (Id.).

On June 22, 2012, Ms. Kliewer filed and served my motion for summary judgment with a supporting affidavit of Mr. Bertoni (Aff., ¶ 251). She did not submit supporting affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote, as she agreed to during our May 4, 2012 telephone conversation (Id.). A comparison of the draft motion that Mr. Bertoni received from the untrained prison law clerk on June 13, 2012 and the motion Ms. Kliewer signed and filed on June 22, 2012 reveals that Ms. Kliewer simply signed off on the work product of the untrained prison law clerk, as if it were her own, despite taking no part, whatsoever, in the preparation thereof. *In re Jones*, 308 Or at 310-11. (Aff., ¶¶ 245 & 253)

VIII. Neglect of a Legal Matter and Assisting in Unauthorized Practice of Law Since August 24, 2012 Reinstatement

Mr. Bertoni’s 150-day suspension ended on or about August 23, 2012. On or about August 29, 2012, Mr. Bertoni met with me at OSCI (Aff., ¶ 274). In doing so, he informed prison officials that he was my attorney, (Id., ¶ 275) not Ms. Kliewer’s legal assistant. (Id.). Ms. Kliewer did not attend that meeting. (Id., ¶ 274).

During our August 29, 2012 visit, Mr. Bertoni hand-delivered to me copies of: the June 22, 2012 summary judgment motion and supporting Bertoni affidavit (Aff., ¶ 276); August 10, 2012 emails from Defense Counsel, Douglas Marshall to Ms. Kliewer, (Id.); and the August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment filed by Defendants (Id.)

Between the August 10, 2012 filing of Defendant's Answer and Response/Cross-Motion for Summary Judgment and Mr. Bertoni's September 4, 2012 substitution as attorney of record, neither Ms. Kliewer nor Mr. Bertoni – as her supposed “unpaid legal assistant” – prepared and/or filed a response to Defendant's cross-motion or a motion for an extension of time to file a response (Aff., ¶¶ 259-265 and 272-273). They also prevented me from drafting my own motion during that period of time by failing to send copies of the August 10, 2012 filings to me, despite my repeated requests that they do so. (Id., ¶¶ 259-269, 274-276 & 280-290).

On August 29, 2012, Mr. Bertoni again requested that I have an untrained prison law clerk draft the response to Defendant's Response/Cross-Motion for Summary Judgment (Aff., ¶ 276). He then filed an August 30, 2012 motion for substitution of counsel, motion for extension of time and affidavit of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137, seeking to substitute Mr. Bertoni as attorney of record for Ms. Kliewer. (Aff., ¶¶ 291-293). Neither Ms. Kliewer nor Mr. Bertoni sent copies of these motions or affidavits to me (Id., ¶ 294).

On September 4, 2012, the trial court issued an order substituting Mr. Bertoni for Ms. Kliewer as the attorney of record (Aff., ¶ 295). Neither Mr. Bertoni nor Ms. Kliewer has ever sent me a copy of that order of substitution. (Id., ¶¶ 296-297)

On or about September 7, 2012, Mr. Bertoni spoke to the untrained prison law clerk by telephone to inform him that the trial court had re-appointed Mr. Bertoni as attorney of record and granted an extension of time to October 5, 2012 to file a reply to Defendant's August 10, 2012 response/cross-motion for summary judgment. (Id., ¶ 309). Mr. Bertoni did not mention the three new Bar complaints against him that were announced in the press that morning. (Id., ¶ 308). Since his September 4, 2012 re-appointment as attorney of record, Mr. Bertoni has made no effort to obtain the promised summary judgment affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote (Id., ¶ 313). Nor has he prepared and filed a response to Defendant's August 10, 2012 Response/Cross-Motion for Summary Judgment (Id., ¶ 314).

Consistent with Mr. Bertoni's April 26, 2012 statement to Ms. Kliewer that “Joe does all the work,” (Rhodes Ltr., p. 2), both I and the untrained prison law clerk whom Mr. Bertoni spoke with on September 7, 2012 (Aff., ¶ 315) are operating on the understanding and belief that Mr. Bertoni is making no effort whatsoever to prepare and file a response and fully expects that I will prepare the response for him to file, as if it were his own work product (Id.).

Simultaneous with this Complaint, I am filing *pro se* motions for an extension of time to file a response and for the substitution of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. The motion for substitution of counsel is based upon the grounds and for the reasons that Mr. Bertoni's failure to protect my interests in the ways described herein and in the supporting affidavit, and his pending Bar complaints, have caused an irreparable breakdown of the attorney-client relationship between Mr. Bertoni and I and created a significant conflict of interest between us. I need substitute counsel to obtain and submit the summary judgment affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote and to prepare and argue my summary judgment response. Oral argument is presently scheduled for October 22, 2012. The

motion for extension of time seeks an additional ninety (90) days for substitute counsel to obtain the necessary affidavits and file the response.

IX. Charging Excessive Fee

As previously noted, on September 9, 2007, I paid Mr. Bertoni a flat-fee retainer of \$5,000 to resolve my plea and sentencing issues through negotiation with the prosecutors and a pcr action, in the event that negotiations failed (Aff., ¶ 17). Mr. Bertoni subsequently represented to me that Judge Maurer and the prosecutors requested that I submit to a current psychological evaluation as part of the negotiation process, (Id., ¶¶ 75, 77, 102, 115 & 129) and insisted that it was crucial that I pay an additional \$3,000 to have Dr. Orin Bolstad, PhD perform the requested evaluation. (Id., ¶¶ 115 & 129).

In hindsight, it now appears that Mr. Bertoni's representations to me concerning his negotiations with prosecutors and Judge Maurer between June 22, 2007 and July 7, 2011 (Aff., ¶¶ 12-109) were false and misleading. It is now my belief that Mr. Bertoni did nothing he claimed to do to resolve my plea and sentencing issues during that period.

Upon the failure of the supposed negotiations to remedy the problems with my plea and sentencing, I filed a *pro se* pcr petition in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137, to remedy my plea and sentencing issues on July 26, 2011 (Aff., ¶ 112). As part of the negotiation of my last Bar complaint against Mr. Bertoni in this matter, he was appointed as attorney of record in that pcr action on December 12, 2011. (Id., ¶¶ 116-143). Mr. Bertoni was the attorney of record in that action from December 12, 2011 to April 2, 2012 and September 4, 2012 to the present. OJIN # 20-31; & 52-56. Between April 2, 2012 and September 4, 2012, Mr. Bertoni was supposedly working on my case as "an unpaid legal assistant" for Ms. Kliever. (Rhodes Ltr., Ex. D, p. 2).

From December 12, 2012 to the present, Mr. Bertoni's April 26, 2012 comment to Ms. Kliever that "Joe does all the work" (Rhodes Ltr., Ex. A, p. 2) has proven true as to every significant filing in the case. On February 17, 2012, Mr. Bertoni filed my Amended PCR Petition – ten days late, as if it were his own work product despite having taken no part in the drafting thereof. (Aff., ¶¶ 145-147, 152 & 154-155); and OJIN # 23. Mr. Bertoni admitted to Ms. Kliever on April 26, 2012 that I prepared that petition myself and he filed it with the court, (Rhodes Ltr., Ex. A, p. 1) *In re Jones*, 308 Or at 310-11, 799 P2d at 1018. I also prepared the June 22, 2012 summary judgment motion and memorandum that Ms. Kliever signed and filed as her own work product despite taking no part in the drafting thereof. (Aff., ¶¶ 217-253). Mr. Bertoni has now placed the onus upon me, again, to prepare my own response to Defendant's August 10, 2012 Response/Cross-Motion for Summary Judgment (Id., ¶¶ 276 & 314-315). No other substantive filings have been made in *Cheadle* since Mr. Bertoni's December 12, 2012 appointment as attorney or record. OJIN # 20-56.

Most importantly, however, Mr. Bertoni has made no effort, whatsoever, to obtain the promised summary judgment affidavits from Judge Maurer and/or DAs Paul, Horner and/or Foote, concerning Mr. Bertoni's purported negotiations, discussions, meetings and/or other efforts with

these parties between June 22, 2007 and July 7, 2011 to resolve my plea and sentencing issues (Aff., ¶¶ 166-167, 225, 251, 290 & 313). In short, Mr. Bertoni has failed to do *any* of the things he assured me that he would do, and that I paid him a \$5,000 retainer, to do.

Now, understanding the breadth of Mr. Bertoni's financial difficulties – which were previously unknown to me – during the period that he represented me – including the 2008 accusations that he stole \$69,826.80 from client trust funds and the current complaint that he owes in excess of \$380,000 to the IRS (Aff., ¶¶ 40, 90, 150 & 308) – causes me to believe that Mr. Bertoni merely told me what I wanted to hear so as to get me to pay him a total of \$8,000 (i.e., \$5,000 retainer + \$3,000 psychological evaluation) for work that he had no intention of performing, and, true to that intention, has *never* performed.

For those reasons, I believe that Mr. Bertoni has charged me a clearly excessive fee, in violation of RPC 1.5. As such, I respectfully request that the Bar assist me in compelling Mr. Bertoni to *immediately* refund the entire fee to me.

X. Promised \$,3500 Reimbursement Upon Conflict/Withdrawal

Pursuant to the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed:

Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date.

As stated in Section IX, *supra*, Mr. Bertoni's acts and omissions complained of herein, as averred to in the herewith submitted affidavit, have created an irreparable breakdown of the attorney-client relationship and a significant conflict of interest. I am now forced to file a *pro se* motion for substitution of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137 to perform the work that I have previously paid Mr. Bertoni a flat fee retainer of \$5,000 to perform, but which he has repeatedly failed to perform. For these reasons, and pursuant to the express terms of the December 5, 2011 Attorney-Client Fee Agreement, I respectfully request your assistance in compelling Mr. Bertoni to immediately "reimburse \$3,500.00 of the fees paid to date" in the event that OSB Counsel does not agree that the full \$5,000.00 retainer constitutes and excessive fee, as discussed in Section IX, *supra*.

XI. Conclusion

Based upon the foregoing, as supported by the Affidavit of Joseph A. Cheadle, submitted herewith, I respectfully request that the Oregon State Bar: (1) pursue disciplinary actions against Mr. Bertoni related to his acts and omissions in his representation of me; (2) investigate (through communications with Clackamas County Circuit Court Judge Steven L. Maurer, Clackamas County District Attorneys David F. Paul, Gregory Horner and/or John Foote and Mr. Gary B. Bertoni) whether the facts Mr. Bertoni represented to me between June 22, 2007 and July 7, 2011 concerning his discussions, negotiations, meetings and other efforts with the referenced parties to resolve my plea and sentencing issues – as averred to in (Aff., ¶¶ 12-109), were false

Scott A. Morrill
September 24, 2012
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and misleading; (3) assist me in obtaining Mr. Bertoni's immediate compliance with the breached terms of the December 5, 2011 Attorney-Client Fee Agreement, as discussed in Section III, supra; (4) assist me in compelling Mr. Bertoni to immediately reimburse \$1,500.00 paid for the psychological evaluation, as discussed in Section IIIA, supra; and (5) assist me in compelling Mr. Bertoni to immediately reimburse the full \$5,000 retainer, as discussed in Section IX, supra, or in the alternative, to immediately reimburse \$3,500 of that retainer, as discussed in Section X, supra.

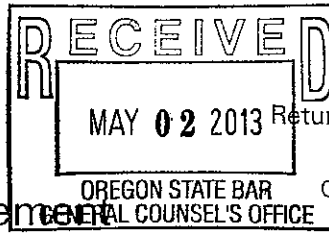
I have all of the documents which I have quoted in the herewith submitted Affidavit of Joseph A. Cheadle. I am happy to provide copies of those documents to your office if you deem them relevant to this Complaint. I am also happy to provide any further information you would like. Thank you for your time and anticipated serious consideration of this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,

Joseph A. Cheadle
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

cc: file
(enclosure)

Client Security Fund Application for Reimbursement



Return completed form to: Oregon State Bar Client Security Fund PO Box 231935 Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar. Submission of this claim does not guarantee payment. The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records. Please attach additional sheets if necessary to give a full explanation.

1. Information about the client(s) making the claim:

- a. Full Name: Joseph Aaron Cheadle
b. Street Address: SID # 10973334, Oregon State Correctional Institution, 3405 Deer Park Dr., SE
c. City, State, Zip: Salem, Oregon 97310
d. Phone: (Home) NA (Cell) NA (Work) (Other) An appointment may be scheduled to speak

with me by telephone at the Oregon State Correctional Institution (OSCI), by calling Mrs. Laura Ellison at (503)373-0125.

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name Gary B. Bertoni, (OSB # 78141)
b. Firm Name Bertoni & Associates
c. Street Address: 520 SW Yamhill Street, Suite 430
d. City, State, Zip: Portland, Oregon 97204
e. Phone: (503)243-2035
f. Email: gbertoni@gbertonilaw.com

3. Information about the representation:

- a. When did you hire the lawyer? 2007. Renewed, with a signed fee agreement on December 5, 2011
b. What did you hire the lawyer to do? I hired Mr. Bertoni to negotiate with the Clackamas County District Attorney's Office to obtain specific performance of the terms of my 1994 plea agreement, and if the prosecutors did not agree to specific performance of the agreement, to file a post-conviction relief proceeding, pursuant to ORS 138.510 to 138.680 to obtain specific performance of the agreement.
c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

"1. For all of ATTORNEY'S past and future services in these pending matters, CLIENT has paid ATTORNEY the fee of \$5,000.00 for legal representation. Said fee specified is a non-refundable minimum flat fee, earned upon receipt, and was paid on or about September 14, 2007." (Ex. 1, p. 1)

"5. CLIENT may discharge ATTORNEY at any time upon telephone notice followed by a written, signed notice from my new attorney or me. Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date." (Ex. 1, p. 2)

- d. Did anyone else pay the lawyer to represent you? Yes
e. If yes, explain the circumstances (and complete item 10B on page 3): Payment was facilitated through a family friend
f. How much was actually paid to the lawyer? \$5,000.00 for attorney fees; \$3,000.00 for psychological evaluation, for

total of \$8,000.00.

g. What services did the lawyer perform? None

h. Was there any other relationship (personal, family, business or other) between you and the lawyer? No

4. Information about your loss:

a. When did your loss occur? December 5, 2011 to the present

b. When did you discover the loss? September 24, 2012

c. Please describe what the lawyer did that caused your loss Mr. Bertoni has collected an excessive fee, insofar as I paid him a total of \$5,000.00 to represent me and he did not complete any work on the case. See e.g., (Ex. 1, p. 1, ¶ 1; & p. 2, ¶ 5) It was necessary for me to file a September 24, 2012 Bar Complaint against Mr. Bertoni, (Ex. 2, pp. 12-13) which is currently pending with Disciplinary Counsel of the Oregon State Bar in Case No. 13-28. (Ex. 3). I also had to file a *pro se* motion for substitution of counsel with the Marion County Circuit Court, to have replacement counsel appointed to represent me in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137, the matter I retained Mr. Bertoni to represent me in. (Ex. 4). On October 23, 2012, the trial court removed Mr. Bertoni as counsel, noting that he had done no work on the case since his December 11, 2011 appointment as attorney of record, and appointed D. Olcott Thompson (OSB # 824092), PO Box 1062, Salem, OR 97308-1062, o.Thompson@comcast.net, to represent me. (Ex 5, p. 5, # 68). Between October 24, 2012 and January 8, 2013, Mr. Thompson resolved the case, in my favor, with minimal effort. Mr. Bertoni was unable or unwilling to make similar efforts on my behalf between December 11, 2011 and October 24, 2012. Mr. Bertoni agreed to repay \$3,500.00 of the \$5,000.00 retain in the event that a conflict of interest prevented him from completing the work I retained him to perform (Ex. 1, p. 2). I believe that Mr. Bertoni should actually be required to return my full \$5,000.00 retainer because he performed no work that he was paid to perform. Mr. Bertoni has failed to repay either the \$3,500.00 that he agreed to repay, or the entire \$5,000.00 retainer as of this writing.

d. How did you calculate your loss? I paid Mr. Bertoni \$5,000.00 but he performed no work to earn that fee and I believe he should return the entire \$5,000.00 fee to me. Mr. Bertoni agreed to reimburse the amount of \$3,500.00 in the event that a conflict of interest arose between us, as it has in this case. (Ex. 1, p. 2, ¶ 5).

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* No. Mr. Bertoni has not repaid any of the \$5,000.00 fee I paid him.

b. Do you have insurance, indemnity or a bond that might cover your loss? *If yes, please explain.* No.

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.* I have demanded reimbursement through my September 24, 2012 Bar Complaint. (Ex. 2, pp. 12-13). The Bar sent copies of that complaint to Mr. Bertoni (Ex. 6 & 7) but he has failed to repay either the full \$5,000.00 fee or the agreed upon sum of \$3,500.00.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* Mr. Bertoni has remained silent on the issue and has refused to answer Bar inquiries for information (Ex. 8 & 9).

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* I have filed a Complaint with the Oregon State Bar which is currently under investigation by Disciplinary Counsel in Disciplinary Case No. 13-28. (Ex. 2 & 3). I have not yet filed a law suit against Mr. Bertoni in any court.

f. Have you obtained a judgment? *If yes, please provide a copy* NA

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No.

ATTORNEY-CLIENT FEE AGREEMENT

I, JOSEPH CHEADLE, (CLIENT), retain GARY B. BERTONI (ATTORNEY) and the law offices of BERTONI & ASSOCIATES to represent me in my post conviction relief petition in JOSEPH A. CHEADLE v. ROB PARSONS, Marion County Case No 11C19137 and in regards to resentencing in STATE v. JOSEPH A. CHEADLE, Clackamas County Case No. 94-0524.

1. For all of ATTORNEY'S past and future services in these pending matters, CLIENT has paid ATTORNEY the fee of \$5,000.00 for legal representation. Said fee specified is a non-refundable minimum flat fee, earned upon receipt, and was paid on or about September 14, 2007.

2. In addition to the above fee, I agree to pay for reasonable and necessary Non-Routine Expenses should Oregon Public Defense not authorize such expenses. Non-Routine Expenses is defined by Public Defense Payment Policies and Procedures 3.2.3. Routine expenses such as copy costs, long distance telephone charges, postage, legal assistant or paralegal time are to be borne by ATTORNEY.

3. I understand ATTORNEY will be present at all court appearances and will personally handle the case and will not reschedule any hearing date presently set or file any substantive or dispositive motion, or response without prior consent of CLIENT. I further understand that ATTORNEY will immediately file a substitution of attorney in the above matter. CLIENT agrees and consents that portions of the work may be performed by associate lawyers, paralegals or others working under ATTORNEY'S supervision.

4. I understand ATTORNEY will use best efforts in representing CLIENT. ATTORNEY has given me no assurances regarding the outcome of matters being handled by ATTORNEY. Best efforts to include the following:

- To keep CLIENT informed of all developments in the case;
- To maintain regular phone contact with CLIENT, a minimum of one phone update per month, and phone contact as required by daily developments in the case;
- To confirm conversations and case developments in writing;
- To sent monthly statements detailing time and events for the month, said statement to be mailed to CLIENT by the 15th of the following month;
- To meet with CLIENT at OSCI as required;
- To reimburse CLIENT \$1,500 for Dr. Bolstad's fee, Payment to be made within 21 days from the date of the execution of this Fee Agreement to a bank account of CLIENT'S choosing;
- To review with CLIENT case progress every three months; and
- To provide an affidavit or declaration confirming all events transpiring in case since September 14, 2007.

Bertoni & Associates

5. CLIENT may discharge ATTORNEY at any time upon telephone notice followed by a written, signed notice from my new attorney or me. Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date.

6. CLIENT reserves all rights to take any legal action against ATTORNEY or file a complaint with the Oregon State Bar should CLIENT reasonably determine that ATTORNEY'S past and future actions have harmed or jeopardized CLIENT'S case. Further, ATTORNEY acknowledges that failure of CLIENT at any time to require strict performance of any provision of this agreement shall not limit CLIENT'S right to enforce the provision, nor shall any waiver by CLIENT of any breach of any provision constitute a waiver of or prejudice CLIENT'S right otherwise to demand strict performance of the provision or any other provision of this agreement.

7. CLIENT acknowledges that failure of ATTORNEY at any time to require strict performance of any provision of this agreement shall not limit ATTORNEY'S right to enforce the provision, nor shall any waiver by ATTORNEY of any breach of any provision constitute a waiver of or prejudice Attorney's right otherwise to demand strict performance of the provision or any other provision of this agreement.

I HAVE READ THIS AGREEMENT, HAVE RECEIVED A COPY OF IT, AND AGREE TO THE TERMS AND CONDITIONS AS STATED. THERE ARE NO VERBAL AGREEMENTS BETWEEN CLIENT, ATTORNEY, AND MYSELF MODIFYING OR EXPANDING THE TERMS OF THIS AGREEMENT.

By: Joseph A. Cheadle 12-1-2011
Date

By: Gary B. Bertoni 12-5-2011
Date
Bertoni & Associates

GARY B. BERTONI
LIVIA E. RILEY
KRISTINE M. ALMQUIST
MATTHEW J. WASHCUK
CORY NEIS

**BERTONI &
ASSOCIATES**
ATTORNEYS AT LAW

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204

◆ ◆ ◆

TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

December 5, 2011

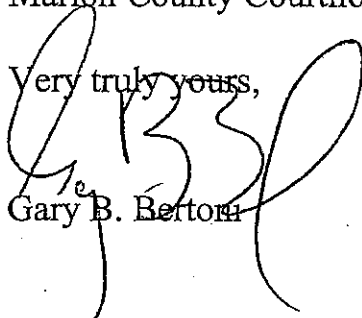
Joe Cheadle #10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

RE: *Joseph Cheadle v. Rob Parsons*
Marion County Circuit Court No. 11C19137

Dear Joe:

Please find enclosed your copy of the fee agreement. I dated your signature for December 1, 2011, the date of your cover letter. I've also enclosed a copy of the Substitution of Attorney, which I will file on December 12, 2011, when I am at the Marion County Courthouse on another matter.

Very truly yours,


Gary B. Bertoni

GBB:rak
cc: file

Client Security Fund Application
Exhibit 1, p. 3 of 6

GARY B. BERTONI
LIVIA E. GOETZ
KRISTINE M. ALMQUIST
MATTHEW J. WASHCUK
CORY NEIS

**BERTONI &
ASSOCIATES**
ATTORNEYS AT LAW

CLIENT'S COPY

430 PACIFIC BUILDING
520 SOUTHWEST YAMHILL STREET
PORTLAND, OREGON 97204

♦ ♦ ♦
TELEPHONE (503) 243-2035
FACSIMILE (503) 243-6307

December 5, 2011

Marshall W. Douglas
DOJ Trial Corrections Lit
1162 Court St NE
Salem OR 97301

Olcott Thompson
270 Cottage St NE
PO Box 1062
Salem OR 97308

**RE: Cheadle v. Rob Parsons,
Marion County Case No. 11C19137**

Gentlemen:

Please find enclosed a copy of Plaintiff's Notice of Substitution of Attorney, which will be filed with the court on December 12, 2011. Thank you.

Very truly yours,


Gary B. Bertoni

GBB:rak
cc: Joseph Cheadle

**Client Security Fund Application
Exhibit 1, p. 4 of 6**

CLIENT'S COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

JOSEPH A. CHEADLE,

Plaintiff,

v.

ROB PARSONS, Superintendent,
Oregon State Correctional Institution,

Defendant.

) Case No. 11C19137

)

)

) NOTICE OF SUBSTITUTION OF
) ATTORNEY

)

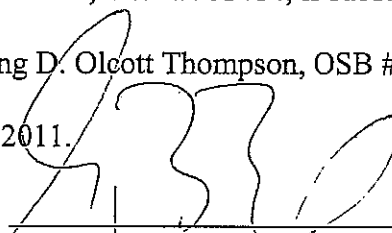
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Notice is hereby given that Gary B. Bertoni, OSB #781414, is substituted as Attorney of Record for Plaintiff Joseph Cheadle, replacing D. Olcott Thompson, OSB #824092.

DATED this 5th day of December 2011.



Gary B. Bertoni OSB# 78141
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that I have served the foregoing NOTICE OF SUBSTITUTION OF ATTORNEY upon the listed individuals as set forth below by mailing a copy thereof duly certified by the undersigned attorney in a sealed envelope plainly addressed as follows:

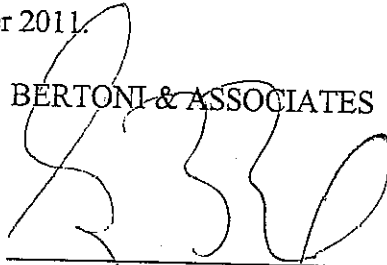
Marshall W. Douglas
DOJ Trial Corrections Lit
1162 Court St NE
Salem OR 97301

Olcott Thompson
270 Cottage St NE
PO Box 1062
Salem OR 97308

postage prepaid, and deposited the same in the United States Post Office at Portland, Multnomah County, Oregon, on this date.

DATED this 5th day of December 2011.

BERTONI & ASSOCIATES


GARY B. BERTONI, OSB No. 78141
Attorney for the Defendant

September 24, 2012

Scott A. Morrill
Assistant General Counsel
16037 Upper Boones Ferry Rd.,
PO Box 231935
Tigard, OR 97281-1935

**RE: RENEWED COMPLAINT IN RE CONDUCT OF
GARY B. BERTONI (OSB #78141)**

Dear Mr. Morrill:

I am writing to bring a formal complaint against my attorney Gary B. Bertoni (OSB # 78141). You previously assisted me in 2008, 2010 and 2011, with complaints against him related to the same matter I now seek assistance with. In fact, some of the issues I now have a problem with relate to Mr. Bertoni's breach – from day one – of the 2011 agreement we entered to resolve the 2011 Bar complaint. This Complaint is supported by the Affidavit of Joseph A. Cheadle, (Aff.,) submitted herewith and incorporated herein by this reference.

I. Summary of Attorney-Client Relationship

In 1993 and 1994, Mr. Bertoni represented me in a criminal proceeding which was resolved through my entry of a plea agreement with the State of Oregon, by and through Clackamas County Deputy District Attorney David F. Paul. (Aff., ¶¶ 3-10).

In 2007, I learned of the potential breach of my 1994 plea agreement and other sentencing problems (Aff., ¶¶ 11 & 15). So I contacted Mr. Bertoni, who agreed that there appeared to be a problem with my plea and sentence. (Id., ¶¶ 12-16). He agreed to represent me in correcting the plea breach and sentencing issues by first attempting to negotiate a correction with DDA Paul, and to assist me in filing a post-conviction relief (pcr) action to correct the errors if the prosecutor was unwilling or unable to correct those problems. (Id., ¶ 17). He agreed to represent me in both the negotiation and potential pcr action for a flat fee retainer of \$5,000 (Id.), which I paid on or about September 9, 2012. (Id., ¶ 18).

Between June 22, 2007 and June 15, 2011, Mr. Bertoni repeatedly claimed to be in serious negotiations with DAs Paul, Gregory Horner and John Foote and Clackamas County Circuit Court Judge Steven L. Maurer, to resolve my plea and sentencing problems. (Aff., ¶¶ 12-109). However, on or about June 15, 2011, Mr. Bertoni claimed that after four years of purported negotiations and meetings, the prosecutors inexplicably broke off talks with no agreement to resolve my plea and sentencing issues. (Id., ¶ 100).

On or about July 26, 2011, I filed a *pro se* petition for pcr in *Joseph A. Cheadle v. Rob Parsons*, Marion County Circuit Court No. 11C-19137, to resolve my plea and sentencing issues. (Aff., ¶

112). On December 12, 2011, Mr. Bertoni was substituted as attorney of record in *Cheadle v. Parsons*, (Id., ¶ 143). On or about February 2, 2012, it was reported, however, that Mr. Bertoni had agreed to a 150-day suspension of his license to practice law, beginning March 27, 2012. (Id., ¶ 150). On March 26, 2012, Mr. Bertoni substituted Ronnee S. Kliever, (OSB # 933319) as attorney of record in *Cheadle v. Parsons*, (Id., ¶ 178).

During the course of Mr. Bertoni's suspension, he remained involved in *Cheadle v. Parsons*, (Aff., ¶¶ 185, 217-250; 260-265; 268, 274-276, and 291-292). Mr. Bertoni's 150-day suspension ended on or about August 23, 2012. The trial court then substituted Mr. Bertoni for Ms. Kliever as the attorney of record in *Cheadle v. Parsons* on September 4, 2012. (Id., ¶ 295). As of this writing, Mr. Bertoni remains the attorney of record in that action. (Id., ¶¶ 296-312).

II. Summary of Previous Bar Complaints Against Mr. Bertoni

I have previously sought the assistance of the Oregon State Bar (OSB) in addressing problems with Mr. Bertoni's representation in relation to the matters summarized in Section I, supra. Specifically, on or about May 29, 2008, I first wrote the OSB concerning Mr. Bertoni's lack of communication (Aff., ¶24). You resolved that problem for me on or about June 3, 2008. (Id., ¶¶ 25-28). Unbeknownst to me, on that same date, Mr. Bertoni's former office manager, Cynthia Stratham had filed a Bar complaint against Mr. Bertoni, accusing him of stealing \$69,826.80 from his client trust accounts. (Id., ¶ 40). That complaint was first reported in the media on November 26, 2008 (Id.) and ultimately resulted in his 150-day suspension from March 27, 2012 to August 23, 2012. (Id., ¶¶ 90 & 150).

On or about January 15, 2010, I sent you second complaint letter seeking assistance in "bring[ing] a resolution to the matters for which I hired [Mr. Bertoni]." (Aff., ¶ 60). On February 2, 2010, you wrote to me, stating that you had again spoken with Mr. Bertoni about my concerns (Id., ¶¶ 61-62) and we ultimately resolved our differences and continued our attorney-client relationship (Id., ¶¶ 64-65).

On or about August 17, 2011, I sent you a third complaint letter concerning Mr. Bertoni's representation of me. (Aff., ¶ 116). Ultimately, with your assistance, Mr. Bertoni and I entered into negotiations to resolve our dispute. (Id., ¶¶ 117, 119-130). These negotiations resulted in a "new" Attorney-Client Fee Agreement between Mr. Bertoni and I, which was fully executed on December 5, 2011 (Id., ¶¶ 131-132 & 134). There had been no written agreement between us before this agreement. As a result of this "Attorney-Client Fee Agreement," I wrote you on December 15, 2011 to "confirm . . . that Mr. Bertoni and I have resolved our issues." (Id., ¶ 144).

III. Mr. Bertoni's Immediate and Repeated Breach of the December 5, 2011 Attorney-Client Fee Agreement

Mr. Bertoni signed and returned the Attorney-Client Fee Agreement to me on December 5, 2011. (Aff., ¶ 134). I am enclosing the signed copy of that agreement for your review. (Ex. 1). Mr. Bertoni immediately and repeatedly breached, and continues to breach, the express terms of that agreement as discussed herein.

A. Reimbursement of \$1,500.00 for Dr. Bolstad's Fee

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed "[t]o reimburse CLIENT \$1,500 for Dr. Bolstad's fee, Payment to be made within 21 days from the date of the execution of this Fee Agreement to a bank account of CLIENT'S choosing[.]" (Ex. 1, p. 1). The Attorney-Client Fee Agreement was fully executed as of December 5, 2011 (Ex. 1, p. 2), making the \$1,500 payment due on or before December 26, 2011. (Ex. 1). Mr. Bertoni failed to reimburse the agreed upon sum on or before December 26, 2011 (Aff., ¶ 136). In fact, as of this writing, Mr. Bertoni has never reimbursed that sum, (Id., ¶ 137) despite my repeated efforts to get him to do so.

On or about January 6, 2012, Mr. Bertoni claimed to have sent "a check payable in the amount of \$1,500.00" to the person I requested him to send that money to. (Aff., ¶ 148). However, that check was never received by the intended recipient. (Id., ¶ 149). On or about February 13, 2012, I wrote Mr. Bertoni, informing him that the check had not been received and asking him to review his mail records and see if the check was returned to him (Id., ¶ 153). Mr. Bertoni wrote to me on February 17, 2012 but said nothing about the missing \$1,500.00 check (Id., ¶ 155).

On or about March 2, 2012, I wrote Mr. Bertoni, stating "I have not heard a response from you regarding the \$1,500.00 you were to mail." (Aff., ¶ 156). On or about March 6, 2012, Mr. Bertoni sent the \$1,500.00 reimbursement check to the party that I asked him to send it to. (Id., ¶ 157). However, that check was returned as uncashable due to insufficient funds. (Id., ¶ 158). As of this writing, Mr. Bertoni has never resent that \$1,500.00 reimbursement check (Id., ¶ 159).

On or about August 29, 2012, Mr. Bertoni met with me at the Oregon State Correctional Institution (OSCI)(Aff., ¶ 274). During that visit, I again requested that Mr. Bertoni send me the \$1,500.00 that he promised to reimburse me by December 26, 2011. (Id., ¶ 277). I asked him if he could get the money to me by mid-September, 2012. (Id.). He claimed that he could not and asked that I give him until September 30, 2012. (Id.).

During the August 29, 2012 visit I presented Mr. Bertoni with a document that I entitled a "Fulfillment of Terms of Agreement" and asked him to sign it. (Aff., ¶ 278). That signed document is attached hereto as (Ex. 2). In that document Mr. Bertoni acknowledges that he has failed to reimburse the \$1,500.00 as of August 29, 2012 and agrees to do so on or before September 30, 2012. (Ex. 2). See also (Aff. ¶¶ 278-279).

On or about September 7, 2012, *The Oregonian* reported that one week after Mr. Bertoni's 150-day suspension ended, the OSB received three new complaints against Mr. Bertoni, including one that alleges that he failed to pay payroll taxes for 2 ½ years and owes the Internal Revenue Service (IRS) in excess of \$380,000 in back taxes and penalties. (Ex. 3). As such, I fear that Mr. Bertoni likely has little intention of paying -- or ability to pay -- the \$1,500.00 that he agreed on December 5, 2011 to reimburse within 21 days.

B. Failure to Provide Affidavit or Declaration Confirming Events Transpiring in Case Since September 14, 2007

In our negotiation of the last complaint I filed against Mr. Bertoni, on November 14, 2011, I stated:

... I am concerned that many of the events over the last four years, which your [sic] said occurred in the course of the 'plea discussions' with the DAs Office, were not accurately described to me. I have repeatedly asked you to verify those events – e.g., an affidavit or letter for use in the PCR proceeding – but you have failed doing so. To be clear, my understanding of those events is described in detail in my letter to DA Gregory D. Horner, dated June 22, 2011. Further, my PCR petition alleges these events and others, including the transaction between DA Horner and yourself regarding the enforcement of my plea deals. Please review those documents. If there are any inaccuracies, I would ask you to identify them to me.

I have three real concerns about those events. First, those events may become a material issue in my PCR proceeding with respect to the timeliness of my claims. My defense against a statute of limitations argument will potentially turn on those events, because it will show that I was in meaningful discussions with the DAs Office, which had a duty to honor the pleas. Second, my parole related claims are premised on an 'anticipatory breach of plea' theory, which I based on your representation that the DAs Office told you that they would not honor the parole component of the plea. Third, as you know, I contracted Dr. Bolstad based on your representation to me that it would be used, and was suggested by, the DAs and Judge Maurer in your discussions with them about my plea agreement. Again, with those points in mind, I would ask that you review my letter to the DAs and the PCR petition and if you identify any inaccuracies, please identify them to me.

If you have misrepresented those events to me, I reserve the right to take legal or state bar action against you, in the event I am harmed.

(Aff., ¶ 129). To address these concerns, Mr. Bertoni expressly agreed in the December 5, 2011 Attorney-Client Fee Agreement "[t]o provide an affidavit or declaration confirming all events transpiring in case since September 14, 2007." (Ex. 1, p. 1). As of this writing, however, Mr. Bertoni has repeatedly failed "[t]o provide [me with] an affidavit or declaration confirming all events transpiring in case since September 14, 2007." (Aff., ¶ 139). Those events, as Mr. Bertoni represented them to me are set forth in my affidavit (Aff., ¶¶ 18-112). I have grave concerns that Mr. Bertoni has, in fact, repeatedly and continually misrepresented those facts to me, and I now request the OSB's assistance in ascertaining – through discussions with District Attorneys David Paul, Gregory Horner, John Foote, Judge Steven Maurer and Mr. Bertoni -- whether the facts averred to in my affidavit accurately depict the ongoing discussions, negotiations, meetings and other efforts to resolve my plea and sentencing issues between June 22, 2007 and July 7, 2011. (Aff., ¶¶ 12-112).

Mr. Bertoni's breach of this term of the December 5, 2011 Attorney-Client Fee Agreement has harmed me. On or about August 10, 2012, the Defendant filed an Answer and a Response/Cross-Motion for Summary Judgment in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. (Aff., ¶ 259). Defendants now assert the statute of limitation defense (Id., ¶¶ 285, 287, and 289) that I repeatedly expressed concern about (Id., ¶¶ 20, 53, 102 and 129). Mr. Bertoni did submit a June 22, 2012 affidavit in support of the summary judgment motion that was filed that day (Id., ¶ 251). This is not the same "affidavit or declaration" that he promised on December 5, 2011 "[t]o provide . . . confirming all events transpiring in case since September 14, 2007." (Ex. 1, p. 1). The June 22, 2012 summary judgment affidavit omits many of the facts he represented to me concerning his supposed discussions, negotiations, meetings and other efforts with Judge Maurer and/or DAs Paul, Horner and/or Foote, to resolve my plea and sentencing issues between June 22, 2007 and July 7, 2011, as averred to in (Aff., 18-113).

Assuming, as I now must, that Mr. Bertoni misrepresented those facts between June 22, 2007 and July 7, 2011, I have been harmed by those misrepresentations insofar as Mr. Bertoni represented to me that the prosecutors and judge wanted to me submit to a current psychological evaluation, at additional financial expense to my family. See (Aff., ¶¶ 75, 77-85, 102, 115 and 129). However, that evaluation was never utilized in the phantom efforts to resolve my plea and sentencing issues. (Id., ¶¶ 75-102 & 115). In the event that Mr. Bertoni misrepresented the facts concerning the request of the judge and prosecutors that I submit to a psychological evaluation, I request reimbursement of the full \$3,000 paid to obtain that evaluation.

C. Failure to Provide Monthly Statements

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed "[t]o sent [sic] monthly statements detailing time and events for the month, said statement to be made to CLIENT by the 15th of the following month[.]" (Ex. 1, p. 1). Between December 5, 2011 and this writing, Mr. Bertoni has never "sent [me] monthly statements detailing time and events for the month . . . mailed . . . by the 15th of the following month," or otherwise. (Aff., ¶¶ 140-141)

D. Failure to Keep Client Informed and Provide Written Confirmation of Conversations & Case Developments

Under the terms of the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed "[t]o keep CLIENT informed of all developments in the case" and "[t]o confirm conversations and case developments in writing[.]" (Ex. 1, p. 1). Mr. Bertoni repeatedly failed to provide written confirmation to me of conversations and case developments in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. Mr. Bertoni failed to confirm in writing: what occurred and was discussed at the March 9, 2012 status conference. OJIN # 26. (Aff., ¶ 162); the March 2012 summary judgment filing deadline in *Cheadle v. Parsons*. (Id., ¶ 164); the reset of the summary judgment deadline to June 15, 2011 (Id., ¶ 176); that he had filed a March 26, 2012 motion and affidavit for substitution of counsel (Id., ¶¶ 178-181); the April 2, 2012 order substituting Ronnee S. Kliewer as attorney of record (Id., ¶¶ 182-183); the April 12, 2012 notice establishing an April 26, 2012 status conference (Id., ¶¶ 186-187); what occurred and was

discussed at the April 26, 2012 status conference (Aff., ¶ 189); the April 26, 2012 notice establishing an May 4, 2012 status conference (Id., ¶¶ 190-191); his April 26, 2012 email to Ms. Kliewer that was provided to me by your office on September 13, 2012 (Ex. A); what occurred and was discussed at the May 4, 2012 status conference (Aff., ¶ 194); his May 14, 2012 email to Ms. Kliewer that your office provide me on September 13, 2012 (Ex. C); the June 15, 2012 motion for extension of time (Aff., ¶¶ 239 & 246); the court's order granting the June 15, 2012 motion for extension of time; the August 10, 2012 Defendant's Answer and Response/Cross-Motion for Summary Judgment (Id., ¶¶ 259-260, 262-263, 265 & 268); the August 30, 2012 motion to substitute attorney, motion for extension of time and affidavit of counsel (Id., ¶¶ 291-293); the trial court's order on the August 30, 2012 motions (Id., ¶¶ 294-297); what occurred and was discussed at the September 7, 2012 status conference (Id., ¶¶ 311-312); and other, unknown conversations and case developments.

IV. Neglect of Legal Matter and Assistance of Unauthorized Practice of Law Before March 27, 2012 Suspension

Mr. Bertoni was appointed as attorney of record in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137 on December 12, 2011. (Aff., ¶¶ 142-143). Prior to his formal appointment, the attorney of record made Mr. Bertoni aware that the trial court had set a February 7, 2012 deadline for filing an Amended Petition for Post-Conviction Relief (Id., ¶¶ 145-146). With the assistance of an untrained prison law clerk, I prepared a draft amended petition for post-conviction relief and sent it to Mr. Bertoni on January 6, 2012 (Id., ¶ 147). Mr. Bertoni did not file an Amended Petition for Post-Conviction Relief on or before the February 7, 2012 filing deadline (Id., ¶ 152). Ultimately, Mr. Bertoni photocopied my January 6, 2012 draft amended petition onto his pleading paper and filed it on February 17, 2012 – ten days late – as if it were his own work product, despite having taken no part in the preparation thereof. (Id., ¶ 154). In his April 26, 2012 email to Ms. Kliewer that I first became aware of, and received a copy of from you, on September 13, 2012, Mr. Bertoni states:

Joe filed his own PCR in August 2011. He was appointed counsel . . . and I substituted in on December 12, 2011. . . . Joe prepared and I reviewed and filed an Amended PCR petition on Feb. 17, 2011. . . .

(Ex. A, p. 1), and: “Anyway, as I said, Joe does all the work. . . .” (Id., p. 2). This is the clearest expression of Mr. Bertoni's intention to perform no work as attorney of record in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. This clearly violates ORS 9.160(1) and the Rules of Professional Conduct (RPC) 5.5(a), by aiding, and compelling, parties who are not active members of the Oregon State Bar (OSB), in the unauthorized practice of law. *In re Jones*, 308 Or 306, 310-11, 799 P2d 1016, 1018 (1989)(En Banc)(“Permitting pleadings to bear [attorney's] name, although he took no part in their preparation, misled both the court and [the attorney's] clients. Such conduct was prejudicial to the administration of justice. Moreover, it was a deception practiced both on the court and the clients.”). See also *Taub v. Weber*, 366 F3d 966, 970 (9th Cir. 2004); *OSB v. Taub*, 190 Or App 280, 78 P3d 114 (2003); and *In re Morin*, 319 Or 547, 878 P2d 393 (1994)(In Banc).

Between his December 12, 2011 substitution as attorney of record and his March 27, 2012 suspension, Mr. Bertoni took no action to advance my claims. (Aff., ¶¶ 151, 165-168 & 177)

V. Failure to Protect Client's Interests Upon Termination of Representation

Oregon State Bar Rule of Procedure 6.3(a) requires that [a] . . . suspended attorney shall not practice law after the effective date of . . . suspension" and Rule 6.3(b) mandates that "[i]t shall be the duty of a . . . suspended attorney to take all reasonable steps to avoid foreseeable prejudice to any client[.]" RPC 1.16(d) also mandates "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests. . . ." Taking Ms. Kliewer at her word, it appears that Mr. Bertoni violated these Rules in relation to his March 27, 2012 suspension. Specifically, in her undated letter that I received on August 29, 2012 and which she submits to Bar Counsel as (Ex. D), Ms. Kliewer claims:

As you know, I assumed responsibility for certain of Mr. Bertoni's cases during his suspension from the practice of law for 150 days. When I agreed to take on Mr. Bertoni's caseload, it was my understanding I would be handling his delinquency and Measure 11 caseload, and a few criminal matters. *I was unaware, at the time, that I would be assuming responsibility for your post-conviction matter.* Mr. Bertoni advised me that all client [sic] for whom he filed substitutions had consented. If this is not the case, you may raise that concern with Mr. Bertoni.

* * * * *

During our initial telephone conference, . . . we also discussed the status of your case. *I had not yet received a copy of your file from Mr. Bertoni, so much of our conversation was spent getting me 'up to speed.'*

(Ex. D)(emphasis added). In fact, during that initial, May 4, 2012 telephone conference, Ms. Kliewer: (1) claimed that she had "just" received my file from Mr. Bertoni but the file did not contain my post-conviction relief petition." (Aff., ¶ 197); (2) claimed to be unaware of the June 15, 2012 filing deadline for my summary judgment motion (Id., ¶ 200); and (3) said that she would speak with Mr. Bertoni about what he had done prior to her April 2, 2012 appointment as attorney of record, to secure the needed affidavits from Judge Maurer and DAs Paul, Horner and Foote (Id., ¶ 204), implying that Mr. Bertoni had never previously informed her of those "efforts." (Id., ¶ 205). *See generally*, (Id., ¶¶ 195-208).

On September 13, 2012, you sent me a September 11, 2012 letter and four supporting exhibits submitted by Ms. Kliewer's attorney, Allison D. Rhodes (Rhodes Ltr). In that letter, Ms. Rhodes claims:

. . . Ms. Kliewer was literally blindsided by Mr. Bertoni's cases upon his suspension and had to beg and cajole for the most basic of cooperation associated with that transition. . . .

Mr. Cheadle's was one of the many files upon which Mr. Bertoni subbed Ms. Kliewer without telling her. The certificates of services associated with this and all other substitutions omitted Mr. Kliewer and the affected clients.¹

... the fact is that he did not provide this file until May 3, 2012, five weeks after he filed (but did not serve) the substitution in this case. He provided the first written details on April 26, 2012, when he wrote her about a status hearing that was to occur a few hours later. (That email is attached as Exhibit A.) As you can see, and although apparently a motion to extend time had been sent over to her office, she had no file and no basis upon which to discuss the matter with her client.

Although Mr. Bertoni reports meetings where Ms. Kliewer 'went over the files,' he also acknowledged that he unilaterally subbed her in on 130 cases. (I have included a redacted excerpt from Mr. Bertoni's response to Ms. Hankin's request for information regarding his cooperation with file transition as Exhibit B). . . . The majority of Mr. Cheadle's complaints belong in an analysis of the larger (130 case) mismanaged file transition associated with his suspension. . . .

(Rhodes Ltr, p. 1). Taking these facts as true, Mr. Bertoni violated OSB Rule of Procedure 6.3(b) and RPC 1.16(d) by failing "to take all reasonable steps to avoid foreseeable prejudice to any client[.]" or "take steps to the extent reasonably practicable to protect a client's interests." As a result of Mr. Bertoni's failing, Ms. Kliewer failed to communicate with me, or take *any* action on my behalf between her April 2, 2012 appointment as attorney of record and our initial May 4, 2012 telephone conversation – at my initiation. *See* (Aff., ¶¶ 182-195)

VI. Continued Practice of Law During March 27, 2012 to August 23, 2012 Suspension

Mr. Bertoni's 150-day suspension commenced on March 27, 2012 and ended on or about August 23, 2012. During that time, Ronnee S. Kliewer was the attorney of record in *Cheadle* from April 2, 2012 until September 4, 2012. OJIN # 31 & 52. However, in that time, Ms. Kliewer did not write me a single letter, never visited me and spoke to me on the phone just twice (Aff., ¶¶ 300-301). She filed a single motion for a one-week extension of time (Id., ¶ 298) and filed a summary judgment motion and memorandum that was prepared by an untrained prison law clerk and which she took no part in preparing (Id.). She did not file a response to Defendant's August 10, 2012 Cross-Motion for Summary Judgment or a motion for extension of time to do so. (Id., ¶ 299). Mr. Bertoni, not Ms. Kliewer, came to the prison on June 13, 2012 to get the motion the prison law clerk had prepared (Id., ¶¶ 234-237). When he did so, he told prison officials he was an attorney, not Ms. Kliewer's legal assistant (Id., ¶ 235). He also did not inform prison officials that he was on suspended status. (Id.). Mr. Bertoni, not Ms. Kliewer, "edited" the prison law clerk's draft summary judgment motion and memorandum. (Id., ¶ 249). Mr. Bertoni, not Ms. Kliewer, met with me at OSCI on August 29, 2012 (Id., ¶ 274). He signed in as my attorney, not

¹ Neither Mr. Bertoni nor Ms. Kliewer consulted with me before moving to substitute Ms. Kliewer as attorney of record (Aff., ¶ 179) and neither of them have ever sent me copies of the motion, affidavit or order of substitution. (Id., ¶¶ 181 & 183).

as Ms. Kliewer's legal assistant. (Id., ¶ 275). Mr. Bertoni, not Ms. Kliewer, took my telephone calls (Id., ¶¶ 192, 213, 232, 234, 247-250, 254-256 and 261-265). On August 29, 2012, Mr. Bertoni, not Ms. Kliewer, finally gave me copies of: the June 22, 2012 summary judgment motion and supporting affidavit; Defense Counsel's August 10, 2012 email to Ms. Kliewer; and Defendant's August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment (Id., ¶ 277). Mr. Bertoni, not Ms. Kliewer, sought additional time to file a response to Defendant's cross-motion for summary judgment (Id., ¶¶ 272, 291-292 & 299). Ms. Kliewer has failed to send copies of court notices and filings to me (Id., ¶¶ 179, 183, 185, 189, 194, 210, 239, 246, 251-252, 260, 269, 291-293, 295-297 and 302-303) and to keep me apprised of what occurs at court hearings (Id., ¶¶ 189, 194 and 201). Clearly, Ms. Kliewer did not act as the attorney of record in *Cheadle*. Rather, she has served only "as a 'front' to cover [Mr. Bertoni's] unauthorized practice of law" during his 150-day suspension. *State ex. Rel Oregon State Bar v. Lenske*, 284 Or 23, 31, 584 P2d 759, 763 (1978)(In Banc). Of course, this violates ORS 9.160(1) and RPC 5.5(a).

VII. Neglect of Legal Matter and Assistance of Unauthorized Practice of Law During March 27, 2012 Suspension

During his suspension, Mr. Bertoni, in conjunction with Ms. Kliewer, forced me to prepare my own summary judgment motion and memorandum of law, without any of the necessary supporting evidence that both Mr. Bertoni and Ms. Kliewer had repeatedly promised to secure for purposes of submitting with that motion.

During our initial May 4, 2012 telephone conversation, I alerted Ms. Kliewer to the June 15, 2012 filing deadline for my summary judgment motion (Aff., ¶ 200). I stressed that in support of that summary judgment motion, I needed affidavits from Clackamas County District Attorneys David Paul, Gregory Horner and/or John Foote, Clackamas County Circuit Court Judge Steven Maurer and Mr. Bertoni concerning the purported discussions, negotiations, meetings and other efforts of those parties between June 22, 2007 and July 7, 2011 to resolve my plea and/or sentencing issues. (Id., ¶ 202). Ms. Kliewer assured me that she would: obtain those affidavits (Id., ¶ 203); speak with Mr. Bertoni about what he had done prior to her April 2, 2012 appointment to secure that evidence (Id., ¶ 204); and speak with DA Horner – whom she knows personally – and use her investigator to obtain those affidavits (Id., ¶ 203).

After my May 4, 2012 telephone conversation with Ms. Kliewer, I fully expected and believed that she would be obtaining the evidence in support thereof and preparing and filing that motion between May 4, 2012 and June 15, 2012. (Aff., ¶¶ 215-216). That belief proved mistaken.

After the May 4, 2012 telephone conversation, the next thing I heard from Ms. Kliewer was when she *and Mr. Bertoni* placed a conference call to me on Friday, June 8, 2012. (Aff., ¶ 217). In her undated letter that I received on August 29, 2012 and the Bar received as (Ex. D) to the Rhodes letter, Ms. Kliewer characterizes Mr. Bertoni's role as her "unpaid legal assistant." She also mischaracterizes the purpose of the June 8, 2012 call (Ex. D, p. 2).

On June 8, 2012 – seven days before the filing deadline -- Ms. Kliewer and Mr. Bertoni asked me to have an untrained prison law clerk prepare my summary judgment motion and memorandum and send it to Mr. Bertoni by Monday, June 11, 2012, because Ms. Kliewer would be out of the office between June 13, 2012 and the June 15, 2012 filing deadline. (Aff., ¶¶ 220-223). Ms. Kliewer and Mr. Bertoni expected me to prepare that summary judgment motion without any of the of the affidavits of DAs Paul, Horner and/or Foote, Judge Maurer and/or Mr. Bertoni that I needed in support of, and as the basis of, that motion. (Aff., ¶¶ 224-233). *See also* (Rhodes Ltr., Ex. A, p. 2)(Bertoni: “. . . as I said, Joe does all the work . . .”).

The untrained prison law clerk called Mr. Bertoni on June 11, 2012 to tell him that his June 8, 2012 request was unreasonable and impossible to comply with. He told Mr. Bertoni that he could not possibly complete a draft of the summary judgment motion and memorandum until June 13, 2012. (Aff., ¶ 234). Mr. Bertoni then agreed to meet with the law clerk here at OSCI, outside my presence, on June 13, 2012 to pick up the prison law clerk’s draft motion and memorandum and to discuss my case. (Id., ¶¶ 234-236). Ms. Kliewer was not present for that visit, (Id., ¶ 236). Mr. Bertoni represented himself to prison officials as an attorney, not as Ms. Kliewer’s legal assistant. (Id., ¶ 235). He also did not inform prison officials that he was on suspended status (Id., ¶ 235). Mr. Bertoni claimed that *he* spent approximately six hours “editing” the draft summary judgment motion and memorandum that he picked up from the untrained prison law clerk on June 13, 2012 (Aff., ¶ 249) and that *he* needed a one-week extension of time to complete that edit and file the motion (Id.).

On June 22, 2012, Ms. Kliewer filed and served my motion for summary judgment with a supporting affidavit of Mr. Bertoni (Aff., ¶ 251). She did not submit supporting affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote, as she agreed to during our May 4, 2012 telephone conversation (Id.). A comparison of the draft motion that Mr. Bertoni received from the untrained prison law clerk on June 13, 2012 and the motion Ms. Kliewer signed and filed on June 22, 2012 reveals that Ms. Kliewer simply signed off on the work product of the untrained prison law clerk, as if it were her own, despite taking no part, whatsoever, in the preparation thereof. *In re Jone*, 308 Or at 310-11. (Aff., ¶¶ 245 & 253)

VIII. Neglect of a Legal Matter and Assisting in Unauthorized Practice of Law Since August 24, 2012 Reinstatement

Mr. Bertoni’s 150-day suspension ended on or about August 23, 2012. On or about August 29, 2012, Mr. Bertoni met with me at OSCI (Aff., ¶ 274). In doing so, he informed prison officials that he was my attorney, (Id., ¶ 275) not Ms. Kliewer’s legal assistant. (Id.). Ms. Kliewer did not attend that meeting. (Id., ¶ 274).

During our August 29, 2012 visit, Mr. Bertoni hand-delivered to me copies of: the June 22, 2012 summary judgment motion and supporting Bertoni affidavit (Aff., ¶ 276); August 10, 2012 emails from Defense Counsel, Douglas Marshall to Ms. Kliewer, (Id.); and the August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment filed by Defendants (Id.)

Between the August 10, 2012 filing of Defendant's Answer and Response/Cross-Motion for Summary Judgment and Mr. Bertoni's September 4, 2012 substitution as attorney of record, neither Ms. Kliewer nor Mr. Bertoni – as her supposed “unpaid legal assistant” – prepared and/or filed a response to Defendant's cross-motion or a motion for an extension of time to file a response (Aff., ¶¶ 259-265 and 272-273). They also prevented me from drafting my own motion during that period of time by failing to send copies of the August 10, 2012 filings to me, despite my repeated requests that they do so. (Id., ¶¶ 259-269, 274-276 & 280-290).

On August 29, 2012, Mr. Bertoni again requested that I have an untrained prison law clerk draft the response to Defendant's Response/Cross-Motion for Summary Judgment (Aff., ¶ 276). He then filed an August 30, 2012 motion for substitution of counsel, motion for extension of time and affidavit of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137, seeking to substitute Mr. Bertoni as attorney of record for Ms. Kliewer. (Aff., ¶¶ 291-293). Neither Ms. Kliewer nor Mr. Bertoni sent copies of these motions or affidavits to me (Id., ¶ 294).

On September 4, 2012, the trial court issued an order substituting Mr. Bertoni for Ms. Kliewer as the attorney of record (Aff., ¶ 295). Neither Mr. Bertoni nor Ms. Kliewer has ever sent me a copy of that order of substitution. (Id., ¶¶ 296-297)

On or about September 7, 2012, Mr. Bertoni spoke to the untrained prison law clerk by telephone to inform him that the trial court had re-appointed Mr. Bertoni as attorney of record and granted an extension of time to October 5, 2012 to file a reply to Defendant's August 10, 2012 response/cross-motion for summary judgment. (Id., ¶ 309). Mr. Bertoni did not mention the three new Bar complaints against him that were announced in the press that morning. (Id., ¶ 308). Since his September 4, 2012 re-appointment as attorney of record, Mr. Bertoni has made no effort to obtain the promised summary judgment affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote (Id., ¶ 313). Nor has he prepared and filed a response to Defendant's August 10, 2012 Response/Cross-Motion for Summary Judgment (Id., ¶ 314).

Consistent with Mr. Bertoni's April 26, 2012 statement to Ms. Kliewer that “Joe does all the work,” (Rhodes Ltr., p. 2), both I and the untrained prison law clerk whom Mr. Bertoni spoke with on September 7, 2012 (Aff., ¶ 315) are operating on the understanding and belief that Mr. Bertoni is making no effort whatsoever to prepare and file a response and fully expects that I will prepare the response for him to file, as if it were his own work product (Id.).

Simultaneous with this Complaint, I am filing *pro se* motions for an extension of time to file a response and for the substitution of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137. The motion for substitution of counsel is based upon the grounds and for the reasons that Mr. Bertoni's failure to protect my interests in the ways described herein and in the supporting affidavit, and his pending Bar complaints, have caused an irreparable breakdown of the attorney-client relationship between Mr. Bertoni and I and created a significant conflict of interest between us. I need substitute counsel to obtain and submit the summary judgment affidavits of Judge Maurer and/or DAs Paul, Horner and/or Foote and to prepare and argue my summary judgment response. Oral argument is presently scheduled for October 22, 2012. The

motion for extension of time seeks an additional ninety (90) days for substitute counsel to obtain the necessary affidavits and file the response.

IX. Charging Excessive Fee

As previously noted, on September 9, 2007, I paid Mr. Bertoni a flat-fee retainer of \$5,000 to resolve my plea and sentencing issues through negotiation with the prosecutors and a pcr action, in the event that negotiations failed (Aff., ¶ 17). Mr. Bertoni subsequently represented to me that Judge Maurer and the prosecutors requested that I submit to a current psychological evaluation as part of the negotiation process, (Id., ¶¶ 75, 77, 102, 115 & 129) and insisted that it was crucial that I pay an additional \$3,000 to have Dr. Orin Bolstad, PhD perform the requested evaluation. (Id., ¶¶ 115 & 129).

In hindsight, it now appears that Mr. Bertoni's representations to me concerning his negotiations with prosecutors and Judge Maurer between June 22, 2007 and July 7, 2011 (Aff., ¶¶ 12-109) were false and misleading. It is now my belief that Mr. Bertoni did nothing he claimed to do to resolve my plea and sentencing issues during that period.

Upon the failure of the supposed negotiations to remedy the problems with my plea and sentencing, I filed a *pro se* pcr petition in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137, to remedy my plea and sentencing issues on July 26, 2011 (Aff., ¶ 112). As part of the negotiation of my last Bar complaint against Mr. Bertoni in this matter, he was appointed as attorney of record in that pcr action on December 12, 2011. (Id., ¶¶ 116-143). Mr. Bertoni was the attorney of record in that action from December 12, 2011 to April 2, 2012 and September 4, 2012 to the present. OJIN # 20-31; & 52-56. Between April 2, 2012 and September 4, 2012, Mr. Bertoni was supposedly working on my case as "an unpaid legal assistant" for Ms. Kliewer. (Rhodes Ltr., Ex. D, p. 2).

From December 12, 2012 to the present, Mr. Bertoni's April 26, 2012 comment to Ms. Kliewer that "Joe does all the work" (Rhodes Ltr., Ex. A, p. 2) has proven true as to every significant filing in the case. On February 17, 2012, Mr. Bertoni filed my Amended PCR Petition – ten days late, as if it were his own work product despite having taken no part in the drafting thereof. (Aff., ¶¶ 145-147, 152 & 154-155); and OJIN # 23. Mr. Bertoni admitted to Ms. Kliewer on April 26, 2012 that I prepared that petition myself and he filed it with the court, (Rhodes Ltr., Ex. A, p. 1) *In re Jones*, 308 Or at 310-11, 799 P2d at 1018. I also prepared the June 22, 2012 summary judgment motion and memorandum that Ms. Kliewer signed and filed as her own work product despite taking no part in the drafting thereof. (Aff., ¶¶ 217-253). Mr. Bertoni has now placed the onus upon me, again, to prepare my own response to Defendant's August 10, 2012 Response/Cross-Motion for Summary Judgment (Id., ¶¶ 276 & 314-315). No other substantive filings have been made in *Cheadle* since Mr. Bertoni's December 12, 2012 appointment as attorney or record. OJIN # 20-56.

Most importantly, however, Mr. Bertoni has made no effort, whatsoever, to obtain the promised summary judgment affidavits from Judge Maurer and/or DAs Paul, Horner and/or Foote, concerning Mr. Bertoni's purported negotiations, discussions, meetings and/or other efforts with

these parties between June 22, 2007 and July 7, 2011 to resolve my plea and sentencing issues (Aff., ¶¶ 166-167, 225, 251, 290 & 313). In short, Mr. Bertoni has failed to do *any* of the things he assured me that he would do, and that I paid him a \$5,000 retainer, to do.

Now, understanding the breadth of Mr. Bertoni's financial difficulties – which were previously unknown to me – during the period that he represented me – including the 2008 accusations that he stole \$69,826.80 from client trust funds and the current complaint that he owes in excess of \$380,000 to the IRS (Aff., ¶¶ 40, 90, 150 & 308) – causes me to believe that Mr. Bertoni merely told me what I wanted to hear so as to get me to pay him a total of \$8,000 (i.e., \$5,000 retainer + \$3,000 psychological evaluation) for work that he had no intention of performing, and, true to that intention, has *never* performed.

For those reasons, I believe that Mr. Bertoni has charged me a clearly excessive fee, in violation of RPC 1.5. As such, I respectfully request that the Bar assist me in compelling Mr. Bertoni to *immediately* refund the entire fee to me.

X. Promised \$,3500 Reimbursement Upon Conflict/Withdrawal

Pursuant to the December 5, 2011 Attorney-Client Fee Agreement, Mr. Bertoni agreed:

Should ATTORNEY become unable to complete the terms of this contract because of a non-waivable conflict of interest, retirement, or disbarment ATTORNEY, upon CLIENT'S request, will reimburse \$3,500.00 of the fees paid to date.

As stated in Section IX, *supra*, Mr. Bertoni's acts and omissions complained of herein, as averred to in the herewith submitted affidavit, have created an irreparable breakdown of the attorney-client relationship and a significant conflict of interest. I am now forced to file a *pro se* motion for substitution of counsel in *Cheadle v. Parsons*, Marion County Circuit Court No. 11C-19137 to perform the work that I have previously paid Mr. Bertoni a flat fee retainer of \$5,000 to perform, but which he has repeatedly failed to perform. For these reasons, and pursuant to the express terms of the December 5, 2011 Attorney-Client Fee Agreement, I respectfully request your assistance in compelling Mr. Bertoni to immediately "reimburse \$3,500.00 of the fees paid to date" in the event that OSB Counsel does not agree that the full \$5,000.00 retainer constitutes and excessive fee, as discussed in Section IX, *supra*.

XI. Conclusion

Based upon the foregoing, as supported by the Affidavit of Joseph A. Cheadle, submitted herewith, I respectfully request that the Oregon State Bar: (1) pursue disciplinary actions against Mr. Bertoni related to his acts and omissions in his representation of me; (2) investigate (through communications with Clackamas County Circuit Court Judge Steven L. Maurer, Clackamas County District Attorneys David F. Paul, Gregory Horner and/or John Foote and Mr. Gary B. Bertoni) whether the facts Mr. Bertoni represented to me between June 22, 2007 and July 7, 2011 concerning his discussions, negotiations, meetings and other efforts with the referenced parties to resolve my plea and sentencing issues – as averred to in (Aff., ¶¶ 12-109), were false

Scott A. Morrill
September 24, 2012
Page 14 of 14

and misleading; (3) assist me in obtaining Mr. Bertoni's immediate compliance with the breached terms of the December 5, 2011 Attorney-Client Fee Agreement, as discussed in Section III, supra; (4) assist me in compelling Mr. Bertoni to immediately reimburse \$1,500.00 paid for the psychological evaluation, as discussed in Section IIIA, supra; and (5) assist me in compelling Mr. Bertoni to immediately reimburse the full \$5,000 retainer, as discussed in Section IX, supra, or in the alternative, to immediately reimburse \$3,500 of that retainer, as discussed in Section X, supra.

I have all of the documents which I have quoted in the herewith submitted Affidavit of Joseph A. Cheadle. I am happy to provide copies of those documents to your office if you deem them relevant to this Complaint. I am also happy to provide any further information you would like. Thank you for your time and anticipated serious consideration of this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,

Joseph A. Cheadle
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

cc: file
(enclosure)

March 18, 2013

Gary B. Bertoni
c/o Wayne Mackeson
Wayne Mackeson PC
621 SW Morrison Street, Suite 1300
Portland, OR 97205

Re: Case No. 13-28— Gary B. Bertoni
(Joseph A. Cheadle)

Dear Mr. Bertoni:

At a meeting held on March 16, 2013, the State Professional Responsibility Board of the Oregon State Bar directed that a formal disciplinary proceeding be instituted against you. The proceeding relates to the matter brought to our attention by Joseph A. Cheadle and will address your alleged violations of the following standards of professional conduct: RPC 1.4(a) [failing to communicate]; RPC 1.4(b) [failing to explain a matter to a client]; RPC 1.5(a) [collecting a clearly excessive fee]; RPC 1.16(d) [failing to properly withdraw]; and RPC 8.1(a)(2) [knowingly failing to respond to the Bar]. This matter will be consolidated with the currently pending matters that were authorized on February 14, 2013, Case Nos. 13-17, 13-18, 13-19; and also the currently pending matters that were authorized on March 16, 2013, Case Nos. 13-27 and 13-29.

Disciplinary Counsel's Office will prepare a formal written complaint in this matter. We may also appoint outside bar counsel to assist us with the proceeding. Once signed by the Disciplinary Counsel, the formal complaint will be served, along with a notice to answer, upon you. If you are willing to accept service of the complaint, please advise immediately. You will have the opportunity to file an answer, and a trial panel of the Disciplinary Board will be assigned to conduct a hearing on the complaint. For your information, we are enclosing a copy of the Rules of Procedure relating to disciplinary proceedings.

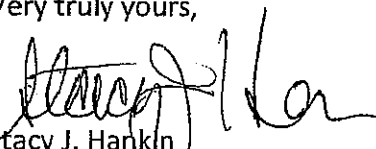
Client Security Fund Application
Exhibit 3, p. 1 of 2

Letter to Gary B. Bertoni, c/o Wayne Mackeson
March 18, 2013
Page 2

All communications on the merits of this matter should be with the Disciplinary Counsel's Office or appointed bar counsel. Please do not communicate with members of the Board of Governors, the State Professional Responsibility Board, any Local Professional Responsibility Committee or any other representative of the Bar about this matter.

Please contact me with any questions you may have. I am also available to discuss whether the proceeding can be resolved by stipulation without the need for hearing.

Very truly yours,


Stacy J. Harkin
Assistant Disciplinary Counsel
Extension 347

SJH:kld

Enclosure (Bar Rules of Procedure and DB Clerk filing sheet)

cc: Joseph A. Cheadle

49a-12

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

JOSEPH A. CHEADLE,)	
	)	Marion County Circuit
Petitioner,	)	Court No. 11C-19137
)	
vs.)	
	)	PETITIONER'S PRO SE MOTION
ROB PARSONS, Superintendent,	)	FOR SUBSTITUTION OF COUNSEL
Oregon State Correctional Institution,)	
)	
<u>Defendant.</u>)	

COMES NOW, the Petitioner, **JOSEPH A. CHEADLE**, *pro se*, pursuant to *Church v. Gladden*, 244 Or 308, 417 P2d 993 (1966)(In Banc), and respectfully moves this Court for an order relieving GARY B. BERTONI, (OSB # 78141) as attorney of record for Petitioner and appointing substitute counsel to represent Petitioner in the above-entitled action.

This motion is based upon the grounds and for the reasons that the acts and omissions of Petitioner's counsel have: harmed, and otherwise failed to protect, Petitioner's interests in this action; caused an irreparable breakdown of the attorney-client relationship; and created a significant conflict of interest between Petitioner and counsel. During the course of his representation of Petitioner in this proceeding, Mr. Bertoni served a 150-day suspension from the practice of law, during which time he continued to work on Petitioner's case as an unpaid legal assistant. However, Mr. Bertoni and substitute counsel took, and failed to take, actions which negatively impacted Petitioner's interests in this case. Mr. Bertoni's suspension ended August 23, 2012 and this Court reappointed him as attorney of record on September 4, 2012. Since his

reappointment as attorney of record, Mr. Bertoni has continued to fail to protect Petitioner's interests in this action.

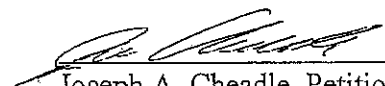
On or about September 7, 2012, *The Oregonian* reported that Mr. Bertoni now faces three new ethical complaints filed with the Oregon State Bar (OSB). On or about September 24, 2012, Petitioner also brought a formal OSB Complaint against Mr. Bertoni, which is the fourth time Petitioner has had to seek OSB assistance with respect to Mr. Bertoni's conduct.

Petitioner's response to Defendant's Cross-Motion for Summary Judgment is currently due on or before October 5, 2012 and oral argument on the parties' cross-motions for summary judgment is presently scheduled for October 22, 2012. Mr. Bertoni has failed to do those things necessary to prepare and file a meritorious response to Defendant's Cross-Motion and Petitioner needs this Court to appoint substitute counsel who will obtain the affidavits Petitioner needs to submit in support of his summary judgment motion, which Mr. Bertoni and Ms. Kliever have repeatedly promised but failed to obtain and submit in support of Petitioner's summary judgment motion. With this motion, Petitioner is filing a motion for an extension of ninety (90) days to respond to Defendant's Cross-Motion for Summary Judgment so as to allow sufficient time for substitute counsel to be appointed and secure and submit the necessary affidavits.

This motion is supported by the Affidavit of Joseph A. Cheadle, filed herewith and incorporated herein by this reference.

DATED this 24th day of September, 2012.

Respectfully submitted,



Joseph A. Cheadle, Petitioner Pro Se
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive, SE
Salem, OR 97310

Client Security Fund Application

COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

JOSEPH A. CHEADLE,)	
	)	Marion County Circuit
Petitioner,	)	Court No. 11C-19137
)	
vs.)	
	)	PETITIONER'S PRO SE MOTION
ROB PARSONS, Superintendent,	)	FOR EXTENSION OF TIME
Oregon State Correctional Institution,)	
)	
Defendant.)	

COMES NOW, the Petitioner, **JOSEPH A. CHEADLE**, *pro se*, and respectfully moves this Court for an extension of ninety (90) days from October 5, 2012 to January 3, 2013, to prepare and file his response to Defendant's Cross-Motion for Summary Judgment in the above-entitled action. That response is presently due on or before October 5, 2012 and oral argument is scheduled on the parties' cross-motions for summary judgment.

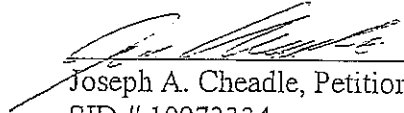
This motion is based upon the grounds and for the reasons that Petitioner's current counsel has repeatedly failed to do those things necessary for Petitioner to file a meritorious response to Defendant's Cross-Motion for Summary Judgment. With this motion, Petitioner files a motion for substitution of counsel. The requested extension of time is necessary to allow substitute counsel sufficient time to obtain affidavits in support of Petitioner's summary judgment motion and to prepare and file the response to Defendant's Cross-Motion for Summary Judgment.

Client Security Fund Application

This motion is supported by the Affidavit of Joseph A. Cheadle, filed herewith and incorporated herein by this reference.

DATED this 24th day of September, 2012.

Respectfully submitted,



Joseph A. Cheadle, Petitioner Pro Se
SID # 10973334
Oregon State Correctional Institution
3405 Deer Park Drive, SE
Salem, OR 97310

Client Security Fund Application

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

JOSEPH A. CHEADLE,)	
	)	Marion County Circuit
Petitioner,	)	Court No. 11C-19137
)	
vs.)	
	)	AFFIDAVIT OF JOSEPH A. CHEADLE
ROB PARSONS, Superintendent,	)	IN SUPPORT OF MOTIONS FOR
Oregon State Correctional Institution,	)	SUBSTITUTION OF COUNSEL AND
	)	EXTENSION OF TIME
Defendant.)	

STATE OF OREGON)
) ss,
 County of Marion)

I, JOSEPH A. CHEADLE, first being duly sworn, according to law, do depose and say that:

- 1) I am the Petitioner in the above-entitled action.
- 2) I make this affidavit and motion in good faith and not for the purposes of harassment or delay.
- 3) I am over eighteen years of age, of sound mind and competent to testify to the matters averred to herein.
- 4) In 1994, I entered into a plea agreement with the State of Oregon, by and through the Clackamas County District Attorney's Office, to resolve the underlying criminal charges at issue in this proceeding.

