

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 21, 2014  
Salem Conference Center, Salem, OR  
**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00 a.m. on February 21, 2014. Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, February 21, 2014, 9:00 a.m.**

- 1. Call to Order/Finalization of the Agenda**
- 2. Report of Officers & Executive Staff**
  - A. President's Report [Mr. Kranovich] Inform Exhibit
  - B. President-elect's Report [Mr. Spier] Inform Exhibit
  - 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] Inform
  - F. MBA Liaison Reports [Ms. Kohlhoff and Mr. Spier] Inform
- 3. Professional Liability Fund [Mr. Zarov]**
  - A. Financial statements Inform Exhibit
- 4. OSB Committees, Sections, Councils and Divisions**
  - A. Oregon New Lawyers Division Report [Mr. Eder] Inform Exhibit
  - B. CSF Claims [Ms. Stevens]
    1. CSF Claim No. 2013-51 IRELAND(Pedro) Request for Review Action Exhibit
    2. CSF Workgroup Recommendations & Committee Response Action Exhibit
  - C. MCLE Committee [Ms. Cline]
    1. Rule Amendment re: Child and Elder Abuse Reporting Action Exhibit
    2. Rule 3.5(a) and Regulation 3.260 Amendments Action Exhibit
  - D. Legal Services Program Committee Report [Ms. Baker]
    1. Class Action Award for Abandoned Client Fund Inform
    2. Task Force on Legal Aid Funding Inform
- 5. BOG Committees, Special Committees, Task Forces and Study Groups**
  - A. Board Development Committee [Ms. Mitchel-Markley]
    1. Update on Committee Actions Inform Exhibit
    2. Discussion of Skills and Attributes for BOG & HOD Candidates Inform Exhibit

- |            |   |        |              |
|------------|---|--------|--------------|
| B.         | Budget and Finance Committee [Mr. Emerick]  |        |              |
| 1.         | Authorization to Open a Line of Credit  | Action | Exhibit      |
| 2.         | Update on Database Upgrade Project  | Action | Exhibit      |
| C.         | Governance and Strategic Planning Committee [Mr. Spier]   |        |              |
| 1.         | Composition and Election of BOG Officers  | Action | Exhibit      |
| 2.         | President's Affirmative Action Award  | Action | Exhibit      |
| 3.         | Animal Law Section Bylaw Amendments   | Action | Exhibit      |
| 4.         | Quality of Life Committee Assignment Revisions  | Action | Exhibit      |
| 5.         | LRAP Policy and Guidelines Revisions  | Action | Exhibit      |
| 6.         | Law School Deans Invitation   | Action |              |
| 7.         | Update on Strategic Planning Session  | Inform | Exhibit      |
| 8.         | Section Reimbursement of Spouse/Guest Expenses  | Action | Exhibit      |
| D.         | Public Affairs Committee [Mr. Prestwich]  |        |              |
| 1.         | Legislative Update  | Inform | Handout      |
| E.         | International Trade and Legal Services Task Force [Ms. Hierschbiel]   | Action | To be Posted |
| F.         | New Lawyer Mentoring Program Status Report [Ms. Walsh]  | Inform | Handout      |
| G.         | Centralized Legal Notice System: Next Steps [Mr. Kranovich/Mr. Greene]  | Action | Exhibit      |
| <b>6.</b>  | <b>Other Items</b>  |        |              |
| A.         | Consideration of Board Meeting Days [Mr. Kranovich]   | Action | Exhibit      |
| B.         | Appointments to Various Bar Committees and Boards [Ms. Edwards]   | Action | Exhibit      |
| <b>7.</b>  | <b>Consent Agenda</b>   |        |              |
| A.         | Approve Minutes of Prior BOG Meetings   |        |              |
| 1.         | Regular Session – November 23 , 2013  | Action | Exhibit      |
| 2.         | Special Session – January 10, 2014  | Action | Exhibit      |
| <b>8.</b>  | <b>Default Agenda</b>   |        |              |
| A.         | CSF Claims Financial Report   |        | Exhibit      |
| B.         | Claims Approved by CSF Committee  |        | Exhibit      |
| <b>9.</b>  | <b>Closed Sessions – <u>CLOSED</u> Agenda</b>   |        |              |
| A.         | Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report                          |        |              |
| <b>10.</b> | <b>Good of the Order (Non-action comments, information and notice of need for possible future board action)</b> |        |              |
| A.         | Correspondence  |        |              |
| B.         | Articles of Interest  |        |              |

## OSB PRESIDENT'S ACTIVITIES

January 1- 31, 2014

DATE:	EVENT	LOCATION (ACTIVITY)	Attachments
01/07/14	Joel DeVore Investiture	Salem (Speaker)	speech
01/08/14	CEJ Task Force	Eugene	No
01/14/14	OWLs Queens Bench	Portland (Guest Speaker)	No
01/23/14	Erin Lagesen Investiture	Salem (Speaker)	speech
01/23/14	OMLA Reception	Portland	No
01/25/14	SSFP Planning Retreat	Edgewood	No
01/29/14	Stole Berne lunch	Portland	No
01/31/14	Celebrating \$518K class action check for Legal Aid	Rick Yugler's Office with Judith Baker and CEJ.	photos

Total Number of Events: Eight

Notes: See Attachments, below

1. DeVore Investiture Speech
2. Lagesen Investiture Speech
3. Photo of Check Ceremony
4. Photo of Check Ceremony

January 2014 Attachment 1

JOEL DeVORE  
Investiture  
January 7, 2014

MAY IT PLEASE THE COURT:

Good afternoon, ladies and gentlemen. It is my pleasure to be here on behalf of the Oregon State Bar. Thank you for inviting me because heaven knows it is the only way I am likely to ever address this august group in this beautiful setting...when most of your cases are low velocity, intersection rear-enders with six weeks of chiropractic treatment, the opportunity for appealable error is somewhat remote.

I was provided some biographical material by the Bar's crack staff much of which I choose not to use but there was one bit which I could not resist and that is a quote from a Willamette Law Review article in which you said: "As Oregon courts construe statutes, new decisions will plow up problems like pottery shards in an old field". And now your hand will be on the plow. Now you get to glue the shards back together. I wish you well with that.

Judge DeVore, as President of the Oregon State Bar I want to thank you for your work on behalf of the legal system and profession. You have served as a county bar president (and we all know how much thanks you get for that); you have served on the HOD. You have served the PLF as "repair counsel" curing potential malpractice actions by keeping people's claims alive. You have been instrumental in several "insurance law" repairs working closely with the Oregon Law Commission and appearing in front of the legislature. You have brought important cases before this court. I would remind everyone here that Oregon is blessed with a plethora of highly qualified lawyers seeking judicial appointment. That you were chosen, from that fine of a group, is a testament to your expertise, your commitment to the profession and your character.

As a practicing attorney I can say this. When there is a pithy topic floating about the OADC list serve, yours is always the voice of well-reasoned analysis and advice. Shoot, I go on line and read your stuff on topics I don't care about. I personally do not think the governor could have chosen better.

I do find myself somewhat amazed that I am here, not just because I woke up on January 1, 2014 and the face in the mirror was that of the President of the Oregon

State Bar; not because my brethren in the OADC have to stop whining about the lack of defense lawyers on the bench; and not because we are witnessing and celebrating this special moment for this very special man...No, what most amazes me is that with the swearing in of Judge DeVore we are finally seeing the birth of the long elusive, and awaited fourth panel of judges.

When I first joined the board we heard that the legislation for the panel was being proposed; then we heard that it had been approved but for some time in the future; then we heard that it was approved but not funded; then we heard that funding was possible but certainly not a lock. Then we finally heard that it had been funded AND A RAISE TOO!! Still I was skeptical but here we are, marking not just the beginning of Joel DeVore's judicial career, but participating in the first investiture of a new panel judge. The panel AND the raise are a reality.

This legislative accomplishment came about because of a lot of hard work by the court, in particular the Chief Justice and the Chief Judge. We are here because of a lot of hard work by the court and by the bar. We are here in no small measure because of tireless effort by bar staff, in particular Susan Grabe, in working closely with the court and the legislature to meet the Bar's commitment to its members and the people of this state for an adequately funded and staffed court system doing the people's business.

Judge DeVore, members of the court and ladies and gentlemen, I am here to pledge the Bar's continuing support for an independent and effective state judicial system. We will continue with our ongoing public affairs and public relations work. We will work on our own. We will work in conjunction with the Chief Justice and Chief Judge. We will work with and we will continue to foster the growth and effectiveness of the Citizens Coalition for Court Funding.

I pledge to you that the Oregon State Bar is not content to pat itself on the back for what it took, legislatively, to make this day happen, or for the raise. We must and will continue to advocate for adequate funding and we will oppose budget reductions. We will renew our efforts to inform our members and the public on the importance of and critical need for a well-funded, independent judiciary. We are poised, ready and committed to building on the successes from the last legislative session.

Judge DeVore, I am proud...the Bar is proud, to have you on the court. The people of the State of Oregon have every reason to be proud too. On behalf of the Oregon State Bar, congratulations. Thank you.

January 2014 Attachment 2  
ERIN LAGESEN  
Investiture  
January 16, 2014

CHIEF JUDGE HASELTON, MEMBERS OF THE COURT, MAY IT PLEASE THE COURT:

Ladies and gentlemen, colleagues and distinguished guests, it is my pleasure to be here on behalf of the Oregon State Bar. Before attending law school I majored in music and had a career as a band director. After becoming a lawyer it was not unusual for people to ask “what did the study of music have in common with the study of law”? My answer was “you spend a lot of time studying and analyzing the writings of old, white, men.

This was, of course, a riff on a quip my Constitutional Law Professor, Barbra Safreit, occasionally used when she would rhetorically ask: “What is the law?” She would then answer: “It’s what nine old men tell us it is.” Today we celebrate not only the investiture of Judge Lagesen; we celebrate the fact that Professor Safreit’s quip has lost its relevance. Through the hard work and perseverance of people of good will, from within and outside of the Oregon State Bar, it is now expected that women will be considered in every judicial appointment process. The work pioneered by Betty Roberts and so many others has borne fruit. As a member of the bar and as its President, I am especially proud of that fact. Please know that your bar remains committed to promoting diversity within the legal profession.

A great, and diverse, court requires a mixture of varied backgrounds and skills. Judge Lagesen, and not just because she is a woman, enriches that mixture: In addition to her J.D. from Willamette Law School, she has not one, but two masters degrees, one from Harvard in education and one in math from the U of O. As a former teacher I fully understand the progression from education into law, but math? Math, unlike music, is an exact science. Math, unlike music, is not usually subjected to arguments of interpretation. Regardless, her path from mathematician to judge reinforces a point we stress with our new, incoming, minority law students and that is: every one of us, in this profession, got to where we are via a unique path. It is to the benefit of the people of Oregon that outstanding lawyers from diverse perspectives are drawn to serve both bench and bar.

As a member of the Oregon State Bar’s Board of Governors what I most enjoy is getting to know many of the wonderful lawyers across the state who volunteer their

time in service to the profession and to the public. Judge Lagesen is typical of those volunteers, having served for several years on the Executive Committee of the Constitutional Law Section, including a term as chair. The Con Law Section, as one might expect, has some very keen legal minds on its executive committee. Perhaps that is where the math background comes in handy.

Through her services with this group Judge Lagesen has demonstrated an essential skill for a good appellate judge: She can build a consensus and articulate it with clear and concise writing. As an example of this go into the BarBooks library on the bar's website and review the our new Constitutional Law book. Judge Lagesen wrote the chapter on "Equal Privileges and Immunities."

On behalf of the Bar, I thank Judge Lagesen for her many contributions to the legal profession, and in turn I am here to reaffirm our pledge of support for her and the court. We will continue to spread the public message that "Strong Courts Build Strong Communities." We will continue to advocate and educate in the legislature for a strong, independent judiciary that is properly funded. We will continue our work with the Citizens Coalition on Court Funding. We will continue to coordinate our efforts with those of the Chief Justice and Chief Judge. We will continue to provide the skills and expertise of bar staff such as Susan Grabe so that we can build on the recent successes that resulted in, among other things, the passage of the legislation allowing for the long overdue expansion of this court that brings us here today. Your bar stands ready to continue this progress, this year, next year and in the years to come.

Judge Lagesen, as a member of the bar, as its President and just as importantly, as a citizen of this state, I am pleased and proud that you will be serving us on this distinguished court. To follow in the footsteps of Betty Roberts is an incredible honor and opportunity, one for which you can deservedly be proud. I know you will well serve the people of Oregon and that you will honor Justice Robert's formidable legacy with your service. On behalf of the Oregon State Bar, Congratulations.

January 2014 Attachment 3





January 2014 Attachment 4



Richard G. Spier  
President-Elect Report  
February 21, 2014

January 6, 2014	Telephone conference with Sylvia, Tom, and Elisabeth to organize Strategic Planning Session
	Met with Sylvia and Camille at OSB to discuss 2015 calendar
January 7, 2014	Speaker at Judge Greenlick Investiture, Multnomah County Circuit Court
January 10, 2014	BOG and Committee meetings, employee appreciation lunch, bar leaders Reception
January 18, 2014	Chair Strategic Planning session
January 20, 2014	MLK Breakfast
February 5, 2014	MBA Board meeting

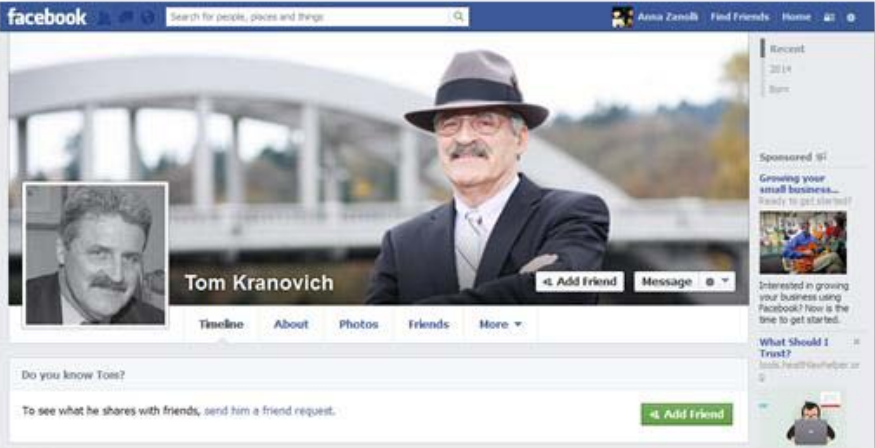
# OREGON STATE BAR

## Board of Governors Agenda

**Meeting Date:** February 21, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Operations and Activities Report

### OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> <li>▪ <b>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</b></li> </ul>	<p><i>Accounting:</i></p> <ul style="list-style-type: none"> <li>▪ Payment of the membership fee by credit card increased again in 2014. By January 31, 2014, 9,733 members paid on line. This is 54% of all payments. The amount paid by credit card was \$4,084,978, or \$521,197 than the year before. On January 31, 731 members paid fees totaling \$299,141 (believed to be a record day high). The latest procrastinator paid at 11:56pm on January 31 (four minutes before the deadline).</li> <li>▪ The final numbers aren't available yet, but the number of members not paying by the deadline has decreased from prior years.</li> </ul> <p><i>Facilities:</i></p> <ul style="list-style-type: none"> <li>▪ Interested parties continue to explore the vacant space at the bar center. One existing tenant is considering more space and another is considering the space currently leased but not occupied.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</b></li> </ul>	<p><i>Communications &amp; Public Services:</i></p> <ul style="list-style-type: none"> <li>▪ Coordinated transition of the CLE Seminars website into the main bar site, along with rebranding of collateral marketing materials;</li> <li>▪ Coordinated the regulatory notice and reminder system;</li> <li>▪ Edited a video of a Small Claims public education seminar for presentation on the bar's website – the first in a planned series of productions that will be delivered via web as well as through community access television.</li> <li>▪ The February/March edition of the Bulletin will be mailed to members in early March. It will feature stories on Oregon's lawyer-legislators and cyber-security for law firms.</li> <li>▪ The Referral &amp; Information Services team is recruiting a new manager following George Wolff's departure for the New York City Bar Association LRS. Several software modules were completed in December and January, automating processes that used to require either staff or panelist intervention.</li> </ul> <p><i>Creative Services:</i></p> <ul style="list-style-type: none"> <li>▪ Formal transition of the CLE seminar website and registration functions began in January. We spent a good portion of 2013 planning for this transition, collaborating with CLE Seminars and Communications staff as we developed the transition plan. Event registration was consolidated on the InReach vendor site in early January and the new CLE seminar home page was launched last week, with seminar staff armed with the tools and training needed to maintain the site. Coordinated email communications</li> </ul>

	<p>will follow this month, with metrics added to measure audience response and refine future messages. The visual integration, streamlined content and search integration with the InReach site provides our online customers with a branded and simplified user experience that should help promote the bar’s seminar registration efforts. To view the new site, go to <a href="http://www.osbar.org/cle">www.osbar.org/cle</a></p> <ul style="list-style-type: none"> <li>▪ We created a new <b>Facebook</b> page for Tom Kranovich’s use as bar president this year. The page was stocked with photos of bridges from all bar regions and we will keep Tom supplied with a monthly list of topics, photos and posting suggestions. We hope he will find the Facebook page a useful tool in his outreach efforts.</li> </ul> 
<ul style="list-style-type: none"> <li>▪ <b>CLE Seminars (Karen Lee)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Switched to a new online live event registration platform</li> <li>▪ Worked with Creative Services and Communications staff to revamp CLE website for an early February launch</li> <li>▪ Was one of the first (if not the first) to cosponsor an ABA program on gender equity in partner compensation</li> <li>▪ Cosponsored a program with the Diversity &amp; Inclusion Department on the myths and realities of race</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Diversity &amp; Inclusion (Mariann Hyland)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Oral report will be presented at meeting.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>General Counsel (includes CAO and MCLE) (Helen Hirschbiel)</b></li> </ul>	<p><i>General Counsel:</i></p> <ul style="list-style-type: none"> <li>▪ The Supreme Court adopted all amendments to the RPCs approved by the HOD with the exception of the RPC 8.4 amendment regarding bias and prejudice.</li> <li>▪ The Legal Ethics Committee has appointed a subcommittee to review and revise formal ethics opinions affected by the new rules.</li> <li>▪ A task force has been selected to begin working on a revised RPC 8.4 proposal.</li> <li>▪ In 2013, General Counsel reviewed 206 requests for review of complaints</li> </ul>