- 5) I was represented in the 1994 criminal proceedings by Gary B. Bertoni, (OSB # 78141).
- 6) In 2007, I first learned of the potential breach of the 1994 plea agreements that I entered into with the State of Oregon.
- 7) On or about June 22, 2007, I contacted Mr. Bertoni about the breach of my plea agreement. He agreed that there appeared to be a breach and offered to assist me in resolving the breach, first by negotiating the resolution thereof with the Clackamas County District Attorney's Office, then by filing a post-conviction relief (pcr) action, if those negotiations failed.
- 8) Between June 22, 2007 and July 7, 2011, Mr. Bertoni repeatedly represented to me that he was engaged in serious, ongoing discussions, negotiations, meetings and other efforts with Clackamas County District Attorneys David Paul, Gregory Horner and John Foote and Clackamas County Circuit Court Judge Steven L. Maurer to resolve my plea and sentencing issues.
- 9) On or about June 15, 2011, Mr. Bertoni informed me that the prosecutors inexplicably broke off communications and their four year effort to negotiate the resolution of my breached plea agreement and sentencing issues.
- 10) On or about July 26, 2011, I filed this *pro se* pcr action, and on or about September 6, 2011, this Court appointed D. Olcott Thompson to represent me.
- 11) Pursuant to my verbal agreement with Mr. Bertoni, he was substituted as attorney of record in this action on or about December 12, 2011.
- 12) Mr. Bertoni agreed to file a summary judgment motion in this action.
- 13) Given that I bear the burden of proof on my claims for relief and on my summary judgment motion, it was incumbent upon Mr. Bertoni to obtain and submit affidavits of

Clackamas County District Attorneys David Paul, Gregory Horner and John Foote and Clackamas County Circuit Court Judge Steven L. Maurer concerning the breach of my plea agreement and their discussions, negotiations, meetings and other efforts between June 22, 2007 and July 7, 2011 to attempt to resolve the breaches thereof.

14) On or about February 2, 2012, *The Oregonian* reported that Mr. Bertoni agreed to a 150-day suspension of his license to practice law, commencing March 27, 2012. That suspension ended on or about August 23, 2012.

15) Prior to his March 27, 2012 suspension, Mr. Bertoni did not file my summary judgment motion or attempt to obtain the necessary affidavits from prosecutors Paul, Horner and/or Foote, and/or Judge Maurer.

16) This court re-set the summary judgment filing deadline for June 15, 2012.

17) On March 26, 2012, Mr. Bertoni moved to substitute Ronnee S. Kliewer (OSB # 933319) as attorney of record in this action during his suspension. This court granted the motion on April 2, 2012.

18) Ms. Kliewer informed me that during his suspension, Mr. Bertoni continued to work on this case as her unpaid legal assistant.

19) Ms. Kliewer first communicated with me on May 4, 2012.

20) During my May 4, 2012 telephone conversation with Ms. Kliewer, I alerted her to the June 15, 2012 summary judgment filing deadline and told her that I needed her to obtain and submit affidavits of Clackamas County District Attorneys David Paul, Gregory Horner and John Foote and Clackamas County Circuit Court Judge Steven L. Maurer concerning the breach of my plea agreement and their discussions, negotiations, meetings and other efforts between June 22, 2007 and July 7, 2011 to attempt to resolve the breaches thereof.

21) During our May 4, 2012 telephone conversation, Ms. Kliewer advised me that she would speak with Mr. Bertoni concerning his efforts to secure the affidavits referenced in paragraph 20, supra, prior to her April 2, 2012 appointment as attorney of record in this action.

22) During our May 4, 2012 telephone conversation, Ms. Kliewer assured me that she would obtain and submit the summary judgment affidavits referenced in paragraph 20, supra.

23) On or about June 22, 2012, Ms. Kliewer filed my summary judgment motion in this action.

24) Despite her May 4, 2012 representations, she did not obtain and submit affidavits of Judge Maurer and/or prosecutors Paul, Horner and/or Foote, in support of that motion.

25) On June 22, 2012, Ms. Kliewer informed this Court and defense counsel that she had "cc'd" a copy of the summary judgment filing to me.

26) Ms. Kliewer did *not* serve me with a copy of the June 22, 2012 summary judgment motion and, in fact, never sent me a copy.

27) I requested that Ms. Kliewer and Mr. Bertoni send me copies of the June 22, 2012 summary judgment motion on June 21, 2012, July 2, 2012, July 9, 2012, July 19, 2012, August 14, 2012, August 15, 2012 and August 16, 2012.

28) Mr. Bertoni finally hand-delivered a copy of the June 22, 2012 summary judgment motion to me on August 29, 2012.

29) Before August 29, 2012, I did not know that Ms. Kliewer and Mr. Bertoni did not obtain and submit affidavits from prosecutors David Paul, Gregory Horner and/or John Foote and/or Judge Maurer, in support of my June 22, 2012 summary judgment motion.

30) On or about August 10, 2012, Defendant filed his Answer and Response/Cross-Motion for Summary Judgment in this action.

Client Security Fund Application

31) Ms. Kliewer did not send me a copy of Defendant's August 10, 2012 Answer and/or Response/Cross-Motion for Summary Judgment.

32) On or about August 14, 2012, August 15, 2012 and August 16, 2012, I requested that Ms. Kliewer and Mr. Bertoni send me copies of Defendant's August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment.

33) On August 29, 2012, Mr. Bertoni hand-delivered copies of Defendant's August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment to me.

34) Before August 29, 2012, I had never seen Defendant's August 10, 2012 Answer and/or Response/Cross-Motion for Summary Judgment.

35) After receiving and reviewing Defendant's August 10, 2012 Answer and Response/Cross-Motion for Summary Judgment on August 29, 2012, I learned for the first time that Defendant is asserting a statute of limitations defense against my per claims.

36) The affidavits of Judge Maurer and DAs Paul, Horner and/or Foote concerning the discussions, negotiations, meetings and other efforts between June 22, 2007 and July 7, 2011 to resolve my plea and sentencing issues are critically important, relevant and material evidence that I need to support my claims for relief and to defeat Defendant's statute of limitations defense.

37) At no point since his December 12, 2011 appointment as attorney of record in this action, has Mr. Bertoni made any effort to obtain affidavits from DAS Paul, Horner and/or Foote and/or Judge Maurer concerning the discussions, negotiations, meetings and other efforts between June 22, 2007 and July 7, 2011 to resolve my plea and sentencing issues.

38) On June 22, 2012, Mr. Bertoni submitted an affidavit of his own in support of my June 22, 2012 summary judgment motion.

Client Security Fund Application

39) I did not see Mr. Bertoni's June 22, 2012 affidavit or otherwise become aware of the content thereof until Mr. Bertoni hand-delivered a copy of that affidavit to me on August 29, 2012.

40) Upon reviewing Mr. Bertoni's June 22, 2012 affidavit on August 29, 2012, I learned for the first time that Mr. Bertoni has omitted numerous critically important facts concerning his discussions, negotiations, meetings and other efforts with DAs Paul, Horner and Foote, and Judge Maurer between June 22, 2007 and July 7, 2011 to resolve my plea and sentencing issues.

41) One week after Mr. Bertoni's 150-day suspension ended on August 23, 2012, three new complaints were filed against him with the Oregon State Bar (OSB).

42) During the course of Mr. Bertoni's representation of me, I have had to seek OSB assistance in resolving issues between us on May 29, 2008, January 15, 2010 and August 17, 2011.

43) Mr. Bertoni's representation of me in this action was part of the resolution of my August 17, 2011 OSB Complaint against him.

44) On or about September 24, 2012 I filed a new complaint against Mr. Bertoni with the OSB concerning his acts and omissions in his representation of me in this action.

45) Mr. Bertoni's acts and omissions in his representation of me in this action have caused the irreparable breakdown of the attorney-client relationship and have created a significant conflict of interest between Mr. Bertoni and I.


46) I need this Court to appoint substitute counsel to represent me in this action and to grant the requested ninety (90) day extension of time to afford substitute counsel sufficient time to get familiar with my pcr issues, to obtain and submit the affidavits of Judge Maurer and DAs

Client Security Fund Application

Paul, Horner and/or Foote, to prepare and file the response to Defendant's Response and Cross-Motion for Summary Judgment and prepare for oral argument of the parties' cross-motions for summary judgment.

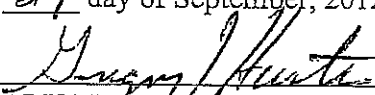
47) I understand that any statement made by me in this affidavit that is not true and correct to the best of my knowledge and beliefs will subject me to the penalties of perjury with that knowledge, I hereby affix my true and correct signature.

EXECUTED this 24th day of September, 2012.

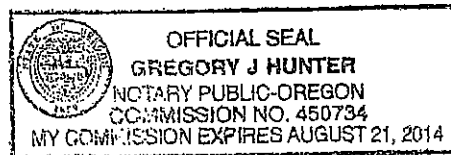


JOSEPH A. CHEADLE, Affiant Pro Se

SUBSCRIBED AND SWORN to before me this 24 day of September, 2012.



NOTARY PUBLIC FOR OREGON
My Commission Expires: 2014



COPY


CERTIFICATE OF SERVICE

I, JOSEPH A. CHEADLE, the Petitioner, *pro se*, hereby declare that I served a true copy of the foregoing PETITIONER'S PRO SE MOTION FOR SUBSTITUTION OF COUNSEL, PETITIONER'S PRO SE MOTION FOR EXTENSION OF TIME, and AFFIDAVIT OF JOSEPH A. CHEADLE, upon the attorneys for Petitioner and Defendant, by mailing said copies in a postage-paid sealed envelope addressed to:

GARY B. BERTONI
Attorney at Law
520 SW Yamhill Str.,
Portland, OR 97204

DOUGLAS MARSHALL
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096

on this 24th day of September, 2012.



Joseph A. Cheadle, Petitioner Pro Se
SID # 10973334
Oregon State Correctional Inst.
3405 Deer Park Drive SE
Salem, Oregon 97310

Case Register..... Marion County Circuit Court
 Case#..... 11C19137 Cheadle Joseph A/Parsons Rob
 Civil Post-conviction

Status Open

Case Filed Date..... 8/03/11 Starting Instrument.. Petition
 Case Started Date... 8/03/11 Originating From..... Original filing
 At Issue Date..... Previous Court..... Clackamas County Circu
 First Setting Date.. Previous Court Case#. CR94-0315
 Trial Scheduled Date Master Case Number...
 Trial Start Date.... Relation to Master...
 Length of Trial..... Amount Prayed for.... \$.00
 Disposition Date.... Termination Stage....
 Final Order Date.... Termination Type.....
 Reinstated Date.....

Judgment Type.....
 Judgment Status.....
 Judgment Volume/Page.

<u>ROLE</u>	<u>PLAINTIFF</u>	<u>ATTORNEY</u>
1 Plaintiff	Cheadle Joseph A	Thompson D Olcott
<u>ROLE</u>	<u>DEFENDANT</u>	<u>ATTORNEY</u>
1 Superinten	Parsons Rob	Marshall W Douglas
<u>ROLE</u>	<u>OTHER PEOPLE</u>	<u>ATTORNEY</u>
1 Clerk	AB	

<u>ENTER DT</u>	<u>FILE DT</u>	<u>EVENT/FILING/PROCEEDING</u>	<u>SCHD DT</u>	<u>TIME</u>	<u>ROOM</u>
1 8/29/11	8/03/11	Petition SID: #10973334 OSCI (Clackamas Co. CR94-0524)			
2 8/29/11	8/29/11	Assigned Scheduled JUDGE HART	8/29/11		TMH
3 9/06/11	8/03/11	Motion For Leave to Proceed as Indigent Person Without Prepayment of Filing Fee PTF 1 Cheadle Joseph A			
4 9/06/11	8/03/11	Affidavit of Indigency w/certified trust account PTF 1 Cheadle Joseph A			
5 9/06/11	8/03/11	Order To Draw From or Charge Against Trust Account 8/03/11 Signed JUD 1 Rhoades James L			
6 9/06/11	8/03/11	Motion Disqualify Judge Judge Ochoa PTF 1 Cheadle Joseph A			
7 9/06/11	8/03/11	Affidavit in Support of Motion PTF 1 Cheadle Joseph A Related event # 6			
8 9/06/11	8/25/11	Order Disqualify Judge			

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		Judge Ochoa			
	8/25/11	Signed			
9	9/06/11	JUD 1 Rhoades James L Motion Disqualify Judge			
		Judge Guimond			
10	9/06/11	PTF 1 Cheadle Joseph A Affidavit in Support of Motion			
		PTF 1 Cheadle Joseph A			
		Related event # 9			
11	9/06/11	8/25/11 Order Disqualify Judge			
		Judge Guimond			
	8/25/11	Signed			
12	9/06/11	JUD 1 Rhoades James L Order Fee Deferral			
		\$29			
		PTF 1 Cheadle Joseph A			
	9/06/11	Signed			
13	9/06/11	JUD 2 Hart Thomas M Order Appointing Counsel			
		PTF 1 Cheadle Joseph A			
		CTA 2 Thompson D Olcott			
	9/06/11	Signed			
14	9/06/11	JUD 2 Hart Thomas M Hearing Status Chec Scheduled	12/16/11	8:45 AM	TMH1
		OSCI			
		Est length of time 5 Minute(s)			
		Set-Over Court			
15	9/09/11	9/08/11 Receipt			
		Of Complete File			
		OSP 1 Parsons Rob			
		AAG 3 Marshall W Douglas			
16	11/07/11	11/07/11 Motion Time Extension			
		To File Amended Petition			
		PTF 1 Cheadle Joseph A			
		CTA 2 Thompson D Olcott			
17	11/07/11	11/07/11 Order to Extend Time			
		to File Amended Petition by			
		2/7/12			
	11/07/11	Signed			
		JUD 2 Hart Thomas M			
18	11/08/11	11/08/11 Hearing Status Chec Scheduled	2/17/12	8:45 AM	TMH1
		OSCI			
		(new status date)			
		Est length of time 5 Minute(s)			
		Related event # 19			
19	11/08/11	11/08/11 Notice Hearing			
20	12/13/11	12/12/11 Notice Substitution of Atty			
		PTF 1 Cheadle Joseph A			
		PRV 4 Bertoni Gary B			
21	2/17/12	2/17/12 Hearing Status Chec Scheduled	3/09/12	8:45 AM	TMH1
		atty Bertoni may appear by			
		phone- call (503)584-7749			
		Est length of time 5 Minute(s)			
		Related event # 22			
22	2/17/12	2/17/12 Notice Hearing			
23	2/21/12	2/17/12 Petition Amended			
		First- for Post Conviction			
		Relief			

Client Security Fund Application
Exhibit 5, p. 2 of 5

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		PTF 1 Cheadle Joseph A			
		PRV 4 Bertoni Gary B			
24	2/22/12	2/22/12 Assigned to Trial Judge			
25	2/28/12	2/28/12 Assigned to Trial Judge			
26	3/09/12	3/09/12 Hearing Oral Argume Scheduled	4/26/12	10:00 AM	TMH1
		Motion for Summary Judgment			
		PETITIONER TO APPR BY PHONE			
		Est length of time 30 Minute(s)			
		Related event # 27			
		Cancelled			
27	3/09/12	3/09/12 Notice Hearing			
		Delivery Failure email address			
		G. Bertoni. Sent copy of			
		notice via mail 3/9/12. AN			
28	3/09/12	3/09/12 Miscellaneous Scheduled	4/05/12		TMH2
		recv MSJ fm Ptf?			
		Cancelled			
29	3/27/12	3/26/12 Motion			
		Substitution of Attorney			
		PTF 1 Cheadle Joseph A			
		PRV 4 Bertoni Gary B			
30	3/27/12	3/26/12 Affidavit in Support of Motion			
		PRV 4 Bertoni Gary B			
		Related event # 29			
31	4/02/12	4/02/12 Order			
		Substituting Attorney			
		Kliwer for Bertoni			
		PRV 4 Bertoni Gary B			
		PRV 5 Kliwer Ronnee			
		4/02/12 Signed			
		JUD 2 Hart Thomas M			
32	4/12/12	4/12/12 Hearing Status Chec Scheduled	4/26/12	10:00 AM	TMH1
		atty Kliwer may appear by			
		phone- call (503)584-7749			
		Est length of time 5 Minute(s)			
		Related event # 33			
33	4/12/12	4/12/12 Notice Hearing			
34	4/26/12	4/26/12 Hearing Status Chec Scheduled	5/04/12	8:45 AM	TMH1
		atty Kliwer may appear by			
		phone- call (503)584-7749			
		Est length of time 5 Minute(s)			
		Related event # 35			
35	4/26/12	4/26/12 Notice Hearing			
36	5/04/12	5/04/12 Hearing Status Chec Scheduled	7/20/12	8:45 AM	TMH1
		Est length of time 5 Minute(s)			
		Related event # 37			
		7/10/12 Set-Over Court			
37	5/04/12	5/04/12 Notice Hearing			
38	5/04/12	5/04/12 Miscellaneous Scheduled	6/25/12		TMH2
		recv MSJ from Kliwer?			
		Cancelled			
39	6/18/12	6/15/12 Motion Time Extension			
		to file Ptf's Motion for			
		Summary Judgment			
		PTF 1 Cheadle Joseph A			
		PRV 5 Kliwer Ronnee			
40	6/18/12	6/15/12 Declaration			
		in Support of Motion			

Client Security Fund Application
Exhibit 5, p. 3 of 5

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		PRV 5 Kliewer Ronnee Related event # 39			
41	6/27/12	6/22/12 Motion Summary Judgment Hearing Requested PTF 1 Cheadle Joseph A PRV 5 Kliewer Ronnee			
42	6/27/12	6/27/12 Miscellaneous Scheduled recv response to MSJ? Cancelled	8/12/12		TMH2
43	7/10/12	7/10/12 Hearing Status Chec Scheduled NEW STATUS DATE Est length of time 5 Minute(s) Related event # 44	8/03/12	8:45 AM	TMH1
		7/24/12 Set-Over Def			
44	7/10/12	7/10/12 Notice Hearing			
45	7/24/12	7/24/12 Hearing Status Chec Scheduled NEW STATUS DATE Est length of time 5 Minute(s) Related event # 46	9/07/12	8:45 AM	TMH1
46	7/24/12	7/24/12 Notice Hearing			
47	8/13/12	8/10/12 Answer Affirmative Defense to First Amended Petition OSP 1 Parsons Rob AAG 3 Marshall W Douglas			
48	8/13/12	8/10/12 Response to Pet's Motion for Summary Judgment and Cross-Motion for Summary Judgment OSP 1 Parsons Rob AAG 3 Marshall W Douglas			
49	9/04/12	8/30/12 Motion Substitution of Attorney PTF 1 Cheadle Joseph A PRV 4 Bertoni Gary B			
50	9/04/12	8/30/12 Motion Time Extension to File Ptf's Reply and Response PTF 1 Cheadle Joseph A PRV 4 Bertoni Gary B			
51	9/04/12	8/30/12 Affidavit of Counsel in Support of Motion PRV 4 Bertoni Gary B Related event # 50			
52	9/06/12	9/04/12 Order Substituting Attorney PRV 4 Bertoni Gary B 9/04/12 Signed JUD 2 Hart Thomas M			
53	9/07/12	9/07/12 Hearing Oral Argume Scheduled Motion for Summary Judgment (Petitioner to appr by phone) call (503) 373-7523 OSCI Est length of time 1 Hour(s) AAG 3 Marshall W Douglas PRV 4 Bertoni Gary B Related event # 54	10/22/12	9:30 AM	TMH1
54	9/07/12	9/07/12 Notice Hearing			
55	9/07/12	9/07/12 Miscellaneous Scheduled diary- response to MSJ due	10/05/12		TMH2

**Client Security Fund Application
Exhibit 5, p. 4 of 5**

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		Cancelled			
56	9/07/12	9/07/12 Miscellaneous Scheduled diary- reply due Cancelled	10/19/12		TMH2
57	9/26/12	9/26/12 Motion Substitution of Counsel PTF 1 Cheadle Joseph A			
58	9/26/12	9/26/12 Motion Time Extension for Response to Motion for Summary Judgment PTF 1 Cheadle Joseph A			
59	9/26/12	9/26/12 Affidavit in Support of Motion PTF 1 Cheadle Joseph A Related event # 58			
60	10/10/12	10/09/12 Motion Strike Def's Answer and Affirmative Defenses to the 1st Amended Petition PTF 1 Cheadle Joseph A			
61	10/10/12	10/09/12 Motion Strike Def's Exhibits 101 & 102 PTF 1 Cheadle Joseph A			
62	10/10/12	10/09/12 Response to Def's Cross-Motion for Summary Judgment PTF 1 Cheadle Joseph A			
63	10/10/12	10/09/12 Affidavit in Support of Motion PTF 1 Cheadle Joseph A Related event # 62			
64	10/10/12	10/09/12 Exhibit List Second Amended PTF 1 Cheadle Joseph A			
65	10/16/12	10/09/12 Certificate of Service PTF 1 Cheadle Joseph A			
66	10/16/12	10/16/12 Reply Defendant's Reply Memorandum OSP 1 Parsons Rob AAG 3 Marshall W Douglas			
67	10/23/12	10/23/12 Hearing Oral Argument Pet's Request for New Counsel JAVS 2A Length of time 21 Minute(s) PTF 1 Cheadle Joseph A CLK 1 AB AAG 3 Marshall W Douglas PRV 4 Bertoni Gary B JUD 2 Hart Thomas M			
68	10/23/12	10/23/12 Order Substituting Attorney Thompson for Bertoni PTF 1 Cheadle Joseph A 10/23/12 Signed JUD 2 Hart Thomas M			
69	10/23/12	10/23/12 Hearing Status Chec Scheduled Est length of time 5 Minute(s) Related event # 70	12/07/12	8:45 AM	TMH1
70	10/23/12	10/23/12 Notice Hearing ***** END OF DATA *****			

October 1, 2012

Gary B. Bertoni
Attorney at Law
Bertoni Law PC
520 SW Yamhill Street, Suite 500
Portland, OR 97204

Re: **Subject: SAM 1101573**
Gary B. Bertoni (Joseph A. Cheadle)

Dear Mr. Bertoni:

Enclosed is correspondence from Joseph Cheadle regarding your conduct. Pursuant to BR 2.5(b)(2), we are referring this matter to Disciplinary Counsel's Office for further consideration.

This referral to Disciplinary Counsel is not, and should not be construed in any way as, a determination that any improper conduct has occurred in this case. Under Bar Rule of Procedure 2.5, CAO determines whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred warranting a referral to Disciplinary Counsel's Office for further investigation. Misconduct means a violation of the rules of professional conduct and applicable statutes that govern lawyer conduct in Oregon.

Disciplinary Counsel's Office will conduct a further inquiry to determine whether there is probable cause that a disciplinary violation occurred. You should hear from Disciplinary Counsel's Office within 14 days and all further correspondence should be directed there.

Please note that the bar maintains a list of Oregon lawyers who have expressed an interest in initially consulting with attorneys regarding disciplinary matters on a pro bono basis to evaluate the issues and determine if defense counsel should be retained. To obtain a copy of this list, please contact Danielle Edwards in the Member Services Department at dedwards@osbar.org or extension 426.

Thank you for your cooperation.

Very truly yours,

Scott A. Morrill
Assistant General Counsel
Ext. 344

SAM/jmm
Enclosure

cc: Joseph A. Cheadle

Client Security Fund Application
Exhibit 6, p. 1 of 1

November 30, 2012

Gary B. Bertoni
Bertoni Law PC
520 SW Yamhill Street, Suite 500
Portland, OR 97204

Re: Gary B. Bertoni (Joseph A. Cheadle)

Dear Mr. Bertoni:

Enclosed please find additional materials I recently received from Mr. Cheadle.

This letter will also confirm that your response to my letter of October 5, 2012 is now due on or before December 21, 2012. No further extensions will be granted.

Very truly yours,

Stacy J. Hankin
Assistant Disciplinary Counsel
Extension 347

SJH:

Enclosure

cc: Joseph A. Cheadle (w/ copy of November 29, 2012, letter)

Client Security Fund Application
Exhibit 7, p. 1 of 1

October 5, 2012

Gary B. Bertoni
Bertoni Law PC
520 SW Yamhill Street, Suite 500
Portland, OR 97204

Re: Gary B. Bertoni (Joseph A. Cheadle)

Dear Mr. Bertoni:

Disciplinary Counsel has received from the Bar's Client Assistance Office correspondence from Joseph A. Cheadle, who has expressed concern about your conduct. Mr. Cheadle's concerns may implicate the provisions of RPC 1.3, RPC 1.4, RPC 1.15-1(a) and (c), RPC 1.16(d), RPC 5.5(a) and ORS 9.160(1).

It is my responsibility to investigate this matter. In order to permit me to make a fair and informed analysis, I request your account of the matter on or before October 26, 2012, as required by BR 2.6(a)(1).

In addition to providing an account of the matter in light of the rules cited above, please also respond to the following:

1. When did Mr. Cheadle retain you regarding the post-conviction and re-sentencing matter? What was the scope of that representation? What was your plan?
2. Mr. Cheadle contends that in January 2012, you told him that you had sent a check on his behalf for \$1,500.00. Is that accurate? If so, provide a copy of the check that was sent and any transmittal letter.
3. Mr. Cheadle contends that in March 2012, you told him that you had sent him a check on his behalf for \$1,500.00. Is that accurate? If so, provide a copy of the check that was sent and any transmittal letter.
4. Mr. Cheadle contends that the second check was returned for insufficient fund. Is that accurate? If so, explain.
5. Mr. Cheadle contends that he sent you \$3,000.00, which was deposited into your trust account, for payment of an examination with Dr. Bolstad. Is that accurate? If so, provide documentation regarding deposit and withdrawal of those funds.

Client Security Fund Application
Exhibit 8, p. 1 of 3

6. What was the cost of Dr. Bolstad's examination? Provide documentation evidencing that the cost was actually paid.
7. In the December 2011 written fee agreement, you agreed to provide an affidavit or declaration confirming all events transpiring in Mr. Cheadle's case since September 14, 2007. Was the affidavit or declaration provided? If so, when? Provide a copy of it. If not, explain.
8. If no affidavit or declaration was provided, provide a detailed list of all events that transpired in Mr. Cheadle's case since September 14, 2007.
9. Mr. Cheadle references an affidavit you signed on June 22, 2012. Provide a copy.
10. On what date did you notify Mr. Cheadle that Ms. Kliewer would be substituting in as his lawyer? Provide all supporting documentation, including a copy of the motion and attachments and any transmittal letters or other documents informing Mr. Cheadle of the substitution.
11. On pages 5 and 6 of his September 24, 2012, letter Mr. Cheadle contends that you did not inform him of number events in his legal matter or provide him information about the events between March 9, 2012, and September 7, 2012. Is that accurate? If so, explain. If not, explain.
12. Mr. Cheadle contends that you did not timely file the Amended Post-conviction Petition. Is that accurate? If so, explain. If not, explain.
13. What steps/action did you take to pursue Mr. Cheadle's legal matter between December 12, 2011, and March 27, 2012?
14. On what date did you provide Ms. Kliewer with Mr. Cheadle's file?
15. Mr. Cheadle contends that you failed to inform Ms. Kliewer about an April 26, 2012, status conference in your legal matter until a few hours prior to the conference. Is that accurate? If so, explain. If not, explain.
16. Mr. Cheadle contends that on two occasions when you visited him while you were suspended from the practice of law, you represented (either orally or in writing) that you were a lawyer. Is that accurate? If so, explain. If not, explain.

Letter to Gary B. Bertoni
October 5, 2012
Page 3

17. Mr. Cheadle asserts that an untrained law clerk prepared the motion for summary judgment. Is that accurate? Did you and/or Ms. Kliewer edit that document before it was filed with the court? If so, how many hours did you spend on it?
18. Mr. Cheadle contends that you were going to obtain and file affidavits from a variety of individuals. Is that accurate? If so, when did you obtain those affidavits and if you did not, explain. If you were not going to obtain any affidavits, explain.

When I receive your response, I will send a copy of it to Mr. Cheadle and allow him to comment upon your response. All material submitted in the course of this investigation by the parties is considered public record, and both parties will receive copies.

After I review all documentation and information gathered, if I feel that further consideration is warranted, I will refer the matter to a Local Professional Responsibility Committee (LPRC) for additional investigation or to the State Professional Responsibility Board (SPRB), with notice to you and Mr. Cheadle. I will also notify you and Mr. Cheadle of any final action taken by this office or the SPRB in the matter.

I am confident that I will receive your full cooperation in this investigation. You should be aware, however, that failing to respond to this inquiry may constitute a violation of RPC 8.1(a)(2). Should I not receive your response on or before the date specified above, this matter may be referred to an LPRC for investigation. I can grant an extension of time to respond for good cause if requested before the deadline.

Thank you in advance for your cooperation. I look forward to a fair and expeditious review of this matter.

Very truly yours,

Stacy J. Hankin
Assistant Disciplinary Counsel
Extension 347

SJH:kld

cc: Joseph A. Cheadle

Client Security Fund Application
Exhibit 8, p. 3 of 3

January 14, 2013

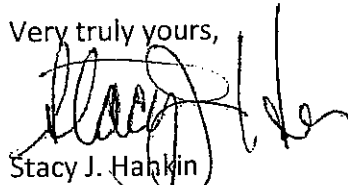
Joseph A. Cheadle
#10973334
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

Re: Gary B. Bertoni (Joseph A. Cheadle)

Dear Mr. Cheadle:

In response to your letter of January 7, 2013, Mr. Bertoni has not provided a response. I am therefore pursuing my investigation without it.

Very truly yours,



Stacy J. Hankin
Assistant Disciplinary Counsel
Extension 347

SJH:

cc: Gary B. Bertoni (w/ copy of January 7, 2013, letter)

Client Security Fund Application
Exhibit 9, p. 1 of 1

OREGON STATE BAR
Board Of Governors

Meeting Date: November 23, 2013
Memo Date: November 6, 2013
From: Legal Services Program Committee
Re: 2012 Legal Services Program Achievements and Results Report

Action Recommended

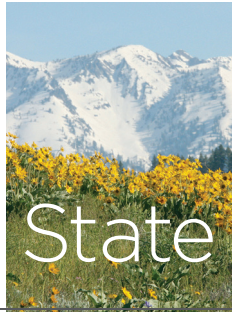
The Legal Services Program Committee is recommending that the BOG approve the 2012 Legal Services Program Achievements and Results Report.

Background

The Legal Services Program (LSP) began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal services to the poor pursuant to ORS 9.572. The legislation required the OSB to manage the funds, develop Standards and Guidelines for providers, and create a LSP Committee to provide ongoing oversight, evaluation and support to legal services providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the oversight and evaluation functions, the Director of the LSP conducts an accountability process that focuses on the effectiveness of the providers in meeting the needs of the individual clients and the larger client community, and the development and use of resources. The LSP Committee is the governing body responsible for making recommendations to the BOG on assessment of provider programs. The LSP Committee has reviewed the 2012 Legal Services Program Achievements and Results Report and is recommending BOG approval.

Oregon State Bar



2012 Legal Services Program

Achievements and Results

August 2013

Judith Baker
jbaker@osbar.org

Oregon State Bar Legal Services Program

Legal Services Committee

Michael B. Hallinan	<i>Chairperson</i>
Josh Newton	<i>Secretary</i>
Amy Edwards	<i>Member</i>
Laurence H. Hamblen	<i>Member</i>
Timothy Gerking	<i>Member</i>
Hon Eva J. Temple	<i>Member</i>
Kristin Bremer	<i>Member</i>
Karen Lord	<i>Public Member</i>
Ray Heysell	<i>BOG Contact</i>

Staff

Judith Baker	<i>Director of Legal Services Programs</i>
Dawn Nelson	<i>Administrative Bookkeeper</i>

Legal Services Providers

Center for NonProfit Legal Services: CNPLS.org
Lane County Legal Aid and Advocacy Center: LCLAC.org
Legal Aid Services of Oregon: LawHelp.org/program/694/index.cfm
Oregon Law Center: oregonlawcenter.org (includes operations of Columbia County Legal Aid)

Preface

The accountability process is designed to provide the OSB LSP with information about the work of legal services providers. With this information the OSB LSP can carry out its duties to the OSB Board of Governors as outlined in the *Oregon Legal Services Program Standards and Guidelines*.¹

The process focuses on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in developing and using resources. The goals of the review are to ensure compliance with OSB LSP *Standards and Guidelines*; to ensure accountability to clients, the public and funders; and to assist with each provider's self-assessment and improvement.

The process has four components:

1. **An annual Self Assessment Report (SAR)** submitted by providers, including a narrative portion and a statistical/financial portion;
2. **Ongoing Evaluation Activities by the OSB LSP**, including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP *Standards and Guidelines*;
3. **An annual Peer Survey** conducted of attorney partners, clients, judges, opposing counsel and community partners, all of whom are identified by the providers; and
4. **A periodic Accountability Report** to the OSB Board of Governors and other stakeholders, summarizing the information from the providers' Self Assessment Reports and other information, including ongoing contacts with providers by OSB LSP staff, annual program financial audits and the Annual Peer Survey.

This is the second Accountability Report prepared by the OSB LSP from the information provided by Oregon legal services providers using the Self Assessment Report instrument. It is the first Accountability Report using a Peer Survey. See a summary of the survey results in Attachment A. This Accountability Report covers the services and accomplishments of Fiscal Year 2012.

¹ Please refer to *Oregon Legal Services Program Standards and Guidelines*, Revised August 19, 2005, section II.B, "Duties to the OSB Board of Governors."

***IT IS THE MISSION OF THE OREGON STATE BAR
LEGAL SERVICES PROGRAM...***

...To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

**Oregon Legal Services Program Standards and Guidelines,
Revised August 19, 2005, section I, "Mission Statement."**

Available at: http://www.osbar.org/_docs/rulesregs/LegServProgStandGuide.pdf

Introduction

Legal aid attorneys and organizations do a remarkable job. They are knowledgeable, committed, and responsive to client needs. Their major handicap is a lack of resources to serve a growing poverty population in Oregon.

Anonymous Community Partner, 2013 Peer Survey

In 1998, Oregon became one of the first states in the nation to form an integrated statewide network of legal aid providers, when the Board of Governors of the Oregon State Bar gave final approval to the *Oregon Legal Services Program Standards and Guidelines*. That document laid out the mission, values and core capacities that today guide the efforts of legal aid lawyers, paralegals and administrators who comprise the Oregon State Bar Legal Services Program. Thousands of private lawyers contribute their pro bono services on an annual basis to provide access to justice for low-income Oregonians living throughout the state.

The Oregon State Bar’s Legal Services Program distributed \$6,069,750 to legal aid programs in 2012, and OSB-funded legal services programs provided legal advice and representation in 17,759 legal matters. Many times that number of people benefitted from the work of legal aid advocates, who served as leaders and members of state- and community-wide task forces tackling issues such as domestic violence and homelessness alongside partners in the bar, bench, human services network, and local and state government agencies; and as litigators who in 2012 set important precedents and addressed systemic problems that benefitted the low-income community as a whole.

Moreover, this work benefitted every Oregonian regardless of income level by reducing the economic and social costs that community-wide problems such as domestic violence and homelessness inflict on everyone. Legal services advocates filled a crucial niche in Oregon’s civil justice system by providing information, advice and representation to those who otherwise would have to navigate the system on their own, thereby making the courts more accessible, fair, efficient and effective for everyone.

This report provides the highlights of these achievements and results in 2012. It is based on (1) the information and data supplied by the legal aid providers in the first round of Self Assessment Reports that the providers submitted in early 2013; (2) responses to the Peer Survey; and (3) ongoing evaluation activities by the OSB LSP.

The first sections of this report provide an overview of the OSB Legal Services Program and describe the outcomes that were produced by OSB-funded programs in 2012. The final section provides highlights of programs’ efforts in 2012 to ensure that services and activities funded by OSB are aligned with the mission, values and core capacities outlined in the OSB LSP *Standards and Guidelines*.

This Report at a Glance	
	Page
Introduction.....	1
Overview of the OSB	
Legal Services Program	2
Direct Legal Assistance	4
Scope of Services	7
Helping People Help Themselves	8
Partnerships	10
Accountability	11
Conclusion	23
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Overview of the OSB Legal Services Program

The integrated, statewide system of civil legal aid organizations funded by the OSB Legal Services Program enabled low-income Oregonians to address critical legal issues directly affecting their families, homes, income, jobs and access to vital services such as education and health care.

As the map on the following page indicates, the network consists of four non-profit organizations that work together on a statewide basis to provide access to a full range of civil legal assistance for residents of every county in Oregon.²

- **Legal Aid Services of Oregon (LASO)** is a statewide program that provides a broad range of civil matters to low-income Oregonians. LASO receives federal funding from the Legal Services Corporation (LSC), in addition to the OSB LSP. Regional offices are located in Albany, Bend, Klamath Falls, Newport, Pendleton, Portland, Salem and Roseburg. LASO also provides statewide services to farmworkers through its Pendleton, Hillsboro and Woodburn offices and representation on Native American issues. Legal services are closely coordinated with other legal services providers and, in particular, with the Oregon Law Center (OLC).

- **Oregon Law Center (OLC)** is a statewide program that coordinates closely with LASO and the other Oregon providers to ensure that residents throughout the state have access to a full range of civil legal assistance.

Because it is not a recipient of federal LSC funds, OLC is able to provide services that LASO cannot provide due to federal restrictions. OLC has offices located in Coos Bay, Grants Pass, Hillsboro, McMinnville, Ontario, Portland, Salem, St. Helens and Woodburn. OLC also maintains a State Support Unit that provides legal assistance to legal aid lawyers statewide.²

- **Lane County Legal Aid and Advocacy Center (LCLAC)** provides general legal assistance in Lane County with the exception of family law cases that do not involve domestic violence. Legal service includes services for people 60 years and older delivered at various senior centers throughout Lane County. In November 2012 LASO closed its Eugene Branch Office, diminishing the amount of funding for legal services in Lane County by 25%.
- **Center for NonProfit Legal Services (CNPLS)** provides general legal assistance in Jackson County. As a non-LSC recipient, it is free of federal restrictions and is thus able to provide a full range of services in Jackson County, in close coordination with LASO and OLC.

² In 2011 Columbia County Legal Aid assigned to OLC the responsibility to operate and maintain an office in St. Helens serving low-income residents of Columbia County. The Columbia County office is fully integrated into OLC's operating system and will not be discussed as a separate non-profit providing client service within this document.

The Oregon State Bar Legal Services Program

A network of non-profit organizations that...

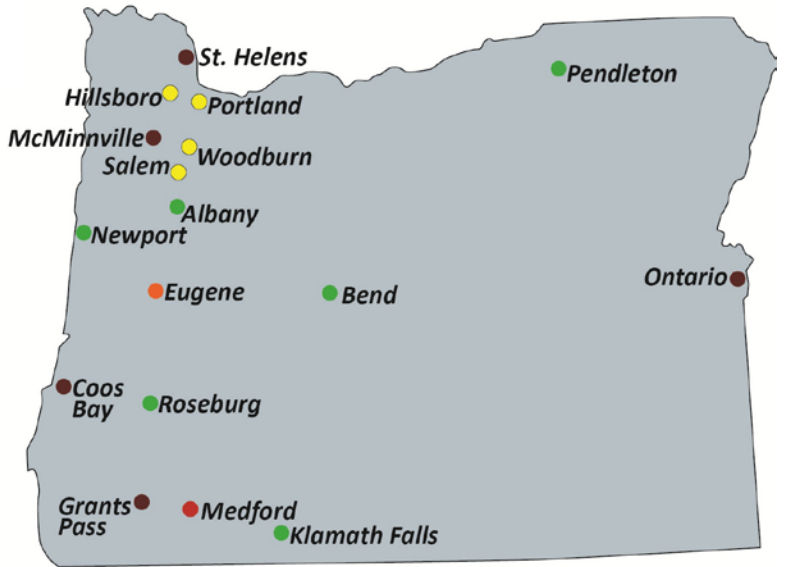
- Provides free civil (not criminal) legal assistance to low-income people.
- Is composed of four legal aid organizations with offices that collaborate closely with each other to provide access to a full range of legal services to residents of every county in the state.
- Employs 87 full time equivalent lawyers, 15 paralegals, and 53 others, including administrators, non-legal professionals, and support personnel.
- In 2012 completed 17,759 legal cases that provided low-income households with direct benefits such as protection from domestic violence, prevention of evictions and foreclosures, and access to public benefits for which they were eligible.

Poverty has grown nationally by more than 17% since the recession, and many Oregon counties have been hit much harder. For instance, poverty in central Oregon has increased by 70% since 2000.

OSB Legal Services Program 2012

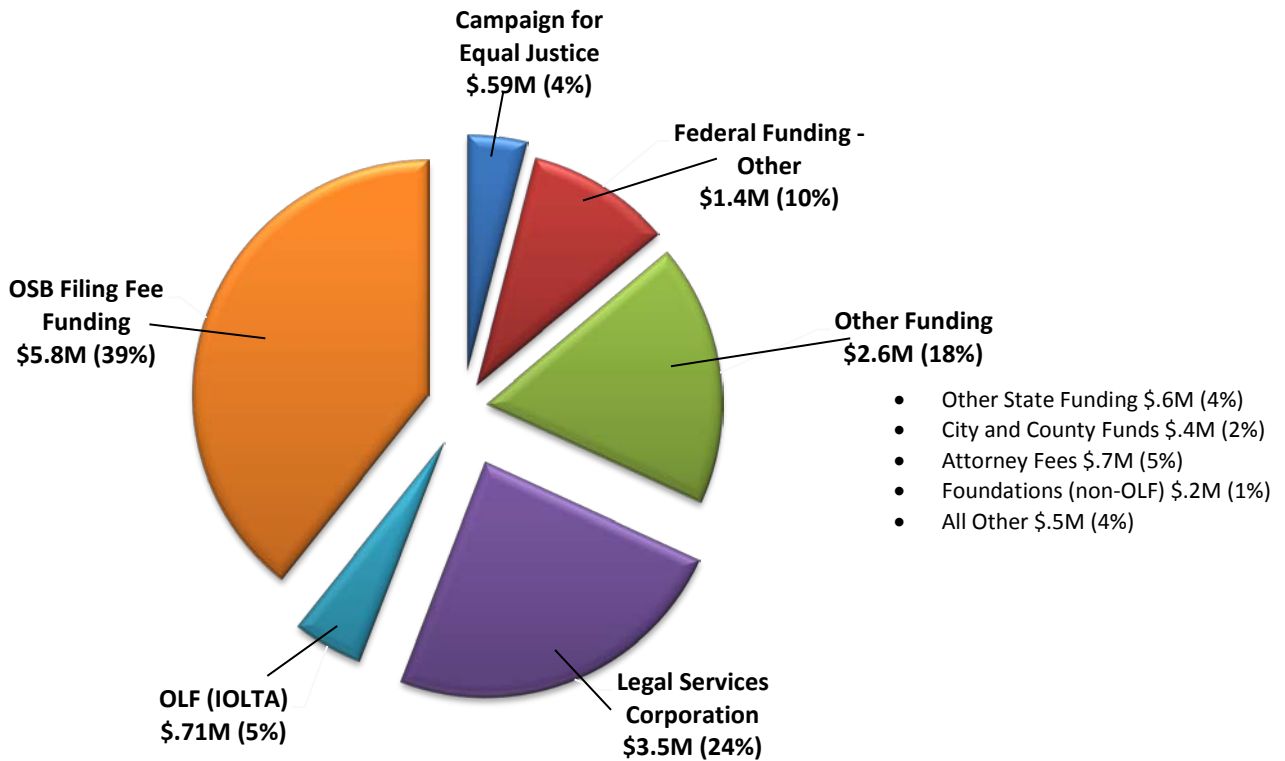
Colored dots indicate office locations.

- Center for Nonprofit Legal Services**
 - Medford
- Lane County Legal Aid and Advocacy Center**
 - Eugene
- Oregon Law Center**
 - Coos Bay
 - Grants Pass
 - Hillsboro
 - McMinnville
 - Ontario
 - Portland
 - Salem
 - St. Helens
 - Woodburn
- Legal Aid Services of Oregon**
 - Albany
 - Bend
 - Hillsboro
 - Klamath Falls
 - Newport
 - Pendleton
 - Roseburg
 - Salem
 - Woodburn



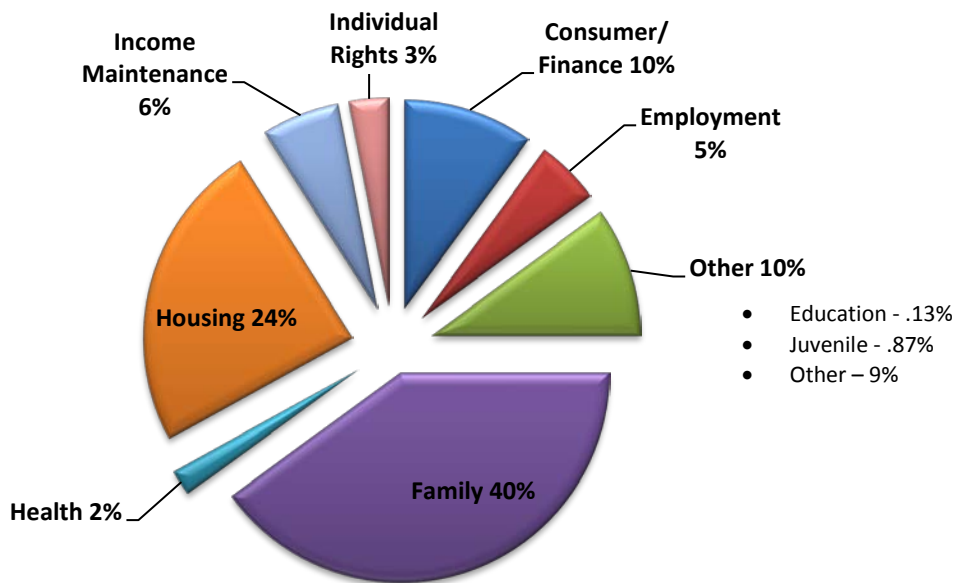
● Indicates instances of multiple programs sharing office space.

Total Funding Received by OSB Legal Services Programs, 2012



Direct Legal Assistance: *Direct legal assistance is the core service of OSB-funded legal services programs.*

Oregon legal aid programs provide free legal help to people who live at or near the poverty level. They perform intake, provide advice and brief legal assistance and if needed in-depth ongoing representation. These services are provided out of program offices located in cities and towns throughout the state, or referred to private attorneys who serve these clients on a pro bono basis. The pie chart reflecting number of cases closed does not capture time spent and people impacted by staff providing other services such as community legal education, pro se help and website information.



Family Matters 7,007 Cases

- Adoption
 - Custody/Visitation
 - Dissolution of Marriage
- Guardianship/Conservatorship
 - Name Change
 - Parental Rights Termination
- Paternity
 - Domestic Abuse
 - Support

“Jane” is a domestic violence survivor with physical disabilities. She suffered severe emotional and physical abuse by her husband, who sometimes yelled at her for hours at a time. He also used their religious tenets to belittle her and undermine her self confidence. After Jane finally separated from him, LASO helped her obtain a restraining order under the Oregon Elderly Persons and Persons with Disabilities Abuse Prevention Act. Because of the couple’s religious beliefs, Jane did not want to file for dissolution of marriage, so the attorney filed for an indefinite legal separation. Counsel was able to negotiate an agreement that enabled the client to receive spousal support and leave the relationship with little debt, while adhering to her religious beliefs. (*Legal Aid Services of Oregon*)

Housing Matters
4,196 Cases

- *Federally Subsidized Housing Rights*
- *Mortgage Foreclosure*
- *Homeownership/ Real Property*
- *Landlord/Tenant (Other than Public Housing)*
- *Public Housing*
- *Housing Discrimination*

“George and Martha” lived with their two school-aged children in an apartment complex in Portland that had policies and practices that discriminated against families with children. For instance, the complex issued fines when children rode scooters on pathways in the complex, or left play furniture on the patios. LASO filed a lawsuit challenging the discriminatory practices. The matter settled with the management agreeing to send its entire staff to fair housing training, to install a play structure at the apartment complex, and to change its practices with regard to the 8,300 housing units that it manages statewide. *(Legal Aid Services of Oregon)*

Health Matters
413 Cases

- *Medicaid/ Medicare*
- *Government Children’s Health Insurance Programs*
- *Private Health Insurance*
- *Home & Community Based Care*
- *Long Term Health Care Facilities*

Ms. C lived in an Adult Foster Home, with care paid by Medicaid and administered by the local Senior and Disabled Services Office. Ms. C had suffered from cognitive limitations and left side paralysis from a stroke ten years earlier. On her third annual review she was found ineligible for services. Because Ms. C did not want to recognize the severity of her limitations, she had downplayed her answers, and the caseworker had not spoken with her caregivers. After two Medicaid hearings, the caseworker received input from the adult foster home provider and obtained complete and accurate information on Ms. C’s condition, leading to the reinstatement of her Medicaid assistance. *(Lane County Legal Aid and Advocacy Center)*

Income Maintenance Matters
1,131 Cases

- *Welfare*
- *Food Stamps*
- *Social Security*
- *SSI / SSDI*
- *Unemployment Compensation*
- *Veterans Benefits*
- *TANF*

“Ellen” was fired after reporting discrimination in the workplace. As a single mother of two, she was concerned about making ends meet. When she was denied unemployment benefits she turned to OLC for help. After a long hearing and testimony from a number of witnesses, Ellen won her appeal. With her unemployment benefits she was able to pay her rent. She now has part time employment. Ellen said, “I am really appreciative. Without the help I wasn’t going to win. I was very nervous and didn’t know what to say.” *(Oregon Law Center)*

Consumer Matters
1,797 Cases

- *Bankruptcy/
Debtor Relief*
- *Contracts/
Warranties*

- *Loans/
Installment
Purchases*
- *Collection*

- *Public Utilities*
- *Unfair Sales
Practices*

“Jose,” who works hard in a potato packing shed to support his wife and two children, thought that the manager of his mobile home park was charging too much for utilities. A new state statute created a formula to allocate the utilities costs among tenants in a mobile home park. After the mobile home park owner came to the offices of OLC to review all of Jose’s bills and receipts, he agreed that there had been a mistake. Eventually, the owner took the receipts and documents to the County District Attorney. The property manager was convicted of criminal fraud. She had taken over \$20,000 from the tenants and the landlord. Today, 56 low-income families are still living in their homes in this mobile home park, and the property manager is no longer stealing from them and the owner. (*Oregon Law Center*)

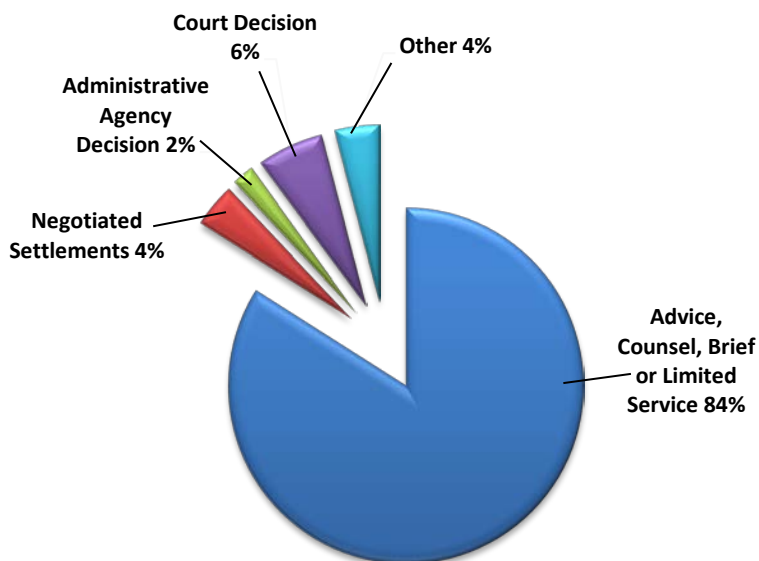
Scope of Services: OSB legal services programs provide low-income Oregonians with access to a full range of legal services.

Providing low-income Oregonians with access to the types and levels of legal assistance they need in order to receive fair treatment within our legal system is a core value in the OSB LSP *Standards and Guidelines*.

Oregon legal aid lawyers seek to maximize use of scarce resources. They provide services in a compassionate manner, but strive to serve as many clients as they can with severely limited resources. They do this by being aware of the most compelling legal needs of the clients that they serve and providing a full range of legal services.

A high proportion of cases are resolved without litigation. As the chart below indicates, 84 percent of the problems handled in 2012 involved advising the client about steps he or she could take, or by providing non-litigation services such as drafting a letter or making phone calls on the client's behalf.

Pro bono efforts of the private bar leverage the investment of dollars in OSB-funded programs. Private lawyers affiliated with OSB-funded programs completed 3,385 cases on a pro bono basis in 2012. This represents nearly 19 percent of the total cases completed for low-income Oregonians in 2012 by OSB legal services programs.



A Full Range of Services

Intake and consultation—Low-income people faced with a legal problem can apply for legal assistance by telephone or at a legal aid office. Depending on availability of resources and the nature of their legal situation, they will be provided with one or more of the following services:

- **Brief representation:** Legal advice or other brief services (for example, drafting a letter) provided by an attorney or paralegal.
- **Pro se assistance:** Information or coaching for people willing and able to proceed on their own in court with a simple matter.
- **Referral to other sources of help:** Assistance in finding a pro bono attorney or other source of aid.
- **Extended representation:** Full legal representation by attorneys and paralegals in court or administrative proceedings, leading to a formal decision and/or negotiated settlement.

Community legal education—Legal services attorneys and paralegals make presentations and distribute written materials describing legal rights and responsibilities across a wide array of areas, such as domestic violence, eviction, foreclosure and public benefits.

Systemic advocacy—Legal services advocates seek to make courts and administrative agencies work more effectively and efficiently, while offering a level playing field for low-income people through activities ranging from serving on agency task forces to conducting complex litigation.

Legislative advocacy—Legislative processes are an essential part of the legal system that affect the low-income population. Legal aid providers provide an important perspective regarding laws, regulations, rules and policies.

Helping People Help Themselves: *In 2012, legal aid advocates helped thousands of people advocate on their own behalf.*

In addition to providing direct legal assistance, legal aid advocates helped thousands of people understand and act upon their legal rights and responsibilities as tenants, parents, employees, spouses and consumers.

Examples of their achievements in 2012 include the following:

Pro Se (Self Help) Assistance

- Oregon legal aid advocates helped thousands of low-income people to prepare for self-representation in simple legal matters. For example, an experienced Housing/Consumer Law attorney at *The Center for Nonprofit Legal Services* in Jackson County calls applicants who are being harassed by collection agencies, reviews their financial situation, including income and resources, helps them understand where they are vulnerable and discusses the court process with them so that they may help themselves.
- The Portland Regional Office of *Legal Aid Services of Oregon* created and administers the Pro Se Assistance Project (PROSAP), which is designed to help meet some of the need of self-represented litigants in Multnomah County family law cases. At PROSAP clinics, held twice a week at the Multnomah County Courthouse, pro bono attorneys respond to discrete family law questions and/or review documents prepared by pro se litigants. For a newer part of the program, the Facilitation Clinic, newly trained lawyers help pro se litigants complete paperwork before they meet with a PROSAP attorney.

Community Legal Education

- The *OregonLawHelp.org* website with legal information and operated by OSB LSP members received 618,822 page views on the English language version (compared to 421,972 page views in 2010) and 59,883 page views on the Spanish language version in 2012.
- *Legal Aid Services of Oregon* distributed 25,000 brochures and provided information through presentations at community centers, schools, shelters and legal services offices.

Legal Services Other Than Direct Legal Representation

- **Pro se (self help) assistance.** With a struggling economy, many Oregonians are joining a growing flood of litigants in Oregon courts seeking to navigate complex legal proceedings on their own. OSB-funded legal aid programs work with the courts to deal with this issue and assist thousands of pro se litigants each year to navigate the court system more effectively.
- **Community legal education.** Many legal situations can be prevented and/or resolved more easily when people have access to timely, accurate information about their legal rights and responsibilities. The OSB Legal Services Program members collaborate to make this information increasingly more accessible.
- **Statewide and organization-specific websites.** OSB-funded legal services programs operate statewide and individual program websites providing 24/7 access to their community legal information, pro se materials and legal services. These include:
 - **All OSB LSP programs:** OregonLawHelp.org
 - **Center for NonProfit Legal Services:** CNPLS.org
 - **Lane County Legal Aid and Advocacy Center:** LCLAAC.org
 - **Legal Aid Services of Oregon:** www.lasoregon.org
 - **Oregon Law Center:** oregonlawcenter.org

- *The Ontario office of Oregon Law Center* created community education training called “women in the workplace,” which covers topics like the family leave act, protection against sexual harassment, workers compensation, minimum wage, unemployment insurance and more. The most typical low-income family in Oregon consists of a single mother with one or two children.
- *Lane County Legal Aid and Advocacy Center* conducted training aimed at creating connections between the faith based and social services communities there, including a day-long seminar attended by 120 participants.
- *Center for NonProfit Legal Services* employees staffed a booth at Project (Homeless) Community Connect in May 2012, and a legal tent at Stand Down in September. For each of those outreach efforts, staff worked with various community organizations to assist veterans, the homeless and those at risk of homelessness. They provided community education materials, general legal information and advice to attendees.

Partnerships

In 2012, Oregon legal aid programs collaborated with a wide array of organizations to solve community-wide problems all across Oregon. Working with funders, community-based organizations, bar associations, government agencies and private law firms helps maximize resources. It also helps ensure that as many partners as possible both understand and work toward resolving the problems of low-income Oregonians.

- **Dealing with the flood of self represented litigants in Oregon courts.** The Grants Pass regional office of the *Oregon Law Center* holds a monthly workshop on pro se divorce/custody. OLC distributes pro se forms, teaches how to complete them and offers follow-up appointments to review the completed forms.
- **Educating others who assist low-income Oregonians.** One of the community partners questioned during the Peer Survey stated: “I am a community health nurse and my ability to consult with Legal Aid has helped make me a better and more informed advocate for my clients. I have passed information on to my colleagues so that we can collectively make positive changes for our mutual clients.”
- **Helping low-income people avoid legal problems.** The *Center for Nonprofit Legal Services* worked with the Jackson County Circuit Court judges to hold court at Project Community Connect to help homeless resolve court fines and fees.
- **Increasing and leveraging pro bono private attorney resources** The Hillsboro Regional Office of *The Oregon Law Center* continues to operate a robust clinic staffed by in-house counsel from Intel and Hewlett Packard. In addition, the ProBono Oregon listserv reaches hundreds of potential pro bono attorneys statewide.
- **Helping to ensure laws and rules are fair for all.** A Senior Staff Attorney at *Lane County Legal Aid and Advocacy Center* often participates in rule advisory committees at the invitation of the state Aging and People with Disabilities Division of the Department of Human Services. During 2012 and 2013, his participation led to rule changes in the areas of regulations applying to long term care facilities.
- **Addressing the community-wide problem of homelessness.** One of the staff attorneys at the Bend Regional Office of *Legal Services of Oregon* is a key partner in Central Oregon's Homeless Leadership Coalition. The HLC is the oversight body for the region's Continuum of Care (HUD funded services). According to one of the community partners, “this is a complicated arrangement, and the LASO attorney has guided us through the process of formalizing the HLC, including the development of bylaws, voting members, committee structure ... all important to the success of the HLC and the Continuum of Care. Couldn't have done it without her. The process took one year, and requires ongoing attention to bylaws revision and other details.”
- **Working with government agencies.** According to one Community Partner who responded to the survey, “it is because of legal aid attorneys that several issues have been brought to [our agency’s] attention. We are taking action to investigate and resolve them.”

Major Partners of the OSB Legal Services Program

- The Oregon State Bar
- The Oregon Law Foundation
- Campaign for Equal Justice
- County bar associations
- Community-based organizations – for example:
 - Shelters
 - Community foundations
 - Housing coalitions
- Members of the judiciary
- State and local government agencies
- Legislators
- United Way and other funders

Accountability: Providers aligned their services in 2012 with the OSB LSP Standards and Guidelines.

Good and competent in legal knowledge and practice; professional, ethical and courteous in their dealings.

Anonymous Judge, 2013 Peer Survey

The Oregon State Bar Legal Services Program is charged with distributing dedicated filing fee revenues to the network of programs that deliver these legal services, and providing ongoing oversight and evaluation of providers based on the *OSB LSP Standards and Guidelines*. Providers are also reviewed pursuant to recognized national standards which includes the ABA Standards for the Provision of Civil Legal Aid.

In the 2010–11 update of the oversight and evaluation approach, OSB LSP staff collaborated with legal services providers to produce and implement a Self Assessment Report instrument that annually elicits information from the providers regarding the alignment of their services, systems and activities with five “Performance Areas” based on the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report.

In addition, in 2013 OSB Legal Services staff created surveys targeted to each of five groups: clients, community partners, judges, attorney partners and opposing counsel. Survey results are summarized in **Attachment A**. Some data and anecdotes are included throughout the Accountability portion of this report.

The Performance Areas

This accountability analysis is divided into “Performance Areas” that track the broad themes expressed in the mission statement for the OSB Legal Services Program and as stated in the Standards and Guidelines. Each section outlines the level of alignment found and flags areas of performance for further follow up. The performance areas are as follows:

- ***“An integrated, statewide system of legal services ... [that eliminates] barriers ... caused by maintaining legal and physical separation between providers ...”***
- ***“Centered on the needs of the client community”***
- ***“Efficient and effective ... by deploying limited resources in a manner that maximizes the system’s ability to provide representation”***
- ***“Full spectrum of legal services ... The broadest range of legal services required to serve the needs of clients.”***
- ***“High quality legal services.”***

Performance Area One:

Achieving an Integrated, Statewide System of Legal Services

It is the goal of the OSB LSP that all providers are part of an integrated statewide delivery system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon. This means that the providers need to work together strategically to target limited resources to ensure equality of access statewide.

The Oregon providers are exceptional in how well they work together and with other stakeholders to achieve statewide integration and meet the requirements set out by the OSB LSP Standards and Guidelines. In 2012 the providers took steps that addressed this performance area.

- In 2012 a statewide legal services planning committee was formed to respond to the falling revenues for statewide legal aid funding in general and for LASO in particular. It was recognized that additional federal funding cuts, including federal sequestration, were likely to severely impact LASO in 2013 and beyond. Legal Aid Services of Oregon, Oregon Law Center, Lane County Legal Aid and Advocacy Center and the Center for NonProfit Legal Services joined together with representatives from the Oregon State Bar, the Oregon Law Foundation and the Campaign for Equal Justice to engage in statewide legal services planning. Members of the committee spent several months reviewing data about case statistics, poverty population, service area square miles, distribution of statewide legal services dollars and distribution of legal services staff among regional service areas throughout the state. The final result was the closing of the Lane County LASO office with LCLAAC remaining as the sole legal services provider in Lane County while keeping the rest of the statewide service delivery system stable. Although this restructuring has resulted in reduced services to clients, it did so in a way that helped ensure equality of access to services statewide and strategic targeting of limited resources. The strategic planning committee continues to meet in 2013, gathering extensive updated information about client demographics, service currently provided, priorities and needs assessment, with the intent to create the next statewide strategic plan that will guide legal aid for upcoming years.
- In 2012 LASO was awarded a grant from the Oregon Housing and Community Services Department to provide legal assistance to Oregon homeowners and renters who are facing foreclosure. LASO, OLC, LCLAAC and CNPLS all collaborated and began the statewide Legal Aid Foreclosure Help project. The project's goal is to preserve housing stability for low and moderate income Oregonians who are struggling as a result of foreclosure by increasing the availability of expert legal assistance, training and representation resources. Since the project began in November 2012, assistance has been provided to over 350 individuals, and 52 clients have been referred for pro bono assistance.

Performance Area One

"It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996..."

*Mission statement of the OSB Legal Services Program
(Emphasis added)*

Equal Justice Values Related to This Theme:

- *Ensure equality of access*
- *Strategic targeting of limited resources*
- *Balancing individual representation and advocacy enforcing broader rights of low-income communities*
- *Commitment to interdisciplinary advocacy*
- *Commitment to multi-forum advocacy*
- *Strategic utilization of all components in service of mission*
- *Maximize efficiency*
- *Minimize geographic and institutional parochialism*

Performance Area One Follow-up

- **Strategic Planning and Implementation**

Providers have been working this year with OSB, OLF and CEJ staff to develop and draft a 2013 Statewide Strategic Planning Report, based on extensive updated information about client demographics, service currently provided, priorities and needs assessment and financial forecasts. They will complete the plan and implement the recommendations to guide services moving forward in a way that responds to the compelling, unmet legal needs of low income Oregonians while assessing the cost-effective use of resources.

- **Connection to Statewide Network**

One of the key means used by providers to ensure that Performance Area One is met is through statewide quarterly substantive law task force meetings, coordinated by the OLC Statewide Support Unit. The goals of the various task forces are to provide support to legal aid lawyers who specialize in housing, family, administrative and employment law. The task forces do so by reviewing changes in laws, talking about open cases and trends, writing self-help materials, and providing guidance, assistance and moral support. It is important that legal aid attorneys participate in various forums in which areas of law and strategies are discussed. This allows attorneys to stay aware of changes among the issues that affect the low-income communities it services. CNPLAS does not attend these taskforce meetings due to financial constraints. CNPLAS should find ways to attend either in person, by teleconference or by video conferencing to ensure that they are more connected to the statewide network of other staff attorneys that practice poverty law in Oregon.

Performance Area Two:

Identifying and Addressing the Priority Needs of the Client Community

Performance Area Two gauges the success of providers at targeting their services on the most compelling needs of the client community and the ability to implement responses to the changing circumstances.

Providers do a good job of regularly assessing the needs of the community and meet the requirements set out by the OSB LSP Standards and Guidelines. All providers report that formally assessing the community takes place approximately every one to three years. The primary mechanism for input is a survey questionnaire distributed by a variety of methods, including online, mail and e-mail, telephone calls, and on-site availability of surveys for current clients. Information is sought from former and current clients, local attorneys and county bar associations, government and non-profit partner agencies.

After survey information is collected and analyzed, each office goes through a priority setting process. These priorities are adopted by the program's boards. OLC reports that in addition its board adopts legislative priorities prior to each session.

The providers also ensure that offices remain knowledgeable and responsive to the needs of the local client community through staff who are active members of their local communities, who interact with client groups and with groups that service the low-income community, and who are familiar with the low-income community's needs.

In their 2012 Self Assessment Reports, providers reported taking the following actions in response to the needs identified through assessment studies, involvement in the community and the intake process.

- As stated above under Performance Area One, in response to Oregon's foreclosure crisis *Legal Aid Services of Oregon* was awarded a grant from the Oregon Housing and Community Services Department to provide legal assistance to Oregon homeowners and renters who are facing foreclosure. All the programs collaborated and began the statewide Legal Aid Foreclosure Help project in response to a pressing client need in Oregon.
- *Legal Aid Services of Oregon's* Native American Program (NAPOLS) engaged in an extensive priority-setting process in 2012. NAPOLS was seeking to obtain statewide information about the needs of the Native American community. NAPOLS received 100 surveys from Tribal members and reviewed the cases handled during the last few years. NAPOLS found that due to increased resources for Tribes many were no longer financially eligible for NAPOLS services. Therefore the shift was to provide services to individuals rather than to Tribes. The LASO board adopted the revised priorities to reflect the legal needs identified through the process.
- Due to the recession, *Oregon Law Center's* regional offices were conducting community needs assessments and finding an increase in employment law issues. The issues included unemployment insurance, workers not getting paid, dangerous work environments, discrimination, and sexual harassment and assault. As a result the Employment Law Task Force was developed. The task force meets four times per year with the

Performance Area Two

"It is the mission of the Oregon State Bar Legal Services Program... to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996..."
(Emphasis added)

Equal Justice Values Related to This Theme:

- Responsive to the most pressing client needs
- Flexible and responsive to changing environmental circumstances
- Strategic targeting of limited resources
- Focus on client empowerment
- Sensitivity to Client Communities and Cultures

goal to provide support to legal aid lawyers who specialize in the area of employment law. It does so by reviewing changes in laws, talking about open cases and trends, writing self-help materials, and providing guidance and assistance.

- *Lane County Legal Aid and Advocacy Center* has an open intake system and is able to identify trends in their community to be addressed. One example is identifying the problems low-income Social Security recipients had with creditors putting claims on funds pursuant to judgments. LCLAAC developed legislative strategy to address it.

Sensitive to Client Communities and Cultures.

Part of what is analyzed in Performance Area Two is how sensitive legal aid providers are to client communities and cultures. Each legal aid provider has a responsibility to understand and respond to the needs of all the low-income communities that it serves, including those that are culturally and linguistically diverse. To be culturally competent means “having the capacity to provide effective legal assistance that is grounded in an awareness of and sensitivity to the diverse cultures in the provider’s service area”. *ABA Standards for Provision of Civil Legal Aid 2.4 on Cultural Competence*.

The legal aid providers all report that they have procedures and resources in place to address the needs of clients with limited English proficiency and for those with disabilities. Job openings are advertised to reach a diverse pool of applicants, and hiring factors include an applicant’s ability to communicate with persons in the client community and cultural understanding of that community. Providers also report that they provide periodic training on cultural competency.

As an example of being sensitive to the client community, the executive directors of OLC and LASO take steps to talk to Regional Directors about effective outreach and systemic representation to the client community both with current lawyers and new hires. The executive directors also evaluate and identify structural and staffing issues in a region and strive to make changes (staffing or areas of advocacy) to better serve the client community in that region. This includes taking into consideration the culturally and linguistically diversity of a service area.

Performance Area Three:

Achieving Efficiency and Effective Delivery of Services

Efficiency and effectiveness became even more important in 2012 as a poor economy drove demand for legal assistance through the roof while available resources plummeted. Striving to improve efficiency, Oregon legal services providers reported the following significant efforts in their 2012 Self Assessment Reports:

- *Lane County Legal Aid and Advocacy Center* continues to be an advocate for change in the Oregon Health Plan and the state's public entitlement programs for seniors, people with disabilities and other low-income populations. LCLAAC accomplishes this through participation in joint agency-stakeholder task forces and work groups and thereby continues to influence both substantive administrative program rules and agency procedures for transparency, accountability and stakeholder inclusion. In addition LCLAAC also provides leadership in statewide legislative efforts in the development and preservation of affordable, stable housing for low-income people.
 - For *Oregon Law Center*, domestic violence ranks first or second in priority in the client needs assessments. 40 percent of the cases closed by legal aid in an average year involve domestic violence. Legal aid does not have the resources necessary to provide direct service in each case. OLC has made this one of the highest priorities and deployed resources at the state, regional and local level to maximize efficiency and effectiveness. For example:
 - Sybil Hebb works in the Oregon Legislature with the Attorney General, judges, law enforcement, domestic violence service providers and other stakeholders to help improve systems designed to serve the victims of domestic violence.
 - Robin Selig works with the Judicial Department at the statewide level to help improve structures and systems serving the victims of domestic violence.
 - Attorneys in the Hillsboro Regional Office work at the regional and local level to help improve systems serving the victims of domestic violence and sexual assault. They collaborate with local judges, district attorneys, police and domestic violence shelters. They provide community education, advice, and brief service and representation to large numbers of individuals on these issues. The quality of their legal work is higher because of their connection to this legislative and administrative advocacy at the state and local level.
- In recognition of collaborative work at the state and local level, OLC received the Judge Stephen Herrell Award for Outstanding Collaborative Efforts to End Family Violence in October 2012.
- *Legal Aid Services of Oregon* was the recipient of a federal Legal Assistance to Victims grant from the U.S. Department of Justice. LASO worked with victim service providers (VSPs) in ten counties to provide legal assistance to victims of domestic violence, sexual assault, and stalking and/or dating violence in underserved rural areas. The goal was to provide a broad range of legal services to help survivors and their children achieve long-term safety and stability.

Performance Area Three

"It is the mission of the Oregon State Bar Legal Services Program...[to] use its oversight authority to work with Providers to insure that the delivery of legal services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians."

(Emphasis added)

Equal Justice Values Related to This Theme:

- Measure effectiveness in terms of results achieved for clients
- Strategic targeting of limited resources
- Strategic utilization of all components in service of mission
- Maximize efficiency
- Ensure accountability

- *Center for NonProfit Legal Services* reported it organizes its efforts into six specialized units and two discrete projects to focus expertise and delivery of efficient and effective legal services to targeted populations.

Performance Area Three Follow-up

- **Incorporating Best Practices**

OLC created a model of working with community partners at the state and local level to effectively advocate on behalf of domestic violence victims in Oregon. This is a systemic model of service that is both effective and efficient. Because there are not enough resources to provide direct service to each client, it is important to work with community partners at the state and local level to create similar models of advocacy for those areas of law that are a high priority for clients. Housing, health care and employment are all areas of law that would benefit from replicating the domestic violence model.

Performance Area Four: ***Achieving a Full Spectrum of Legal Services***

Performance Area Four reflects the principle expressed in the OSB LSP *Standards and Guidelines* that providing a wide range of legal services for the poor promotes fairness as well as efficiency. Enforcing broader rights of low-income communities such as legislative and administrative advocacy is a function of legal services advocates, as well as providing individuals with representation in day-to-day matters. Providing community legal education and helping people represent themselves are also important functions.

“All approaches need to be measured against the standard of whether they effectively respond to compelling, unmet legal needs of low income persons while assessing the cost-effective use of resources to accomplish a meaningful result.” *ABA Standards for Delivery of Civil Legal Aid 2.2 on Delivery Structure.*

Direct representation, brief legal services and self-help assistance were all illustrated earlier in the report on pages 4-9. The following examples illustrate the provider’s alignment with this theme concerning complex systemic litigation and legislative advocacy.