	<p>dismissed by CAO.</p> <ul style="list-style-type: none"> <li>▪ GCO continues to respond to an average of 10-15 ethics inquiries every day.</li> </ul> <p><i>Client Assistance Office:</i></p> <ul style="list-style-type: none"> <li>▪ Interviewing for 3<sup>rd</sup> lawyer position; in the home stretch.</li> <li>▪ Held department planning session to map out strategies for handling complaints electronically.</li> <li>▪ Program Manager Scott Morrill co-presented at a CLE for the OPDS lawyers.</li> </ul> <p><i>Minimum Continuing Legal Education:</i></p> <ul style="list-style-type: none"> <li>▪ The MCLE Committee met on December 13 and recommended several rule changes regarding (1) the new elder abuse reporting credit requirement and (2) out-of-state members who are also members in a state with which Oregon has MCLE reciprocity. These recommendations will be reviewed by the BOG at its February 21 meeting.</li> <li>▪ In 2013, the MCLE Department processed 8,607 accreditation applications, including 1,170 applications for other types of CLE activities (teaching, legal research, etc.). So far in 2014, we have processed 850 accreditation applications, including 209 requests for other types of CLE activities.</li> <li>▪ Compliance reports were sent to 4,950 members on October 15. As of February 5, we still have 188 members who have not submitted a report. Notices of Noncompliance will be sent March 3 (30 days after the filing deadline).</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Human Resources (Christine Kennedy)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Recruiting replacements for the following positions: Disciplinary Counsel and Director of Regulatory Services, Assistant General Counsel and Client Assistance Office Attorney, Referral &amp; Information Services Manager, Discipline Paralegal/Trial Assistant;</li> <li>▪ Hired two part-time replacements for Referral &amp; Information Services Assistants;</li> <li>▪ Surveyed employees about their supervisors and compiled the results;</li> <li>▪ Started the annual performance evaluation process.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Publications (Linda Kruschke)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since my last report:             <ul style="list-style-type: none"> <li>✓ Six <i>Uniform Criminal Jury Instructions</i>.</li> <li>✓ Sixteen <i>Uniform Civil Jury Instructions</i>.</li> <li>✓ <i>2013 Oregon Legislation Highlights</i>.</li> <li>✓ Fourteen additional chapters of <i>Criminal Law</i>, 2013 revision, and the final PDF.</li> </ul> </li> <li>▪ <i>Criminal Law</i> 2013 revision went to the printer February 11.             <ul style="list-style-type: none"> <li>✓ 2013 Budget = \$37,500; 2014 Budget = \$7,000; Sales to date = \$39,051</li> </ul> </li> <li>▪ <i>Uniform Civil Jury Instructions</i> 2013 supplement is scheduled to go to the printer this week.             <ul style="list-style-type: none"> <li>✓ 2014 Budget = \$25,500; Pre-orders to date = \$24,057 plus Bloomberg fee of \$3,250 to be billed later in the year.</li> </ul> </li> <li>▪ <i>Uniform Criminal Jury Instructions</i> 2013 supplement is scheduled to go to the printer this week.             <ul style="list-style-type: none"> <li>✓ 2014 Budget = 21,700; Pre-orders to date = \$14,491 plus Bloomberg fee of \$3,250 to be billed later in the year.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ In-house editing of the PLF publication <i>Oregon Statutory Time Limitations</i> has begun with two attorney editors working on it.</li> <li>▪ Our new Attorney Editor is working out great.</li> <li>▪ We launched our new blog at <a href="http://legalpubs.osbar.org">http://legalpubs.osbar.org</a> and are working on a plan to promote it.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Services Program (Judith Baker)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The LSP received \$518,000 in unclaimed client funds from a class action handled by Landye Bennett Blumstein LLP. The LSP Committee will meet in March to structure a recommendation regarding how to distribute the funds.</li> <li>▪ Staff is working with the Public Affairs Dept. and legal aid on HB 4053 to increase the statutory allocation to legal aid that goes to the LSP.</li> <li>▪ Staff is the liaison to the Task Force on Legal Aid Funding the purpose of which is to set goals to achieve minimally adequate funding for legal aid.</li> <li>▪ The LRAP Advisory Committee is forwarding policy revisions to the BOG for approval in February.</li> <li>▪ Staff continue to work with the American Bar Association to coordinate the Equal Justice Conference which takes place in Portland the beginning of May.</li> <li>▪ The OLF continues to work with banks to try to achieve the maximum return on IOLTA accounts as possible.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Media Relations (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Report will be posted later.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Member Services (Dani Edwards)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Recruiting for the OSB and ABA House of Delegates election has begun, the deadline for candidates to file is March 21. More than 40 seats are open for election this year with vacancies in each bar region. Candidate forms and more information is available at <a href="https://www.osbar.org/leadership/hod">https://www.osbar.org/leadership/hod</a>.</li> <li>▪ On January 1 nearly 400 members began a new term volunteering on one of the bar’s 19 committees or 42 section executive committees.</li> <li>▪ The department has held two webinar sessions providing training to new section treasurers. Future webinars are being considered to cover topics such as</li> <li>▪ CLE seminar planning, providing services to the section membership, increasing membership, and executive committee member recruitment and elections.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>New Lawyer Mentoring (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Report will be posted later.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Public Affairs (Susan Grabe)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Summary.</i> The February 2014 Session began with a flurry of activity during organizational days in January. Public Affairs has focused on the bar’s legislative priorities adopted in January as well as affirmative legislation on Chief Justice Authority to set fees for eCourt and an increase in the statutory allocation for legal aid.</li> <li>▪ <i>OSB Legislative Reception.</i> Public Affairs Department has worked closely with Executive Services to assist with planning the legislative reception in Salem to be held in conjunction with the February board meeting.</li> <li>▪ <i>2014 Session.</i> The Public Affairs staff is continually monitoring all bills</li> </ul>

	<p>introduced during the legislative session, and referring to sections any bills of interest. Sections are encouraged to work with the Public Affairs staff to monitor and respond to ongoing legislation, and to become involved in the legislative process when appropriate. Bar groups are more engaged in the February session than originally anticipated actively opposing or supporting legislation.</p> <ul style="list-style-type: none"> <li>▪ <i>2014 Legislative Task Forces.</i> Public Affairs is staffing a number of work groups requested by the legislature. These workgroups will address the 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. Other ongoing task forces include the juvenile dependency and delinquency workgroup on best practices. The recommendations from these taskforces will likely take the form of legislative proposals for 2015.</li> <li>▪ <i>2015 Law Improvement Package.</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. 2015 Legislative Proposals are due to the Public Affairs Committee on April 4, 2014. A Legislative forum will be held on April 17, 2014 from 1 – 4 pm to discuss the 2015 Legislative proposals.</li> <li>▪ <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 Probate Modernization, as well as the OSB/OJD eCourt Task Force.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Regulatory Services (John Gleason)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Oral report will be presented at BOG meeting.</li> </ul>

**Executive Director’s Activities November 25, 2013 – February 21, 2014**

Date	Event
12/3/13	Supreme Court Public Meeting on RPC 8.4 amendments
12/5/13	OSB Awards Luncheon
12/6/13	PLF Board Meeting & Dinner
12/10-13/13	Vacation !!!
12/17/13	Campaign for Equal Justice Reception
12/18/13	ED’s Breakfast Group
12/19/13	Innovation Work Group Meeting
12/31/13	Race, Myths & Reality CLE
1/10/14	BOG Committees and Special Meeting
1/10/14	BOG/MBA Leadership Reception
1/11/14	Client Security Fund Meeting
1/15/14	ED’s Breakfast Group
1/17/14	Meeting with Chief Justice re: Regulatory Counsel departure
1/18/14	BOG Strategic Planning Session
1/19/14	Skanner Foundation MLK Breakfast
1/20/14	CEJ Board Meeting
1/23/14	OMLA Recognition Reception

1/24/14	Legal Technicians Task Force Meeting
1/28/14	Meeting with Disciplinary Board Chair-Elect
1/29/14	Law Firm Lunch@Stoll Berne
1/29/14	Oregon Paralegal Association Forum on Licensing Legal Technicians
1/30/14	Markewitz Herbold Open House
2/3/14	Law Firm Lunch@Kell Alterman
2/4-8/14	Nat'l. Assoc. of Bar Executives & Nat'l. Conference of Bar Presidents Meetings
2/11/14	Law Firm Lunch@Perkins Coie
2/12/14	Partners in Diversity "Say Hey" Reception
2/13/14	OWLs Networking Event
2/14/14	Meeting with the Chief Justice & Supreme Court 100 <sup>th</sup> Anniversary Event
2/19/14	CEJ Awards Luncheon
2/20-21/14	Lunch w/Courts, BOG Committees, Local Bar Reception, BOG Meeting
2/21/14	Oregon Hispanic Bar Association Awards Dinner



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** February 11, 2014  
**From:** John S. Gleason, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

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

- Accepted the Stipulation for Discipline from Eugene lawyer *Howard Hudson* for various violations who stipulated to a 2-year suspension, all but 6 months stayed, pending a 2-year probation;
- Issued an order immediately suspending Hood River lawyer *Eric Einhorn* during the pendency of disciplinary proceedings;
- Approved the SPRB recommendation that this Seattle, Washington lawyer *C. William Rehm* be suspended for 30 days following his reprimand in Washington for misconduct in connection with his representation of a father seeking to modify his child support obligation. *Rehm* stipulated in Washington that he neglected his client's case, failed to respond to reasonable requests for information, and failed to provide a prompt accounting and/or to refund his client's advance fee;
- Approved the SPRB recommendation that this Tempe, Arizona lawyer *Blake Simms* be suspended for 60 days following his admonition and 1-year probation in Arizona for failing to communicate with his client regarding an arbitration, failing to follow up with the court regarding the status of the arbitration, repeatedly failing to respond to his client, failing to promptly provide his client with a complete file upon termination of his services, failing to expedite an arbitration, and failing to respond to bar counsel's request of his file relating to his client; and
- Issued an opinion in *In re Steven M. McCarthy* suspending this Independence lawyer for 90 days. The court affirmed the trial panel finding violations of RPC 1.1, RPC 1.4(a), RPC 1.4(b), and RPC 1.15-1(c) in the course of *McCarthy* representing a plaintiff in a civil action involving claims under the federal Truth in Lending Act and Real Estate Settlement Procedures Act.

b. Disciplinary Board

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

- *In re Carla A. Anderson* of Gresham (90-day suspension) became final on November 19, 2013;
- *In re Timothy J. Vanagas* of Portland (reprimand) became final on November 19, 2013;
- *In re Thomas Ifervsen* of Lake Oswego (1-year suspension) became final on November 26, 2013;
- *In re Susan Ford Burns* of Portland (210-day suspension) became final on December 3, 2013;
- *In re Christopher Cauble* of Grants Pass (45-day suspension with conditions and restitution) became final on December 11, 2013; and
- *In re Alan G. Seligson* of Eugene (reprimand) became final on December 17, 2013.

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

- A trial panel recently issued an opinion in *In re David Herman* of Denio, Nevada (disbarment) for conduct involving dishonesty, fraud, deceit or misrepresentation;
- Another trial panel issued an opinion in *In re James C. Jagger* of Eugene (90-day suspension) for failure to provide competent representation and counseling a client to engage, or assist a client, in illegal or fraudulent conduct in three separate matters;
- Another trial panel issued an opinion in *In re John L. Ballard* of Hermiston (dismissal); and
- Another trial panel issued an opinion in *In re Susan C. Steves* of Bend (disbarment) neglect of legal matter, knowingly making a false statement of law or fact to a tribunal, conduct involving dishonesty or misrepresentation, conduct prejudicial to the administration of justice, failure to keep a client reasonably informed about the status of a matter, failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation, and failure to comply with applicable law requiring notice to a tribunal when terminating representation in four separate matters.

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Ellen J. Krider* of Prineville (reprimand); *In re Timothy O’Rourke* of Pendleton

(reprimand); *In re Ivan S. Zackheim* of Portland (reprimand); and *In re Mary E. Landers* of Grants Pass (30-day suspension, all stayed, 2-year probation).

c. BR 7.1 Suspensions

The Disciplinary Board Chairperson approved the BR 7.1 suspensions in: *In re Kelly E. Ireland* of Keizer, *In re Eric Kaufman* of Lake Oswego, *In re Robert H. Sheasby* of Bend, and *In re Sara Lynn Allen* of Lake Oswego.

**2. Decisions Pending.**

The following matters are pending before the Supreme Court:

*In re Michael Spencer* – 60-day suspension; accused appealed; under advisement  
*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; oral argument March 4, 2014  
*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 Julie D. Sione* – reciprocal discipline matter pending  
*In re David Herman*—disbarment; accused appealed; awaits briefs  
*In re James C. Jagger*—90-day suspension; accused appealed; awaits briefs  
*In re Karl W. Kime*—reciprocal discipline matter pending  
*In re Karl W. Kime*—BR 3.4 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 Jeff Wilson Richards* – October 7, 2013 (sanction memo filed)  
*In re Peter M. Schannauer*—January 20, 2014 (sanctions memo filed)  
*In re Justin E. Throne*—January 21, 2014  
*In re Eric Einhorn*—January 31, 2014 (sanctions memo filed)

**3. Trials.**

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

*In re Montgomery Cobb* – March 10-11, 2014  
*In re John P. Eckrem* – April 30, 2014

**4. Diversions.**

The SPRB approved the following diversion agreements since November 2013:

*In re Jennifer J. Schade* – effective December 31, 2013

**5. Admonitions.**

The SPRB issued 2 letters of admonition in November, December, and January. The outcome in these matters is as follows:

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

**6. New Matters.**

Below is a table of complaint numbers in 2014, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

<b>MONTH</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
January	29/29	19/20	46/49	21/21	29/31
February	24/25	35/36	27/27	23/23	
March	26/26	21/25	38/39	30/30	
April	30/30	40/42	35/38	42/43	
May	119/119*	143/146*	19/20	37/37	
June	23/26	20/20	39/40	31/31	
July	29/34	27/28	22/22	28/30	
August	24/25	22/23	35/35	33/36	
September	33/36	29/29	22/22	26/27	
October	27/33	22/23	23/23	26/26	
November	21/21	27/27	18/18	25/26	
December	24/24	39/40	26/26	19/19	
<b>TOTALS</b>	<b>409/428</b>	<b>444/459</b>	<b>350/359</b>	<b>341/349</b>	<b>29/31</b>

\* = includes IOLTA compliance matters

As of February 1, 2014, there were 203 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 29% are less than three months old, 27% are three to six months old, and 44% are more than six months old. Nine of these matters will be on the SPRB agenda in February.

**7. Reinstatements.**

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

JSG/rlh

## II. PRIMARY PROGRAM CLAIMS HANDLING OVERVIEW

(through November 2013)

	2010	2011	2012	2013
<b>INDEMNITY PAID</b>	\$ 8,806,003	\$ 8,021,342	\$ 9,270,238	\$ 8,660,620
Fees other than Repair	\$ 7,018,698	\$ 8,179,751	\$ 8,011,699	\$ 7,227,991
Repair Fees	\$ 883,270	\$ 1,000,757	\$ 967,121	\$ 711,905
Other Expenses	\$ 1,043,529	\$ 1,375,756	\$ 1,075,715	\$ 1,017,013
<b>TOTAL EXPENSE</b>	\$ 8,945,497	\$ 10,556,264	\$ 10,054,535	\$ 8,956,909
<b>TOTAL INDEMNITY &amp; EXP</b>	\$ 17,751,500	\$ 18,577,605	\$ 19,324,773	\$ 17,617,529

NOTE: This report does not reflect contributions or recoveries from other parties.

### CLAIMS HANDLING BY YEAR

	2005	2006	2007	2008	2009	2010	2011	2012
Beginning	836	773	741	729	866	923	867	819
Opened	846	783	778	904	976	938	916	1032
Reopened	54	56	40	48	61	58	69	50
Closed	963	871	830	815	980	1052	1033	935
Pending	773	741	729	866	923	867	819	966

### CLAIMS IN CURRENT YEAR

	JAN	FEB	MAR	APR	MAY	JUNE
Beginning	966	951	997	977	978	993
Opened	70	94	92	78	82	58
Reopened	13	4	6	7	6	1
Closed	98	52	118	84	73	163
Pending	951	997	977	978	993	889

	JULY	AUG	SEPT	OCT	NOV	DEC
Beginning	889	901	932	927	944	
Opened	80	71	71	84	73	
Reopened	6	7	8	10	4	
Closed	74	75	84	77	117	
Pending	901	904	927	944	904	0

### CLAIMS REPORTED EACH YEAR

YEAR	CLAIMS
2000	798
2001	775
2002	816
2003	815
2004	923
2005	842
2006	780
2007	781
2008	901
2009	973

YEAR	CLAIMS
2010	938
2011	916
2012	1032
2013	853

ANNUALIZED	
2013	931

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
11/30/2013**

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7	Combined Investment Schedule

**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Balance Sheet  
11/30/2013**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$729,891.95	\$433,847.26
Investments at Fair Value	41,828,998.80	38,216,788.57
Assessment Installment Receivable	(1.00)	0.00
Due from Reinsurers	474,190.24	40,749.68
Other Current Assets	117,950.87	128,081.13
Net Fixed Assets	869,807.47	961,960.56
Claim Receivables	36,464.00	61,097.60
Other Long Term Assets	<u>10,142.22</u>	<u>9,825.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$44,067,444.55</u></b>	<b><u>\$39,852,349.80</u></b>
 <u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$138,100.60	\$86,996.03
Due to Reinsurers	\$10,706.07	\$8,279.04
Deposits - Assessments	648,719.00	541,346.00
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	13,268,984.18	13,735,605.65
Liability for Claim Expense	13,727,984.22	13,999,009.19
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	62,056.86	60,863.71
Assessment and Installment Service Charge Allocated for Rest of Year	<u>2,117,836.65</u>	<u>2,098,356.81</u>
<b>Total Liabilities</b>	<b><u>\$36,920,008.09</u></b>	<b><u>\$37,360,761.71</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$4,047,255.11	(\$781,169.42)
Year to Date Net Income (Loss)	<u>3,100,181.35</u>	<u>3,272,757.51</u>
<b>Total Fund Equity</b>	<b><u>\$7,147,436.46</u></b>	<b><u>\$2,491,588.09</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$44,067,444.55</u></b>	<b><u>\$39,852,349.80</u></b>



**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Income Statement  
11 Months Ended 11/30/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$22,938,027.52	\$22,961,583.37	\$23,555.85	\$22,720,179.78	\$25,049,000.00
Installment Service Charge	358,505.58	357,500.00	(1,005.58)	361,745.08	390,000.00
Other Income	47,448.28	0.00	(47,448.28)	59,968.17	0.00
Investment Return	<u>3,889,667.79</u>	<u>2,257,587.75</u>	<u>(1,632,080.04)</u>	<u>3,728,848.53</u>	<u>2,462,823.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$27,233,649.17</u></b>	<b><u>\$25,576,671.12</u></b>	<b><u>(\$1,656,978.05)</u></b>	<b><u>\$26,870,741.56</u></b>	<b><u>\$27,901,823.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$17,249,500.00			\$19,140,000.00	
Actuarial Adjustment to Reserves	664,997.05			(1,288,663.47)	
Coverage Opinions	131,159.21			122,522.26	
General Expense	81,692.09			40,493.51	
Less Recoveries & Contributions	16,962.32			(153,924.50)	
Budget for Claims Expense		<u>\$18,998,760.00</u>			<u>\$20,725,920.00</u>
<b>Total Provision For Claims</b>	<b><u>\$18,144,310.67</u></b>	<b><u>\$18,998,760.00</u></b>	<b><u>\$854,449.33</u></b>	<b><u>\$17,860,427.80</u></b>	<b><u>\$20,725,920.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$2,038,718.62	\$2,092,934.25	\$54,215.63	\$2,011,715.71	\$2,283,201.00
Accounting Department	745,623.36	720,704.49	(24,918.87)	682,239.18	786,223.00
Loss Prevention Department	1,664,918.38	1,744,388.47	79,470.09	1,651,597.76	1,902,969.00
Claims Department	2,329,166.95	2,458,421.24	129,254.29	2,185,315.07	2,681,914.00
Allocated to Excess Program	<u>(1,013,012.00)</u>	<u>(1,013,012.00)</u>	<u>0.00</u>	<u>(1,008,173.76)</u>	<u>(1,105,104.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$5,765,415.31</u></b>	<b><u>\$6,003,436.45</u></b>	<b><u>\$238,021.14</u></b>	<b><u>\$5,522,693.96</u></b>	<b><u>\$6,549,203.00</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$280,657.63	\$280,657.63	\$48,693.21	\$306,172.00
Depreciation and Amortization	\$152,808.94	\$190,666.63	\$37,857.69	\$160,527.31	\$208,000.00
Allocated Depreciation	<u>(27,551.37)</u>	<u>(27,551.37)</u>	<u>0.00</u>	<u>(32,996.37)</u>	<u>(30,056.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$24,034,983.55</u></b>	<b><u>\$25,445,969.34</u></b>	<b><u>\$1,410,985.79</u></b>	<b><u>\$23,559,345.91</u></b>	<b><u>\$27,759,239.00</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>\$3,198,665.62</u></b>	<b><u>\$130,701.78</u></b>	<b><u>(\$3,067,963.84)</u></b>	<b><u>\$3,311,395.65</u></b>	<b><u>\$142,584.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
11 Months Ended 11/30/2013**

<u>EXPENSE:</u>	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$408,675.72	\$3,809,328.24	\$3,802,493.75	(\$6,834.49)	\$3,634,804.37	\$4,148,175.00
Benefits and Payroll Taxes	129,615.78	1,344,144.57	1,444,852.09	100,707.52	1,284,992.92	1,576,202.00
Investment Services	0.00	20,898.75	25,666.63	4,767.88	20,682.00	28,000.00
Legal Services	5,542.50	11,434.00	14,666.63	3,232.63	10,684.50	16,000.00
Financial Audit Services	0.00	22,600.00	20,716.63	(1,883.37)	21,700.00	22,600.00
Actuarial Services	0.00	19,731.25	17,416.63	(2,314.62)	18,900.00	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	3,850.00	0.00
Information Services	7,723.25	133,848.79	88,000.00	(45,848.79)	78,138.04	96,000.00
Document Scanning Services	13,662.18	43,880.68	68,750.00	24,869.32	50,429.16	75,000.00
Other Professional Services	4,154.68	52,294.11	52,616.74	322.63	45,299.52	57,400.00
Staff Travel	1,609.10	15,429.06	11,412.50	(4,016.56)	15,074.74	12,450.00
Board Travel	1,993.03	25,316.61	35,749.89	10,433.28	28,386.45	39,000.00
NABRICO	0.00	10,958.51	9,625.00	(1,333.51)	9,790.28	10,500.00
Training	807.46	18,603.80	22,458.37	3,854.57	18,595.27	24,500.00
Rent	42,145.08	478,992.43	477,345.88	(1,646.55)	470,260.04	520,741.00
Printing and Supplies	8,909.11	51,511.30	72,416.74	20,905.44	54,170.23	79,000.00
Postage and Delivery	3,475.00	26,757.90	33,687.50	6,929.60	31,065.42	36,750.00
Equipment Rent & Maintenance	2,389.28	39,433.32	33,183.26	(6,250.06)	34,530.71	36,200.00
Telephone	4,547.86	43,794.68	39,416.63	(4,378.05)	32,707.31	43,000.00
L P Programs (less Salary & Benefits)	65,558.14	317,528.46	397,430.22	79,901.76	337,117.48	433,560.00
Defense Panel Training	501.27	9,969.91	21,175.11	11,205.20	0.00	23,100.00
Bar Books Grant	16,666.67	183,333.37	183,333.37	0.00	183,333.37	200,000.00
Insurance	0.00	38,878.00	82,618.25	43,740.25	89,642.00	90,129.00
Library	2,285.42	27,210.49	30,250.00	3,039.51	26,158.27	33,000.00
Subscriptions, Memberships & Other	2,243.98	32,549.08	31,166.63	(1,382.45)	30,555.64	34,000.00
Allocated to Excess Program	<u>(92,092.00)</u>	<u>(1,013,012.00)</u>	<u>(1,013,012.00)</u>	<u>0.00</u>	<u>(1,008,173.76)</u>	<u>(1,105,104.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$630,413.51</u></b>	<b><u>\$5,765,415.31</u></b>	<b><u>\$6,003,436.45</u></b>	<b><u>\$238,021.14</u></b>	<b><u>\$5,522,693.96</u></b>	<b><u>\$6,549,203.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Income Statement  
11 Months Ended 11/30/2013**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$682,625.51	\$684,520.87	\$1,895.36	\$669,500.87	\$746,750.00
Prior Year Adj. (Net of Reins.)	3,371.55	1,375.00	(1,996.55)	1,369.88	1,500.00
Installment Service Charge	41,433.00	34,833.37	(6,599.63)	37,180.00	38,000.00
Investment Return	<u>313,501.31</u>	<u>169,926.13</u>	<u>(143,575.18)</u>	<u>391,245.64</u>	<u>185,374.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$1,040,931.37</u></b>	<b><u>\$890,655.37</u></b>	<b><u>(\$150,276.00)</u></b>	<b><u>\$1,099,296.39</u></b>	<b><u>\$971,624.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$1,111,864.27	\$1,120,679.34	\$8,815.07	\$1,104,938.16	\$1,222,559.00
Allocated Depreciation	<u>\$27,551.37</u>	<u>\$27,551.37</u>	<u>\$0.00</u>	<u>\$32,996.37</u>	<u>\$30,056.00</u>
<b>NET INCOME (LOSS)</b>	<b><u>(\$98,484.27)</u></b>	<b><u>(\$257,575.34)</u></b>	<b><u>(\$159,091.07)</u></b>	<b><u>(\$38,638.14)</u></b>	<b><u>(\$280,991.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
11 Months Ended 11/30/2013**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$56,227.34	\$616,236.44	\$613,849.50	(\$2,386.94)	\$619,133.32	\$669,654.00
Benefits and Payroll Taxes	20,931.31	230,064.99	232,403.49	2,338.50	218,910.02	253,531.00
Investment Services	0.00	1,601.25	2,750.00	1,148.75	1,818.00	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	255,634.50	255,634.50	0.00	252,665.38	278,874.00
Reinsurance Placement & Travel	0.00	369.49	4,583.37	4,213.88	3,933.47	5,000.00
Training	0.00	0.00	458.37	458.37	0.00	500.00
Printing and Mailing	3,943.08	4,035.46	4,583.37	547.91	1,568.26	5,000.00
Program Promotion	0.00	3,922.14	4,583.37	661.23	5,564.71	5,000.00
Other Professional Services	0.00	0.00	1,833.37	1,833.37	1,345.00	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>
<b>TOTAL EXPENSE</b>	<b><u>\$104,341.23</u></b>	<b><u>\$1,111,864.27</u></b>	<b><u>\$1,120,679.34</u></b>	<b><u>\$8,815.07</u></b>	<b><u>\$1,104,938.16</u></b>	<b><u>\$1,222,559.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
11 Months Ended 11/30/2013**

	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>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$492.22	\$130,649.59	\$2,563.14	\$184,235.72
Intermediate Term Bond Funds	8,100.72	179,479.03	19,074.36	228,290.22
Domestic Common Stock Funds	0.00	240,474.52	0.00	27,094.64
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	137,305.09	0.00	137,625.61
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>113,683.36</u>	<u>0.00</u>	<u>101,407.99</u>
<b>Total Dividends and Interest</b>	<b><u>\$8,592.94</u></b>	<b><u>\$801,591.59</u></b>	<b><u>\$21,637.50</u></b>	<b><u>\$678,654.18</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	\$1,961.12	(\$130,976.54)	\$994.72	\$299,137.54
Intermediate Term Bond Funds	(24,263.09)	(263,347.75)	19,172.41	519,845.35
Domestic Common Stock Funds	228,335.16	1,936,050.76	54,364.27	780,781.04
International Equity Fund	148,135.03	1,570,853.09	163,638.57	1,015,274.96
Real Estate	0.00	266,869.89	0.00	124,187.08
Hedge Fund of Funds	0.00	296,132.24	47,762.04	241,319.13
Real Return Strategy	<u>(58,576.20)</u>	<u>(274,004.18)</u>	<u>41,913.55</u>	<u>460,894.89</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$295,592.02</u></b>	<b><u>\$3,401,577.51</u></b>	<b><u>\$327,845.56</u></b>	<b><u>\$3,441,439.99</u></b>
<b>TOTAL RETURN</b>	<b><u>\$304,184.96</u></b>	<b><u>\$4,203,169.10</u></b>	<b><u>\$349,483.06</u></b>	<b><u>\$4,120,094.17</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$446.83	\$60,825.13	\$1,386.96	\$59,874.39
Gain (Loss) in Fair Value	<u>15,370.79</u>	<u>252,676.18</u>	<u>21,014.90</u>	<u>331,371.25</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$15,817.62</u></b>	<b><u>\$313,501.31</u></b>	<b><u>\$22,401.86</u></b>	<b><u>\$391,245.64</u></b>

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# OREGON STATE BAR

## Board of Governors Agenda

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

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To begin the year the ONLD Executive Committee met in Hillsboro for our annual retreat and January Executive Committee meeting. Our board spent time discussing annual projects and what new events or services could be offered to provide benefit to our membership. In addition to continuing the projects the Executive Committee conducted last year we will again focus efforts on providing new lawyers opportunities for practical skills training.

New programs this year include a two-day intro to family law program slated for this spring at the OSB Center and a goal to implement the ABA's Wills for Heroes Project. The purpose of the project is to provide basic estate planning documents to emergency first responders at no cost.

Also this spring, the Law Related Education Subcommittee plans to launch a new art contest for grade school or middle school students to coincide with Law Day. The subcommittee will continue to offer the High School Essay contest which will move to the fall this year.

January 16 was the first brown bag CLE seminar held at the Multnomah County Courthouse this year. Future programs in Multnomah County are scheduled each month for the remainder of this year. The subcommittee also plans to host CLE programs in Bend, Eugene, Lincoln City, and Salem this year.

We look forward to our February meeting in Eugene which will be held in conjunction with a half-day CLE program. The event, which is co-sponsored with U of O and the law student association, will be held at the school and will include two tracks of programming followed by an evening program and social at a downtown restaurant. As with all ONLD CLE programs, law students attend free of charge.

## 2014 ONLD Master Calendar

Last updated January 27, 2014

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Location</b>
February 25-26	All Day	Bar Exam	Holiday Inn, Portland Airport
February 27	Noon	Access to Justice CLE	MCC, Portland
March 13	Noon	Access to Justice CLE	MCC, Portland
March 20	Noon	Jury Selection CLE	MCC, Portland
March 21	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>March 21</b>	<b>TBD</b>	<b>Dinner with the BOG</b>	<b>OSB, Tigard</b>
<b>March 22</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
April 8-10	All Day	ABA Day	Washington, D.C.
April 17	Noon	Employment Law CLE	MCC, Portland
April 25	Noon	Employment Law CLE	MCC, Portland
April 25	9:00 a.m.	BOG Board Meeting	OSB, Tigard
<b>April 25</b>	<b>TBD</b>	<b>CLE Programs &amp; Social</b>	<b>Willamette U., Salem</b>
<b>April 26</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Grand Hotel, Salem</b>
May 8	Noon	Ethics CLE	MCC, Portland
<b>May 9*</b>	<b>1:30 p.m.</b>	<b>Swearing In Reception</b>	<b>Willamette University, Salem</b>
May 15	Noon	Cross Examination CLE	MCC, Portland
May 15-17	All Day	ABA Spring Conference	Pittsburgh, PA
May 23	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>June 6</b>	<b>5:30 p.m.</b>	<b>CLE Program &amp; Social</b>	<b>TBD, Bend</b>
<b>June 7</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Bend</b>
June 19	Noon	Business Litigation CLE	MCC, Portland
June 26-27	9:00 a.m.	BOG Board Meeting	TBD, Pendleton
July 17	Noon	Family Law CLE	MCC, Portland
July 25	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>August 2</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>

\* indicates an update since the last version

**Bold** indicates required attendance

August 7-9	All Day	ABA Annual Meeting	Boston, MA
August 8	7:00 p.m.	ONLD Social Event at OLIO	TBD
August 8-10	All Day	OLIO Orientation	Hood River Inn, Hood River
August 21	Noon	Ethics CLE	MCC, Portland
September 5	9:00 a.m.	BOG Board Meeting	OSB, Tigard
<b>September 12</b>	<b>5:30 p.m.</b>	<b>CLE Program &amp; Social</b>	<b>TBD, Lincoln City</b>
<b>September 13</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>TBD, Pacific City</b>
September 18	Noon	Professionalism CLE	MCC, Portland
September 25	Noon	Article 3 Courts CLE	MCC, Portland
<b>October 2*</b>	<b>1:30 p.m.</b>	<b>Swearing In Reception</b>	<b>Willamette University, Salem</b>
October 9-11	All Day	ABA Fall Conference	Portland, OR
October 10	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>October 11</b>	<b>TBD</b>	<b>Executive Committee Meeting</b>	<b>Thuemel Uhle &amp; Eder, Portland</b>
October 16	Noon	Ethics CLE	MCC, Portland
October 23	2:00 p.m.	Pro Bono CLEs and Fair	WTC, Portland
November 7	TBD	HOD Annual Meeting	TBD
<b>November 7</b>	<b>5:30 p.m.</b>	<b>Annual Meeting</b>	<b>Portland</b>
November 13	Noon	Estate Planning CLE	MCC, Portland
November 13-15	9:00 a.m.	BOG Board meeting	Salishan, Gleneden Beach
November 20	Noon	Construction CLE	MCC, Portland
December 11	Noon	Child Abuse Reporting CLE	MCC, Portland

\* indicates an update since the last version  
**Bold** indicates required attendance



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2013-51 IRELAND (Pedro) – Request for Review

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### Action Recommended

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

### Discussion

At its meeting on January 11, 2014, after considering Mr. Pedro's application for reimbursement, the CSF Committee voted unanimously to deny the application on the ground that there was insufficient evidence of dishonesty and that the claim was really a dispute over the reasonableness of the lawyer's fees. Mr. Pedro has timely requested BOG review of the Committee's decision.

Mr. Pedro hired Keizer attorney Kelly Ireland in March 2012 to represent him in a post-conviction proceeding. The fee agreement indicated that Ireland would charge for her time at \$100/hour. Mr. Pedro deposited an initial retainer of \$500; over time additional payments were made totaling \$3,100.

Mr. Pedro claims that Ireland did very little on his case. Court records show that in December 2012 Ireland filed a comprehensive Second Amended Petition with the client's detailed declaration. There were also some procedural motions and brief appearances. Thereafter she became difficult to reach. Mr. Pedro eventually terminated the representation and Ireland filed a motion to withdraw on May 2, 2013.

Unearned fees are eligible for reimbursement under CSF Rule 2.2, which provides, in pertinent part:

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

\* \* \*

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

The CSF Committee acknowledged that Mr. Pedro was justifiably frustrated with Ireland's failure to communicate beginning in late 2012 or early 2013. At the same time, the committee concluded Mr. Pedro must have been satisfied with her services prior to that time, as he continued to deposit funds toward Ireland's fees (all payments were made before 2013). The Committee also acknowledged that Ireland's fees may have been excessive, given the amount of services provided. Mr. Pedro maintains that Ireland couldn't possibly have performed 31 hours of work to earn the \$3,100 he paid her. Mr. Pedro also argues that Ireland's services were of little or no value to him. Mr. Pedro's current attorney suggests that the Seconded Amended Petition would have taken about 5 hours to prepare; the Committee guessed that Ireland might have spent about 20 hours on the case before withdrawing.

The Committee found no evidence of defalcation or other dishonesty.<sup>1</sup> It was also unable to conclude that Ireland's service were "minimal or insignificant."

The Bar is currently investigating nine complaints from former clients of Ireland, including one from Mr. Pedro. All were filed between April and November 2013. Ireland was suspended in December 2013 for failing to respond to the bar's inquiries and requests for information in connection with those matters.

Accompanying material: CSF Investigator's Report  
Mr. Pedro's Request for Review

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<sup>1</sup> In his request for review, Mr. Pedro argues that Ireland's failure to invoice him for her services amount to defalcation.

**MATTHEW L. SOWA**  
**ATTORNEY AT LAW**  
456 State Street, Suite 200  
Salem, OR 97301

Telephone: 503 540 5684

Fax: 503 540 5822

January 28, 2014

Sylvia E. Stevens  
Executive Director  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

RECEIVED  
JAN 30 2014  
Oregon State Bar  
Executive Director

RE: Client Security Fund Claim No. 2013-51  
Claimant: Robert James Pedro  
Lawyer: Kelly E. Ireland

Dear Ms. Stevens:

Please consider this letter as written request for reconsideration under Client Security Fund Rule 4.10.1.

As you may know, Robert James Pedro, ("Pedro") hired Kelly Ireland ("Ireland") to help him transfer his post-conviction relief case, which was filed in Marion County, to Umatilla County. It was contemplated that Pedro could then hire a local attorney close in proximity to where Pedro was incarcerated so that Pedro could aid in his own case.