Complex Systemic Advocacy

“A provider should strive to achieve both clients’ objectives and lasting results that respond to the low income communities’ most compelling legal needs.” *ABA Standards for Delivery of Civil Legal Aid 2.6 on Lasting Results for Low Income Individuals and Communities.* During the course of representing clients a provider will identify laws and policies that have a detrimental effect on the broader client community. Systemic advocacy is appropriate to defend against proposed changes or the status quo that negatively impact low income persons or communities. Examples of effective systemic advocacy are as follows:

- **Due process settlement changes city ordinance.** LASO represented a tenant whose landlord requested the city to terminate water service to the tenant’s rental unit after ongoing disputes. Without notice the city terminated water service and refused to turn it back on without the authorization of the landlord. This was pursuant to the city’s water termination ordinance. The tenant was without water for one and one-half months. LASO sued the city for violating the tenant’s due process rights. The city agreed to change its ordinance to provide notice of any water termination directly to the tenant in addition to the landlord. This now allows tenants to contact the city within 10 days and make arrangements to avoid termination.
- **Complex class action setting a national precedent.** OLC brought a class action that helped protect 264 affordable housing units at NE Halsey and 65th Avenue in Portland. In addition it enforced Congressional intent and set an important legal precedent in a case of first impression that benefits low-income families living in 2 million units of affordable housing nationwide. In exchange for money from the federal Low Income Housing Tax Credit (LIHTC) program, the property owners had agreed to commit the project to provide low-income housing until 2021. The promise is recorded as a restrictive covenant or equitable

Performance Area Four

“It is the mission of the Oregon State Bar Legal Services Program... to work with Providers to insure that the delivery of legal services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.”

(Emphasis added)

Equal Justice Values Related to This Theme:

- Balancing individual representation and advocacy enforcing broader rights of low-income communities
- Commitment to interdisciplinary advocacy
- Commitment to multi-forum advocacy
- Focus on client empowerment
- Strategic utilization of all components in service of mission

servitude on the deed, and includes language permitting tenants, former tenants and prospective tenants to enforce the provision as third-party beneficiaries. In this case, because the landlord had failed to comply with the requirements applicable to LIHTC housing, an employee of the State of Oregon, which had been assigned to monitor and enforce the rules, signed a document indicating that the property owner and the state agreed to release the affordability restrictions on the property. The property sold, but the purchaser had actual notices of the restrictions and release. OLC represented “Sarah”, who had lived in the property and had been forced to move when the new owners gave eviction notice to all of the tenants. She worried about the large number of low-income families that had been displaced. She filed a class action seeking an injunction forcing the owners to provide low-income housing through 2021 as promised. The defendants argued that the tenant could not stop the release and lacked standing. OLC and two volunteer attorneys working with the OLC represented Sarah. The National Housing Law Project helped because of the national importance of the case. After much debate, the Oregon Court of Appeals became the first court in the United States to hold that tenants can enforce the LIHTC property use restrictions recorded as a covenant on the deed.

Legislative Advocacy

“A provider should advocate before legislative and administrative bodies or actively participate in a delivery system which includes such advocacy.” *ABA Standards for Delivery of Civil Legal Aid 3.2 on Legislative and Administrative Advocacy*. Legislative and administrative processes are an essential part of the legal system that affects low-income populations. Because of their knowledge of the legal problems of low-income persons, legal aid providers offer an important perspective regarding laws and policies that are considered at a legislative level or administrative rulemaking level. Examples of effective legislative advocacy are as follows:

- LCLAAC’s housing attorney has negotiated, drafted and explained to legislators a new method of billing for water and sewer costs for manufactured home park residents. He explained the new law and method to park residents, the state’s Manufactured Communities Resource Center, and landlord attorneys.
- OLC has two legislative advocates that worked on issues that were priorities for the low income community and because of that were adopted as part of a legislative agenda by the OLC board. The advocates worked on improving access to affordable health care, providing support to help low-income people use Section 8 housing benefits, increasing housing benefits for veterans, broadening access to mediation for people facing foreclosure, providing funding for foreclosure counselors and others who could help low-income people save their homes, funding for domestic violence shelters; and, establishing a structure that permits the victims of sexual assault to get a restraining order similar to the domestic violence restraining orders.

Integrating the Resources of the Legal Profession.

The legal profession is a valuable resource in addressing the needs of the low-income community and should be integrated to the greatest extent possible into a provider’s efforts to provide a full spectrum of legal services that respond to its clients’ needs. One Attorney Partner’s survey response made clear the importance of pro bono support for legal aid providers: “I am an immigration attorney and have volunteered with the CNPLS since being licensed in 2008. ... I actively mentor their younger immigration attorney”.

92 percent of pro bono volunteers surveyed had a positive experience as a volunteer. As one respondent stated, “the LASO lawyers are fantastic resources, creative thinkers and excellent lawyers. They are always available to support the cases that they send out for pro bono representation.” For the 8 percent that were neutral about their volunteer experiences, however, the lack of resources to support them seems to be the reason.

Oregon legal aid providers all report that pro bono attorney involvement is an integrated part of the structure

used to deliver high quality legal services. The following are examples of how volunteer lawyers are used:

- The Volunteer Lawyer Project of the Portland Regional Office of LASO has existed for over 30 years. The bankruptcy clinic of the VLP serves clients in Multnomah, Washington, Clackamas, Yamhill, Columbia, Wasco and Hood River counties.
- The LASO Pendleton office uses pro bono attorneys for intake at several locations throughout its geographically wide service area.

Resource Development.

Demand outstrips the resources available to meet the most compelling civil legal needs of low-income Oregonians. It is therefore essential that providers pursue strategies to maintain and expand available financial resources to enhance the ability to provide a full spectrum of legal services. The providers worked with the Campaign for Equal Justice (CEJ) as legal aid's primary resource development arm and engaged in numerous activities to support CEJ's annual campaign. The providers also work closely with the OSB to protect and expand funding for the OSB LSP.

Performance Area Four Follow-up:

Statewide Pro Bono Coordinator

In 2011 OLC eliminated the Statewide Pro Bono Coordinator position due to funding shortfalls. The goal of the Statewide Pro Bono Coordinator is to increase the number of clients who are able to receive assistance from pro bono attorneys statewide. This helps to expand limited resources to provide direct representation of low income clients.

Realizing that pro bono is an important part of the statewide delivery structure, allocating resources back to that position is recommended and is currently part of the proposed Strategic Planning Report.

Resource Development

Providers should make it a priority to work in a meaningful way with CEJ on CEJ's private bar campaign to provide a cohesive effort to fundraise for statewide legal services. It is, of course, a key goal that the providers work together to provide relative equal access to legal aid statewide. Raising funds in a cohesive effort is a vital part of working together to reach that key goal.

Performance Area Five:
Achieving High Quality of Legal Services

Delivering high quality legal services has been a fundamental requirement of the Oregon State Bar Legal Services Program since its inception. Indeed, the *Oregon Legal Services Program Standards and Guidelines* incorporate by reference such national standards as the *ABA Standards for Providers for Civil Legal Services for the Poor* and the *Performance Criteria* of the federal Legal Services Corporation.

Pursuant to the ABA Standards for the Provision of Civil Legal Aid 6.1 to 6.6, the following are standards for quality assurance:

- A provider’s staff should be diverse, well qualified, sensitive to low-income persons and competent.
- A provider should assign and manage cases and individual workloads for attorneys and other staff.
- A provider should adequately supervise the work to assure each client is competently represented.
- A provider should review representation provided to clients to assure high quality assistance and to identify areas in which the provider should offer training and support.
- A provider should provide access to ongoing and comprehensive training for all personnel.
- A provider should assure the availability of adequate resources for appropriate legal resource and factual investigation.

Performance Area Five

“High quality legal representation” of low income persons in this state should be defined and driven by the Lawyer's Code of Professional Responsibility, the ABA SCLAID Standards and by the LSC Performance Criteria.”

Mission statement of the OSB Legal Services Program (Emphasis added)

Equal Justice Values Related to This Theme:

- Maintain standards of advocacy and program performance
- Ensure accountability

The 2012 Self Assessment Reports submitted by OSB-funded legal services programs provide detailed descriptions of the systems and procedures for quality assurance that were applied in various forms by every OSB-funded legal services organization. These include:

- Sophisticated, multi-office, web-based case management systems to record information, check client conflicts and track cases.
- Well-managed case oversight systems.
- Staff evaluation and performance review plans.
- Adherence to PLF standards of office system management of files and data.
- Availability of Lexis and BarBooks for all staff attorneys.
- Education on and systems to ensure client confidentiality.
- Participation in the minority law student job fair, public interest job fairs, externships and work study programs designed to expose diverse applicants to the programs and expose the programs to diverse applicants.
- Supervision of lawyers, paralegals, volunteers and law students.
- Attendance at local, regional and national training programs.

The following are examples of specific quality assurance activities reported in the 2012 Self Assessment Reports.

- *Oregon Law Center’s* State Support Unit (SSU) provides extensive support for litigation statewide. SSU attorneys provide sample complaints, briefs, orders and similar pleadings related to poverty law. SSU attorneys review pleadings, discuss strategy and provide advice. They co-counsel in more complex cases or

when a new attorney has a first trial. SSU attorneys set up moot court sessions to give attorneys an opportunity to practice oral arguments before federal and appellate courts.

- In 2012 *Legal Aid Services of Oregon* revised a number of its regional office accounting procedures and forms. Although there had been very little change in staff among the employees responsible for handling local office account procedures, it conducted program-wide, web-based trainings for office managers and supervisors on the revised procedures.
- *Center for NonProfit Legal Services* plans to make its website more user-friendly for its clients, with downloadable applications and the ability for community members to register for alerts and updates. It should make those changes before the next Accountability Report.
- *Lane County Legal Aid and Advocacy Center* trains more volunteers to identify under-served and, in particular, sexual assault survivors and have used our new Sexual Assault Legal Rights brochure, which was recently completed and approved by Office on Violence Against Women (OVW), to hand out at trainings with our volunteers and to other professionals.

Performance Area Five Follow-up

Effective Use of Technology

A provider should utilize technology to support efficient operations and the provision of high quality and responsive services. *ABA Standards for the Provision of Civil Legal Aid Standard 2.10 Use of Technology.*

A provider should examine all aspects of its operation for opportunities to increase the quality and range of its service through technology. To that end the providers have outlined in the Strategic Planning Report that they plan to review the technology needs throughout the programs and consider how to best meet those needs with the goal to better serve clients. It is recommended that these considerations be incorporated to the greatest extent possible within the confines of resources available.

Succession Planning

Providers that have experienced senior staff including attorneys and administrative staff should put together a transition/succession plan to provide a road map for when they retire. The plan should involve other legal service providers and take into consideration the organizational impact both locally and statewide of retiring attorneys who are policy experts on statewide issues such as housing and public benefits.

Conclusion: *Striving for excellence is a key tenet of the OSB LSP Standards and Guidelines.*

Words cannot express the feelings of despair when one needs legal aid and cannot afford it. ... I truly believe that if I were in a position to hire any attorney that I wanted, I could not find a better choice than [my legal aid attorney.]

[My legal aid attorney] was not only brilliant, but a very soothing and stabilizing influence.

Anonymous Clients, 2012 Peer Survey

This Results and Accountability report has highlighted some of the key outcomes communicated by providers in their submissions for 2012. It has given many examples illustrating how legal services providers continue to align their services, systems and activities with the vision set forth in the OSB LSP *Standards and Guidelines*.

The vision includes the quest for constant improvement. With a struggling state economy that has swelled the numbers of people seeking legal assistance while shrinking the resources available to serve them, efficiency and effectiveness are critical values that figure prominently in every report submitted by Oregon legal services programs. Setting priorities and targeting resources to maximize their impact on the legal problems of low-income Oregonians continue to be both a challenge and an opportunity.

The support of the Oregon State Bar is crucial. As one of the providers summarized in its 2012 report:

Legal aid's ability to provide efficient and effective services is dependent upon the ability of OSB, and its members, to educate current and future generations of lawyers about the importance of access to justice for low income Oregonians – to make them excited about supporting it. The rich history of legal aid in Oregon started in 1936 during the depression. It continued when a large number of Oregon lawyers, who had traveled to the South to help with voter registration in the 60's, returned home and provided leadership to build a statewide structure for legal aid. Leaders from the Oregon Supreme Court, the Legislature, law schools and private law firms are currently strong supporters of legal aid and access to justice. OSB should continue to promote a culture where OSB members believe that volunteering for pro bono work, making contributions to CEJ and supporting access to justice are part of being a lawyer in Oregon.

Summary of Survey Results

Attachment A

As part of the 2012 evaluation process, the OSB sent out a survey to 914 individuals identified by the legal services providers as belonging to one of five categories: community partners, attorney partners, opposing counsel, judges or clients. Because only five clients responded, those responses were too few to be statistically significant. Individual answers to questions asked of clients have been included elsewhere in this report, but have been included only as anecdotal evidence of the work done by the legal services providers. What follows here is a summary of those results.

Attorney Partners

Statewide, 100 attorney partners responded to the survey. Attorney partners are those who co-counseled with legal services attorneys, volunteered as pro bono attorneys for various organizations or otherwise partnered with legal services attorneys. Generally, attorney partners find that legal services attorneys are well-prepared, well-informed, good advocates who engage ethically, use resources wisely, are efficient with their time and are appropriately involved with their local communities. Less than 3% of attorneys partners surveyed believe that legal services attorneys are poorly prepared, bad advocates or inefficient with their time.

A representative comment about legal services attorneys, from their attorney partners, is that legal services attorneys are “hard working, overworked, and underpaid.” Staff attorneys are considered “[d]evoted, principled, sacrificing for the greater good.”

Overall concerns reported by the respondents had to do with decreased funding, and decreased availability of legal services attorneys. As one respondent put it, “Legal Aid attorneys in my community have historically been amazing and dedicated to a job where they are vastly underpaid for their professionalism and service to clients of limited means. I have serious concerns that legal aid is losing quality attorneys with the budget and staffing cuts.”

Of interest in these results is that 21.6% of attorney partners disagree with (3.3%) or were neutral about (18.3%) the statement that “Legal aid attorneys are efficient with their time.” Tying those responses to the narrative portion of the survey, it becomes obvious that the attorney partners who are neutral or negative about this statement tend to believe that legal services attorneys have overly litigated some matters, rather than settling or compromising. (This is true for the survey responses of opposing counsel, also.)

When asked whether legal services attorneys could have received a better result by engaging in different behavior, 89.9% of attorney partners responded “no.”

For those attorneys who were pro bono volunteers (92% of the respondents), 91.7% agreed that they had a positive experience volunteering for the legal services organization. Overall, 77.4% stated that they received adequate training from the organization, 19% were neutral (indicating that training was unnecessary), with 3.6% (three attorneys) indicating that they needed further training. Interestingly, only 69.1% felt they were adequately

supervised, with 25% neutral, and 6% (5 attorneys) indicating that they did not receive adequate supervision. Statewide, legal services providers should examine whether their training and supervision of pro bono attorneys could be given a higher priority.

The survey also found that almost 24% of pro bono volunteers did NOT report their pro bono hours to the organization. Given that all legal services organizations are certified and therefore required to report their volunteers' time to the Oregon State Bar, each organization should endeavor to create policies to ensure that volunteer time is adequately charted.

Community Partners

Statewide, 82 Community Partners responded to the survey. Community Partners are those individuals, identified by the legal services providers, who work with the legal services providers through social service agencies or government agencies. Responses in this category were more mixed than those in the Attorney Partners category.

87% of respondents agreed that legal aid attorneys are well prepared for legal interactions. 89% agreed that legal aid attorneys are well informed in the areas of law or indigent services their organizations are involved with. 79.3% agreed that legal aid attorneys worked with them to meet the legal needs of their specific community. 84.2% agreed that working with the legal aid organization benefited their organization. 87.8% agreed that working with the legal aid organization benefited the clients they serve. 79.2% agreed that the legal aid organization was responsive to their input. 80.5% agreed that the legal aid organization was responsive to the legal needs of their community.

Interestingly, only 67.1% of respondents agreed that the legal aid attorneys they are familiar with are involved in local community activities. 25.3% of Community Partners were neutral on the question of legal aid attorneys being involved in local community activities, with 7.6% (6 respondents) disagreeing that legal aid attorneys are involved in their local community activities. Whether these statistics represent a lack of awareness of legal aid attorneys being involved in local community activities or the failure to be involved cannot be known. Legal services providers should endeavor to ensure that staff attorneys both remain involved and make public their connection with the legal services organization.

30% of Community Partner respondents stated that dealings with a legal aid attorney led their organizations to change their policies or practices. One Community Partner stated:

It is because of legal aid attorneys that several issues have been brought to Oregon Health Authority attention. We are taking action to investigate and resolve them. OLC (I understand a different organization than legal aid) has also used experiences from legal aid attorneys in their participation on Rules Advisory Councils which result in direct change to rules that improve access, quality and outcomes for our clients.

Another stated:

They raised some concerns about state agency process and language. We are in the process of making changes based, in part, to their input and will be seeking their input as we work through our communication improvements.

Judges

The Judges' survey was particularly interesting. Thirty judges responded to the survey, making the survey a rather small sampling. Still, some general conclusions may be drawn. While over 90% of judges surveyed agreed that legal services lawyers are well prepared for their legal interactions (90%), good advocates for their clients (93.3%), ethical (96.7%) and well-informed on the law (96.6%), only 55.2% agreed that they are efficient with their time and only 69% agreed that they used resources wisely. 41.4% of Judges were neutral about the statement that legal aid lawyers are efficient with their time. 27.6% of Judges were neutral on the statement that legal aid lawyers use resources wisely.

When asked to describe the reputation of legal aid lawyers who practice in front of them, the judges are almost universally extremely positive. Representative comments include "Good, competent, hard-working, grossly underpaid," "Good and competent in legal knowledge and practice; professional, ethical and courteous in their dealings" and "selfless and hardworking." As one judge stated, legal services attorneys are "overworked and underpaid, stretched too thin because they have to cover too many courts."

The strong judicial neutrality on efficiency and use of resources presents an opportunity for the legal services organizations to reflect on why judges might have concerns in that area. Have area judges contributed enough to the priority setting? Have area judges been well-informed on the substantial cuts to legal services programs? Can the legal services organizations work more closely with the judiciary to solve some of the representation problems? Can local judges do more work to encourage or support pro bono services of local attorneys?

Opposing Counsel

Twenty-seven opposing counsel responded to the survey. 88.0% agreed that legal aid attorneys are well-prepared for legal interactions. (11.1% were neutral on this statement, 0 disagreed with it.) 96.3% agreed that legal aid attorneys were good advocates for their clients. 92.6% agreed that legal aid attorneys were well-informed in the areas of law they practice.

As with the judges who responded, opposing counsel tended to not agree as strongly that legal aid attorneys are efficient with their time or use resources wisely. One attorney strongly disagreed with the statement that legal aid attorneys are efficient with their time, while 25.9% (seven attorneys) remained neutral on that statement. Two attorneys disagreed that legal aid attorneys use resources wisely, while 34.6% (nine attorneys) remained neutral on that statement.

Again, the legal services programs should examine why it is that a significant percentage of opposing counsel believes that their attorneys could be more efficient and/or use resources more wisely. Generally, opposing counsel stated that the reputations of legal aid attorneys in their communities is good, but some provided the following comments, which might help the organizations reflect on why there is some perception of inefficiency and/or not the best use of resources:

They make poor decisions about which cases they take on.

They are very zealous about their cases and very committed to their clients. They file far more motions and do more discovery than private lawyers doing cases for people with similar income levels. They work very hard for their client's interests. They cannot be faulted for a lack of enthusiasm or dedication.

That they are good attorneys but not very helpful because they can only take cases where there is domestic violence and a huge amount of the population who need help are neglected.

Opposing Counsel were asked, specifically, “Are there any other comments you would like to make about legal aid attorneys.” This question provided some interesting input, with many opposing counsel wondering about the priority setting and screening done by local offices. The perspective of some opposing counsel appears to be that the legal services offices should think more about which cases to take, rather than taking whichever cases happen to walk into the door.



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 6, 2013
From: Tom Kranovich, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (1 of 2)

Action Recommended

On October 25 the Board Development Committee selected the following members for appointment:

Advisory Committee on Diversity and Inclusion

Chair: John M. Haroldson
Secretary: Cynthia Starke
Members with terms expiring 12/31/2016:
David Bartz Jr.
Irina Batrakova
Bruce Harrell
Jonathan Liou
Gabriel Moses
J. Nicole Rose
Daniel Simon

Bar/Press/Broadcasters Council

Members with terms expiring 12/31/2015:
Alison Wilkinson
Members with terms expiring 12/31/2016:
Nancy Cozine
Chad Jacobs
Steven Krasik
Christian Stringer

Client Security Fund Committee

Chair: Elaine Brown
Secretary: Lisa Miller
Members with terms expiring 12/31/2016:
Steven Bennett
Lisanne Butterfield
Mary Dougherty
Andrew Keeler
Mitzi Naucler

Federal Practice and Procedure Committee

Chair: Kelly Zusman
Co-Secretaries: Edward McGlone III and Anna Sortun
Members with terms expiring 12/31/2016:
Anna Braun
Carl Crowell
Tim Myers
Shannon Riordan Armstrong
Anna Sortun
Benjamin Souede

Judicial Administration Committee

Chair: Roderick Boutin
Secretary: Danielle Hunsaker
Members with terms expiring 12/31/2016:
Ryan Bounds
Susan Lain
Agnes House
Kate Wilkinson
James D. Williams

Legal Ethics Committee

Chair: Shannon Riordan Armstrong
Secretary: Robert G. Burt
Members with terms expiring 12/31/2016:
Kimberly S. Boswell
Katrina Brown
Erious Johnson Jr.
Chris Shaffner

Legal Heritage Committee

Chair: Katharine von Ter Stegge
Secretary: Rachel Lynn Hull
Members with terms expiring 12/31/2016:
Mary Anne Anderson
David Avison
Gabriel Mead Biello
Bill Chin
Jamie Lynn Dickinson
Ning Fu
Janet Kreft
Adam Schenker
Jacqueline Tommas
Paul Martinez (public)
Jay Mullen (public)

Legal Services Committee

Chair: Josh Newton
Secretary: Kristin Bremer
Members with terms expiring 12/31/2016:
Brent Hall
Kamala H. Shugar

MCLE Committee

Chair: Sean O'Day
Secretary: Linda Larkin
Members with terms expiring 12/31/2016:
Carla Kelley

New Lawyer Mentoring Program Committee

Chair: Jeffrey Howes
Members with terms expiring 12/31/2015:
Michael Purcell
Members with terms expiring 12/31/2016:
Alfred Frank Bowen III
Kelsie McDaniel
Sarah Petersen
Ariel Vee
Jessica Wilcox

Procedure and Practice Committee

Chair: Jason Pistacchio
Secretary: Steven C. Berman
Members with terms expiring 12/31/2016:
Kristin Abel
John Eickelberg
Loren Gramson
Anna Malmberg
Chin See Ming

Public Service & Information Committee

Chair: Heidi Brown
Secretary: Jennifer A. Costa
Members with terms expiring 12/31/2016:
Gary Firestone
Kamron L. Graham
Anna Marie Joyce
Robert Howard Klonoff

State Lawyers Assistance Committee

Chair: Robert M. Lusk
Secretary: Kevin Lucey
Members with terms expiring 12/31/2016:
Teri Durham
Members with terms expiring 12/31/2017:
Michael Cougar
Stephen J. Doyle

Uniform Civil Jury Instructions Committee

Chair: Matthew Malmshemer
Secretary: John Thomas Devlin
Members with terms expiring 12/31/2016:
Hon. Oscar Garcia
Charles Henderson
Gordon Osaka
Mark Allen Peterson
Christina Stephenson
Katharine von Ter Stegge

Uniform Criminal Jury Instructions Committee

Chair: Hon. Terry Ann Leggett
Secretary: Jaime Contreras
Members with terms expiring 12/31/2016:
Barry Engle
Patrick Flaherty
Amanda Nadell
Andrew Robinson
Alix Wicks

Unlawful Practice of Law Committee

Chair: Laura Rufolo
Chair-Elect: Katharine von Ter Stegge
Secretary: David Doughman
Members with terms expiring 12/31/2017:
Aaron Knott
James Nitta
AnneMarie Sgarlata
Caroline Louise Smith
Elizabeth Wakefield

Disciplinary Board

State Chair and Chair-Elect terms expire 12/31/2014.

State Chair: Pamela E. Yee

State Chair-Elect: Nancy M. Cooper

Unless designated otherwise, regional chair positions have terms expiring 12/31/2014 and members have terms expiring 12/31/2016.

Region 1

Chair: Carl W. Hopp Jr.

Members:

J. David Coughlin

Jennifer Kimble

Max Taggart

William Olsen (public)

John G. McBee (public)

Region 2

Chair: Robert A. Miller

Members:

Carrie Bebout (public)

Region 3

Chair: Megan B. Annand

Members:

Joan-Marie Michelsen

William Francis

April Leigh Sevcik (public)

Region 4

Chair: Kathy Proctor

Members:

Kathy Proctor

Eddie D. Medina

Simeon D. Rapoport (term
expires 12/31/2015)

Region 5

Chair: Cooper, Nancy

Members:

Ronald Atwood

Dylan Cernitz

Charles Paternoster

Kristina M. Reynolds

David Rabbino

Bryan Beel

Charles Martin (public)

Joyce Ironside (public)

Region 6

Chair: James C. Edmonds

Members:

John Barlow

Sydney Brewster

Paul Levy

Robert McCann

Yvonne Ana Tamayo

Fadd Beyrouty (public)

Dorothy Fallon (public)

Richard M. Miller (public)

Region 7

Chair: Anthony Buccino

Members:

Deanna Franco

Kelly Harpster

Willard Chi

Andrew Cole

Joan LeBarron (public)

Terry A. Donahe (public)

State Professional Responsibility Board

Chair: Michael J. Gentry (term expires 12/31/2014)

Members with terms expiring 12/31/2017:

Valerie Wright

Justin N. Rosas

Nathaline Frener (public member)

Professional Liability Fund Board of Directors

Dennis Black, member with term expiring 12/31/2018

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 22-23, 2013
Memo Date: November 14, 2013
From: Rod Wegener, CFO
Re: 2014 OSB Budget Report

Action Recommended

Review and approval of the 2014 OSB Budget.

Background

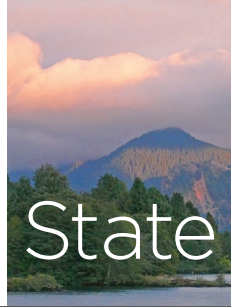
The 2014 OSB Budget Report is 75 pages of the narrative and line item budget of all bar programs and departments following a summary of the budget. The report contains changes made after the Budget & Finance Committee reviewed the budget at its October 15 meeting and instructed staff to eliminate the potential \$107,000 use of reserve dollars to balance all operations.

A print copy of the report was mailed to the Board of Governors and the new 2014 board members on November 14, and the online version is [available at this link](#).

Highlights of the 2014 budget are:

- A net operating revenue of \$453,471;
- No change in the active or inactive membership fee, except for increasing the Diversity & Inclusion assessment approved by the House of Delegates;
- Operating revenue exceeding the 2013 budget by \$309,700, or 2.9%, even though membership fee revenue is only \$65,000 more than the 2013 budget and showing a decline in membership growth;
- No reserve funds are transferred to revenue for operational needs;
- All operating expenses are \$137,400, or 1.3%, less than the 2013 budget;
- The \$15.00 increase in the D&I assessment raises additional revenue of \$217,400 for the program

Oregon State Bar



2014 Budget

Report to the
Board of Governors

November 21-23, 2013

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2014 BUDGET

Report to the Board of Governors

November 22-23, 2013



Introduction to the Budget Report

This report is for the review and approval of the 2014 budget for the Oregon State Bar by the Board of Governors. The report will be reviewed one more time by the Budget & Finance Committee just prior to the board meeting on November 23.

On October 25 the Committee reviewed the report developed by bar staff of the line item department and program budgets. The outcome of that review was the Committee's recommendation to pare \$107,000 from the budget to assure no reserve funds are needed to fund bar operations. The result of the changes:

**The Net Operating Revenue
of the 2014 BUDGET is
\$453,471**

The revised Net Operating Revenue (NOR) is a \$179,401 improvement of the NOR included in the October 25 report. The next few pages describe the changes made to accomplish the improved NOR and cash position.

The Net Expense in 2012 was \$2,641. The Net Revenue projected for 2013 is \$6,331. The 2014 budget is a continuation of the services and operations of those budgets. The 2014 Net Operating Revenue is attributable to encouraging revenue projections in certain programs, even with slowing membership growth, and concerted efforts to control and decrease operational costs.

Exhibit A is a one-page program by program summary of the 2014 budget.

Report Format

This report is a new format for the budget report to the board. The first seven pages are an overall summary of the budget and the changes made to eliminate the potential \$107,000 cash deficit. The bulk of the report is a two-page description of each program or department.

- The first page is a brief narrative of the program's operations and services and a description of key program revenue or expenses, or changes from the 2013 to 2014 budget.
- The second page is a line-by-line statement of the program's 2014 budget with 2012 and 2013 comparisons.

Overview of the 2014 Budget

Revenue . . .

■ Membership Fees

Although Membership Fee revenue increases over 2013, the increase is smaller than previous years.

Through ten months of 2013, the member fee revenue increase is 1.4 % over 2012, and has been above 1% for the last four months of 2013. The projected 2014 revenue of \$7,076,000 is \$65,000, or .93% more than the 2013 budget primarily due to slower membership growth.

The 2014 budget includes:

- **no active member fee increase – the 9th consecutive year of no general fee increase**
- **no transfer of reserves to revenue for general operations.**

Member Fee Revenue Since the Last Active Member Fee Increase

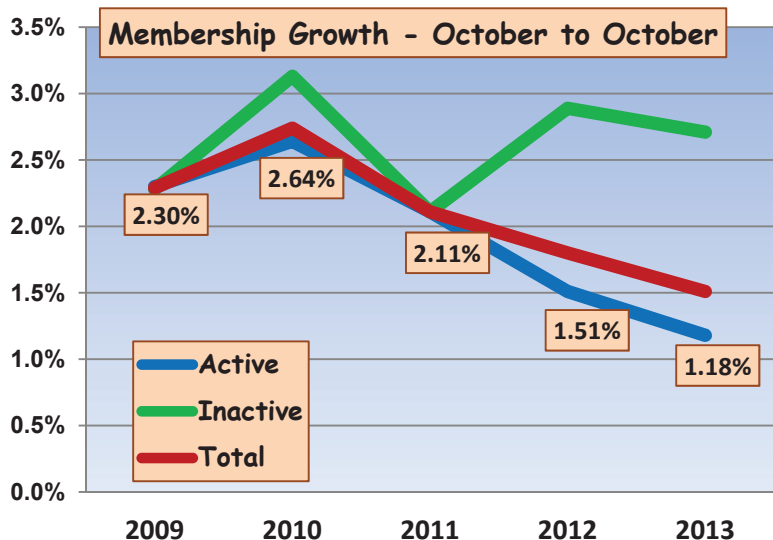
Year	Actual	\$ Chg YOY	% YOY
2014 B	\$7,076,000	\$65,000	0.93%
2013 B	\$7,011,000	\$51,300	0.74%
2012	\$6,959,700	\$145,657	2.14%
2011	\$6,814,043	\$183,588	2.77%
2010	\$6,630,455	\$153,872	2.38%
2009	\$6,476,583	\$159,808	2.53%
2008	\$6,316,775	\$127,911	2.07%
2007	\$6,188,864	\$156,947	2.60%
2006	\$6,031,917		
Average 2007 to 2012			2.41%

The increased revenue from membership fees in 2013 and 2014 is lower than any year since the last time there was a member fee increase (for 2006).

Another cause of lesser fee revenue is members making their fee payments with credit card (in 2013 over half the members paid with credit card), rather than after the January 31 deadline. In 2014, the additional revenue from late payments is \$14,400 lower than 2013 – the approximate amount of lower late fee revenue experienced then.

The Impact of Slowing Membership Growth

Not surprisingly Membership Fee revenue parallels the changes in the number of bar members. That parallel is never more evident now as the growth of membership is declining. The chart clearly indicates a “trend” in bar membership with lower growth from one year to the next in the last three years. A chart similar to the one at the right was created for May to May and September to September and those charts parallel the October to October growth.



Going back further, the year-over-year membership increase in the decade 2000 to 2009 averaged 2.53% a year making the current downward trend even more dramatic.

■ Program Fees

Program Fee revenue increases \$334,000, or 9.9%, over the 2013 budget, and is attributable to three programs.

- The revenue from the **Lawyer Referral** percentage fee model has exceeded its first year projections which, due to the newness of the program, were set low. Revenue from registration and percentage fees are projected at \$305,000 more than the 2013 budget.
- **Legal Publications** print sales also have exceeded expectations (and already have exceeded the revenue budget for 2013), and has created new revenue sources. Sales and royalty revenue is projected \$104,900 higher.
- Surprisingly **Admissions** revenue is projected at \$20,400 more than 2013 as enrollment and resultant bar application numbers are not expected to drop until 2015.

CLE Seminars revenue shows a budget decline of \$55,000 and most other program sources of revenue show a slight decline from 2013, but the gains above offset those declines. For further explanation of those changes, refer to the narrative summaries of each program.

Expenditures . . .

All expenses are \$137,400, or 1.3%, less than the 2013 budget.

■ Salaries, Taxes & Benefits

This draft of the budget includes a 2% salary pool. In spite of this increase, a most surprising change for the 2014 budget is only a \$73,700, or .9%, increase in personnel costs for 2014. There are two major reasons for this:

1. The taxes and benefits rate as a percent of salaries is 38.1%.

This is more than a full percentage less than the 2013 budget.

The sole reason for this lower rate is the lower than expected employer's contribution rate for PERS that began with the two-year rate period beginning July 1, 2013.

Estimated Impact of Salary Pool on 2014 Budget		
Per Cent Change	Dollar Amount	Revised Net Revenue (Expense)
No change	\$ 0	\$ 590,371
2%	\$ 136,900	\$ 453,471
3%	\$ 205,400	\$ 384,971

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

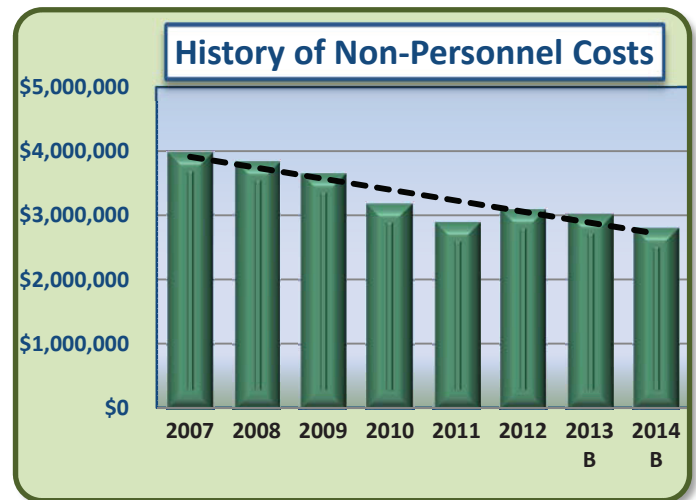
The lower rate is a result of SB 822. Although other PERS-related bills have since passed legislative action within the past few weeks, the impact of those changes on the current or future rate is not known yet.

- To offset any significant rate increase in mid 2015, the PERS Contingency will be increased monthly until mid 2015 when the contingency will be \$434,000.
2. There have been personnel changes in 2013 that impact the salaries budget:
- Five exempt attorney staff (four of which had in excess of ten years experience at the bar) and one exempt manager left bar employment during 2013. Some positions still are vacant and the replacement salary typically is lower than the replaced employee.
- Also, a new employee joins PERS in a plan with a lower contribution rate than a former long-term employee.
- The Admissions Department has eliminated an administrative position.

An exception to the little change in overall salaries is an increase in personnel cost for added call staff in Lawyer Referral to handle the calls and administration for the percentage fee program. The added personnel are part-time staff and as the program develops, some added positions will be eliminated.

■ Non-Personnel Expenses (Direct Program & Administrative)

Non-personnel costs are lower by \$211,000, or 7.0% in the 2014 budget. This is the case in most departments. The largest decrease is in indirect costs as costs for copier leases, depreciation, postage, bank fees, and others are estimated to be less in 2014.



Not since 2009 have all operating costs been lower than the 2014 budget operating costs.

■ Restricted Funds

The next two funds do not receive funds from the general membership fee and each have a separate designated source of revenue and budget independent of the general operations budget.

Diversity & Inclusion

The \$15.00 increase to \$45.00 for each active member in the Diversity & Inclusion assessment will raise additional revenue of \$217,400 for the program. This will eliminate any net expense that would have occurred without the increase. The fund balance at the end of 2014 will reach \$108,000 with the budgeted program activities.

Client Security Fund

The Client Security Fund assessment remains at \$45.00. However, with the large volume of claims paid in 2012 and 2013, the revenue raised in 2013 and 2014 will still leave the fund balance at the end of 2014 below \$500,000.

■ Fanno Creek Place

Little change is expected in the Fanno Creek Place budget. The net expense of \$679,395 is \$23,000 less than the 2013 budget net expense.

■ The Five Years after 2014 (Exhibit B)

The higher than expected net revenue for 2014 changes the five-year forecast slightly from previous forecasts. Here are some assumptions in this forecast:

- Since the actual results of 2013 and 2014 exceed expectations, the forecast in this report defers a member fee increase to 2016, assuming no changes to operations and services.
- If there is no \$50.00 member fee increase until 2016, the forecast shows a \$141,000 net revenue for 2015. However, in the second year after the increase reserves are needed to eliminate a cash deficit and by the third year, a significant net expense develops.
- Program Fee revenue is stagnant year-over-year since Admissions revenue is expected to decline 15% in 2015 and 10% in 2016 before plateauing.
- Lawyer Referral revenue must offset the declines or no growth expected in Admissions, CLE Seminars, and Legal Publications for Program Fee revenue to remain constant.
- There is a nominal increase in expenses, but salary increases of 2% to 3% are included.

■ Software Modernization Project (Exhibit C)

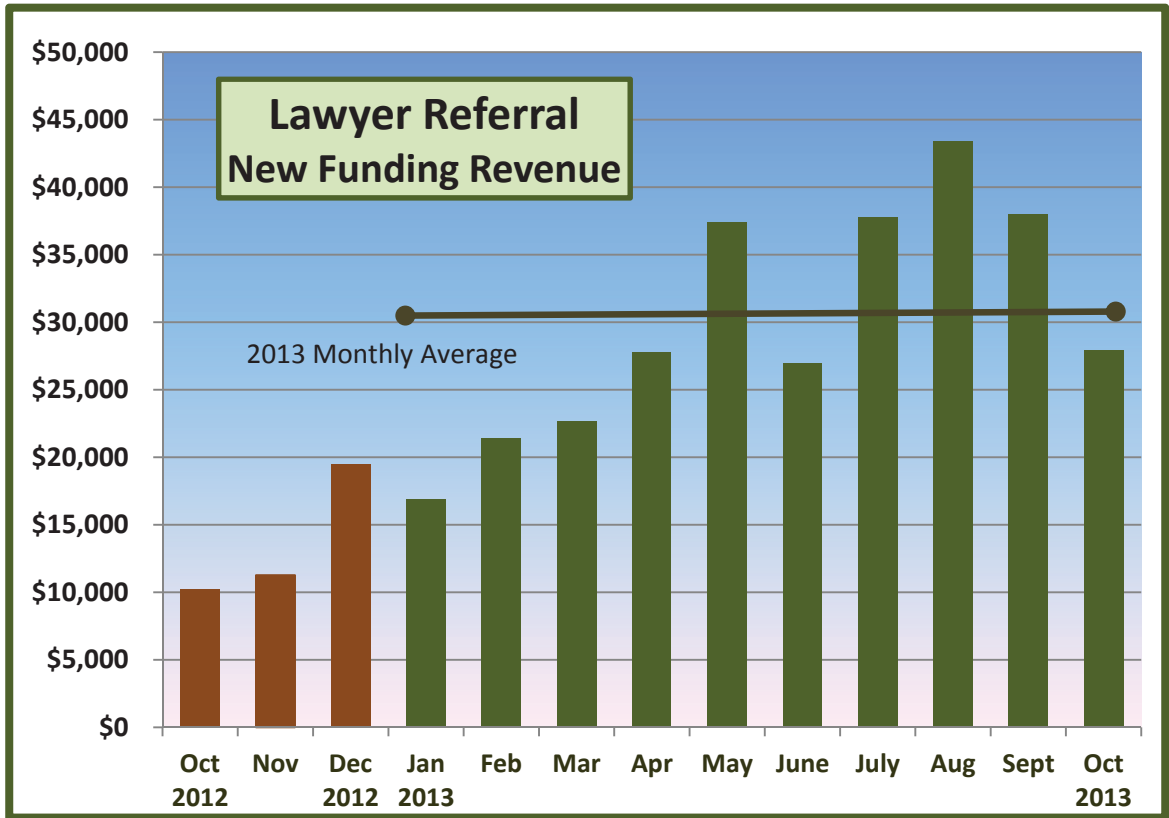
Exhibit C is an updated report on the plan to replace the bar's database and software planned for 2014.

Changes to the 2014 Budget AFTER the October 25 Budget & Finance Committee meeting

The report presented to the Budget & Finance Committee at its October 25 meeting included a Net Operating Revenue of \$274,069. However, the forecast for Funds Available showed a \$107,000 deficit, meaning reserve funds would be needed for all operations. The Committee instructed bar staff to eliminate the \$107,000 deficit.

After a review of all programs and departments an additional \$211,001 in additional revenue, cost reductions, and cash reductions were identified.

Account	Amount	Description
Revenue		
Membership Fees	\$26,100	Based on member count exceeding 1% for each month compared in 2013, the October to October fee increase at 1.4%, and further member status analysis, the fee revenue increase was raised from .55% to .93%.
Legal Publications	32,100	<i>Criminal Law</i> will not come to market until 2014, not December 2013 as originally planned. Sales are expected to be strong. Related costs also are deferred to 2014.
CLE Seminars	(20,000)	Online and Season Ticket sales are reduced after further analysis.
Lawyer Referral (see chart on next page)	77,500	Percentage fee revenue originally was projected at \$293,000 based on projections with the program implementation. Ten month sales in 2013 already are \$302,475 - a \$30,000 per month average. This monthly average is the estimate used for 2014. Member participation in the program has not declined as much as expected, so registration revenue is raised to the 2013 budget amount.
Total Revenue Changes	\$115,700	
Cost Reductions		
Contract Legal Fees	\$20,000	Due to legal matters resolved in 2013, a smaller budget (\$30,000) is included in 2014. Additionally, the reserve for these fees is \$172,819.
Eliminate Senior Lawyer Task Force Funding	10,000	The funding for this task force has been in the budget since 2011, but never implemented.
Net cost reductions in seven other program/ departments	33,701	Cost reductions of \$18,853 in four other program/ departments, increased costs of \$9,025 in three others, and \$23,873 in reallocation of ICA.
Total Cost Reductions	\$63,701	
Cash Available Adjustments		
Capital Purchases	\$31,600	The last budget draft for capital was a non-specific list of capital needs. A more thorough analysis identified capital needs of \$59,400 – not \$91,000.
Net Operating Revenue exceeding the 2013 budget	TBD	The 2013 budget NOR is only \$6,331. That amount was raised by \$100,000 in the last draft. If the NOR for 2013 is greater than \$106,331, the cash available for 2014 will increase.
Total cash available	\$31,600	
Total Changes from Oct 25 Budget Report	\$211,001	



Action on the 2014 Budget

Unless there are additional adjustments to this budget report by the Budget & Finance Committee, this is the final budget for 2014.

To reach a decision on the budget, the board should review each program and department narrative and line item budget in this report.

OREGON STATE BAR 2014 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$743,446	\$302,545	\$273,235	\$18,104	\$593,884	\$118,128	\$31,434
Bulletin	\$662,790	\$184,300	\$335,904	\$4,186	\$524,390	\$161,930	(\$23,530)
CLE Seminars	\$1,252,485	\$458,700	\$411,800	\$24,998	\$895,498	\$359,364	(\$2,377)
Client Assistance Office	\$0	\$506,800	\$600	\$16,792	\$524,192	\$118,989	(\$643,181)
Communications	\$23,300	\$488,000	\$18,600	\$7,600	\$514,200	\$115,681	(\$606,581)
Disciplinary Counsel	\$78,750	\$1,671,300	\$114,550	\$79,832	\$1,865,682	\$361,389	(\$2,148,321)
General Counsel	\$2,500	\$392,100	\$43,450	\$16,227	\$451,777	\$74,804	(\$524,081)
Governance (BOG)	\$0	\$301,100	\$152,750	\$23,008	\$476,858	\$73,242	(\$550,100)
Legal Publications	\$321,802	\$578,000	\$115,677	\$21,527	\$715,204	\$260,816	(\$654,218)
Loan Repayment Assistance Progra	\$74,900	\$0	\$88,000	\$0	\$88,000	\$0	(\$13,100)
MCLE	\$300,300	\$161,881	\$1,500	\$11,591	\$174,972	\$70,759	\$54,569
Member Services	\$0	\$169,048	\$11,750	\$5,097	\$185,895	\$102,649	(\$288,544)
New Lawyer Mentoring Program	\$20,000	\$140,700	\$2,950	\$1,890	\$145,540	\$50,467	(\$176,007)
New Lawyers Division	\$6,650	\$64,500	\$77,200	\$4,680	\$146,380	\$45,830	(\$185,560)
Public Affairs	\$0	\$439,900	\$20,750	\$32,638	\$493,288	\$91,614	(\$584,902)
Referral & Information Services	\$475,500	\$440,717	\$49,240	\$10,444	\$500,401	\$143,755	(\$168,656)
Special Projects	\$200,000	\$15,900	\$173,200	\$325	\$189,425	\$0	\$10,575
TOTAL PROGRAMS	\$4,162,423	\$6,315,491	\$1,891,156	\$278,939	\$8,485,586	\$2,149,417	(\$6,472,579)
ALLOCATIONS:							
Finance & Operations	\$6,951,050	\$1,536,644	\$772,647	\$76,005	\$2,385,296	(\$2,114,146)	\$6,679,900
Less: Dept Charges/Offsets			(\$271,150)		(\$271,150)		\$271,150
Oregon State Bar Center	\$0	\$0	\$27,910	\$840	\$28,750	(\$28,750)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
TOTAL OPERATIONS	\$11,113,473	\$7,852,135	\$2,445,563	\$355,784	\$10,653,482	\$6,521	\$453,471
Fanno Creek Place	\$837,340	\$117,400	\$1,544,515	\$15,279	\$1,677,194	(\$160,459)	(\$679,395)
TOTAL GENERAL FUND	\$11,950,813	\$7,969,535	\$3,990,078	\$371,063	\$12,330,676	(\$153,938)	(\$225,925)
DESIGNATED FUNDS:							
Diversity Inclusion	\$698,900	\$311,973	\$169,450	\$32,899	\$514,322	\$76,163	\$108,415
Client Security Fund	\$688,700	\$42,500	\$253,650	\$2,624	\$298,774	\$26,622	\$363,304
Legal Services	\$6,055,000	\$96,000	\$5,935,000	\$1,877	\$6,032,877	\$51,153	(\$29,030)
TOTAL ALL FUNDS	\$19,393,413	\$8,420,008	\$10,348,178	\$408,463	\$19,176,649	\$0	\$216,764

Exhibit A

2014 Budget

Oregon State Bar

Five-Year Forecast

Operations

November-13

Proposed Fee increase for Year		\$0	\$0	\$50	\$0	\$0	\$0
Operations	BUDGET	BUDGET	F O R E C A S T				
	2013	2014	2015	2016	2017	2018	2019
REVENUE							
MEMBER FEES							
General Fund	\$7,011,000	\$7,076,000	\$7,147,000	\$7,182,700	\$7,952,000	\$8,032,000	\$8,112,000
Active Member Fee Increase		0	0	730,000	0		
% of Total Revenue	64.9%	63.7%	64.3%	60.2%	67.3%	67.8%	67.8%
PROGRAM FEES:							
Admissions	721,998	743,446	631,900	568,700	568,700	568,700	568,700
CLE Seminars	1,307,455	1,252,485	1,227,400	1,227,400	1,227,400	1,227,400	1,227,400
Legal Publications (print sales)	217,865	321,802	250,000	200,000	150,000	150,000	100,000
Lawyer Referral New Model fees	55,000	360,000	472,000	562,000	588,000	500,000	550,000
All Other Programs	1,060,299	1,018,990	1,039,400	1,060,200	1,081,400	1,103,000	1,116,200
Total Program Fees	3,362,617	3,696,723	3,620,700	3,618,300	3,615,500	3,549,100	3,562,300
OTHER INCOME							
PLF Contribution	200,000	200,000	200,000	200,000	0	0	0
Reallocation of Reserves	100,000	0	0	0	0	0	0
Investment & Other Income	130,112	140,750	138,900	192,800	243,800	260,600	293,200
TOTAL REVENUE	10,803,729	11,113,473	11,106,600	11,923,800	11,811,300	11,841,700	11,967,500
EXPENDITURES							
SALARIES TAXES & BENEFITS							
Salaries - Regular	5,548,900	5,664,500	5,769,600	5,934,300	6,103,600	6,277,700	6,456,700
Benefits - Regular	2,199,200	2,159,599	2,296,900	2,476,400	2,653,800	2,823,700	2,943,000
Salaries & Taxes - Temp	30,382	28,035	44,000	33,000	44,000	33,000	44,000
Total Salaries & Benefits	7,778,482	7,852,134	8,110,500	8,443,700	8,801,400	9,134,400	9,443,700
% of Total Revenue	72.0%	70.7%	73.0%	70.8%	74.5%	77.1%	78.9%
DIRECT PROGRAM:							
CLE Seminars	424,025	411,800	415,900	420,100	426,400	430,700	437,200
Legal Publications	100,313	115,677	125,000	100,000	75,000	75,000	50,000
All Other Programs	2,069,238	1,893,086	1,921,500	1,959,900	1,999,100	2,059,100	2,120,900
Total Direct Program	2,593,576	2,420,563	2,462,400	2,480,000	2,500,500	2,564,800	2,608,100
GENERAL & ADMIN (incl offsets)	400,340	362,305	367,700	375,100	382,600	394,100	405,900
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENSES	10,797,398	10,660,002	10,965,600	11,323,800	11,709,500	12,118,300	12,482,700
NET REVENUE/(EXPENSE) - OPERATIONS	\$6,331	\$453,471	\$141,000	\$600,000	\$101,800	(\$276,600)	(\$515,200)

2014 Budget			Five-Year Forecast				
Fanno Creek Place							
Fanno Creek Place	BUDGET	BUDGET	F O R E C A S T				
	2013	2014	2015	2016	2017	2018	2019
REVENUE							
RENTAL INCOME							
PLF	\$504,807	\$512,379	\$520,065	\$527,865	\$535,783	\$543,820	\$551,977
First Floor Tenant - Suite 175 - Zip Realty	52,160	48,681	50,141	51,646	53,195	54,791	30,569
First Floor Tenant - Suite 150 - Joffe	128,683	130,599	134,517	103,914	107,032	132,000	135,960
First Floor Tenant - Suite 100 - Simpson Prop	55,585	23,486	24,191	24,900	25,600	26,368	27,159
First Floor Tenant - Suite 110 - Prof Prop Gp	0	27,969	28,808	29,672	29,672	30,562	30,562
First Floor Tenant - Suite 165 (vacant)	0	22,638	45,276	46,634	48,033	49,474	24,737
OLF	28,536	29,388	30,300	31,200	32,100	33,100	34,100
Meeting Rooms	30,000	40,000	30,000	25,000	24,000	24,000	24,000
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400
INTEREST	2,100	2,200	2,500	2,800	3,000	3,200	4,000
TOTAL REVENUE	801,871	837,340	868,798	846,732	861,615	900,616	866,465
EXPENDITURES							
OPERATING EXPENSE							
Salaries & Benefits	119,800	117,400	119,700	123,300	127,000	130,800	134,700
Operations	308,560	334,239	344,300	354,600	365,200	376,200	387,500
Depreciation	510,100	509,300	514,300	514,300	514,300	524,300	524,300
Other	5,180	8,600	8,600	8,600	8,600	8,600	8,600
DEBT SERVICE							
Interest	720,801	707,655	693,699	678,884	663,158	646,462	628,729
TOTAL OPERATING EXPENSES	1,664,441	1,677,194	1,680,599	1,679,684	1,678,258	1,686,362	1,683,829
ICA to Operations	(160,459)	(160,459)	(160,500)	(164,500)	(164,500)	(164,500)	(168,600)
NET EXPENSES	1,503,982	1,516,735	1,520,099	1,515,184	1,513,758	1,521,862	1,515,229
NET REVENUE/(EXPENSE) - FC Place	(\$702,111)	(\$679,395)	(\$651,301)	(\$668,452)	(\$652,143)	(\$621,246)	(\$648,764)
ACCRUAL TO CASH ADJUSTMENT							
SOURCES OF FUNDS							
Depreciation Expense	510,100	509,300	514,300	514,300	514,300	524,300	524,300
Landlord Contingency Fund	30,000	30,000				200,000	
Loan Proceeds							
USES OF FUNDS							
Assign PLF Subtenants' Leases (Net)							
TI's - First Floor Tenants	(30,000)	(30,000)					
Principal Pmts - Mortgage	(213,507)	(224,653)	(240,609)	(256,424)	(271,150)	(287,846)	(305,569)
NET CASH FLOW - FC Place	(\$405,518)	(\$394,748)	(\$377,610)	(\$410,576)	(\$408,993)	(\$184,792)	(\$430,033)

2014 Budget

Five-Year Forecast

Funds Available/Reserve Requirement

	BUDGET	BUDGET	F O R E C A S T				
	2013	2014	2015	2016	2017	2018	2019
FUNDS AVAILABLE							
Funds Available - Beginning of Year	\$ 1,496,210	\$1,368,493	\$1,471,616	\$1,351,246	\$1,806,570	\$1,554,477	\$984,985
SOURCES OF FUNDS							
Net Revenue/(Expense) from operations	6,331	453,471	141,000	600,000	101,800	(276,600)	(515,200)
Depreciation Expense	176,800	140,000	142,800	145,700	148,600	150,100	151,600
Provision for Bad Debts	21,000	25,000	25,000	25,000	25,000	25,000	25,000
Increase in Investment Portfolio MV	71,000	70,000	76,000	89,000	0	115,000	138,000
Allocation of PERS Reserve	111,000		64,440	129,000	64,500		
Projected HIGHER Net Operating Revenue	100,000						
USES OF FUNDS							
Capital Expenditures	(56,850)	(54,400)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Reserve Expenditures	(21,000)		(25,000)	(40,000)	(50,000)	(75,000)	(50,000)
Capital Expenditures - New Building	(10,000)	(5,000)	(30,000)		(50,000)		(50,000)
Capital Reserve Expenditures - New Building						(200,000)	
Landlord Contingency Interest	(2,100)	(2,200)	(2,500)	(2,800)	(3,000)	(3,200)	(4,000)
Net Cash Flow - Fanno Creek Place	(405,518)	(394,748)	(377,610)	(410,576)	(408,993)	(184,792)	(430,033)
Addition to PERS Reserve	(118,380)	(129,000)	(64,500)				
Projected LOWER Net Operating Revenue	0						
CHANGE IN FUNDS AVAILABLE	(127,717)	103,123	(120,370)	455,324	(252,093)	(569,492)	(814,633)
Funds Available - End of Year	\$1,368,493	\$1,471,616	\$1,351,246	\$1,806,570	\$1,554,477	\$984,985	\$170,352
RESERVE REQUIREMENT							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	525,000	550,000	575,000	600,000
Total - Reserve Requirement	\$1,000,000	\$1,000,000	\$1,000,000	\$1,025,000	\$1,050,000	\$1,075,000	\$1,100,000
RESERVE VARIANCE							
Over/(Under) Reserve Requirement	\$368,493	\$471,616	\$351,246	\$781,570	\$504,477	(\$90,015)	(\$929,648)
RECONCILIATION							
CASH to ACCRUAL	BUDGET	BUDGET	FORECAST				
	2013	2014	2015	2016	2017	2018	2019
NET REVENUE/(EXPENSE) - Operations	6,331	453,471	141,000	600,000	101,800	(276,600)	(515,200)
NET REVENUE/(EXPENSE) - FC Place	(702,111)	(679,395)	(651,301)	(668,452)	(652,143)	(621,246)	(648,764)
NET REVENUE/(EXPENSE) - OSB	(\$695,780)	(\$225,924)	(\$510,301)	(\$68,452)	(\$550,343)	(\$897,846)	(\$1,163,964)

MODERNIZING THE BAR'S DATABASE SOFTWARE

The foundation of the bar's membership information and most operational functions is a relational database entitled UniVerse. UniVerse was first installed at the bar in 1985 or 1986; thus the technology product the bar relies on so heavily is approaching thirty years. In today's technology world that is ancient technology.

Over the years, UniVerse has had four to five owners, including IBM, and the current owner is Rocket Software, which is a split-off of IBM. All OSB functional program software is customized – a good and bad feature at the same time.

UniVerse isn't a user-friendly product in today's technology environment. Over the years the bar has had staff who were program specialists in the software and for the past several years has relied on a contract programmer who is moving to retirement. This programmer works closely with the bar's IT staff and another contract programmer who specializes in the bar's website infrastructure and e-commerce.

In the late 1990's the bar embarked on a plan to replace the UniVerse system and hired a consultant to analyze all bar functions and develop a Request for Proposal to distribute to Association Management System (AMS) vendors. The bar selected a vendor from the Washington DC area (where most AMS vendors reside), but the project failed for two reasons. First, bar staff working on the conversion reported that the conversion was not improving the existing environment, and at the same time staff were reporting this, the company president reported he has sold his company to another vendor. After analyzing the options, the bar executed its contract termination rights. In hindsight and what the bar has learned about the vendor to whom the company was sold, the bar's decision to terminate was the best action.

There are pros and cons to customized software. The pros include developing software specifically designed to your operations. Today the cons outweigh the pros since any changes to operations mean a redesign of the software and the required documentation. Also, over time the customized program can divert from "best practices" for the operation.

The bar's IT staff consistently hit roadblocks as a result of the aging database. The fragility of the database has made new work slow to develop and in many cases not possible due to unmanageable code and non-standard integration methods. To make changes to meet regulatory requirements, increase staff efficiency and enhance member experiences the system needs an overhaul.

In 2011 the bar hired a former Schnitzer Steel employee to be the bar's Business Analyst/Project Manager, a position redesigned from an existing vacant position. Shortly thereafter, and with other department restructuring, the employee was appointed as the IT Manager with the objective of developing a plan to replace the UniVerse database.

Bar staff have considered these alternatives in evaluation of the database infrastructure:

1. Upgrade UniVerse, purchase the various required add-ons and re-engineer existing data structures.

Conclusion: The platform and programming language is not supported by the larger IT community. Programmers that work in this environment are in the decline.

2. Rebuild and re-customize the application in a new database platform.

Conclusion: The nature of building custom software with the variety of programs the bar provides is extremely complex and with only one staff programmer, one system administrator and one business analyst/project manager the amount work required is cost and time prohibitive (considering it has been almost three decades to arrive at the existing applications).

3. Buy Association and Case Management software.

Conclusion: Many applications today are built with flexibility in mind to allow IT to configure and extend existing application and platforms without having to be responsible for all aspects of the software development lifecycle. Options to this are a core group of vendors providing standard Association Management Systems and broad platforms for case management and Customer Relationship Management systems.

The IT manager has had preliminary interviews with a number of vendors to ascertain future involvement and demonstrations in consideration of the third option. Standard project management methodology will be used throughout the project to control the overall scope, timeline and budget. Currently the project is in the initiation stage which includes, high-level technical and functional requirements gathering, prioritization of needs, scope definition, and the vendor selection process.

This project will have workload strain to some degree on most staff (in addition to the commitment of time by the IT staff) as all departments must provide input, and the project must be considered a long-term investment and improvement to the current status. The results should have a positive effect on bar operations by creating far greater efficiency of numerous operations, eliminating the cost for contract programmers, eliminating certain licenses, and over time require less administrative, manual, and redundant processes which should lead to the elimination of administrative staff positions.

All bar staff have a PC at their disposal. Installed on each PC is the Microsoft Office suite of Word, Excel, Email, PowerPoint, and Access on some stations. The purchase of the new database will not change the need for these products. If any new hardware is needed, it will be a new server or servers to support the new software.

It is too soon to ascertain a cost for the new database, but it will be somewhere in six figures. Once vendor(s) are chosen bar staff can begin calculating the initial budget and timeline. The bar has maintained a \$500,000 capital reserve for technology and other large, infrequent capital purchases for several years, and it is expected this reserve will fund the project.

ADMISSIONS

The Admissions Department administers the Supreme Court Rules for Admission of Attorneys in Oregon on behalf of the Board of Bar Examiners (BBX) for the Oregon Supreme Court. The department processes applications for admission and conducts character and fitness investigations on all applicants seeking admission to the bar via the bar examination, reciprocity, house counsel, law teacher admission, and pro bono admission.

By Supreme Court rule, the Board appoints an Executive Director who serves at the pleasure of the BBX. (In 2013 the BBX changed the Executive Director position to Admission Director with a corresponding reduction in salary classification. The necessary rule change will be submitted to the Court in the near future.)

The Admissions office will process over 800 applications in 2013. Approximately 650 of those took the Oregon bar exam. Due to an expected 54 person spike in graduates at the University of Oregon Law School in 2014, the number of applicants estimated to take the Oregon bar exam will remain constant in 2014 before declining in 2015 and 2016.

Reciprocity applicants are on pace to reach 160 applicants in 2013. While reciprocity admission is expected to continue to increase, the budget for this applicant remains constant for 2014.

Although applicant numbers and revenue are expected to remain flat in 2014, but a decline in revenue is expected in 2015 and beyond, significant and permanent budget cuts have been made starting with the 2014 budget in two areas:

- The duties of the vacant Admissions Assistant and Specialists positions will be combined into one higher rated position; thus, eliminating one position and reducing the department's personnel budget by approximately \$53,000.
- The BBX's grading session will be reduced by one day saving approximately \$13,000.

2014 Budget

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
101-4070-000	Applications - Bar Exam	445,938	453,750	437,500	-16,250
101-4070-100	Applications - W/O Bar Exam	113,375	81,250	106,250	25,000
101-4180-000	Supreme Court Certificate revenue	7,245	8,750	6,000	-2,750
101-4320-000	Investigation Fees - Bar Exam	26,250	46,250	46,250	0
101-4320-100	Investigation Fees - W/O Bar Exam	47,050	55,250	72,250	17,000
101-4355-000	Late Fees - Bar Exam	26,250	38,500	38,500	0
101-4490-000	Photocopies	4,950	4,850	4,950	100
101-4670-000	Services to Other Bars	545	375	375	0
101-4750-000	Laptop Fees	32,393	33,023	31,371	-1,652
Total Revenues		\$703,996	\$721,998	\$743,446	\$21,448
Salaries & Benefits					
101-6100-000	Employee Salaries - Regular	214,253	224,400	218,400	-6,000
101-6105-000	Employee Taxes & Benefits - Regular	85,004	88,900	83,300	-5,600
101-6200-000	Employee Salaries - Temporary	5,089	7,120	768	-6,352
101-6205-000	Employee Taxes & Benefits - Temporary	389	712	77	-635
Total Salaries & Benefits		\$304,735	\$321,132	\$302,545	(\$18,587)
Direct Program Expenses					
101-7110-000	Bar Exam Multistate Fees - MBE	37,822	41,500	39,900	-1,600
101-7110-100	Bar Exam Multistate Fees - MPT	12,087	17,700	17,290	-410
101-7110-200	Bar Exam Multistate Fees - MEE	14,349	13,050	8,645	-4,405
101-7130-000	Bar Exam Special Testing Conditions	6,020	7,500	7,500	0
101-7135-000	Laptop Exp - Special Testing Conditions	738	2,000	4,200	2,200
101-7135-100	Bar Exam Laptop Testing Exp - Electrical	2,577	3,750	3,750	0
101-7140-000	Bar Exam Specific expenses	11,258	11,000	12,000	1,000
101-7175-000	Supreme Court Certificates	2,436	4,000	4,000	0
101-7265-000	Contract Services	1,250	3,000	2,000	-1,000
101-7360-000	Facilities	15,315	18,000	18,000	0
101-7415-000	Hearings	0	5,000	5,000	0
101-7450-000	Investigation - Character/Fitness	4,950	3,000	3,000	0
101-7930-016	Travel & Expense - Board	169,442	159,350	145,950	-13,400
101-7940-000	Travel & Expense - Others	2,071	2,000	2,000	0
Total Direct Program Expenses		\$280,315	\$290,850	\$273,235	(\$17,615)
General & Administrative Expenses					
101-9400-000	Messenger & Delivery Services	42	200	200	0
101-9500-000	Office Supplies	1,530	2,000	2,000	0
101-9600-000	In House Printing	1,824	2,400	3,000	600
101-9620-000	Postage	4,645	5,000	5,000	0
101-9680-000	Publications & Subscriptions	0	200	300	100
101-9800-000	Telephone	0	100	100	0
101-9830-000	Training & Education	0	500	800	300
101-9850-000	Travel & Expense - Staff	7,989	7,081	6,704	-377
Total General & Administrative Expenses		\$16,030	\$17,481	\$18,104	\$623
Total Expenses		\$601,080	\$629,463	\$593,884	
Net Operating Revenue (Expense)		\$102,916	\$92,535	\$149,562	
101-9000-000	<i>Less: Indirect Cost Allocation</i>	\$141,397	\$130,881	\$118,128	
Net Revenue (Expense)		(\$38,481)	(\$38,346)	\$31,434	

BULLETIN

The Bulletin Department is responsible for the publication of OSB Bulletin, the 10-times-a-year magazine that is mailed to every active, inactive and active pro bono member of the Oregon State Bar, as well as advertisers and about 100 subscribers. Total circulation is approximately 18,500.

The Bulletin staff consists of one full-time editor, a half-time associate editor and a half-time administrative assistant. Advertising is handled by an independent contractor, paid by commission. Design and production is handled by the OSB Creative Services Department.

Working with bar leadership and senior OSB staff, the Bulletin staff develops an editorial calendar of articles, columns and other features, and works with bar leaders, OSB staff, freelance writers and volunteers to procure and edit all editorial matter in the magazine. Staff also edit and write the several hundred press releases submitted every year for the Briefs, Bar News and the popular Bar People column (“Among Ourselves” and “Moves”).

The Bulletin’s major revenues are generated by three forms of advertising: display advertising, lawyer announcements and classifieds. Pursuant to postal regulations, a small portion of the annual member fee (\$10 per year) is allocated to the Bulletin for the purpose of a subscription. Other minor revenue categories are royalties (Lexis-Nexis and Westlaw) and photo fees (Bar People section).

Recent financial trends include:

- continuing softness in the business-to-lawyer advertising sector (e.g., expert witnesses, professional services, publishers);
- continuing growth in the lawyer-to-lawyer advertising sector (firms seeking referrals, announcement of moves, openings and new hires);
- continuing decline in classified advertising, mirroring a national trend;
- a shift to smaller, or less frequent, advertisements, particularly to the new “Attorney Marketplace” section.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
123-4005-001	Atty Market Place Adv - 5 issues	0	0	32,500	32,500
123-4006-001	Atty Market Place Ads - 10 issues	0	0	32,500	32,500
123-4010-xxx	Advertising - ALL	311,815	357,936	303,306	-54,630
123-4015-xxx	Advertising - Classified - ALL	40,262	38,760	37,918	-842
123-4020-xxx	Advertising - Lawyer Announceme - ALL	61,090	59,278	57,866	-1,412
123-4405-000	Membership Fees - Subscriptions	185,951	188,000	191,300	3,300
123-4485-000	Photo Fees	3,940	4,500	4,000	-500
123-4610-000	Royalties	10,320	7,000	2,500	-4,500
123-4705-000	Subscriptions - Bulletin	1,190	900	900	0
Total Revenues		\$614,568	\$656,374	\$662,790	\$6,416
Salaries & Benefits					
123-6100-000	Employee Salaries - Regular	133,633	136,700	133,400	-3,300
123-6105-000	Employee Taxes & Benefits - Regular	47,544	54,200	50,900	-3,300
Total Salaries & Benefits		\$181,177	\$190,900	\$184,300	(\$6,600)
Direct Program Expenses					
123-7090-000	Bank Fees - Credit Card Processing	1,441	1,000	1,200	200
123-7194-000	Commissions Expense	93,348	107,381	110,492	3,111
123-7265-xxx	Contract Services - ALL	28,407	34,250	35,500	1,250
123-7670-xxx	Postage - ALL	58,057	59,522	59,511	-11
123-7700-xxx	Printing Services - ALL	63,246	73,700	65,268	-8,432
123-7875-xxx	Supplies - ALL	75,468	70,980	63,933	-7,047
Total Direct Program Expenses		\$319,967	\$346,833	\$335,904	(\$10,929)
General & Administrative Expenses					
123-9500-000	Office Supplies	297	150	150	0
123-9600-000	In House Printing	267	250	250	0
123-9620-000	Postage	1,329	1,250	1,000	-250
123-9640-000	Professional Dues	529	170	634	464
123-9660-000	Bad Debt Expense	2,261	250	250	0
123-9680-000	Publications & Subscriptions	0	0	25	25
123-9830-000	Training & Education	500	550	375	-175
123-9850-000	Travel & Expense - Staff	1,724	0	1,452	1,452
123-9999-000	Miscellaneous Expense	94	50	50	0
Total General & Administrative Expenses		\$7,001	\$2,670	\$4,186	\$1,516
Total Expenses		\$508,145	\$540,403	\$524,390	
Net Operating Revenue (Expense)		\$106,423	\$115,971	\$138,400	
123-9000-000	<i>Less: Indirect Cost Allocation</i>	\$89,915	\$130,589	\$161,930	
Net Revenue (Expense)		\$16,508	(\$14,618)	(\$23,530)	

CLIENT ASSISTANCE OFFICE

The Client Assistance Office (CAO) processes written complaints about lawyers practicing in Oregon. Three staff attorneys and two administrative staff process about 2,000 complaints a year, separating the credible complaints that implicate a rule of professional conduct from ones that do not. Credible complaints that implicate a rule of conduct are forwarded to Disciplinary Counsel's Office. Complaints that are either nonjurisdictional or lacking credible evidence are dismissed in writing.

CAO staff often provide non-legal advice assistance to the public such as referrals to other agencies, re-establishing good lines of communication between lawyers and clients and helping clients obtain their files. This assistance and answering questions from the public occupies a great deal of CAO staff time.

CAO attorneys also speak at CLE's and national conferences, give informal ethics advice to members, and write Bar Counsel articles.

- CAO generates no revenue.
- The bulk of CAO's budget is employee salaries, taxes and benefits.
- A new CAO manager began late 2013 replacing the retiring manager.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
<i>Salaries & Benefits</i>					
112-6100-000	Employee Salaries - Regular	369,007	389,500	366,900	-22,600
112-6105-000	Employee Taxes & Benefits - Regular	129,747	154,400	139,900	-14,500
Total Salaries & Benefits		\$498,754	\$543,900	\$506,800	(\$37,100)
<i>Direct Program Expenses</i>					
112-7450-000	Inquiry/investigation related expense	747	500	600	100
Total Direct Program Expenses		\$747	\$500	\$600	\$100
<i>General & Administrative Expenses</i>					
112-9400-000	Messenger & Delivery Service	0	50	50	0
112-9500-000	Office Supplies	878	2,000	1,500	-500
112-9600-000	In House Printing	1,413	2,500	2,000	-500
112-9620-000	Postage	6,196	6,000	6,000	0
112-9640-000	Professional Dues	2,196	1,404	2,296	892
112-9680-000	Publications & Subscriptions	251	800	500	-300
112-9800-000	Telephone	0	0	300	300
112-9830-000	Training & Education	231	1,200	500	-700
112-9850-000	Travel & Expense - Staff	5,508	5,995	3,546	-2,449
112-9999-000	Miscellaneous Expense	0	200	100	-100
Total General & Administrative Expenses		\$16,673	\$20,149	\$16,792	(\$3,357)
Total Expenses		\$516,174	\$564,549	\$524,192	
Net Operating Revenue (Expense)		(\$516,174)	(\$564,549)	(\$524,192)	
112-9000-000	<i>Less: Indirect Cost Allocation</i>	\$137,364	\$134,271	\$118,989	
Net Revenue (Expense)		(\$653,538)	(\$698,820)	(\$643,181)	

CLE SEMINARS

The CLE Seminars Department provides attorneys and other legal professionals with continuing legal education in a variety of formats, including live seminars, webcasts, and on-demand online seminars. In addition to sponsoring 45 to 55 live seminars annually, CLE Seminars partners with national CLE providers to give OSB members increased access to online seminars. The Department also provides OSB sections and the ONLD with a variety of CLE services, ranging from registration support to co-sponsorship of seminars and multi-day institutes.