The representation agreement also discusses Ireland staying on after new counsel was hired in order to help Pedro's new counsel in the investigation of the underlying Polk County case. Attached is a copy of the representation agreement.

Pedro alleges that after representation began Ireland decided that she was competent to handle the entire case, and obtained Pedro's approval. Pedro alleges that he made a total of \$3,100 in payments to Ireland based on Ireland's representation that services were being performed and that progress was being made on Pedro's case. Pedro alleges that Ireland provided at most one invoice, although he is uncertain as to whether an invoice was actually provided or just merely just discussed.

Pedro alleges that Ireland began a pattern of non-communication, only communicating in order to request another payment. He alleges that Ireland contacted his sister around Christmas time

claiming that she would not have a good Christmas if she did not receive a payment. Pedro's sister provided a payment.

Pedro alleges that all communication eventually stopped. Pedro filed a disciplinary complaint and was forced to hire new counsel to take over his post-conviction relief case.

I fail to see how Ireland's acceptance of any funds beyond the initial \$500 retainer could be considered earned. Pedro did not receive thirty-one (31) hours worth of service, and Ireland failed to provide any invoices.

Alternatively, what value did Ireland add to Pedro's case? Clearly Pedro had to pay his new counsel duplicate fees to review Ireland's work and to prepare for Pedro's hearing.

Your letter dated January 13, 2014 states that there is insufficient evidence of defalcation. If Ireland was retained on an hourly basis and has failed to provide an invoice, how is this anything but defalcation?

I respectfully request that the board reconsider its position.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew L. Sowa', with a long horizontal flourish extending to the right.

Matthew L. Sowa

## HOURLY LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This agreement, executed with each party receiving, is made between IRELAND LEGAL, LLC, hereafter referred to as "Law Firm," and ROBERT PEDRO, hereafter referred to as "Client."

Law Firm's legal work will be completed by Kelly E. Ireland, Attorney-at-Law, licensed to practice law in the State of Oregon. Ireland is hereafter referred to as "Attorney."

This agreement is intended to memorialize the agreement of the parties, already commenced at the verbal instruction of Client.

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Clients are as follows: becoming attorney of record for client on his PCR case; appearing at April 3<sup>rd</sup>, 2012 status conference; securing a change of venue to Umatilla County; and assisting with local investigation and legal representation under the supervision of the PCR attorney selected and hired by Client once change of venue is secured.

3. RESPONSIBILITIES OF LAW FIRM AND CLIENTS. Law Firm will perform the legal services called for under this agreement, keep Clients informed of progress and developments, and respond promptly (within 48-hours unless impossible) to Clients' inquiries and communications. Clients will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Clients' address, telephone numbers and whereabouts; and timely make any payments required by this agreement.

4. ATTORNEY'S FEES. Clients will pay Law Firm for attorney's fees for the legal services provided under this agreement at the respective hourly rates of the individuals providing the services. Law Firm will provide legal services at a rate of \$100 an hour. Law Firm will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity will be one tenth of an hour.

Law Firm will charge for all activities undertaken in providing legal services to Clients under this agreement, including, but not limited to, the following: conferences, court sessions, and depositions (preparation and participation); correspondence and legal documents (review and preparation); legal research; and **telephone conversations**. I highlight telephone conversations because this is the item where Client's are often surprised on an invoice. Many short telephone calls can add up. When two or more of Law Firm's personnel are engaged in working on the matter at the same time, such as in conferences between them, the time of each will be charged at his or her hourly rate.

Clients acknowledge that Law Firm has made no promises about the total amount of attorney's fees to be incurred by Clients under this agreement.

1 - Pedro Hourly Fee Agreement

Ireland Legal, LLC  
P.O. Box 21477  
Keizer, Oregon 97307  
Fax: (503) 463-4724  
Phone: (503) 881-4410  
irelandlegal@gmail.com

5. COSTS. Clients will pay all "costs" in connection with Law Firm's representation of Clients under this agreement. Costs will be advanced by Law Firm and then billed to Clients unless the costs can be met out of client deposits that are applicable toward costs. Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, long-distance telephone charges, messenger service fees, photocopying expenses, and process server fees.

6. DEPOSIT FOR FEES. Client has placed \$500 in trust by way of check delivered to Ireland Legal, LLC. These funds—and any future deposit/retainer funds—will be deposited to Law Firm's IOLTA (Interest on Lawyer's Trust Accounts), where it will be held in trust until earned and billed by Law Firm.

7. DEPOSIT FOR COSTS. Law Firm hereby waives the requirement of a deposit for costs, and if necessary costs will be taken from the Fee Retainer . See item number 6.

Law Firm will notify Clients whenever the full amount of any deposit has been applied to fees and costs incurred by Clients. Client will promptly pay any balance owing, and as necessary, deposit further funds into trust.

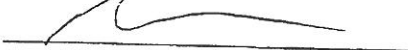
8. STATEMENTS AND PAYMENTS. Law Firm will send Client monthly statements indicating attorney's fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month.

9. NEW LAWYER STATUS. In the State of Oregon, an attorney is considered to be a 'new lawyer' for the first six-years of practice. Because Attorney is within this period, Client authorizes law firm to consult with other attorneys as needed to competently and ethically represent Client.

10. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date when it is executed by the second of the parties to do so.

The foregoing is agreed to by:

Dated this 25<sup>th</sup> day of March, 2012

Client :   
Robert Pedro

Dated this 20<sup>th</sup> day of March, 2012

Attorney :   
Kelly E. Ireland

# CLIENT SECURITY FUND

## INVESTIGATIVE REPORT

**From:** Mark G. Reinecke  
**Date:** December 31, 2013  
**Re:** Client Security Fund Claim No.: 2013-51  
Attorney: Kelly E. Ireland, OSB No. 106134; Status: Suspended  
Claimant: Robert James Pedro  
Investigator: Mark G. Reinecke

### Investigator's Recommendations

Claimant Robert Pedro requests \$3,100. Recommend denial of the claimed amount.

### Statement of the Claim

Pedro retained Kelly Ireland on March 25, 2012 in a post-conviction relief proceeding. A written fee agreement indicated that Ireland would charge an hourly rate of \$100 for the services to be provided. An initial retainer was paid in the amount of \$500.00 and placed in Ireland's trust account. Additional payments were subsequently made.

In Pedro's application for reimbursement submitted to CSF, he indicates that he paid Ireland a total of \$3,500. Proof of payment was provided by JoAnna Gould, Pedro's sister, and Jan Pedro, Pedro's mother. However, the proof only totaled \$3,100. Upon inquiry, Pedro's attorney, Matthew L. Sowa, confirmed that the amount paid was only \$3,100.

In his application, Pedro states that Ireland performed almost no services. I was unable to reach Ireland. However, I was able to obtain copies of the court filings from the Marion County Circuit Court which revealed several appearances and pleadings by Ireland, including a comprehensive "Second Amended Petition for Post-Conviction Relief" which included a detailed Declaration which was signed by Pedro. The Second Amended Petition was filed in early December 2012. At some point in early 2013, Ireland became very difficult to reach. Pedro ultimately terminated the representation and Ireland filed a Motion to Withdraw on May 2, 2013.

The last payment (\$520) made to Ireland on behalf of Pedro was received the first week in January 2013. However, that payment was to cover a payment from December 2012 which had been returned for insufficient funds. Pedro was not able to provide any billing invoices nor did he recall whether any were provided.

### Findings and Conclusion

1. Ireland was admitted to practice in Oregon in 2010. Thereafter she was an active member of the Bar, maintaining an office in Oregon for the practice of law. She is currently suspended – non-disciplinary.

2. Pedro retained Ireland in March 2012 to seek post-conviction relief. Pedro asserted that his trial attorney recommended he accept the state's plea offer without adequately reviewing the discovery provided by the District Attorney's Office. Pedro's trial attorney is currently incarcerated himself and Pedro has had a series of post-conviction relief counsel. The post-conviction relief case ultimately went to trial on December 19, 2013 in Marion County. Pedro's current attorney is Robert Klahn. As of the time of this writing, the case was under advisement.

3. Through family members, Pedro provided Ireland with \$3,100 for legal services. Proof was provided to the CSF.

4. Section 2.5 requires that the claimed loss arise from, and was because of:

2.5.1, an established lawyer-client relationship; or

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

Pedro's loss arose from an established lawyer-client relationship, from the lawyer's failure to account for money entrusted to her in connection with the practice of law, and while acting as a fiduciary related to her practice of law.

5. A reimbursable loss must be caused by the lawyer's dishonest conduct. CSF Section 2.2. Section 1.8 defines "dishonest conduct" to be "a lawyer's willful act against a client's interest by defalcation, by embezzlement, or by other wrongful taking."

6. In early 2013, Pedro understandably became dissatisfied with Ireland's non-responsiveness. However, Ireland provided substantial services to Pedro. Pedro would have continued paying Ireland but for her non-responsiveness in early 2013. It appears that all of the charges were for services provided prior to that time. It is possible that the amount charged for the services provided was excessive. According to Pedro's current counsel, the preparation time for the Amended Petition for Post-Conviction Relief should have been about 5 hours. At Ms. Ireland's rate of \$100 per hour, that would only be about \$500. Most of the other services provided appear to be routine including procedural motions and brief appearances. Although it would seem that approximately 20 hours should have been enough, there is insufficient evidence of defalcation. A fee dispute claim seems more appropriate.

7. Pedro filed the claim with the CSF within two years of the discovery of his claimed loss.

8. No judgment has been sought. Ireland is likely judgment proof. Also, CSF Section 2.6.2 requires claimants to obtain a judgment, except for when the claim loss is \$5,000 or less (CSF Section 2.6.3).

9. Recommend denial of Pedro's *revised* claim of \$3,100.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2013  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Workgroup Recommendations & Committee Response

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### **Action Recommended**

Consider the request of the CSF Committee that changes to CSF policy and procedure adopted in September 2013 not be implemented.

### **Background**

The OSB Client Security Fund was established in the late 1960's to alleviate losses suffered by clients due to the dishonesty of their lawyers. In essence, a client is eligible for an award from the Fund if there is evidence of theft or other defalcation by the lawyer. Like its companions around the US and Canada, the CSF is considered a "fund of grace" that makes discretionary awards when the claimant has no other recourse to recover the loss. Awards are capped at \$50,000.

Prior to 2012-13, there had been only one situation where the Fund was insufficient to satisfy all outstanding claims. That occurred in 1988-1989 when three attorneys were the source of claims in excess of \$800,000, which was well more than the annual \$3 assessment brought in and there was no reserve. Payment of the approved claims (the cap was then \$25,000) was stretched out over two years as income was received. As a result of that experience, the assessment was raised to \$25 and the BOG established a minimum \$500,000 reserve for the CSF. Once the reserve minimum was reached, the annual assessment was reduced to a level sufficient to sustain the reserve minimum. As shown on the attached CSF Assessment History chart, the assessment fluctuated some over the next years (with a spike in 1997 because of high claims activity), but held steady at \$15 for seven years.

During that same period (as shown on the attached CSF Claim Paid History chart), total annual awards from the Fund were relatively modest with the exception of 1998 and 2005. In both cases, however, the unexpectedly higher claim volume did not threaten the Fund because the annual revenue coupled with the reserve was adequate to cover the awards. In 2012, the Fund began to receive claims from clients of Bryan Gruetter and Jason McBride and it was quickly apparent that the total of claims would exceed the 2012 assessment revenue and the entire reserve. Based on 2012 activity, the BOG raised the annual CSF assessment to \$45 in order to rebuild the reserve.

Throughout its history (with the exception of 1988-1989), CSF awards were made as the claims were approved, enabling the Fund to alleviate the clients' loss as quickly as possible. Even so, neither the enabling statute nor the CSF Rules mandate payment in that fashion,

allowing the BOG (as ultimate trustee of the Fund) the flexibility to determine when claims should be paid according to circumstances.

### **BOG Workgroup Recommendations**

Due to the BOG's concerns about the impact of the Gruetter claims in 2012-2013, a workgroup was formed to consider whether any of the Fund's policies and procedures should be adjusted to avoid similar situations in the future. In September 2013, the workgroup presented its recommendations to the BOG. Due to scheduling conflicts and a breakdown in communication, representatives of the CSF Committee were unable to be present at that meeting to voice its strong opposition to the proposed changes.<sup>1</sup>

### **Subsequent Action**

Once we learned about the September meeting mix-up, OSB President Haglund agreed that implementation of the changes should be deferred until the matter could be returned to the BOG at a time when the Committee could have an opportunity to present its opposing view. The CSF Committee met on November 16 and again discussed the workgroup recommendations with BOG Contact Theresa Kohlhoff. The Committee confirmed its continuing opposition and designated then-chair Stephen Bennett to represent the Committee's views to the BOG. Mr. Bennett will appear on February 21. His letter is included in this packet.

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<sup>1</sup> I was aware of the Committee's opposition but was also not present at the September meeting and unaware that no Committee representatives had appeared before the BOG.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 27, 2013  
**From:** Hunter Emerick, Chair, BOG Client Security Fund Workgroup  
**Re:** Report of the BOG Client Security Fund Workgroup

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### Action Recommended

Consider and adopt the recommendations of the CSF Workgroup as set forth in this report.

### Discussion

#### *Creation of the Workgroup*

The unprecedented experience of the Client Security Fund in 2012<sup>1</sup> caused the Board of Governors to devote considerable time discussing the Fund including its purpose, how it is funded, what types and amount of awards it should make, and how to avoid a similar situation where eligible claims far exceed the Fund reserve.

In mid-2012, the BOG asked the CSF Committee to review Fund rules and policies and suggest any changes that would help assure Fund stability in future years. The Committee had many discussions about the impact of the Gruetter and McBride claims as they worked through them.<sup>2</sup> The Committee also had a special meeting to respond to the BOG's request for an analysis of the Fund. Ultimately, the Committee recommended a minor clarification in the *per claim limit*, but nothing else.

When the Committee's recommendation was submitted to the BOG in May, several members continued to be concerned that rule changes might be necessary to limit the CSF's exposure to significant claims. President Haglund suggested further consideration be given to the issues, and appointed a workgroup comprised of Hunter Emerick, Matt Kehoe, Ethan Knight, Theresa Kohlhoff and Caitlin Mitchel-Markley.

#### *The Workgroup's First Meeting*

The workgroup had its first meeting on June 7 and invited CSF Chair Steven Bennett to participate. The committee began by reiterating its goal of assuring stability of the Fund and avoiding exhaustion of the reserves that requires an increase in the assessment. Ms. Stevens

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<sup>1</sup> Thirty-nine Clients of Bend lawyer Bryan Gruetter submitted claims alleging losses of more than \$1.2 million and eligible claims paid to date exceed \$800,000 (with one remaining to be resolved). The CSF also received more than 70 claims from clients of Salem attorney Jason McBride; the total amount of those claims, approximately \$300,000, constitute the second largest Fund payout in its history, after Gruetter.

<sup>2</sup> It is worth noting that the CSF Committee had several meetings of 4+ hours as they analyzed and made decisions about the claims.

provided a brief history of the OSB Client Security Fund and explained that magnitude of the Gruetter/McBride claims together was unique in the history of the Fund. The only similar situation occurred in the early years of the Fund before there was a reserve, when the funds on hand were insufficient to cover all the eligible claims. In addition to raising the assessment for the following year, the BOG in that instance authorized partial payments followed by final payments the following year.

The workgroup then discussed the respective merits of various policies in place in other funds:

- Per-claim and per-lawyer caps;
- Once-per-year awards limited to a specified percentage of the fund balance, prorated as necessary;
- A look-back period of two or three years to supplement partial payments in the claim year.

Eliminating “earned on receipt” fees and having random trust account audits were also discussed as possibly effective ways to minimize claims of misappropriation, although admittedly more difficult to implement.

Mr. Bennett was then asked for his perspective. He pointed out that Oregon’s fund is very much in the mainstream with a long history of stable funding through member assessment and maintenance of a suitable reserve. Mr. Bennett echoed the CSF Committee’s view that none of the possible changes would appear to improve the existing program. He suggested that making awards only once a year would exacerbate the claimant’s hardship and that “justice delayed is justice denied.” He also expressed his opinion that the \$30 assessment increase in 2013 is “background noise” and not meaningful to most members, who to his knowledge are universally proud of the bar’s ability to at least partially repair the damage done by dishonest lawyers.

At the conclusion of the meeting, there was a general consensus that the CSF reserve should be increased to \$1 million and the rules revised to clarify that the maximum award of \$50,000 per claim applied regardless of the number of legal matters the lawyer was handling for the client at the time. Staff was requested to gather information about insurance for the fund, and also about random audit programs for consideration at the next meeting.

### *The Workgroup’s Second Meeting*

The workgroup met again on August 23. Ms. Stevens reported that none of the insurers to whom she was referred was interested in covering the Fund. Reasons given were that the Fund was too small to be of interest; the premiums were likely to be larger than the current per-member assessment; and in the event of a significant claim, the policy would be cancelled or the premium increased to an even greater amount.

The group then reviewed its prior consideration about options. The group reiterated its desire to raise the reserve and clarify the rules regarding per-claim limits. There was also a

consensus for making awards at the end of the year and limiting the amount that would be paid out of the fund at any time. To alleviate the hardship of annual payments, it was agreed that the first \$5000 of any claim could be paid as approved, with the remainder held to the end of the year, with a look-back to allow the balance of the approved award to be paid in subsequent years.

*Recommendations of the Workgroup*

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.<sup>3</sup>
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.

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<sup>3</sup> This may require a special BOG meeting in December.

**Steven R. Bennett**  
Attorney  
Admitted in Oregon  
sbennett@fwwlaw.com

121 SW Morrison Street, Suite 600  
Portland, Oregon 97204  
tel 503.228.6044  
fax 503.228.1741  
www.fwwlaw.com

TO: Oregon State Bar Board of Governors  
FROM: Steven R. Bennett (Former Chair of CSF Committee)  
DATE: January 14, 2014  
RE: CLIENT SECURITY FUND COMMITTEE – STATEMENT OF  
OPPOSITION TO WORKGROUP RECOMMENDATIONS

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The BOG Workgroup presented its recommendations by written report to BOG on September 27, 2013. The report listed seven points, and the first two are supported by many members of the Committee:

1. Increase the CSF reserve from \$500,000 to \$1 million, and
2. CSF Committee and BOG continue to review and approve claims throughout the year, and pay claims under \$5000 upon approval.

The Client Security Fund Committee opposes the next three recommendations:

3. The remaining balance of approved award in excess of \$5,000 will be held and paid at the end of the year.
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.

As noted in the report, many of us believe that Oregon's client security fund is very much in the mainstream with a long history of stable funding through member assessment and maintenance of a suitable reserve. The Committee strongly believes that none of the above 3 changes would appear to improve the existing program, and some of the changes would make it far worse.

The timing of payment is critical to the victims of lawyer dishonesty. Making awards only once a year would exacerbate the claimant's hardship. Most claimants have already been waiting for a long time before they discover their loss. Added to that time is the time for a CSF claim to be investigated, decided, and processed. With respect to many of Brian Gruetter's victims, the clients suffered permanent injuries, some lacked financial resources for medical treatments, and many were impaired in their ability to work. Several of his clients had creditors chasing them for payments. As to Jason McBride's victims, they are all people of limited financial means and limited options. Additional waiting could mean that, before payment is

January 14, 2014

Page 2

made, they will have been deported or will have moved, leaving no trace with which to locate them and leaving the compensation process unfinished. To require these claimants to wait possibly an additional year before final payment is almost unconscionable given the purpose of the fund.

As for the assessment increase enacted in 2013, the committee believes most attorneys have not and will not object. To our knowledge, it appears most members of the bar are proud of the bar's ability to at least partially repair the damage done by dishonest lawyers.

We believe the current attention being focused on CSF rules is due to depletion of the fund at the end of 2012. This resulted in the need for CSF to "borrow" \$200,000 from the bar's general fund. We are informed that BOG approved such loan, and that the loan was fully repaid 2 months later. Nevertheless, the committee respects the bar's need to avoid disruption of bar finances. We all hope and expect this unusual need for a short-term loan never arises again. However, it is always BOG's prerogative to approve, or deny, such short term borrowings. In the unlikely event of another record-setting spike in claims, BOG could simply decline any temporary loan to CSF. Future cash shortages could easily be dealt with by deferring or pro-rating payments of claims as necessary, until the following year. We must not overlook the flexibility that CSF already has, in choosing the timing for payment of claims. As we understand it, deferral of payment is exactly how CSF dealt with temporary cash shortages on the few occasions in the past when the issue arose. There is no need to inflict the hardship of payment deferral on all victims, when there have been, and likely will continue to be, ample funds to promptly pay all approved claims in most years.

Finally, the notion of increasing the reserve is supported by the committee, but this reserve must be fully available for payment of claims. Why have a reserve for payments if these funds cannot be touched? No explanation has been offered that justifies collection of these funds from members and then holding and not using them for the purpose intended. In the unlikely event the reserve is depleted in a given year, further payments of approved claims will need to be deferred. However, no portion of the reserve should be "untouchable" – bar members deserve to have their assessments put to work, and not just held on deposit to satisfy someone's sense of security about bar finances. Even if claim payouts return to normal, as it appears they have, it will take at least 2 years to build up the reserve of \$1 million. When that level is reached, the annual assessments should be reduced to a level adequate to maintain the reserve, but not increase the reserve.

Respectfully Submitted,



Steven R. Bennett, Past-Chairman,  
Client Security Fund

## 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.<sup>1</sup>
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.

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<sup>1</sup> 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]**

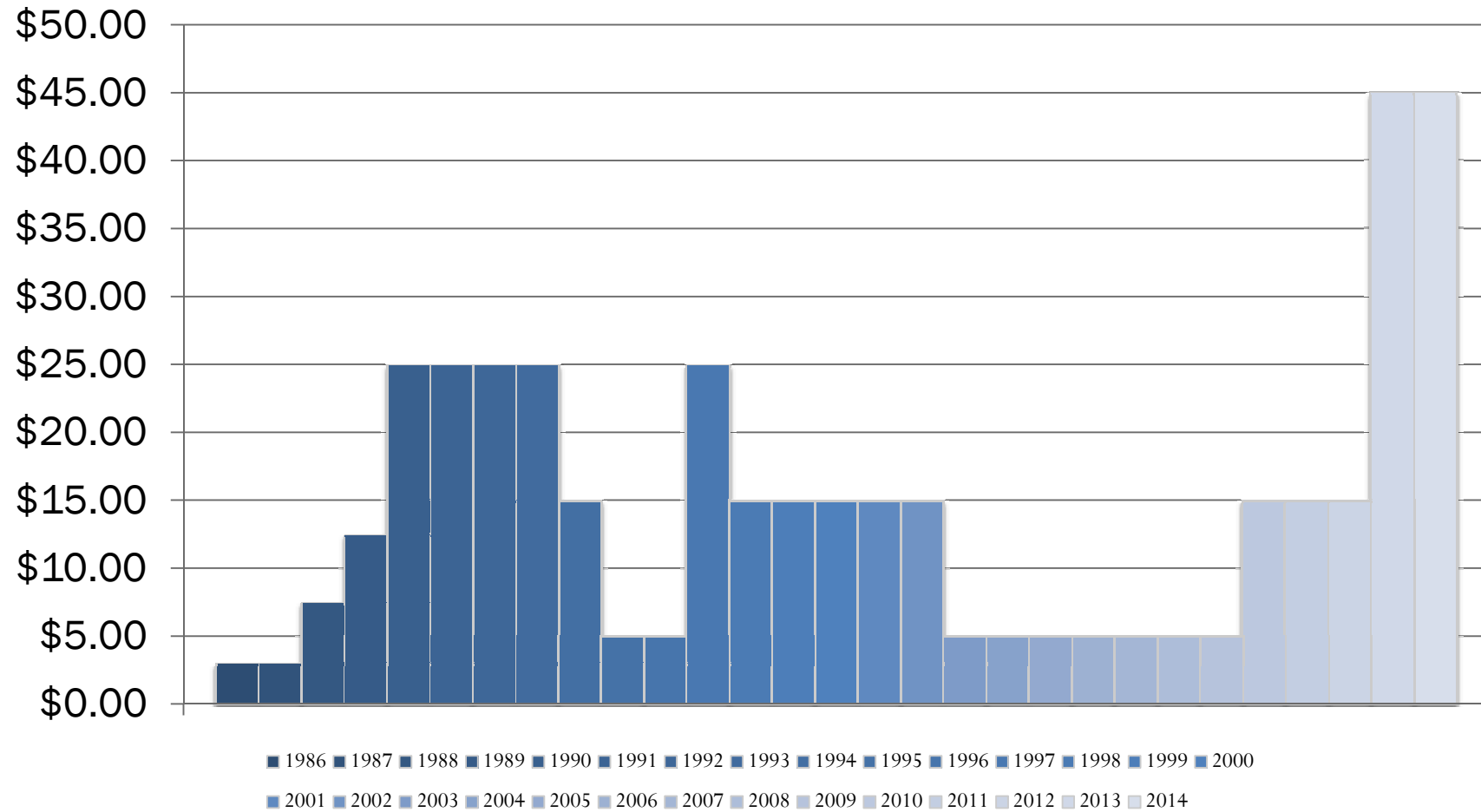
**Motion:** The board voted unanimously to approve the committee recommendation to not raise the Active Membership Fee for 2014.

**C. Governance and Strategic Planning Committee**

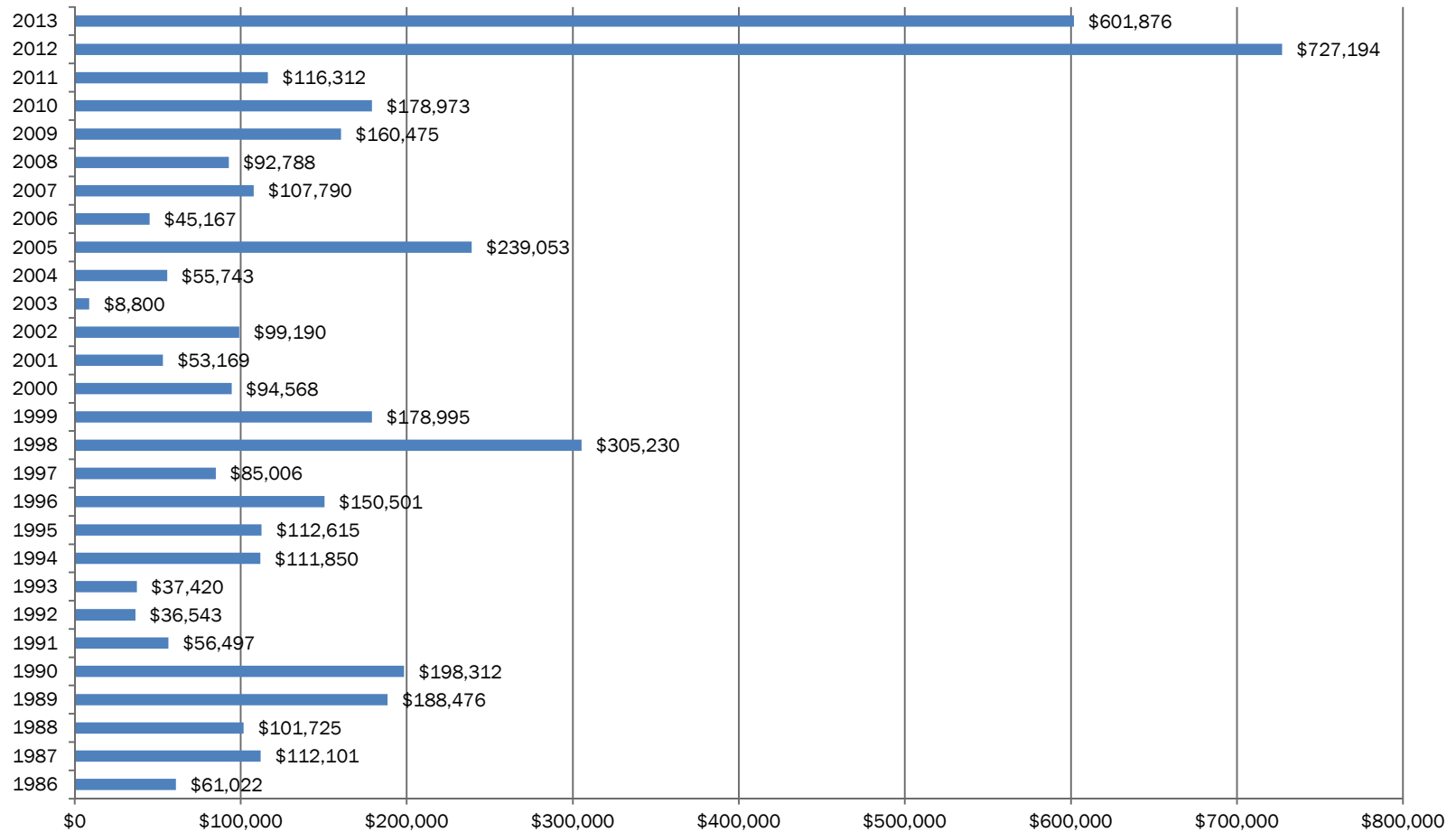
Ms. Hirschbiel presented the committee's proposed amendments to the Standard Section Bylaws, which prohibit reimbursement of section executive committee's guest expenses. The proposed amendments will be circulated to section leadership and board members may receive feedback from members. This issue will 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

# CSF Assessments 1986-2014



# Claims Paid 1986-2013



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** MCLE Committee  
**Re:** Proposed amendments to various MCLE Rules and Regulations

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### Issue

House Bill 2205 was passed during the 2013 Legislative Session. Among other changes, Section 5 of HB 2205 amends ORS 124.050 to add lawyers to the list of mandatory reports for elder abuse, and Section 7 amends the mandatory child abuse reporting training requirement set forth in ORS 9.114. Specifically, Section 7 removes the details of the training requirement from the statute but requires the Oregon State Bar to "...adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010."

The amendments become operative on January 1, 2015.

### Options

At its meetings on September 13 and December 13, 2013, the MCLE Committee reviewed and discussed various options for amendments to the MCLE rules and regulations relating to the duties of attorneys to report child abuse and elder abuse, including:

- 1) How long should the training be – 30 minutes; 60 minutes; other?
- 2) How often should lawyers be required to attend the training -- one hour per reporting period; one-half hour per reporting period; one hour in alternate reporting periods; only once?
- 3) Should the training combine the child and elder abuse reporting requirements or deal with them separately?
- 4) Requirements for new admittees

### Discussion

The purpose of the statutory amendment was to return to the Supreme Court the authority to set minimum training requirements for attorneys. Therefore, during its discussions about possible amendments to the MCLE rules and regulations relating to the duties of attorneys to report child abuse and elder abuse, the MCLE Committee was aware that it had considerable room for discretion in crafting a new rule. At the same time the Committee was mindful of the importance of lawyers understanding their mandatory reporting requirements and the possible consequences of gutting the training requirement entirely.

The Committee had a lengthy discussion about how much training is “enough”. Some OSB members opined that one training should be enough. The Committee considered this option, but ultimately rejected it for several reasons. First, there was concern that the Supreme Court might not approve a rule amendment that so drastically reduced the training requirement. Second, the MCLE Committee was concerned that such a significant change may give the appearance that lawyers don’t care about child and elder abuse, which may result in potential backlash from the legislature and/or members of the public. Third, members of the MCLE Committee firmly believe that regular training better serves the purpose of the child and elder abuse reporting laws by ensuring that members are reminded of and understand the contours of their mandatory reporting requirements.

Committee members discussed combining the elder abuse and child abuse reporting requirements into one one-hour program, which would be required in the same three-year reporting periods in which access to justice credits are required. The concern with this approach was that, although the reporting obligations and exceptions to reporting are the same for both, what constitutes abuse is different. Child abuse and elder abuse present differently and elder abuse can be more difficult to identify. The Committee considered bar members’ concerns about having to complete two separate requirements and the confusion over which credit would be due in what reporting period, and ultimately determined that it is more important to keep the two requirements separate. The Committee also considered reducing the amount of time for the training, but determined that the topic could not be covered adequately in any time less than an hour.

The Committee also discussed whether the two separate credits should be required in each reporting period. This would further dilute the ethics credit requirement, which has already been diluted by including the child abuse reporting credit as one of the six ethics credits. The Committee was also concerned about requiring lawyers to complete two hours of **mandatory** credit requirements in each reporting period. Therefore, the Committee decided to alternate the two reporting requirements every other reporting cycle.

Finally, the Committee considered whether new admittees should be required to complete the child abuse reporting and elder abuse reporting credits in the first reporting period. This could mean that new admittees would have no ethics credit requirement in the first reporting period. After discussion, it was decided that the new admittees should have a requirement of two ethics credits and no initial child or elder abuse reporting requirement. The proposed amendments would require new admittees to complete child abuse reporting and elder abuse reporting credits in the applicable three year reporting periods set forth in Regulation 3.300(d).

Because new admittees will not have a child abuse or elder abuse reporting requirement in the first reporting period after admission, the Committee agreed that information about these reporting requirements should be included in the new admittee packet and be part of the New Lawyer Mentoring Program curriculum.

Ultimately, the Committee unanimously recommended amending the MCLE Rules and Regulations as follows:

### **Proposed Rule Amendments Recommended by the MCLE Committee**

**Rule 3.2 (b) Ethics.** At least six of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), including one hour on the subject of a lawyer's statutory duty to report child abuse ~~(see ORS 9.114)~~ or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

**Rule 3.2(c) Access to Justice.** In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b). ~~For purposes of this rule, the first reporting period that may be skipped will be the one ending on December 31, 2009.~~<sup>1</sup>

#### **3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.**

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics ~~(including one in child abuse reporting).~~

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics ~~(including one in child abuse reporting),~~ and ten credit hours in practical skills. ~~New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period.~~ New admittees admitted ~~on or after January 1, 2009~~<sup>2</sup> must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule 3.2(a) shall apply.

#### **3.5 Out-of-State Compliance.**

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon but is in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a

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<sup>1</sup> Reference to past date is being deleted for housekeeping purposes.

<sup>2</sup> References to past dates are being deleted for housekeeping purposes.

compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114. ). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

#### **5.5 Ethics and Access to Justice.**

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

### **Proposed Regulation Amendments**

**3.260 Reciprocity.** An active member whose principal office for the practice of law is in Idaho, Utah or Washington may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements of the state in which the member's principal office is located, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

**3.300(d)** Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. ~~Access to Justice credits earned in a non-required reporting period will be credited as general credits.~~ Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit. Access to Justice, child abuse reporting and elder abuse reporting credits earned in a non-required reporting period will be credited as general credits.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** MCLE Committee  
**Re:** Proposed amendments to MCLE Rule 3.5(a) and Regulation 3.260.

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### Issue

An Oregon State Bar member whose principal office for the practice of law is in Washington, Idaho or Utah, may satisfy the Oregon MCLE requirements by completing the child abuse reporting credit and providing a Comity Certificate of MCLE Compliance from the Washington, Idaho or Utah State Bar. (MCLE Rule 3.5(a) and Regulation 3.260).

#### **MCLE Rule 3.5 Out-of-State Compliance.**

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon but is in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse reporting credit required in ORS 9.114.

**MCLE Regulation 3.260 Reciprocity.** An active member whose principal office for the practice of law is in Idaho, Utah or Washington may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements of the state in which the member's principal office is located, together with evidence that the member has completed the child abuse reporting training required in ORS 9.114. No other information about program attendance is required.

The MCLE Committee recently reviewed a request from an Oregon lawyer who is also licensed in Washington and Montana, and whose principal office for the practice of law is in Montana. The lawyer complied with Washington's MCLE requirements. Because his principal office for the practice of law is in Montana rather than Washington, however, he was not permitted to satisfy Oregon's MCLE requirements with a Comity Certificate of Compliance from Washington pursuant to MCLE Rule 3.5. Instead, the rules required him to file a compliance report showing that he completed Oregon's minimum CLE credit requirements for the current reporting period. As a result, the member asked the Committee to consider amending MCLE Rule 3.5 and the accompanying regulations.

### Options

At its meeting on December 13, 2013, the Committee discussed three options pursuant to the member's request:

- 1) Make no change to the current rules and regulations.
- 2) Amend the rules and regulations as specifically requested by the member (i.e., delete the reference to principal office location for OSB members who are also members in Washington, Idaho or Utah).



- 3) Expand MCLE reciprocity to cover all out-of-state members of the Oregon State Bar who are also active members in any of the qualifying jurisdictions in RFA 15.05(2), not just those who are active members in Washington, Idaho or Utah.

### Discussion

Option 2 slightly expands the current Comity Agreement the Oregon State Bar has with the Washington, Idaho and Utah state bars, which was approved in 1996 after several months of study. The Comity Agreement states that the MCLE rules and regulations of the four northwest states – Oregon, Washington, Idaho and Utah – would be recognized as essentially equivalent to those of each of the other states. This option would allow OSB members to satisfy their Oregon MCLE requirements with a Certificate of MCLE Compliance from Washington, Idaho or Utah regardless of where their principal office is located. Provided the CLE requirements of Washington, Idaho or Utah have been met, the OSB member may submit a Certificate of Compliance from one of these three states (and show completion of the child abuse reporting credit) in lieu of providing a compliance report listing all credits completed during the reporting period.