- Live seminar revenue is projected to continue decreasing as more members seek CLE not only from OSB, but also from other providers as bricks-and-mortar sponsors (in-person events) and online-only sponsors .
- Sales of shippable products (DVDs, CDs, and print books) continue to decrease as those formats give way to technological advances in CLE delivery methods, i.e., on-demand seminars and electronic course materials.
- Correspondingly, online seminar revenue has steadily increased as more members attend seminars “live” via webcast or obtain credit through on-demand seminar products.
- The Department is offering an increasing number of studio-only (no live audience) seminar webcasts, which are relatively inexpensive to produce while boosting on-demand sales revenue.
- Department FTE is 5.7 though the number of live seminars produced and credit hours offered has increased over the last several years.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
109-4235-000	Discounts on Sales	-13,903	-12,000	-12,000	0
109-4290-000	Freight charge revenue	4,713	6,000	5,000	-1,000
109-4565-xxx	Registrations (Conferences/Semi - ALL	401,249	481,955	470,285	-11,670
109-4620-xxx	Sales - ALL	663,644	691,000	666,500	-24,500
109-4670-000	Services - Sections	20,223	20,000	20,200	200
109-4760-000	Video Rentals	4,215	4,000	4,000	0
109-4760-624	Audio Rental - Reciprocity	21,450	25,000	30,000	5,000
109-4760-628	Video Rentals - DVD's	19,993	30,000	8,000	-22,000
109-4760-756	DVD Rental - Reciprocity	50,700	65,000	60,000	-5,000
109-4999-000	Miscellaneous Revenue	0	500	500	0
Total Revenues		\$1,172,284	\$1,311,455	\$1,252,485	(\$58,970)
Salaries & Benefits					
109-6100-000	Employee Salaries - Regular	347,706	293,400	332,100	38,700
109-6105-000	Employee Taxes & Benefits - Regular	119,914	116,300	126,600	10,300
Total Salaries & Benefits		\$467,620	\$409,700	\$458,700	\$49,000
Direct Program Expenses					
109-7025-000	Advertising	3,514	3,000	3,000	0
109-7085-xxx	Audio / Visual - ALL	59,517	57,070	67,600	10,530
109-7090-000	Bank Fees - Credit Card Processing	14,133	15,000	10,000	-5,000
109-7165-xxx	Catering - ALL	103,410	123,850	118,350	-5,500
109-7205-015	Computer - Website development/Mtcec	1,165	1,000	500	-500
109-7360-xxx	Facilities - ALL	12,397	12,950	9,000	-3,950
109-7563-000	Mailhouse Services-	5,961	6,000	6,000	0
109-7670-xxx	Postage - ALL	12,748	18,750	18,000	-750
109-7700-xxx	Printing Services - ALL	19,221	36,400	28,400	-8,000
109-7730-xxx	Program Materials - ALL	65,837	23,400	26,300	2,900
109-7810-000	Royalties expense	5,598	8,000	7,000	-1,000
109-7830-000	Section Services Expenses	815	1,200	1,200	0
109-7837-xxx	Speaker Airfare - ALL	11,485	10,600	9,800	-800
109-7840-xxx	Speaker Expense - ALL	31,715	49,600	50,250	650
109-7845-xxx	Lodging - ALL	21,090	15,220	18,520	3,300
109-7850-000	Special Projects	5,833	0	5,000	5,000
109-7875-000	Supplies - Blank Flyer Stock	1,037	2,200	500	-1,700
109-7875-625	Supplies - Audio CD's	19,826	18,000	14,000	-4,000
109-7875-628	Supplies - DVD's	11,212	10,000	6,000	-4,000
109-7965-xxx	Video Replays - ALL	1,355	2,950	3,800	850
109-7999-xxx	Miscellaneous Expense - ALL	9,283	8,835	8,580	-255
Total Direct Program Expenses		\$417,152	\$424,025	\$411,800	(\$12,225)
General & Administrative Expenses					
109-9500-000	Office Supplies	601	500	500	0
109-9600-000	In House Printing	188	200	200	0
109-9620-000	Postage	9,680	10,000	10,000	0
109-9640-000	Professional Dues	1,387	1,737	1,307	-430
109-9660-000	Provision for Bad Debts	-1,392	500	500	0
109-9680-000	Publications & Subscriptions	0	100	50	-50
109-9800-000	Telephone	0	50	50	0
109-9830-000	Training & Education	2,276	4,330	3,885	-445
109-9850-000	Travel & Expense - Staff	2,820	7,873	8,406	533
109-9999-000	Miscellaneous Expense	108	100	100	0
Total General & Administrative Expenses		\$15,668	\$25,390	\$24,998	(\$392)
Total Expenses		\$900,440	\$859,115	\$895,498	
Net Operating Revenue (Expense)		\$271,844	\$452,340	\$356,987	
109-9000-000	<i>Less: Indirect Cost Allocation</i>	\$366,540	\$414,138	\$359,364	
Net Revenue (Expense)		(\$94,696)	\$38,202	(\$2,377)	

COMMUNICATIONS & PUBLIC SERVICES

The Communications & Public Services Department coordinates the bar's organizational communications to ensure consistent and effective delivery of OSB information and priority messages to members and the public.

Public service functions include development of website content, legal information pamphlets and specialty publications, and multimedia support.

Member communications functions include content development for the bar's website and portions of the Bulletin; publication of the electronic Bar News and BOG Update e-newsletters, along with other all-member emails; coordination of special events including the annual Awards Luncheon and 50-Year Member event, assistance with OSB room rentals; and communications and marketing support to other bar programs and departments. The department director also has policy and oversight responsibilities for the Bulletin, Creative Services and Referral & Information Services programs, each of which has a separate budget.

- More than 97% of the department's direct expenses go to salaries and benefits.
- Revenue for the new online career center through Job Target has greatly exceeded initial 2013 projections of \$1,500 and is estimated to net \$11,000 for 2013 and 2014.
- The largest non-staff expense of \$10,800 is catering for the awards and 50-year member luncheons. This expense is offset with an identical revenue line item representing ticket sales for the two events.
- Revenue for sales of public education materials largely offsets associated printing expense.
- Tel-Law phone expenses have declined for the past few years as the bar transitions away from telephone recordings in favor of online delivery. Recordings via the telephone will be discontinued in 2014.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
108-4165-000	Catered Events	2,101	11,700	10,800	-900
108-4185-000	Commissions - Job Target	1,584	1,500	11,000	9,500
108-4620-039	Sales - Pamphlets (Members)	1,954	1,200	1,500	300
Total Revenues		\$5,639	\$14,400	\$23,300	\$8,900
Salaries & Benefits					
108-6100-000	Employee Salaries - Regular	268,063	295,200	353,300	58,100
108-6105-000	Employee Taxes & Benefits - Regular	93,211	117,000	134,700	17,700
Total Salaries & Benefits		\$361,274	\$412,200	\$488,000	\$75,800
Direct Program Expenses					
108-7090-000	Bank Fees - Credit Card Processing	48	100	100	0
108-7165-000	Catering Expense	9,924	11,700	10,800	-900
108-7395-000	Gifts & Awards	1,034	1,200	1,400	200
108-7575-000	Marketing	172	650	3,500	2,850
108-7730-000	Materials	2,926	1,000	1,000	0
108-7850-000	Special Projects	3,150	0	600	600
108-7885-042	Telephone - Tel Law	1,610	1,800	600	-1,200
108-7975-000	Volunteer Recognition	876	800	600	-200
Total Direct Program Expenses		\$19,740	\$17,250	\$18,600	\$1,350
General & Administrative Expenses					
108-9500-000	Office Supplies	191	350	400	50
108-9600-000	In House Printing	2,370	2,700	2,200	-500
108-9620-000	Postage	999	1,100	950	-150
108-9800-000	Telephone	1,762	1,600	1,500	-100
108-9830-000	Training & Education	60	750	1,600	850
108-9850-000	Travel & Expense - Staff	321	500	800	300
108-9999-000	Miscellaneous Expense	0	200	150	-50
Total General & Administrative Expenses		\$5,703	\$7,200	\$7,600	\$400
Total Expenses		\$386,717	\$436,650	\$514,200	
Net Operating Revenue (Expense)		(\$381,078)	(\$422,250)	(\$490,900)	
108-9000-000	<i>Less: Indirect Cost Allocation</i>	\$93,948	\$127,807	\$115,681	
Net Revenue (Expense)		(\$475,026)	(\$550,057)	(\$606,581)	

DISCIPLINARY COUNSEL

The Disciplinary Counsel consists of 15 attorney and support staff dedicated to the regulatory functions of the bar and its members.

- The time allocated to BBX/Admissions by the Disciplinary Counsel Director increased to .20 FTE to more accurately reflect the time spent on those duties.
- There is an increase in the area of staff training. Significant changes in the admissions area as well as national trends in lawyer regulation require additional training for the staff.
- The largest program expense is Court Reporting which can vary considerably year over year based on the number and complexity of cases requiring those services.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
115-4080-000	Arbitration Registration Fees	1,400	2,000	2,000	0
115-4180-000	Certificates of Good Standing	8,720	13,000	13,000	0
115-4285-000	Filing Fees - PHV	5,738	5,000	5,500	500
115-4310-000	Interest - Judgments	1,026	750	750	0
115-4340-000	Judgments Collected	24,248	12,000	12,000	0
115-4490-000	Photocopies - Public Records	3,260	2,000	2,000	0
115-4565-092	Registrations - Ethics School	5,025	3,500	3,500	0
115-4580-000	Reinstatement Fees	44,910	38,000	40,000	2,000
Total Revenues		\$94,327	\$76,250	\$78,750	\$2,500
Salaries & Benefits					
115-6100-000	Employee Salaries - Regular	1,155,581	1,220,800	1,210,000	-10,800
115-6105-000	Employee Taxes & Benefits - Regular	413,548	483,800	461,300	-22,500
Total Salaries & Benefits		\$1,569,129	\$1,704,600	\$1,671,300	(\$33,300)
Direct Program Expenses					
115-7015-000	Accused Cost Bills	966	2,000	2,000	0
115-7090-000	Bank Fees - Credit Card Processing	40	50	50	0
115-7190-000	Collection Fees - Judgments	0	500	500	0
115-7195-000	Committee Expense	0	500	500	0
115-7245-092	Ethics School course-related expense	341	800	1,500	700
115-7265-000	Contract Services	40,620	7,000	7,000	0
115-7275-000	Court Reporter	63,253	60,000	60,000	0
115-7285-000	Custodianship Expense	250	2,500	2,500	0
115-7450-000	Investigation/Litigation - Disciplinary	6,873	10,000	11,500	1,500
115-7450-035	Investigation - Reinstatement	5,158	7,000	6,000	-1,000
115-7700-000	Printing	7,981	1,750	3,000	1,250
115-7765-000	Research	2,283	3,500	3,500	0
115-7930-016	Travel & Expense - SPRB	11,845	12,000	12,000	0
115-7980-000	Witness/Filing Service Fees	4,005	5,000	4,500	-500
Total Direct Program Expenses		\$143,615	\$112,600	\$114,550	\$1,950
General & Administrative Expenses					
115-9400-000	Messenger & Delivery Services	341	400	300	-100
115-9500-000	Office Supplies	6,247	7,000	7,000	0
115-9600-000	In House Printing	9,746	9,000	10,000	1,000
115-9620-000	Postage	11,104	12,000	11,500	-500
115-9640-000	Professional Dues	7,583	7,508	6,556	-952
115-9680-000	Publications & Subscriptions	2,849	6,693	6,019	-674
115-9800-000	Telephone	29	150	100	-50
115-9830-000	Training & Education	2,124	6,061	8,440	2,379
115-9850-000	Travel & Expense - Staff	20,979	20,002	29,417	9,415
115-9999-000	Miscellaneous Expense	0	500	500	0
Total General & Administrative Expenses		\$61,002	\$69,314	\$79,832	\$10,518
Total Expenses		\$1,773,746	\$1,886,514	\$1,865,682	
Net Operating Revenue (Expense)		(\$1,679,419)	(\$1,810,264)	(\$1,786,932)	
115-9000-000	<i>Less: Indirect Cost Allocation</i>	\$426,088	\$442,948	\$361,389	
Net Revenue (Expense)		(\$2,105,507)	(\$2,253,212)	(\$2,148,321)	

GENERAL COUNSEL

General Counsel's Office consists of two full-time lawyers and one full-time support staff person to provide legal advice and assistance to the Board of Governors, bar committees and sections, the Client Security Fund, and the Disciplinary Board. Additional legal services provided are:

- the legal advisor to the Human Resources Director and other managers on personnel issues;
- drafts and reviews contracts between the bar and sections and its vendors, tenants and contractors, and represent the bar's interests in non-disciplinary litigation;
- administers the OSB Fee Arbitration Program, oversees the operations of the Client Assistance Office and the Mandatory Continuing Legal Education Office, and serves as the Disciplinary Board Clerk's Office;
- provides support to the Unlawful Practice of Law Committee, the Legal Ethics Committee, the State Lawyers Assistance Committee, and BOG Task Forces.

Notable changes in the General Counsel Office budget are:

- The Contract Services-Legal line item reflects a \$10,000 decrease from 2013 (\$20,000 from the October 25 report). This account is used to pay for outside legal counsel in more complex litigation and other matters that require specialized expertise. The \$30,000 amount now in the 2014 budget has been enough to pay for outside legal fees since 2008.
- The bar maintains a reserve for Contract Legal Fees. The balance of this reserve at October 31 is \$172,819 and is maintained for costs for extraordinary legal challenges.
- The travel expense line item is increased moderately to account for the added responsibility of General Counsel for attending the Legal Ethics Committee meetings, two of which are outside the Portland metropolitan area and attendance at OLIO.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
117-4285-000	Filing Fees - Fee Arbitration	2,100	2,500	2,500	0
Total Revenues		\$2,100	\$2,500	\$2,500	\$0
Salaries & Benefits					
117-6100-000	Employee Salaries - Regular	261,866	260,100	283,900	23,800
117-6105-000	Employee Taxes & Benefits - Regular	90,322	103,100	108,200	5,100
Total Salaries & Benefits		\$352,188	\$363,200	\$392,100	\$28,900
Direct Program Expenses					
117-7195-069	UPL Committee Expense	100	300	300	0
117-7265-000	Contract Services-Legal	27,823	40,000	30,000	-10,000
117-7265-069	Legal & Contract Services - UPL	687	3,000	3,000	0
117-7650-000	Pamphlet Production - Fee Arbitration	0	100	100	0
117-7710-060	Publication - Disciplinary Board Reporter	0	350	350	0
117-7765-000	Research	1,081	1,000	1,200	200
117-7930-060	Travel & Expense - Disciplinary Board	2,098	8,500	8,500	0
Total Direct Program Expenses		\$31,789	\$53,250	\$43,450	(\$9,800)
General & Administrative Expenses					
117-9400-000	Messenger & Delivery Services	0	100	100	0
117-9500-000	Office Supplies	251	400	400	0
117-9600-000	In House Printing	1,089	1,500	1,500	0
117-9620-000	Postage	1,449	1,500	1,500	0
117-9640-000	Professional Dues	2,629	2,164	2,194	30
117-9680-000	Publications & Subscriptions	2,731	2,875	3,145	270
117-9800-000	Telephone	18	100	200	100
117-9800-069	Telephone - UPL	195	150	200	50
117-9830-000	Training & Education	519	2,000	2,000	0
117-9850-000	Travel & Expense - Staff	4,815	4,592	4,688	96
117-9999-000	Miscellaneous Expense	225	300	300	0
Total General & Administrative Expenses		\$13,921	\$15,681	\$16,227	\$546
Total Expenses		\$397,898	\$432,131	\$451,777	
Net Operating Revenue (Expense)		(\$395,798)	(\$429,631)	(\$449,277)	
117-9000-000	Less: Indirect Cost Allocation	\$82,323	\$76,588	\$74,804	
Net Revenue (Expense)		(\$478,121)	(\$506,219)	(\$524,081)	

GOVERNANCE

The Governance budget includes expenses for the House of Delegates' regional and annual meetings; travel and meeting expenses for the Board of Governors; travel and expense for the President and President-Elect; salaries and expenses for the Executive Director and Executive Assistant; and partial reimbursement for the OSB's ABA Delegates.

The largest program expense is for the costs of the Board of Governors' meetings. This cost is expected to be higher in 2014 due to travel reimbursement of board members.

- The Sponsorship budget is increased by \$2,500 to \$10,000 based on 2013 event and participation activity.
- The Executive Director Special Projects line item varies year over year based on new or special events or activities developed by the Executive Director.
- The \$5,000 line item for Insurance is the annual premium for Directors and Officers Insurance.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Salaries & Benefits					
107-6100-000	Employee Salaries - Regular	224,179	222,100	218,000	-4,100
107-6105-000	Employee Taxes & Benefits - Regular	76,388	88,000	83,100	-4,900
Total Salaries & Benefits		\$300,567	\$310,100	\$301,100	(\$9,000)
Direct Program Expenses					
107-7150-021	Pres/Pres Elect Taxable Spouse Exp	2,558	3,700	3,700	0
107-7150-022	BOG Conference Travel - President	15,446	12,000	12,000	0
107-7150-023	BOG Conference Travel - President-Elect	9,136	9,400	9,400	0
107-7150-024	BOG Officer Allowance - Local Bar Visits	1,397	3,500	3,000	-500
107-7150-027	BOG Members - WSBC Conference Travel	5,962	7,000	6,000	-1,000
107-7290-000	Delegate Expense - ABA	6,000	6,000	6,000	0
107-7395-000	Gifts & Awards	1,511	2,000	2,000	0
107-7445-000	Insurance	0	0	5,000	5,000
107-7538-000	Local Bar & Special BOG Events	15,551	16,400	13,000	-3,400
107-7590-172	Meeting - House of Delegates	11,849	3,000	3,000	0
107-7851-018	Exec. Dir. Special Projects	16,474	12,500	12,500	0
107-7860-000	Sponsorships Evcmt Attendance	8,785	7,500	10,000	2,500
107-7885-016	Telephone - BOG	366	800	650	-150
107-7930-xxx	Travel & Expense - ALL	57,824	62,500	66,500	4,000
Total Direct Program Expenses		\$152,859	\$146,300	\$152,750	\$6,450
General & Administrative Expenses					
107-9400-000	Messenger & Delivery Services	0	200	200	0
107-9500-000	Office Supplies	471	1,000	500	-500
107-9600-000	In-House Printing	547	1,500	500	-1,000
107-9600-172	In House Printing - House of Delegates	0	500	150	-350
107-9620-000	Postage	3,252	3,000	2,000	-1,000
107-9620-172	Postage - House of Delegates	0	500	250	-250
107-9640-000	Professional Dues	1,747	1,800	1,800	0
107-9680-000	Publications & Subscriptions	0	250	250	0
107-9800-000	Telephone	361	500	375	-125
107-9830-000	Training & Education	3,856	3,750	3,750	0
107-9850-000	Travel & Expense - Staff	8,405	13,178	13,233	55
Total General & Administrative Expenses		\$18,639	\$26,178	\$23,008	(\$3,170)
Total Expenses		\$472,065	\$482,578	\$476,858	
Net Operating Revenue (Expense)		(\$472,065)	(\$482,578)	(\$476,858)	
107-9000-000	<i>Less: Indirect Cost Allocation</i>	\$69,512	\$72,433	\$73,242	
Net Revenue (Expense)		(\$541,577)	(\$555,011)	(\$550,100)	

LEGAL PUBLICATIONS

The Legal Publications Department is responsible for revising and updating 37 publications, the *Uniform Civil and Criminal Jury Instructions*, and the *Disciplinary Board Reporter* and posts all these books to the BarBooks™ online library, in addition to the Public Affairs Department publication *Oregon Legislation Highlights* and three Professional Liability Fund books.

In 2014, Legal Publications will release supplements to the *Uniform Civil and Criminal Jury Instructions* and *Oregon Formal Ethics Opinions*, a new book titled *Appeal and Review: Advanced Topics, Environmental Law vol. 2*, a revision of *Creditors' Rights and Remedies* that will include several chapters from *Foreclosing Security Interests*, and a 5-volume *Oregon Real Estate Deskbook* that will replace the five current real estate series titles and include several chapters from *Foreclosing Security Interests*.

Sources of department revenue include:

Print books

- New print titles are sold on a pre-order basis to avoid excess inventory.
- Sales data indicates that new titles are selling at a rate of 25% to 38% of pre-BarBooks™ sales. These figures have been used to project print book revenue for 2014.
- In 2011, 2012, and 2013, sales of older titles has consistently been \$3,000 per month.

BarBooks™ subscriptions

- Staff accounts are sold to law firms for \$50.00 per year.
- The State of Oregon Law Library pays \$3,275 per year for access to BarBooks™ for state employees who log in through the library portal page.
- The three Oregon law schools each pay \$1,500 per year for access to BarBooks™ for their students and faculty through their law school portal page.
- At least 12 county law libraries subscribe to BarBooks™ at a rate of \$295 per computer.

Licensing agreements

- Legal Publications receives \$6,500 per year for licensing *Uniform Civil and Criminal Jury Instructions* to Bloomberg Law for inclusion in its online database product.
- Legal Publications will receive \$26,000 per year for licensing the remainder of our books to Bloomberg Law beginning in 2014. The agreement has a 3-year term that is renewable.
- Legal Publications receives a 20% royalty on the revenue attributed to subscription access to our *Uniform Civil and Criminal Jury Instructions* from LexisNexis. This agreement has a 5-year term that is renewable. It is too early to determine the potential revenue.

Major department expenses other than personnel include:

- **Printing** – 2014 printing expenses are projected to be similar to 2013 as at least two bids for each print project are obtained to ensure the best price and quality.
- **Indexing** – Indexing is outsourced at a rate of \$2.90 per page.
- **Contract Services** – Copyediting is outsourced at a rate of \$4.00 per page. These costs are projected to be higher than 2013 primarily due to projection of increased productivity by the in-house substantive attorney editors.
- **Research** – WestlawNext and Westlaw Drafting Assistant allow the attorney editors to be more efficient and accurate in their substantive editing of chapters.
- **Supplies** – Generic 3-ring binders used for most of our publications.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
111-4175-000	Copyright Revenue	1,280	0	26,000	26,000
111-4235-000	Discounts on Sales	-4,449	-1,500	-750	750
111-4290-000	Freight charge revenue	8,509	7,000	9,700	2,700
111-4610-555	Royalties - UCJI	3,250	3,250	3,450	200
111-4610-565	Royalties - UCRI	3,250	3,250	3,450	200
111-4620-xxx	Sales - ALL	220,690	217,865	263,777	45,912
111-4625-xxx	Sales - Online - ALL	26,811	16,175	16,175	0
Total Revenues		\$259,341	\$246,040	\$321,802	\$75,762
Salaries & Benefits					
111-6100-000	Employee Salaries - Regular	442,716	413,500	418,500	5,000
111-6105-000	Employee Taxes & Benefits - Regular	178,303	163,900	159,500	-4,400
Total Salaries & Benefits		\$621,019	\$577,400	\$578,000	\$600
Direct Program Expenses					
111-7040-000	Annual Event	0	2,150	1,150	-1,000
111-7090-000	Bank Fees - Credit Card Processing	1,664	2,000	1,700	-300
111-7205-083	Computer Software	144	144	144	0
111-7265-xxx	Contract Services - ALL	10,128	18,000	23,600	5,600
111-7430-xxx	Indexing - ALL	20,078	19,500	16,725	-2,775
111-7575-xxx	Marketing - ALL	187	200	200	0
111-7700-xxx	Printing Services - ALL	53,351	31,981	48,148	16,167
111-7765-000	Research	17,822	18,000	18,000	0
111-7850-000	Special Projects	78	100	100	0
111-7875-xxx	Supplies - ALL	9,605	5,000	3,000	-2,000
111-7999-xxx	Miscellaneous Expense - ALL	2,752	3,200	2,910	-290
Total Direct Program Expenses		\$115,809	\$100,275	\$115,677	\$15,402
General & Administrative Expenses					
111-9500-000	Office Supplies	274	400	300	-100
111-9600-000	In House Printing	230	100	100	0
111-9620-000	Postage	10,355	9,000	9,000	0
111-9640-000	Professional Dues	4,570	3,955	4,225	270
111-9660-000	Provision for Bad Debts	1,032	200	200	0
111-9680-000	Publications & Subscriptions	1,473	1,875	1,875	0
111-9800-000	Telephone	422	550	575	25
111-9830-000	Training & Education	1,489	1,300	1,380	80
111-9850-000	Travel & Expense - Staff	3,490	4,418	3,872	-546
Total General & Administrative Expenses		\$23,335	\$21,798	\$21,527	(\$271)
Total Expenses		\$760,163	\$699,473	\$715,204	
Net Operating Revenue (Expense)		(\$500,822)	(\$453,433)	(\$393,402)	
111-9000-000	Less: Indirect Cost Allocation	\$268,084	\$278,020	\$260,816	
Net Revenue (Expense)		(\$768,906)	(\$731,453)	(\$654,218)	

PROGRAMS

LOAN REPAYMENT ASSISTANCE PROGRAM (LRAP)

The mission of the Loan Repayment Assistance Program is to attract and retain public service lawyers by helping them pay their educational debt. The Program will make a forgivable loan up to \$5,000 per year per program participant for a maximum of three consecutive years.

The revenues to fund this program are \$5.00 allocated from each active member fee. Twenty-two participants received grants during the current year.

By previous board action, no administrative costs including .1 FTE staff time are allocated to the program. These costs are included in the Special Projects portion of the budget.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
<i>Revenues</i>					
106-4310-000	Interest - Fund Balance	508	500	500	0
106-4405-000	Membership Fees - LRAP	73,053	73,300	74,400	1,100
Total Revenues		\$73,561	\$73,800	\$74,900	\$1,100
<i>Direct Program Expenses</i>					
106-7183-000	LRAP Loan Disbursements	83,900	84,000	88,000	4,000
Total Direct Program Expenses		\$83,900	\$84,000	\$88,000	\$4,000
Total Expenses		\$83,900	\$84,000	\$88,000	
Net Operating Revenue (Expense)		(\$10,339)	(\$10,200)	(\$13,100)	
106-9000-000	<i>Less: Indirect Cost Allocation</i>				
Net Revenue (Expense)					

MINIMUM CONTINUING LEGAL EDUCATION (MCLE)

The MCLE program is responsible for ensuring Oregon bar members comply with the requirements set forth in the MCLE rules.

The source of revenue is program sponsor fees and late fees.

- Sponsors applying for CLE accreditation pay a program sponsor fee of \$75.00 (for programs more than four credit hours) or \$40 (for programs four or fewer credit hours).
- A \$40.00 late fee is paid if the application is received more than 30 days after the program date. OSB members pay a late fee for failing to file their compliance report by the January 31 filing deadline (late fee starts at \$50.00 and increases in \$50.00 increments) or for failing to complete the minimum credit requirement by the end of the reporting period (late fee starts at \$200.00 and increases in \$50.00 increments).

Revenue from member late fees and program sponsor fees for 2014 is \$4,300 lower than 2013 based on the lower than expected revenue in 2013.

Duties of the department are to:

- process approximately 8,000 applications for CLE credit throughout the year.
- process approximately 5,000 compliance reports each year with approximately 95% of those reports being processed in December, January and February.
- conduct compliance report audits each spring.
- work with the MCLE Committee to propose rule and regulation amendments.
- gather attendance information for posting to member transcripts.

Due to the high volume of compliance reports and accreditation applications processed in December and January, an additional 20 hours per week for 10 weeks for temporary staffing are added to the 2014 budget.

The majority of compliance reports are sent via email requiring little cost for printing and postage. The Oregon Supreme Court recently approved rule amendments which allow the department to send Notices of Noncompliance via regular mail rather than certified mail. With this change, the postage budget for 2014 has been reduced by \$1,500.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
121-4355-000	Late Fees	64,115	61,500	57,800	-3,700
121-4355-045	Late Fees - Sponsors	8,875	8,500	8,500	0
121-4550-000	Sponsorship Fees	235,520	234,600	234,000	-600
Total Revenues		\$308,510	\$304,600	\$300,300	(\$4,300)
Salaries & Benefits					
121-6100-000	Employee Salaries - Regular	102,102	110,000	112,000	2,000
121-6105-000	Employee Taxes & Benefits - Regular	40,602	43,600	42,700	-900
121-6200-000	Employee Salaries - Temporary	7,592	4,080	6,528	2,448
121-6205-000	Employee Taxes & Benefits - Temporary	588	408	653	245
Total Salaries & Benefits		\$150,884	\$158,088	\$161,881	\$3,793
Direct Program Expenses					
121-7090-000	Bank Fees - Credit Card Processing	1,224	1,500	1,500	0
Total Direct Program Expenses		\$1,224	\$1,500	\$1,500	\$0
General & Administrative Expenses					
121-9500-000	Office Supplies	734	700	700	0
121-9600-000	In House Printing	38	750	500	-250
121-9620-000	Postage	5,106	7,500	6,000	-1,500
121-9640-000	Professional Dues	500	500	500	0
121-9800-000	Telephone	0	150	100	-50
121-9830-000	Training & Education	500	750	900	150
121-9850-000	Travel & Expense - Staff	2,229	3,161	2,841	-320
121-9999-000	Miscellaneous Expense	0	50	50	0
Total General & Administrative Expenses		\$9,107	\$13,561	\$11,591	(\$1,970)
Total Expenses		\$161,215	\$173,149	\$174,972	
Net Operating Revenue (Expense)		\$147,295	\$131,451	\$125,328	
121-9000-000	<i>Less: Indirect Cost Allocation</i>	\$69,749	\$69,384	\$70,759	
Net Revenue (Expense)		\$77,546	\$62,067	\$54,569	

MEMBER SERVICES

The Member Services Department provides administrative support services to the bar's 41 sections and 20 committees. These services include:

- the scheduling of meeting rooms and maintenance of rosters;
- recruitment and appointment of volunteers;
- distribution of meeting and event notices;
- bar leadership training;
- administering the staff liaison network;
- compiling annual reports.

Similar services also are provided to several county and specialty bar associations.

The department is responsible for administering the bar's elections and judicial preference polls and providing staff assistance to the Board Development Committee of the Board of Governors.

In the past the department held an annual Conference of Bar Leaders to provide information to incoming committee, section, and county bar leaders. Declining attendance at the conference provided us the opportunity to transform this event into a series of conference calls and online information for volunteer leaders. This change in format has allowed a \$4,000 reduction to the department budget.

The department has continued to reduce its use of printed event announcements, election materials, and new member information. As such postage, printing, and supplies line items are lower by \$5,500 for 2014.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
<i>Salaries & Benefits</i>					
125-6100-000	Employee Salaries - Regular	138,488	139,800	117,100	-22,700
125-6105-000	Employee Taxes & Benefits - Regular	50,654	55,400	44,600	-10,800
125-6200-000	Employee Salaries - Temporary	0	2,340	6,680	4,340
125-6205-000	Employee Taxes & Benefits - Temporary	0	234	668	434
Total Salaries & Benefits		\$189,142	\$197,774	\$169,048	(\$28,726)
<i>Direct Program Expenses</i>					
125-7040-000	Annual Event	0	5,000	1,000	-4,000
125-7195-093	Professionalism Commission Expenses	243	250	250	0
125-7265-000	Contract Services - State Lawyers Assistance Commi	0	0	2,500	2,500
125-7620-000	Local & Speciality Bar Outreach	0	3,000	500	-2,500
125-7885-000	Telephone - Committee Expense	2,416	3,500	3,500	0
125-7930-048	Committee and Section Liaison Travel & Expense	2,739	3,500	3,500	0
125-7999-000	Miscellaneous Expense	110	1,000	500	-500
Total Direct Program Expenses		\$5,508	\$16,250	\$11,750	(\$4,500)
<i>General & Administrative Expenses</i>					
125-9500-000	Office Supplies	853	1,500	1,000	-500
125-9600-000	In House Printing	3,240	5,000	500	-4,500
125-9620-000	Postage	1,119	5,000	500	-4,500
125-9640-000	Professional Dues	115	115	115	0
125-9680-000	Publications & Subscriptions	60	60	60	0
125-9800-000	Telephone	56	300	300	0
125-9830-000	Staff Training & Education	199	1,200	800	-400
125-9850-000	Staff Travel & Expense	1,090	800	1,822	1,022
Total General & Administrative Expenses		\$6,732	\$13,975	\$5,097	(\$8,878)
Total Expenses		\$201,382	\$227,999	\$185,895	
Net Operating Revenue (Expense)		(\$201,382)	(\$227,999)	(\$185,895)	
125-9000-000	<i>Less: Indirect Cost Allocation</i>	\$96,083	\$81,592	\$102,649	
Net Revenue (Expense)		(\$297,465)	(\$309,591)	(\$288,544)	

NEW LAWYER MENTORING PROGRAM

The New Lawyer Mentor Program remains in its early stages of development and the understanding of program dynamics continue to evolve. One full cycle is completed and nearing completion of the second full cycle of mentoring partnerships.

A key development in the 2014 budget arises from revenue projections being less than 2013. The sole revenue comes from the \$100.00 program fee paid by new lawyers upon completion of the program. The 2012/13 participants were considerably fewer than projected. This lower number was due to the poor job market for the bar's newest members, which caused many to either delay swearing-in to the bar (to postpone paying dues), or to defer participation in the NLMP. Deferral is an option for any New Lawyer not practicing law in Oregon.

Many 2012 and even 2011 members remain in that deferred status for NLMP. Still others commenced their program participation late so have not completed the program and paid their fee.

Several members currently are operating under a 12/31/13 deadline and those revenues are anticipated by the end of 2013. However, 2013 revenue will come in under budget.

2014 projections are adjusted accordingly (200 are expected to complete the program in 2014), though it may take several cycles before an accurate projection of trends regarding enrollment, deferrals, completions, and fee payments can be defined.

The program evaluations indicate strong program satisfaction with several suggestions for modification. The two key needing enhancements, and for which the \$1,200 in Special Projects is earmarked, are: 1) increased communications with participants; and 2) increased programming for participants.

Additional communication vehicles have been developed and program projects are in development, but no significant budget impact is expected to achieve those goals.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
116-4565-000	NLMP Registration Fee Revenue	17,800	40,000	20,000	-20,000
Total Revenues		\$17,800	\$40,000	\$20,000	(\$20,000)
Salaries & Benefits					
116-6100-000	Employee Salaries - Regular	106,095	99,900	101,900	2,000
116-6105-000	Employee Taxes & Benefits Regular	17,423	39,600	38,800	-800
Total Salaries & Benefits		\$123,518	\$139,500	\$140,700	\$1,200
Direct Program Expenses					
116-7085-000	Lawyer Mentoring Program-Video	0	50	100	50
116-7090-000	Bank Fees - credit card	28	0	50	50
116-7620-000	Mentor Outreach	273	600	600	0
116-7670-000	Postage-Program related	116	300	300	0
116-7700-000	Printing Services	120	500	500	0
116-7850-000	Special Projects-	0	500	1,200	700
116-7930-000	Volunteer/Member Travel & Expense	0	200	200	0
Total Direct Program Expenses		\$537	\$2,150	\$2,950	\$800
General & Administrative Expenses					
116-9600-000	Photocopying	35	0	50	50
116-9640-000	Professional Dues	125	150	150	0
116-9800-000	Telephone	159	200	200	0
116-9850-000	Staff Travel & Expense	251	1,298	1,490	192
Total General & Administrative Expenses		\$570	\$1,648	\$1,890	\$242
Total Expenses		\$124,625	\$143,298	\$145,540	
Net Operating Revenue (Expense)		(\$106,825)	(\$103,298)	(\$125,540)	
116-9000-000	<i>Less: Indirect Cost Allocation</i>	\$40,806	\$45,820	\$50,467	
Net Revenue (Expense)		(\$147,631)	(\$149,118)	(\$176,007)	

NEW LAWYERS DIVISION (ONLD)

Every lawyer who has practiced six years or less, or is 36 years old or younger (whichever is later) is automatically a member of the ONLD. The ONLD represents over 3,500 lawyers (approximately 25% of the bar) and is the only bar division.

The mission of the ONLD is to assist new lawyers with the transition to practicing law in Oregon, either from law school or from a practice in another jurisdiction; conduct programs of value to new lawyers and law students; promote public awareness and access to justice; provide opportunities for community service and public outreach; provide opportunities for leadership; and promote professionalism among new lawyers.

The goals of the ONLD are set by its members and acted upon by the Executive Committee and five subcommittees. The Executive Committee is made up of eleven members, seven regional members (one from each bar region), four at-large members, and is governed by a chair, chair-elect, secretary and treasurer, all of whom are elected by the ONLD membership at the annual meeting.

The ONLD receives its funding from the bar's general fund and is supported by .8 FTE.

The ONLD budget underwent major restructuring to provide more insight to the type of expense rather than listing expenses by the event or activity. The budget is essentially the same overall dollar amount with two exceptions:

- An increase of \$2,500 in out of state travel expenses for the ONLD chair or his designee to attend the Western State's Bar Conference.
- The bar is moving registration services to a contracted vendor. All ONLD CLE programs and events requiring registration services will now incur a \$2.00 per registrant fee, a cost increase of \$1,200 for this change.
- Numerous expense accounts were added and deleted or renamed for the 2014 budget, so not all accounts are comparable year to year. The totals are correct, but some individual line items have been comingled.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
124-4348-000	Registrations- Portland Lunch Series	3,630	1,800	2,500	700
124-4550-000	Sponsorship- Annual Events	3,325	0	50	50
124-4550-100	Sponsorships -Practical Skills Events	150	500	50	-450
124-4550-200	Sponsorships-Special Events & Projects	0	0	50	50
124-4565-000	Registrations - Out of Town CLEs	0	400	500	100
124-4565-100	Registrations -ONLD Special Events & Projects	3,386	100	1,000	900
124-4565-200	Registrations-Super Saturday CLE	2,805	1,200	2,500	1,300
Total Revenues		\$13,296	\$4,000	\$6,650	\$2,650
Salaries & Benefits					
124-6100-000	Employee Salaries - Regular	43,067	42,900	46,700	3,800
124-6105-000	Employee Taxes & Benefits - Regular	15,235	17,000	17,800	800
Total Salaries & Benefits		\$58,302	\$59,900	\$64,500	\$4,600
Direct Program Expenses					
124-7040-000	Annual Meeting	4,178	2,500	3,000	500
124-7090-000	Bank Fees - Credit Card Processing	179	100	150	50
124-7165-000	Catering-Events	0	0	9,200	9,200
124-7245-000	CLE Accreditation Fees	2,043	3,000	350	-2,650
124-7265-000	Contract Services - Event Registration Service Fee	0	0	1,200	1,200
124-7395-000	Awards	0	0	2,000	2,000
124-7575-000	Marketing	0	0	1,000	1,000
124-7585-000	New Member Welcome	9,340	8,500	3,000	-5,500
124-7590-000	Meeting Expense - OSB/Portland	0	0	500	500
124-7590-100	Meeting Expense - Off Site	0	0	17,500	17,500
124-7590-200	Board Meeting Expense - travel and expense reimbur	28,702	0	9,000	9,000
124-7590-300	Board Expense - Subcommittee meeting and event rei	0	0	2,100	2,100
124-7700-000	Photocopying & Printing Services	0	0	2,000	2,000
124-7850-000	Special Events & Projects	671	1,700	2,000	300
124-7860-000	Sponsorships	100	0	3,000	3,000
124-7885-000	Telephone	0	0	200	200
124-7930-000	Board Retreat	31,004	27,000	4,500	-22,500
124-7930-028	Board Travel Reimbursements - ABA Young Lawyer Div	0	0	12,000	12,000
124-7930-100	Board Travel Reimbursements - Western States Bar C	0	0	2,500	2,500
124-7975-000	Volunteer Recognition	0	0	1,000	1,000
124-7999-000	Miscellaneous Expense	0	0	1,000	1,000
Total Direct Program Expenses		\$76,217	\$42,800	\$77,200	\$34,400
General & Administrative Expenses					
124-9400-000	Messenger & Delivery Services	0	80	80	0
124-9500-000	Office Supplies	46	600	600	0
124-9620-000	Postage	623	1,000	1,000	0
124-9850-000	Travel & Expense - Staff	2,176	2,000	2,000	0
124-9999-000	Miscellaneous Expense	0	2,000	1,000	-1,000
Total General & Administrative Expenses		\$2,845	\$5,680	\$4,680	(\$1,000)
Total Expenses		\$137,364	\$108,380	\$146,380	
Net Operating Revenue (Expense)		(\$124,068)	(\$104,380)	(\$139,730)	
124-9000-000	<i>Less: Indirect Cost Allocation</i>	\$38,908	\$39,269	\$45,830	
Net Revenue (Expense)		(\$162,976)	(\$143,649)	(\$185,560)	

PUBLIC AFFAIRS

The Public Affairs Department works to apply the knowledge and experience of the legal profession to the public good by advising governmental bodies, proposing legislation for law improvement and advocating on matters that affect the legal profession. The Public Affairs law improvement program works primarily with sections and committees to identify, monitor, and formulate responses to substantive legislative issues. Public Affairs also works with bar priorities related to funding for the courts, low income legal services, both civil and criminal, as well as identifies and responds to significant public policy issues that affect the practice of law and the bar.

The move to Annual Sessions with legislative hearing days every other month has increased workload requirements and bar interaction with the executive, legislative and judicial branches. The two-year biennial cycle consists of 35 day sessions in even -numbered years followed by a longer, 120 day session in odd-numbered years. In addition, Public Affairs is involved in numerous task forces and special projects related to issues of importance to the legal profession and the practice of law including implementation of Oregon e-Court, judicial selection, and court funding.

- Legislation tracking services have decreased from \$1,200 to \$0 as the bar is in the process of building the Public Affairs Department a database for bill tracking. This is used in tracking bills for members, sections and committees, the department and the Board of Governors.
- With annual legislative sessions travel and other costs associated with the longer session are greater than during the short session.
- During the Legislative Interim Days every other month for three days, the Public Affairs Department works on interim workgroups with the legislature. During this short interim, the bar has been assigned the task of working with five legislatively created workgroups, in addition to other existing workgroups. These are SB 798 re alternate juror in criminal cases, 799 re attorney withdrawal, 812 re judge affidavit in rural county, HB 2205 re definition of elder abuse and HB 3363 re Court Appointed Special Advocate structure.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Salaries & Benefits					
119-6100-000	Employee Salaries - Regular	314,699	325,700	318,500	-7,200
119-6105-000	Employee Taxes & Benefits - Regular	111,443	129,100	121,400	-7,700
Total Salaries & Benefits		\$426,142	\$454,800	\$439,900	(\$14,900)
Direct Program Expenses					
119-7090-000	Bank Fees - Credit cards	4	50	50	0
119-7195-066	Committee - Public Affairs/Appellate Screening	53	3,500	3,500	0
119-7620-xxx	Outreach Programs - ALL	10,476	23,200	16,300	-6,900
119-7700-000	Public Affairs-Printing Services-	0	150	150	0
119-7765-000	Research	41	100	100	0
119-7780-000	Rent - Office Space	150	2,400	150	-2,250
119-7999-000	Miscellaneous Expenses	44	500	500	0
Total Direct Program Expenses		\$10,768	\$29,900	\$20,750	(\$9,150)
General & Administrative Expenses					
119-9500-000	Office Supplies	688	700	700	0
119-9600-000	In House Printing	444	1,200	600	-600
119-9620-000	Postage	290	700	500	-200
119-9640-000	Professional Dues	2,686	3,406	3,951	545
119-9680-000	Publications & Subscriptions	2,441	2,970	1,910	-1,060
119-9800-000	Telephone	2,020	2,500	3,000	500
119-9830-000	Training & Education	1,723	4,700	4,500	-200
119-9850-000	Travel & Expense - Staff	12,556	16,179	16,977	798
119-9999-000	Miscellaneous Expense	26	500	500	0
Total General & Administrative Expenses		\$22,874	\$32,855	\$32,638	(\$217)
Total Expenses		\$459,784	\$517,555	\$493,288	
Net Operating Revenue (Expense)		(\$459,784)	(\$517,555)	(\$493,288)	
119-9000-000	Less: Indirect Cost Allocation	\$101,303	\$98,197	\$91,614	
Net Revenue (Expense)		(\$561,087)	(\$615,752)	(\$584,902)	

REFERRAL INFORMATION SERVICES (RIS)

The Lawyer Referral Service (LRS) is the oldest and largest program of the Referral and Information Services Department (RIS) and the only one that produces revenue. RIS also includes the Modest Means Program, Problem Solvers, Lawyer to Lawyer and the Military Assistance Panel.

Revenue from the new funding model began in October 2012. This revenue for the three months in 2013 was \$41,010, an average of \$13,670 per month, but still more than expected for the start of the program. Through ten months of 2013 this revenue is \$302,475 – an average of \$30,200 a month and far exceeding expectations. While the revenue generated greatly exceeded projections making long-term projections still is premature. For the 2014 budget, the 2013 monthly average is used to project percentage fee revenue of \$360,000, a conservative number based on 2013 activity, but considerably higher than the \$293,000 in the initial budget draft.

If the \$360,000 revenue target is attained in 2014, this means participating members have earned fees totaling \$3,000,000.

RIS continues to implement a new database program that currently provides only basic functionality, including new LRS reporting and payment obligations. Implementation is heavily focused on addressing ongoing delays in software development and regression testing. Recognizing these issues, in late 2012 the software company suspended RIS's obligation to pay subscription license fee payments for several months and entered into a modified Statement of Work which ties seven packages of software enhancements to incentive payments for work completed and accepted within stated timeframes (a total of \$20,000, some of which are to be completed before the end of 2013). The 2014 budget contains the remainder of these incentive payments.

The economic downturn has continued to affect LRS revenue. Call volume remains lower than historical norms, meaning LRS provides fewer referrals to panelists and thus may receive less percentage fee revenue. Panelist enrollment remains strong. Similarly, new admittee registrations remain high as they search for a constant source of cases to build their practice. The result is increased LRS registration revenue and a lower referral-to-panelist ratio, which could decrease panelist satisfaction with the number of referrals received.

An impact of implementation challenges are higher personnel costs. Public follow-up, a key component of successful LRS programs nationwide and important check on lawyer reporting compliance, has not yet been implemented and will require consistent, dedicated staff time. Moreover, as the economy begins to recover and as RIS seeks to increase marketing, call volume should increase, which also necessitates a sufficient level of staff on the phones. As the percentage fee revenue model matures, implementation concludes, and systems and processes stabilize in the next 2-3 years, RIS is projected to function with less staff resources.

Marketing and printing expenses will remain unchanged to continue implementation of RIS's multi-year grassroots marketing campaign and hopefully increase the number of referrals per lawyer. Marketing has included the distribution of posters and business cards to trial courts, tribal courts, libraries, social service organizations, state and municipal government offices, and police precincts.

RIS's projected net expense after ICA for 2013 will be at its lowest level since 1999.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
<i>Revenues</i>					
128-4185-000	LRS referral commissions	41,010	55,000	360,000	305,000
128-4565-000	LRS Registrations	134,482	115,500	115,500	0
Total Revenues		\$175,492	\$170,500	\$475,500	\$305,000
<i>Salaries & Benefits</i>					
128-6100-000	Employee Salaries - Regular	266,928	232,800	313,900	81,100
128-6105-000	Employee Taxes & Benefits - Regular	91,795	92,300	119,700	27,400
128-6200-000	Employee Salaries - Temporary	0	4,960	6,470	1,510
128-6205-000	Employee Taxes & Benefits - Temporary	0	496	647	151
Total Salaries & Benefits		\$358,723	\$330,556	\$440,717	\$110,161
<i>Direct Program Expenses</i>					
128-7025-000	Advertising - Promotions	8,270	5,000	5,000	0
128-7090-000	Bank Fees - Credit Card Processing	1,390	2,000	1,800	-200
128-7265-088	Contract Service-LRS Software	1,860	7,680	22,440	14,760
128-7700-000	Printing	1,450	1,000	1,000	0
128-7885-000	Telephone - Lawyer Referral	15,891	17,000	19,000	2,000
Total Direct Program Expenses		\$28,861	\$32,680	\$49,240	\$16,560
<i>General & Administrative Expenses</i>					
128-9500-000	Office Supplies	972	1,000	800	-200
128-9600-000	In House Printing	1,616	800	800	0
128-9620-000	Postage	3,818	3,500	3,800	300
128-9640-000	Professional Dues	957	867	882	15
128-9680-000	Publications & Subscriptions	258	300	300	0
128-9800-000	Telephone	0	0	50	50
128-9830-000	Training & Education	2,360	1,500	1,500	0
128-9850-000	Travel & Expense - Staff	1,579	2,000	2,112	112
128-9999-000	Miscellaneous Expense	0	200	200	0
Total General & Administrative Expenses		\$11,560	\$10,167	\$10,444	\$277
Total Expenses		\$399,144	\$373,403	\$500,401	
Net Operating Revenue (Expense)		(\$223,652)	(\$202,903)	(\$24,901)	
128-9000-000	<i>Less: Indirect Cost Allocation</i>	\$147,091	\$161,226	\$143,755	
Net Revenue (Expense)		(\$370,743)	(\$364,129)	(\$168,656)	

SPECIAL PROJECTS

Special Projects is a collection of bar activities or grants that are not applicable to a specific bar program. These projects are:

- grants to the Campaign for Equal Justice (\$45,000), the Classroom Law Project (\$20,000), and the Council on Court Procedures (\$4,000). These grants have been in the budget at the same amounts for several years.
- the annual cost of the Fastcase legal research library available as a member benefit for all active OSB members;
- since 2011, \$10,000 has been a placeholder amount for the Senior Lawyers task force which was never implemented and now is removed since there are no plans to implement;
- the personnel and administrative costs of the Loan Repayment Assistance Program.

Revenue recorded here is the \$200,000 grant from the PLF for BarBooks.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
<i>Revenues</i>					
140-4190-321	Grants Received - PLF	\$0	\$200,000	\$200,000	0
140-4998-000	Transfer from Reserves	\$0	\$100,000	\$0	-100,000
Total Revenues		\$0	\$300,000	\$200,000	-100,000
<i>Salaries & Benefits</i>					
140-6100-000	Salaries - LRAP	\$6,279	\$11,400	\$11,500	100
140-6105-000	Employee Taxes & Benefits - Regular-LRAP	\$2,235	\$4,500	\$4,400	-100
140-6150-000	Board Designated awards	\$0	\$0	\$0	0
Total Salaries & Benefits		\$8,514	\$15,900	\$15,900	0
<i>Direct Program Expenses</i>					
140-7195-079	Council on Court Procedures	\$3,670	\$4,000	\$4,000	0
140-7245-028	ABA Young Lawyers Division Conference	\$0	\$0	\$0	0
140-7250-000	Contingency	\$11,791	\$25,000	\$0	-25,000
140-7250-013	Reinstatements - Prior YR's Reinst Fee Refunds	\$0	\$0	\$0	0
140-7265-216	Casemaker	\$99,000	\$114,600	\$99,000	-15,600
140-7265-218	Casemaker	\$0	\$0	\$0	0
140-7270-034	Contributions-Classroom Law Project	\$20,000	\$20,000	\$20,000	0
140-7270-055	Contributions-Campaign for Equal Justice	\$45,000	\$45,000	\$45,000	0
140-7270-066	Contributions - ProBono Recognition	\$1,578	\$5,000	\$5,000	0
140-7590-000	LRAP Meeting Exp	\$0	\$200	\$200	0
140-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	\$0	0
140-7850-103	Special Projects - Diversity Convocation	\$0	\$0	\$0	0
140-7850-310	Special Projects - Senior Lawyers	\$0	\$10,000	\$0	-10,000
140-7850-312	Special Projects - Remote Communications	\$0	\$0	\$0	0
140-7870-000	Economic Survey	\$0	\$0	\$0	0
Total Direct Program Expenses		\$181,039	\$223,800	\$173,200	-50,600
<i>General & Administrative Expenses</i>					
140-9600-000	LRAP Photocopy Expense	\$139	\$250	\$250	0
140-9620-000	LRAP Postage	\$44	\$50	\$50	0
140-9800-000	LRAP- Telephone	\$20	\$50	\$25	-25
140-9999-000	Contingency Reserve	\$0	\$0	\$0	0
Total General & Administrative Expenses		\$203	\$350	\$325	-25
Total Expenses		\$189,756	\$240,050	\$189,425	
Net Operating Revenue (Expense)		(\$189,756)	\$59,950	\$10,575	

CLIENT SECURITY FUND

The Client Security Fund is established by Oregon Statutes and the key financial statutes are:

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

9.645 Annual payment by state bar members. To establish and maintain a client security fund, the board of governors may require an annual payment by each active member of the state bar. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual membership fee.

- The Client Security Fund assessment was raised from \$15.00 to \$45.00 in 2013 to offset the large volume and size of claims. Claims Paid in 2012 were \$673,535 and \$549,880 for the first nine months of 2013.
- At the end of September 2013, the fund balance is \$198,071 with some claims still outstanding for 2013.
- The \$45.00 assessment will generate \$679,800 in revenue in 2014. If there are only \$250,000 in claims paid in 2014, the fund balance still will be below the \$500,000 reserve at year end.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
113-4310-000	Interest - Fund Balance	3,148	3,100	3,300	200
113-4340-000	Judgments Collected	22,928	4,000	1,000	-3,000
113-4405-000	Membership Fees - CSF Assessment	220,257	675,000	684,400	9,400
Total Revenues		\$246,333	\$682,100	\$688,700	\$6,600
Salaries & Benefits					
113-6100-000	Employee Salaries - Regular	27,806	28,200	30,800	2,600
113-6105-000	Employee Taxes & Benefits - Regular	9,184	11,200	11,700	500
Total Salaries & Benefits		\$36,990	\$39,400	\$42,500	\$3,100
Direct Program Expenses					
113-7185-000	Claims	673,535	200,000	250,000	50,000
113-7190-000	Collection Fees	3,046	1,000	2,000	1,000
113-7195-000	Committee Expense	2	250	250	0
113-7930-000	Travel & Expense - Others	2,086	1,400	1,400	0
Total Direct Program Expenses		\$678,669	\$202,650	\$253,650	\$51,000
General & Administrative Expenses					
113-9500-000	Office Supplies	0	150	150	0
113-9600-000	In House Printing	0	150	150	0
113-9620-000	Postage	519	500	500	0
113-9640-000	Professional Dues	200	200	200	0
113-9800-000	Telephone	60	150	150	0
113-9830-000	Training & Education	475	600	600	0
113-9850-000	Travel & Expense - Staff	0	874	874	0
Total General & Administrative Expenses		\$1,254	\$2,624	\$2,624	\$0
Total Expenses		\$716,913	\$244,674	\$298,774	
Net Operating Revenue (Expense)		(\$470,580)	\$437,426	\$389,926	
113-9000-000	<i>Less: Indirect Cost Allocation</i>	\$13,048	\$14,625	\$26,622	
Net Revenue (Expense)		(\$483,628)	\$422,801	\$363,304	

DIVERSITY & INCLUSION

By action of the Board of Governors, the assessment for the Diversity & Inclusion program was increased from \$30.00 to \$45.00 for over-two year members and from \$15.00 to \$25.00 for under-two year active members of the bar for 2014. The increased assessment will raise an additional \$214,700 revenue for the program in 2014. This action is still subject to approval by the House of Delegates.

Reductions were made to the program budget in 2013 to reach a budget that will not exceed the program's fund balance, which will be near \$0 at the end of 2013.

The 2014 budget will restore the department to 3 FTE and the following:

- bar exam grant funding;
- membership in professional organizations;
- promotional materials;
- community outreach and sponsorships;
- staff training.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
103-4190-031	Grant from OLF	2,500	1,500	500	-1,000
103-4310-000	Interest - Fund Balance	1,506	1,400	2,200	800
103-4405-000	Membership Fees - AAP Assessment	417,013	419,700	637,100	217,400
103-4550-xxx	Sponsorship Fees - ALL	34,595	50,600	55,600	5,000
103-4565-030	BOWLIO Registrations	2,755	5,000	3,500	-1,500
Total Revenues		\$458,369	\$478,200	\$698,900	\$220,700
Salaries & Benefits					
103-6100-000	Employee Salaries - Regular	209,721	211,400	221,800	10,400
103-6105-000	Employee Taxes & Benefits - Regular	75,577	83,900	84,600	700
103-6200-000	Employee Salaries - Temporary	2,319	0	5,067	5,067
103-6205-000	Employee Taxes & Benefits - Temporary	179	0	507	507
Total Salaries & Benefits		\$287,796	\$295,300	\$311,973	\$16,673
Direct Program Expenses					
103-7040-000	Annual Event - OLIO Spring Social	4,412	1,600	1,600	0
103-7040-030	BOWLIO annual event expenses	3,878	4,000	4,000	0
103-7040-031	OLIO Orientation event	7,017	1,000	1,000	0
103-7040-047	Employment Retreat Expenses	2,169	1,800	1,800	0
103-7165-031	Catering - OLIO Orientation	28,953	19,000	19,000	0
103-7245-074	Bar Exam Prep seminar	4,488	2,100	6,300	4,200
103-7265-000	Contract Services	8,340	1,000	2,500	1,500
103-7265-031	Contract Services - OLIO	438	1,200	1,500	300
103-7360-031	Facilities - OLIO Orientation	607	800	1,200	400
103-7375-000	Fellowship - Honors	28,800	28,800	28,800	0
103-7395-031	Gifts & Awards-OLIO	919	0	500	500
103-7400-074	Grants - Bar Exam	5,400	1,800	5,400	3,600
103-7495-000	Law Clerk Placement	33,549	32,000	32,000	0
103-7575-000	OLIO Promo Materials	0	1,500	2,000	500
103-7590-000	Meeting Expense	1,164	1,000	1,000	0
103-7620-000	Outreach/ Program Marketing	324	600	2,000	1,400
103-7670-031	OLIO - OLIO Postage	0	500	750	250
103-7730-031	Program Materials-OLIO	0	200	200	0
103-7815-000	Scholarships	16,000	16,000	16,000	0
103-7840-000	Speaker Expense	6,000	3,800	3,800	0
103-7845-031	Lodging - OLIO	24,684	19,000	19,000	0
103-7850-000	Special Projects - Pipeline Development	2,396	1,800	1,800	0
103-7860-000	Sponsorships	4,720	3,000	13,500	10,500
103-7930-031	Travel & Expense - OLIO	3,120	3,200	3,800	600
Total Direct Program Expenses		\$187,378	\$145,700	\$169,450	\$23,750
General & Administrative Expenses					
103-9500-000	Office Supplies	851	500	500	0
103-9600-000	In House Printing	983	1,000	3,000	2,000
103-9620-000	Postage	1,096	500	500	0
103-9640-000	Professional Dues	1,127	2,300	2,694	394
103-9680-000	Publications & Subscriptions	538	250	400	150
103-9800-000	Telephone	167	500	200	-300
103-9830-000	Training & Education	4,622	2,500	8,920	6,420
103-9850-000	Travel & Expense - Staff	8,583	8,000	13,085	5,085
103-9850-031	Staff Travel & Exp-OLIO	2,281	3,500	3,500	0
103-9999-000	Miscellaneous Expense	474	100	100	0
Total General & Administrative Expenses		\$20,722	\$19,150	\$32,899	\$13,749
Total Expenses		\$495,896	\$460,150	\$514,322	
Net Operating Revenue (Expense)		(\$37,527)	\$18,050	\$184,578	
103-9000-000	<i>Less: Indirect Cost Allocation</i>	\$74,020	\$78,582	\$76,163	
Net Revenue (Expense)		(\$111,547)	(\$60,532)	\$108,415	

LEGAL SERVICES PROGRAM

The goal of the Legal Services Program is to use revenues collected under ORS 21.480 to fund a statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The LSP does this by distributing the revenue collected to Oregon's five legal aid providers. The revenues collected are filing fees, pro hac vice and unclaimed funds from lawyer trust accounts.

The expected revenue collected in 2014 is \$5,950,000 – the same amount as 2013. An additional \$100,000 is raised from Pro Hac Vice applications. From the total filing fee revenue, \$5,830,000 will be distributed to the five legal aid agencies and the bar retains \$120,000 to administer the program. Administration dollars pay for the following:

- Program staff and the LSP Committee to provide ongoing oversight, evaluation and support to legal services providers to ensure compliance with the Standards and Guidelines and to further the program's goals.
- Program staff and the LSP Committee to work with other funding sources and organizations to promote statewide collaboration and to improve access to civil justice in Oregon.
- Program staff and the Pro Bono Committee to provide oversight and coordination for the bar's Pro Bono Program and promote the OSB Pro Bono Aspirational Standard.

The LSP anticipates collecting an additional \$750,000 at the end of 2013. This represents unclaimed client funds from a class action lawsuit. These funds will be distributed pursuant to a strategy implemented in 2014.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
120-4070-000	Applications - Pro Hac Vice	114,750	100,000	100,000	0
120-4345-000	Legal Aid Funds Collected by Courts	5,950,000	5,950,000	5,950,000	0
120-4510-000	Pro Bono Program Revenue	1,578	5,000	5,000	0
Total Revenues		\$6,066,328	\$6,055,000	\$6,055,000	\$0
Salaries & Benefits					
120-6100-000	Employee Salaries - Regular	65,497	68,200	69,500	1,300
120-6105-000	Employee Taxes & Benefits - Regular	22,931	27,000	26,500	-500
Total Salaries & Benefits		\$88,428	\$95,200	\$96,000	\$800
Direct Program Expenses					
120-7183-xxx	County Disbursements - ALL	5,830,000	5,830,000	5,830,000	0
120-7750-000	Pro Bono Recognition & Promotion Expense	1,578	5,000	5,000	0
120-7783-000	Pro Hac Vice Distributions	114,750	100,000	100,000	0
Total Direct Program Expenses		\$5,946,328	\$5,935,000	\$5,935,000	\$0
General & Administrative Expenses					
120-9500-000	Office Supplies	27	50	50	0
120-9600-000	In House Printing	22	50	50	0
120-9620-000	Postage	15	20	20	0
120-9640-000	Professional Dues	732	602	632	30
120-9800-000	Telephone	0	25	25	0
120-9850-000	Travel & Expense - Staff	2,287	1,963	1,100	-863
Total General & Administrative Expenses		\$3,083	\$2,710	\$1,877	(\$833)
Total Expenses		\$6,037,839	\$6,032,910	\$6,032,877	
Net Operating Revenue (Expense)		\$28,489	\$22,090	\$22,123	
120-9000-000	<i>Less: Indirect Cost Allocation</i>	\$23,771	\$45,818	\$51,153	
Net Revenue (Expense)		\$4,718	(\$23,728)	(\$29,030)	



ALL FINANCE & ADMINISTRATION

This statement is a summary of all the departments in Finance & Administration (F&A) that provide support services to all bar departments and programs and including sections.

The bulk of the costs are salaries for personnel in accounting, technology, distribution center (mailroom and copy center), receptionists, human resources, and creative services. The Direct Program expenses are the administrative costs and supplies necessary for the bar's overall operation. These costs are allocated to all other programs as "Indirect Cost Allocation" (ICA) – commonly known as "overhead."

Here is the summary of all departments making up F&A and a comparison of the current and next year's budget.

Department	2013	2014	\$ Change	% Change
Accounting	\$430,737	\$418,229		
Bar Center	33,360	28,750		
Creative Services *		325,885		
Distribution Center	381,140	250,350		
Fanno Creek Place	160,459	160,459		
Finance	251,861	243,855		
Human Resources	229,420	230,560		
Information Technology *	904,265	645,267		
Totals	\$2,391,242	\$2,303,355	(\$87,887)	-3.7%

* Creative Services was included with Information Technology in 2013.

These costs are allocated to the departments using criteria such as the respective department's/ program's FTE, space occupied, number of financial transactions, copy and mail services.

Account Code	Acct Description	2012 Totals	Current Year Budget	Budget 2014	Budget Inc / Dec
Revenues					
13x-4235-xxx	Discounts	\$0	\$0	\$0	\$0
13x-4250-xxx	Equipment Surplus	\$674	\$500	\$0	(\$500)
13x-4300-000	Insufficient Funds Fees	\$175	\$150	\$150	\$0
13x-4325-xxx	Investments	\$298,958	\$128,962	\$130,600	\$1,638
13x-4395-xxx	Realized Gain (Loss)	\$85,817	\$0	\$0	\$0
13x-4405-xxx	Membership Fees	\$6,681,631	\$6,749,700	\$6,810,300	\$60,600
13x-4475-000	Over (Short)	\$72	\$0	\$0	\$0
13x-4610-xxx	Royalties	\$12,489	\$0	\$0	\$0
13x-4620-xxx	Sales	\$0	\$0	\$3,000	\$3,000
13x-4620-xxx	Sales	\$0	\$0	\$0	\$0
13x-4670-xxx	Services	\$0	\$0	\$7,000	\$7,000
13x-4999-xxx	Miscellaneous Income	\$1,724	\$0	\$0	\$0
	Total Revenues	\$7,081,540	\$6,879,312	\$6,951,050	\$71,738
Salaries & Benefits					
13x-6100-xxx	Employee Salaries - Regular	\$1,003,676	\$1,130,700	\$1,108,500	(\$22,200)
13x-6105-xxx	Employee Taxes & Benefits - Reg	\$365,589	\$448,100	\$422,600	(\$25,500)
13x-6150-xxx	Employee Recognition Bonus	\$0	\$0	\$0	\$0
13x-6200-xxx	Employee Salaries - Temporary	\$9,664	\$1,200	\$5,040	\$3,840
13x-6205-xxx	Employee Taxes & Benefits - Tem	\$745	\$120	\$504	\$384
13x-6300-xxx	Long Term Temporary Employee -	\$2,681	\$2,700	\$0	(\$2,700)
	Total Salaries & Benefits	\$1,382,355	\$1,582,820	\$1,536,644	(\$46,176)
Direct Program Expenses					
13x-7080-xxx	Auditing	\$19,248	\$20,000	\$19,000	(\$1,000)
13x-7090-xxx	Bank Fees	\$91,716	\$127,500	\$111,500	(\$16,000)
13x-7170-000	Gift card purchases	\$5,330	\$5,700	\$5,700	\$0
13x-7205-xxx	Computer Services	\$95,399	\$78,210	\$88,947	\$10,737
13x-7265-xxx	Contract Services	\$218,332	\$211,840	\$104,000	(\$107,840)
13x-7295-xxx	Depreciation	\$287,043	\$176,800	\$140,000	(\$36,800)
13x-7425-xxx	Hiring & Recruiting	\$10,736	\$7,900	\$7,900	\$0
13x-7445-xxx	Insurance	\$18,577	\$17,800	\$30,400	\$12,600
13x-7455-xxx	Interest Expense	\$0	\$0	\$0	\$0
13x-7460-xxx	Investment Expense	\$35,634	\$36,700	\$40,200	\$3,500
13x-7500-xxx	Office Equipment	\$1,293	\$2,200	\$1,000	(\$1,200)
13x-7535-xxx	Loss on Sale	\$0	\$0	\$0	\$0
13x-7540-000	Lease Expense	\$0	\$0	\$0	\$0
13x-7563-xxx	Mailhouse Services	\$0	\$0	\$0	\$0
13x-7570-xxx	Maintenance	\$10,177	\$12,000	\$3,000	(\$9,000)
13x-7660-xxx	Payroll Processing	\$18,349	\$19,100	\$22,000	\$2,900
13x-7670-xxx	Postage	\$0	\$0	\$100	\$100
13x-7670-xxx	Postage	\$95,620	\$109,000	\$94,100	(\$14,900)
13x-7700-xxx	Printing Services	\$235	\$700	\$500	(\$200)
13x-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	\$0	\$0
13x-7830-xxx	Section Services	\$0	\$0	\$0	\$0
13x-7830-xxx	Section Services	\$302	\$0	\$0	\$0
13x-7870-000	Survey - Economic	\$19,199	\$0	\$0	\$0
13x-7875-xxx	Supplies	\$35,680	\$32,700	\$39,800	\$7,100
13x-7877-000	Data Protection	\$22,635	\$20,400	\$16,000	(\$4,400)
13x-7885-xxx	Telephone	\$42,263	\$47,000	\$48,500	\$1,500
13x-7995-044	YE Inventory Change - Bar Store	\$0	\$0	\$0	\$0
13x-7999-000	F & O - Gen'l-Miscellaneous Expense-	\$0	\$0	\$0	\$0
	Total Direct Program Expenses	\$1,027,768	\$925,550	\$772,647	(\$152,903)
General & Administrative Expenses					
13x-9400-xxx	Messenger & Delivery Services	\$3,359	\$4,100	\$4,600	\$500
13x-9500-xxx	Office Supplies	\$3,861	\$3,575	\$3,575	\$0
13x-9600-xxx	Photocopying	\$1,384	\$1,650	\$1,650	\$0
13x-9620-xxx	Postage	\$10,917	\$9,250	\$7,900	(\$1,350)
13x-9640-xxx	Professional Dues	\$1,345	\$1,375	\$1,160	(\$215)
13x-9660-xxx	Bad Debts Expense	\$49,749	\$22,000	\$25,000	\$3,000
13x-9680-xxx	Publications & Subscriptions	\$1,272	\$1,750	\$2,250	\$500
13x-9700-xxx	Small furn & equip < \$500	\$0	\$500	\$500	\$0
13x-9800-xxx	Telephone	\$8	\$150	\$520	\$370
13x-9830-xxx	Training & Education	\$7,568	\$12,030	\$15,710	\$3,680

Account Code	Acct Description	2012 Totals	Current Year Budget	Budget 2014	Budget Inc / Dec
General & Administrative Expenses					
13x-9850-xxx	Staff Travel & Expense	\$9,388	\$6,312	\$5,440	(\$872)
13x-9855-000	Staff Expenses- FIRE Committee	\$6,002	\$6,100	\$6,100	\$0
13x-9999-xxx	Miscellaneous Expense	\$747	\$1,300	\$1,600	\$300
Total General & Administrative Expenses		\$95,600	\$70,092	\$76,005	\$5,913
Total Expenses Before Allocations:		\$2,505,723	\$2,578,462	\$2,385,296	
Service Reimbursements					
13x-4710-xxx	Support Assessment	(\$112,106)	(\$113,000)	(\$137,200)	(\$24,200)
13x-4670-xxx	Services	(\$11,589)	(\$11,100)	(\$11,100)	\$0
13x-4505-xxx	Postage	(\$3,306)	(\$3,000)	(\$2,800)	\$200
13x-4490-xxx	Photocopies	(\$12,207)	(\$9,600)	(\$5,200)	\$4,400
Total Service Reimbursements		(\$139,208)	(\$136,700)	(\$156,300)	(\$19,600)
Offsets					
13x-9801-000	Telephone - Offset	\$0	\$0	\$0	\$0
13x-9621-000	Postage - Offset	(\$91,101)	(\$101,600)	(\$87,400)	\$14,200
13x-9601-000	Photocopying - Offset	(\$51,026)	(\$34,500)	(\$27,450)	\$7,050
Total Offsets		(\$142,127)	(\$136,100)	(\$114,850)	\$21,250
Total Expense Allocations		(\$281,335)	(\$272,800)	(\$271,150)	
Net Expenses		\$2,224,388	\$2,305,662	\$2,114,146	
Net Revenue Before Indirect Cost Allocation		\$2,351,429	\$1,995,188	\$2,451,608	
Indirect Cost Allocations to Bar Programs:					
<i>Admissions</i>		\$141,397	\$130,881	\$118,128	(\$12,753)
<i>Diversity & Inclusion</i>		\$74,020	\$78,582	\$76,163	(\$2,419)
<i>Loan Replacement Assistance Program</i>					
<i>Governance</i>		\$69,512	\$72,433	\$73,242	\$809
<i>Communications & Marketing</i>		\$158,715	\$185,215	\$115,681	(\$69,534)
<i>CLE Seminars</i>		\$366,540	\$414,138	\$359,364	(\$54,774)
<i>Legal Publications</i>		\$268,084	\$278,020	\$260,816	(\$17,204)
<i>Client Assistance Program</i>		\$137,364	\$134,271	\$118,989	(\$15,282)
<i>Client Security Fund</i>		\$13,048	\$14,625	\$26,622	\$11,997
<i>Disciplinary Counsel</i>		\$426,088	\$442,948	\$361,389	(\$81,559)
<i>New Lawyer Mentoring Program</i>		\$40,806	\$442,948	\$361,389	(\$81,559)
<i>General Counsel</i>		\$82,323	\$76,588	\$74,804	(\$1,784)
<i>Public Affairs</i>		\$101,303	\$98,197	\$91,614	(\$6,583)
<i>Legal Services Program</i>		\$23,771	\$45,818	\$51,153	\$5,335
<i>MCLE</i>		\$69,749	\$69,384	\$70,759	\$1,375
<i>Bulletin</i>		\$89,915	\$130,589	\$161,930	\$31,341
<i>New Lawyers Division</i>		\$38,908	\$39,269	\$45,830	\$6,561
<i>Member Services</i>		\$96,083	\$81,592	\$102,649	\$21,057
<i>Referral Information Services</i>		\$147,091	\$161,226	\$143,755	(\$17,471)
Total Indirect Cost Allocations		\$2,344,717	\$2,499,596	\$2,303,355	
Net Revenue (Expense)		\$4,696,146	\$4,494,784	\$4,754,963	

ACCOUNTING

The Accounting Department processes the bar's accounts payable, accounts receivable, payroll, sales and inventory for all departments, and the annual billing and collections for member fees. These services, as needed, are performed also for all 41 sections.

The department also:

- prepares the approximately 50-page monthly OSB financial statements and all sections;
- administers the OSB department and section budgets, and works with department staff and section volunteers to oversee and correctly manage their respective budgets;
- maintains bar-wide financial-related procedures and internal controls;
- monitors the bar's cash and short-term investments.

The number of members paying online by credit cards continues to grow each year (52.4% in 2013, the first year when more than half the payments were made with a credit card). These bank fees are a percentage of dollars charged so as member fees paid with a credit card increase, the cost to process these payments also increases. The current fee the bar pays is approximately 2.5% of credit card charges, which for the twelve months September 2012 to August 2013 was \$5,071,234.

The bank fee amount in the 2013 budget is too high as the amount included the fees for all bar products purchased with credit card, rather than only the 82% of payment of member fees that should have been included in 2013, and is included in the 2014 budget.

- The bar will be audited by an independent CPA firm in 2014 for the 2012 and 2013 fiscal years. The 2014 budget includes the one year accrual of the estimated two-year fee.
- Although postage cost have decreased dramatically, the bar still mails fee statements to some members, sends postcards reminders in January to those who have not yet paid their member fees, and sends certified notices on the final fee due date.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
<i>Salaries & Benefits</i>					
132-6100-000	Employee Salaries - Regular	\$162,649	\$177,400	\$181,000	3,600
132-6105-000	Employee Taxes & Benefits - Regular	\$60,023	\$70,300	\$69,000	-1,300
132-6150-000	Employee Recognition Bonus	\$0	\$0	\$0	0
132-6200-000	Employee Salaries - Temporary	\$9,664	\$1,200	\$5,040	3,840
132-6205-000	Employee Taxes & Benefits - Temporary	\$745	\$120	\$504	384
132-6300-000	Temp Staff Salaries - Agency	\$2,681	\$2,700	\$0	-2,700
Total Salaries & Benefits		\$235,762	\$251,720	\$255,544	3,824
<i>Direct Program Expenses</i>					
132-7080-000	Auditing	\$19,248	\$20,000	\$19,000	-1,000
132-7090-000	Bank Fees - Credit Card Processing	\$88,597	\$124,000	\$108,250	-15,750
132-7090-100	Bank Fees - Other	\$3,060	\$3,500	\$3,250	-250
132-7500-000	Small furn & equip < \$500 - Direct Pgm	\$0	\$0	\$0	0
132-7563-000	Mailhouse Services	\$0	\$0	\$0	0
132-7660-000	Payroll Processing	\$18,349	\$19,100	\$22,000	2,900
132-7700-000	Printing - Program related	\$235	\$700	\$500	-200
Total Direct Program Expenses		\$129,489	\$167,300	\$153,000	-14,300
<i>General & Administrative Expenses</i>					
132-9400-000	Messenger & Delivery Services - Accounting	\$0	\$0	\$0	0
132-9500-000	Office Supplies - Accounting	\$617	\$875	\$1,575	700
132-9600-000	In House Printing/Copies - Accounting	\$238	\$600	\$350	-250
132-9620-000	Postage - Accounting	\$9,101	\$8,200	\$7,200	-1,000
132-9640-000	Professional Dues - Accounting	\$110	\$110	\$110	0
132-9680-000	Publications & Subscriptions - Accounting	\$0	\$0	\$0	0
132-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$0	\$0	0
132-9800-000	Telephone - Accounting	\$0	\$0	\$0	0
132-9830-000	Training & Education - Accounting	\$407	\$860	\$450	-410
132-9850-000	Travel & Expenses - Accounting Staff	\$264	\$1,072	\$0	-1,072
132-9999-000	Miscellaneous Expense - Accounting	\$0	\$0	\$0	0
Total General & Administrative Expenses		\$10,737	\$11,717	\$9,685	-2,032
Total Expenses		\$375,988	\$430,737	\$418,229	
Net Operating Revenue (Expense)		(\$375,988)	(\$430,737)	(\$418,229)	

CREATIVE SERVICES

The Creative Services Department was formed in 2013 with the merger of the Design Center with Production Services. The new department provides creative services that support the communication and marketing efforts of bar departments and bar groups, including committees, sections, and local bars. Services delivered to the latter two groups generate income to help cover staff time, with direct costs passed through to the groups without markups.

Ongoing department products include the design and layout of the Bulletin and management of the bar's website, including the features and services delivered through the website and the member dashboard. Income from sales of the printed membership directory, a legacy product still produced by the Department, has been retained in the creative services budget. Advertising revenue related to the companion *Attorney's Marketplace*, has been transferred to the Bulletin budget since the primary print product is contained within the periodical. The secondary display of *Attorney's Marketplace* advertising is maintained by creative services on the bar's website and serves as a potential source for new advertising revenue.

- Revenue historically received for sale of the printed membership directory continues on a downward trend following elimination of both the full directory and the modified Bulletin supplement. The bar continues to sell printed and bound versions of member contact/white page listings, a file for which is also available for download on the member side of the website at no charge.

Downloads of the whitepages.pdf file have trended upward since first offered in 2011—2,953 copies downloaded to date in 2013; up from 2,064 in 2012, and up from 1,764 in 2011.

The trend is reversed for the printed version with 107 copies sold to date in 2013—down from 292 copies sold in 2012, and 299 in 2011.

These trends are expected to continue in the same direction for 2014.

- A focus in 2014 is increasing department skills to support the organization's strategic marketing plan and CLE integration efforts.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
<i>Revenues</i>					
133-4620-605	Sales - Member Directory	\$0	\$0	\$3,000	3,000
133-4670-000	Services - Sections/Local Bars	\$0	\$0	\$7,000	7,000
Total Revenues		\$0	\$0	\$10,000	10,000
<i>Salaries & Benefits</i>					
133-6100-000	Employee Salaries - Regular	\$0	\$0	\$231,300	231,300
133-6105-000	Employee Taxes & Benefits - Regular	\$0	\$0	\$88,200	88,200
133-6150-000	Employee Recognition Bonus	\$0	\$0	\$0	0
133-6200-000	Employee Salaries - Temporary	\$0	\$0	\$0	0
133-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	\$0	0
133-6300-000	Long Term Temporary Employee - Agency	\$0	\$0	\$0	0
Total Salaries & Benefits		\$0	\$0	\$319,500	319,500
<i>Direct Program Expenses</i>					
133-7670-605	Postage - Directory	\$0	\$0	\$100	100
133-7830-000	Section Services - Projects	\$0	\$0	\$0	0
133-7875-070	Supplies - Program Related-Art	\$0	\$0	\$2,500	2,500
Total Direct Program Expenses		\$0	\$0	\$2,600	2,600
<i>General & Administrative Expenses</i>					
133-9400-000	Messenger & Delivery Services	\$0	\$0	\$0	0
133-9500-000	Office Supplies	\$0	\$0	\$600	600
133-9600-000	In House Printing	\$0	\$0	\$500	500
133-9620-000	Postage	\$0	\$0	\$100	100
133-9640-000	Professional Dues	\$0	\$0	\$115	115
133-9680-000	Publications & Subscriptions	\$0	\$0	\$750	750
133-9800-000	Telephone	\$0	\$0	\$0	0
133-9830-000	Training & Education	\$0	\$0	\$1,500	1,500
133-9850-000	Travel & Expense - Staff	\$0	\$0	\$120	120
133-9999-000	Miscellaneous Expense	\$0	\$0	\$100	100
Total General & Administrative Expenses		\$0	\$0	\$3,785	3,785
Total Expenses		\$0	\$0	\$325,885	
Net Operating Revenue (Expense)		\$0	\$0	(\$315,885)	

DISTRIBUTION CENTER

The Distribution Center handles the mailroom, shipping and receiving, and copy center duties of the bar. These duties also include similar services for sections. The gross cost of all postage and shipping is recorded in this department before it is directly charged or allocated to the respective bar programs as part of the ICA.

- The bar's postage costs have been in a consistent decline with the distribution of much bar communication via email and other electronic messages.

Year	2009	2010	2011	2012	2013 P	2014 B
Postage and Shipping	\$234,846	\$195,096	\$106,811	\$ 95,621	\$ 87,500	\$ 92,000
YOY % Change		-16.9%	-45.3%	-10.5%	-8.5%	5.1%

- The 2013 cost in the chart above is the projected 2013 cost, and the increase in 2014 is due to the expected reaching the "bottom" in volume, a three cents postage increase in January 2014, and increased per unit shipping cost.

The second component of the Distribution Center is the Copy Center, which produces volume printing and product assembly for bar and section activities. The cost (listed under Contract Services) is for an employee provided by the vendor, the lease for 12 copiers/printers, and the maintenance and supplies of the copiers.

- The copy center costs dropped dramatically in mid 2013 as a five-year lease terminated and proposals from five vendors led to a substantial savings in less copying/printing, personnel, leasing of new equipment, and lower maintenance costs adding to the competitive bidding process.
- The cost of copying and printing is charged directly to the department or allocated as part of the ICA. The chart below reflects the consistent decline in the number of sheets of paper printed throughout the bar center on internal copiers. The bar anticipates that copy volume has plateaued to about 1.9 to 2 million copies a year

Year	2008	2009	2010	2011	2012
Copy Volume (<i>in millions</i>)	3.416	2.379	2.044	1.920	1.945
YOY % Change		-30.4	-14.71	-6.1	1.3

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
Salaries & Benefits					
138-6100-000	Employee Salaries - Regular	\$44,649	\$45,200	\$36,300	-8,900
138-6105-000	Employee Taxes & Benefits - Regular	\$15,388	\$17,900	\$13,800	-4,100
138-6150-000	Employee Recognition	\$0	\$0	\$0	0
138-6200-000	Employee Salaries - Temporary	\$0	\$0	\$0	0
138-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	\$0	0
138-6300-000	Long Term Temporary Employee - Agency - Distrib	\$0	\$0	\$0	0
Total Salaries & Benefits		\$60,037	\$63,100	\$50,100	-13,000
Direct Program Expenses					
138-7265-040	Contract Services - IKON	\$180,249	\$180,340	\$77,400	-102,940
138-7265-076	Contract Services - Fulfillment	\$0	\$0	\$0	0
138-7265-081	Contract Services -Scanning	\$0	\$0	\$0	0
138-7500-000	Office Equipment & Furniture <\$500 tagged	\$0	\$500	\$500	0
138-7563-000	Mailhouse Services	\$0	\$0	\$0	0
138-7570-000	Maintenance - Mailing Equipment	\$1,275	\$3,000	\$2,000	-1,000
138-7670-000	Postage - Meter	\$61,305	\$69,100	\$57,300	-11,800
138-7670-097	Postage - Permit	\$17,739	\$23,000	\$15,600	-7,400
138-7670-098	Postage - UPS/Parcel	\$14,616	\$14,800	\$19,100	4,300
138-7670-099	Postage - Misc.	\$1,960	\$2,100	\$2,100	0
138-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	\$0	0
138-7875-000	Supplies - Mailing	\$5,595	\$5,400	\$5,800	400
138-7875-040	Supplies - Duplicating	\$14,786	\$14,400	\$14,400	0
Total Direct Program Expenses		\$297,525	\$312,640	\$194,200	-118,440
General & Administrative Expenses					
138-9400-000	Messenger & Delivery Services - Distribution Ctr	\$3,359	\$4,000	\$4,500	500
138-9500-000	Office Supplies - Distribution Center	\$64	\$200	\$200	0
138-9600-000	In House Printing - Distribution Center	\$111	\$0	\$0	0
138-9620-000	Postage - Distribution Center	\$40	\$150	\$100	-50
138-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$500	\$500	0
138-9800-000	Telephone - Distribution Center	\$0	\$50	\$50	0
138-9830-000	Training & Education - Distribution Center	\$0	\$300	\$300	0
138-9850-000	Travel & Expense - Distribution Center Staff	\$49	\$200	\$400	200
138-9999-000	Miscellaneous Expense - Distribution Center	\$0	\$0	\$0	0
Total General & Administrative Expenses		\$3,623	\$5,400	\$6,050	650
Total Expenses		\$361,185	\$381,140	\$250,350	
Net Operating Revenue (Expense)		(\$361,185)	(\$381,140)	(\$250,350)	



FINANCE & ADMINISTRATION - GENERAL

Finance & Administration records the revenue and expenses that apply to the overall administration of all bar programs. The revenue is the membership fees and investment income earned on the general and section funds and the service charge to sections.

Member Fee For:	2013	2014	\$ Change	% Chge	Fee
General	\$ 6,654,700	\$ 6,729,700	\$ 75,000		\$ 432.00
Late Fees	95,000	80,600	(14,400)		
	\$ 6,749,700	\$ 6,810,300	60,600	0.90%	\$ 432.00
Bulletin	188,000	191,300	3,300		10.00
LRAP	73,300	74,400	1,100		5.00
Total General Fund	\$ 7,011,000	\$ 7,076,000	65,000	0.93%	\$ 447.00
D&I	419,700	637,100	217,400		45.00
CSF	675,000	684,400	9,400		45.00
Total All Funds	\$ 8,105,700	\$ 8,397,500	\$ 291,800	3.60%	\$ 537.00

The increase in *Member Fee revenue* is less than projected at mid-year. These numbers will be updated with the final budget report and anticipate there will be a slightly higher revenue number.

The large decrease in *Late Fees* is based on 2013 experience in which the bar collected far less late fees as more members paid by credit card (52.3% of all fee payments) rather than pay the additional fee after January 31.

Investment income is the dividend and interest income earned on the portfolios managed by the two investment firms and the interest on the short-term funds in the Local Government Investment Pool (LGIP).

The 2014 budget includes an increase in the *administrative fee charged to sections* from \$6.50 to \$8.00. The fee had been \$6.50 for the previous three years. The \$8.00 assessment is estimated as half the cost of services provided to the sections by bar staff. Previous BOG action established the fee at half the cost of the services provided to the sections by the bar.

The key F&A - General expenses are:

- Personnel costs are for two receptionists and most of the CFO.
- The investment management fee is the fee charged by Becker Capital and Washington Trust Bank to manage the bar's investment portfolio. The fee from both firms is based on the value of the portfolio, so as the portfolio increases so does the fee.
- Depreciation is the non-cash charge for the past cost of furniture, fixtures, equipment, and any capitalized software. This expense is declining as many of these assets are carryovers from the former building, or assets purchased with the new building nearing the end of their depreciable life but do not need to be replaced.
- Insurance expense is any insurance not related to the building. This includes liability, crime, employee practices liability, and umbrella. Market conditions are causing regular annual increases in premiums.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
Revenues					
135-4235-000	Discounts	\$0	\$0	\$0	0
135-4235-044	Discounts - Company Store	\$0	\$0	\$0	0
135-4235-100	Discounts - Company Store	\$0	\$0	\$0	0
135-4250-000	Surplus Equipment Sales	\$674	\$500	\$0	-500
135-4300-000	Insufficient Funds Fees	\$175	\$150	\$150	0
135-4325-xxx	Investments - ALL	\$298,958	\$128,962	\$130,600	1,638
135-4395-600	Realized (Gain) Loss - Becker	\$30,696	\$0	\$0	0
135-4395-700	Realized Investment (Gain)/Loss-WTB	\$55,121	\$0	\$0	0
135-4395-800	Realized Investment (Gain)/Loss-Lazard	\$0	\$0	\$0	0
135-4405-000	Membership Fees - General	\$6,567,337	\$6,654,700	\$6,729,700	75,000
135-4405-013	Membership Fees - Prior Years Adjustments	\$0	\$0	\$0	0
135-4405-100	Membership Fees - Interim Years Dues	\$4,394	\$0	\$0	0
135-4405-200	Membership Fees - Late Payment Fee Increase	\$109,900	\$95,000	\$80,600	-14,400
135-4475-000	Over (Short)	\$72	\$0	\$0	0
135-4610-000	Royalties - Credit Card Program	\$12,469	\$0	\$0	0
135-4610-680	Survey - Economic	\$20	\$0	\$0	0
135-4620-044	Sales - Company Store	\$0	\$0	\$0	0
135-4999-000	Miscellaneous Revenue	\$1,724	\$0	\$0	0
Total Revenues		\$7,081,540	\$6,879,312	\$6,941,050	61,738
Salaries & Benefits					
135-6100-000	Employee Salaries - Regular	\$258,327	\$257,300	\$188,100	-69,200
135-6100-100	Employee Salaries - Regular - Recptn	\$0	\$0	\$0	0
135-6100-108	Employee Salaries - Reception Staff Regular	(\$11)	\$0	\$0	0
135-6105-000	Employee Taxes & Benefits - Regular	\$91,578	\$102,000	\$71,700	-30,300
135-6105-100	Employee Taxes & Benefits - Regular - Recptn	\$0	\$0	\$0	0
135-6105-108	Employee Taxes & Benefits - Reception Regular	(\$2)	\$0	\$0	0
135-6150-000	Employee Recognition Bonus	\$0	\$0	\$0	0
135-6150-100	Employee Recognition Bonus - Recptn	\$0	\$0	\$0	0
135-6150-108	Bonus-Reception	\$0	\$0	\$0	0
135-6200-000	Employee Salaries - Temporary	\$2,166	\$0	\$0	0
135-6200-100	Employee Salaries - Temporary - Recptn	\$0	\$0	\$0	0
135-6205-000	Employee Taxes & Benefits - Temporary	\$167	\$0	\$0	0
135-6205-100	Employee Taxes & Benefits - Temporary - Recptn	\$0	\$0	\$0	0
135-6300-000	Long Term Temporary Employee - Agency	\$0	\$0	\$0	0
135-6300-108	Temp Staff-Agency-Reception	\$0	\$0	\$0	0
Total Salaries & Benefits		\$352,225	\$359,300	\$259,800	-99,500
Direct Program Expenses					
135-7265-000	Contract Services	\$0	\$1,000	\$1,000	0
135-7295-000	Depreciation-Furniture/Equip/Software	\$287,043	\$176,800	\$140,000	-36,800
135-7445-000	Insurance & Bonding	\$18,577	\$17,800	\$30,400	12,600
135-7455-000	Interest - Capital Lease	\$0	\$0	\$0	0
135-7460-000	Investment Expense	\$3,805	\$36,700	\$40,200	3,500
135-7460-100	Investment Expense-Wash Trust Bank	\$17,827	\$0	\$0	0
135-7460-200	Investment Expense-Becker/WCT	\$14,002	\$0	\$0	0
135-7500-000	Office Equipment & Furniture <\$500 tagged	\$0	\$500	\$500	0
135-7535-000	Loss on Sale - Equipment/Furniture	\$0	\$0	\$0	0

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
Direct Program Expenses					
135-7540-000	Lease Expense	\$0	\$0	\$0	0
135-7570-000	Maintenance - Equipment	\$0	\$0	\$0	0
135-7830-000	Section Services	\$302	\$0	\$0	0
135-7870-000	Survey - Economic	\$19,199	\$0	\$0	0
135-7875-000	Supplies - Operating	\$3,600	\$5,100	\$5,100	0
135-7995-044	YE Inventory Change - Bar Store	\$0	\$0	\$0	0
135-7999-000	F & O - Gen'l-Miscellaneous Expense-	\$0	\$0	\$0	0
Total Direct Program Expenses		\$364,355	\$237,900	\$217,200	-20,700
General & Administrative Expenses					
135-9400-xxx	Messenger & Delivery Services - ALL	\$0	\$100	\$100	0
135-9500-xxx	Office Supplies - ALL	\$518	\$200	\$200	0
135-9600-xxx	Photocopying - ALL	\$391	\$300	\$300	0
135-9620-xxx	Postage - ALL	\$1,335	\$400	\$200	-200
135-9640-xxx	Professional Dues - ALL	\$725	\$745	\$575	-170
135-9660-000	Provision for Bad Debts	\$49,749	\$22,000	\$25,000	3,000
135-9680-xxx	Publications & Subscriptions - ALL	\$890	\$500	\$300	-200
135-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$0	\$0	0
135-9800-xxx	Telephone - ALL	\$8	\$100	\$50	-50
135-9830-xxx	Training & Education - ALL	\$2,369	\$1,570	\$1,660	90
135-9850-xxx	Staff Travel & Expense - ALL	\$4,595	\$3,600	\$3,220	-380
135-9855-000	Staff Expenses- FIRE Committee	\$6,002	\$6,100	\$6,100	0
135-9999-xxx	Miscellaneous Expense - ALL	(\$7)	\$200	\$300	100
Total General & Administrative Expenses		\$66,575	\$35,815	\$38,005	2,190
Service Reimbursements					
135-4490-000	In House Printing - Sections	(\$12,207)	(\$9,600)	(\$5,200)	4,400
135-4490-100	In House Printing - Others	\$0	\$0	\$0	0
135-4505-000	Postage - Sections	(\$3,306)	(\$3,000)	(\$2,800)	200
135-4505-100	Postage - Others	\$0	\$0	\$0	0
135-4670-000	Services - Labels/Address Imprinting - Sections	(\$94)	(\$100)	(\$100)	0
135-4670-100	Services - Other / Misc. Services - Sections	(\$659)	\$0	\$0	0
135-4670-200	Services - Labels/Address Imprinting - Others	(\$10,836)	(\$11,000)	(\$11,000)	0
135-4670-300	Services - Other / Misc. Services - Others	\$0	\$0	\$0	0
135-4670-999	Services - Miscellaneous Section	\$0	\$0	\$0	0
135-4710-000	Support Assessments - Sections	(\$112,106)	(\$113,000)	(\$137,200)	-24,200
135-4710-320	Support Services - OLF	\$0	\$0	\$0	0
Total Service Reimbursements		(\$139,208)	(\$136,700)	(\$156,300)	-19,600
Offsets					
135-9601-000	Photocopying - Offset	(\$51,026)	(\$34,500)	(\$27,450)	7,050
135-9621-000	Postage - Offset	(\$91,101)	(\$101,600)	(\$87,400)	14,200
135-9801-000	Telephone - Offset	\$0	\$0	\$0	0
Total Offsets		(\$142,127)	(\$136,100)	(\$114,850)	21,250
Total Expenses		\$783,155	\$633,015	\$515,005	
Net Operating Revenue (Expense)		\$6,298,385	\$6,246,297	\$6,426,045	

HUMAN RESOURCES

The Human Resources Department maintains compliance with all local, state, and federal regulations related to human resources and safety and wellness issues, and develops policies to ensure compliance; maintains a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; guides directors and managers with the management, evaluation, and discipline of staff; manages a comprehensive and cost effective benefit program; and creates and enhances training options at all staff levels.

Like many departments, most of Human Resources costs are personnel salaries, taxes, and benefits.

- Recruitment advertising remains at \$7,900 as HR continues to use no-cost or low-cost advertising opportunities while still reaching a qualified, diverse applicant pool.
- The Gift card purchases line item are gift cards for staff who provide exemplary tasks over and above normal job duties, and for staff at Thanksgiving.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
<i>Salaries & Benefits</i>					
136-6100-000	Employee Salaries - Regular	\$143,490	\$145,800	\$148,700	2,900
136-6105-000	Employee Taxes & Benefits - Regular	\$50,452	\$57,800	\$56,700	-1,100
136-6150-000	Employee Recognition	\$0	\$0	\$0	0
136-6150-100	Spot Bonus Gift Cards	\$0	\$0	\$0	0
136-6200-000	Employee Salaries - Temporary	\$0	\$0	\$0	0
136-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	\$0	0
136-6300-000	Long Term Temporary Employee - Agency - HR	\$0	\$0	\$0	0
Total Salaries & Benefits		\$193,942	\$203,600	\$205,400	1,800
<i>Direct Program Expenses</i>					
136-7170-000	Gift card purchases	\$5,330	\$5,700	\$5,700	0
136-7265-000	Contract Services	\$0	\$0	\$0	0
136-7425-000	Hiring & Recruiting	\$10,736	\$7,900	\$7,900	0
136-7500-000	Small furn & equip < \$500 - Direct Pgm	\$0	\$0	\$0	0
Total Direct Program Expenses		\$16,066	\$13,600	\$13,600	0
<i>General & Administrative Expenses</i>					
136-9400-000	Messenger & Delivery Services - Human Resources	\$0	\$0	\$0	0
136-9500-000	Office Supplies - Human Resources	\$692	\$500	\$500	0
136-9600-000	In House Printing - Human Resources	\$405	\$750	\$500	-250
136-9620-000	Postage - Human Resources	\$412	\$300	\$200	-100
136-9640-000	Professional Dues - Human Resources	\$510	\$520	\$360	-160
136-9680-000	Publications & Subscriptions - Human Resources	\$270	\$750	\$700	-50
136-9700-000	Small furn & equip < \$500-	\$0	\$0	\$0	0
136-9800-000	Telephone - Human Resources	\$0	\$0	\$0	0
136-9830-000	Training & Education - Human Resources	\$3,815	\$2,800	\$2,800	0
136-9830-100	Staff Tuition Reimbursement	\$607	\$5,000	\$5,000	0
136-9850-000	Travel & Expense - Human Resources Staff	\$2,816	\$500	\$300	-200
136-9999-000	Miscellaneous Expense - Human Resources	\$754	\$1,100	\$1,200	100
Total General & Administrative Expenses		\$10,281	\$12,220	\$11,560	-660
Total Expenses		\$220,289	\$229,420	\$230,560	
Net Operating Revenue (Expense)		(\$220,289)	(\$229,420)	(\$230,560)	

INFORMATION TECHNOLOGY (IT)

IT maintains a variety of systems to support several distinct processes surrounding regulatory requirements and member services. The department staff holds a wide range of expertise to sustain technical support for approximately 90 employees, 110 computers, 12 servers, a collection of systems relating to A/V conferencing, over 30 distinct applications, and several desktop tools (e.g. MS Office). The license and software maintenance for these systems make up \$55,778 of the 2014 IT budget.

Department reorganization in 2013 moved the 'design' element out of 'Information Design & Technology' reducing the department to the present 4.5 employees and promoted Carolyn McRory, the Project Manager/Business Analyst to IT Manager. The overall expense budget has little to no changes from 2013 to 2014.

The focus for 2014 is the Software Modernization Project which aims to replace the bar's 30 year old core database. The project is in the initiation stage and a separate exhibit on this topic is included in this budget report.

In addition to major projects, unexpected priorities and general maintenance the IT department receives on average 122 service requests a month from staff. The current completion rate is 72% leaving a typical back log of 34 requests a month.

There are three distinct functions IT focuses on to ensure the department is meeting basic organizational expectations:

Incident Management

- Technical support for computers, printers, telephones, and other devices used on a daily basis.
- Assistance in retrieving data, training, trouble shooting, bug fixes and minor enhancements in various supported applications using internal staff and contract services (\$7,600 for web and \$18,000 for core database applications).
- Generate mailing list requests and statistics needed by staff, sections or members for the various programs.
- AV, technical meeting room support for staff, member groups and external customers.

Infrastructure Maintenance

- Maintain the integrity, security, and availability of the bar's resources and information.
- Builds and maintain systems that automate the operations of the bar including: network devices and cabling, server hardware and software, conference room presentation and communication systems, and building security and automation systems.
- Manage service providers that supply voice (\$30,000) and data service (\$18,500), email filtering and archiving, website hosting, offsite data storage, and other services.

Systems Development

- Work with staff to analyze processes and provide systems design and architecture.
- Develop new applications when requirements arise that cannot be handled in existing systems or when enhancing an existing system is not practical.
- Provide project support by coordinating tasks and communications between staff, IT and outside vendors.
- Maintain the integrity of the data in the membership database and subsidiary programs.
- Document the various existing applications.
- Perform and coordinate construction and user acceptance testing.

Account #	Account Description	2012 Totals	Current Yr Budget	2014 Budget	Budget Inc / Dec
Salaries & Benefits					
134-6100-000	Employee Salaries - Regular	\$394,572	\$505,000	\$323,100	-181,900
134-6105-000	Employee Taxes & Benefits - Regular	\$148,150	\$200,100	\$123,200	-76,900
134-6150-000	Employee Recognition	\$0	\$0	\$0	0
134-6200-000	Employee Salaries - Temporary	\$844	\$0	\$0	0
134-6205-000	Employee Taxes & Benefits - Temporary	\$65	\$0	\$0	0
134-6300-000	Temporary Employee - Agency	\$0	\$0	\$0	0
Total Salaries & Benefits		\$543,631	\$705,100	\$446,300	-258,800
Direct Program Expenses					
134-7090-000	Bank Fees- Credit card	\$59	\$0	\$0	0
134-7090-100	Bank Chgs - Other	\$0	\$0	\$0	0
134-7205-015	Hosted Services & Infrastructure	\$47,729	\$21,820	\$33,169	11,349
134-7205-083	Software License Renewal & Maint	\$47,670	\$56,390	\$55,778	-612
134-7205-100	Computer Services - - Contract Services	\$0	\$0	\$0	0
134-7205-200	Computer Services - - Data Protection	\$0	\$0	\$0	0
134-7265-000	Contract Svcs - Consulting - General	\$0	\$1,000	\$0	-1,000
134-7265-015	Contract Svcs - Web programming	\$27,313	\$12,500	\$7,600	-4,900
134-7265-050	Contract Svcs - Network support	\$0	\$0	\$0	0
134-7265-083	Contract Svcs - Software programming	\$10,770	\$17,000	\$18,000	1,000
134-7500-000	Office Equipment & Furniture <\$500 tagged	\$1,293	\$1,200	\$0	-1,200
134-7570-000	Maintenance - Computer	\$1,765	\$1,500	\$1,000	-500
134-7570-100	Maintenance - Telephone	\$7,137	\$7,500	\$0	-7,500
134-7700-000	Outside printing services	\$0	\$0	\$0	0
134-7875-000	Supplies - Hardware	\$11,097	\$7,500	\$12,000	4,500
134-7875-070	DO NOT USE - USE 134-7500-000	\$440	\$0	\$0	0
134-7875-100	Supplies - Telecom	\$162	\$300	\$0	-300
134-7877-000	Data Protection	\$22,635	\$20,400	\$16,000	-4,400
134-7885-000	Telephone - Data	\$25,016	\$30,000	\$30,000	0
134-7885-100	Telephone - All bar general	\$17,247	\$17,000	\$18,500	1,500
Total Direct Program Expenses		\$220,333	\$194,110	\$192,047	-2,063
General & Administrative Expenses					
134-9400-152	Messenger & Delivery Services - Facilities	\$0	\$0	\$0	0
134-9500-000	Office Supplies - IS	\$1,970	\$1,800	\$500	-1,300
134-9600-000	In House Printing - IS	\$239	\$0	\$0	0
134-9620-000	Postage - IS	\$29	\$200	\$100	-100
134-9640-000	Professional Dues - IS	\$240	\$115	\$0	-115
134-9680-000	Publications & Subscriptions - IS	\$112	\$500	\$500	0
134-9700-000	Small furn & equip < \$500-	\$0	\$0	\$0	0
134-9800-000	Telephone - IS	\$0	\$0	\$420	420
134-9830-000	Training & Education - IS	\$370	\$1,500	\$4,000	2,500
134-9850-000	Travel & Expense - IS Staff	\$1,664	\$940	\$1,400	460
134-9999-000	Miscellaneous Expense - IS	\$0	\$0	\$0	0
Total General & Administrative Expenses		\$4,624	\$5,055	\$6,920	1,865
Total Expenses		\$768,588	\$904,265	\$645,267	
Net Operating Revenue (Expense)		(\$768,588)	(\$904,265)	(\$645,267)	

OREGON STATE BAR CENTER (OSBC)

The costs in Oregon State Bar Center are a catch-all of various costs that do not pertain to any one department. The two largest expenses are the rent for off-site storage of printed material that must be retained (e.g. certain attorney files, accounting records) or have not yet been scanned and files into an electronic file. The amount of this material declines each year.

The other large expense is kitchen supplies, which includes the cost of coffee and tea for all events, staff, and attendees, rental of brewing equipment, a limited amount of paper products, and any supplies needed for food service at the bar center.

The costs of this department will be incorporated into Department 135 in the future.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
<i>Revenues</i>					
137-4310-000	Interest - Landlord Contingency Fund	\$0	\$0	\$0	0
137-4999-000	Miscellaneous Income	\$0	\$0	\$0	0
Total Revenues		\$0	\$0	\$0	\$0
<i>Salaries & Benefits</i>					
137-6100-000	Employee Salaries - Regular	\$0	\$0	\$0	0
137-6105-000	Employee Taxes & Benefits - Regular	\$0	\$0	\$0	0
137-6150-000	Employee Recognition Bonus	\$0	\$0	\$0	0
137-6300-000	Long Term Temporary Employee - Agency - Facilities	\$0	\$0	\$0	0
Total Salaries & Benefits		\$0	\$0	\$0	\$0
<i>Direct Program Expenses</i>					
137-7090-000	Bank Fees - Credit Card Processing	\$0	\$0	\$0	0
137-7265-000	Contract Services	\$0	\$1,000	\$500	-500
137-7295-000	Depreciation - Building	\$0	\$0	\$0	0
137-7360-000	Projected Operating Expense NBC	\$0	\$0	\$0	0
137-7360-100	Facilities - Tenants Oper Exp Fanno Creek Place	\$0	\$0	\$0	0
137-7385-000	Recycling & shredding OSB only	\$876	\$910	\$910	0
137-7445-000	Insurance & Bonding	\$0	\$0	\$0	0
137-7500-000	Furniture & Equip < \$500 tagged	\$155	\$1,000	\$500	-500
137-7570-000	Maintenance - Building	\$1,144	\$3,000	\$1,200	-1,800
137-7780-000	Rent- Offsite storage	\$11,058	\$9,600	\$8,800	-800
137-7780-100	Rent - OSBC	\$0	\$0	\$0	0
137-7875-000	Supplies - Kitchen & Misc.	\$18,664	\$17,000	\$16,000	-1,000
137-7875-100	Supplies - Janitorial	\$200	\$0	\$0	0
Total Direct Program Expenses		\$32,097	\$32,510	\$27,910	(\$4,600)
<i>General & Administrative Expenses</i>					
137-9300-000	OSBC Disaster Recovery Preparation Exp	\$4,320	\$0	\$0	0
137-9400-000	Messenger & Delivery Services - Facilities	\$0	\$0	\$0	0
137-9500-000	Office Supplies - Facilities	\$131	\$200	\$200	0
137-9600-000	In House Printing - Facilities	\$0	\$0	\$0	0
137-9620-000	Postage - Facilities	\$0	\$0	\$0	0
137-9680-000	Publications & Subscriptions - Facilities	\$64	\$350	\$440	90
137-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$0	\$0	0
137-9800-000	Telephone - Facilities	\$0	\$0	\$0	0
137-9830-000	Training & Education - Facilities	\$0	\$0	\$0	0
137-9850-000	Travel & Expense - Facilities Staff	\$721	\$200	\$100	-100
137-9999-000	Miscellaneous Expense - Facilities	\$0	\$100	\$100	0
Total General & Administrative Expenses		\$5,236	\$850	\$840	(\$10)
Total Expenses		\$37,333	\$33,360	\$28,750	
Net Operating Revenue (Expense)		(\$37,333)	(\$33,360)	(\$28,750)	

FANNO CREEK PLACE (FCP)

The operation of the Oregon State Bar Center is reported as a separate company entitled *Fanno Creek Place*, which is the name given to the three-building complex in 2007 of which the bar center is the largest building by the developer, Opus Northwest.

FCP was built in 2007 and the bar occupied the building in January 2008 and purchased the building from Opus NW in September 2008. The bar occupies 54% of the 68,525 s.f. building and the balance is occupied by tenants. "Rent 2014" in the schedule below is the annual rent or projected rent for the tenant in 2014.

Tenant	RSF	% RSF	Rent 2014	Expiration
Simpson Property Group	938	1.37%	\$ 23,486	August 2018
Professional Practices Group	1,086	1.58%	\$ 27,969	December 2017
Joffe Medi-Center	6,015	8.78%	\$ 130,599	September 2016
Zip Realty	2,052	2.99%	\$ 48,681	June 2014
Vacant	2,058	3.00%	\$ 22,638	
PLF	19,060	27.81%	\$ 512,379	February 2023
Total - Tenants	31,209	45.54%	\$ 765,753	
Oregon State Bar (owner)	37,316	54.46%		
Totals	68,525	100.00%		

- In addition to the rental income from tenants, the 2014 budget includes income from the rental of the bar center's conference and meeting rooms. This income was \$40,082 in 2012 and is budgeted for \$40,000 for 2014, although could be higher if existing renters continue into 2014. The bar also receives rent of \$29,388 from the Oregon Law Foundation.
- The bar purchased the building with a \$13 million loan from Thrivent Financial, a mutual insurance company in Minneapolis, Minnesota. The loan is amortized over 30 years at 5.99%. A balloon payment is due February 2023. The monthly payment is \$77,859, and the largest change in the FCP budget is the decline in interest expense each year.
- The next largest expense after interest is the non-cash expense for depreciation budgeted at \$509,100 for 2014.
- The bar is responsible for all operation costs and accounting and oversight duties (common area maintenance (CAM)) of the three buildings of the six-acre Fanno Creek Place development. The bar is reimbursed fully for the costs related to buildings B&C in the complex.
- Excluding interest and depreciation, operating costs are projected to increase by 7.6% (\$24,620) and most of the increase is attributed to costs (e.g. janitorial services, utilities, carpet cleaning) related to the meeting room renters and the two tenants added in 2013.

Account #	Account Description	2012 Totals	Current Budget	2014 Budget	Budget Inc / Dec
Revenues					
139-4250-000	Sale of surplus equipment	\$0	\$0	\$0	0
139-4325-400	Interest - Mortgage reserve	\$2,009	\$2,100	\$2,200	100
139-4325-500	Interest - F & O portion	\$0	\$0	\$0	0
139-4590-xxx	Rent - ALL	\$757,571	\$799,771	\$835,140	35,369
139-4670-000	Management Fee Revenue	\$4,504	\$0	\$0	0
139-4999-000	Miscellaneous Income	\$0	\$0	\$0	0
Total Revenues		\$764,084	\$801,871	\$837,340	35,469
Salaries & Benefits					
139-6100-000	Employee Salaries - Regular	\$83,852	\$85,800	\$85,000	-800
139-6105-000	Employee Taxes & Benefits - Regular	\$29,666	\$34,000	\$32,400	-1,600
139-6150-000	Employee Recognition Bonus	\$0	\$0	\$0	0
Total Salaries & Benefits		\$113,518	\$119,800	\$117,400	-2,400
Direct Program Expenses					
139-7090-000	Bank Fees - Credit Cards	\$840	\$600	\$600	0
139-7090-100	Fanno Creek Place-Bank Fees	\$0	\$0	\$0	0
139-7265-xxx	Contract Services - ALL	\$10,642	\$12,810	\$18,600	5,790
139-7265-xxx	Contract Services - ALL	\$0	\$0	\$2,310	2,310
139-7280-100	PLF rent exp to Shorestien	\$0	\$0	\$0	0
139-7295-000	Depreciation - Building	\$504,624	\$510,100	\$509,300	-800
139-7385-000	Trash removal FCP	\$5,108	\$5,130	\$5,500	370
139-7445-000	Insurance & Bonding	\$47,987	\$46,200	\$50,100	3,900
139-7455-000	Interest - Mortgage Fanno Creek Place	\$733,185	\$720,801	\$707,655	-13,146
139-7475-000	Janitorial Services	\$68,316	\$66,540	\$73,100	6,560
139-7485-000	Landscape Maintenance & Supplies	\$2,266	\$1,650	\$1,850	200
139-7500-000	Furniture & Equipment < \$500 tagged	\$300	\$0	\$500	500
139-7535-000	Loss/gain on sale of assets	\$0	\$0	\$0	0
139-7570-000	Maintenance - Building	\$13,904	\$13,100	\$17,000	3,900
139-7570-100	Maintenance -HVAC system	\$5,121	\$6,500	\$7,500	1,000
139-7575-000	Marketing - OSBC Meeting Rooms	\$760	\$600	\$1,000	400
139-7590-000	Meeting Room Operating Expense	\$2,187	\$1,000	\$1,500	500
139-7780-000	Rent- Offsite storage	\$0	\$0	\$0	0
139-7780-100	Rent - Fanno Creek Place	\$0	\$0	\$0	0
139-7875-000	Supplies - FCP	\$4,496	\$3,400	\$4,500	1,100
139-7875-100	Supplies - Janitorial	\$5,207	\$5,500	\$5,500	0
139-7882-000	Taxes - R/E taxes on FCP	\$20,646	\$20,650	\$21,700	1,050
139-7885-000	Telephone	\$1,717	\$1,560	\$2,000	440
139-7960-000	Electricity	\$88,131	\$85,800	\$85,800	0
139-7960-100	FCP Electricity-interior common space	\$0	\$0	\$0	0
139-7960-200	Water & Sewer	\$22,755	\$24,000	\$26,200	2,200
139-7960-300	Natural Gas	\$2,190	\$2,400	\$2,300	-100
Total Direct Program Expenses		\$1,540,382	\$1,528,341	\$1,544,515	16,174
General & Administrative Expenses					
139-9100-000	Common Area Maintenance-	\$12,769	\$16,300	\$15,279	-1,021
139-9500-000	Office Supplies - Facilities	\$104	\$0	\$0	0
139-9660-000	Fanno Creek Place-Bad Debts Expense-	(\$20)	\$0	\$0	0
139-9700-000	Fanno Creek Place-Small furn & equip < \$500-	\$0	\$0	\$0	0
139-9800-000	Telephone - Facilities	\$0	\$0	\$0	0
139-9999-000	Miscellaneous Expense - Facilities	\$0	\$0	\$0	0
Total General & Administrative Expenses		\$12,853	\$16,300	\$15,279	-1,021
Total Expenses		\$1,666,753	\$1,664,441	\$1,677,194	
Net Operating Revenue (Expense)		(\$902,669)	(\$862,570)	(\$839,854)	

NOTES

NOTES

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 22-23, 2013
Memo Date: November 14, 2013
From: Rod Wegener, CFO
Re: Approval of Auditors for 2012-2013 OSB Financial Statements

Action Recommended

Ratify the approval of Moss Adams as the auditors of the 2012-2013 OSB financial statements.

Background

On October 25 Budget & Finance Committee members David Wade and Theresa Kohlhoff and the bar's CFO and controller served as a sub-committee to interview four candidate firms for the audit of the bar's financial statements for 2012 and 2013. The firms interviewed were: Grove Mueller & Swank; Kern & Thompson; Moss Adams; and Talbot Korvola & Warwick. The four firms were selected by bar staff after reviewing the responses to the bar's RFP from seven firms.

Although all firms interviewed provided compelling responses to the RFP and in the interviews, the sub-committee recommended to the Committee at its afternoon meeting that the bar select Moss Adams for the audit of the bar's 2012-2013 financial statements. The Budget & Finance Committee approved that recommendation.

In the week following the meeting, Mr. Wegener polled the Committee to seek permission to inform Moss Adams of the selection even though previous selections of the auditors had been approved by the board. The earlier notification was important since Moss Adams might perform field work in November or December, and the bar's Controller submitted her resignation after the meeting, which also could affect the fieldwork schedule.

From: [Theresa Kohlhoff](#)
To: [Caitlin Mitchel-Markley](#); [Charles A. Wilhoite](#); [David Wade](#); [Hunter Emerick](#); [Matt Kehoe](#); [Ethan Knight](#); [Rod Wegener](#); [Michael Haglund](#); [Sylvia Stevens](#); [Tom Kranovich](#); [Camille Greene](#); [Richard Spier](#)
Subject: Fanno Creek Due Diligence, November 17, 2013 from Theresa M. Kohlhoff
Date: Sunday, November 17, 2013 5:06:15 PM

Camille, if this report needs to go into the packet, or needs to go in as an exhibit to the B & F agenda in the BOG packet, please do so. I have been under the impression that the building will be a point of discussion for the whole BOG at the retreat, and I think this material is relevant to that discussion.

This is a composite report of the feedback from Cushman Wakefield, Macadam Forbes, Apex Real Estate, Melvin Marks, Macadam Forbes and Bob Humphrey of Experion and other individuals.

Fanno Creek was purchased for \$19 million in 2008 and is 68,525 square feet. Bottom line: Fanno Creek cannot be sold at this time. It could be 2 or 3 years before the market comes back but may never in the suburbs. Everyone agreed the suburbs took a hit in 2008. Most people agreed that office buildings have not come back although everything else has either started to or is back completely, e.g. downtown Portland.

The value of the building ranges from \$13.2 million to \$18 million. (This depends on whether you love the building, how much you impute for rent, whether you are an owner user and even on the decrease of the net income because there are no real estate taxes for the Bar and the PLF.) We owe a little under \$12 million. The amount of prepayment penalty is \$4.7 million, depending on the day. Although the loan is assumable for a 1% fee, the financing is at 5.9% (the estimates of the present rates are between 2.8% and 5% with most people saying 4.5% and 5%) and the expectation is that the buyer would want a discount in the purchase price.

The cost of a building now ranges from \$150 per sq. foot in the suburbs on up to \$300 sq. ft. for the nicest building, urban or suburban. We paid \$277-287 per sq. foot at the time and could not replace it now for this. At the time of the purchase rent was \$26 per sq. foot. The PLF was paying \$34, so the rent they are paying at Fanno Creek now while high, was perceived at the time to be a good deal.

Some thoughts were to lease excess space out to 3rd parties at fair market value which is again, \$19 to \$24 per square foot, depending on who you talked to. (Tualatin's highest rent is \$22; Lake Oswego, Kruse Way is now \$24.50 and Tigard is \$23 -\$24.) This would presumably bring in more than the present \$50K revenue coming in from rent from excess space being used for meetings.

We could also tee up for different users, e.g. investors who would be looking at the rents or "income from the lease stream." Or we could hope for an owner occupier who would want to control the space and be willing to pay a premium.

We could sell and lease back for 7 to 10 years. This would mean paying the rent from the proceeds.

We could hold but downsize to mitigate costs. For example, we could get an architect to help determine whether we are using the space effectively. We have about 400 per square foot for each employee which is high. There are of course, policy changes which would trim or eliminate programs and staff which would free up space to rent at fair market value.

We could deliberately raise the leases to market value (everyone but the PLF which has a lease until 2023) and even become a tenant ourselves.

We could sell and buy another building. Available now is a 30K building for \$3.8 million and another 40K building for \$8 million. And where? This depended on whether you liked the suburbs or liked downtown. (Pros, it's downtown where the action is, come on. Cons, parking at \$175-\$300 per month, and an executive tax?)

In short, what we pay on our loan plus the \$394,748 in cash was generally looked at as imputed rent and therefore amounted to cheap rent. But most understood that the big picture was it was a huge driver of our

present cost of operations. The potentiality of a sharp decline in revenues, the likelihood or unlikelihood that the membership will just be fine with a dues increase and the content/discontent with the extent of the Bar's programs is another inquiry entirely.

--

Theresa M Kohlhoff
ATTORNEY

5828 North Lombard
Portland, Oregon 97203
(503) 286-7178

KOHLHOFF & WELCH
ATTORNEYS AT LAW
A MOTHER DAUGHTER PARTNERSHIP

"There are no wrong notes. You're only a half step, sharp or flat, from resolution." Kenny Feinstein

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 8, 2013
From: Danielle Edwards, Director of Member Services
Re: Amendments to Standard Section Bylaws

Action Recommended

Consider the attached proposed amendments to the Standard Section Bylaws, which would prohibit reimbursement of section executive committee's guest expenses.

Background

The attached proposed Standard Section Bylaw amendments would clarify that sections are prohibited from reimbursing expenses incurred by a section executive committee member's guest or relative. The reason for the amendment is threefold.

First, this amendment is consistent with OSB Bylaws Section 7.500, which provides "Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors."

Second, the amendment proactively prevents violations of the Oregon Government Ethics Laws and prevents a perception of unfairness. Not all reimbursements of section executive committee members' guest expenses would be permitted under the Oregon Government Ethics Law, ORS Chapter 244, *et seq.* The Oregon Government Ethics Law generally prohibits public officials, including volunteers such as section executive committee members, from using or attempting to use their position to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available "but for" their position as a public official. ORS 244.040(1). For this reason, members are generally prohibited from using their positions with the bar to financially benefit themselves, their relatives, or businesses with which they are associated.

There are exceptions to the Oregon Government Ethics Law's general "but for" prohibition. One exception allows reimbursement of the expenses of a public official's relative or a member of a public official's household, who is accompanying a public official to an official event. ORS 244.020(6)(b)(H). That exception, however, *does not* extend to mere friends or significant others who do not reside with the public official (e.g. girlfriends/boyfriends). If the Bar were to allow sections to routinely reimburse guest expenses, the Bar would have to evaluate each request and deny requests if they did not fall under an Oregon Government Ethics Law exception. This would likely lead to a perception of unfairness. If the Bar did not evaluate reimbursement requests, there is a risk that it would reimburse expenses prohibited by the Government Ethics Law.

Third, the change eliminates any administrative cost associated with tracking reimbursements to guests of section members. If reimbursements are allowed, the Bar would need to track reimbursements and collect member W-9s so that it could issue a 1099 whenever reimbursements exceeded six hundred dollars. The Bar would be required to issue tax documentation because reimbursement of guest expenses is not a business expense.

These proposed amendments were distributed to section chairs allowing them an opportunity to provide feedback. Of the four members who responded, one member suggested the bylaws outline a

section's ability to cover expenses for speakers or program planners. This clarification was added to Standard Section Bylaw Article IX, Section 4 as indicated below. Another leader from the Administrative Law Section responded in favor of the proposed changes.

The remaining two responses came from members outside the Portland area and expressed concern that the proposed changes would discourage participation in multi-day section events. They asked the BOG to consider modifying the proposed changes to permit sections the authority to determine when guest expenses could be covered within the limitations outlined by the Oregon Government Ethics Laws.

Proposed Amended Standard Section Bylaws

Article IX Receipts and Expenditures

Section 1. Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

Section 2. The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

Section 3. Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar. **Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.**

Section 4. Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee. **Individuals who attend a section program or event for the purpose of providing a significant service to the section are eligible for expense reimbursement pursuant to Section 7.5 of the OSB Bylaws, with approval from the Executive Committee.**

Section 5.

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 6, 2013
From: David Wade, Governance & Strategic Planning Committee Chair
Re: Uniform Civil Jury Instructions Committee Assignment Revisions

Action Recommended

Consider the proposed revision to the Uniform Civil Jury Instructions Committee assignment (also referred to as a committee charge).

Background

The Uniform Civil Jury Instructions Committee requests a revision of the committee assignment to remove a charge focusing on the review of punitive damages and product liability instructions. This charge was specific to what the committee was focusing on several years ago but these topics do not require ongoing evaluation each year.

Additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

UNIFORM CIVIL JURY INSTRUCTIONS COMMITTEE ASSIGNMENT

General:

Develop uniform jury instructions for use in civil trials. Promote better coordination of activities with the Uniform Criminal Jury Instructions Committee to insure a uniform approach to judicial instructions to juries. Continually update existing jury instructions to comply with case law, legislation and useful suggestions from sections and the legal community. Draft instructions in plain language maintaining the goals of clarity and accuracy.

Specific:

1. Promote new jury instructions.
- ~~2. Review punitive damages and product liability instructions.~~
- 3~~2~~. Annually supplement and periodically revise the UCJI Redbook.
- ~~4~~3. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: Amendment of OSB Bylaw 23.503

Action Recommended

Amend OSB Bylaw 23.503 to eliminate the prohibition against BOG members from prosecuting or defending PLF claims, but to require recusal from any PLF-related decision.

Background

Since at least 1994,¹ BOG members have been prohibited from prosecuting or defending PLF-covered claims, although the prohibition does not extend to mediation of such claims. The rationale behind the prohibition is obvious: to avoid even the appearance of improper influence on the handling or outcome of a PLF claim by a member of the BOG who represents a party to the claim. The possibility of influence exists because the PLF is a function of the Bar and the BOG appoints the members of the PLF board.

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

As a practical matter, opportunities for the BOG to influence the PLF handling of a claim are nonexistent. The OSB bylaws are clear that the BOG's oversight role is limited to approving PLF bylaws and policies and appointing its board.²

Although the BOG has three liaisons to the PLF board, the PLF maintains a careful screen around anything having to do with claims handling. BOG liaisons do not attend the closed sessions of the board meetings at which claims are discussed; mention of claims in open session are rare and never include the name of the covered party or the nature of the issues. The only exception to the "cone of silence" that surrounds PLF claim matters occurred recently when the PLF sought the BOG's approval to assert a Tort Claims Act defense in a bad faith claim asserted by a covered lawyer who was unhappy with the outcome of his defense.

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

² Section 23.3 Operation: "Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF."

The possibility of amending Bylaw 23.503 was raised with the PLF board earlier this year, and the PLF board was unanimous in its objection to any change. The only argument posed, however, was the “appearance of influence.” On further discussion, the Governance & Strategic Planning Committee concluded that the mere appearance of influence is not a sufficient basis to exclude certain lawyers from BOG service when there is no actual opportunity for influence. Accordingly, the Committee recommends that Bylaw 23.503 be amended as follows:

Subsection 23.503 ~~Prohibition Against Prosecuting BOG Members Participating in PLF Claims~~

~~(a) A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the board. Upon undertaking the representation, the board member shall inform the Executive Director in writing as soon as practicable. During the course of the representation, at any time that a PLF-related matter comes before the board, the board member shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of board meetings shall reflect the announcement and the board member’s recusal. Board of Governors members will neither prosecute nor defend PLF covered claims, but may mediate the claims at the request of the parties.~~

~~(b) The policy set forth in (a) above does not extend to the prosecution or defense of PLF covered claims by lawyers in board members’ firms, as long as the board member is screened from any form of participation or representation in the matter. To ensure such screening:~~

~~(1) The board member must prepare and file an initial affidavit with the Executive Director of the Bar attesting that while his or her firm is handling a PLF covered claim, the board member will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member. The board member must also prepare and submit a compliance affidavit to the Executive Director of the Bar describing the board member’s actual compliance with these undertakings promptly on final disposition of the matter or representation.~~

~~(2) The board member’s firm must also prepare and file an initial affidavit with the Executive Director of the Bar attesting that all firm members are aware of the requirement that the board member be screened from participating in or discussing the matter or other representation. The firm must also prepare and file with the Executive Director of the Bar a compliance affidavit indicating the firm’s actual compliance with the procedures for screening the board member promptly on final disposition of the matter or representation.~~

~~(3) The initial affidavits called for by Subsection 23.503 (B)(1) and (2) Bar’s Bylaws must be filed with the Executive Director of the Bar no later than 14 days following the acceptance of a case involving a PLF covered claim by a board member’s firm. Acceptance of a case for purposes of Subsection 23.503 is the day that the attorney-client relationship is established. The compliance affidavits required by Subsection 23.503 (B)(1) and (2) must be filed with the Executive Director no later than 14 days following the final disposition of the matter or representation.~~

~~(4) The compliance affidavits called for by Subsection 23.503 (1) (3) need not be filed with the Executive Director if a board member’s term on the Board of Governors ends before the final disposition of the matter or representation.~~

~~(c) Nothing in this section relieves members of the Board of Governors or their firms from ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).~~

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: David Wade, Governance and Strategic Planning Committee Chair
Re: Unclaimed Lawyer Trust Account Funds

Action Recommended

Waive the one-meeting notice requirement and adopt the attached amendments to Article 27 of the OSB Bylaws relating to Unclaimed Lawyer Trust Account Funds.

Background

In 2010, the Legislature amended Oregon's unclaimed property laws to require that abandoned funds in lawyer trust accounts be delivered to the Oregon State Bar. Pursuant to ORS 98.392(2), the board adopted rules for the administration of claims to the abandoned funds, which are found in Article 27 of the OSB Bylaws.

As originally adopted, the bylaws gave full responsibility for adjudicating claims to a special committee appointed by the board, the Unclaimed Lawyer Trust Account Committee (ULTA Committee). In 2012, the bylaws were amended to give the executive director authority to adjudicate claims under \$500. Claims of \$500 or more, on the other hand, still must be decided by the ULTA committee.

Adjudicating claims is largely a ministerial, simple, and straightforward task. While board oversight of the unclaimed lawyer trust account claim process is important, convening a board committee to adjudicate claims for relatively nominal amounts of money seems to be a waste of board members' time. Typically, there are only a handful of claims each year, and only one or two are over \$500. Even so, a meeting must be held in order to make a claim determination.

As with Client Security Fund claims, the proposed amendments would give the Executive Director authority to resolve ULTA claims of less than \$5,000, while ULTA claims of more than \$5,000 would be submitted to the board for review and approval. According to our records, 997 out of the 1024 remittances made to the bar so far are less than \$5000. This means that only 3% of the potential claims would come before the board, unless someone appealed the executive director's denial of a claim.

The appeal process remains unchanged and annual reporting of claims paid remains unchanged. Therefore, the board does retain oversight of the ULTA claim process.

The only other proposed amendment is to bylaw 27.103(f). The portion deleted is more detailed than necessary and is duplicative of subsection (h).

If these amendments are approved, the ULTA committee would be disbanded.

Attachment: Proposed Amendments to OSB Bylaw 27.103

PROPOSED AMENDMENTS TO ARTICLE 27 OF OSB BYLAWS

Subsection 27.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, the Bar shall review the claim and approve or deny the claim within 120 days after the completed claim form and all necessary information to process the claim is received. If a claimant is requested to provide additional information and fails to do so within 90 days after the request is made, the Bar may close the file without further action. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The Executive Director or the Executive Director's designee shall decide whether to approve or deny all claims for amounts under \$5000. Claims for amounts of \$5000 or more must be reviewed and approved or denied by ~~a special committee appointed by~~ the Board.

(c) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection 27.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(d) If a claim is approved pursuant to this Subsection, the Executive Director or designee shall notify the claimant.

(e) If a claim is denied, the Executive Director or designee ~~special committee~~ shall notify the claimant. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(f) A claimant may appeal the denial of a claim by making a request in writing to the Executive Director within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request, ~~and respond through the Executive Director in writing. The Board's response will include an explanation of the Board's reasoning.~~

(g) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the ~~special committee~~Executive Director with the new evidence.

(h) The Executive Director or designee shall notify the claimant of the Board's decision on appeal.

(i) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(j) On a monthly basis, the Executive Director or designee shall provide a listing of the claims resolved to the Department of State Lands. The Executive Director shall also provide an annual report of the claims resolved to the Board.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: Matt Kehoe, Public Affairs Committee Chair
Re: Public Affairs Committee Recommendations

Action Recommended

The Public Affairs Committee recommends the board oppose a proposal that would require law firms and other businesses to switch to the accrual method of accounting as opposed to the cash method of accounting.

Background

A proposed limitation on the use of the cash method of accounting is contained in House Ways and Means Committee Chairman Dave Camp's (R-Mich.) small business tax reform discussion draft. Under the proposal, only individuals and certain taxpayers with average gross receipts of \$10 million or less are eligible for the cash method. The proposal effectively eliminates exceptions that currently exist for certain pass-through entities (i.e., partnerships and S corporations), farmers and personal service corporations to use the cash method.

Although the timing is uncertain, Chairman Camp has indicated that he plans to introduce his revised bill as early as mid-to late November, and once he does, it's possible the bill could start to move fast as part of a revenue-raising element of larger budget and debt discussions. Accordingly, the ABA is now in the process of updating its existing policy so that it can weigh in against the proposal at the appropriate time. The ABA has reached out to state bars to ensure they are aware of how quickly this proposal may move at the federal level.

Report of the OSB Centralized Legal Notice Task Force

November 23, 2013

Summary

The Centralized Legal Notice Task Force was established by the OSB Board of Governors in response to a resolution passed at the 2012 House of Delegates meeting that instructed the BOG to:

reconsider¹ seeking legislative approval for a centralized legal notice system to be operated for the benefit of all Oregonians under the auspices of either the state judicial department or a private nonprofit such as the Oregon Law Foundation.

Having thoroughly discussing the benefits of a centralized legal notice system, evaluating the likelihood of legislative success and determining that it might be possible to create the online system with little or no initial investment by the OSB, the task force believes that the options available to the OSB Board of Governors are that (1) the bar continue to work with the Oregon Newspaper Publishers Association with the intention of ultimately arriving at a mutually acceptable proposal for a more robust online notice system that would both maintain the newspapers' historic involvement in the public legal notice system while generating revenue to be used for legal services; (2) ascertain whether the desired vendor is available and willing to develop and maintain the online system, being compensated with a portion of the posting fee; and (3) seek legislative approval of a centralized online legal notice system either in concert with the [Oregon Newspaper Publishers Association \(ONPA\)](#) or on its own.

Creation of the Task Force

In the spring of 2012, the Oregon Law Foundation approached the Oregon State Bar with a proposal to fundamentally change the system for the posting of most statutorily required legal notices. Under the proposal, rather than being published in local newspapers, legal notices

¹ At its meeting on July 27, 2012, the BOG had voted not to pursue the enabling legislation at that time, but to continue discussing the concept of a centralized online legal notice system operated by the Oregon State Bar.

from around the state would be posted to a centralized web site that would be maintained by the OLF, the ~~B~~bar, or another designated entity.

The OLF believed that this system could be operated and maintained for a cost that was low enough that attorneys and other parties posting notices could actually be charged much lower rates than they currently pay to newspapers. Additionally, the OLF believed that it would be possible to retain some significant part of the revenue received, and use that revenue to fund legal aid services programs in Oregon.

The BOG and OSB staff evaluated the OLF proposal for what came to be referred to as the CLNS. Concerns included whether operation of a CLNS was within the bar's mission, whether the bar had the expertise and capacity to establish and operate such a system, and whether the legislature would be amenable to the proposal. The BOG also conferred with representatives of the Oregon Newspaper Publishers Association and other news entities, all of ~~whom~~ which expressed strong opposition to the CLNS concept. Their opposition was due in part to the impact an online system would have on their revenues and ability to continue operating, and concern that many citizens do not yet look online for their news, especially local public notices. After vigorous debate, the BOG ultimately concluded that the CLNS proposal was not ready for inclusion in the 2013 Law Improvement Package.

In November 2012 the House of Delegates passed a resolution encouraging the Board of Governors to further investigate this issue and to again consider legislation. As a consequence of that resolution, the BOG formed the Centralized Legal Notice Task Force. The task force met five times beginning in January of 2013 and concluding in September 2013. The Task Force was co-chaired by BOG members Travis Prestwich and Patrick Ehlers. Task Force members were Duane Bosworth, Chad Jacobs, Karen Clevering, Theresa Kohlhoff, Kathleen Evans, Tom Kranovich, S. Ward Greene, and Norman Williams. Staff support was provided by Sylvia Stevens and Matt Shields.

Major Issues of Discussion

The task force identified several issues that merited discussion. These included:

- Is a Centralized Legal Notice System technically feasible?
- Is a Centralized Legal Notice System economically viable?
- Is shifting from newspaper publication to internet publication wise public policy?
- Assuming that such a system is advisable, is it appropriate and feasible for the Oregon State Bar to operate and administer the system?
- Does it make sense to operate a centralized system in addition to publication in physical newspapers, or should it operate as a replacement?

- Is there a role for newspapers if notice is only required in an online format?

The task force invited guests to the meetings to discuss similar systems in other states (albeit systems with important differences in scope) as well as vendors who could speak to the technical difficulty and associated costs of implementing such a system.

The task force discussion also highlighted concerns that lawyers have about the existing legal notice system, including:

- The perception or reality that the cost of publication is too high.
- Concerns regarding the effectiveness of newspaper publication – e.g. are such notices actually being read by the relevant parties?
- The need for improvements to the existing online listing of legal notices that is maintained by the Oregon Newspaper Publishers Association.
- The factors that influence lawyers' selection of a publication in which to run a notice.

While some of those concerns were not directly related to the charge of the task force,, to the extent that they represent the concerns of bar members regarding the current system, they were deemed appropriate for consideration in evaluating the merits of any major change in Oregon's legal notice requirements.

Current State of the Law

Oregon statutes have long required the publication of legal notices in newspapers. These notices typically include real and personal property foreclosures, sheriff's sales of foreclosed property, probate notices, and notices of state and local government meetings. Depending on the type of notice, the statutes require publication in varying detail and for various lengths of time.

ORS 193.010 and 193.020 generally define what publications are suitable for newspaper publication. ORS 193.010 defines "newspaper" and requires:

- The publication must be in English, and must be for the dissemination of local or legal news.
- The publication must be of a minimum physical size.
- The publication must have been publishing at least once a week for at least 12 months prior to the notice, and
- The publication must have "*bona fide subscribers representing more than half of the total distribution of copies circulated, or distribution verified by an independent circulation auditing firm.*"

The last requirement has never been analyzed at an appellate level, but it is generally understood to mean that to meet the definition of “newspaper” a publication must have a paid subscriber base. A free weekly publication cannot meet the definition of “newspaper” unless its distribution can be verified by audit.²

ORS 193.020(1) requires that when newspaper publication is required, the notice must be placed in a newspaper that is published within the county in which the “action, suit or other proceeding” is pending. In the event that there is no newspaper in the county, notice must be placed in the closest newspaper.

ORS 193.020(2) further provides that if more than one newspaper in the county meets the requirements of ORS 193.020(1), then the notice should be published in the newspaper “which the moving party considers best suited to give actual notice.” The statute does not specify criteria that the moving party would use to make this determination.

In cases where lawyers (and presumably agencies of state and local government) have a choice of where to publish their notices, ~~it~~ anecdotal information suggests that they often make the decision based on which newspaper has the lowest rates for publishing notices. ~~While that choice may be wise public policy, it is unclear if it is technically in conformance with the statute.~~ There are no reported cases analyzing ORS 193.020.

Task Force Findings

Technical Feasibility

After studying and evaluating the online notice systems of the Oregon Newspaper Publishers Association,³ the Oregon Sheriff’s Association and the State of Utah, the task force had a presentation from NIC Inc.,⁴ the software developer that has created many of the programs in use by the State of Oregon. The last presentation, in particular, satisfied the task force that building a centralized legal notice system that is capable of handling all public legal notices published in Oregon is technically feasible. In an absolute sense, the volume of information that would need to be stored and presented in a centralized legal notice system, while considerable, is not so great as with other major technology projects the state has undertaken. The greater

² This provision was the subject in a recent Deschutes County case, when an individual chose to publish a required notice in a free weekly newspaper. In 2012, a Deschutes County Court ruled that in order to meet the statutory definition of “newspaper” the publication must have a paid subscriber base. That case has not been appealed.

³ The Oregon Newspaper Publishers Association currently maintains a website that compiles a large number of legal notices published in member newspapers. It is not clear whether this website displays all such notices, but it appears to have the majority of the ones run in ONPA member newspapers.

⁴ NIC Inc. describes itself as the nation’s leading provider of official government portals, online services and secure payment processing solutions. More information is available at www.egov.com.

challenge will be constructing a database that is robust enough to allow searches based on user-selected criteria. The ONPA and OSA websites currently consist of notices that can be sorted only geographically. Task force members generally felt that the major potential advantage of any online system would be to enable users to search for notices based on other criteria, such as by the subject of the notice or by the names of parties. Ideally the system would also allow users to subscribe to an automatic notice whenever ~~a certain types of notice~~ was certain type of notice was posted (e.g. all foreclosures in Josephine County).

Economic Feasibility

The economic feasibility of a centralized online notice system is obviously of great importance, as the ~~Bbar~~ probably does not currently have the resources or the will to invest in a major software development project. However, NIC Inc. works on a “zero-dollar contracting” self-funding model at no cost to the government agency. It recoups its costs from transaction fees or a portion of the revenues generated by the program⁵ and from ongoing maintenance charges.

As with the existing newspaper publication model, an online central notice system would generate revenue by charging a fee to post a notice. Additional revenue could also be generated from subscriptions or other add-on features that might be available. For example, while individuals who only occasionally use the system likely would prefer to simply browse postings by location or date, or might want to run basic searches; frequent business users might wish to subscribe to a more active form of notification – such as receiving direct emails about postings in a topic area. That kind of active notification could potentially serve as an additional revenue source.

The task force also noted that the economic feasibility of the system will be affected by the amount of personal handling required. Some systems – such as the one run by the Oregon Sheriff’s Association to post notices of Sheriff’s sales – appear to require a large amount of direct staff involvement in each posting. (Nevertheless, the Sheriff’s Association charges much less for its online notices than the cost to post notices in local newspapers.-) Similarly, ONPA reports that it provides considerable assistance to posters in formatting and otherwise preparing the published notices, which are then ~~transferred without change to the posted~~ unchanged to the website.

By contrast, NIC has developed systems for some State of Oregon agencies that are essentially automated and require very little staff involvement with each customer/client use of the system. The task force contemplates a centralized legal notice system that would operate with

⁵ For instance, NIC Inc. developed the State of Oregon’s online tax payment portal and program and receives a few dollars of each tax payment that is made online.

minimal staff involvement because notices would be posted as submitted (similar to posting on Craigslist)-. Only technical assistance would be provided, such as explanations of how to post a notice or search posted notices.

Based on these findings, the task force is confident that a system could be created that will allow for much cheaper posting rates (rough estimates are in the \$20-30 range) while generating sufficient net income after payment of operating expenses to contribute meaningfully toward low-income legal services.

Public Policy Considerations

The task force spent considerable time looking at the public policy implications of moving from newspaper publication to a centralized legal notice system, and task force members were by no means unanimous on answers to these questions.

While all members of the task force were very concerned about finding a stable funding stream for legal services, this was not a major driving force for everyone in the group. Many task force members expressed a desire for a legal notice system – whether online or in print – that will be most likely to result in actual notice going to interested parties. Task force members disagreed on the efficacy of the current statutory notice system. However, members did generally agree that there are certain advantages and disadvantages to one system versus another.

The task force members identified advantages a centralized system – whether as a replacement for newspaper publication or in addition to it:

- An online system would likely be significantly cheaper for those posting notice because there is no need to recoup the cost of paper, printing and distribution and once a notice is published it can remain on the site for whatever period is required without additional effort. Moving to posting notices exclusively online could result in substantial savings to government agencies and to the public. That said, the extent of the savings would vary considerably depending on the amount of staff assistance provided to system users, and the amount of revenue legal services.
- An online system would offer much more search capacity. For individuals who are actively looking for notices, searching in an online database is likely preferable to searching through multiple newspapers. The ONPA website contains many notices posted in member newspapers,⁶ and allows for searching by type of sale or by geographic region, among others. Many task force members felt that an even more robust system could be created that would offer more functionality to system users. As

⁶ ONPA members are not required to post notices online and many do not.

mentioned above, one possibility would be “pushing” notifications to individuals who subscribe to such a service.

- Some task force members expressed the belief that a primarily or exclusively online system would result in more frequent actual notice to persons who have a direct interest in the issue being noticed. This belief is difficult to quantify, because there is extremely little data available on the frequency with which public notices published in newspapers result in direct notification of parties who were otherwise unaware of the issue.

The group also acknowledged several arguments in favor of continuing to publish notices in newspapers.

- The members of the public ~~is~~are already used to notices in their local newspapers, and know ~~that if they are looking for~~to look in the paper for such notice, this is the place to look. If notices suddenly stopped being printed in newspapers at all, confusion may result and many members of the public would be at a loss to know ~~for~~ where to look for them instead.
- Newspapers are disinterested third parties with regard to the content of the notices. While the newspapers may have a clear financial interest in publishing legal notices, they do not normally have a direct interest in the matter that is the subject of the notice. An instrumentality of government, on the other hand, might be seen as less objective. To the extent that public confidence in the objectivity of the system is an issue, a system run by a third party such as the newspaper industry may be preferable.
- Somewhat related to the first point, newspapers “push” notices out in an active way that a database does not. The public is already reading newspapers, and may thus see public notices while browsing the newspaper and become aware of events or issues they would not have known to go look for in an online system. By contrast, people will have to actively seek information in a centralized database, and are much less likely to just stumble across the information as they might while browsing their local paper.

This last point is an issue about which many task force members, and likely many members of the public, disagree. While it is clear that a great many people regularly read newspapers, many people (and particularly younger people) are migrating to the internet for their news. This may be more of a problem for large metropolitan newspapers than for small “hyperlocal” publications, but it is a real and growing trend. While it is also clear that most regular readers are aware that public notices are published in newspapers, it does not necessarily follow that the public is generally likely to see notices published in newspapers. There is undoubtedly some number of persons who read the newspaper front to back, or who routinely read the public notices, but it is more likely that most readers simply peruse individual articles and sections of

their papers and rarely if ever read the public notices. At the same time, individuals and businesses who regularly and actively search newspapers for notices of interest to them will no doubt continue to actively search the notices regardless of the format in which they are published.

Advisability of OSB Involvement

Another issue addressed by the task force was the extent to which – even if a centralized legal notice system is deemed advisable – the Oregon State Bar should be involved in developing and operating the system.

Although lawyers frequently post statutorily required public notices in newspapers on behalf of their clients, the Oregon State Bar as an institution has not historically been involved with the public legal notice system in Oregon. Designating the Bar as the agency tasked with overseeing a statewide central notice system ~~would constitute~~ to some task for members was a major expansion of the Bar's mission. Some task force members expressed reservations regarding expanding so far beyond the bar's historic and statutorily mandated role of regulating attorneys, advancing the science of jurisprudence and improving the administration of justice.

Nevertheless, many members of the task force felt that the Oregon State Bar is a better entity to perform this function than the State of Oregon and this was within the mission of the Bar, i.e. to promote access to justice. The Bar has a clear and historic interest in the integrity of the judicial system, ~~to defending~~ public access to the courts and ~~to the~~ proper functioning of government in general. Furthermore, as with newspapers, the Bar is only very rarely an interested party in matters for which statutory notice is required. The State of Oregon, on the other hand, is frequently an interested party. There may be some value in the separation created by the system being supervised by an entity that is not directly part of state government.

To the extent that the system generates enough revenue to help fund legal services, some task force members advocated for maintaining Bar involvement with the system on the theory that the bar would have more control over the revenue stream, and could help ensure that legal services continued to benefit from the system. Some task force members specifically advocated that the Oregon State Bar should only be involved with the system if it results in revenue for legal services, although this was not a unanimous position.

Another issue of concern to the task force is cost. In principle, once the system is up and running, overseeing a truly self-sufficient centralized legal notice system should not have significant financial consequences to the Bar because the revenue would offset the operating and maintenance costs. What has not yet been confirmed is whether the Bar would have to incur costs to create the system. Current budget projections do not include an outlay of funds

for this purpose ~~and significant reserves are already earmarked for upgrading the bar's operating software. Undertaking the up-front costs of creating a centralized legal notice system would require a reorganization of existing OSB priorities.~~

Possible Collaboration with the Newspaper Industry

Most of the members of the task force agreed that there would be considerable value in attempting to reach a collaborative solution with the newspaper industry. Working with the newspaper industry on the creation of a centralized system rather than advocating for one that would exclude them would make it easier to get legislative approval of the necessary statutory changes. The task force also recognizes the continuing civic purposes that newspapers serve, especially in smaller and rural communities; a complete withdrawal of public notices that will have an adverse affect on the newspapers would not serve the citizens of those communities well.

One possible approach, ~~at least in the short term,~~ would be to continue requiring newspaper publication of ~~at least an~~ abbreviated public notice, with information directing interested parties to the online system for additional information. Not only would this appease the newspapers, but it would have the additional advantage of gradually introducing the public to the new system.

Task force members (as volunteers but not as arms of the task force) have been meeting with representatives of the Oregon Newspaper Publishers Association regarding such an approach. That work ~~will~~ may continue if the Board of Governors accepts ~~the~~ that task force ~~recommendations~~ option.

Conclusions

Based on its careful consideration of the issues, the task force believes the Bar has three basic choices available:

- Proceed on its own to ~~S~~seek legislation that would substitute a centralized legal notice system for the current newspaper publication system.
- Continue to seek a collaborative solution with the Oregon Newspaper Publishers Association, and only propose legislation once that process is complete (whether successfully or unsuccessfully).
- Decline to pursue any changes to the system at this time.

The consensus of the Centralized Legal Notice System Task Force is that the Board of Governors should seek continued negotiation with the ONPA with the intention that some kind of collaborative system be developed. If this process results in a satisfactory approach, the bar

should join with the ONPA to actively pursue legislation. If negotiations with the ONPA are not ultimately successful, then the Board should consider pursuing legislation on its own. In either event, the Bbar would also need to determine whether NIC, Inc. or a similar provider would create a system with no upfront cost to the Bbar, or identify appropriate funding sources to cover the upfront costs that would be incurred.

Working with the ONPA will necessarily mean that the bar will not be introducing any legislation into the 2014 session on this issue because of the time necessary to explore and craft a solution that is acceptable to all parties. However, given the relatively narrow scope of the 35-day even-year session, pursuing legislation in 2014 is likely not realistic even if the bBar was committed to doing so. Members and committees are permitted to introduce only a handful of bills, and there is a relatively narrow window for public input. Many legislators would likely be uncomfortable with pushing through a significant change in a short session.