Option 3 allows any OSB member who is also an active member of any of the qualifying jurisdictions set forth in Rules for Admission 15.05(2)<sup>1</sup> to comply with Oregon’s requirements by providing a Certificate of MCLE Compliance from the qualify jurisdiction and completing the child abuse reporting credit. No other information about credits completed would be required.

Before making a recommendation, MCLE Committee members requested information about the MCLE requirements in the 38 qualifying jurisdictions referenced in RFA 15.05(2). (Note that Montana is not listed as one of the 38 qualifying jurisdictions.) After reviewing the MCLE requirements in the other jurisdictions, members decided not to recommend such broad MCLE reciprocity because many jurisdictions, including Kansas, Indiana, and Louisiana, require only 12 credits per year, which is substantially less than Oregon’s average of 15 credits per year. Also, Oregon does not have the same close relationship with the other states as it does with the four northwest states. The MCLE Administrators in the four northwest states work closely together to maintain the integrity of the agreement.

The Committee did feel a change was warranted because deleting the principal office requirement makes the compliance process less burdensome for members admitted to more than one northwest state. This change mirrors the Washington State Bar procedure, which does

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<sup>1</sup> 15.05 *Admission of Attorneys Licensed to Practice Law in other Jurisdictions*

- (1) Attorneys who have taken and passed the bar examination in another qualifying jurisdiction, who are active members of the bar in that qualifying jurisdiction, and who have lawfully engaged in the active, substantial and continuous practice of law for no less than five of the seven years immediately preceding their application for admission under this rule may be admitted to the practice of law in Oregon without having to take and pass the Oregon bar examination, subject to the requirements of this rule.
- (2) For purposes of this rule, a “qualifying jurisdiction” means any other United States jurisdiction which allows attorneys licensed in Oregon to become regular members of the bar in that jurisdiction without passage of that jurisdiction’s bar examination.

The qualifying jurisdictions are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming

not require that a member have a principal office in Oregon, Idaho or Utah in order to comply with Washington's MCLE requirements with a Comity Certificate from one of those states. Therefore, the Committee recommends Option 2 -- amending Rule 3.50 and Regulation 3.260 as set forth below. These amendments will allow members to comply with Oregon's MCLE requirements by completing the child abuse reporting credit and providing a Comity Certificate of Compliance from Washington, Idaho or Utah, even though their principal office is not in one of those states.

**MCLE Rule 3.5 Out-of-State Compliance.**

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon ~~but~~ and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse reporting credit required in ORS 9.114.

**MCLE Regulation 3.260 Reciprocity.** An active member who is also an active member ~~whose principal office for the practice of law is in a jurisdiction with which Oregon has established MCLE reciprocity~~ (currently Idaho, Utah and Washington) ~~Idaho, Utah or Washington~~ may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction ~~of the state in which the member's principal office is located~~, together with evidence that the member has completed the child abuse reporting training required in ORS 9.114. No other information about program attendance is required.

Charge	Goal & Action Items	Lead	Timeline	Status
1. HOD election	Recruit members to run for election to the HOD		Candidate deadline March 21, 2014 Election held April 7 through 21	
	1.1 Assess vacancies and prepare candidate materials including candidate statement and list of FAQs	Dani	Final calculation on February 1	Pre-February materials available on website. Final calculations to be updated prior to February committee meeting.
	1.2 Identify desired attributes of HOD candidates	Committee	February 20/21 meeting	
	1.3 Advertise recruitment through bar emails, <i>The Bulletin</i> , website, and social media accounts	Dani	January-March	Ad in January Bulletin, posting on website homepage
	1.4 Contact members from volunteer opportunities survey and outgoing HOD members	Dani	February 21-March 20	
	1.5 Conduct outreach to county, specialty, and minority bar associations. Initial email followed up by telephone call or in person contact.	Staff/ Committee	February 24 emails out March 3-14 calls made	

Charge	Goal & Action Items	Lead	Timeline	Status
2. <b>BOG election</b>	Recruit members to run for election to the BOG		Candidate deadline May 13, 2014 Election held October 6 through 20	
	2.1 Assess vacancies, prepare and post candidate materials online (including form and FAQs)	Dani	Before February 15	Regions 4, 5, 6, 7 Materials in draft form
	2.2 Identify desired attributes of BOG candidates	Committee/BOG	February 20/21 meeting	
	2.3 Advertise call for candidates through bar emails, <i>The Bulletin</i> , website, list serves, and social media accounts	Dani	March - May	
	2.4 Conduct outreach to county, specialty, and minority bar associations. Initial email followed up by telephone call or in person contact.	Staff/ Committee	February 24 emails out March 3-14 calls made	
	2.5 Contact members from volunteer opportunities survey	Dani	March	

Charge	Goal & Action Items	Lead	Timeline	Status
3. Public member volunteers	Recruit, select, and appoint non-lawyer volunteers for the BOG and other bar positions		Application deadline July 3, 2014	
	3.1 Identify desired skills and attributes of BOG public member candidates	Committee/BOG /Staff	February 20/21 March 21	
	3.2 Draft and issue press release to media outlets	Dani & Public Relations	After March committee meeting	
	3.3 Conduct outreach to chamber of commerce chapters and grange halls. Initial email followed up by telephone call or in person contact.	Committee	April 4 emails out April 14-18 calls made <i>Continue follow up as needed until July 2</i>	
	3.4 Identify and conduct outreach to specified professional organizations. Initial email followed up by telephone call or in person contact.	Committee	April 4 emails out April 14-18 calls made <i>Continue follow up as needed until July 2</i>	
	3.5 Select candidates to interview for BOG position	Committee	July 25 meeting	
	3.6 Conduct BOG applicant interviews and select candidate for appointment recommendation	Committee	September 5	
	3.7 BOG vote on BDC recommendation for BOG Public Member	BOG	October 10 meeting	

Charge	Goal & Action Items	Lead	Timeline	Status
4. Lawyer volunteer recruitment	Recruit, select, and appoint lawyer volunteers		Application deadline August 25, 2014	
	4.1 Assess volunteer recruitment needs	Staff/Committee	April 25 meeting	
	4.2 Determine recruitment for balance committees-add neutral or only keep plaintiff/defense options. Notify balance committees of BDC's recruitment/appointment policy.	Committee	April 25 meeting	
	4.3 Determine how to handle bar affiliated group appointments and recruitment. Notify bar affiliated groups of BDC's recruitment/appointment policy.	Committee	April 25 meeting	
	4.4 Update online survey based on staff feedback and decisions from BDC meeting	Dani	No later than May 12	
	4.5 Advertise call for candidates through bar emails, <i>The Bulletin</i> , website, and social media accounts	Dani	May 19 – August 24	
	4.6 Conduct outreach to county, specialty, and minority bar associations. Initial email followed up by telephone call or in person contact.	Staff/Committee	May 19 emails out May 26-30 calls made <i>Continue follow up as needed until August 24</i>	
	4.7 Compile group volunteer lists and send to committee officers and staff liaisons for recommendations. Notify committee officers and staff liaisons of BDC's appointment policy.	Dani	September 1	
	4.8 Select candidates to appoint for 250+ positions	Committee	October 10 meeting	
	4.7 Recommendations go to BOG	BOG	November 15 meeting	

<b>Charge</b>	<b>Goal &amp; Action Items</b>	<b>Lead</b>	<b>Timeline</b>	<b>Status</b>
<b>5. BOG Member Development</b>	Identify training and development needs for members of the board		Ongoing	
	5.1 Assess skills and attributes of current BOG members	Committee/staff /BOG	March 21	
	5.2 Tour of OSB center and staff introductions for all BOG members	Staff	January 2014	Scheduled for January 10, 2014
	5.3 Assess BOG Buddy system	Committee/BOG	June 26/27; October 10	
	5.4 Consider approaches to developing board leadership	Committee	May 23, June 26/27	
	5.5 Acknowledgement of BOG members' actions and encouragement of outreach	Committee	Ongoing	





**BOARD DEVELOPMENT COMMITTEE  
Calendar of Deadlines and Events**

<b>Date</b>	<b>Event/Task</b>	<b>Location/Method</b>
January 10	Board (Special) and Committee Meetings - Finalize BDC calendar and strategy/action plan - All BOG meet staff and tour bar building	OSB Center
February 20	Committee Meetings - Identify desired BOG & HOD candidate skills and attributes - Identify desired public member skills and attributes	Salem
February 24	HOD & BOG Elections: Email affiliated bars to recruit candidates	via email
March 3-14	HOD & BOG Elections: Follow up with affiliated bars re. recruitment	Telephone or in-person
March 21	BOG Committee Meetings - Asses skills and attributes of current BOG - Identify desired BOG public member skills and attributes	OSB Center
March 21	HOD election: Candidate deadline	Forms to Dani
April 4	Public Member Recruitment: send outreach emails to professional organizations and community groups	via email
April 7	HOD election: Voting begins for regions with contested races	Online
April 14-18	Public Member Recruitment: follow up contact with professional organizations and community groups	Telephone or in-person
April 21	HOD election: Voting ends for regions with contested races	Online
April 25	Board and Committee Meetings + PLF - Agree on lawyer recruitment issues re. committee balance and affiliated groups	OSB Center
May 13	BOG election: Candidate deadline	Forms to Dani
May 19	Lawyer Recruitment: Send outreach emails to affiliated bars	
May 23	BOG Committee Meetings - Consider approaches to developing board leadership	OSB Center
May 26-30	Lawyer Recruitment: Make follow up contact with affiliated bars	
June 26-27	Board and Committee Meetings - Consider approaches to developing board leadership - Assessment of BOG Buddy system	Pendleton, OR
July 3	Public Member Recruitment: Application deadline	Forms to Dani
July 25	BOG Committee Meetings - select public member candidates to interview for BOG position	OSB Center
August 25	Lawyer Recruitment: Application deadline	online survey
September 5	Board and Committee Meetings - Interview public member candidates for BOG	OSB Center
October 6	BOG election: Voting begins for regions with contested races	Online
October 10	Board (Special) and Committee Meetings - Assessment of BOG Buddy system - BDC selects 250+ volunteers for group appointments - BOG vote on public member candidate	OSB Center
October 20	BOG election: Voting ends for regions with contested races	Online
November 13-15	Board and Committee Meetings with Planning Retreat - BOG vote on group appointments	Salishan

\*Please note - the following lists are not comprehensive. Please feel free to suggest other skills/knowledge/experiences or personal attributes you think are important for BOG or HOD Members/Candidates to possess. If there are items which are not applicable or important for BOG or HOD Members/Candidates to possess, please identify those as well.

**Skills/Knowledge/Experience - Board of Governors Member/ Candidate**

Accessible to constituency	Information Management and Technology
Accounting (Banking)	International/Global
Accounting (Financial Management)	Legal/Regulatory Issues
Accounting (Investments)	Legal Industry
Auditing	Marketing (Branding)
Board of Directors/Committee work	New Lawyer Development
Building and nurturing relationships	Operational Management
Communication/Interpersonal skills	Policy Implementation and Evaluation
Commitment to leadership development	Political/Legislative Awareness
Community Outreach	Program Planning
Corporate Governance	Public Relations
Diversity Awareness	Public Speaking
Ethics and Values	Risk Management
Evaluation/Assessment of Programs	Strategic planning
Executive Assessment/Compensation	Succession Planning
Familiarity with Robert's Rules of Order	Team Building
Familiarity with OR Rules of Professional Conduct	Time Management
Historical and Philosophical Foundations	Volunteer Management
Human Resources	

**Skills/Knowledge/Experience - House of Delegates Member/ Candidate**

Accessible to constituency	Familiarity with OR Rules of Professional Conduct
Board of Directors/Committee work	Historical and Philosophical Foundations
Building and nurturing relationships	Information Management and Technology
Communication/Interpersonal skills	International/Global
Commitment to leadership development	Legal/Regulatory Issues
Community Outreach	Legal Industry
Corporate Governance	Political/Legislative Awareness
Diversity Awareness	Public Relations
Ethics and Values	Public Speaking
Evaluation/Assessment of Programs	Risk Management
Familiarity with Robert's Rules of Order	Strategic planning

**Personal Attributes**

	<b><u>BOG Member/ Candidate</u></b>	<b><u>HOD Member/ Candidate</u></b>
Accountable/Responsible		
Collegial		
Considerate		
Dedicated		
Decisive		
Detail-Oriented		
Effective at delegating		
Ethical		

Forward Thinking		
Free of apparent conflicts of interest		
Motivational		
Non-Partisan		
Open-minded		
Outspoken		
Professionalism		
Quick Learner		
Reputation for Integrity		
Self-Motivated		
Trustworthy		
Willingness to focus time on performing duties of HOD/BOG member		
Willingness to learn		

**Demographics**

Member/ Candidate	Region	Gender	Years in Practice	Firm Size	Practice Area(s)	Other Diversity Factors

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** February 12, 2014  
**From:** Rod Wegener, CFO  
**Re:** Authorization to Open a Line of Credit

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### **Action Recommended**

Authorize the OSB Executive Director and CFO to establish a \$500,000 line of credit with a local bank.

### **Background**

At the end of 2012 and 2013, the bar's CFO borrowed funds from the bar's reserves invested with Becker Capital and Washington Trust Bank to cover bar expenses in November and December. The low amount of cash available was due primarily to the excessive amount of Client Security Fund claims paid from July 2012 through the end of 2013. The funds eventually were returned to the reserve portfolios and the total of \$430,000 withdrawn on two occasions in 2013 was returned before December 31.

Although the cash flow issue may not surface again, it was determined that if it did a bank line of credit is a better solution. The matter was presented to the Budget & Finance Committee at its January 10 meeting and the Committee authorized the CFO to research the line with local banks. The Committee suggested banks paying the highest IOLTA rates be contacted.

The CFO contacted four banks – two with which the bar already has a banking relationship and two paying the highest IOLTA rates. The CFO asked each bank for terms on base borrowing rate, add-on rates, set-up and annual fees, length of term, repayment terms, and any other bank requirements.

If temporary funds are needed again, they are not needed until late in the year before member fee payments are made. The matter is before the Budget & Finance Committee now as the issue is recent and to resolve the matter if temporary funds are needed again.

The CFO will share the findings on the research with the four banks with the Budget & Finance Committee which will make a recommendation to the Board of Governors.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** February 12, 2014  
**From:** Rod Wegener, CFO  
**Re:** Update on Database Upgrade Project

---

### Action Recommended

Authorize the bar to expend funds from the Capital Reserve to fund the contract of a consultant to aid the bar in the development of the RFP and the analysis and selection of a vendor for the new database.

### Background

At the January 10 Budget & Finance Committee meeting, the agenda included the latest information on bar staff ongoing plan for the upgrade of the bar's database. The agenda stated:

*At the February meeting, a proposal may be presented to the Committee to provide certain funding for a piece of the project. As indicated in previous reports, the bar's Capital Reserve, which has been \$500,000 and untapped for several years, is the expected source for funding of the project.*

In late January, the bar sent a Request for Proposal to three database consulting firms requesting services to review the bar's analysis of its requirements, priorities, and goals; coordinate vendor demonstrations; aid in the development of a RFP to vendors; provide counsel on the demonstrations and vendors; and aid the bar in selection of a vendor. The responses are due February 28.

All three consultants are located in the Washington DC area and have provided such counsel to numerous associations. The bar will perform its due diligence on the three vendors and plan to select the consultant by March 28.

Bylaw 7.302 (b) indicates the purpose of the Capital Reserve:

*Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than \$5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.*

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** Richard Spier, Chair, Governance & Strategic Planning Committee  
**Re:** Composition and Election of BOG Officers

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### Recommendation

Consider the recommendation of the Committee to amend the OSB Bylaws to (1) eliminate the office of vice-president, and (2) clarify the manner of electing officers.

### Discussion

#### *1. Office of Vice-President*

Bylaw 2.201 (a) calls for the annual election of the president, the president-elect and two vice-presidents. Originally, board officers were the president, the president-designate (chosen in May to take office in September), a secretary and a treasurer.<sup>1</sup> In mid-1998, the office of president-elect was established and the offices of secretary and treasurer were eliminated as unnecessary in view of the professional staff's handling of those responsibilities. Instead, the lawyer members of the third year class not selected as president-elect automatically became vice-presidents.<sup>2</sup>

When the change was made in 1998, there were only 16 members of the BOG (12 lawyers and four public members). In each class, then, there were two lawyer members to serve as vice-presidents. With the addition of two lawyer members of the BOG in 2008, the BOG classes now have 3 or 4 lawyer members in alternating years, two or three of whom are eligible to be vice-president.

The GSP Committee recommends eliminating the office of vice-president. Pursuant to OSB Bylaw 2.2, the vice-presidents "perform duties as the Board directs." As a practical matter, the board has never directed the vice-presidents to perform any duties. While it is not stated in the bylaws, the president-elect generally acts in the stead of the president as needed, and the office of vice-president is a title without purpose.

Should the BOG decide to retain the office of vice-president, then the bylaw needs to be revised to accommodate a varying number of vice-presidents.

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<sup>1</sup> The treasurer's duties were to "assist the board and its appropriate committees in the preparation of the annual budget..." and "perform such other duties as may be directed by the board." The secretary's duties were "to perform those duties as may be directed by the board." The treasurer was often the chair of the Budget & Finance Committee.

<sup>2</sup> Bylaw 2.301 prohibits public members from serving as officers.



## 2. Election of Officers

The language of the bylaw governing election of BOG officers is confusing. One section states that they are “elected each year at the last regularly scheduled board meeting of the calendar year,” while another section provides for unchallenged candidates to be “deemed elected without balloting.”

Since the adoption of the nominating committee for selecting the candidate for President-elect, there has not been a contested election for that office. Because the President-elect is the sole candidate for president, there has not been a contested election for that office as well. Moreover, there is nearly annual confusion about the need to formally “elect” the President-elect or the President.

The committee recommends eliminating the need for a formal election, and recognizing that the president and president-elect are deemed elected.