Most task force members also believed that a collaborative approach is much more likely to be successful in the legislature than any proposal that the bBar advocated for on its own. The legislature generally favors proposals where all the major parties have already come together and reached a consensus. In the absence of such a consensus, the legislature often defers major decisions by forming legislative task forces to push for such a compromise. Therefore, even if the Bbar preferred to advocate for its own solution without working with the newspapers, there is some significant chance the legislature would insist on such collaboration anyway.

Finally many task force members noted that historically the newspaper association has some considerable sway with legislators. Few legislators want to see the newspapers in their districts suffer, and of course the newspapers have considerable ability to advocate for their own interests. There could be adverse effects for a legislator to go against the newspapers. It short, it would be difficult albeit not impossible for the Bar to be able~~It is questionable whether the bar would be able~~ to convince the legislature to completely revamp the legal notice system over the unified objection of the newspaper industry.

The task force was not unanimous on how to proceed in the event that an agreement with the ONPA cannot be reached. However, the majority of members expressed the position that some form of a centralized system was in the best interests of both the bar and the state, and that the bar should continue to push for this change in the event that negotiations with the ONPA are ultimately unsuccessful. In that event, it is the task force's secondary recommendation that the Bbar advocate for legislation on its own, even in light of the aforementioned difficulties.

Additionally the task force believes that in any legislative effort, the Bbar should consider whether there are other consensus improvements to the public notice system that can be made that would be of benefit to OSB members. This is a secondary goal that should not

jeopardize the overall effort, but the task force felt that we should make every effort to improve the law where we can.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013

Memo Date: November 12, 2013

From: Andrew Schpak, Chair, New Lawyer Mentoring Program
Kateri Walsh, Director, New Lawyer Mentoring Program

Re: NLMP Program Status Report

Action Recommended

None

Background

The Oregon State Bar has had a longstanding dialogue about how best to transition new lawyers into the profession in a manner that promotes the highest ideals of competence, ethics and professionalism, while reinforcing the collegiality long enjoyed throughout the Oregon bar.

In 2010, under the leadership of then Chief Justice Paul De Muniz, the Oregon Supreme Court passed the New Lawyer Mentoring Rule, making Oregon the third state in the nation to require a year-long mentoring program.

The original program was developed by a task force representing law schools, the judiciary, public and private sector employers, large and small law firms, and a cross-section of practice areas and experience. Many of the task force members transitioned to the NLMP Advisory Committee (“Committee”) to guide the program development in its first two years.

The NLMP launched in mid-2011, with the first participants completing the program in December 2012. We are now nearing completion of our second full cycle of operations.

This report constitutes our first detailed report to the Board of Governors since the program launched. We look forward to elaborating on this report, answering questions, and soliciting input from BOG members at the November 23rd meeting.

NLMP by the Numbers.

As of this month, 288 New Lawyers have completed the program. We have another “class” of 177 who are operating under a 12/31/13 deadline and expect to complete the program by year’s end. We have 226 additional New Lawyers who are currently matched and progressing through the program, with deadlines of either May or December, 2014.

We have 271 who are enrolled, but have not yet been matched. We have another 269 who are currently in deferral. Deferral is an option for New Lawyers who are not currently practicing law in Oregon. This number has been higher than originally anticipated, largely due to the economic climate.

Program Evaluation

Understanding that any new program would need refinement, the Committee has employed numerous evaluation tools throughout the start-up phase. These have included facilitated focus groups, telephone interviews, collection of anecdotal feedback, and online surveys of all mentors and mentees upon completion of the program.

In all of these endeavors, we have focused on several areas: 1) Matching Process; 2) Curriculum; 3) Time Commitment; 4) Ethics issues; 5) Events and Programming; 6) Communication Preferences; 7) Best Practices; 8) Creating Meaningful Mentoring.

Feedback from all of these areas indicate that the program is on strong footing, and is meeting a very real need on the part of our new members, particularly given the economic challenges faced by many. There are, however, some areas requiring increased attention. Following is a brief assessment of several program areas.

1. **Matching.** In the majority of cases, the matching process has been quite effective in matching people quickly and appropriately, with careful attention paid to the New Lawyer's interests and preferences. For quite a few, however, the matching process is taking too long. This is largely a function of geography and practice area. Its resolution rests in mentor recruitment, a primary area of focus for the coming months.
2. **Curriculum and Time Commitment.** Program creators sought to craft a curriculum that provided somewhat more structure than less formal mentoring programs, but with enough flexibility to allow Mentors and New Lawyers to focus on the individual needs of each participant. One of the first structural changes in 2012 was to eliminate and/or add flexibility to some Program requirements after hearing feedback from some about it being an overly burdensome time commitment. With that change, feedback indicates that we've reached a good balance.
3. **Ethics Issues.** A small but notable number of participants express concern about ethics issues in mentoring. This arises primarily in government settings, and is a barrier to mentor recruiting in an area where we have strong interest from new lawyers. In talking with our active mentors in these settings, it seems to be an issue with clear work-arounds, but we need to enhance our education and communications on these issues to assure that potential mentors feel comfortable signing on to the role.

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4. **Events and Programming.** This is the area that stands out most clearly in evaluation surveys and other feedback. Participants would like to see the NLMP provide more programming geared toward curriculum elements, while providing networking and community-building opportunities. Notably, the curriculum element most valued by new lawyers, and yet least addressed by mentors is “introducing the new lawyer to the legal community.” Programming would seem to be a key strategy toward helping mentors better address this challenge for their new lawyers.
 5. **Communications.** This will be another area of increased focus throughout 2014. We are increasing our communications strategies on several fronts. Most visible will be creation of a bi-monthly newsletter which will feature program updates, events and/or CLEs of interest (both OSB and external), and best practices.
 6. **Best Practices and Meaningful Mentoring.** Two years into the program, we have begun to amass many creative ideas on how to enhance the value of the mentoring relationship. These will be more regularly shared through communications vehicles and programming.

For purposes of this report, we briefly highlight three issues. The issue of Mentor Criteria is one we have grappled with throughout the year and is appropriate to flag for the BOG, if only to increase awareness and invite any possible input. The other two constitute our key priorities for 2014: mentor recruiting and NLMP Programming.

Mentor Criteria

The Supreme Court Rule establishing the NLMP program sets forth the following criteria to serve as a mentor:

- Five years of experience as a lawyer
- No current disciplinary proceedings pending (approved for prosecution).
- A clean recent disciplinary history (there is a matrix indicating the time since the discipline occurred, and the seriousness of the sanction).
- A reputation for ethics and professionalism

The first three requirements are clear and objective. The third is subjective and difficult to apply.

Although it comes up infrequently, it has been a challenging issue to resolve on a few occasions. Committee members feel strongly that since mentor appointment has the “stamp of approval” of the OSB and Supreme Court for purposes of one member shepherding another into the profession, it rightfully has a higher bar than simply the discipline test.

However, Committee members are also reticent to allow a member to be “blackballed,” with no process for dispute and often, no notice or information about why his/her reputation was questioned (or by whom). In several cases, a mentor’s service has been questioned (albeit stridently) by just one person, and often without a willingness to publicly dispute the appointment.

Additionally, in several settings this has come up in the case of a new lawyer being mentored by his/her in-house supervising attorney. In this case, the mentoring is going to take place regardless of the approval of the NLMP.

Because of this challenge, in 2012 the BOG eliminated its own role in reviewing potential mentors. The current process involves a review by the NLMP committee members, with a request that members contact either the NLMP Director or the Chair with concerns. Names are then submitted to the Court for appointment.

In the rare case where concerns have been raised (both this year were in-house mentoring relationships), the staff has approved the mentors and then asked several other bar leaders to reach out to the new lawyers and offer some additional, more informal, mentoring connections. The intent is simply to establish one more trusting relationship which could give these new lawyers a resource to turn to should they encounter difficulties in their first year of practice. In cases thus far, this has proven effective. The committee and staff welcome any input on this issue.

Recruiting

Our initial call for mentors in 2011 produced impressive results. With highly visible support by Chief Justice Paul De Muniz, and OSB President Steve Piucci, we fairly quickly had 600 mentors signed up. That number has now increased to 879. This is a testament to the statewide bar’s dedication to the future of this profession.

We have found, however, that in order to meet our goals of getting these new lawyers connected promptly to a suitably matched mentor, we need a very sizable surplus of mentors.

Although we have engaged in recruiting efforts continuously, we do intend to employ a much more aggressive and targeted effort throughout the winter and spring. We hope to increase our numbers by roughly 50 percent. As part of that effort, we will be asking a large segment of those identified as bar leaders (BOG, HOD, section and committee chairs, local and specialty bar leaders, etc.) to personally recruit members in their own network who may be well-suited to the mentoring role.

In addition to the “personal ask,” which is always particularly effective, we will ask these leaders to utilize their own organization’s broad communications vehicles to further grow our pool of mentors.

We will also be targeting some of the specific areas, either geographic or practice-specific, where we see the greatest gaps. Please see the attached chart which indicates some of these areas.

Programming

As noted above, the feedback which has come through most clearly is that participants would appreciate more programming specifically geared toward the six NLMP curriculum requirements.

Also of interest is our survey data indicating that the curriculum element most valued by the new lawyers is “introduction to the legal community.” Yet this also is the area with the lowest satisfaction rates by the end of the NLMP year. Clearly, we need to find ways to communicate to mentors the importance of helping new lawyers build their networks, and then provide some vehicles to make that as easy as possible.

We have plans to partner with other organizations (OWLS, MBA, etc.) to co-sponsor and cross-market programs already in development. We hope this is a “win-win” for our program and our partners throughout the bar.

We also hope to host two programs each year specifically geared toward our participants. These programs will hold both an MCLE element and a social element, and will be structured in a manner that will help in the networking efforts of new lawyers. In order to keep costs extremely minimal for new lawyers, many of whom are facing daunting financial circumstances, we hope to get a programming budget of \$1000 for 2014.

Board of Government Support

Finally, the Committee has been thankful for the support the Board of Governors has given to this project from its inception. Given the speed with which the program was developed and launched, it could not have been done effectively without the backing it’s received from the BOG and from the Supreme Court under both the previous Chief Justice and under current Chief Justice Thomas Balmer.

The following chart identifies several of the most requested Mentor Practice Areas in several counties. Bar leaders are encouraged to consult this chart in reaching out to colleagues who may be well-suited to the mentoring role. Please contact Program Director Kateri Walsh with any comments or questions.

MENTOR RECRUITMENT

P areas most requested/waiting for mentors:

COUNTY	MOST REQUESTED	2 nd MOST REQUESTED	3 rd MOST REQUESTED
Multnomah	GenLit-Plaintiff	RELU	Business/Corporate Wills&Trusts
Washington	Bankruptcy	Wills&Trusts	Admin Law GenLit-P Labor&Emp- Employer RELU
Clackamas	GenLit-P	Wills&Trusts	Admin Law RELU
Marion	Admin Law	GenLit-P	RELU GenLit-Defense
Lane	Family	RELU	Business/Corporate Criminal-P Juvenile Wills&Trusts
Yamhill	Bankruptcy	RELU	Admin Law Labor&Emp- Employer Wills&Trusts

- From the datacenter report “Mentors Needed”

Downloadable spreadsheet that lists number of AOL requests (1st, 2nd +3rd choices) from all enrolled NLs not yet matched and the counties selected.

NEW LAWYER MENTORING PROGRAM

PROGRAM BASICS

The goal of the New Lawyer Mentoring Program is to provide personalized professional guidance to Oregon's newest attorneys. The program is designed to welcome new lawyers into the legal profession, and to help them develop the practical skills and judgment required in establishing a successful and professional law practice.

Participants are matched with mentors based on location, practice areas and other common elements. The recommended curriculum includes six components, each designed with the flexibility to tailor it directly to the new lawyer's needs and the mentor's strengths.

MENTOR CRITERIA

- member of the OSB in good standing
- at least five years experience in the practice of law
- reputation for competence and ethical and professional conduct
- no current disciplinary prosecutions pending
- appointed by the Oregon Supreme Court

The typical time commitment is expected to be a monthly 90-minute meeting for 12-18 months. The deadline for completion of the program is determined when a mentor assignment is made.

ENROLLMENT

Upon being sworn in, each new lawyer must enroll in the NLMP unless he/she meets the deferral or exemption criteria. Upon admission, new lawyers will receive an email message that includes a link to the online enrollment survey.

EXEMPTIONS: Newly admitted Oregon lawyers are exempt from the NLMP if they have practiced for no less than 24 months in another jurisdiction.

DEFERRALS: New OSB lawyers may temporarily defer program participation if they are serving as a judicial clerk, or otherwise not actively engaged in the practice of law in Oregon.

Once either of the above deferral circumstances change, the new lawyer must enroll in the NLMP. Program participation is **mandatory**.

MATCHING

Matches are made in one of three ways:

- new lawyers may recruit mentors from relationships already developed within the legal community;
- mentors may be available through the new lawyer's firm or place of employment; or
- the OSB makes the match based primarily on geographic location and practice areas of interest.
- In the event that the matching process is delayed by the OSB, the new lawyer is not in any compliance danger. A completion deadline is not determined until the mentor assignment is made.

REQUESTING A CHANGE IN MATCH ASSIGNMENT

In rare circumstances, a mentoring relationship may not be ideal for either the mentor or new lawyer. Participants are encouraged to contact the administrator early if they'd like to discuss any concerns or challenges, or to request a change.

TRAINING & MCLE CREDIT

- Mentors are responsible for reviewing the NLMP Manual (curriculum) in detail and viewing a brief training video. Both are posted on the bar's website *www.osbar.org*.
- Mentors may claim a total of eight (8) MCLE credits upon completion of the plan year.
- Upon completion of the NLMP, new lawyers are awarded six (6) MCLE credits that can be carried forward into their first three-year reporting period. These credits **do not** replace the first-year MCLE requirements for new admittees.
- Upon completion and certification, the NLMP will forward MCLE credit information for each participant to the MCLE department.

CURRICULUM

The new lawyer and mentor will work to develop an individualized Mentoring Plan covering six areas:

- introduction to the local legal community
- rules of professional conduct and cultural competency
- introduction to law office management
- successful client relationships
- career development, public service, bar leadership and work/life balance
- practice area basic skills

COMPLETION

Upon being assigned to a mentor, the new lawyer is given a deadline for completion. Deadlines are typically 12-18 months from the assignment date, on either May 31 or December 31.

New lawyers are responsible for the program fee and for submitting the completion packet by the appropriate deadline.

This packet is comprised of:

- signed copy of the completion certificate
- mentoring plan Parts A & B checklist
- \$100.00 program fee, payable to Oregon State Bar

OTHER PROGRAM DETAILS

- Mandatory participation for all OSB members admitted after January 1, 2011, unless admitted by reciprocity or having practiced in another jurisdiction for at least 24 months.
- Deferrals to the program apply to new lawyers serving as judicial clerks, those residing outside the state and those not engaged in the practice of law.

CONTACTS

If you have additional questions about the NLMP, please contact Kateri Walsh, Program Administrator at 503.431.6406 or send an email to mentoring@osbar.org.

**18. Marriage Equality Resolution
(Board of Governors Resolution No. 7)**

Whereas, The Oregon Legislative Assembly has directed the BOG to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice;” and

Whereas, The Functions of the Oregon State Bar as stated in OSB Bylaw 1.2 include that “We are leaders helping lawyers serve a diverse community;” and

Whereas, Consistent with and supportive of this Function, one of the Values of the Oregon State Bar is that “The Bar is committed to serving and valuing its diverse community, to advancing equality in the legal system, and to removing barriers to the system;” and

Whereas, The movement for Marriage Equality is the civil rights challenge of this decade, much as the struggle for racial and ethnic equality was an important part of the 1950s and 1960s, which struggle resulted in improved ability of racial minorities to enjoy the same civil rights afforded to others, such as in public accommodations, education, voting rights, -- and marriage (*Loving v. Virginia*, 388 US 1 (1967)); and

Whereas, As the organization of Oregon lawyers who are called upon to “serve a diverse community,” we of the OSB should go on record in support of the civil right to marry a person of either sex; and

Whereas, Members of the OSB help Oregonians every day with issues that turn on the status of the marriage relationship, including marriage and dissolution and attendant issues of support, property division, and child custody; adoption; estate planning, estate/gift and income taxation; healthcare and medical insurance; criminal law; education; and the rights and obligations of debtors and creditors; and

Whereas, the United States Supreme Court recently held the federal Defense of Marriage Act unconstitutional as respects its prohibition of the

federal government’s recognition of same sex marriages that are valid under state law(*United States v. Windsor*, 570 US ____ (2013)); and

Whereas, In holding that the central government cannot discriminate against same-sex spouses whose marriages are valid under applicable state law, the Court stated:

. . . The differentiation [between different-sex and same-sex marriage] demeans the couple, whose moral and sexual choices the Constitution protects, see *Lawrence [v. Texas]*, 539 U. S. 558 [2003], and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives; and

Whereas, We must be respectful of Bar members and members of the public whose personal religious or moral beliefs may be strongly opposed to same-sex marriage, but as an organization charged with protecting equality in the legal profession, and “advancing the science of jurisprudence and the improvement of the administration of justice,” the OSB should publicly support a legal environment in Oregon in which the relationship between same-sex couples who wish to marry is deemed “dignified,” in which the moral and sexual choices of same sex couples are not “demeaned,” and in which their children are not “humiliated;” now, therefore, be it

Resolved, that the Oregon State Bar supports the right of every Oregonian to marry a person of any sex, subject to applicable law regarding age, residence, and other prevailing statutory requirements.

*Presenters: Patrick Ehlers, BOG, Region 5
Richard Spier, BOG, Region 5*

Print This Page

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COMMENTARY

In Oregon, law is a stubborn mule

STEVE DUIN

From the get-go, it didn't feel like your typical Oregon State Bar House of Delegate yawncathon, where they pass out CPAPs at the door. There were legal sparklers on the menu at the Holiday Inn in Wilsonville, and an edge to the crowd.

The in-fighting began early, I'm told. The lawyers argued for an hour before passing a resolution to increase the annual diversity-and-inclusion assessment for the first time in 23 years.

One objector castigated the bar for "mission creep," and I may have to agree with the guy, given that the number of the bar's 14,000 members who identify as racial and ethnic minorities has crept up from 5 percent to an equally embarrassing 6.6 percent in the last 39 years.

The 135 delegates on hand argued for another hour over a resolution to label it professional misconduct when an attorney engages in conduct that knowingly manifests bias based on race, religion, national origin, gender expression and whatnot.

But even with all preliminary sparring, no one was prepared for the main event, Duane Petrowsky's moment at the microphone in the afternoon showdown over marriage equality.

Petrowsky, a Portland family-law attorney, objected to the resolution supporting same-sex marriage, asking, "How far are we going to dilute the definition of marriage?"

It's a daunting and slippery slope, Petrowsky insisted, between a man marrying a man and "a man marrying a mule or marrying his property."

I have to believe, gentle readers, that there's a thoughtful argument to be made against the Oregon bar taking positions on tempestuous civil-rights issues when bar membership is mandatory to practice law.

That argument, however, doesn't feature the word "mule."

"It's nothing we haven't heard before," said Elizabeth Milesnick, an attorney at Miller Nash, "but I was surprised to hear it in this context. People groaned. Audibly. It was embarrassing for the House of Delegates, and the state bar as a whole."

One resolution supporter was so annoyed that he stepped to the mike and assured Petrowsky, "You may not be able to marry a mule, but you, sir, are an ass."

"I was waiting for Thaddeus Stevens to take up his cane and go after me. When I spoke with Petrowsky on Tuesday, he said, 'I certainly didn't mean to offend anyone. I'm just a purist when it comes to language. This is an emotionally charged issue for people; I can take it or leave it. (The analogy) was meant to show a contrast of extremity: How far can you stretch a definition until it's made ridiculous?'"

What delegates who still remained in Wilsonville continued to thrash that out. Abrams was especially passionate: "I framed the issue as I have always framed the issue, as the next logical step in America's imperfect struggle toward equality."

"This is the only country whose consistent theme has been an effort, not always successful, toward equality. For blacks, then the Irish, then women. Jews. Hispanics. And now gays. This isn't about next year's ballot measure. This is about equality under the law today."

And Abrams was convinced the attending lawyers were poised to celebrate that resolution — with "a landslide majority" — when Salem attorney Hunter Emerick delivered a timely — or untimely — quorum call.

The bar has 238 delegates; Emerick wanted to know if a voting majority of 120 remained in the room. Even as he asked, three attorneys told me, several opponents of the resolution headed for the exits.

"Eight or nine," Abrams said. More than enough, he added, for the "ol' Texas-Democrats-against-redistricting-hide-in-the-Oklahoma-motel trick."

More than enough to assure a quorum wasn't present.

“All white men,” said Megan Livermore, a board member at OGALLA, the state’s LGBT bar association. “And the men who walked out of the room, it’s almost like they were feeling this lack of power, and rather than speak their piece, they didn’t want there to be a vote.”

And there wasn’t. The first count yielded only 113 delegates. After bar officials adjourned to round up any strays in the exercise room or the hotel jacuzzi, the tally dropped to 106.

As a result, the bar delegates missed what Milesnick called an opportunity “to take a stand on the civil rights issue of the day. We want to be on the right side of history. We don’t want to look back and say we didn’t take this position when we had the chance.”

If the issue is that significant, Emerick said, a significant percentage of delegates should be on hand to address it. “I don’t think this is a debate that should be before the Oregon State bar,” he notes, “but if it’s going to be, it should be with the appropriate number of people. There was no strategy here other than saying we ought to follow the rules.

“We are lawyers.”

And lawyers, Abrams added, who rapidly lose interest in all-day shouting matches when they can’t charge for them: “I’d love to ascribe some bigger meaning to it, but in a profession where we have billable hours, and billable hours are dribbling away, it mitigates against long meetings.”

* Steve Duin: 503-221-8597; 1320 S.W. Broadway, Portland, OR 97201; sduin@oregonian.com; oregonlive.com/duin



Summary of 2013 House of Delegates Actions

November 1, 2013

Passed

In Memoriam (BOG Resolution No. 1)

Diversity & Inclusion Assessment Increase
(BOG Resolution No. 2)

Amend Oregon Rule of Professional Conduct
8.4 (BOG Resolution No. 3) as amended.
[Exhibit A]

Amendment of Oregon Rules of Professional
Conduct 7.1-7.5. (BOG Resolution No. 4)

Amendment of various Oregon Rules of
Professional Conduct (BOG Resolution No. 5)

Veterans Day Remembrance extending
gratitude to those serving in the military
service and offering condolences to the
families of those who have died in service to
their country (BOG Resolution No.6)

Member Support of Judicial Branch
(Delegate Resolution No. 1)

Online Directory Section Listings (Delegate
Resolution No. 2) as amended **[Exhibit B]**

Support for Adequate Funding for Legal
Services to Low-Income Oregonians
(Delegate Resolution No. 3)

Failed

Scope of House of Delegates Authority
(Delegate Resolution No. 5)

Withdrawn

Centralized Legal Notice System (Delegate
Resolution No. 7)

Not Considered Due to Lack of Quorum

Marriage Equality Resolution (BOG Resolution
No. 7)

Admission to Bar after Two Years of Law
School (Delegate Resolution No. 6)

Admission Rule for Military Spouse Attorneys
(Delegate Resolution No. 8)

Excluded from Preliminary Agenda

Enhance Public Safety on Oregon Public
Waterways (Delegate Resolution No. 4)

Exhibit A

Whereas, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

Whereas, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, That the amendment of Oregon Rule of Professional Conduct 8.4 as set forth below is approved and will be submitted to the Oregon Supreme Court for adoption:

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; [or]
- (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 knowingly 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

*Presenter: Ethan Knight
BOG, Region 5*

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. The LEC established the group and designated it Task Force on Discipline for Harassment, Discrimination and Intimidation ("HDI Task Force").

At the September 2011 BOG meeting, the HDI Task Force submitted a recommendation and a proposed amendment to RPC 8.4 to the BOG. The Board voted unanimously to accept the task force conclusion that the RPCs should prohibit discrimination, intimidation and harassment in the practice of law. However,

because the LEC itself had not had an opportunity to fully study the proposed rule, and in a preliminary vote was evenly divided on the issues of whether a rule change was appropriate and on the language of the proposed rule, the Board decided to send the matter back to the LEC for further study.

After another year of consideration including efforts to draft a formal ethics opinion, and meeting with stakeholders, the LEC ultimately concurred 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.

On 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.¹

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

¹ 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.

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 believes is a fair compromise: the rule requires evidence that a lawyer *knowingly engaged in conduct* that manifests bias or prejudice, as opposed to evidence that the lawyer *knowingly manifested bias or prejudice*. Accordingly, a violation would occur, 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 spent considerable time discussing 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 proposed 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 new language may not be the preferred version for everyone, compromises were made by many in order to 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 BOG acknowledges and is grateful for the stakeholders' contributions to the work of the LEC in developing this proposed amendment.

Exhibit B

Resolved, That the House of Delegates of the Oregon State Bar directs the Board of Governors to consider taking ~~take~~ prompt action to enhance the online membership directory listing by adding each listed member's section membership and leadership history to the online display for each consenting member when the Oregon State Bar IT system is upgraded.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
Memo Date: November 8, 2013
From: George Wolff, Referral & Information Services Manager
Kay Pulju, Communications & Public Services Director
Re: Lawyer Referral Service Update and Modest Means Program Expansion

Actions Recommended

1. Consider special handling of case referrals for SSI/SSD, VA Benefits and Workers Compensation claims.
2. Approve expansion of the Modest Means Program through the creation of new subject matter panels.

Background

The Lawyer Referral Service (LRS) percentage fees implementation plan included a recommendation to consider expanding the Modest Means Program (MMP) after the LRS percentage fee model was in place. This report follows the close of the LRS 2012-2013 program year and completion of the first renewal cycle under the percentage fees revenue model. It returns to topics introduced in a [May 2013 report to the BOG](#), and reports on Public Service Advisory Committee (PSAC) feedback on program policy.

LRS Finances and Policy Recommendations

In total LRS has collected \$343,535 in percentage fee remittances since implementation, which represents \$2,862,792 in business generated for panelists. Due to the typical delay between referral and case resolution in contingency fee matters, budget projections will increase in accuracy and begin to stabilize within the next 18-24 months. Year-to-date registration revenue is \$121,125, which exceeds budget projections. As discussed in our last report, panelist attrition has been less than expected. Total call volume from the public is now back up to pre-recession 2008 levels, e.g., September 2008 (5,987 calls) as compared to September 2013 (6,071 calls). However, RIS is now able to service more of those calls and capture more referrals, having driven the abandoned call ratio down from 10.11% (2008) to 3% (2013).

The PSAC and staff recommend no changes be made to registration rates or percentage fee calculations at this time. While there is general support for adding a “trigger” amount to lessen the impact of percentage fees on low-fee matters, the committee does not think one year of data is adequate to determine an appropriate trigger amount. In addition, panelists are still getting used to the current procedures and making changes too soon – especially if they might need to change again in the future -- could frustrate panelists. Against this backdrop, PSAC

members supported the idea of a trigger only when it can be supported by sufficient data and analysis.

The PSAC also reviewed but did not support limitations on statewide registration or territory designations. The review included consideration of concerns raised by two rural LRS attorneys about perceived encroachment by urban attorneys as well as the impact on overall registration numbers.

Special Handling for Certain Case types

Following up on the BOG's directive to explore Modest Means expansion and concerns about percentage fees expressed by the Workers Compensation Section, PSAC members and/or bar staff met with the executive committees of the following sections over the eighteen months: Elder Law, Estate Planning and Administration, Criminal Law, Disability Law, and Workers Compensation. On September 27, 2013, the Military and Veterans Law Section, Disability Law Section, and Workers Compensation Section appeared before the BOG to voice their special concerns regarding application of percentage fees to their respective areas of law. Additional materials from those sections are also part of the board's November agenda.

On September 28, the PSAC discussed the sections' presentation to the BOG, which the PSAC chair attended. Focusing on access to justice considerations, PSAC members had concerns that veterans and SSD claimants do not appear to have their needs met. Historically, LRS has had few attorneys registered under the Military/Veterans and SSI/SSD panels and has had difficulty meeting claimants' requests for attorneys nearby or willing to take on a long-distance client. The number of panelists registered for the Workers Comp panel declined after implementation of percentage fees, but not to the level of hampering the program's ability to make appropriate referrals. The PSAC chose not to offer a recommendation to the board but suggested that any exemption process should follow a standard and any exemptions created should be periodically reviewed.

If the board favors special procedures for these or any other areas of law, there are essentially two approaches to consider:

1. Establish exemptions within the LRS system. This could be done either on a case-type by case-type basis or through adoption of an exemption standard. For discussion purposes a workable standard might be to exempt areas of law in which: 1) the client base is predominantly low income or otherwise disadvantaged, and 2) attorney fees are limited by rule or law, and 3) LRS has difficulty making appropriate referrals due to low panelist enrollment.

An LRS exemption approach would require significant software reprogramming along with changes to LRS policies and procedures and communications with panelists.

2. Create special MMP panels. The reduced hourly rate approach would not apply to panels for SSI/SSD, VA Disability Benefits or Workers Compensation as attorneys in these areas do not charge hourly rates. The client application process required for other MMP panels could also be waived for the new panels if client income eligibility is not a serious concern or otherwise outweighed by access to justice concerns.

An MMP special panel approach would require no programming changes and could be announced as part of a package of other recent and proposed (see below) changes to the program.

Modest Means Program Expansion

At present, the Modest Means Program only offers assistance in certain kinds of family law, criminal law, landlord-tenant and foreclosure matters on a three-tier qualification/hourly rate basis: Tier 1 (\$60/hour), Tier 2 (\$80/hour), Tier 3 (\$100/hour). Attorney participation has increased substantially over the last few years and client applications have increased an average of 15% per year since 2008.

In addition to any special panels for disability law and workers compensation, the PSAC and staff recommend establishing a new MMP Elder Law Panel with corresponding subpanels to be determined in consultation with the Elder Law and Estate Planning and Administration sections. Both sections have already endorsed expansion, with specific areas of law to include not yet determined. The sections suggested, and will assist with any client application modifications, e.g., substituting estate size for income as a test of means.

In addition, discussions continue with individual immigration practitioners regarding whether to create an MMP immigration panel and how to accommodate fee reductions into the standard billing practices for that area.

Oregon State Bar
Meeting of the Board of Governors
September 27, 2013
Open Session Minutes

The meeting was called to order by President Michael Haglund at 1:39 p.m. on September 27, 2013. The meeting adjourned at 4:33 p.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Theresa Kohlhoff, Tom Kranovich, Audrey Matsumonji, Caitlin Mitchell-Markley, Maureen O'Connor, Travis Prestwich, Joshua Ross, and Timothy L. Williams. Staff present were Helen Hirschbiel, Rod Wegener, John Gleason, Kay Pulju, Susan Grabe, Kateri Walsh, Dani Edwards, George Wolff, Judith Baker and Camille Greene. Also present were Ira Zarov, PLF CEO, Guy Greco, Vice-Chair PLF Board of Directors, Tom Cave, PLF CFO, Valerie Saiki and John Berge, PLF Public Members, Andrew Gust, ONLD CLE Co-Chair, Cheryl Coon, Disability Law Section, Rob Guarrasi, Workers Compensation Section, Mark Holady, Military and Veterans Law Section, William Jones, Public Service Advisory Committee Chair, Sandra Hansberger, CEJ Executive Director, Holly Puckett, CEJ Assistant Director, and active members Gerry Gaydos, Ed Harnden, David Thornton and Mark Wada.

1. Report of Officers & Executive Staff

A. Report of the President

As written. Mr. Haglund announced the 2014 President-elect nominee will be Mr. Richard Spier. Mr. Spier's nomination will be confirmed at the November board meeting. Mr. Haglund revealed the names of his selections for the President's Special Award of Appreciation: Attorney General Ellen Rosenblum and former OSB President Gerry Gaydos.

Motion: Mr. Kranovich moved and Mr. Ehlers seconded, and the board voted to approve Mr. Haglund's selections for the President's Special Award of Appreciation.

B. Report of the President-elect

Mr. Kranovich reported that he met with the November retreat facilitator and attended various sponsorship events during the past month.

C. Report of the Executive Director

Operations Report as written.

D. Director of Regulatory Services

Mr. Gleason summarized his written report, noting in particular that the uniform bar exam (UBE) is supported by the deans from all three Oregon law schools. The Board of Bar Examiners (BBX) is considering the UBE for Oregon. The board expressed interest in supporting adoption of the UBE as well. Mr. Gleason will prepare for the November board meeting a resolution for the board regarding the UBE and a position paper regarding the Presiding Disciplinary Judge position for discipline cases at the bar.

E. Director of Diversity & Inclusion

As written.

F. MBA Liaison Reports

Mr. Ehlers attended the September 4 MBA meeting. No report was given.

2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov provided a general update and financial report. The PLF is searching for a new CFO as Mr. Cave retires at the end of this year. Mr. Cave presented the PLF's 2014 Budget to the board for approval. The assessment will not increase but the excess rates will.

Motion: Ms. Billman moved, Ms. Mitchel-Markley seconded, and the board voted to approve the 2014 PLF budget which includes a 2% salary pool, a \$200,000 contribution to the OSB for BarBooks®, a new IT position, and an additional Oregon Attorney Assistance Program attorney-counselor position. **[Exhibit A]**

3. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division

In Mr. Eder's absence, Mr. Gust reported on a variety of ONLD projects and events described in the written report including their CLE programming geared to help new lawyers become practice-ready. They are pleased with Mr. Spier as their BOG liaison and would like to extend his position to next year.

B. Client Security Fund

Mr. Emerick presented the CSF Workgroup Report & Committee Response. The workgroup made the following recommendations:

1. Increase the CSF reserve to \$1 million, even though achieving that goal will mean retaining the \$45 assessment for more years than originally anticipated.
2. CSF Committee and BOG will continue to review and approve claims throughout the year and the first \$5,000 of approved awards will be paid on approval.
3. The remaining balance of approved award in excess of \$5,000 will be held and paid at the end of the year.¹
4. The Fund reserve balance will never be less than \$500,000 and the year-end awards will be pro-rated as necessary.
5. Any approved award that is not fully paid at the end of the year will be eligible for additional payment over the following two years if the fund balance is sufficient.
6. Revise CSF Rule 6.2 as follows:
No ~~reimbursement from the Fund on any one claim shall exceed~~ claimant shall be entitled to an award in excess of \$50,000 for any claim or claims arising out of claimant's representation by a lawyer or law firm, regardless of the number of matters handled or the length of the representation.
7. Request Legal Ethics Committee to consider the implications of eliminating the permission for "earned on receipt" fees.

Motion: Mr. Ehlers moved, Mr. Prestwich seconded, and the board voted unanimously to approve the workgroup recommendations with the exception of the changes made to CSF Rule 6.2.

¹ This may require a special BOG meeting in December.

Ms. Hirschbiel presented the committee request that the Marion County DA be informed of Jason McBride's activities. There was discussion about whether there was a precedence set or if this recommendation was consistent with the action the board took in the Gruetter case.

Motion: Mr. Kranovich moved, Mr. Ehlers seconded, and the board voted to inform the Marion County District Attorney of Jason McBride's activities. Ms. Kohlhoff and Mr. Prestwich were opposed.

Ms. Hirschbiel presented the CSF claims recommended for payment. **[Exhibit B]**

Motion: Mr. Emerick moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve payments totaling \$112,929.69.

C. Sections Presentation on LRS Policy

Ms. Pulju introduced Cheryl Coon, Disability Law Section, Rob Guarrasi, Workers Compensation Section, and Mark Holady, Military and Veterans Law Section, each of whom presented requests that the areas to be exempted from the LRS referral fee policy due to the financial hardship it creates for the attorneys in their practice area and their clients. Mr. Holady also addressed the issue of military veterans who are underserved. For information only; related action items will appear on the November board agenda.

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

A. Board Development Committee

The update on committee actions was deferred until the next board meeting. Mr. Kranovich presented the committee's appointment recommendation for the Board of Governors 2014 public member.

Motion: The board voted unanimously to approve the appointment of Elizabeth Zinser to the Board of Governors as Public Member in 2014.

B. Budget and Finance Committee

In Mr. Knight's absence, Mr. Haglund presented the committee's request for the board to establish the Active Membership Fee for 2014. **[Exhibit C]**

Motion: The board voted unanimously to approve the committee recommendation to not raise the Active Membership Fee for 2014.

C. Governance and Strategic Planning Committee

Ms. Hirschbiel presented the committee's proposed amendments to the Standard Section Bylaws, which prohibit reimbursement of section executive committee's guest expenses. The proposed amendments will be circulated to section leadership and board members may receive feedback from members. This issue will be on November 2013 BOG Agenda for action. **[Exhibit D]**

Ms. Hirschbiel presented the committee recommendations for section contributions. Ms. Hansberger addressed this committee motion and the importance of sections supporting the

Campaign for Equal Justice because of its link with the bar to support increased equal access to justice around Oregon.

[Exhibit E]

Motion: The board voted unanimously to approve the GSP Committee's recommendations for encouraging section contributions to the Campaign for Equal Justice, based on the HOD resolution requiring the OSB to assist in achieving a 75% contribution rate among sections.

Mr. Ehlers presented the committee's recommendation to submit a marriage equality resolution to the HOD in November. This is an equal rights issue in the legal profession and was not meant to offend any religious views. **[Exhibit F]**

Motion: The board voted to approve the GSP Committee's recommendation that the BOG submit the proposed HOD resolution supporting marriage equality to the HOD in November 2013 and support its passage. Mr. Emerick and Mr. Prestwich were opposed. Ms. Matsumonji abstained.

D. Public Affairs Committee

Mr. Emerick reported on the interim legislative committee meetings. No handout was submitted. The Indian Law Section requested an exemption to UTCR 3.170 for their out-of-state lawyers representing tribes in Oregon courts for ICWA cases. The committee recommended the board decline the section's proposal. The committee motion passed. Mr. Williams was opposed.

E. Special Projects Committee

Mr. Prestwich reported on the progress of current board projects for 2013 and the series of CLEs they will present on the subject of buy/selling practices. Another tree planting will take place November 2, 2013.

F. International Trade & Legal Services Task Force

Report deferred until November board meeting.

5. Other Action Items

A. Ms. Edwards presented the recommendations for various interim committee appointments. **[Exhibit G]**

Motion: Mr. Emerick moved, Mr. Prestwich seconded, and the board unanimously approved the appointments as presented.

B. Mr. Gaydos explained the relationship between the Campaign for Equal Justice, the Oregon Law Foundation and the Oregon State Bar. He stressed the importance of the leadership banks where bar members hold their trust accounts and how that affects IOLTA. He encouraged all board members to support the Campaign for Equal Justice and the HOD resolution to support Legal Services. Mr. Wada talked about the legal aid fund drive and how it unites lawyers around the state. Mr. Harnden addressed the need for attorneys to network around the state and how this networking helps encourage Oregon's congressmen to support Access to Justice.

- C. Mr. Haglund asked the board to determine whether it wished to remove any of the proposed resolutions from the agenda and whether it wished to take a position on the various delegate resolutions on the 2013 draft HOD agenda.

HOD Agenda Item #9:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #9 re: Diversity & Inclusion Assessment Increase.

HOD Agenda Item #10:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted to support HOD agenda item #10 re: Amendment of Oregon Rule of Professional Conduct 8.4. Ms. Mitchel-Markley was opposed.

HOD Agenda Item #11:

Ms. Hirschbiel shared comments that members submitted in response to the proposed advertising rule amendments. **[Exhibit H]**

Motion: Ms. Billman moved, Mr. Emerick seconded, and the board voted unanimously to support HOD agenda item #11 re: Amendment of Oregon Rules of Professional Conduct 7.1-7.5.

HOD Agenda Item #12:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #12 re: Amendment of Oregon Rules of Professional Conduct.

HOD Agenda Item #13:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #13 re: Veterans Day Remembrance.

HOD Agenda Item #14:

Motion: Mr. Prestwich moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #14 re: Member Support of Judicial Branch.

HOD Agenda Item #15:

Motion: Mr. Heysell moved, Mr. Ross seconded, and the board voted to oppose HOD agenda item #15 re: Online Directory Section Listings based on financial issues. Mr. Prestwich abstained.

HOD Agenda Item #16:

Motion: The board voted unanimously to support HOD agenda item #16 re: Support for Adequate Funding for Legal Services to Low-Income Oregonians.

HOD Agenda Item #17:

Motion: Ms. Mitchel-Markley moved, Mr. Ehlers seconded, and the board voted unanimously to exclude HOD agenda item #17 re: Enhance Public Safety on Oregon Public Waterways pursuant to OSB Bylaw 3.4 and HOD Rule 5.5.

HOD Agenda Item #18:

Motion: Mr. Kranovich moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to oppose HOD agenda item #18 re: Scope of House of Delegates Authority as this issue was already addressed with a poll this summer.

HOD Agenda Item #19:

Motion: The board voted to support HOD agenda item #19 re: Marriage Equality. Mr. Prestwich and Mr. Emerick were opposed.

HOD Agenda Item #20:

Motion: Ms. Kohlhoff moved, Ms. O'Connor seconded, and the board voted unanimously to oppose HOD agenda item #20 re: Admission to Bar after Two Years of Law School as this is a decision for the Supreme Court, not the bar.

HOD Agenda Item #21:

Motion: Mr. Kranovich moved, Ms. Mitchel-Markley seconded, and the board voted to oppose HOD agenda item #21 re: Centralized Legal Notice System because the task force assigned to investigate this issue has yet to release its final report and recommendation to the board. Mr. Ehlers abstained. Ms. Kohlhoff and Ms. O'Connor were opposed.

HOD Agenda Item #22:

Motion: Mr. Heysell moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to oppose HOD agenda item #22 re: Admission Rule for Military Spouse Attorneys.

D. Ms. Hirschbiel presented the draft 2013 HOD Agenda for approval.

Motion: Ms. Mitchel-Markley moved, Mr. Emerick seconded, and the board voted unanimously to approve the 2013 HOD Preliminary Agenda, with the exception of Item #17, which was removed from the agenda.

6. Consent Agenda

Motion: Ms. Billman moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

7. 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

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

None.

**Oregon State Bar
Board of Governors Meeting
September 27, 2013
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. Phillip R. Bennett – 841687

Mr. Gleason presented information concerning the BR 8.1 reinstatement application of Mr. Bennett. Disciplinary Counsel's office recommends the Board of Governors approve Mr. Bennett's reinstatement and recommend such to the Oregon Supreme Court subject to the ten conditions set forth in **[Exhibit I]**.

Motion: Ms. Billman moved, and Mr. Ehlers seconded, to recommend to the Supreme Court that Mr. Bennett's reinstatement application be approved, subject to conditions. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
September 27, 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

Tricia Allen dba Affordable Legal Services
(UPL Case No. 2013-27)

The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Tricia Allen, who is an independent paralegal operating Affordable Legal Services out of Talent, Oregon. **[Exhibit J]**

Motion: Ms. Mitchel-Markley moved and Ms. O'Connor seconded to approve the agreement as presented. The motion passed unanimously.

B. Pending or Threatened Non-Disciplinary Litigation

The BOG received status reports on the non-action items.

C. Other Matters

Washington State Taxes

Ms. Hirschbiel asked the board to determine how to proceed with the counteroffer presented by the Washington Department of Revenue. **[Exhibit K]**

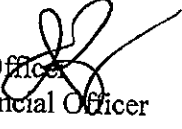
Motion: Mr. Ehlers moved, and Ms. Mitchel-Markley seconded, to decline the offer from the Washington Department of Revenue. The motion passed unanimously.

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

September 3, 2013

To: PLF Finance Committee (Tim Martinez, Chair; Teresa Statler, and John Berge) and
PLF Board of Directors

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

Re: 2014 PLF Budget and 2014 PLF Primary Assessment

I. Recommended Action

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

1. Approve the 2014 PLF budget as attached. This budget uses a 2014 salary pool recommendation of 2.0 percent. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2014 PLF Primary Program assessment. We recommend that the 2014 assessment be \$3,500, which is the same amount as the past three years.

II. Executive Summary

1. Besides the two percent salary pool, this budget includes increased costs for PERS and medical insurance. It includes a \$200,000 PLF contribution for the OSB Bar Books. This budget includes two new staff positions; a computer systems analyst / programmer and an additional OAAP attorney position.
2. The actuarial rate study estimates a cost of \$2,730 per lawyer for new 2014 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.

III. 2014 PLF Budget

Number of Covered Attorneys

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,107 full-pay attorneys for 2013. For the past five years, the average annual growth of full-pay attorneys has been 1.3 percent. We have chosen to conservatively assume only 1 percent growth for the 2014 budget which translates to 7,178 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. After holding steady for one year, participation declined again in 2013. We do not expect further declines in 2014.

Full-time Employee Statistics (Staff Positions)

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

	<u>2013 Projections</u>	<u>2014 Budget</u>
Administration	8.20 FTE	10.00 FTE
Claims	19.75 FTE	20.00 FTE
Loss Prevention (includes OAAP)	12.75 FTE	13.58 FTE
Accounting	7.04 FTE	5.95 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
Total	48.74 FTE	50.53 FTE

We continue to have some permanent positions staffed at less than full-time levels for both 2013 and 2014. Some staff members work from 30 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

An existing systems administrator position has been moved from the accounting department to the administration department starting with the 2014 budget.

During the first half 2013, a claims attorney and claims secretary retired and new employees were hired for both positions. The 2013 budget included an additional new claims attorney position which was filled in July. The 2013 budget also included a paralegal position in the claims department. The position was filled at 75 percent of full-time. However, the staff member has done more work in the loss prevention department related to closing law offices. As a result, this position has been moved to the loss prevention department.

There are two new positions proposed to be filled in late 2013. Because of potential retirements and the long learning curve, an additional OAAP attorney position has been added to the budget starting in November, 2013. In addition, the chief financial officer is scheduled to retire November 30, 2013 and some of his duties were in the data processing department. A computer systems analysis / programmer position has been added to the administration department starting in October, 2013. Some of the costs of this new position will be offset by reduced expenses with outside contractors. The replacement Chief Financial Officer is expected start in November. The 2013 budget anticipated some of these "succession planning" expenses and had an increased contingency amount. The additional 2013 expenses have been charged to salary and benefits rather than contingency because it allows for better period to period comparisons.

While no definite plans have been made, we continue to expect that some claims attorneys and other members of the PLF management team to retire in the next few years. The 2014 budget continues to have an increased amount allocated to contingency to cover succession planning and possible expenses relating to replacing these positions.

Allocation of Costs between the Excess and Primary Programs

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

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

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2014 allocation of salary, benefits and overhead is about 14.35 percent of total administrative operating expense. This is slightly lower than the percentage used in the 2013 budget (14.45 percent).

Primary Program Revenue

Projected assessment revenue for 2013 is based upon the \$3,500 basic assessment paid by an estimated 7,107 attorneys. The budget for assessment revenue for 2014 is based upon a \$3,500 assessment and 7,178 full-pay attorneys. Primary Program revenue for 2013 also includes our forecast for SUA collections of \$215,532. Because of changes in Board of Director policy, there will be no SUA program or collections for 2014.

Investment returns were better than expected for the first seven months of 2013. In doing the 2013 full year projections and 2014 budget, we used the rates of return for the different asset categories recently recommended by R. V. Kuhns & Associates, Inc. These rates are reduced from 2013 levels for several categories (mostly fixed income). While the percentages chosen are significantly lower than historical rates of return, they reflect the current reduced expectations of our investment consultants. Our calculation of investment return projections for the remainder of 2013 and for 2014 began with the July 31, 2013 market value of all current investments. Investment revenue was calculated from July forward using 2.25 percent for the short-term cash flow bond fund, 3.5 percent for intermediate bonds, 7.9 percent for domestic equities, 8.65 percent for foreign equities, 6.75 percent for hedge fund of funds or the GATT funds that are likely to replace the hedge fund of funds, 7 percent for real estate, and 6.75 percent for absolute return. The overall combined expected rate of return for 2014 is about 6.21 percent. (The overall rate combined rate of return used in prepared the 2013 budget was 6.61 percent.)

Primary Program Claims Expense

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

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

During the second half of 2012, 141 claims were made against a single attorney. There have been 15 additional claims made against the same attorney during 2013. All of these claims from 2012 and 2013 are subject to the same coverage limit of \$350,000. When the actuaries reviewed the estimates for claim liabilities in December 31, 2012 and June 30, 2013, they made an adjustment to

their methodology and removed these claims from their normal analysis. It is also appropriate to adjust claim frequency calculations. After this adjustment, the frequency of new claims dropped for the second half of 2012 and this drop in frequency continued for the first half of 2013. Our 2013 projections of claim costs assume 935 claims made during 2013 at \$21,000 per claim. The \$21,000 cost per claim is higher than our current average claim cost (\$20,500) because early analysis suggests that 2013 claim severity may be a bit higher than expected.

The 2013 budget included \$1,065,600 (approximately \$150 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The June 30, 2013 actuarial review of claim liabilities recommended an increase of about \$665,000 as a result of adverse development of pending claims. In the past, actuarial adjustments have been both up and down and undoubtedly the December 31, 2013 adjustment will differ from the June adjustment. However, in order to project the 2013 cost of pending claims, we have doubled the amount from June (\$1.33 million).

Primary Program new claims expense for 2014 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13 percent, 7,178 covered attorneys and an average claim cost of \$21,000. Multiplying these three numbers together gets a 2014 budget for claims expense of \$19.6 million. This would also translate to about 933 claims at \$21,000 for 2014.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2014. If pending claims do not develop adversely, this margin could offset higher 2014 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,076,700 (\$150 times the estimated 7,178 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2014 assessment.

Salary Pool for 2014

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

After consultation with Sylvia Stevens, a two percent salary pool increase is recommended for 2014. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$40,689 in PLF salary expense and \$14,504 in PLF benefit costs. The total cost of the two percent salary pool is less than one half of one percent of total expenses (0.4 percent). The projected increase in the CPI index for 2014 is between 2 and 3 percent with the average prediction being 2.1 or 2.2 percent.

Because all salary reclassifications cannot be accomplished within the two percent salary pool allocation, we are also requesting \$30,000 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

Benefit Expense

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

The employer contribution rates for PERS were expected to increase significantly as of July 1, 2013. Because of legislative changes, the new rates were lower than expected. This is the reason that 2013 projections for benefits and payroll taxes are much lower than the 2013 budget figures.

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

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents. Although the rate of increases in medical insurance is slowing somewhat, the cost of medical insurance continues to rise faster than salary levels. We have included about a 5 percent increase for the cost of medical and dental insurance.

Capital Budget Items

The OAAP telephone system was replaced during 2013. There also will be some minor remodeling (leasehold improvements) for new IT personnel during the last quarter of 2013.

There have been ongoing maintenance problems with the PLF boardroom audiovisual equipment. We have included funds in the capital budget to potentially replace the equipment in 2014.

Other Primary Operating Expenses

Insurance expense in the 2013 budget was higher because of a large increase in the cost of 2012 E&O insurance. The cost of this coverage increased because of a significant claim made against the PLF. The proposed cost of the renewal E&O policy was again increased in 2013. Because of significant increase in cost, a decision was made not to purchase this coverage. The 2013 projections and 2014 budget for insurance were reduced accordingly.

The information services account covers the cost of website development. The PLF finished developing a new website for the PLF defense panel during 2013. The PLF also developed a website for the distribution of material for BOD and BOD committee meetings during 2013. In addition, the main PLF website will be revised and rewritten during 2013 and early 2014.

The PLF has traditionally had defense panel meetings every other year. The 2013 budget included estimates of costs for the scheduled 2013 meeting. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers. There is a small 2014 budget amount for a potential small program for newer panel members.

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

The 2014 budget includes a \$200,000 contribution to the OSB Bar Books. The PLF Board of Directors believes there is substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims.

For many years, the PLF Primary Program has included a contingency budget item. The contingency amount has usually been set between two and four percentage of operating costs. In the past, the contingency items was been used for items such as CEO recruitment expense, the costs of a focus group on SUA, and the Medicare reporting litigation expense. In 2013, the contingency budget was raised to 4 percent of operating costs to cover potential succession costs. The 2014 contingency budget also uses 4 percent of operating expenses (\$314,701).

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2013 Primary Program operating costs to be about 3.2 percent lower than the budget amount.

The 2014 Primary Program operating budget is 2.8 percent higher than the 2013 budget and 6.3 percent greater than the 2013 projections. The main reasons for the increases are the new IT and OAAP positions, the 2 percent salary increase, and related higher benefit costs.

Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2014 Primary Program assessment. We do include a budget for the Excess Program (page 8). Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. After holding steady for one year, participation declined again in 2013. We do not expect further declines in 2014 because of reported increases in premium costs from competing insurers.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$745,000 for 2013. The 2014 budget estimates ceding commissions to increase slightly because of changes in the excess agreement relating to data loss coverage.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2013 projections or 2014 budget.

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

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

IV. Actuarial Rate Study for 2014

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2014 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2013. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2014 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2014 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of

the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2014 claims frequency rate of 13 percent and \$21,000 as the average cost per claim (severity). The average cost figure has increase by \$500 from last years' study. We feel the \$21,000 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is a half of one percent lower from last years' figure of 13.5 percent. We feel that this rate is appropriate given the reduction in claim frequency over the past twelve months. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,730 per attorney. This amount would only cover the estimated funds needed for 2014 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2014 shortfall is about \$575 per lawyer assuming 7,178 full-pay lawyers.

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

V. Staff Recommendations

If you add the operating expense portion of \$575 per lawyer to the actuaries' indicated claim cost of \$2,730, you would have an assessment of \$3,305. We feel that it is appropriate to include a margin of \$150 per attorney for adverse development of pending claims. This allows for a budget of about \$1.1 million for adverse development of pending claims. An assessment of \$3,500 would allow a projected budget profit of about \$326,000.

Because of good financial results for 2012 and the first six months of 2013, the PLF currently has positive combined Primary and Excess retained earnings of about \$4.3 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2014 assessment with some margin makes it more likely that some small progress will be made toward that retained earnings goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2014. Accordingly, we recommend setting the 2014 Primary Program assessment at \$3,500.

The Finance Committee will discuss the actuarial report during its telephone conference meeting at 3:00 p.m. on September 10, 2013 and prepare recommendations for the Board of Directors. The full Board of Directors will then act upon the committee's recommendations at their board meeting on September 13, 2013.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
Presented to PLF Board of Directors on September 13, 2013**

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Revenue</u>					
Assessments including SUA	\$24,465,415	\$24,803,326	\$25,049,000	\$25,090,978	\$25,123,000
Installment Service Charge	385,593	394,631	390,000	391,000	390,000
Investments and Other	(544,650)	4,364,988	2,462,823	3,115,627	2,692,264
Total Revenue	<u>\$24,306,358</u>	<u>\$29,562,945</u>	<u>\$27,901,823</u>	<u>\$28,597,605</u>	<u>\$28,205,264</u>
<u>Expenses</u>					
Provision for Claims					
New Claims	\$18,538,608	\$20,908,307	\$19,660,320	\$19,635,000	\$19,595,940
Pending Claims	\$2,398,105	(\$2,435,227)	\$1,065,600	\$1,330,000	\$1,076,700
Total Provision for Claims	<u>\$20,936,713</u>	<u>\$18,473,080</u>	<u>\$20,725,920</u>	<u>\$20,965,000</u>	<u>\$20,672,640</u>
Expense from Operations					
Administration	\$2,234,384	\$2,200,578	\$2,283,201	\$2,260,078	\$2,482,372
Accounting	635,730	748,742	786,223	815,137	637,662
Loss Prevention	1,700,518	1,824,653	1,902,969	1,866,918	2,081,023
Claims	<u>2,305,033</u>	<u>2,398,157</u>	<u>2,681,914</u>	<u>2,462,053</u>	<u>2,666,466</u>
Total Operating Expense	\$6,875,665	\$7,172,130	\$7,654,307	\$7,404,186	\$7,867,523
Contingency	53,523	23,693	306,172	25,000	314,701
Depreciation	209,326	175,500	208,000	168,527	169,800
Allocated to Excess Program	(1,393,740)	(1,135,822)	(1,135,160)	(1,135,160)	(1,145,155)
Total Expenses	<u>\$26,681,487</u>	<u>\$24,708,581</u>	<u>\$27,759,239</u>	<u>\$27,427,553</u>	<u>\$27,879,509</u>
Net Income (Loss)	<u>(\$2,375,129)</u>	<u>\$4,854,364</u>	<u>\$142,584</u>	<u>\$1,170,052</u>	<u>\$325,755</u>
Number of Full Pay Attorneys	6,937	7,030	7,104	7,107	7,178

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	2.79%
Increase from 2013 Projections	6.26%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CONDENSED STATEMENT OF OPERATING EXPENSE
Presented to PLF Board of Directors on September 13, 2013**

<u>Expenses</u>	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
Salaries	\$3,858,800	\$3,984,100	\$4,148,175	\$4,101,924	\$4,333,390
Benefits and Payroll Taxes	1,194,430	1,395,115	1,576,202	1,473,542	1,613,525
Professional Services	270,489	289,644	314,000	337,261	319,630
Auto, Travel & Training	76,029	95,137	94,450	99,350	122,650
Office Rent	491,884	511,782	520,741	521,137	530,879
Office Expense	153,163	136,526	151,950	134,250	136,250
Telephone (Administration)	34,329	36,564	43,000	49,872	57,960
L P Programs	359,385	389,839	433,560	358,268	444,794
OSB Bar Books	300,000	200,000	200,000	200,000	200,000
Defense Panel Program	20,706	0	23,100	23,100	1,500
Insurance	60,081	70,793	90,129	38,878	39,145
Library	32,928	31,047	33,000	33,000	33,000
Memberships & Subscriptions	18,244	20,512	19,800	21,000	22,200
Interest & Bank Charges	5,197	11,071	6,200	12,604	12,600
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$6,875,665</u>	<u>\$7,172,130</u>	<u>\$7,654,307</u>	<u>\$7,404,186</u>	<u>\$7,867,523</u>
Allocated to Excess Program	<u>(\$1,350,104)</u>	<u>(\$1,099,826)</u>	<u>(\$1,105,104)</u>	<u>(\$1,105,104)</u>	<u>(\$1,120,789)</u>
Full Time Employees (See Explanation)	44.56	44.83	47.06	47.74	49.53
Number of Full Pay Attorneys	6,937	7,030	7,104	7,107	7,178
Non-personnel Expenses	\$1,822,435	\$1,792,915	\$1,929,930	\$1,828,720	\$1,920,608
Allocated to Excess Program	<u>(\$388,938)</u>	<u>(\$275,635)</u>	<u>(\$278,874)</u>	<u>(\$278,874)</u>	<u>(\$270,406)</u>
Total Non-personnel Expenses	<u>1,433,497</u>	<u>1,517,280</u>	<u>1,651,056</u>	<u>1,549,846</u>	<u>1,650,202</u>

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	2.79%
Increase from 2013 Projections	6.26%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
ADMINISTRATION**

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$647,912	\$632,504	\$642,627	\$656,351	\$807,152
Benefits and Payroll Taxes	209,493	231,342	242,304	230,476	296,206
Staff Travel	13,759	23,832	17,550	19,250	19,550
Board of Directors Travel	29,994	38,011	39,000	39,000	39,000
Training	843	9,701	8,000	12,000	15,000
Investment Services	27,304	27,719	28,000	28,000	28,000
Legal Services	7,931	13,251	16,000	12,000	13,000
Actuarial Services	18,564	18,900	19,000	19,000	22,000
Information Services	82,863	86,814	96,000	134,705	97,600
Offsite System Backup	1,138	0	0	0	0
Electronic Record Scanning	21,879	52,035	75,000	60,000	65,000
Other Professional Services	73,601	65,375	57,400	60,956	70,230
Pro Services - Medicare Reporting	11,400	3,850	0	0	0
OSB Bar Books	300,000	200,000	200,000	200,000	200,000
Office Rent	491,884	511,782	520,741	521,137	530,879
Equipment Rent & Maint.	42,345	36,000	35,200	39,000	39,000
Dues and Memberships	18,244	20,512	19,800	21,000	22,200
Office Supplies	64,615	51,613	68,000	50,000	52,000
Insurance	60,081	70,793	90,129	38,878	39,145
Telephone	34,329	36,564	43,000	49,872	57,960
Printing	10,966	8,573	11,000	9,000	9,000
Postage & Delivery	34,350	37,715	36,750	34,750	34,750
NABRICO - Assoc. of Bar Co.s	24,805	9,996	10,500	10,600	10,600
Bank Charges & Interest	5,197	11,071	6,200	12,604	12,600
Repairs	887	2,625	1,000	1,500	1,500
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$2,234,384</u>	<u>\$2,200,578</u>	<u>\$2,283,201</u>	<u>\$2,260,078</u>	<u>\$2,482,372</u>
Allocated to Excess Program	<u>(\$559,903)</u>	<u>(\$430,118)</u>	<u>(\$430,857)</u>	<u>(\$430,857)</u>	<u>(\$461,595)</u>
Administration Full Time Employees	8.75	8.00	8.00	8.20	10.00
CHANGE IN OPERATING EXPENSES:					
Increase from 2013 Budget		8.72%			
Increase from 2013 Projections		9.84%			

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
ACCOUNTING

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$473,136	\$542,180	\$548,750	\$581,693	\$445,453
Benefits and Payroll Taxes	141,635	183,646	210,973	208,344	162,909
Travel	207	178	400	500	1,500
Financial Audit	20,200	21,700	22,600	22,600	23,800
Training	<u>552</u>	<u>1,038</u>	<u>3,500</u>	<u>2,000</u>	<u>4,000</u>
Total Operating Expenses	<u>\$635,730</u>	<u>\$748,742</u>	<u>\$786,223</u>	<u>\$815,137</u>	<u>\$637,662</u>
Allocated to Excess Program	<u>(\$144,052)</u>	<u>(\$128,721)</u>	<u>(\$111,674)</u>	<u>(\$111,674)</u>	<u>(\$90,264)</u>
Accounting Full Time Employees	6.10	6.90	6.90	7.04	5.95

CHANGE IN OPERATING EXPENSES:

Decrease from 2013 Budget	-18.90%
Decrease from 2013 Projections	-21.77%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
LOSS PREVENTION (Includes OAAP)
Presented to PLF Board of Directors on September 13, 2013**

	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,015,169	\$1,053,974	\$1,059,579	\$1,100,271	\$1,189,806
Benefits and Payroll Taxes	325,964	380,840	409,830	408,379	446,423
In Brief	54,370	44,854	62,000	45,000	62,000
PLF Handbooks	7,320	5,872	6,000	1,000	6,000
Library	102	436	150	500	500
Video and Audio Tapes	42,485	35,454	42,200	35,000	35,000
Mail Distribution of Video and Audiotape	12,871	11,949	12,000	12,000	12,000
Web Distribution of Programs	9,165	24,180	18,000	15,000	18,000
Program Promotion	20,596	28,664	30,000	15,000	20,000
Expense of Closing Offices	4,800	15,861	14,500	4,000	10,500
Facilities	33,591	47,282	45,000	47,000	47,000
Speaker Expense	1,018	(1,311)	5,000	7,000	5,000
Accreditation Fees	1,071	1,632	1,400	1,600	1,600
Beepers & Confidential Phone	3,377	4,107	4,000	5,000	5,000
Expert Assistance	6,414	300	5,000	0	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	10,832	11,053	11,000	11,000	12,900
Travel	31,708	36,171	36,950	23,075	36,750
Training	22,883	25,038	40,250	29,325	47,800
Downtown Office	96,782	98,297	100,110	106,768	119,744
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$1,700,518</u>	<u>\$1,824,653</u>	<u>\$1,902,969</u>	<u>\$1,866,918</u>	<u>\$2,081,023</u>
Allocated to Excess Program	<u>(\$246,921)</u>	<u>(\$202,122)</u>	<u>(\$209,540)</u>	<u>(\$209,540)</u>	<u>(\$225,930)</u>
L P Depart Full Time Employees (Includes OAAP)	11.83	11.83	11.83	12.75	13.58

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	9.36%
Increase from 2013 Projections	11.47%

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CLAIMS DEPARTMENT

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,722,583	\$1,755,442	\$1,897,219	\$1,763,609	\$1,890,979
Benefits and Payroll Taxes	517,338	599,287	713,095	626,343	707,987
Claims Audit	5,609	0	0	0	0
Training	4,335	9,758	13,000	12,000	29,000
Travel	1,534	2,623	2,500	4,000	4,000
Library & Information Systems	32,928	31,047	33,000	33,000	33,000
Defense Panel Program	<u>20,706</u>	<u>0</u>	<u>23,100</u>	<u>23,100</u>	<u>1,500</u>
Total Operating Expenses	<u>\$2,305,033</u>	<u>\$2,398,157</u>	<u>\$2,681,914</u>	<u>\$2,462,053</u>	<u>\$2,666,466</u>
Allocated to Excess Program	<u>(\$399,228)</u>	<u>(\$338,865)</u>	<u>(\$353,033)</u>	<u>(\$353,033)</u>	<u>(\$343,000)</u>
Claims Depart Full Time Employees	17.88	18.10	20.33	19.75	20.00
CHANGE IN OPERATING EXPENSES:					
Decrease from 2013 Budget		-0.58%			
Increase from 2013 Projections		8.30%			

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CAPITAL BUDGET

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
Capital Items					
Furniture and Equipment	\$19,595	\$21,188	\$10,000	\$8,000	\$10,000
Telephone	0	0	1,000	11,500	5,000
Copiers / Scanners	0	71,253	10,000	2,500	8,500
Audiovisual Equipment	0	0	0	0	25,000
Data Processing					
Hardware	22,832	9,434	13,000	12,000	12,000
Software	22,179	5,574	10,000	4,000	6,000
PCs, Ipads and Printers	57,751	27,077	13,500	7,500	7,500
Leasehold Improvements	<u>1,783</u>	<u>1,700</u>	<u>3,000</u>	<u>15,000</u>	<u>5,000</u>
Total Capital Budget	<u>\$124,140</u>	<u>\$136,226</u>	<u>\$60,500</u>	<u>\$60,500</u>	<u>\$79,000</u>

Increase from 2013 Budget 30.58%

Increase from 2013 Projections 30.58%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 EXCESS PROGRAM BUDGET
Presented to PLF Board of Directors on September 13, 2013**

	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
<u>Revenue</u>					
Ceding Commission	720,039	733,700	746,750	745,000	760,000
Profit Commission	21,684	32,599	0	0	0
Installment Service Charge	37,322	37,180	38,000	41,500	42,000
Other	703	1,478	1,500	3,375	1,500
Investment Earnings	<u>22,315</u>	<u>429,191</u>	<u>185,374</u>	<u>292,734</u>	<u>202,643</u>
Total Revenue	<u>\$802,063</u>	<u>\$1,234,148</u>	<u>\$971,624</u>	<u>\$1,082,609</u>	<u>\$1,006,143</u>
<u>Expenses</u>					
Allocated Salaries	\$732,877	\$608,431	\$599,356	\$599,356	\$621,781
Direct Salaries	65,615	66,984	70,298	73,048	76,512
Allocated Benefits	228,289	215,760	226,874	226,874	228,602
Direct Benefits	15,938	23,050	26,657	26,434	28,400
Program Promotion	1,596	6,070	5,000	7,500	7,500
Investment Services	2,696	2,282	3,000	2,500	2,500
Allocation of Primary Overhead	388,938	275,635	278,874	278,874	270,406
Reinsurance Placement Travel	5,733	3,933	5,000	500	5,000
Training	0	0	500	500	500
Printing and Mailing	4,283	5,301	5,000	5,500	5,500
Other Professional Services	6,290	1,345	2,000	2,000	2,000
Software Development	0	0	0	0	0
Total Expense	<u>\$1,452,255</u>	<u>\$1,208,791</u>	<u>\$1,222,559</u>	<u>\$1,223,086</u>	<u>\$1,248,701</u>
Allocated Depreciation	<u>\$43,636</u>	<u>\$35,996</u>	<u>\$30,056</u>	<u>\$30,056</u>	<u>\$24,366</u>
Net Income	<u>(\$693,828)</u>	<u>(\$10,639)</u>	<u>(\$280,991)</u>	<u>(\$170,533)</u>	<u>(\$266,924)</u>
Full Time Employees	1.00	1.00	1.00	1.00	1.00
Number of Covered Attorneys	2,317	2,313	2,395	2,175	2,175

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	2.14%
Increase from 2013 Projections	2.09%

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Awards

Action Recommended

Consider the recommendation of the CSF Committee that awards be made On the following claims:

No. 2013-33 McBRIDE (J. Garibay).....	\$5,000.00
No. 2012-68 McBRIDE (Romero) & No. 2012-90 McBRIDE (Vega de Garibay).....	\$10,000.00 ¹
No. 2013-38 GRUETTER (Bullwinkel)	\$48,950.15
No. 2013-26 GRUETTER (M. Farrar).....	\$28,984.53
No. 2013-27 GRUETTER (B. Farrar)	\$14,995.01
No. 2013-07 McBRIDE (Olvera).....	\$5,000.00
 TOTAL	 \$112,929.69

Discussion

No. 2013-33 McBRIDE (J. Garibay) \$5,000.00

Jose Garibay came to the US with his family at age four in 1987, entering without permission. In about 2005, Jose was able to acquire a work authorization based on his mother's status as a domestic violence victim. In March 2009, Jose pleaded guilty to two felony charges (including rape in the third degree) and was sentenced to 19 months in prison. In August 2009, the government initiated removal proceedings and in January 2010 Jose was transported to Tacoma to await deportation.

Jose's sister Maria paid \$100 and consulted with McBride in on February 24, 2010 on Jose's behalf. McBride "guaranteed" that Jose would be able to stay in the US and persuaded Maria that he could also help get Jose's conviction overturned. Maria signed a retainer agreement with McBride on Jose's behalf on July 14, 2010; Jose's mother paid a retainer of \$4900. In late July 2010, McBride filed a notice of appearance on Jose's behalf and in late August filed a motion to appear by phone at the removal hearing. At the hearing it was determined that Jose did not qualify for a "reasonable fear" delay in removal, and he was deported on October 2, 2010.

¹ See note 2.

Maria contends that she called McBride two or three times a month to inquire about Jose's case and was always told that he was working on appeals. In March 2011, McBride sent Jose's mother some papers to complete, indicating that he would use her status to seek an adjustment in Jose's status. McBride's file contains no evidence that he filed such application or that he did any work on a criminal or removal appeal. Virtually nothing seems to have been done following Jose's removal.

McBride never told Jose's sister or mother that Jose's felony convictions would permanently bar him from an adjustment of status, or that the chances of a convicted sex offender gaining legal permanent resident status are essentially non-existent.

The CSF Committee recommends an award to Jose (to be paid to his mother) of the entire \$5000 paid to McBride. The Committee concluded that McBride was dishonest in taking a fee from Jose's family and promising an outcome that was legally impossible. McBride had been handling immigration cases for several years and held himself out as an expert, so he had to have known that there was nothing he could do for Jose and should have declined the representation. No judgment is required because the OSB has obtained a judgment against McBride that encompasses all claims.

**No. 2012-68 McBRIDE (Romero) &
No. 2012-90 McBRIDE (Vega de Garibay) \$10,000.00**

Oscar Romero and Maria Vega de Garibay entered the US illegally from Mexico in 1995 and 1997, respectively. They left in 2000 and returned, again illegally, in 2002. They were married in the US in 2006. That same year they filed applications for permanent residency or status adjustment for themselves and their children.

In September 2009, Oscar and Maria's applications were denied due to their multiple illegal entries and ineligibility for an exception. Orders for removal of the family soon followed. Later that month, Oscar and Maria retained McBride to seek cancellation of the removal orders and for work authorizations. McBride assured them that, despite the removal orders and denial or previous applications, he could accomplish their objectives for a fee of \$10,000.² In June 2010, McBride filed a Notice of Appearance with the Immigration Court, two days before a master hearing on Maria's removal hearing. Claimants indicate that McBride attended two removal hearings and was able to have the proceedings continued.

Oscar and Maria also paid \$1155 in fees for filing their applications. McBride asked for the fee (\$385) on three occasions, blamed the immigration authorities. The investigator determined that McBride made at least one erroneous filing that had to be re-done with a new fee. Curiously, however, although he always asked his clients to deliver filing fees in money

² Oscar and Maria each filed CSF Applications for Reimbursement. Oscar sought only the \$5000 attributed to his case, while Maria requested \$10,000 for both of them. It was not clear from either application that they were related and that fact was discovered only through the investigations. The Committee decided to treat their two applications as one.

orders payable to the government, McBride instructed Maria to leave the payee line blank on at least two of the money orders she provided.

Communication with McBride was difficult; when asked about the status he assured the clients that he was looking into things. He never returned their calls and cancelled appointments. At one point he told Maria he was waiting to file their work visa applications until “after the election.” They learned of McBride’s suspension and subsequent resignation when they contacted the OSB for help.

McBride’s files do not contain evidence of any substantive action concerning the clients’ matter. There is a note that the deportation hearings were administratively closed on June 22, 2012 but nothing official that gives a reason. The claimants were unaware of the status of their deportation case until informed by the investigator. There are no copies of completed work applications in McBride’s file. Oscar and Maria have no valid work visas and have not been able to adjust their status.

The CSF Committee concluded that any work done by McBride was *de minimis* and of little value to the claimants. Some members suggested McBride be credited with 2 hours of work at \$200/hour, and refunding \$9600 to the claimants. They also believed that the claimants should recover 2 of the \$385 filing fees, for a total of \$770. Ultimately, the committee voted unanimously to recommend an award of \$10,000.

No. 2013-38 GRUETTER (Bullwinkel) \$48,950.15

David Bullwinkel hired Bryan Gruetter to pursue claims for serious injuries sustained in an automobile accident in 2007. Bullwinkel gave Gruetter \$5000 for expenses, but Gruetter otherwise agreed to handle the case on a *pro bono* basis because of the extensive medical bills and limited insurance available from the driver. Gruetter settled the claim for \$100,00 in July 2008. Gruetter deposited the settlement funds into trust, explaining to Bullwinkel that his strategy was to hold the funds, wait for the medical providers to refer the bills to collections, and then settle cheaply with the collection agencies.