### Proposed Bylaw Amendments

Based on the foregoing, the GSP Committee recommends the following amendments to Bylaws 2.200 and 2.201:

#### Section 2.2 Officers

##### **Subsection 2.200 Duties**

###### (a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

###### (b) President-Elect

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

###### ~~(c) Vice Presidents~~

~~The Vice Presidents perform duties as the Board directs.~~

##### **Subsection 2.201 Election**

###### (a) ~~President and Vice Presidents~~ Time of Election

The President, and President-elect ~~and two Vice Presidents~~ are elected ~~each year~~ at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect. ~~The other two lawyer members of the third year class are the only candidates for Vice President.~~

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the Executive Director by September 1. Each candidate must submit with said notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the Executive Director not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

~~Election requires voting in person. Voting by proxy is not allowed. If there is only one candidate for an office, the candidate is deemed elected without a formal vote. If there is only one nominee for an office or in the case of the Vice Presidents only two nominees for two positions, the nominee or nominees are deemed elected without balloting. When there is more than one are two nominees for an office, balloting for election will be as follows: Each member present is given a ballot printed with the names of the nominees for the office. If additional nominations have been made that are not on the printed ballot, those names must be written on the ballot. Each member must vote for his/her first choice only. President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and after the first ballot no candidate one person receives more than 50 percent of the votes on the first vote, the last candidate receiving the fewest votes is eliminated and another ballot is cast vote will be taken. Only board members present at the meeting may vote.~~

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** Richard Spier, Chair, Governance & Strategic Planning Committee  
**Re:** President's Affirmative Action Award

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### Action Recommended

Change the name of the President's Affirmative Action Award to the President's Diversity & Inclusion Award.

### Discussion

In 2011, the name of the former Affirmative Action Program was changed to the Diversity & Inclusion Department. Subsequently, the BOG approved changing the name of the Affirmative Action Committee to the Advisory Committee on Diversity & Inclusion. The only remaining vestige of "affirmative action" is in the name of one of the president's awards.

For consistency and to be better connected to the bar's current mission and policies, OSB Bylaw 4.4 should be amended as follows:

**Section 4.4 President's ~~Affirmative Action~~Diversity & Inclusion Award**

The criteria for the President's ~~Affirmative Action~~Diversity & Inclusion Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing ~~minority representation~~diversity and inclusion in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Standard Section Bylaw Amendments for the Animal Law Section

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### Issue

The Animal Law Section requests the approval of modifications to the Standard Section Bylaws as they relate to the Animal Law Section. Amendments include elimination of the chair-elect and immediate past chair positions and extending the term limits for the secretary and member at large positions.

### Options

- Allow modifications to the Standard Section Bylaws as they relate to the Animal Law Section.
- Deny the section's request for amendments to the Standard Section Bylaws.

### Discussion

In the 1990's the BOG created the Standard Section Bylaws which incorporated rules and policies from several of the existing sections at that time. While there have been several modifications since their creation, currently all 42 sections operate from these standard bylaws.

The Animal Law Section Executive Committee is requesting changes to the Standard Section Bylaws to bring them into alignment with how the section has operated the last few years with regard to officer positions and member-at-large terms. A red-line copy of the proposed changes is attached. The Executive Committee summarizes the changes as follows.

#### **Delete the positions of Chair-Elect and Immediate Past Chair**

Recently the Executive Committee has elected to have the chairperson remain in the position for two years. This practice is largely based on the difficulty of implementing new initiatives in a one year time frame particularly when the executive committee meets a limited number of times each year. The reason for eliminating the chair elect position is primarily due to the challenge a candidate faces when they consider taking on a two-year demanding position more than one year before the term begins. While this may not be a perfect system, it has worked to build the Section thus far.

The Past-Chair position is a sort of honorific that allows the lingering of the past chair even though the term of service is completed. It creates an opportunity to conflict when the past chair has an unfinished initiative that the new Chair may not embrace. We provide a different honorific. We have traditionally seen the Chair appoint the past Chair to the Advisory Board. This movement to the non-voting Advisory Board position makes clear the lines of authority all the while providing the past Chair complete access to the correspondence of the Executive Committee and the meetings as all of the Advisory Board members enjoy. In our context the Advisory Board is a leadership bench from which the Executive Committee can draw expertise and experience, and on which the

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future leaders of the Section can sit while learning the manner of governance of the Section. In our particular case the Past Chair position serves no useful purpose and in some cases could be a detriment to the activities of the new Chair.

### **Extending the term limits for secretary and member at large positions**

The reason for the secretary term limit change is to bring into alignment the positions of secretary and treasurer by removing the limit of consecutive years a member can serve in the secretary position. The Executive Committee has benefited from our recent practice of a long-term secretary as this position is best handled by a member with longevity and continuity. Each year the Secretary must prepare meeting agendas and associated materials, maintain minutes of meetings, produce several annual reports for the OSB, follow up on the Chair's initiatives with the sub-committees, manage the Professional Outreach projects (i.e., Externship), respond to and direct responses to email, and populate and monitor others who populate the Public Outreach (Web) content and associated materials. These are not tasks which benefit from too frequent a change in the identity of the person performing them. Further, the Secretary position is essential to the smooth transition of the Chair positions.

The members at large do not benefit from the existing 4 year restriction. The current 4 year term limit on members at large forces those specific Executive Committee members, who choose to be at large because they have only limited time to commit to the leadership of the Section, to either step up to the commitment of an office role of one year or resign and go onto another activity. The experience of the Section thus far has been that once a member at large leaves the leadership role they do not come back. The Advisory Board was adopted by the Section as a way to let these people "keep the hand in" the activities. But it has not resulted in the return of a member at large after any time away.

As required by the Bylaws, the proposed amendments were approved by the executive committee and voted on by the section's membership. During the membership vote there were 88 section members eligible to participate. Below are the results of the vote.

**Question:** Do you approve of eliminating the section executive committee's chair-elect and past chair positions?

**Responses:** 9 voted for the change, 1 member opposed the change

**Question:** Do you support extending the executive committee term limits to allow: The chair to serve up to two consecutive years; The secretary to serve up to nine consecutive years; Members-at-large to serve up to six consecutive years?

**Responses:** 6 voted for the change, 4 voted against the change

One section member provided the following comment regarding the bylaw changes: It is undemocratic to get rid of reasonable term limits. Six and nine year term limits create an entrenched leadership that does not represent the interests of newer members.

# Proposed Animal Law Section Bylaw Revisions

~~Standard Animal Law~~ Section Bylaws

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# Proposed Animal Law Section Bylaw Revisions

## Article I Definition and Purpose

**Section 1.** Sections provide Bar members who share interests in particular substantive areas of law an opportunity to develop and improve skills and provide a forum for communication and action in matters of common interest.

**Section 2.** Sections may adopt a statement of purpose.

**Section 3.** The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.

## Article II Membership

**Section 1.** Any active or inactive member of the Oregon State Bar may be a regular member upon payment of the membership dues. Any active member of another state bar may be an out-of-state member. Sections are encouraged to offer complimentary membership to 50-year members and to judges and their lawyer staff. Nonlawyers may be associate members as provided in Section 2 of this Article. Only regular members may vote and hold office except as otherwise specifically approved by the Section membership and the Board of Governors.

### Section 2.

(A) Associate membership shall be available to: (1) employees of an Oregon lawyer or employees of the legal department of a corporation or government entity who are supervised by an Oregon lawyer, (2) law students, and (3) members of related professions.

(B) Out-of-state members as defined in Section 1 and associate members as defined in Section 2(A) are automatically entitled to membership upon payment of section dues unless the Section votes at its annual meeting to “opt out” and not include either out-of-state members or associate members.

(C) Out-of-state members and associate members shall certify their qualifying status upon initial application for membership and annually upon renewing their membership.

(D) Out-of-state or associate membership shall terminate immediately upon the termination of the member’s qualifying status. There shall be no refund of dues in that event.

**Section 3.** Membership dues shall be set by the membership of the Section at the annual meeting of the Section or by mail or electronic ballot, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. Dues may be waived for new admittees, law students or any other category designated by the Section. Membership dues for members of the Oregon State Bar shall be collected annually by the Bar with Bar membership fees.

# Proposed Animal Law Section Bylaw Revisions

## Article III Meetings of Section

**Section 1.** Meetings of the Section (including meetings of the Executive Committee and its committees) are subject to the Public Meetings Law (ORS 192.610 et seq. and 192.630(4)). ORS 192.630(4) requires that meetings of a public body be held within the geographic boundaries of the state. The Section shall notify the Bar at least twenty (20) days in advance of any meeting, or in the case of special meetings as soon as possible.

**Section 2.** The Section shall hold at least one membership meeting annually for the purpose of conducting Section business, which meeting shall be known as the Section Annual Business Meeting. The Section Annual Business Meeting may be held electronically. Sections shall elect officers and executive committee members by November 15.

**Section 3.** Special meetings of the Section may be scheduled from time to time by the Section Executive Committee.

**Section 4.** A quorum is required to conduct Section Business at all meetings of the Section. At Section meetings other than Section Executive Committee meetings, those members voting shall constitute a quorum and action shall be by majority of those voting.

**Section 5.** A report to the Section membership shall be presented at the meeting and shall include information about the Section's activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section's finances, its budget, long range plan and fiscal reserve policy.

**Section 6.** The Section shall sponsor or co-sponsor not fewer than one continuing legal education program every two years. The CLE program may, but need not, be held in conjunction with the Section's Annual Business Meeting. Sections are encouraged to offer complimentary CLE admission to 50-year members and to judges and their lawyer staff.

## Article IV Officers

**Section 1.** The officers of the Section shall be the Chair, ~~Chair-Elect, Immediate Past Chair,~~ Secretary, Treasurer and such other officers as may be determined to be necessary by the membership. Officers of the Section shall be active members of the Oregon State Bar. Sections may establish eligibility requirements or other procedures to ensure rotation of the Chair among specific groups or specialty areas of the membership, such as plaintiff or defense counsel.

**Section 2.** The Chair, or the ~~Chair-Elect~~Secretary in the absence of the Chair, shall preside at all meetings of the Section and of the Section Executive Committee. The Chair shall appoint the officers and members of all committees of the Section pursuant to Article VII; plan and monitor the programs of the Section; keep the Section Executive Committee informed and carry out its decisions; and perform such other duties as may be designated by the Section Executive Committee.

~~**Section 3.** The Chair-Elect will become the Chair on January 1 regardless of the date of the Section Annual Business Meeting or the date of the mailed or electronic ballot election. The Chair-Elect shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or~~



## Proposed Animal Law Section Bylaw Revisions

~~resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term or disability.~~

**Section 43.** The Secretary shall retain and maintain all books, papers, documents and other property pertaining to the work of the Section, and shall keep a true record of proceedings of all meetings and votes of the Section and of the Section Executive Committee. The Secretary shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death or resignation of the Chair, the Secretary shall convene a meeting of the Executive Committee to vote on a new Chair to complete the unexpired term. ~~The Secretary shall perform other duties as assigned by the Section Executive Committee.~~

**Section 54.** The Treasurer shall keep an accurate record of all receipts and expenditures by the Section as hereinafter provided; report on the Section's present and projected financial condition at each meeting of the Section Executive Committee; prepare an annual projected budget for approval by the Section Executive Committee; and submit a report of the Section's financial affairs and financial condition to the members at the Section Annual Business Meeting.

**Section 65.** Section Chairs shall serve as ex officio voting members of the Oregon State Bar House of Delegates. In the event the section chair holds another position that also serves as an ex officio member of the House of Delegates, the section chair shall designate an alternate to serve in the chair's stead at any House of Delegates meeting. In all other situations, the section chair may designate an alternate delegate to serve in the chair's stead at any House of Delegates meeting. An alternate delegate must be a person duly authorized in the section's bylaws or otherwise to act in the section chair's stead.

### Article V

#### Section Executive Committee

**Section 1.** The Section Executive Committee shall be composed of the Chair, ~~the Chair-Elect, the Immediate Past Chair,~~ the Secretary, the Treasurer, and not fewer than two (2) nor more than twelve (12) Members-at-Large. The terms of the Members-at-Large shall be staggered as evenly as possible. Suspended members may not serve on the Section Executive Committee.

**Section 2.** The Section Executive Committee shall supervise and control the affairs of the Section subject to these Bylaws and the Bar's bylaws.

**Section 3.** A quorum is required to conduct Executive Committee business. A quorum shall consist of a majority of the Executive Committee. Action of the Section Executive Committee shall be by majority vote of those voting.

**Section 4.** The Chair may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

**Section 5.** Between meetings of the Section, the Section Executive Committee shall have full power to do and perform all acts and functions that the Section itself may perform. Voting on matters of Section business may be done electronically and results of an electronic vote must be recorded in the official minutes of the Section.

## Proposed Animal Law Section Bylaw Revisions

**Section 6.** The Section Executive Committee may direct that a matter be submitted to the members of the Section by a mail or electronic vote or by a vote at the Section Annual Business Meeting; in any such event, binding action of the Section shall be by majority of those voting.

**Section 7.** No salary or compensation for services shall be paid to any member of the Section Executive Committee or member of any committee with the exception of the Editor and other staff of the Section newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Section Executive Committee and members of all Section standing and special committees.

**Section 8.** The membership of the Section shall have the right to rescind or modify any action or decision by the Section Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Section Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Section Executive Committee shall not include the power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Section Executive Committee must be taken at a meeting at which two-thirds of members voting approve the Motion.

### Article VI

#### Terms of Office and Elections

**Section 1.** No member may serve on the Section Executive Committee for more than nine consecutive years.

**Section 2.** Each term of office shall begin on January 1 regardless of whether the election is held at the Section Annual Business Meeting or a mailed or electronic ballot election.

**Section 3.** A position on the executive committee, including an officer position, may be, at the option of the Executive Committee, deemed vacant if that member:

- A. Fails to attend two consecutive meetings, in the absence of an excuse approved by the chair prior to the meeting; or
- B. Fails to attend four consecutive meetings, even if excused.

**Section 4.** ~~Except as provided by Article IV, Section 3, and except for the office of Chair-Elect, the~~ Section Executive Committee shall fill by appointment until January 1 of the next year any position that becomes vacant.

**Section 5.** Any officer or Member-at-Large appointed to fill an unexpired term shall serve the unexpired period. Such members shall then be eligible at the next Section Annual Business Meeting or mail or electronic ballot election for election for a first full term, unless the member's election to the new term will result in a violation of Section 1 of this article.

**Section 6.** At the Section Annual Business Meeting or a mail or electronic ballot election, the Section membership shall elect:

- A. A Chair-~~Elect~~, Secretary and Treasurer, each to serve a term of one year; and
- B. Members-at-Large to serve terms of two years or less on the Section Executive Committee.

## Proposed Animal Law Section Bylaw Revisions

**Section 7.** ~~The Chair Elect will succeed to the office of Chair on January 1 and serve a term of one year. If the office of Chair Elect is vacant at the Section Annual Business Meeting or a mail or electronic ballot election, then a Chair shall be elected by the members. No member shall serve in the office of Chair for more than two consecutive years. Except as provided by Section 1 of this article, No officer-member shall have a limit to the number of successive terms in the position of Secretary or serve two successive terms in the same office, except the~~ Treasurer. A Member-at-Large may serve no more than ~~four-six~~ consecutive years as a Member-at-Large.

**Section 8.** At least sixty (60) days prior to the Section Annual Business Meeting or a mail or electronic ballot election, the Section Executive Committee shall appoint a nominating committee of not less than three members of the Section, no more than two-thirds of whom may be on the Executive Committee. The nominating committee shall make and report to the Chair at least thirty (30) days prior to the Section Annual Business Meeting or the date of a mail or electronic ballot election one nomination for each position to be filled by election. The nominating committee shall use reasonable efforts to ensure that the members nominated reflect the diversity of the Section membership, the Oregon State Bar and community at large, taking into account all relevant factors including without limitation practice area, office location, age, gender, race, ethnicity, disability and sexual orientation.

**Section 9.** To the extent possible, no more than one person from the same law firm, company or department of a public agency may serve on the Executive Committee at the same time.

**Section 10.** If elections are held at the Section Annual Business Meeting, the report of the nominating committee shall be distributed to the Section membership along with the notice of the time and place of the Section Annual Business Meeting at least fourteen (14) business days in advance of the meeting. Additional nominations for any position may be made from the floor at the Section Annual Business Meeting. Elections for contested positions may be by written ballot. Each contested position shall be set forth and voted upon separately. In a contested election, the candidate receiving the highest number of votes shall be elected.

**Section 11.** Upon approval of the Section Executive Committee, elections may be by mail or electronic ballot of the Section membership provided that: (1) write-in votes are allowed, (2) ballots are returned to an appropriate Section officer for tabulation, and (3) the results are certified to the Bar Center no later than November 15.

### Article VII Committees

**Section 1.** The Section Executive Committee may establish as many standing committees as deemed necessary and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all standing committees.

**Section 2.** In addition to the standing committees provided above, the Executive Committee may appoint as many special committees for particular purposes as deemed appropriate and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all special committees.

# Proposed Animal Law Section Bylaw Revisions

## Article VIII Legislative Activities

**Section 1.** Legislative activity of the Section, whether initiating legislation or taking positions in support or opposition of pending legislation shall be in compliance with Article 12 of the OSB Bylaws and these bylaws. The Section shall not represent to the legislature or any committee thereof a position or proposal or any bill or act as the position of the Section without the majority approval of the Section Executive Committee and the approval of the Board of Governors, except as provided otherwise below.

**Section 2.** The Section shall submit proposals for new legislation, together with the full text of the proposals to the Public Affairs Director by April 1, or such date as the Public Affairs Director shall designate. The proposal shall indicate whether the Section requests that it be presented to the legislature under the sponsorship of the Oregon State Bar or of the Section. The Board of Governors will inform the Section whether the legislation should go forward under the sponsorship of the Section or under the sponsorship of the Bar, and whether it will be presented to the House of Delegates or the membership for approval. If the Board of Governors declines to submit the Section's proposal for Bar-sponsored legislation to the House of Delegates or the membership, any member of the Section may submit the matter to the House of Delegates or the membership in accordance with ORS 9.148(3) and (4) and Article 3 of the OSB Bylaws.

**Section 3.** During regular legislative sessions the Section Executive Committee may, by majority vote, tentatively approve a position in favor of or in opposition to any pending bill within its general subject area. The proposal shall be submitted to the Bar's Public Affairs Director or the Chair of the Board of Governors Public Affairs Committee. After receipt of the proposal, the chair of the committee shall have 72 hours to approve the position or to refer it to the entire Public Affairs Committee. If the chair or committee approves the proposal, the action then becomes an official position of the Section and representatives of the Section may testify or make other appropriate statements.

**Section 4.** When special need is demonstrated, the Public Affairs Committee may expedite the introduction of new Section bills or amendments. The Public Affairs Director shall be kept informed about the status of Section legislative activity.

## Article IX Receipts and Expenditures

**Section 1.** Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

**Section 2.** The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

**Section 3.** Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section

## Proposed Animal Law Section Bylaw Revisions

fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar.