Gruetter paid some of the medical bills in May and June 2010 and distributed \$10,000 to Bullwinkel. He said the balance of \$43,950.15 would be available in November after the statute of limitations passed on the remaining medical claims. Bullwinkel learned of the loss in July 2011 when medical providers began to contact him and he was unable to get an explanation from Gruetter. Gruetter also never accounted for the \$5000 cost advance.

The Committee recommends an award to Bullwinkel of \$48,950.15. His claim is included in the restitution judgment being negotiation by the US Attorney’s Office that will be assigned to the OSB.

No. 2013-26 GRUETTER (B. Farrar) \$14,995.01

No. 2013-27 GRUETTER (M. Farrar) \$28,984.53

Bryan and Maureen Farrar were injured in a car accident and hired Bryan Gruetter to pursue their injury claims. He settled the two claims for \$100,00 each in January 2008. He reported to the clients with a preliminary accounting, indicating that he had successfully negotiated a waiver of the PIP liens and a significant reduction in some of the medical claims, which were paid directly from State Farm.

With his initial accounting Gruetter distributed \$66,572.77 to the claimants and reported that he was withholding \$44,679.23 for outstanding medical bills (\$28,984.53 for Maureen and \$15,694.70 for Bryan). Gruetter promised to continue negotiating with the providers, and assured the clients they would receive a substantial portion of the money he was holding. They heard nothing more from Gruetter and the balance of their medical bills were never paid. Their attorney explains the long delay in presenting a claim to the Farrar's lack of sophistication and trust in Gruetter's continuing assurances that he was taking care of things for them.

The CSF investigation identified an additional \$699.69 in expenses paid on Mr. Farrar's behalf. The CSF Committee recommends unanimously that the Farrars be awarded a total of \$43,979.54.

McBRIDE (Olvera) \$5,000.00

Jose Olvera entered the US illegally in 2002. Shortly thereafter, he was detained and returned to Mexico, but he again entered the US illegally. Jose married a US citizen in 2008 and they have a child who was born in the US.

In February 2011, Olvera hired McBride about getting permanent legal residency. During the interview, Olvera disclosed his two illegal entries into the US. McBride did not inform Olvera that his two illegal entries subjected him to a 10-year bar; rather, he assured Olvera that he could accomplish Olvera's objectives and Olvera paid the quoted fee of \$5,000.

In the summer of 2011, after Olvera had paid 1/2 of the fee, McBride's office filed the petition for permanent residency. The petition disclosed one illegal entry. (McBride apparently typically told clients not to disclose a second illegal entry; he also told clients that the 10-year bar could be waived in certain circumstances.) Olvera continued making payments toward McBride's fee through December 2011. By that time, McBride knew he was being investigated by the Bar on complaints of 10 former clients. In February 2012, the Bar filed a petition seeking immediate suspension, which McBride stipulated to in May 2012. He did not inform clients of his situation and Olvera learned of it only when he unsuccessfully tried to contact McBride's office in the summer of 2012.

The committee concluded that McBride took Olvera's money under false pretenses, since his two illegal entries were a complete bar to Olvera's objective of obtaining permanent legal status, and recommends a refund of the entire \$5000.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
Memo Date: September 12, 2013
From: Rod Wegener, CFO
Re: 2014 Active Membership Fee

Action Recommended

Establish the Active Membership Fee for 2014.

Background

The last increase in the Active Membership Fee was in 2006 when the fee was raised from \$397.00 to \$447.00. (This fee does not include the Diversity & Inclusion and Client Security Fund assessments.) The current general active fee for the over-two year member is \$447.00 and \$383.00 for the under-two year member.

The preliminary projections for the 2014 budget indicate the budget can be balanced without a fee increase in the general membership in 2014. Although there have been increases to the other fees and assessments over this nine-year period, the general active member fee for has not changed. (The year of any increase is bolded in red.)

Year	General	D&I	CSF	Total	Inactive
2006	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2007	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2008	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2009	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2010	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2011	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2012	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2013	\$447.00	\$30.00	\$45.00	\$522.00	\$125.00
2014	\$447.00	\$45.00	\$45.00	\$537.00	\$125.00

At the August 23 meeting, the Budget & Finance Committee recommended to the board that the assessment for the Diversity & Inclusion program be increased from \$30.00 to \$45.00 in 2014. This increase adds approximately \$229,000 to that program's budget for 2014.

The line item budget for 2014 currently is being developed by bar managers and the detail budget will be presented to the Budget & Finance Committee at its October 25 meeting with final approval of the 2014 budget at the November BOG meeting.

Proposed Amended Standard Section Bylaws

Article IX Receipts and Expenditures

Section 1. Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

Section 2. The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

Section 3. Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar. **Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.**

Section 4. Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee.

Section 5.

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

OSB APPROVED RECIPIENTS OF SECTION CHARITABLE CONTRIBUTIONS

The OSB's mission includes promoting the rule of law and the fair administration of justice, and increasing access to justice. OSB Bylaw 1.2. For several years, the OSB House of Delegates has passed resolutions supporting adequate funding for legal services for low-income Oregonians. In furtherance of that goal, the HOD has called for 75% of OSB Sections to contribute to the Campaign for Equal Justice.

The Campaign for Equal Justice is the support arm for Oregon's legal aid programs, which consist of four non-profits: Legal Aid Services of Oregon and the Oregon Law Center (statewide programs); and the Center for Non-Profit Legal Services (Medford) and Lane County Legal Aid and Advocacy. Oregon's legal aid programs also support numerous pro bono programs including the Statewide Low-Income Taxpayer Clinic, the Domestic Violence Project, the Senior Law Project, the Family Law Pro Se Facilitation Clinic, and the Bankruptcy Clinic.

Sections are strongly encouraged to contribute to the Campaign for Equal Justice in furtherance of the Bar's mission to promote the rule of law and the fair administration of justice. Sections may also contribute to any charitable cause that is related to the purposes for which the section exists and that has been approved by the Executive Director. OSB Bylaw 15.401.

The following charities has been approved for section contributions:

- Campaign for Equal Justice¹
- Catholic Charities
- Classroom Law Project
- Chemawa Student Association
- Lewis and Clark Small Business Clinic
- Multnomah County Probate Advisory Committee
- National Bar Association
- National Council on Juvenile and Family Court Judges
- Native American Youth Association
- Oregon Minority Lawyers Association
- Opportunity for Lawyers in Oregon
- Oregon Lawyers Against Hunger
- Oregon Lawyer Assistance Foundation
- Oregon Native American Chapter
- Peacemakers
- Special Advocates for Vulnerable Oregonians, Inc.

Scholarships or Educational Activities:

- Allen Hein Scholarship Fund at NW School of Law of Lewis and Clark College
- Carlton Snow scholarship fund
- Federal Circuit Bar Associations Charitable and Educational Fund
- Harry Chandler scholarship fund
- Juvenile Law Training Academy
- Section scholarships law school students earning the highest grade on the final exam in the section's area of substantive law.

¹ Donations to the individual organizations supported by the CEJ are not allowed, although donors may designate the use of their contributions.

BOG Resolution No. XXX

Whereas, The Oregon Legislative Assembly has directed the BOG to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

Whereas, The Functions of the Oregon State Bar as stated in OSB Bylaw 1.2 include that “We are leaders helping lawyers serve a diverse community,” and

Whereas, Consistent with and supportive of this Function, one of the Values of the Oregon State Bar is that “The Bar is committed to serving and valuing its diverse community, to advancing equality in the legal system, and to removing barriers to the system,” and

Whereas, the movement for Marriage Equality is the civil rights challenge of this decade, much as the struggle for racial and ethnic equality was an important part of the 1950s and 1960s, which struggle resulted in improved ability of racial minorities to enjoy the same civil rights afforded to others, such as in public accommodations, education, voting rights, -- and marriage (*Loving v. Virginia*, 388 US 1 (1967)), and

Whereas, As the organization of Oregon lawyers who are called upon to “serve a diverse community,” we of the OSB should go on record in support of the civil right to marry a person of either sex and

Whereas, Members of the OSB help Oregonians every day with issues that turn on the status of the marriage relationship, including marriage and dissolution and attendant issues of support, property division, and child custody; adoption; estate planning, estate/gift and income taxation; healthcare and medical insurance; criminal law; education; and the rights and obligations of debtors and creditors, and

Whereas, It is reasonable to support uniformity of application of the law in these areas, as between same-sex and different sex couples who wish to be married, and to contend for the benefits of federal law only recently made available to same-sex couples whose marriages are recognized under state law, and.

Whereas, the United States Supreme Court recently held the federal Defense of Marriage Act unconstitutional as respects its prohibition of the federal government’s recognition of same sex marriages that are valid under state law(*United States v. Windsor*, 570 US ____ (2013)), and
Whereas, in holding that the central government cannot discriminate against same-sex spouses whose marriages are valid under applicable state law, the Court stated:

. . . The differentiation [between different-sex and same-sex marriage] demeans the couple, whose moral and sexual choices the Constitution protects, see *Lawrence [v. Texas]*, 539 U. S. 558 [2003], and whose relationship the State has sought to

dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives, and

Whereas, We must be respectful of Bar members and members of the public whose personal religious or moral beliefs may be strongly opposed to same-sex marriage, but as an organization charged with protecting equality in the legal profession, and “advancing the science of jurisprudence and the improvement of the administration of justice,” , the OSB should publicly support a legal environment in Oregon in which the relationship between same-sex couples who wish to marry is deemed “dignified,” in which the moral and sexual choices of same sex couples are not “demeaned,” and in which their children are not “humiliated,” Now therefore,

BE IT RESOLVED, that the Oregon State Bar supports the right of every Oregonian to marry a person of any sex, subject to applicable law regarding age, residence, and other prevailing statutory requirements.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
Memo Date: September 11, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

Review and approve the following appointment recommendations.

Background

State Lawyers Assistance Committee

Due to a resignation and the chair moving out of state, the committee requires the appointment of a chair and one member. Staff and the committee officers recommend the appointment of **Robert "Kim" Lusk** (782911) as chair. Mr. Lusk has been a member of the committee since 2005 and is currently serving in the secretary position. Staff also recommends the appointment of **Michael W. Seidel** (871466). In addition to his experience with SLAC business from his previous service, he also provides geographic diversity as a practicing attorney from central Oregon.

Recommendation: Robert "Kim" Lusk, chair, term expires 12/31/2014

Recommendation: Michael W. Seidel, member, term expires 12/31/2014

House of Delegates

HOD Regions 1 and 2 have public member vacancies. Staff recommends the appointment of **James B. Horan** of Baker City for the region 1 position. Mr. Horan is the government affairs and communications manager at Oregon Trail Electric Consumer's Cooperative and currently serves on the Public Service Advisory Committee. **Nathaline Frener**, recommended by staff for the region 2 position, is the program supervisor for the Lane County Family Mediation Program.

Region 1: James B. Horan, term expires 4/19/2016

Region 2: Nathaline Frener, term expires 4/19/2016

CASA Workgroup

During the 2013 legislative cycle, HB 3363 called for creation of a workgroup to study and make recommendations to remove obstacles in the juvenile court dependency system. The BOG was asked to appoint two members to the workgroup with expertise representing parents and children in juvenile court dependency proceedings. On September 9 Mike Haglund appointed **Angela Sherbo** (824472), who worked closely with CASA and the Judicial Department to reach a compromise on HB3363 to create this workgroup, and **Nancy Cozine** (972432), Executive Director of the Office of Public Defense Services.

Oregon Elder Abuse Workgroup

During the 2013 legislative cycle, HB 2205 created the Oregon Elder Abuse Workgroup, 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 workgroup is to recommend legislation to the 2014 legislature. The Board of Governors has two appointments to the workgroup: a lawyer whose practice is concentrated on elder law and a criminal defense lawyer. In July the BOG appointed **Lara C Johnson** (933230) to the workgroup. **John Lamborn** (951389) was appointed to the remaining OSB seat by Mike Haglund on September 9.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
From: Helen M. Hirschbiel, General Counsel
Re: Advertising Rules Commentary

Action Recommended

Review member comments to determine whether any changes should be made to the proposed advertising rules prior to submission to the House of Delegates.

Background

At its meeting on February 22, 2013, the Board approved for HOD consideration, changes to the current advertising rules. The proposed changes are on the draft HOD agenda.

The Board also directed staff to solicit comments to the proposed advertising rules from the membership. To that end, staff published an article in the OSB Bulletin summarizing the proposed changes and providing a link to the full text of the proposed rules on the bar website. The comments received are attached to this memo.

Three people raised concerns about proposed RPC 7.2(b), which continues the prohibition against paying another for recommending or securing employment that exists in current RPC 7.2(a). Neither the current rule nor the proposed rule applies to referral fees between lawyers, which is governed by RPC 1.5(d). A few who commented expressed concern that proposed RPC 7.2(b) would prohibit lawyers from sending a token of appreciation for an unsolicited referral, such as a gift basket or a bottle of wine. These types of *de minimus* thank you gifts have never been interpreted as violating RPC 7.2(a), either in Oregon or in other states with the identical rule.¹ In fact, the Legal Ethics Committee plans to write an opinion on this topic once the advertising rules are settled in order to resolve any confusion.

One person raised a concern about the continued requirement that the phrase "Advertising Material" be included on the outside of the envelope, saying that no other states include such a requirement. In fact, the vast majority of states maintain this requirement, the purpose of which is to ensure that the communication is not misleading. Even so, I did find eleven jurisdictions (including Washington) that have omitted this requirement from their rules.

One person, Scott Wolfe, contends that the rules as currently crafted sweep too broadly in their application to electronic communications and therefore are likely unconstitutional. In 2008, Mr. Wolfe sued the Louisiana Attorney Disciplinary Board in federal court, challenging the Louisiana equivalent of proposed Oregon RPC 7.2(c), which provided:

¹ Of the 41 jurisdictions I was able to review, 39 include language substantially similar to the proposed Oregon rule. A few specifically refer to RPC 1.5 as the rule applicable to lawyer referral fees, and one specifically provides that *de minimus* gifts are an exception to the general prohibition on giving things of value in exchange for a referral.

Rule 7.2 Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required information:

(1) Name of Lawyer. All advertisements and written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) Location of Practice. All advertisements and written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised.

In Louisiana, these requirements expressly applied to all electronic and internet-based communications. Mr. Wolfe noted that pop-up advertisements, text advertisements and other advertisements geared toward smaller mobile devices are typically limited in the number of characters. He maintained that by requiring lawyers to include the name and address of the lawyer in all communications, the Louisiana rules effectively barred lawyers from using these types of electronic advertising. The US District Court for the Eastern District of Louisiana agreed, and found the Louisiana rule an unconstitutional limitation on free speech.

Relevant portions of the proposed Oregon RPC 7.2 provide:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

.....

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Mr. Wolfe is not the first to express concerns about the constitutionality of the Oregon advertising rules for lawyers. In August 2009, a BOG-appointed Advertising Task Force made recommendations for much more sweeping changes to the advertising rules than the current proposal, based in part on its understanding of the limits that can be placed on commercial speech under the Oregon Constitution. For one, the Task Force proposed that the prohibition on in-person solicitation be eliminated entirely. The Task Force did not, however, recommend elimination of the requirement that an unsolicited communication be identified as an advertisement and identify the name of the lawyer and the city and state in which the lawyer's office is located, suggesting that it had no concerns about the constitutionality of these provisions. On the other hand, it is unclear whether the Task Force considered these provisions in the context of web-based and other electronic communications.

The Legal Ethics Committee reviewed the comments at its meeting on August 17, 2013 and decided not to make any changes to the proposed rules that were originally submitted and approved by the Board.

From: Russ.Abrams@Daimler.com
To: [Helen Hierschbiel](#)
Subject: Proposed Modifications to Advertising Rules
Date: Monday, July 08, 2013 10:59:06 AM

Dear Ms. Hierschbiel,

I have a brief comment relating to the proposed modifications to the RPCs as they relate to advertising. I understand the Bar Association's position is that personal opinions on etiquette or tasteful conduct are not necessarily grounds for maintaining or modifying the rules on this topic. Nevertheless, separation of the rules from things like courtesy and etiquette are part of the reason lawyers are generally and appropriately condemned as aggressive, rude, bellicose and vulture-like. Until we demand more from ourselves in our written mandatory standards, our profession will continue its decline in the eyes of our fellow citizens. Thank you.

Russell S. Abrams
Business Development Manager
Daimler Trucks NA
2477 Deerfield Dr.
Fort Mill, SC 29715
russ.abrams@daimler.com
(803) 578-3647

If you are not the addressee, please inform us immediately that you have received this e-mail by mistake, and delete it. We thank you for your support.

From: [Timothy Farrell](#)
To: [Helen Hierschbiel](#)
Subject: RPC 7.3
Date: Wednesday, July 10, 2013 2:22:05 PM

Dear Ms. Hierschbiel:

I was shocked to see that the proposed new rule still requires the word "advertisement" to be displayed on the envelop of solicitation letters. During the foreclosure crisis I sent dozens of letters to local homeowners who were facing foreclosure. I did not receive a single response, much less retain a client during this difficult time when the banks were unlawfully taking families' homes from them. It is my belief that these letters were immediately disposed of in the recycling bin. As a member of 6 bar associations, I can tell you that no other state has such a rule interfering with an attorney's ability to attract and retain clients. I would respectfully suggest that the envelope provision be deleted and limited to the body of the solicitation to give Oregon attorneys a fighting chance to develop their practice.

Sincerely,
Timothy MB Farrell

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CONFIDENTIALITY NOTICE: The materials in this electronic mail transmission (including all attachments) are private and confidential and are the property of the sender. The information contained in the material is privileged and is intended only for the use of the named addressee(s). If you are not the intended addressee, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this material is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender by telephone at (541)490-4525 or send an electronic message to timothymbfarrell@yahoo.com, and thereafter destroy it immediately.

From: [Dean Heiling](#)
To: [Helen Hirschbiel](#)
Cc: [Jim Dwyer](#); [Roy Fernandes](#); [Sylvia Albright](#)
Subject: PROPOSED RCP 7.2
Date: Wednesday, July 17, 2013 9:58:05 AM

Ms. Hirschbiel:

Proposed rule 7.2(b) prohibits lawyers from giving “anything of value” to a person who refers someone to the lawyer. Over the last couple decades my office has made it a practice of sending “thank you” notes and a nominal gift (such as chocolate or a \$10 gift card to a popular establishment) to people who refer clients to us. To me, it’s like taking a loaf of homemade bread to a new neighbor; it’s not compensation for anything, it’s just a nice thing to do. I propose a modification of the rule to allow modest gifts of appreciation.

Thank you.

Dean Heiling
HEILING DWYER
ATTORNEYS AT LAW
1220 SW Morrison, Suite 820
Portland OR 97205

phone: 503-274-0404
fax: 503-274-0004

From: [Daniel Re](#)
To: [Helen Hierschbiel](#)
Subject: Comment Regarding Proposed Oregon RPC 7.1
Date: Tuesday, July 23, 2013 2:00:56 PM

Dear Ms. Hierschbiel,

I have the following comments regarding proposed Oregon RCP 7.1.

The existing RPC 7.1(a) applies to communications made by a lawyer and to communications caused to be made by a lawyer about the lawyer the lawyer or the lawyer's firm that fall under one or more of the twelve types of conduct specified in that rule.

The proposed RPC 7.1 apply only to false or misleading communications made by a lawyer about the lawyer or the lawyer's services. The proposed Rule 7.1 appears to substantively change the existing Rule by eliminating its applicability to:

- (1) Statements caused to be made by the lawyer; and,
- (2) Statements about the lawyer's firm.

If my understanding of the consequences of the changes made by the proposed Rule 7.1 are accurate, they would create opportunities for attorneys to have false and misleading statements made about their firms or made by others about themselves without violating the RCPs. In my view, this would not protect the public and would be contrary to the purpose of the RPCs.

Please let me know if these issues were specifically considered by the Board of Governors in February, 2013 and, if they were, why the BOG felt these changes were appropriate. Any other information you have regarding these changes would be appropriate.

Thank you.

Daniel C. Re

From: [Sylvia Stevens](#)
To: "[David Bean](#)"
Subject: RE: Comment, per your request
Date: Wednesday, July 24, 2013 2:51:00 PM

David, the proposed amendments do not change the existing prohibition against compensating or "giving anything of value" in exchange for a referral. That is the rule nearly everywhere and has never been interpreted to prohibit ordinary professional thank-you's such as a bottle of wine or a fruit basket. What is not permitted is cash payments or a new car or anything else that is likely to motivate a referral to get the swag rather than to benefit the client.

Sylvia Stevens
Executive Director
503-431-6359
sstevens@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •
www.osbar.org

-----Original Message-----

From: David Bean [<mailto:dib@wysekadish.com>]
Sent: Wednesday, July 24, 2013 1:16 PM
To: Sylvia Stevens
Subject: Comment, per your request

Hi Sylvia,

Hope you are well.

I might be mistaken, and I hope I am, but I don't think the proposed rule changes effect 7.2(a). In my view, the rule should be changed to allow lawyers to be courteous with thank you gifts of reasonable value. For example, if someone refers me a case, I should be able to send them a book or bottle of wine.

I'm told no one has gotten in trouble for violating this rule and that the Bar would likely not enforce it. If it's true that it's nothing the Bar would enforce, then the rule might have well be scrapped. Either it's a good rule and should be enforced, or it should be changed.

What do you think?

Thank you,

David

From: [Jim Yocom](#)
To: [Helen Hierschbiel](#)
Subject: Comments on Revisions Oregon RPC 7.1-7.5
Date: Thursday, July 25, 2013 11:56:07 AM

Dear Helen,

I am writing to express a couple of concerns about the proposed revisions to RPC 7.5. Please pass these on to the Legal Ethics Committee. Thank you so much!

7.5(a). I have concerns about the revisions to 7.5(a). Lawyers practice as sole practitioners, LLCs, nonprofits, and professional corporations. Any of these may register a trade name with the Oregon Secretary of State. These are all firms (1.0d), so any can technically register a trade name. What does it mean for a "lawyer in private practice" to use a trade name? Suppose A, B, and C form a charitable nonprofit, ABC Charities of Oregon. A is hired as a staff attorney by ABC. Under 7.5(a), is A in private practice? May ABC register a trade name (ABC) "use" that name?

It is unclear why trade names are singled out here. Presumably the name **itself** as formally registered would not be OK if it implied a connection with a public or charitable organization, even if the Secretary of State let you register it.

I acknowledge that the model rule is confusing on these points. The existing rule uses the language.

Wouldn't it be clearer--and avoid all of this mess--for 7.5(a) to read: "A firm [the latter of which the ORPCs define to include single-person operations (1.0d)] shall not use a name, trade name, letterhead or other professional designation that violates 7.1 or implies an untrue or misleading connection with a government agency or public or charitable legal services organization." (something along these lines). In conjunction with 7.5(d), doesn't this do the trick?

7.5(d). I have concerns about the exact wording of the revised 7.5(d). It is unclear to me what it means for lawyers to "imply that they practice in a partnership or other organization." This can be read to prohibit practicing in a **specific** partnership or organization or in a partnership or organization **in general**. This is not a crazy reading of the rule. For example, sole practitioners and single-member professional corporations and LLCs frequently refer to themselves as "we" in their advertising materials, and refer to their operations as "firms." It is entirely common in the business world for solo operations to use a royal "we," perhaps because they mean to include themselves and any contract attorneys they hire. The proposed rule can be read to prohibit this kind of representation.

In contrast, the existing rule seems targeted to a different kind of misrepresentation--namely holding out that you are affiliated with XYZ, when you are in fact not affiliated with XYZ. The words ("a" and "the") in current 7.1(e) seem to make that clear.

Thanks to the committee for all of their hard work. In general, the proposed

changes look terrific & I am very pleased!

Jim Yocom
OSB# 111504

From: ["Richard M. Fernández esq."](#)
To: [Helen Hirschbiel](#)
Subject: Comment on Proposed ORPC 7.2(b)
Date: Monday, July 29, 2013 2:18:18 PM

(Dear Helen, thank you in advance for passing this on to the BOG for me.)

Dear BOG:

I would like to weigh in on the proposed change to the above-referenced draft rule and state that I believe it is time to lift this prohibition on providing referral fees. It is standard practice in many professions to provide such a courtesy to others who make referrals. In the context of the legal profession, any concern that somehow lawyers might misuse this should be covered by existing duties of honesty and avoiding false and misleading statements. A blanket prohibition on professional referral fees strikes me as over broad and unnecessary and could be permitted subject to appropriate cautions. I think it would also comport better with the spirit of the proposed changes to the advertising rules, which seems to express less of a paternalistic view towards both lawyers and the public.

Respectfully,
Rick Fernández
Bowles Fernández Law LLC
5200 SW Meadows Rd Ste 150
Lake Oswego, OR 97035-0066
p 503.726.5930
f 503.406.2428
rick@bowlesfernandez.com

From: [Scott Wolfe](#)
To: [Helen Hirschbiel](#)
Subject: Fwd: Comment on Rules of Professional Conduct Change
Date: Thursday, August 08, 2013 4:47:37 AM

My comment was sent last week, but keeps being returned to me. See below.

----- Forwarded message -----

From: **Scott Wolfe** <scott@wolfelaw.com>
Date: Sun, Aug 4, 2013 at 2:24 PM
Subject: Comment on Rules of Professional Conduct Change
To: hhirschbiel@osbar.com
Cc: Sean Sullivan <sean@wolfelaw.com>, Seth Smiley <ssmiley@wolfelaw.com>

Hi Ms. Hirschbiel:

This email is sent in response to your office's request for comments within the Oregon State Bar Bulletin (July 2013). I am a licensed attorney in Oregon, as well as a few other states, including Louisiana.

In 2008 / 2009, Louisiana amended their RPCs to more strictly regulate advertisements. I particular took issue with the requirements as they restricted freedom of speech through electronic communications (websites, blogs, twitter feeds, etc.). Therefore, I filed a federal lawsuit against the bar association: [Scott G Wolfe Jr, et al v. Louisiana Attorney Disciplinary Board, et al](#), United States Eastern District Court, No. 08-4994.

After a Motion for Summary Judgment, the court ruled in our favor and declared the Louisiana rules unconstitutional as they related to electronic communications. See: [Order and Reasons](#).

Today, in response to the Oregon Request for Comments, I write with most concern for Rule 7.2(c), which provides that "Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content."

Since "communication" is previously defined as "written, recorded or electronic," this provision is eerily similar to the provision that caused concern in Louisiana and ultimately led to its unconstitutionality.

In promulgating these rules, the Oregon Board of Governors must consider the character and nature of the communications it seeks to regulate. With specific regard to electronic communications, it appears that Oregon would be making the same mistake as Louisiana, for at least the following two reasons:

(1) I suspect that Oregon, like Louisiana, will not be able to show any harm caused to any consumers as a result of any electronic communications by attorneys; and

(2) Oregon will not be able to justify the requirements of Rule 7.2(c) in electronic communications, which, unlike print and traditional advertisements, oftentimes have character limitations.

The same problems arise with respect to proposed RPC 7.3(c).

I'm happy to discuss these issues with any contacts at Oregon further.

Best,

Scott Wolfe Jr. (092642)

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

From: [Scott Wolfe](#)
To: [Helen Hirschbiel](#)
Subject: Re: Comment on Rules of Professional Conduct Change
Date: Thursday, August 15, 2013 7:23:35 AM

Hi Helen -

One additional thing that I overlooked in my original comment. The original comment focused on two specific provisions, but a broader problem with the regulation was only mentioned in passing: that the law does not contemplate the nature of the 'communication' being regulated.

When regulating 'commercial speech' there is a lot of discussing in the jurisprudence about what constitutes commercial speech. Is it that the speaker had a financial motivation? It is a traditional advertisement? Etc.

The problem with regulating electronic communications as the OSBA now proposes is that the nature of this speech is not always commercial, or even close to commercial. In fact, because I personally (and many attorneys) frequently blog about pending legislation and court decisions, there is an excellent argument that this is 'political speech,' the most difficult to regulate.

This was argued successfully in my Louisiana case. I caution the OSBA against passing a regulation so broadly regulating 'electronic communication' without clearly distinguishing between true advertisements and other educational or political communications by attorneys.

Scott

Sent from my iPhone

On Aug 12, 2013, at 12:27 PM, Helen Hirschbiel <HHirschbiel@osbar.org> wrote:

Scott,

Thank you for taking the time to comment. I plan to share all comments with the Legal Ethics Committee and Board of Governors.

<!--[if !vml]--><!--[endif]-->Helen Hirschbiel
General Counsel
503-431-6361
HHirschbiel@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •
www.osbar.org

From: Scott Wolfe [<mailto:scott@wolfelaw.com>]
Sent: Thursday, August 08, 2013 4:47 AM
To: Helen Hirschbiel
Subject: Fwd: Comment on Rules of Professional Conduct Change

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Cc: Sean Sullivan <sean@wolfelaw.com>, Seth Smiley <ssmiley@wolfelaw.com>

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e: scott@wolfelaw.com

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

witness in this proceeding. The evidence is substantial that Bennett has been clean and sober since February, 2012 (a period of 18 months and his longest period of sobriety since 2003).

If the support of others in recovery is essential to sobriety, and experts say it is, then Bennett is likely to succeed. He is supported in every aspect of his life by individuals committed to his sobriety. Of equal significance is his commitment to his daughter.

If Bennett's reinstatement is approved by the board and the court, it should be subject to the conditions set forth below. The conditions will provide the bar and the public with additional safeguards should Bennett relapse.

Conclusion

I recommend the Board of Governors approve Bennett's reinstatement and recommend such to the Oregon Supreme Court subject to the conditions set forth below.

Conditions of Reinstatement

1. Bennett's conditional reinstatement will commence when approved by the Oregon Supreme Court and shall continue for 24 months thereafter. During this period Bennett will comply with all terms and conditions of his reinstatement.
2. Bennett will comply with all provisions of the Oregon Rules of Professional Conduct. A finding of probable cause by the State Professional Responsibility Board in a complaint filed against Bennett may be a violation of the conditions of reinstatement.
3. Bennett will abstain from alcohol or any other mind altering substance unless prescribed by a physician for the duration of this conditional reinstatement.
4. Within 15 days of his conditional reinstatement Bennett will consult with the State Lawyers Assistance Committee (SLAC) for implementation of the monitoring required herein. Bennett acknowledges and agrees that SLAC must provide the Disciplinary Counsel's Diversion and Probation Coordinator all reports required by his conditional admission.
5. Bennett shall provide releases to treating counselors, therapists, health care providers, and/or AA or other recovery or peer support program, or sponsors, to allow them to freely communicate with Disciplinary Counsel's Diversion and Probation Coordinator regarding the nature of the treatment provided to Bennett, and whether Bennett is complying with the recommended treatment. Any medical records or documents produced in connection with this Agreement shall remain confidential except for the purposes of this particular proceeding.
6. Bennett shall attend an AA, or other equivalent recovery program, meeting on at least a twice weekly basis for the duration of this agreement. If any mental health professional or evaluator requires that Bennett attend such a recovery program more frequently,

Bennett shall comply with that recommendation. Bennett shall provide written confirmation of compliance with these terms and conditions on a monthly basis to Disciplinary Counsel's Diversion and Probation Coordinator. The above-mentioned reports are due the first of every month for the duration of the conditional admission.

7. Bennett will submit to full-screen, random urinalysis testing at least once every 14 days for the duration of this conditional admission unless the Disciplinary Counsel determines that more frequent urinalysis testing is appropriate. For urinalysis testing, Bennett shall provide a sufficient urine sample. A copy of the laboratory results of each urinalysis shall be provided to Disciplinary Counsel's Diversion and Probation Coordinator by the laboratory or testing facility. Bennett shall execute all necessary releases so that the laboratory or agency administering the urinalysis can send copies of the results to Disciplinary Counsel's Diversion and Probation Coordinator at the same time it sends the results to Bennett or his representative or treatment provider. A positive test for use of alcohol or mood-altering substances shall be deemed a violation of the terms and conditions of this conditional reinstatement. An abnormally low creatinine level, below 20mg/dL, which may be indicative of an attempt to "flush" your system to reduce or eliminate the level of any prohibited substance or substances, may also be deemed a violation of the terms and conditions of this agreement.
8. As suggested by Bennett's treating physician, Bennett shall undergo a 5-panel hair follicle random screening once every 3 months for the duration of his conditional reinstatement. The 5-panel screening must test for the following substances: Amphetamines including Methamphetamines and Ecstasy, Cocaine, Opiates, and Phencyclidine. A copy of the laboratory report shall be provided to Disciplinary Counsel's Diversion and Probation Coordinator by the testing facility at the same time the report is provided to Bennett. A positive test for the use of any of the named substances or other mind altering substance may be considered a breach of Bennett's Conditional Reinstatement.
9. Bennett shall complete the Oregon State Bar Ethics School within one year and comply with all MCLE requirements associated with his active status.
10. Bennett shall pay all costs associated with compliance with the terms and conditions of his reinstatement.

JSG

Attachments: Reinstatement data sheet
Stipulation for discipline

CEASE AND DESIST AGREEMENT

THIS AGREEMENT is entered into by and between the Oregon State Bar (hereafter "Bar") and Tricia Allen doing business as Affordable Legal Services (hereafter "Allen").

RECITALS

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is authorized to enforce the provisions of ORS Chapter 9 relating to the practice of law by persons not active members of the Bar.

At all relevant times Allen was doing business as a paralegal with a principal place of business in Jackson County, Oregon.

Allen was not and is not an active member of the Oregon State Bar.

Before the date of this agreement, Allen engaged in one or more of the following activities which the Bar contends violates ORS 9.160, *et seq.*:

- A. Drafting a demand letter on behalf of another person in a child custody modification matter;
- B. Providing legal advice to another person in a child custody modification matter; and
- C. Seeking to represent another person in a child custody modification matter.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, which are contractual and not mere recitals, the Bar and Allen hereby agree as follows:

1. Allen agrees to refrain from engaging in the following practices:
 - a. Representing to the public in any manner that she is authorized to practice law.
 - b. Drafting or selecting documents for another when informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of another;
 - c. Providing legal advice by making any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties;
 - d. Using print or electronic materials, advertisements or other solicitations describing services which can reasonably be construed as legal services; and
 - e. Taking any other action for another which requires legal skill or judgment.
2. Allen will not engage in the same or any similar activity as described in paragraph

1, in any manner whatsoever, whether as an individual, corporation, association, partnership or as a partner, investor, shareholder, director, officer, employee, consultant, independent contractor, or otherwise. This prohibition extends throughout the State of Oregon. Nor will Allen accomplish the same through an affiliate or affiliation, including but not limited to Affordable Legal Services. The term "affiliate" means any legal entity or person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control by Allen

3. So long as Allen refrains from engaging in the practices described in Paragraph 1 herein, complies with the terms of this agreement, and does not engage in the unlawful practice of law or violate ORS 9.160, *et seq.*, the Bar agrees to refrain from seeking to enjoin Allen.

4. The parties agree that should Allen breach this agreement, that breach shall be considered the unlawful practice of law in violation of ORS 9.160, *et seq.*

5. In the event the Bar is required to bring any future action to enjoin the unlawful practice of law by Allen, and it prevails in such action, it shall be entitled to recover from Allen reasonable attorney fees and legal expenses at trial and on appeal, in addition to all other sums provided by law.

6. This agreement is entered into in Oregon and shall be governed by the laws of Oregon. Venue for future actions to enjoin the unlawful practice of law by Allen shall be in the county of the Bar's choosing.

7. If any provision of this agreement is invalid or unenforceable, then, to the extent possible, all the remaining provisions of the agreement shall remain in full force and effect and shall be binding upon both parties.

8. This agreement is subject to and shall not become effective or binding on either party until it is approved by the Board of Governors of the Bar and signed by its authorized representative.

9. This agreement represents the entire agreement between the parties, and no change in this agreement shall be binding against either party unless it is in writing and has been authorized by the Board of Governors of the Bar.

10. The parties have read this agreement and enter into it voluntarily and after having had the opportunity to consult with legal counsel.

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THIS IS A LEGALLY BINDING CONTRACT. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONSULT WITH A LAWYER.

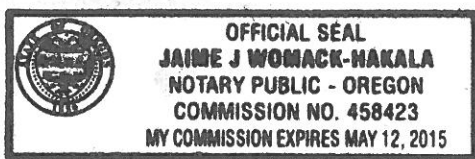
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first written above.

Tricia M Allen
Tricia Allen

Dated: August 30, 2013

State of Oregon)
County of Jackson) ss.

Personally appeared Tricia Allen, who being first duly sworn, did say that she is an owner of Affordable Legal Services, and acknowledged this instrument to be his voluntary act and deed.



Jaime Hakala
Notary Public for Oregon
My Commission Expires: May 12, 2015

OREGON STATE BAR

By: _____
Amber A. Hollister
Deputy General Counsel

Dated: _____

State of Oregon)
County of Washington) ss.

Personally appeared Amber A. Hollister, who, being first duly sworn, did say that she is Deputy General Counsel for the Oregon State Bar, a public corporation, and that said instrument was approved by the Board of Governors of the Oregon State Bar on the ___ day of _____, 2013, and that this instrument is acknowledged to be the voluntary act and deed of the Oregon State Bar.

Notary Public for Oregon
My Commission Expires: _____

OREGON STATE BAR

Board of Governors Executive Session Agenda

Meeting Date: September 27, 2012
From: Helen M. Hirschbiel, General Counsel
Re: Washington State Tax Liability
Attorney-Client Privileged Communication

Action

Decide whether to accept the Washington Department of Revenue's (DOR) offer of settlement regarding the Oregon State Bar liability for Washington State Business and Occupation Tax (B&O Tax) for gross revenue earned from CLE seminars conducted in Washington and sales/use tax for CLE publications and products sold to Washington state residents.

Background

The OSB CLE Seminars Department has been conducting seminars in the state of Washington for over 20 years. The bar also sells miscellaneous CLE products to Washington residents. In addition, one of the CLE Seminars Department employees has been telecommuting from her home in Washington for the last 15 years.

In 2009, it came to the bar's attention that it may have tax liability for its business activities in Washington. After consultation with several tax attorneys, the OSB Board decided to voluntarily disclose its activities to the Washington DOR in an effort to limit its liability for any alleged tax owed. At the same time, the bar argued that it was not subject to any tax liability. On May 11, 2011, the DOR Audit Division determined that the bar is subject to both B&O and sales tax. The OSB Board decided to appeal the Audit Division's decision to the DOR Appeals Division. A hearing was held and on September 20, 2012, the bar received the ALJ decision that the bar is subject to both B&O tax and retail sales tax for its Washington activities.

Last fall, the OSB Board decided to petition for executive level review of the ALJ decision and attempt to negotiate a settlement with DOR, again to try to limit tax liability exposure. After executive level review was granted, we made an offer to settle the matter: the bar would collect and remit sales tax from January 1, 2013 going forward; in exchange, DOR would waive any past sales tax liability and agree that the bar is not liable for B&O tax.

DOR rejected the offer. A second hearing was held on July 1, 2013, this time with the ALJ's supervisor in tow. The second hearing was even more discouraging than the first. On September 10, 2013, the DOR made a counteroffer of settlement. The letter is attached.

Discussion

Frankly, the offer makes no sense and does not comply with its own regulations. We made an effort to point this out to Judge Margolis in our response letter dated September 16, 2013, which is also attached. Not surprisingly, Judge Margolis does not agree with our reasoning and seems to stand by his original offer. See DOR letter dated September 18, 2013.

We have discussed Judge Margolis' offer with our tax attorney and determined that we have several options at this point.

1. Take the offer, with the hope that we can still convince them to limit the look-back period to four years.
2. Decline the offer, wait for the assessment of our tax liability, and pay it.

Because we made a voluntary disclosure, our liability should be limited to a look-back period of four years and would include interest but no penalties. The four year look-back period is calculated from the date of assessment, so we believe that the assessment should only reach back to 2009. If this calculation is used, according to the numbers provided by Judge Margolis, the amount of the assessment plus interest should be approximately \$32,500.

Things have not gone the way we expected so far, however, and it could be that the assessment will look back the full seven years to 2006 and include penalties as well as interest. In that event, the tax liability would be approximately \$70,000.

Based on Judge Margolis' letter, it is even possible that the DOR would look back seven years from 2009, when the bar first came forward. We have not gathered the amount of income that arguably bore a nexus to Washington for 2002—2004, so I cannot say for certain what that number would be, but adding tax for those years would likely add at least another \$20,000 to the bottom line.

3. Await the assessment of our tax liability and initiate a new administrative appeal.

It is unlikely that we would get a different result a second time around with the DOR Appeals Division. However, we could appeal the administrative decision to the Washington State Board of Tax Appeals. Unfortunately, the bar's counsel has suggested that the State Board tends to rubberstamp the DOR decisions. After appealing to the State Board, we could further appeal to the Thurston County Superior Court. If we were not successful, we could further appeal to the Washington State Court of Appeals or the Washington Supreme Court.

4. Wait for the assessment, pay it, and file a petition for refund in Thurston County Superior Court in Washington.

The superior court reviews these cases de novo, and most are decided on summary judgment. This option would give us the quickest resolution. If we were not successful, we could appeal to the Washington State Court of Appeals.

5. File an action for declaratory and injunctive relief in federal court.

I have little information about this option. The Tax Anti-Injunction Act, 26 USC 7421(a), provides that federal courts do not have jurisdiction to restrain the collection of a tax except in very limited circumstances. Mr. Mastrodonato seems to think that the bar's situation may qualify as one of those limited circumstances, but neither he nor I have spent any time to research this issue yet. In his opinion, however, the federal court would offer the most independent and favorable view of our case. My concern is the added time and cost of arguing the jurisdictional issue.

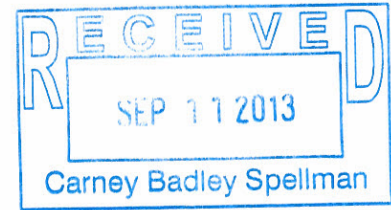
Other Considerations

If the Board decides to pursue some type of appeal, whether administrative, or in state or federal court, there could be substantial additional costs to retain outside counsel. We have paid over \$10,000 in attorney fees so far. An action in state or federal court could easily top \$50,000. We have considered handling this case in house, but would need to associate with local counsel in order to do so. We are also exploring the option of pro bono counsel. The facts and legal arguments have already been developed, so this may be a relatively simple, interesting, and compelling case for an Oregon lawyer who is also licensed in Washington.

Another consideration for the Board is the possibility of losing on appeal and getting a published decision that is available to other taxing entities. Because of the Oregon State Bar's unique status as a public corporation and instrumentality of the judicial department of the state of Oregon, whether the bar should enjoy the same rights and privileges, or bear the same responsibilities, as other state governmental entities is a recurring issue. While the IRS found the bar to be a governmental entity for income tax purposes, that decision was over 50 years ago, and the bar has changed significantly since then.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE



September 10, 2013

SCANNED

George Mastrodonato
Carney Badley Spellman PS
701 5th Ave Ste 3600
Seattle WA 98104-7010

Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

It was a pleasure talking with you, and thank you for the additional information regarding your client's position on whether Oregon State Bar (OSB) has substantial nexus for taxes imposed on apportionable activities under RCW 82.04.067(1)(c).

We understand that while OSB disagrees with the Department's holding in Det. No. 12-0248, it would agree to a settlement under which it would collect and remit retail sales tax on Washington sales for 2013 forward. The Department maintains that OSB is liable for Washington taxes, and would require OSB to recognize such liability in any potential closing agreement; we decline to agree that OSB will pay on a purely voluntary basis. Assuming that OSB is willing to make this concession, we are hopeful that OSB and the Department will be able to reach agreement.

We have shared the numbers you provided regarding OSB's activities with the Audit Division (Audit), and based on this information, along with previously provided figures, Audit has estimated OSB's liability for tax and interest (interest computed through September 30, 2013) as follows: \$10,773 for 2005, \$6,164 for 2006, \$7,064 for 2007, \$10,292 for 2008, \$9,076 for 2009, \$10,431 for 2010, \$7,150 for 2011, and \$5,892 for 2012. For 2011 and 2012, the tax estimate is equivalent to retail sales tax only, as retailing B&O tax is offset by small business tax credits and based on the information you supplied, it appears that OSB lacks substantial nexus for service and other activities B&O tax after December 31, 2010.¹ We will make schedules available for your review upon request.

¹ See the Department's Special Notice titled "B&O tax reporting requirement continues after business activity stops," dated September 10, 2010, available at <http://dor.wa.gov>.



George Mastrodonato
September 10, 2013
Page 2

OFFER:

Although OSB has not entered into a voluntary disclosure agreement with the Department, it did come forward seeking to enter into such an agreement initially. We are willing to extend the same relief to your client now through settlement.

For settlement purposes, we are prepared to fully waive penalties in exchange for your client accepting liability for Washington taxes and (1) paying a sum of \$66,842 in satisfaction of its liability through 2012, (2) paying retail sales tax and retailing B&O tax for 2013 forward, and (3) agreeing to report and remit taxes imposed on apportionable activities should OSB's business practices establish nexus for such activities under RCW 82.04.067. We are willing to work with you on establishing a date for the filing of returns for 2013 and remitting amounts due. We will waive interest on the 2013 amounts if received promptly.

Please let us know if your client is interested in these terms by September 23, 2013. If we do not hear from you, we will assume you are not interested and will continue with the decision writing process.

Sincerely,



H. Geoffrey Margolis
Administrative Law Judge
Appeals Division

HGM:nsj
cc: Mary Barrett, Director's Designee

CARNEY
BADLEY
SPELLMAN

George C. Mastrodonato

Law Offices
A Professional Service Corporation

701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
T (206) 622-8020
F (206) 467-8215
Direct Line (206) 607-4110

Email: Mastrodonato@carneylaw.com

September 16, 2013

VIA EMAIL (geoffreym@dor.wa.gov)/
ORIGINAL VIA U.S. MAIL

Geoffrey Margolis
Administrative Law Judge
Department of Revenue - Appeals Division
P.O. Box 47460
Olympia, WA 98504-7460

**Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248**

Dear Geoff:

This is in response to your letter of September 10, 2013, and to the Department's offer of settlement in the above matter. I have reviewed your letter with Helen Hirschbiel and we have two requests and one point of clarification.

- First, in respect to the calculation of OSB's tax liability (including interest) for the years 2005 to 2012, you offered to make the audit schedules available for our review. We would appreciate a copy of the Audit Division's calculation, so please send that to me.

- Second, you set a September 23, 2013 deadline for OSB to respond to the Department's offer. The OSB Board of Governors' monthly meeting will not take place until after this date and Ms. Hirschbiel would like the opportunity to discuss the Department's offer with the Board before we provide a response to you. So, we would like the deadline extended to Friday, October 4, 2013. Please confirm that this new deadline will be acceptable to the Department.

- Third, your letter states that the Department will extend the benefits of voluntary disclosure to OSB. We appreciate this offer and have two questions regarding it. First, we have never had any reason to believe that the OSB was not still within the Department's voluntary disclosure program and therefore eligible for its benefits. If the Department believes that the OSB is not still within the program, we would like to know the basis for the Department's belief. Second, our understanding of the voluntary disclosure program is that the retroactive liability or "look back" period is limited to four years from the date of the assessment plus the current year, which is consistent with RCW 82.32.050. However, the offer the Department has made requires OSB to pay retroactive taxes (plus interest) going back to 2005 – a period of eight years (plus the current year).

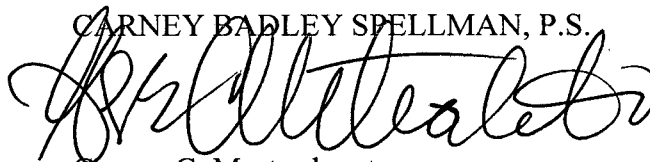
Geoffrey Margolis
September 16, 2013
Page 2

To our knowledge, no assessment has been made to date. On the assumption the Department's assessment will be made before December 31, 2013, an offer consistent with the voluntary disclosure program should only include tax liability incurred on and after January 1, 2009.¹ Indeed, even the Audit Division back on May 4, 2010, wrote that the Department's assessment would not include any taxes prior to January 1, 2007. So, the Department's offer is not only inconsistent with RCW 82.32.050, it is also inconsistent with Audit's prior commitment to assess OSB beginning January 1, 2007. Therefore, if the Department intends to adhere to the voluntary disclosure guidelines as stated in your letter, the "look back" period should begin with the tax year 2009. Please confirm that this is the Department's intent with its offer.

Thank you for your attention to the above items. We would appreciate your prompt attention to all of these items so that the OSB Board can be properly advised of this pending matter.

Sincerely,

CARNEY BADLEY SPELLMAN, P.S.



George C. Mastrodonato

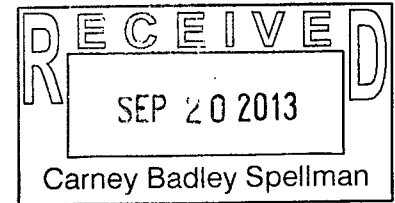
GCM:cu

cc: Mary Barrett, Director's Designee (MaryB@dor.wa.gov)
Helen Hirschbiel, Esq.

¹ At the time, Audit asked if OSB intended to appeal Audit's determination to the Appeals Division and OSB indicated that it would. But, at no time did OSB ask Audit to delay the assessment or do anything to otherwise prevent Audit from issuing an assessment for taxes during the "look back" period.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE



September 18, 2013

George Mastrodonato
Carney Badley Spellman PS
701 5th Ave., Suite 3600
Seattle WA 98104-7010

Re: OREGON STATE BAR
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

Thank you for your letter dated September 16, 2013. Below please find a response to your two requests and one point of clarification.

You requested a copy of the draft audit schedules referenced in our letter of September 10, 2013. The schedules are enclosed. Please keep in mind that these schedules are for settlement purposes only. You also asked that we extend the deadline to respond to the Department's offer from September 23, 2013 to October 4, 2013. The deadline is hereby extended to October 4, 2013, per your request.

Finally, with regards to the benefits of the voluntary disclosure program, the parties have not entered into an agreement under which OSB agreed to pay taxes and the Department waived penalties and limited the "look back" period. Under the settlement offer, the Department is extending the benefits of voluntary disclosure to the extent OSB would have enjoyed these benefits had it entered into a voluntary disclosure agreement in 2009, when it approached the Department. Thus, it includes tax liability and interest from 2005 forward.



George Mastrodonato

September 18, 2013

Page 2

The Department is prepared to issue an assessment upon request. We would consider your position that OSB should benefit from the voluntary disclosure program and that the "look back" period should be four years plus the current year, but would also consider provisions regarding the assessment period for unregistered taxpayers.

Sincerely,



H. Geoffrey Margolis

Appeals Division

HGM:ci

cc: Mary Barrett, Director's Designee

Enclosure

603 122 675
Schedule 1

Oregon State Bar
Summary of Tax Adjustments by Classification
Source: Supplemental Schedules 2 through 5

Audit Number: 0210500 - 000
Auditor: 619 - Mark Blunck
Audit Period: 1/1/2009 - 12/31/2012

		2009	2010	2011	2012	TOTALS
<u>SCHEDULE</u>						
<u>REFERENCE:</u>						
	<i><u>Royalties; Child Care; Nonprofit R&D - 080</u></i>					
Schedule 2	Royalties Tax Due on Gross Washington Income from Copyright Licenses	0	0	0	0	0
		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<i><u>Service & Other Activities; Gambling Contests of Chance (less than \$50,000 a year) - 004</u></i>					
Schedule 3	Service & Other Activities Tax Due on Live Seminars at Venues within Washington	2,274	2,284	0	0	4,558
		<u>2,274</u>	<u>2,284</u>	<u>0</u>	<u>0</u>	<u>4,558</u>
	<i><u>Retailing - 002</u></i>					
Schedule 4A	Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products	289	385	343	288	1,305
		<u>289</u>	<u>385</u>	<u>343</u>	<u>288</u>	<u>1,305</u>
	<i><u>State and Combined Local Sales - 001</u></i>					
Schedule 4B (0003)	Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products	5,745	7,774	6,920	5,815	26,254
		<u>5,745</u>	<u>7,774</u>	<u>6,920</u>	<u>5,815</u>	<u>26,254</u>
	<i><u>Miscellaneous Taxes and Credits</u></i>					
Schedule 5	Annual Small Business B&O Tax Credits Applied in Tax Assessment	0	(625)	(343)	(288)	(1,256)
		<u>0</u>	<u>(625)</u>	<u>(343)</u>	<u>(288)</u>	<u>(1,256)</u>
	Total Tax Adjustment (Excluding Penalties and Interest)	8,308	9,818	6,920	5,815	30,861
	Estimated Interest (Calculated on Total Tax) through 09/30/2013	768	613	230	77	1,688
	<i>Total Tax and Estimated Interest</i>	<u>9,076</u>	<u>10,431</u>	<u>7,150</u>	<u>5,892</u>	<u>32,549</u>

603 122 675
Schedule 2

Oregon State Bar
Royalties Tax Due on Gross Washington Income from Copyright Licenses
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2009	1/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.00484	.00484	.00484	.00484	
Line Code 080					

Gross Washington Income from Sales Copyright Licenses Subject to Royalties B&O Tax	40	20	0	0	60
Commercial Domicile is in Oregon, so Copyright License Income is not Taxable for period of 01/01/2009 - 04/30/2010	(40)	(20)	0	0	(60)
Total Taxable Amounts	0	0	0	0	0
X Tax Rate = Royalties B&O Tax Difference to Schedule 1	0	0	0	0	0

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Royalties B&O	0	0	0	0	0

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 3

Oregon State Bar
Service & Other Activities Tax Due on Live Seminars at Venues within Washington
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2009	1/1 - 4/30 2010	5/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.015	.015	.018	.018	.018	
Line Code 004						

Gross Washington Seminar and Advertising Income Subject to Service and Other Activities B&O Tax
Economic Nexus Threshold \$250,000 was not met, so Gross Income is not Taxable
Total Taxable Amounts

	151,569	44,777	89,553	38,604	147,143	471,646
	0	0	0	(38,604)	(147,143)	(185,747)
	151,569	44,777	89,553	0	0	285,899
X Tax Rate = Service & Other Activities B&O Tax Difference to Schedule 1	2,274	672	1,612	0	0	4,558

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Service & Other Activities B&O	0	2,274	2,284	0	4,558

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 4A

Oregon State Bar
Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products
Source: Washington Income Figures Provided by George Mastrodonato, Attorney

	1/1 - 12/31 2009	1/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.00471	.00471	.00471	.00471	
Line Code 002					

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retailing B&O Tax
Total Taxable Amounts

	61,277	81,831	72,846	61,212	277,166
	61,277	81,831	72,846	61,212	277,166
X Tax Rate = Retailing B&O Tax Difference to Schedule 1	289	- 385	343	288	1,305

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Retailing B&O	0	289	385	343	288
					1,305

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
 Schedule 4B (0003)

Oregon State Bar
 Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products
 Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 3/31	4/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
	2009	2009	2010	2011	2012	
Tax Rate	.09	.095	.095	.095	.095	
Line Code 001						

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retail Sales Tax	15,319	45,958	81,831	72,846	61,212	277,166
Total Taxable Amounts	15,319	45,958	81,831	72,846	61,212	277,166
X Tax Rate = Retail Sales Tax Difference to Schedule 1	1,379	4,366	7,774	6,920	5,815	26,254

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Retail Sales	0	5,745	7,774	6,920	26,254
0003-Pool Fund (Highest Rate)					

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	OK	0003

Audit 2000 - Version 9.02
 Revised - May, 2013

603 122 675
Schedule 5

Oregon State Bar
Annual Small Business B&O Tax Credits Applied in Tax Assessment
Schedules 2, 3 and 4A.

1/1 - 12/31 1/1 - 12/31 1/1 - 12/31 1/1 - 12/31 TOTALS
2009 2010 2011 2012

Tax Rate
Line Code 000

Allowable Annual Small Business B&O Tax Credits as Calculated within Workpaper A
Total Taxable Amounts

0	625	343	288	1,256
0	625	343	288	1,256

X Tax Rate = Small Business Credit 815 Tax Difference to Schedule 1

0	(625)	(343)	(288)	(1,256)
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NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Small Business Credit 815	0	(625)	(343)	(288)	(1,256)

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 2

Oregon State Bar
Royalties Tax Due on Gross Washington Income from Copyright Licenses,
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2005	1/1 - 12/31 2006	1/1 - 12/31 2007	1/1 - 12/31 2008	TOTALS
Tax Rate	.00484	.00484	.00484	.00484	
Line Code 080					

Gross Washington Income from Sales Copyright Licenses Subject to Royalties B&O Tax
Commercial Domicile is in Oregon, so Copyright License Income is not Taxable for period of 01/01/2005 - 12/31/2008
Total Taxable Amounts

	93	55	125	45	318
	(93)	(55)	(125)	(45)	(318)
	0	0	0	0	0
	0	0	0	0	0

X Tax Rate = Royalties B&O Tax Difference to Schedule 1

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Royalties B&O	0	0	0	0	0

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675	Oregon State Bar	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
Schedule 3	Service & Other Activities Tax Due on Live Seminars at Venues within Washington	2005	2006	2007	2008	
	Source: Washington Income Figures Provided by George Mastrodonato, Attorney.	Tax Rate	.015	.015	.015	.015
		Line Code 004				
Gross Washington Seminar, Advertising, and Online Subscription Income Subject to Service and Other Activities B&O Tax		114,892	67,805	45,174	163,996	391,868
Total Taxable Amounts		114,892	67,805	45,174	163,996	391,868
X Tax Rate = Service & Other Activities B&O Tax Difference to Schedule 1		1,723	1,017	678	2,460	5,878

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY						
	2005	2006	2007	2008	TOTAL	
Service & Other Activities B&O	0	1,723	1,017	678	2,460	5,878
	Math 1	Math 2	Tax Tot	LSU	LSU Code	
	OK	OK	OK	N/A	N/A	

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 4A

Oregon State Bar
Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2005	1/1 - 12/31 2006	1/1 - 12/31 2007	1/1 - 12/31 2008	TOTALS
Tax Rate	.00471	.00471	.00471	.00471	
Line Code 002					

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retailing B&O Tax
Total Taxable Amounts

68,014	40,140	54,537	69,288	231,979
68,014	40,140	54,537	69,288	231,979

X Tax Rate = Retailing B&O Tax Difference to Schedule 1

320	189	257	326	1,092
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NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Retailing B&O	0	320	189	257	1,092

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
 Schedule 4B (0003)

Oregon State Bar
 Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products
 Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 3/31	4/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
	2005	2005	2006	2007	2008	
Tax Rate	.086	.09	.09	.09	.09	
Line Code 001						

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retail Sales Tax	17,004	51,011	40,140	54,537	69,288	231,979
Total Taxable Amounts	17,004	51,011	40,140	54,537	69,288	231,979
X Tax Rate = Retail Sales Tax Difference to Schedule 1	1,462	4,591	3,613	4,908	6,236	20,810

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Retail Sales	0	6,053	3,613	4,908	20,810
0003-Pool Fund (Highest Rate)					

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	OK	0003

Audit 2000 - Version 9.02
 Revised - May, 2013

**Oregon State Bar
Special Open Meeting of the Board of Governors
October 25, 2013
Minutes**

The meeting was called to order by President-elect Tom Kranovich at 9:30 a.m. on October 25, 2013. The meeting adjourned at 10:10 a.m. Members present from the Board of Governors were President Michael Haglund, Jenifer Billman, Patrick Ehlers, Hunter Emerick, Ray Heysell, Ethan Knight, Theresa Kohlhoff, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Josh Ross, Richard Spier and David Wade. Maureen O'Connor and Timothy Williams joined during the closed session. Staff present were Sylvia Stevens, Helen Hirschbiel, Amber Hollister, Susan Grabe, Dani Edwards, Dawn Nelson and Camille Greene.

1. Call for Approval of Agenda

Mr. Kranovich asked whether there were any additions to the agenda.

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to approve and accept the agenda as presented.

2. Volunteers to Speak in Opposition to HOD Resolutions

Mr. Kranovich asked for volunteers to speak on behalf of the BOG in opposition to specific HOD resolutions and board members responded. **[Exhibit A]**

3. Reconsider BOG position on HOD Delegate Resolution No. 8

Ms. Stevens introduced a request for the board to reconsider its opposition to HOD Delegate Resolution No. 8 (Admission Rule for Military Spouse Attorneys). **[Exhibit B]** She emphasized that the rule included with the delegate's resolution was only a "model rule" and that the resolution itself asks only that the adoption of a similar rule be considered; the rule could take any form that the BOG or BBX desires. It was also noted that a Region 5 delegate has questioned whether a rule should be broad enough to encompass spouses of anyone in federal service to the public.

Motion: Mr. Spier moved, Mr. Wade seconded, and the board voted on changing its position to support HOD Delegate Resolution No. 8. The motion failed, 5-7. Ms. Billman, Mr. Emerick, Mr. Knight, Mr. Spier and Mr. Wade were in favor. Mr. Ehlers, Mr. Heysell, Ms. Kohlhoff, Ms. Matsumonji, Ms. Mitchel-Markley, Mr. Prestwich and Mr. Ross were opposed. Mr. Haglund left the meeting prior to the vote.

Motion: Mr. Ross moved the board change its position to "no position". Mr. Heysell amended the motion to add the BOG further the study the issue. Mr. Ehlers seconded the amended motion, and the board voted unanimously to change its position to "no position" on HOD Delegate Resolution No. 8.

4. BOG Position on HOD Delegate Resolution No. 4

Ms. Stevens reported that Delegate Danny Lang has indicated he will move to have his excluded resolution added to the final HOD agenda, and that in that event the BOG may wish to have a position on it.

Motion: Mr. Wade moved that the board oppose HOD Agenda Item 22 (Enhance Public Safety on Oregon Public Waterways) in the event there is a successful motion to add it to the agenda at the beginning of the HOD meeting. Mr. Ross seconded, and the board voted unanimously to oppose the resolution. .

5. Closed Sessions – see CLOSED Minutes

A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel

**Oregon State Bar
Board of Governors Meeting
October 25, 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. Other Matters

Washington State Taxes

Ms. Hirschbiel asked the board to determine how to proceed with the second counteroffer presented by the Washington Department of Revenue. **[Exhibit C]**

Motion: Mr. Wade moved, and Mr. Ehlers seconded, to accept the second counteroffer from the Washington Department of Revenue. The motion passed unanimously.

North Carolina State Bar *Amicus* Request

Ms. Hollister asked the board to decide if they will join an amicus curiae brief in support of a petition for certiorari to the United States Supreme Court in the case of *North Carolina Board of Dental Examiners v. Federal Trade Commission*, No. 1201172 (4th Cir.). **[Exhibit D]**

Motion: Mr. Wade moved, and Mr. Heysell seconded, to not support the petition for certiorari. The motion passed. Mr. Williams abstained.

2013 HOD Resolutions

Item	Sponsor	Description	On HOD Agenda?	Presenter	BOG Position?	Presenter of BOG Position
8	BOG	In Memoriam	yes	David Wade	n/a	n/a
9	BOG	D&I Assessment Increase	yes	Ethan Knight & Dave Bartz	support	n/a
10	BOG	Anti-Bias Rule	yes	David Wade	support	n/a
11	BOG	Advertising Rules	yes	Kurt Hansen (LEC Chair)	support	n/a
12	BOG	Misc. RPC Changes	yes	Helen Hirschbiel	support	n/a
13	BOG	Veterans' Day Rememberance	yes	Richard Spier	support	n/a
14	Delegate	Support of Judicial Branch	yes	Danny Lang	support	n/a
15	Delegate	Online Directory Section Listings	yes	John Gear	oppose	Mr. Emerick
16	Delegate	Adeq. Funding for Legal Svcs.	yes	Kathleen Evans, et al.	support	n/a
17	Delegate	Scope of HOD Authority	yes	Danny Lang	oppose	Mr. Wade
18	BOG	Support for Marriage Equality	yes	Patrick Ehlers & Rich spier	support	n/a
19	Delegate	Need for 3 Yrs of Law School	yes	Timothy Farrell	oppose	Mr. Ross
20	Delegate	Centralized Legal Notice System	yes	John Gear	oppose	Mr. Haglund
21	Delegate	Admission Rule for Military Spouse Attorneys	yes	Gabriel Bradley	oppose	Mr. Spier
22	Delegate	Public Safety on Waterways (Flotation Devices)	no	Danny Lang	exclude	Mr. Heysell

Exhibit: HOD Delegate Resolution No. 8

8. Admission Rule for Military Spouse Attorneys (Delegate Resolution No. 8)

Whereas, the Department of Defense has recognized that military spouses face unique licensing and employment challenges as they move frequently in support of the nation's defense; and

Whereas, the American Bar Association House of Delegates and the Conference of Chief Justices have encouraged state bar-admission authorities to enact "admission by endorsement" for military spouses; and

Whereas, this House desires that the burden of licensing requirements should be eased for military spouses to the maximum extent possible while also maintaining rigorous standards for learning, ability, character, and fitness among lawyers admitted to practice in Oregon; and

Whereas, the Military Spouse J.D. Network has promulgated a Model Rule for Admission of Military Spouse Attorneys that allows for admission without examination for military spouses who are members in good standing of another bar and who meet character and fitness requirements; now, therefore, be it

Resolved, The Board of Governors recommend to the Oregon Supreme Court that it adopt a rule allowing admission without examination for attorneys holding an active license to practice law in at least one state, territory, or the District of Columbia for as long as those attorneys are present in Oregon due to a spouse's military service and those attorneys meet the education, character, and fitness requirements for admission.

Presenter: Gabriel Bradley, HOD, Out-of-State

Background

Military members typically move every two or three years. For an attorney married to a military member, the frequent state-to-state moves present a huge obstacle to a legal career. In addition to the normal hassle of moving, military spouse attorneys have to become re-licensed in their new jurisdictions.

In June 2011, the Department of Defense's State Liaison and Educational Opportunity office announced that sixteen states have laws that make licensing easier for professionals (not just attorneys) who move to a new jurisdiction because of their spouses' military service. Oregon was not one of those states.

On February 6, 2012, the ABA House of Delegates adopted a resolution that urged state bar-admission authorities to adopt rules that "accommodate the unique needs of military spouse attorneys who move frequently in support of the nation's defense." This resolution specifically encouraged:

- Admission without examination for military spouses who are present in a state due to their spouses' military service.
- Reviewing bar application procedures to ensure they are not unduly burdensome to military spouses.
- Encouraging mentorship programs for military spouses who are new to a jurisdiction.
- Offering reduced bar application and membership fees to military spouses who are new to a jurisdiction or wish to retain bar jurisdiction after moving out of the jurisdiction.

On July 25, 2012, the Conference of Chief Justices passed a resolution encouraging state bar-admission authorities to "consider the development and implementation of rules permitting admission without examination for attorneys who are dependents of service members of the United States Uniformed Services and who have graduated from ABA accredited law schools and who are already admitted to practice in another state or territory."

Oregon allows for attorney admission by reciprocity with thirty-seven states and the District of Columbia. But some military spouse attorneys will come to Oregon from states that do not have reciprocity with Oregon. Others may be starting out in their careers or may have taken time off and will therefore not meet the time-in-practice requirements of the general reciprocity rule. A more flexible admissions rule for military spouse attorneys would alleviate the burden of frequent moves.

The Military Spouse J.D. Network (www.msjdn.org) is a group of attorneys who are married to military members. They have drafted a Model Rule for Admission of Military Spouse Attorneys. MSJDN reports that rule accommodations for military spouse attorneys have been passed in Arizona, Idaho, Illinois, North Carolina, South Dakota, and Texas. A copy of the Model Rule is attached. **[Exhibit B]**

Exhibit B
DRAFT Model Rule for Admission of Military Spouse Attorneys

Rule __. Admission of Military Spouse Attorneys.

1. Due to the unique mobility requirements of military families who support the defense of our nation, an attorney who is a spouse or a registered domestic partner of a member of the United States Uniformed Services (“service member”), stationed within this jurisdiction, may obtain a license to practice law pursuant to the terms of this rule.
2. An applicant under this rule must:
 - (a) have been admitted to practice law in another U.S. state, territory, or the District of Columbia;
 - (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
 - (c) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
 - (d) establish that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
 - (e) establish that the applicant possesses the character and fitness to practice law in this jurisdiction;
 - (f) demonstrate presence in this jurisdiction as a spouse of a member of the United States Uniformed Services;
 - (g) certify that the applicant has read and is familiar with this jurisdiction’s Rules of Professional Conduct;
 - (h) pay the prescribed application fee;
 - (i) within [60 days] of being licensed to practice law, complete a course on this jurisdiction’s law, the content and method of delivery of which shall be approved by this jurisdiction’s highest Court; and
 - (j) comply with all other ethical, legal, and continuing legal education obligations generally applicable to attorneys licensed in this jurisdiction.
3. The Court may require such information from an applicant under this rule as is authorized for any applicant for admission to practice law—except any information specifically excluded by this rule—and may make such investigations, conduct such hearings, and otherwise process applications under this rule as if made pursuant to this jurisdiction’s rules governing application for admission without examination. Upon a showing that strict compliance with the provisions of this section would cause the applicant unnecessary hardship, the Court may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.
4. If after such investigation as the Court may deem appropriate, it concludes that the applicant possesses the qualifications required of all other applicants for admission to practice law in this jurisdiction, the applicant shall be licensed to practice law and enrolled as a member of the bar of this jurisdiction. The Court shall promptly act upon any application filed under this rule.
5. Except as provided in this rule, attorneys licensed under this rule shall be entitled to all privileges, rights, and benefits and subject to all duties, obligations, and responsibilities of active members of bar of this jurisdiction, and shall be subject to the jurisdiction of the courts and agencies of this jurisdiction with respect to the laws and rules of this jurisdiction governing the conduct and discipline of attorneys, to the same extent as members of the bar of this jurisdiction.
6. The license to practice law under this rule shall terminate in the event that:
 - (a) the service member is no longer a member of the United States Uniformed Services;
 - (b) the military spouse attorney is no longer married to the service member; or
 - (c) the service member receives a permanent transfer outside the jurisdiction, except that if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the service member is assigned to a location with dependents authorized.

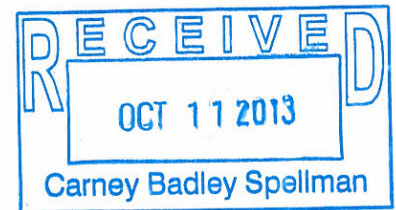
In the event that any of the events listed in this paragraph occur, the attorney licensed under this rule shall notify the Court of the event in writing within thirty (30) days of the date upon which the event occurs. If the event occurs because the service member is deceased or disabled, the attorney shall notify the Court within one hundred eight (180) days of the date upon which the event occurs.

- 7.** Each attorney admitted to practice under this rule shall report to the Court, within thirty (30) days:
 - (a) any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the attorney has been admitted to the practice of law; or
 - (b) the imposition of any permanent or temporary professional disciplinary sanction by any federal or state court or agency.

- 8.** An attorney's authority to practice under this rule shall be suspended when the attorney is suspended or disbarred in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which the attorney has been admitted to practice.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE



October 10, 2013

SCANNED

George Mastrodonato
Carney Badley Spellman PS
701 5th Avenue Suite 3600
Seattle WA 98104-7010

Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

Thank you for your letter dated October 4, 2013, in which you offer “to accept the standard terms of a voluntary disclosure agreement” (VDA), pay taxes assessed¹ by the Department for 2013, and pay taxes for January 1, 2009 forward plus interest.

Under the terms of your offer, the Department would waive taxes for 2005-2008 that the Oregon State Bar (OSB) would have paid had it entered into a VDA in 2009 and paid taxes going forward. Taxpayer would effectively be rewarded for having not entered into an agreement with the Department until 2013.

In recognition of the uniqueness of this situation, and given that the “look back” period for Taxpayers who fail to voluntarily register is 7 years, the Department is prepared to waive taxes for one of those years, 2005, as part of a closing agreement. The Department also remains prepared to waive penalties which would normally be applied if OSB had not come forward voluntarily and the Department had issued an assessment.

The proposed closing agreement would provide that Taxpayer will pay the Department approximately \$56,069 for liability through 2012, retail sales tax and retailing B&O tax for 2013 forward, and B&O tax on apportionable activities if it establishes nexus for such activities under RCW 82.04.067. The closing agreement would not require an admission of past liability, but would include future instructions.

¹ We interpret this to mean taxes which could be assessed.



George Mastrodonato
October 10, 2013
Page 2

Please let us know by October 25, 2013 whether your client finds these terms acceptable.

Sincerely,

A handwritten signature in black ink that reads "H. Geoffrey Margolis". The signature is written in a cursive, slightly slanted style.

H. Geoffrey Margolis

Appeals Division

HGM:bv

cc: Mary Barrett, Director's Designee



Office of the President

M. Keith Kapp
Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601
Post Office Drawer 1000
Raleigh, NC 27602
(919) 981-4024 (direct)
(919) 981-4300 (fax)
kkapp@williamsmullen.com

RECEIVED

OCT 04 2013

Oregon State Bar
Executive Director

October 2, 2013

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

Re: *North Carolina Board of Dental Examiners v. Federal Trade Commission*, No. 12-1172,
United States Court of Appeals for the Fourth Circuit

Dear Ms. Stevens,

The North Carolina State Bar seeks your help in addressing the recent decision of the United States Court of Appeals for the Fourth Circuit in *North Carolina Board of Dental Examiners v. Federal Trade Commission*. The opinion is enclosed.

The opinion holds that members of the North Carolina Board of Dental Examiners are not entitled to State Action Immunity from liability under the Sherman Antitrust Act. The Fourth Circuit declared that because a controlling number of Board members are licensed dentists elected by their peers, and are therefore “competitors” of those the Board seeks to regulate and those the Board seeks to restrain from engaging in the unauthorized practice of dentistry, the Board’s actions must be actively supervised by another state government official or agency to qualify for antitrust immunity. In the absence of such “active state supervision,” the Fourth Circuit held that members of the Dental Board were not agents of the state but were “private actors,” and potentially liable for treble damages under the federal antitrust laws, when they sought to prevent non-licensed teeth-whiteners operating out of kiosks in shopping malls. The Fourth Circuit reached this decision notwithstanding that the North Carolina legislature created the Dental Board, prescribed the qualifications of and manner of selecting its members, defined the practice of dentistry to include removal of stains from teeth, and assigned to the Dental Board the duty to prevent the unauthorized practice of dentistry.

The North Carolina State Bar is extremely concerned about the effect of this decision because, pursuant to statute, its governing council is comprised primarily of licensed attorneys elected by their peers who are charged with duties to regulate the profession and restrain the unauthorized practice of law. We are concerned that a court applying the Fourth Circuit decision could conclude that individual members of the State Bar Council are personally liable under the Sherman Antitrust Act for performing the very acts the legislature directed them to perform—so that those aggrieved by the actions of the Bar are likely to bring actions seeking such a conclusion. Furthermore, the opinion’s



Ms. Sylvia E. Stevens

Page 2

October 2, 2013

emphasis on the fact that the members of the board are “private actors in the marketplace” suggests that its reasoning might also be applied to boards with appointed members who are practicing professionals. Finally, given the current state of the law, a board will find it difficult or impossible to determine whether any state supervision under which it operates is “active enough” to provide a defense.

We are advised that the Dental Board will file a petition with the United States Supreme Court for writ of certiorari to review the Fourth Circuit decision. We have resolved to file an amicus brief in support of the petition for certiorari and would very much appreciate your participation in that brief. Our counsel indicate that the Supreme Court is much more likely to accept the case for review if a number of state bars whose abilities to perform fundamental duties are imperiled by the Fourth Circuit decision join the amicus brief.

We are enclosing a copy of the amicus brief the North Carolina Attorney General and the North Carolina State Bar filed in support of the Dental Board’s petition for rehearing in the Fourth Circuit. We anticipate that the amicus brief we will file in support of the petition for certiorari will be similar in substance. We will ask the Attorney General to participate again. The amicus brief must be submitted in late November, so time is of the essence.

Thank you very much for your consideration of this urgent request.

Sincerely,

M. Keith Kapp
President

Enclosures

cc: Mr. L. Thomas Lunsford II

OREGON STATE BAR
Client Security - 113
For the Nine Months Ending September 30, 2013

Description	September 2013	YTD 2013	Budget 2013	% of Budget	September Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$97	\$1,722	\$3,100	55.6%	\$222	\$2,835	-39.2%
Judgments	100	17,481	4,000	437.0%	3,436	4,287	307.7%
Membership Fees	2,025	657,795	675,000	97.5%	147	219,252	200.0%
TOTAL REVENUE	2,222	676,998	682,100	99.3%	3,805	226,374	199.1%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	2,229	22,036	28,200	78.1%	2,159	21,330	3.3%
Employee Taxes & Benefits - Reg	748	7,828	11,200	69.9%	671	7,072	10.7%
TOTAL SALARIES & BENEFITS	2,977	29,863	39,400	75.8%	2,830	28,402	5.1%
DIRECT PROGRAM							
Claims	20,565	549,880	200,000	274.9%	239,890	440,151	24.9%
Collection Fees		9,362	1,000	936.2%		46	20208.7%
Committees			250				
Pamphlet Production			150			11	-100.0%
Travel & Expense		1,203	1,400	86.0%		2,086	-42.3%
TOTAL DIRECT PROGRAM EXPENSE	20,565	560,446	202,800	276.4%	239,890	442,295	26.7%
GENERAL & ADMINISTRATIVE							
Messenger & Delivery Services			50				
Office Supplies			150				
Photocopying			150				
Postage	27	299	500	59.9%	50	399	-24.9%
Professional Dues		300	200	150.0%		200	50.0%
Telephone	30	56	150	37.2%		38	45.9%
Training & Education		425	600	70.8%		475	-10.5%
Staff Travel & Expense		60	874	6.9%			
TOTAL G & A	57	1,140	2,674	42.6%	50	1,112	2.6%
TOTAL EXPENSE	23,599	591,449	244,874	241.5%	242,770	471,809	25.4%
NET REVENUE (EXPENSE)	(21,377)	85,549	437,226		(238,965)	(245,435)	-134.9%
Indirect Cost Allocation	1,219	10,971	14,625		1,119	10,071	8.9%
NET REV (EXP) AFTER ICA	(22,596)	74,578	422,601		(240,084)	(255,506)	-129.2%
Fund Balance beginning of year		123,493					
Ending Fund Balance		198,071					
Staff - FTE count		.35	.00			.35	

CLAIM year	CLAIM No.	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2009	39	Pottle, John	Ryan, T. Michael	\$ 500.00	\$ 200.00	Franco	CSF Approved 07.20.2013
2012	59	Marquez, Alberto Luis and Talamantes, Estela	McBride, Jason	\$ 500.00	\$ 500.00	Franco	CSF Approved 07.20.2013
2012	68	Romero Garibay, Oscar G	McBride, Jason	\$ 10,000.00	\$ 5,000.00	Angus	BOG Approved 09.27.2013
2012	71	Sanchez-Serrano, Jonathan Alejandro	McBride, Jason	\$ 4,950.00	\$ 4,500.00	Cousineau	CSF Approved 11.16.2013
2012	90	Vega de Garibay, Maria	McBride, Jason	\$ 10,000.00	\$ 5,000.00	Angus	BOG Approved 09.27.2013
2012	102	Hernandez, Javier (Pio)	McBride, Jason	\$ 5,100.00	\$ 4,650.00	Atwood	waiting for new w-9
2012	105	Cisneros, Javier Ramirez	McBride, Jason	\$ 4,000.00	\$ 2,500.00	Miller	CSF Approved 11.16.2013
2012	115	Manriquez, Maria Luz	McBride, Jason	\$ 4,900.00	\$ 3,600.00	Eggert	ck req 11/13/13
2013	2	Steidley, James J	Goff, Daniel	\$ 40,000.00	\$ 40,000.00	Davis	
2013	7	Olvera, Jose Alvarado	McBride, Jason	\$ 5,100.00	\$ 5,000.00	Angus	ck req 11/15/13
2013	24	Mantell, Ellitott J	Goff, Daniel	\$ 47,609.00	\$ 47,609.00	Davis	
2013	26	Farrar, Bryan	Gruetter, Bryan	\$ 15,694.70	\$ 14,995.01	Bennett	pd 10/21
2013	27	Farrar, Maureen	Gruetter, Bryan	\$ 28,984.53	\$ 28,984.53	Bennett	pd 10/21
2013	32	Conley, Kimberly	Kaufman, Eric	\$ 600.00	\$ 600.00	Brown	CSF Approved 11.16.2013
2013	33	Garibay, Jose Luis	McBride, Jason	\$ 5,100.00	\$ 5,000.00	Atwood	pd 10/24
2013	35	Cheadle, Joseph	Bertoni, Gary	\$ 6,500.00	\$ 6,500.00	Bennett	Appealed 10/7/13
2013	36	Chaves Ramirez, Aquilino	McBride, Jason	\$ 2,600.00	\$ 2,600.00	Angus	CSF Approved 09.07.2013
2013	37	Martinez, Maria	McBride, Jason	\$ 2,600.00	\$ -	Angus	CSF Approved 09.07.2013
2013	38	Bullwinkel, David	Gruetter, Bryan	\$ 53,950.15	\$ 48,950.15	Bennett	pd 10/31
2013	39	Watkins, Sandra and Ronald	Handy, Paul	\$ 3,800.00	\$ 740.35	Reinecke	CSF Approved 09.07.2013
2013	42	Meier-Smith, Mary	Hall, C. David	\$ 27,500.00	\$ 27,500.00	Brown	
2013	43	Gomes, Heidi Marie	Wolf, Amber	\$ 6,956.63	\$ 6,956.63	Atwood	
2013	44	Littlefield, Darla and Sickles, Bruce	von Blumenstein, Debbe	\$ 6,000.00	\$ 6,000.00	Timmons	
2013	45	Canenguez, Jorge Adalberto	McBride, Jason	\$ 3,500.00	\$ 2,000.00	Atwood	CSF Approved 11.16.2013
2013	46	Houck, Angela Kay	von Blumenstein, Debbe	\$ 1,010.00	\$ 1,010.00	Timmons	
2013	47	Herbert, Rebecca D	Browning, Robert	\$ 5,000.00	\$ 5,000.00	Franco	
2013	48	Monroy, Anna	Bertoni, Gary	\$ 5,000.00	\$ 5,000.00	Bennett	
2013	49	Babb, Avon Lee	Goff, Daniel	\$ 3,000.00	\$ 3,000.00	Davis	
2013	50	Powell, Constance Faye	Schannuaer	\$ 300.00	\$ 300.00	Miller	
2013	51	Pedro, Robert James	Kelly Ireland	\$ 3,500.00	\$ 3,500.00	Reinecke	
2013	52	Guardado, Ivonne T	Kelly Ireland	\$ 300.00	\$ 300.00	Reinecke	
					\$ 287,195.67		
		Funds available for claims and indirect costs allocation as of September 2013		Total in CSF Account	\$ 198,071.00		
				Fund Excess	\$ (89,124.67)		

2000.OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 23, 2013
From: Sylvia E. Stevens, Executive Director
Re: Client Security Fund Committee Final Awards

Action Recommended

None. This report is for the BOG's information pursuant to CSF Rule 4.11.

Discussion

The CSF Committee met on November 16, 2013 and gave final approval to awards on the following claims:

No. 2012-105	McBRIDE (Cisneros)	\$2,500.00
No. 2012-71	McBRIDE (Serrano)	\$4,500.00
No. 2013-45	McBRIDE (Canenguez)	\$2,000.00
No. 2013-32	KAUFMAN (Conley)	\$600.00

DANNY LANG,
OSB #790078 & CSB #78838

GLINDA SIFERS,
Litigation Manager/Paralegal

Law Offices of
DANNY LANG
Attorney at Law

148 S. STATE STREET
SUTHERLIN, OREGON 97479
TELEPHONE (541) 459-9888
FAX (541) 459-1230
attorneylang@osbar.org
Taxpayer I.D. #1804336

November 14 2013

Via Facsimile & US Mail

MICHAEL HAGLUND
PRESIDENT
BOARD OF GOVERNORS
OREGON STATE BAR
503-225-0777
200 MARKET ST., STE. 1777
PO BOX 97201
TIGARD, OR 97201
FAX: 503-225-1257
haglund@hk-law.com

TOM KRANOVICH
PRESIDENT ELECT
BOARD OF GOVERNORS
c/o KRANOVICH & LUCERO
503-992-6680
4949 MEADOWS RD., STE. 530
LAKE OSWEGO, OR 97035
FAX: 503-992-6681
tom@tkatlaw.com

SYLVIA STEVENS
EXECUTIVE DIRECTOR
BOARD OF GOVERNORS
OREGON STATE BAR
503-431-6359
16037 SW UPPER BOONES
FERRY RD.
PO BOX 231935
TIGARD, OR 97281
FAX: 503-598-6959
sstevens@osbar.org

RE: HOUSE OF DELEGATES 2013 MEETING

SUBJECT: RECURRING LACK OF QUORUM

Dear President Haglund, President Elect Kranovich, Executive Director Stevens, and Members of the BOG:

As an Elected HOD Delegate, and having actively participated in several annual HOD Meetings, please find attached a copy of the previous proposed 2008 HOD Agenda Item ["Proposed Amendment to House of Delegate Quorum Requirement"] for reconsideration in view of the disappointing lack of a quorum at our 2013 Annual Meeting. Perhaps examination of the Sign-In Register(s) would reveal the percentage of attendance by Elected HOD Delegates compared to Ex-Officio Delegates. Accordingly such a statistical comparison may or may not be an indicator of persons who have a greater rate of attendance because there is little point in becoming a HOD Elected Delegate if one is not going to attend the HOD Annual Meeting. On the other hand, perhaps some Ex-Officio Delegates consider the Title more of an honorarium rather than an obligation. If that hypothesis is correct, then perhaps an adjustment to the formula for a quorum would be appropriate.

Please feel free to contact me if I can be of any further assistance.

Regards,



DANNY LANG
Region 3 Elected HOD Delegate

DRL:gs

Enclosures: Danny Lang's Proposed 2008 HOD Agenda Item

PROPOSED 2008 HOD AGENDA ITEM

**PROPOSED AMENDMENT TO
HOUSE OF DELEGATE QUORUM REQUIREMENT**

WHEREAS, the present Quorum requirement for the annual House of Delegate Meeting requires 50% +1 of all eligible Delegates [Elected & Ex-Officio Delegates] to be present; and,

WHEREAS, the actual number of Delegates in attendance at prior House of Delegates meetings has resulted in serious concerns for achieving and maintaining the required Quorum; and,

WHEREAS, a substantial risk of failure to reach a Quorum would adversely impact both those Delegates in attendance and the Oregon State Bar Budget by the cost/loss of mileage allowance payable to attending Delegates; now,

THEREFORE, be it resolved that the House of Delegates recommends and encourages the Board of Governors to amend the Quorum requirements so as to provide for a reduction in the number of Delegates needed to constitute a Quorum.

FURTHER, the House of Delegates recommends amendment of the Quorum requirement so as to define a Quorum as being 50% +1 of the number of Elected Delegate positions with both Elected & Ex-Officio Delegates in attendance being counted for purposes of satisfying the new Quorum requirement of 50% +1 of the number of Elected Delegate positions.

*Proposed HOD Agenda Item
Respectfully submitted by:*

**DANNY LANG, OSB #79007
HOD Delegate - 2008-2011**

RECEIVED

OCT 08 2013

Oregon State Bar
Executive Director

Law Offices
BUTLER & LOONEY, P.C.

Charles W. Swan 1900-1994
Rob't. D. Butler
H. Clifford Looney
R. David Butler II*
*Admitted in OR & ID

www.butlerlooney.com

Fax (541) 473-3731
292 Main St. S.
PO Box 430
Vale, Oregon 97918
Phone (541) 473-3111
E-mail: cliff@butlerlooney.com

October 4, 2013

OSB BOARD OF GOVERNORS
C/O CAMILLE GREENE
P O BOX 231935
TIGARD OR 97281

OSB CLE DEPARTMENT
P O BOX 231935
TIGARD OR 97281

Subject: Is Your Client Disabled? CLE Seminar held October 3, 2013

Dear Ladies and Gentlemen:

Please find enclosed a copy of the email advertisement that came to us in Vale, Oregon regarding this disability program. Please note that it advertises the matter as being free for those who can attend who have a CLEasy Pass but still charges those who cannot attend.

This is once again our bar association making it more difficult for those of us who live in the hinterlands to participate and receive the benefit off our bar membership. The highly touted pass that we buy every year is certainly less meaningful and less valuable when we are asked to pay for something that the people in Portland and the Portland area do not have to pay for. Is there a rational basis for this distinction?

The fees have increased and the cooperation has decreased. We used to have seminars available in Vale. Our ability to put those seminars on has now been terminated by the CLE Department. Is there a rational basis?

Very truly yours,

BUTLER & LOONEY, P.C.


H. Clifford Looney

HCL:mah
Enclosure

Main Identity

From: "OSB Continuing Legal Education" <cle@osbar.org>
To: <cliff@butlerlooney.com>
Sent: Tuesday, October 01, 2013 10:21 AM
Subject: OSB CLE – Social Security Disability Benefits – Oct. 3 - OSB 660734



Upcoming Seminars

Click title for brochure

**Elder Law 2013:
Basics to Build On**
October 4, 2013

**Government Law
Updates—Fall 2013**
October 4, 2013

Broadbrush Taxation
October 11, 2013

**Fundamentals of
Oregon Civil Trial
Procedure**
October 17–18, 2013

**The 15th Annual
Oregon Trial Advocacy
College**
October 24–25, 2013

**Deposition Techniques
and Strategy with
David Markowitz**
October 31, 2013

**Handling a VA Service
Connected Disability
Claim**
November 14, 2013

**The State of the
Constitutions: New
Developments in
Federal and State
Constitutional Law**
November 22, 2013



Is Your Client Disabled?

Cosponsored by the Disability Law Section
9 a.m.–10 a.m., Thursday, October 3, 2013
Oregon State Bar Center, Tigard
1 General CLE or Access to Justice credit

Registration:

Tuition-free or 50% off live seminar or video replay registration with a CLEasy Pass—[click here](#) for Easy Pass info

\$50 OSB Member

\$70 Non-OSB Member

\$20 discount for Disability Law Section members

Tigard seminar registration—[Click here](#)
Brochure and registration form—[Click here](#)
Live webcast registration—[Click here](#)

Electronic course materials are included with registration. Print materials are available for a nominal charge.

Can't attend the live seminar or webcast? [Click here](#) to register for the webcast and watch an archived video of the seminar at your convenience. The archived video will be available two weeks after the live webcast, and you will have access for more than a month. Use your OSB CLEasy Pass to save 30%!

Seminar Description:

Have you wondered about Social Security disability benefits and whether clients you represent on other matters may be entitled to these? Would you like to understand better who is eligible, how long it takes, and what the process is? Then this seminar is for you. This concise presentation will provide an overview of Social Security disability benefits, both SSI and SSD. Learn about the process, including the application, reconsideration, appeal, and the five-step process of evaluation. Gain ten tips to improve the chance of receiving insurance benefits, and discover the biggest mistakes

claimants make.

For more information about the wide range of live and on demand OSB CLE seminars, please **click here**.

Oregon State Bar CLE Seminars
www.osbarcle.org
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935
OSB CLE Service Center: (503) 431-6413 or
toll-free (800) 452-8260, ext. 413

OSB Members: If you do not wish to receive e-mail notification of upcoming OSB CLE seminars and events, please log in to your account on the bar's website and change your preferences for Seminar Brochures & Notices on your Communication Preferences page. **Non-OSB Members:** If you do not wish to receive email notification of upcoming OSB CLE seminars, events, and promotions, please reply to this email with the word "unsubscribe."

October 29, 2013

H. Clifford Looney
Butler & Looney PC
PO Box 430
Vale, OR 97918

Re: OSB CLEasy Pass and Video Replay Sites

Dear Mr. Looney:

Please accept my apologies for my delay in responding to your October 4, 2013 letter expressing your concerns about CLE Seminars pricing and availability.


The Easy Pass (and its predecessor, the Season Ticket) is a subscription plan primarily for attending live seminars and video replays. I appreciate that the closure of the Vale video replay site may suggest a lack of concern for our rural members. On the contrary, it was necessitated by changing demands for CLE delivery and our obligation to operate the CLE Seminars program on as nearly a break-even basis as possible.

In locations where there is no video replay site, members have the option of utilizing a DVD rental to view the seminar. The rental would count as one of the firm's ten Easy Pass uses, and the viewers would have three weeks to screen the seminar. This option costs you no more than live attendance.

The Easy Pass differs from the prior Season Ticket, which allowed unlimited usage. The original format worked well in the days of high demand for live programs and group video replays. As more attorneys turn to online and on-demand seminars, restructuring the CLE subscription plan makes the best use of bar resources while still offering discounts and meeting the demands of the market. The new Easy Pass costs \$150 less, includes ten tuition-free registrations (or rental-replays), and increased discounts for CLE products.

There may be other ways for you and your firm to make the best use of your Easy Pass, and I encourage you to contact the CLE Seminar Director, Karen Lee (klee@osbar.org or 800-452-8260, ext. 382), to discuss the available options.

Sincerely,



Sylvia S. Stevens, Executive Director
ssstevens@osbar.org
(800) 452-8260, ext. 359

cc: OSB Board of Governors
Karen Lee, CLE Seminars
16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon 97281-1935
(503) 620-0222 toll-free in Oregon (800) 452-8260 fax (503) 684-1366



OAJC
OREGON AREA
JEWISH COMMITTEE

RECEIVED

OCT 28 2013

Oregon State Bar
Executive Director

7410 SW Oleson Rd.
PMB #190
Portland, OR 97223 - 9425
503-295-6761 (Office)
503-497-9054 (Fax)
info@OAJCOnline.org
www.OAJCOnline.org

10/23/2013

Sylvia Stevens
Oregon State Bar Association
PO Box 231935
Tigard, OR 97281

President
Elise Brickner-Schulz

President Elect
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Jerry Eckstein

Secretary
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Roy Lambert
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Susan Marcus
Brad Pearlman
Alix Rosenbaum Dyke
Helen Spector
Eliana Temkin

Executive Director
Joanne Van Ness Menashe

Through Jewish values, the Oregon Area Jewish Committee advances social justice, human rights, religious liberty, support for Israel, mutual understanding, and democratic principles. OAJC aspires to be the area's Jewish ambassador to the community at large.

Dear Sylvia,

On Behalf of the Oregon Area Jewish Committee, I would like to extend our thanks to you for attending OAJC's 2013 Human Relations Award Dinner honoring Kaiser Permanente. The Human Relations Award honors business leaders and corporations who, with their skills, influence, and dedication, have demonstrated their profound commitment to our community and social justice.

Our speakers for the evening focused on themes of health, community and Tikkun Olam (repairing or healing the world). Dr. Bruce Goldberg spoke eloquently about Oregon's successful venture into healthcare reform and Dr. Jeffrey Weisz, who accepted the Human Relations Award on behalf of Kaiser Permanente, shared wonderful stories of his own experience with tikkun olam as well as Kaiser Permanente's rich history of building community and paving the way for community healthcare.

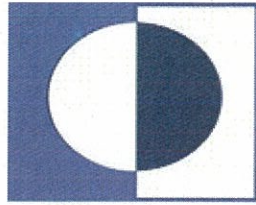
This event continues to play an important role in OAJC's efforts to advance social justice, build community and promote understanding in the Oregon and SW Washington region. Your generous contribution of \$400.00 received on August 06, 2013 is greatly appreciated. Your charitable deduction amount is \$240.00. Please save this for your tax records.

Co-Chairs Wally Van Valkenburg and Thomas Aschenbrener join us in thanking you for making the evening a success and we hope that you will continue to support OAJC and its programs in the future.

Thank you!

Sincerely,

Joanne Van Ness Menashe
Executive Director



OAPABA

OREGON ASIAN PACIFIC
AMERICAN BAR ASSOCIATION

October 3, 2013

Oregon State Bar Board of Governors
c/o Mr. Tom Kranovich
Kranovich & Lucero LLC
4949 Meadows Road, Suite 630
Lake Oswego, OR 97035

Dear Mr. Kranovich:

On behalf of the Oregon Asian Pacific American Bar Association, thank you for sending such a large delegation to our 2013 gala dinner. We greatly appreciated your attendance and support.

Your generosity and that of other supporters helped us raise funds which will be used to further our mission of advancement, advocacy, and communication among attorneys with diverse backgrounds, and within our communities and in government.

For your records, our tax identification number is 27-0243410.

Thank you again and we hope we can count on your support again in the coming years.

Sincerely,

Toan Nguyen
Gala Dinner Committee Co-chair

Karen M.T. Nashiwa
Gala Dinner Committee Co-chair

OCT - 8 2013

THE 3L FEBRUARY BAR EXAM: AN EXPERIMENT UNDER WAY IN ARIZONA

by Sally Rider and Marc Miller

On December 10, 2012, the Arizona Supreme Court adopted a rule, on an experimental basis through 2015, allowing law school students to take the bar examination in their third year of law school. This article describes the process, initiated by several faculty members at the University of Arizona James E. Rogers College of Law (“Arizona Law”), which culminated in a rule change that we feel will not only benefit students but also improve legal education in Arizona.

THE INITIAL IMPETUS FOR THE IDEA

In the summer of 2011, several faculty members at Arizona Law began to investigate whether it might be feasible to allow students to take the Arizona Bar Examination in February of their third year of law school.¹ We see the February bar exam option for third-year students as a unique opportunity to address some of the biggest challenges facing law schools and law school graduates today: the cost of legal education, an increasingly complex and tight job market, the persistent critique that law schools do not pay enough attention to producing graduates who are ready to practice law, and doubts about the distinctive purpose and value of the third year of law school. The February bar exam option would offer the following benefits:

- **A Jump Start on Practice:** Allowing students to take the bar exam before graduation will effectively decrease the cost of entering the profession because students who pass the February exam will be eligible to become

members of the bar and begin to practice some five months earlier than those who take the bar exam in July. We expect that many students will want to follow the traditional path of the July bar exam. But for those students who want to begin practice sooner—and for whom taking the July bar exam means incurring additional debt, or working when they might otherwise be studying for the exam—the February bar exam is a practical option.

- **Increased Employment Opportunities:** As the job market for law school graduates and experienced attorneys has significantly tightened over the last several years, more employers now require that those they hire be already admitted to the bar. For students pursuing those jobs, being admitted to the bar earlier would give them an advantage in their job search. Arizona’s adoption of the Uniform Bar Examination (UBE), which provides a score portable to other UBE jurisdictions, also increases the out-of-the-gate job options for Arizona graduates. Finally, students who take the February bar exam in Arizona could then also take another bar exam in July in a non-UBE jurisdiction (such as, for instance, California, Texas, or New York), potentially making them eligible to practice in even more jurisdictions right away and increasing their marketability.
- **Graduates More Ready for the Full Range of Legal Jobs:** We saw an opportunity to

respond to the persistent critiques that law schools do not do as much as they could to prepare graduates for many practice areas, and that the third year of law school does not have a coherent role in legal education. These critiques are joined by the idea that the third year of law school could be better focused on transitioning students from theory to practice, and that doing so would require settings, materials, and teaching methods different from those provided by traditional semester-long classes. Early examination presents the opportunity to develop a new curricular approach that would benefit not only February exam takers but other upper-level students as well. While curricular and educational reform would be possible in theory without the February bar exam option, that option provides a powerful lever to drive substantial educational reforms. The challenge of retooling the traditional curriculum to emphasize experiential learning and facilitate the transition from law school to law practice became a major driver for many of those who championed the February exam rule change.

In her President's Page in the August 2009 edition of this publication, Erica Moeser expressed her opinion that the courts, bar admission agencies, and legal educators should "revisit the matter of allowing students to sit for the bar examination during their final semester of law school," stating the benefits to graduates and the opportunities for curricular reform cited above.² In Arizona, we have taken up President Moeser's challenge.

RESEARCHING EARLY EXAMINATION IN OTHER STATES SPURS FURTHER IDEAS

We began our inquiry by looking into whether any other states allow early examination for students in

their third year of law school. While we discovered that many states allow students under some circumstances to take the bar exam prior to receiving their J.D. degrees, none made it practical for students to sit for the bar in February of their third year. For instance, in a handful of jurisdictions, students are eligible to take the bar exam prior to graduation if they are expected to receive their degrees within a certain number of days after the examination (e.g., within 30, 45, or 60 days—none of which would allow testing in February for May graduates), or if they have completed all work required for graduation but their degrees may not have been conferred. West Virginia allows only third-year students who will be on active-duty deployment overseas at the time of the July bar exam to sit for the February bar exam.³ As we discussed this proposal with colleagues, however, we discovered that the February bar exam option had apparently once been available in several states, and more recently in Georgia.

The Georgia experience was highly instructive. For many years, up until the mid-1990s, students attending Georgia law schools could sit for the bar exam during February of their third year. But 20 years ago Georgia law schools supported a rule change requested by the Georgia Board of Bar Examiners to discontinue the early bar exam. Those law schools reported that students sitting for the bar exam in February were neglecting their studies, that it was disruptive to the third-year curriculum, and that such students missed out on clinical experiences.

The Georgia experience emphasized the need to carefully think through curricular changes to accommodate bar preparation, alternative course scheduling, and clinic participation. In considering each of these issues, we began to realize another opportunity presented by the February bar exam: creating a two-month window during the third year when our students could devote themselves full-time to preparing to take the bar exam.

Although graduates at Arizona Law typically have a very high pass rate, we have never had an opportunity to offer our students this sort of structured support for bar preparation while they are still students. After graduation, we expect our students to devote sufficient time and attention to bar exam study. But for students who take the February bar exam, we could effectively build that time into the curriculum.

THE BENCH WEIGHS IN

We began to detail a plan that would modify the bar exam rule and decided that we should consult with the members of the Arizona Supreme Court, which would ultimately act on a rule change petition. We wanted to get a sense of the justices' reactions to the idea before approaching the deans of the other two law schools in Arizona.

One of the joys of teaching at a law school in Arizona is that the members of the Supreme Court are accessible. When we called Chief Justice Rebecca White Berch's chambers to see about scheduling a meeting, she offered to meet us somewhere south of Phoenix so that we would not have to drive two hours from Tucson to the Court building. (We drove to the Court!)

Chief Justice Berch has served on the Arizona Supreme Court since 2002 and as Chief Justice since 2009. She has long been involved in legal education and bar admissions in her work with the American Bar Association, the National Conference of Bar Examiners, and the U.S. Conference of Chief Justices. She was one of the moving forces in Arizona's adoption of the UBE. With her background, we knew that she would immediately recognize the possibilities of the February bar exam idea but could also identify potential pitfalls and practical difficulties.

Chief Justice Berch was intrigued as we outlined our plan. Although she had many questions, she

clearly saw how and why this might be done. She encouraged us to speak with her colleagues on the Court and with the other law school deans. Each of the members of the Court was willing to hear our preliminary proposal, although none of the justices endorsed the idea outright. The justices made helpful suggestions about whom we might consult among Court staff to get new thoughts about how the plan might be put into operation.

COLLABORATION WITH THE OTHER ARIZONA LAW SCHOOLS

Our next step was to talk with the deans at Arizona State University Sandra Day O'Connor College of Law and Phoenix School of Law to determine whether petitioning to amend the rule would be a joint effort. The collegial nature of our relationships with our sister schools made this outreach easy, and within days, both deans affirmed their interest. Together, we began drafting a rule change petition.

Concurrently, we met as a group with our colleagues at Arizona Law. For some time, we had been talking with faculty, staff, and students in the hallways and at faculty lunches about early examination. In November 2011 we held a formal discussion on the proposal at a faculty meeting, suggesting an incremental approach to any curricular changes. The faculty enthusiastically endorsed the idea of petitioning to change the rule, adding a motion that if the petition was adopted by the Arizona Supreme Court, instead of incremental curricular reforms, the law school should dramatically change the third-year curriculum for students opting to take the February bar exam—and, in doing so, use the reform to benefit all Arizona Law students.

Many faculty members saw the potential for changes that could improve our students' education by incorporating more experiential learning into the curriculum. In addition to the faculty discussions,

we also consulted with members of the bench and bar and with some of our students. Although there were many questions about how and why we might pursue this rule change, most everyone we spoke to was intrigued by the idea.

A PETITION IS FILED

On January 5, 2012, we filed a petition with the Arizona Supreme Court on behalf of all three Arizona law schools. The petition sought to change Arizona Supreme Court Rule 34(b), Application for Admission, Applicant Requirements and Qualifications, to allow an applicant to sit for the bar examination, on a conditional basis, if the applicant submitted "a certification from the law school from which the applicant expects to obtain a juris doctor that the applicant is currently enrolled in a course of study, which, if satisfactorily completed, will result in graduation within 120 days following administration of the bar examination" The proposal was constructed so that each law school retained discretion in determining the criteria used to certify its students. The petition was open for public comment from January through May 2012.

While the petition was pending for comment, we worked with the State Bar of Arizona as it considered whether to file a comment on the proposal. Again, most members of the bar immediately saw the upside to allowing third-year students to take the bar exam in February, but they had many questions, for which we had ready answers. (See the sidebar on this page for some of the key questions.)

As we engaged in discussions about these and other questions, most members of the legal community became more excited about the possibilities. The exception seemed to be the few people who thought that students need doctrinal studies for all three years in order to gain the best legal

Questions from Members of the State Bar of Arizona

Question: How can students possibly study for the bar exam while juggling the demands of law school?

Answer: Students who opt to take the February bar exam in their third year will not take regular classes in January or February of that year, when they are studying for the bar and likely taking a commercial bar review course. Instead, we plan to design a curriculum that will require students who take the February bar exam to enroll in only one course during January and February that, for most students, will be integrated with their bar exam preparation and focused on short writing assignments geared toward subjects on the bar exam.⁵

Question: How will you keep them engaged once they have taken the bar?

Answer: The curriculum redesign will result in a series of capstone, experiential courses that focus on the transition from theory to practice. In providing these courses, we will be asking our students to be more practitioner than student—doing things and learning things that will smooth their immediate transition into practice and give them more confidence and more connection to the bench and bar. We hope to re-create the excitement of the first semester of law school. As a small law school that is highly responsive to individual students, we have the capacity to engage our students in this new way.

Question: If the same idea failed in Georgia, what makes you think it will work here?

Answer: Georgia's experience gives us valuable insight into how thoughtfully an early bar exam option must be planned and delivered. In Georgia, students were allowed to take the February bar exam, but the schools were not the source of that rule and made no curricular accommodation. Hence, Georgia schools found it disruptive to their regular third-year curricula. Here, we are building the curriculum—substantively and practically—to support students who take the February bar exam.

education. They saw this proposal as some sort of gimmick rather than a real effort to address the cost of legal education, the more competitive employment environment, and complaints from employers and consumers that students are graduating without some fundamental lawyering skills, including a better understanding of the economics of law practice. We appreciate the very real reservations that these individuals expressed and hope that the proof will be in the careful way in which we are implementing the transition to the February bar exam.

COMMENTS TO THE PETITION ARE FILED

After considering the petition, the State Bar filed a comment in support of the change. The response noted the number of states (14 states in 2012) that currently allow third-year students to take the bar exam prior to graduation (albeit under limited circumstances) and discussed the Georgia experience at length. The Bar's comment contrasted the Georgia experience, which resulted in law schools in Georgia supporting the Georgia Board of Bar Examiners' request that third-year access to the February bar exam be eliminated, with the thoughtful plan proposed by the three Arizona law schools.⁶

Two other comments were filed in strong support of the petition: one by a recent graduate of Arizona Law and the other by Arizona Law's Student Bar Association. The only negative comment was filed by the Arizona Supreme Court Attorney Regulation Advisory Committee (ARC). Essentially, ARC members were concerned about 1) the curtailment of the Arizona Supreme Court's oversight of bar admission candidates, 2) the risk of compromising students' ability to study for the bar exam while in school, 3) the negative experience of law schools in Georgia and other states that had allowed early testing, and 4) the fact that early passage of the bar exam would not guarantee immediate admission to

the bar. The schools filed a response to ARC's comment, explaining that the petition sought to address each of the potential pitfalls raised by ARC.

THE COURT CONSIDERS THE PETITION

On August 31, 2012, after having continued its consideration of the petition, the Arizona Supreme Court posed a series of questions. The questions included whether the three Arizona schools would use the same criteria for certification of students, whether students attending out-of-state schools would be eligible, the effect of early examination on agreements with reciprocal jurisdictions, and what the experience of other states could add. (See the sidebar on page 20 for the complete list of questions.)

The Court asked that representatives of the three Arizona law schools, the State Bar, and ARC work together in order to respond to the Court's questions by November 9, 2012, so that the Court could consider the petition at a December meeting. A working group of representatives from the law schools, the State Bar, ARC, and Court staff met over the next several weeks. The working group discussed the petition, the Court's questions, and practical issues regarding implementation. It also identified and attempted to resolve concerns relating to substantive, technical, and practical issues raised by the petition.

As a result of the working group discussions, Arizona Law and the Sandra Day O'Connor College of Law at Arizona State University submitted a response to the Court that included answers to the Court's questions, a revised proposal, a draft application for early examination (in the form of an affidavit to be filled out by the school attesting that the student fulfills the educational requirements listed below), and a short description of the curricular changes being considered by the law schools.⁷

Arizona Supreme Court Notification and Questions

The Court has continued its consideration of the petition to amend Rule 34, Rules of the Supreme Court (R-12-0002), which would allow law students to take the uniform bar examination if they are currently enrolled in a course of study that will result in graduation within 120 days following the examination. The Court would like additional information regarding the details of the law schools' plans for their proposal. Specifically, the Court seeks answers to the following questions:

1. Do the three Arizona law schools plan to have a uniform set of criteria for certification of students? If not, why not?
2. What criteria will be used to determine whether a student qualifies for certification to take the bar examination?
3. Should students certified by out-of-state ABA-approved law schools be eligible to take the early bar examination in Arizona? If so, should the criteria for both in-state and out-of-state student eligibility be uniform?
4. If this program is not available to all those attending ABA-accredited schools, would the proposal favor students attending school in Arizona, whether or not they are from Arizona, and disfavor those (including Arizona residents) who do not attend school in Arizona? Is this a problem?
5. If the program is open to all those who attend ABA-accredited schools, must they be candidates for a J.D. degree? What about students working toward an LL.M. degree? What about those who transfer or visit from non-ABA-accredited schools?
6. Who will be responsible for monitoring the program requirements and criteria for out-of-state law schools?
7. How will the criteria for out-of-state student eligibility be enforced?
8. If, as the comment from the Attorney Regulation Advisory Committee notes, some jurisdictions do not currently recognize bar examinations taken before a degree is conferred, will that affect Arizona's agreements with reciprocal jurisdictions?
9. Many other states that have permitted early testing have much tighter standards (e.g., Texas allows students who are within four credit hours of graduation to take the exam, and six other jurisdictions allow exams to be taken only 30 to 60 days before graduation). Why does the proposal use 120 days?
10. What information can the heads of bar examinations in those states that have adopted an early examination program provide regarding how the program is working?

The Court requests that representatives of the Arizona law schools, the State Bar, and the Attorney Regulation Advisory Committee meet and develop a plan to provide this information to the Court by November 9, 2012, so that the Court can consider the matter at a December Rules Agenda.

Source: E-mail from Ellen Crowley, Chief Staff Attorney, Arizona Supreme Court (Aug. 31, 2012).

While the original proposal would have allowed each law school the discretion to determine the criteria used to certify its students to sit for the February bar exam, the revised proposal was much narrower. Students wishing to take the early bar exam would have to demonstrate

- current enrollment and good standing at an ABA-approved law school,
- expected graduation within 120 days of the administration of the bar exam,
- enrollment in a maximum of two credit hours (or equivalent) during the month of the exam and the preceding month,
- eight or fewer units needed to graduate at the time of administration of the exam, and
- academic preparedness for early testing, as attested to by the school.

Representatives of the two law schools also appeared at an ARC meeting to discuss the proposal as revised. After that meeting, ARC filed a letter with the Court reversing its earlier position and recommending approval of the revised proposal on a provisional basis, albeit with some reservations. (Three ARC members who did not attend the meeting later filed a letter with the Court noting that they would have voted against recommending approval of the revised proposal.)

THE COURT ISSUES AN ORDER AMENDING RULE 34

On December 10, 2012, the Arizona Supreme Court issued an order amending Rule 34, Rules of the Supreme Court, "effective January 1, 2013[,] until December 31, 2015," and requiring the law schools and ARC to file reports with the Court on the early examination process by November 1, 2015. (See the

sidebar on page 22 for the rule.) The amended rule incorporates the criteria in the amended proposal and requires an applicant wishing to sit for early examination to submit an affidavit "attested to by the applicant and the law school" that he or she meets the criteria for early examination. The rule provides that a "law school's decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee [on Character and Fitness] or the Court."⁸

The amended rule further provides, in line with the criteria in the amended proposal, that applicants may not be recommended for admission to the bar until they have graduated and completed all other admission requirements. Examination scores will not be released until the applicant provides proof of graduation within 120 days of exam administration. If the applicant fails to graduate within 120 days of the first day of the exam administration, or fails to cause the law school to submit proof of graduation within 60 days after graduation, the early exam scores will be void, but the examination shall count as an examination attempt.

THE AMBITIOUS CURRICULAR REFORMS EMERGE

While working through the rule change process, we were simultaneously planning a new theory-to-practice curriculum. In the summer of 2012, we convened an Advisory Committee led by Professor Susan Salmon, Assistant Director of Arizona Law's highly respected legal writing program, and including other faculty, recent graduates, seasoned practitioners (solo and large-firm, litigators, and transactional lawyers), a representative of the State Bar, judges, and students. Our aim was to engage diverse perspectives to counsel the law schools on what a theory-to-practice curriculum *should* look like in

Excerpts from Arizona Supreme Court Rule 34, Application for Admission

Rule 34. Application for Admission

....

2. An applicant may be allowed to sit for the Arizona uniform bar examination prior to the award of a juris doctor degree if the applicant:
 - A. is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association;
 - B. is expected to graduate with a juris doctor degree within one hundred twenty (120) days of the first day of early exam administration;
 - C. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent in quarter hours at the time of early exam administration;
 - D. will not be enrolled in more than two (2) semester hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month;
 - E. has been determined by their school to be academically prepared for early testing;
 - F. provides by the deadline to the Committee on Character and Fitness, on a form provided by the Committee, an affidavit attested to by the applicant and the law school that they meet the above criteria. The law school's decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee or the Court.

No applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a juris doctor within one hundred twenty (120) days of the first day of early exam administration, all parts of the Arizona uniform bar examination, including the score, are void and the applicant's examination scores shall not be disclose[d] for any purpose. Scores may not be released until such time as satisfactory proof of award of juris doctor, as determined by the Court, is provided to the Committee. An early examination which is voided shall count as an examination attempt under Rule 35(c)(1).

At the completion of the juris doctor requirements and within sixty (60) days after graduation, the applicant must cause his or her law school, dean, or registrar to submit to the Committee on Character and Fitness proof of graduation, showing his or her juris doctor was conferred within one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination and provide evidence of graduation within an additional sixty (60) days shall render the applicant's score void.

....

Source: Supreme Court of Arizona, Sup. Ct. R. 34, Rules for Admission of Applicants to the Practice of Law in Arizona, as Amended, Effective January 1, 2013, Application for Admission.

order to help our graduates be more practice-ready upon graduation.

This Advisory Committee met a number of times during the summer and fall of 2012, breaking down into subgroups for particular subject-matter areas. The overriding goal was to ensure that all of the classes would focus heavily on experiential learning, address needs identified by the working group, and include an ethics and professionalism component. The curriculum discussions continued through the fall, when the members of the working group developed outlines for a number of courses that might be offered.

In late fall 2012, another Arizona Law faculty member, Professor Robert Williams, agreed to take the materials that Professor Salmon's Advisory Committee had produced and outline a series of classes that could be considered by the Curriculum Committee and the faculty. (The Curriculum Committee is a standing faculty committee with authority to review and recommend denial or approval of all curricular matters.) Those classes included a number of capstone courses focused on professionalism and law practice, transactional practice in a variety of areas, and litigation practice skills. In addition, there would be a series of electives offered on a compressed schedule and emphasizing experiential learning, including both in-house and placement clinical opportunities. The capstone courses would be open to all third-year students, although early bar-takers would receive priority enrollment. The compressed electives would be open to all upper-level students.

The February bar exam curricular reform proposals have led to reassessment of the entire law school experience, including the integration of a wider range of experiential and "real world" learning opportunities throughout the curriculum and

throughout each student's law school experience. These include a variety of clinical and externship opportunities, innovative classroom approaches, and more pervasive conversations about client needs, document drafting, attention to the economics of legal practice, and a focus on the range of "soft" skills that a lawyer needs to succeed in a wide range of practice settings.

CONCLUSION

The Code of Recommended Standards for Bar Examiners (as adopted in 1987 and published annually in the *Comprehensive Guide to Bar Admission Requirements*) provides that "[e]ach applicant should be required to have completed all requirements for graduation with a J.D. or LL.B. degree from a law school approved by the American Bar Association before being eligible to take a bar examination . . ."⁹ We hope that our experience with early bar exam administration in Arizona can influence rethinking of this recommendation.

We recognize that the Arizona 3L February bar exam experiment is just one illustration of the larger challenge that law schools and the legal profession face in responding not only to changing times, but to times that are likely to continue to change for the foreseeable future. One of the most notable aspects of this experiment is that it required not only a good idea and the internal efforts at one school, but the collaboration of three law schools, the State Bar, lawyers throughout the state, and a state Supreme Court open to innovation.

As with all good ideas, the devil is in the details. We have come a very long way from our first discussions about early bar examination and a theory-to-practice curriculum. As we begin the 2013–2014 school year and welcome the first group of 3L February bar examinees, we are moving from

trepidation to excitement in creating new opportunities for our students, leading the way in improving legal education, and demonstrating that the early bar option is an innovative way to help our students transition from theory to ethical and effective practice. ■

NOTES

1. The idea began with conversations between Professor Gabriel (Jack) Chin, now at the University of California, Davis, who first asked why medical students should be able to take their licensing exams during medical school but law students could not, and Professor Marc Miller (now Dean of Arizona Law). Dean Miller had been thinking about curriculum and program reforms that would provide a better transition from theory to practice; provide more exposure to clients, documents, and actual challenges faced by lawyers in a wide range of settings; and give coherence to the third year of law school. Professor Sally Rider, Associate Dean for Administration, Chief of Staff, and Director of the William H. Rehnquist Center on the Constitutional Structures of Government at Arizona Law, enthusiastically joined the conversation and led the discussions with Court administrators and other institutional representatives in the process described in this article.
2. Erica Moeser, *President's Page*, 78(3) THE BAR EXAMINER 4 (August 2009).
3. See NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS (National Conference of Bar Examiners and American Bar Association 2013), available at http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf, at 1, Chart 1: Basic Information.
4. Petition to Amend Rule 34, Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed January 5, 2012).
5. Offering bar preparation courses for credit was enabled in 2004 by the repeal of former Standard 302(f) of the ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, which had prohibited such offerings. Although the repeal was initially accompanied by Interpretation 302-7, which restricted the use of the credit (prohibiting such credit from being counted toward the minimum requirements for graduation, and prohibiting law schools from requiring successful completion of a bar prep course as a condition of graduation), Interpretation 302-7 was repealed in 2008, allowing law schools to offer bar preparation courses for credit without any restrictions on the use of the credit earned.
6. Comment of the State Bar of Arizona on Petition to Amend Rule 34 of the Arizona Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed May 7, 2012).
7. Supplemental Information Regarding Early Bar Proposal, Petition to Amend Rule 34, Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed November 8, 2012).
8. Order Amending Rule 34, Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed December 10, 2012).
9. *Supra* note 3, Code of Recommended Standards for Bar Examiners, Section II, Paragraph 6. The Code of Recommended Standards for Bar Examiners is a series of recommendations to the state authorities who are responsible for admission to the bar, and to lawyers and law schools generally. It was adopted by the policy-making bodies of the American Bar Association, the National Conference of Bar Examiners, and the Association of American Law Schools.



SALLY RIDER is Associate Dean for Administration and Chief of Staff at the University of Arizona James E. Rogers College of Law, and Director of the William H. Rehnquist Center on the Constitutional Structures of Government.



MARC MILLER is Dean and Ralph W. Bilby Professor at the University of Arizona James E. Rogers College of Law.



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ABA Task Force on the Future of Legal Education issues draft report on proposed reforms to pricing, accrediting and licensing

CHICAGO, Sept. 20, 2013 — Stating that the system of legal education in the United States is widely admired around the world but faces serious challenges, the [American Bar Association Task Force on the Future of Legal Education](#) today issued its [draft report](#) with recommendations.

Key proposals call for changes in the pricing of legal education, liberalizing or eliminating certain accreditation standards, and speeding the pace of innovation and practical-skills training at law schools. The draft also calls on courts and bar authorities to devise new frameworks for licensing legal service providers.

“The Task Force believes that if the participants in legal education continue to act in good faith on the recommendations presented here, with an appreciation of the urgency of coordinated change, significant benefits for students, society, and the system of legal education can be brought about quickly, and a foundation can be established for continuous adaptation and improvement,” the draft report states.

The Task Force is soliciting public comment on the draft that will help the panel prepare a final report for consideration by the ABA House of Delegates. Neither the draft report nor the final report represents the policy or positions of the ABA.

“While the Task Force is not finished with its work, this draft report represents our effort thus far to formulate solid proposals to ensure that legal education in the United States remains viable in light of substantial economic and structural changes,” said Task Force Chair Randall T. Shepard, former chief justice of the Indiana Supreme Court.

“We look forward to receiving additional public comment to supplement the hearings and comments process that we have conducted over the last year,” Shepard continued. “Our goal is to produce a final report that will be as comprehensive and effective as possible while taking into account all the views that came to our attention.”

Said ABA President James R. Silkenat: “Legal education in the United States is the best in the world, but it must continue to evolve to match the rapid changes that are taking place in legal practice in the United States. The Task Force’s draft report was informed by a thoroughly open process, which is important, given the gravity and complexity of the issues. The draft report represents the hard work and broad-based inquiry that ABA leadership expected from our insightful Task Force members, who represent a wide range of backgrounds and perspectives.

“We are grateful for the Task Force’s continuing efforts under the leadership of Justice Shepard,” Silkenat continued. “Thanks to the Task Force’s work, the legal community will be able to have a full, engaged discussion with all stakeholders concerning the future of legal education. This is a topic that is critical to our profession and essential to the delivery of legal services in the United States.”

The Task Force was commissioned in July 2012 by then-ABA President Wm. T. (Bill) Robinson III and supported by ABA leadership, including Silkenat and Immediate Past President Laurel G. Bellows.

To prepare the draft report and recommendations, the Task Force reviewed literature on problems and solutions. It met throughout the year to review and test potential solutions, accelerating its original timetable in light of the seriousness of the developing challenges to legal education in the United States.

The Task Force solicited written comments from interested parties starting in September 2012, held two public hearings and conducted a webcasted mini-conference in April 2013, to which various knowledgeable parties were invited to share information and perspectives.

In addition, the Task Force chair met with the leadership of the Association of American Law Schools and conducted a forum for deans of ABA-approved law schools. The chair and other Task Force members held forums at the annual meeting of the Council on Higher Education Accreditation and the Conference of Chief Justices.

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The report is available online [here](#), or at the [Task Force website](#).

With nearly 400,000 members, the American Bar Association is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. To review our privacy statement [click here](#). Follow the latest ABA news at www.ambar.org/news and on Twitter [@ABANews](#).

This entry was posted on Fri Sep 20 01:00:00 CDT 2013 and filed under [News Releases](#) and [Section of Legal Education and Admissions to the Bar](#).

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President's Message

Legal Access Job Corps will place law grads in areas with unmet legal needs

Posted Oct 1, 2013 5:00 AM CDT

By James R. Silkenat



Photo of James R. Silkenat by Marc Hauser.

Our nation is facing a paradox involving access to justice. On the one hand, too many people with low and moderate incomes cannot find or afford a lawyer to defend their legal interests, no matter how urgent the issue. On the other hand, too many law graduates in recent years have found it difficult to gain the practical experience they need to enter practice effectively.

The American Bar Association is uniquely positioned to connect the unmet legal needs of our society and the unmet employment needs of our young lawyers. At my request, the ABA is convening a task force of experts in legal education, legal aid and legal service delivery to determine how we can help resolve both problems together.

The ABA Legal Access Job Corps Task Force is co-chaired by Chief Judge Eric Washington of the District of Columbia Court of Appeals, dean Patricia White of the University of Miami School of Law, and Atlanta lawyer Allan Tanenbaum, a longtime bar leader. The task force will propose possibilities for providing legal services to underserved populations while offering work and experience to lawyers who are now entering legal practice. As part of its work, the task force will review existing initiatives that may be adopted as national models.

One such program was recently launched in South Dakota, where the state bar president called the “Main Street attorney” an “endangered species.” Last March, Gov. Dennis Daugaard signed a rural attorney recruitment bill into law. Funded by state and local governments and the state bar, a pilot program will give new lawyers an annual subsidy to live and work outside the state’s biggest cities, provided they make a five-year commitment to their rural practices. The program is being compared to similar programs designed to attract doctors, nurses and dentists to rural areas.

Elsewhere, legal “incubator” and residency programs, hosted by law schools and bar associations, are providing good practical experience for recent law graduates who serve populations with unmet legal needs. The ABA Division for Legal Services provides descriptions of these programs at ambar.org/incubators.

Public interest models are also emerging. Lawyers for America, founded by the University of California’s Hastings College of the Law, provides two-year fellowships during students’ final year of law school and their first year as new lawyers. The University of Miami School of Law Legal Corps has shown tremendous success at placing recent law graduates in public sector organizations nationwide.

The ABA has long prepared lawyers to practice law and pursue successful legal careers. Both the ABA Law Student Division and Young Lawyers Division—along with the many ABA sections that cater to and involve law student and young lawyer members—nurture new lawyers’ entrepreneurial spirit and leadership potential, which is key to setting them apart from the competition in this difficult economy. The Career Center on the ABA website provides a job search database and collection of helpful articles and other resources from groups throughout the association.

Also without question is the ABA’s commitment to equal access to justice. The ABA has long been a national leader in its advocacy for legal aid funding, pro bono legal assistance and many other areas of support for those in need.

But we need to do more. The employment challenges of the new economy are now mixed in with the age-old challenge of providing access to justice for all. The responses by law schools, courts, bar associations and others create a laboratory setting that is worthy of our greatest attention.

Nobody denies that it will be tricky to navigate the many facets of a Legal Access Job Corps, including the issues of cost and sustainability. This should not keep us from seriously examining the issues and proposing workable solutions.

If we meet the challenges, the rewards are high. We will provide legal services to those who have been denied them by marshaling the considerable resources of lawyers who are just entering the legal profession. Through this win-win proposal, we hope to go a long way toward resolving the access-to-justice paradox.

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Paradigm Shift

Who's eating law firms' lunch?

Posted Oct 1, 2013 5:30 AM CDT

By Rachel Zahorsky and William D. Henderson



Illustration by Manzo/Shutterstock

Deanna Johnston had 30 minutes to spare. As vice president of litigation at Fireman's Fund Insurance Co., she and her busy team couldn't afford to waste time meeting with another typical legal vendor. But her boss, the general counsel, had insisted on this one.

Two hours later, Johnston hired the company to aid her outside counsel on a test basis to redo the discovery process: roughly 30,000 documents for a case two months before trial. The vendor's team of lawyers identified a missing key document and saved Johnston \$100,000 in outside lawyers' fees on the matter—even as she paid for repeat work—because the high level of organization and analysis of the thousands of documents so thoroughly and quickly prepped her team and the BigLaw lawyers for trial.

To date, Johnston says her relationship with Novus Law, the legal services company based in Chicago, has saved her an estimated 15 to 30 percent per case on outside counsel fees. With a single matter running Johnston nearly \$3 million, the dollar amount saved is substantial.

"They've become valued litigation partners; I don't view them as a vendor," Johnston says. "They're better than any contract review attorney and most junior associates, even at well-known firms. When you add in the pricing, it's an overall great value."

Johnston isn't the only corporate client seeking alternative legal service providers and partnerships over the sole reliance on traditional firms—at a hefty swipe at those firms' bottom lines. In fact in 2012, Novus Law claims, it saved another of its corporate clients nearly \$3 for every dollar spent on work originally tasked to another firm. For every \$3 it saved the client, Novus Law earned \$1 in fees.

That means the client's law firm lost \$4 for every dollar paid to Novus Law.

Or look at it this way: 2012 revenue for the top 100 U.S. firms totaled more than \$70 billion, according to American Lawyer magazine. Since the recession hit the legal profession in 2007, these firms have grown in headcount, often

through mergers and the absorption of lawyers from several law firm failures. But on a per-lawyer basis, revenue has been essentially flat.

Novus Law, by contrast, is tripling its revenue year over year. And as Novus and many other legal vendors snatch millions of dollars in work typically done by traditional law firms, the growth of the Am Law 100 could disappear completely.



Novus Law: Joe Kelly, Joanna Penn, Ray Bayley, Lois Haubold and Jerry Carter. Formed eight years ago, this Chicago-based legal services provider competes as well as partners with top law firms across the country. "What Novus does," notes Akin Gump litigation partner Shawn Hanson, "is return lawyers to being lawyers. Our younger lawyers are much more free with Novus, used thoughtfully and properly in real collaboration, to do what's great about being a lawyer." Photo by Wayne Slezak.

Nearly 80 percent of the work done by Novus Law attorneys is work large law firms would otherwise do, according to co-founders Ray Bayley and Lois Haubold. It reviews, manages and analyzes documents for large-scale litigation, and is poised to focus its technology and resources on drafting briefs and motions.

One should note that neither is a lawyer. Bayley served as managing partner of PricewaterhouseCoopers' North American business process outsourcing organization and sat on PwC's U.S. management committee; Haubold also was a PwC senior executive. Together they've launched and run several different entrepreneurial ventures and professional service firms. They are efficient and accurate masters of process.

"For the Fortune 500, we determined that somewhere between \$40 billion to \$50 billion a year is spent on work that we do," says Bayley, whose lawyers focus on complex litigation, which funnels in more dollars than any other aspect of the legal profession. Bayley contends that it's also the most inefficient area.

"More than half of that money is wasted on non-value-added spend," he notes.

"The legal profession focuses on inputs, number of people, hours and so forth, which is important if your revenue is driven by the billable hour," Bayley says. "Our model is based on outputs—how much we can produce in a given period of time while minimizing the cost of inputs and achieving world-class levels of quality."

To that end, client engagements are priced on a predictable budget, defect-free work product and timely delivery. The Novus One-Touch work process was part of the first-ever quality management system independently certified by the Underwriters Laboratories for use in the legal profession. In 2008, this resulted in Novus Law becoming the first nonlaw firm to win the InnovAction Award from the College of Law Practice Management.

Bayley and other legal service providers (some who've traditionally performed services for law firms, many who now deliver services in competition with them) who embrace technology and design and apply a scientific, process-driven methodology to this type of legal work offer an estimated \$25 billion savings opportunity for corporate America, he says.

With numbers like that, other legal service providers and new entrepreneurs aren't just eating BigLaw's lunch; they are eyeing breakfast and dinner as well. Most of this change has occurred under the radar as these new legal entrepreneurs started with so-called commodity legal work like document review. But why would they stop there?

VISIONS OF THE FUTURE NOW

While on his usual pilgrimage to the LegalTech New York show in January, Vermont Law School professor Oliver

Goodenough had an epiphany. In prior years he had been fascinated by the more than 200 competing vendors, which he viewed as legal support. But as he surveyed what he estimated to be \$20 billion to \$30 billion a year in commercial activity this winter, Goodenough says he realized that "this activity is legal work."

The companies appearing at LegalTech represent the next step in an evolution that originally produced large corporate law firms, Goodenough says. Those firms hit a hiring plateau as early as 2004. A data set called County Business Patterns, assembled and published by the U.S. Census Bureau, has the statistics.

In the category known as Offices of Lawyers, total employment in law offices peaked in 2004 and thereafter has declined by more than 50,000 as of March 2011. Between 2008 and 2011, total law office payroll has been completely flat at \$88 billion.

The category of All Other Legal Services was less than 1 percent of total legal services employment in 1998, but by 2010 had more than doubled to beyond 21,000 jobs—an annual growth rate of more than 6 percent. It now makes up nearly 2 percent of total legal industry employment.

Indeed, walking the floors of LegalTech revealed a burgeoning legal industry that included not only services but also products. We did some number-crunching for the 227 exhibitors at the 2013 show:

- 35 percent were offering services.
- 49 percent were offering products.
- 13 percent were offering both.

The primary product offering was software, typically to make legal work better, faster, cheaper or all three. Yet companies that make legal products such as software are unlikely to be included in the County Business Patterns census of the legal service employers. This suggests the boundaries of the legal industry are beginning to blur.

One thing is for sure—technology and law are the wave of the future.

This tech-driven approach to law is the growth area being targeted by some law schools and professors, ones like Vermont and Goodenough.

Goodenough expands on his LegalTech epiphany in a recently published *Chicago-Kent Law Review* article, noting that the traditional law firm "is no longer the best game in town for delivering high-quality legal service through scaling and flexibility. Rather, we are developing even more concentrated engines of efficiency and scale, often technologically enabled, in the new service companies like those on the floor of LegalTech. "Legal practice isn't going away," he continues. "It is just going to forms of delivery that can combine the competence and flexibility of an old-fashioned firm with the efficiency and scale of a just-in-time cloud-computing company."

WHERE THE JOBS ARE

That prediction may cause night sweats and denial among some longtime legal practitioners, but it's proven in the growing lists of legal services and product providers that are not law firms and the market share they are now vying for. It is also changing how hiring is done by these legal-not-law firms, and how some bright students are plotting their careers in law.

This past year, Goodenough negotiated with the trade show organizers to obtain discounted floor passes for some of his students. Of the eight students from his e-lawyering class who carpooled to Manhattan, three left the show with job interviews. One has already landed a job. (Remember, LegalTech is a trade show, not a job fair.)

While nearly half of recent law school graduates have yet to find jobs requiring a law degree, law students with technical training are finding themselves in demand.

Jerry Carter is a 34-year-old graduate of Indiana University's Maurer School of Law who recently joined Novus Law. A self-described middle-of-the-class student, Carter lacked the pedigree to gain notice by most high-end corporate law



Oliver Goodenough: "A technology-driven revolution is overturning how America practices law." Photo by Arnold Adler.



Photo of Jerry Carter by Wayne Slezak.

firms. However, because of his prelaw business and financial career, plus stints with Korean, Indian and Japanese law firms, the JD and MBA grad fielded (and eventually turned down) offers from foreign law firms, banking giants and U.S. hedge funds.

“Going into a law firm, you see an unbelievable amount of inefficiency,” Carter says. “At the firm in Korea, I’d be sent a text: ‘Jerry, check your email,’ and it would be 12 hours of work due in eight. Two other people may have already looked at it, but I had no idea of value added or the redundancy of work being done.

“I want to educate companies paying too much for legal services on a daily basis,” he says, “and continue innovation in this emerging market.”

According to Bayley, Carter is an ideal entry-level hire for Novus Law, which Bayley says offers new recruits significantly higher salaries than the \$60,000 median published by NALP for 2011 law graduates.

“Jerry has prelaw work experience at Toyota, where he learned Six Sigma and lean manufacturing,” Bayley says. “These are the same concepts and principles we apply to our legal work. Our entire business is organized around structured process management and quality control.”

The company also scooped up two other recent law grads: IU Law-trained Joanna Penn, 29, a former media relations coordinator in New York City and copywriter in China, and Joe Kelly, 31, who before attending Michigan State University College of Law worked as a computer programmer at a prominent media and technology company.

Kelly transmitted a copy of his law school transcript to his new employers, but no one at Novus Law cared. “Having top grades was just not relevant to our hiring decision,” says Bayley. “We wanted Joe for his interdisciplinary skills and passion for innovation.”

At MSU Law, Kelly experimented with data visualization in cutting-edge projects involving real-world data for external clients as part of the school’s ReInvent Law Laboratory, the brainchild of law professors Daniel Martin Katz and Renee Newman Knake. (See “[Legal Rebels—A Banner Year](#),” September, page 33.)

Bayley visited Katz’s quantitative methods class (part of the laboratory coursework), which he describes as “core to measuring and monitoring Novus Law’s work process and continuously improving quality.” Bayley’s team also committed to an annual recruiting trip to East Lansing, which fits with Katz’s long-term plan to place up to 25 students a year from his ReInvent Law Lab into the burgeoning law and technology field—almost 10 percent of each year’s graduating class.

Katz, an untenured junior professor, is betting his career on a massive technology and process-driven tidal wave that will fundamentally transform the legal profession and, thereby, legal education. And others are betting on him too.

In 2012, the Ewing Marion Kauffman Foundation, which specializes in entrepreneurship and education, supported Katz and Knake’s program—which proffers the tagline Law, Tech, Design, Delivery—with a \$150,000 grant.

The transition can also be observed through the careers of some of Goodenough’s students from the early ’90s who are now reaching midcareer. Kevin Colangelo, a ’94 grad of Vermont Law School, is a New York City lawyer who worked at several large law firms and co-chaired the outsourcing and technology transactions practice at Am Law 100 firm Kramer Levin Naftalis & Frankel.



Kevin Colangelo: "Once you thought about it, there was no principled reason why this pattern was going to exempt BigLaw." Photo by Arnold Adler.

"All of the lawyers in my area of practice observed the same relentless pattern of businesses gaining enormous efficiencies through technology and globalization; albeit the collateral effects were often massive employment dislocation," Colangelo says. "Once you thought about it, there was no principled reason why this pattern was going to exempt BigLaw."

To pre-empt the eventual outsourcing of his own career, Colangelo did something in 2006 that baffled his peers. He applied for a job as a business development manager for a fledgling legal process outsourcer called Pangea3.

The primary appeal was not the business model itself, but Colangelo's firsthand knowledge of Pangea3 co-CEO David Perla. During the early 2000s, Perla and Colangelo had been opposing counsel on a major mergers and acquisitions deal when Perla was general counsel at Monster.com. After the deal closed, the two became friends. A few years later, Perla also did the unthinkable and left the security of his high-profile job to start Pangea3.

Some may believe that if a paradigm shift is in the offing, it is only in the beginning stages. But if you look at the careers of Perla and co-founder Sanjay Kamlani, the shift is at least 10 years in the making. And their formative life experiences date back even further.

The duo were classmates at the University of Pennsylvania Law School in the early 1990s and after graduation, Kamlani served as Perla's tour guide on a leisure trip to India. Thereafter, they began what Perla called "parallel careers." Kamlani developed and managed PwC's India International Business Network and later became general counsel of OfficeTiger, one of the first companies at the center of the burgeoning industry of business process outsourcing. Perla joined Katten Muchin Zavis Rosenman.

When, at a 2003 dinner, Perla expressed his dissatisfaction with the limited menu of options for obtaining better and cheaper legal services, the two wondered whether the principles of outsourcing could disrupt and improve the staid U.S. corporate market.

Seven years later, they sold the resulting outsourcing venture, Pangea3, to Thomson Reuters in a deal a source close to it assured us was valued at nearly \$100 million.

WHAT NEW EMPLOYERS?

Looking at the County Business Patterns data set, a question arises: What employers make up the rapidly growing All Other Legal Services sector? While there is no definitive answer, we have many clues.

The Census Bureau aggregates payroll and headcount data to preserve the anonymity of companies. Yet the state-level data reveals surprising statistics: Delaware, Florida, Georgia, Missouri, New York, Ohio and Pennsylvania all have at least one All Other Legal Services employer with 500 to 999 employees. Of those with 100 to 499 employees, California has eight such employers; Florida, Illinois and Texas have two; and Connecticut, Indiana, Massachusetts, Minnesota, New Jersey, Ohio and Pennsylvania each have one.

Ron Friedmann, a law and technology consultant and former legal process outsourcing executive, helped generate a list of large alternative legal service providers now posted at ABAJournal.com. The majority of companies fell into three relatively blurry categories:

- Companies assembling teams for document review or other specialized legal projects.
- Legal process outsourcers, typically involving foreign labor.
- Companies specializing in predictive coding and other solutions involving technology and machine learning.

These companies also share one significant trait: As opposed to U.S. law firms, they all invite nonlawyer financing.

In the document review space, major players include Robert Half Legal, a division of Robert Half International, which is publicly traded on the New York Stock Exchange (ticker symbol: RHI); and Special Counsel, which has 36 U.S. locations and is owned by Adecco Group North America, a subsidiary of the Adecco Group, which is traded on the SIX Swiss Exchange (ticker symbol: ADEN).

Some domestic document review work, however, can be diverted to legal process outsourcers. LPO competitors include Pangea3 (now owned by Thomson Reuters, NYSE symbol: TRI); Huron Consulting Group (Nasdaq symbol: HURN); CPA Global (owned by a European private equity firm); Integreon (majority-owned by two international private equity firms); and UnitedLex (financed by venture capital funds, including Sequoia Capital).

However, a substantial portion of the LPO work may soon be eclipsed by more sophisticated computer algorithms in a category broadly referred to as predictive coding. Companies that specialize in predictive coding include Recommind, which was formed in 2000 and now has more than 100 employees in six locations spanning three continents, and Kroll Ontrack, which started in the hard-disk recovery business in the 1980s and now employs more than 1,500 workers in the U.S., Europe, Asia and Australia. The latter is owned by Kroll Inc., a subsidiary of Alteryx—a conglomerate that specializes in information technology and analytics. The Alteryx group of companies is principally owned by Providence Equity Partners, a private equity firm with more than \$27 billion under management.



Bryce Arrowood and Mark Cohen—Clearspire's co-founders plan to raise an additional \$3 million from outside investors this year. Photo by Arnold Adler.

One part law firm and one part business entity, Washington, D.C.-based Clearspire Law Co. aims to expand its nontraditional law firm model across the country with the addition of 50 to 100 BigLaw lawyers each year for the next five years, all serviced by its sister business outsourcing company, Clearspire Services Co. Together they make up the legal service business Clearspire.

Co-founders Bryce Arrowood, who previously built one of the first temporary legal staffing firms in the U.S., and civil trial lawyer Mark A. Cohen, an early adopter of information technology in the delivery of legal services, started the company in response to the sea change expedited by the Great Recession.

“We looked at the state of play, and for the first time law firms were not experiencing the year-to-year explosive growth they had seen,” Cohen says. “We had to come up with a novel way to inject business process methodologies into legal services, to move the focus away from [profits per partner] and allow the firm to operate as a unified entity while outsourcing all of the business operations and support services to its sister company.”

In addition, the duo spent \$5 million of their own funds to build the online platform Coral, which connects lawyers and

clients through virtual offices and high-end videoconferencing. Their efforts have garnered the attention of more than 200 general counsel of Fortune 500 companies in the past two years.

"I don't think any law firm I can think of has that kind of access to that high level of corporate America," Cohen says. "And the reason for it is clearly not solely the fact that we have a whiz-bang group of lawyers and are growing nicely. Rather, it's that this platform is a game changer."

The two-company model, along with the cutting-edge technology of Coral, strips away many of the overhead cost escalators of large law firms, driving efficiency, Cohen says. It also allows for nonlawyer investment and revenue-sharing in Clearspire's business arm, which doesn't operate under the restrictions of ABA Model Rule 5.4: Professional Independence of a Lawyer. As a result, the company plans to raise \$3 million from outside investors this year.

PROFS IN THE GAP

Not surprisingly, many of the companies mentioned above were vendors on display at the New York LegalTech show in January. To the dismay of Goodenough, one seemingly important group was missing: law professors.

"This disconnect is striking," Goodenough observes. "A technology-driven revolution is overturning how America practices law, runs its government and dispenses justice. The revolution has so far gone almost completely unnoticed by the people who teach aspiring lawyers. This has to change."

Goodenough began his legal career in the late 1970s as an associate in a major New York City law firm and, a few years later, lateraled to a small boutique where he became partner. In the early 1990s, when Goodenough started his legal academic career, he was nearly 40 and arguably had too much practice experience to be taken seriously by law faculty. Nonetheless, Vermont was willing to give him a shot. During the subsequent two decades, Goodenough's research has probed the intersections of law, economics, finance, media, technology, behavioral biology and neuroscience, winning several academic awards and distinctions along the way.

Goodenough's story makes a simple, yet distinct point—we should use caution when tempted to casually disregard the observations of someone who has achieved success as both a practicing lawyer and an academic scholar. If anyone in the legal profession has the experience and credibility to call a paradigm shift, it's Goodenough.

For the past two years, MSU's Katz was the only full-time law professor who spoke at the LegalTech conference. Katz and Knake are creating a curriculum relevant to the emerging law and technology sector, albeit primarily for companies like Novus Law and Recomind, whose competitive advantage is rooted in process and technology.

Within the legal academy, Katz is an anomaly. Aside from his JD, he has a PhD in political science and public policy from the University of Michigan. However, he focused almost all of his graduate study on complex systems. It's a relatively new scientific field that uses mathematical modeling to understand how a multitude of human and nonhuman factors interact and influence one another. Human society and the human brain are two examples of complex systems. Neither can be effectively modeled by conventional math or statistics.

The late Larry Ribstein at the University of Illinois was one of Katz's early mentors. When he went into teaching a few years ago, Katz says, Ribstein told him: "I bet you must feel like an alien. I greatly admire your work. You are definitely on the right track. But the rest of the legal academy is just not ready for you."

In June 2011, Katz joined the faculty at MSU Law. Michigan State partnered with the Detroit College of Law in 1995 and moved the law college into a building in East Lansing two years later. Though the school's rebranding efforts did raise its profile, to most of the profession, MSU Law remains a nonprestigious regional law school located in the heart of the Rust Belt.

None of this dissuades Katz from his sincere belief that it is possible to turn any institution into the preferred recruiting grounds for the nation's emerging law-and-tech industry.

"When I was 18 years old," explains Katz, "I had the privilege of joining a transformative organization"—as a kicker for the University of Oregon football team, the Ducks. "We were in the Pac-10, but it's in Eugene, Ore., where it is often cloudy and raining. We had no shot at all with the top recruits from Southern California. So coach Mike Bellotti had to figure out ways to stretch and optimize what some might call second-tier talent.

"Oregon is now a national powerhouse, but the seeds of that success were sown much earlier. It was difficult to be bigger or faster than USC or UCLA. So Coach Bellotti decided we would be better on the details of the game. We

would be better conditioned and we would pay significant attention to special teams. Our emphasis on special teams got us better field position. And by the third or fourth quarters, our opponents would have their hands on their burning legs. But because of our conditioning regimen, we had more stamina. Our success became contagious. Over time, we were able to get prized recruits. It was a culture of innovation.”

During Bellotti's tenure at Oregon, from 1995 to 2008, the Ducks had only one losing season, blotting out decades of mediocre performance. The year that Katz graduated, the Ducks were co-champions of the Pac-10, a feat that makes him beam with pride.

Katz's “secret sauce” for RelInvent Law is arguably much more important than a degree in complex systems. He looks at the 25 students entering the RelInvent Law Laboratory as raw human potential. Katz also actively recruits potential law school applicants to his program, though he declines to discuss his strategy.

Katz understands that the most attractive candidates for the law and technology sector are those with special skills that are often obtained through prelaw work experience. “But there is no reason why some of those key skills and experiences cannot be learned and obtained right here,” Katz says of the MSU program.

He notes that virtually all law students have high cognitive ability. He feels the key to their future success is mastery of domain-specific knowledge—often in areas that are complementary to law—and the ability to collaborate across disciplines. This requires engagement and an immense amount of time spent on the task. So how does one develop the educational program that will prepare the law student for legal-tech jobs—some that may not yet exist?

“This,” Katz says, “is just an education design problem.”

Sidebar

Seated at the Table

There are some prominent names already feasting on duties formerly done by law firms, including:

LEGALZOOM

MINDCREST

PANGEA3

ROBERT HALF

SEDONA CONFERENCE

HUDSON GLOBAL

INTEGREON

RECOMMIND

CPA GLOBAL

HURON

FASTCASE

PRACTICAL LAW COMPANY

DISCOVER READY

SPECIAL COUNSEL

FTI CONSULTING

HIRE COUNSEL

KROLL ONTRACK

UNITED LEX

Source: JPMP Consulting Inc.

William D. Henderson is director of the Center on the Global Legal Profession and a professor and Nolan Faculty Fellow at Indiana University's Maurer School of Law. Rachel M. Zahorsky, who was a legal affairs reporter for the ABA Journal at the time this story was written, accepted a position at Novus Law as this issue was going to press.

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