**Section 4.** Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee.

### **Section 5.**

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

## **Article X**

### **Notice of Meetings, Minutes and Reports**

**Section 1.** The Chair or Secretary shall distribute notice of scheduled Section Executive Committee meetings together with an agenda and minutes of the previous meeting to all Section Executive Committee members and to the Bar at least ten (10) business days prior to such meetings, or if ten days' notice is not practicable, then such lesser notice as is practicable. Minutes of all meetings of the Section and of the Section Executive Committee shall be distributed to all members of the Section Executive Committee and to the Bar no later than thirty (30) days after the meeting and are subject to amendment and approval at the next meeting of the Section or the Section Executive Meeting.

**Section 2.** Whenever the Section desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

**Section 3.** Not later than December 1, the Chair shall file with the Executive Director of the Oregon State Bar a concise report summarizing the activities of the current year and anticipated activities for the ensuing year.

**Section 4.** A proposed annual budget and proposed annual dues for approval by the Board of Governors shall be provided to the Executive Director no later than October 15 of each year if it contains a proposal for a change in membership dues, or no later than December 1 of each year if no change in membership dues is proposed. Alternatively, this budget information may be included with the Section's annual report submitted December 1, pursuant to Section 3 of this Article.

## Proposed Animal Law Section Bylaw Revisions

**Section 5.** The proposed budget shall have attached to it a short description of the Section's long range plans for programs and activities which require accumulation of funds and the Executive Committee's reserve plan, including the target reserve calculated to protect the Section from foreseeable financial loss.

**Section 6.** At the request of the Board of Governors, the Section Chair shall present a report in person to the Board of Governors concerning the activities of the Section for the current and succeeding years.

### Article XI Amendments to Bylaws

**Section 1.** These Bylaws may be amended by the Board of Governors. Notice of intent to promulgate and pass Bylaw Amendments shall be given to the Section Executive Committee Chair in sufficient time to allow for review and comment. Bylaw amendments passed by the Board of Governors become effective upon passage.

**Section 2.** These Bylaws may be amended by the Section by a majority of those voting in a mail or electronic ballot or at any membership meeting of the Section to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws and the text of proposed amendments shall be distributed to all Section members at least fourteen (14) business days prior to the meeting or mail or electronic balloting.

### Article XII Sunsetting the Section

**Section 1.** A Section Executive Committee may recommend that the Board of Governors sunset the section if it has accomplished its goals or is otherwise deemed no longer necessary. A sunset recommendation submitted to the Board of Governors must include a proposal for distribution of any section assets.

**Section 2.** The Section has a duty to its members, and at a minimum each year, must:

- A. Hold regular Executive Committee meetings.
- B. Appoint a Nominating Committee.
- C. Hold a Section Annual Business Meeting.
- D. Elect officers and executive committee members at large by November 15 of each year.
- E. Submit an annual budget.
- F. File an annual report.

If the Section fails to meet the above minimum requirements, it is subject to restructuring or sunsetting by the Board of Governors.

### Article XIII Rules of Order

**Section 1.** Except as otherwise provided herein, meetings of this Section shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

## Proposed Animal Law Section Bylaw Revisions

**Section 2.** All references in these Bylaws to “mail” or “mailing” or “mail ballot” shall also include electronic email to a member or addressee who has an email address on file with the Oregon State Bar.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** January 27, 2014  
**From:** Rich Spier, Governance & Strategic Planning Committee Chair  
**Re:** Quality of Life Committee Assignment Revisions

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### Action Recommended

Consider the GSP Committee's request to amend the Quality of Life Committee assignment (also referred to as a committee charge).

### Background

Over the last year the Quality of Life Committee periodically discussed their committee assignment. In December of 2013 the committee approved the below revisions with the intent of making the committee's assignment more holistic and integrated with the OSB's goals.

Additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

#### QUALITY OF LIFE COMMITTEE CHARGE

General:

~~Educate and motivate lawyers to make professional choices that will enhance their quality of life and advance the legal profession.~~

Encourage and support a culture within the legal community that recognizes, accepts, and promotes quality of life objectives as important to personal and professional development.

Specific:

1. Encourage awareness ~~and discussion of the diverse standards by which lawyers evaluate their lives of~~ and foster openness to the personal and professional choices that lawyers make to improve quality of life for themselves and others.
2. Educate lawyers and ~~law firms~~ legal employers about the benefits of reducing tension between personal and professional life, and methods for doing so.
3. Identify obstacles and problems that tend to limit the range of quality of life options available to the legal community and develop solutions to overcome those obstacles.
- ~~2-4.~~ Educate lawyers about methods for improving quality of life, including pursuing physical and mental wellness, managing stress, volunteering, and improving personal financial skills and stability.
- ~~3-5.~~ Provide information and support relating to quality of life to ~~for~~ lawyers who choose non-traditional career paths.
- ~~4-6.~~ Continued publication of ~~Solicit and draft~~ articles ~~on enhancing the~~ related to quality of life issues for publication on the Committee's website, in the *Bulletin*, and other OSB-legal publications.



- ~~5.7. Form-Maintain~~ relationships with ~~other Bar~~ OSB sections and committees, Oregon law schools, and other groups to promote ~~discussion of these issues within their constituencies~~ the committee's goals. Enhance involvement with groups outside of the OSB, including OAAP, OWLs and Oregon law schools in promoting the goals of the committee.
- ~~6. Continue to maintain web site.~~
- ~~7. Pursue greater speaker outreach to talk to members and law students about balancing home and work life.~~
- ~~8. Solicit nominations for~~ the annual OSB Awards of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench
- ~~9.8. Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.~~ of lawyers who exemplify or demonstrate the benefits of incorporating higher quality of life standards into their lives and law practices.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** February 5, 2014  
**From:** Governance and Strategic Planning Subcommittee  
**Re:** Changes to the LRAP Policies and Guidelines

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### Action Recommended

The Governance and Strategic Planning Subcommittee recommends that the Board of Governors approve an increase in the salary cap from \$55,000 to \$60,000 for public service lawyers applying for the Oregon State Bar Loan Repayment Assistance Program and that the LRAP Policies and Guidelines be changed in the following ways:

- To reflect that the LRAP Advisory Committee reports to the Governance and Strategic Planning Committee of the BOG.
- To make clear that previous recipients are eligible to re-apply.
- To make clear that those lawyers employed part-time are eligible to apply for the program and that their award may be pro-rated.
- To clarify that actual loan payments (vs. minimum loan payments) are considered by the LRAP Advisory Committee.
- To clarify the obligation of participants to return executed promissory notes.

### Background

The Loan Repayment Assistance Program (LRAP) is now in its eighth year of providing forgivable loans to lawyers pursuing careers in public service law. Through this program, lawyers working in public service may receive loans for up to \$5,000 per year for three years to aid them in repaying their educational debt. Each loan is forgiven at the end of the year, provided that the lawyer remains in public service. The LRAP Advisory Committee seeks to increase the current salary maximum to \$60,000 from \$55,000. When the Program started, the salary maximum was \$45,000. It has increased occasionally and is now \$55,000. The Advisory Committee believes that \$60,000 is the proper salary maximum now. Increasing the salary maximum will allow attorneys to apply for the LRAP funds who have served for many years in public service. Those attorneys are not eligible for new federal loan forgiveness programs and have disproportionately higher loan payments to make compared with newly admitted attorneys.

In addition, the Advisory Committee wishes to refine the Policies and Guidelines in a number of minor ways. Proposed changes to the Policies and Guidelines are attached hereto.

*Loan Repayment  
Assistance Program*

**Policies and Guidelines**

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

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*Revised January 11, 201~~3~~*

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

### **Statement of Purpose**

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

## **Section 1 – Administrative Partners**

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

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

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

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

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

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

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

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

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

**(B) Oregon State Bar**

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

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

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

- Applicants must fully complete the Program application, submit annual certifications and follow other Program procedures.
- Previous recipients ~~may apply~~ are eligible to reapply.

**(B) Qualifying Employment**

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.
- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment; hours worked per week less than 35 will be considered part-time.
- Part-time employees are eligible to apply for the Program; ~~but however~~ participation may be prorated at the discretion of the Advisory Committee, based on FTE.

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

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.

- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.
- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

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

Applicants with ~~full-time~~ salaries greater than ~~\$55,000~~60,000 at the time of initial application will be ineligible for Program participation.

- The Advisory Committee may annually adjust the maximum eligible salary.
- As more fully described in Section 3(B)(ii), Program participants may retain eligibility despite an increase in salary above the cap set for initial participation.
- The above amount may be pro-rated for part-time employees, based on FTE

**(E) *Eligible Loans***

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

- Applicants with eligible debt at the time of initial application less than \$ 35,000 will be ineligible for Program participation.
- If debt in the applicant's name and in others' names is consolidated, the applicant must provide evidence as to amount in the applicant's name prior to consolidation.
- Loan consolidation or extension of repayment period is not required.
- Program participants who are in default on their student loans will be ineligible to continue participating in the Program (see 4(C)(v) below for more details).

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

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

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

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

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

**(ii) Interest on LRAP Loans**

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

**(iii) Federal Income Tax Liability**

Each Program participant is responsible for any tax liability the Program participant may incur, and neither the Advisory Committee nor the OSB can give any Program participant legal advice as to whether a forgiven LRAP loan must be treated as taxable income. Program participants are advised to consult a tax advisor about the potential income tax implications of LRAP loans. However, the intent of the Program is for LRAP loans which are forgiven to be exempt from income tax liability.

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

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

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

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

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

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

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

**(iii) Exception to Repayment Requirement**

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

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

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program

participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. This extra time is added to the end of the year in which the leave is taken and thereafter, the starting date of the new year is reset based upon the new ending date of the year in which the extended leave is taken.

## **Section 4 – Program Procedures**

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

- Applications submitted to the Advisory Committee must be postmarked or delivered to the Oregon State Bar office by April 15 of each year.
  - Applicants must be members of the OSB already engaged in qualifying employment by the application deadline.
  - Applicants may not commence the application process prior to receiving bar exam results.
  - Unsuccessful applicants will get a standard letter drafted by the Advisory Committee and may reapply in future years as long as they meet the qualifications described in Section 2.
- Applicants will be notified by June 1 of each year as to whether or not they have been selected for Program participation in accordance with the selection criteria set forth in Section 4(B).
- Those applicants selected as Program participants will receive a promissory note for the first year of LRAP loans along with their notification of selection. The executed promissory note ~~will be due~~ must be returned to the Advisory Committee by June 15.
- Initial disbursement of LRAP loans will be made by July 1 provided the executed promissory note has been returned.
- In conjunction with the annual certification procedure set forth in Section 4(C), persons who remain eligible Program participants will be sent a new promissory note, covering the LRAP loan in the upcoming year by June 1, which must be executed and returned by June 15.
- Ongoing disbursement of loans to persons who remain Program participants will be made on or about July 1 of each year.

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

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

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
  - Demonstrated commitment to public service;
  - Financial need;
  - Educational debt, monthly payment to income ratio, and/or forgiveness of debt;
  - Extraordinary personal expenses;
  - Type and location of work;
  - Assistance from other loan repayment assistance programs;



- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants for a period of six months in the event a selected individual does not participate in the Program.

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

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

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

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

**(i) Annual Certifications Required**

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

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

The annual certifications submitted by Program participants will include:

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

**(iii) Employer Certification - Contents**

The annual certifications submitted by employers will include:

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

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

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant’s financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the

LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

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

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

**(vi) Voluntary Withdrawal from Program**

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

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

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

# OSB Board of Governors

## Planning Session Outline

January 18, 2014

Action Plan 2014

### ~~MISSION AND FUNCTIONS OF THE OREGON STATE BAR~~

#### INTRODUCTION

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”<sup>1</sup> The OSB is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.<sup>2</sup> As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established. The BOG has translated the statutory mission purposes into six core functions that provide overall direction for OSB programs and activities:

- 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 a provider of assistance to the public.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

~~As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established.~~

In order to advance the mission and achieve its goals, the BOG must assure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

#### FUNCTIONS , GOALS AND STRATEGIES

##### **FUNCTION #1 – REGULATORY AGENCY PROVIDING PROTECTION TO THE PUBLIC**

Goal: Provide meaningful protection of the public while enhancing member and public perception understanding of and respect for the discipline system.

Strategy 1	Conduct a comprehensive review of disciplinary procedures and practices
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<sup>1</sup> Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

<sup>2</sup> The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

	focusing on fairness and efficiency.
Strategy 2	Improve member <u>and public</u> understanding of the disciplinary process and of their role in client protection.
Strategy 3	Increase the visibility of disciplinary staff attorneys among the membership.
Strategy 4	Provide adequate channels for public information and comment.

## FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

Goal: Promote and protect the integrity of the judicial system.

Strategy 1	Support adequate funding for the Judicial Branch in the legislature.
Strategy 2	Respond appropriately to challenges to the independence of the judiciary.
Strategy 3	<u>Assure-Participate</u> meaningfully <u>ly participation</u> in judicial selection processes.

## FUNCTION #3 – PROFESSIONAL ORGANIZATION

Goal: Provide meaningful-relevant and cost-effective services to enhance the competencequality of legal services provided by bar members.

<del>Strategy 1</del>	<del>Ensure adequate resources to maintain desired level of services.</del>
Strategy <u>21</u>	Review OSB programs for adherence to mission, value to members and efficiency.
<del>Strategy 3</del>	<del>Ensure appropriate management of OSB Center to maximize rental income, contain operating costs, and provide space for member activities.</del>
Strategy <u>42</u>	Upgrade organizational software to meet changing member demands for online services.
Strategy <u>53</u>	Develop and enhance programs that support career opportunities and professional development of new lawyers.
Strategy <u>64</u>	Coordinate and collaborate with law schools <del>toward reducing the cost of legal education while</del> <u>to develop effective models for</u> graduating new lawyers with needed skills.

## FUNCTION #4 – ASSISTANCE TO THE PUBLIC

Goal: Promote public understanding of and respect for the justice system.

Strategy 1	Support <del>the Classroom Law Project and similar</del> civic education programs <u>and activities that promote understanding of and respect for the rule of law and the legal profession.</u>
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Strategy 2	Enhance the availability of public information about OSB regulatory and client protection programs.
Strategy 3	Promote the Referral & Information Service programs.

#### FUNCTION #5 – SERVING A DIVERSE COMMUNITY

Goal: Increase the diversity of the Oregon bench and bar; Engage and include increase participation by the OSB’s diverse membership at all levels of the organization and assist bar members in serving a diverse community.

Strategy 1	<del>Implement the OSB Diversity Action Plan. Assist OSB leadership to develop relationships with all facets of the membership.</del>
<del>Strategy 2</del>	<del>Break down the barriers to justice for diverse clients.</del>
<del>Strategy 3</del>	<del>Promote professional development of diverse lawyers.</del>

#### FUNCTION #6 – ACCESS TO JUSTICE

Goal: Promote access to legal information, legal services, and the legal system for all persons.

Strategy 1	Identify <u>new and additional</u> sources of funding for low-income legal services.
Strategy 2	Explore expansion of who can provide legal services in Oregon.
Strategy 3	Support the leveraging of technology to provide legal information to self-represented persons.
Strategy 4	Support and promote funding for indigent defense services for children and adults.

#### ~~OTHER ISSUES FOR CONSIDERATION~~

- ~~▪ Governance – future of the House of Delegates~~
- ~~▪ Financial Stability and Resources for the Future~~
- ~~▪ OSB Role in Admissions~~

# OREGON STATE BAR

## Governance & Strategic Planning Committee Agenda

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**Meeting Date:** February 21, 2014  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Section Guest Expense Reimbursement Request

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### Issue

During the November 23, 2013 meeting the BOG voted to amend the standard section bylaws to prohibit executive committee guest reimbursements except as specifically approved by the Board of Governors. After notifying section leadership of the bylaw amendment two sections requested exception to the bylaw and ask the BOG to consider adopting a policy that would allow certain reimbursements.

### Options

Adopt a policy allowing section guest reimbursement in a particular set of circumstances.

Deny the request for section guest expense reimbursements.

### Discussion

The Executive Committees of the Business Law Section and the Real Estate and Land Use Section submitted the attached letters requesting exemption from OSB Standard Section Bylaw Article IX, Section 3.

When the BOG amended the section bylaws last November three reasons were offered as the basis for the change:

- 1) Bring the section bylaws into alignment with OSB Bylaw 7.500,
- 2) Proactively prevent violations of the Oregon Government Ethics Laws and prevent a perception of unfairness,
- 3) Eliminate the administrative cost associated with tracking guest reimbursement amounts to ensure compliance with tax laws because guest expenses are not a business expense.

Additionally the BOG may want to consider the use of membership fees to heavily subsidize sections. In accordance with Bylaw 15.400, the bar provides administrative support to sections including the collection of dues and management of section funds. In exchange for this support, the Bar charges an administrative fee equal to 50% of the actual cost to provide the services. The current administrative charge is \$8.00 per section member. In January 2014 there were 16,208 section memberships making the Bar's cost to support sections this year at nearly \$130,000. Although it would be section funds used to reimburse guest expenses the BOG should consider whether it wants to allow sections to spend member's money on these expenses.

An exception is made to Bylaw 7.500 which allows reimbursement of BOG guests at official dinners. If the BOG wants to allow section guest expense reimbursement it could adopt a policy that would allow reimbursement for only the following:

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Expenses: meals (but not including alcohol);

Individuals: spouses or household members of executive committee members;

Events: official executive committee functions which the spouse or household member is expected to attend;

The BOG could further specify that no more than \$600 per individual would be reimbursed in any given year. Additional limitations could be specified such as the number of events and guests for which reimbursement would be provided.

Both section requests cite good reasons for allowing reimbursement of guests. If the BOG denies the request some thought should be given to the reasoning for refusing section reimbursements.

January 30, 2014

Richard Spier, Chair  
OSB Governance and Strategic Planning Committee

Dear Chair Spier,

I am the chair of the Executive Committee (the “Committee”) of the Oregon State Bar Business Law Section (“BLS”). At our January 16, 2014 meeting, the Committee approved the submission of a request for approval by the Board of Governors to allow BLS to reimburse payments for the expenses of Committee members' spouses or domestic partners at one official Committee event.

As amended in November 2013, Section Bylaws Article IX, Section 3 provides that “[e]xpenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.” The three rationales for this amendment are set out in a memorandum from Danielle Edwards, Director of Member Services, attached (the “Amendment”). For the reasons that follow, the Committee believes that allowing the section to reimburse the expenses of Committee members' spouses or domestic partners at one official Committee event is consistent with the purpose of Article IX, Section 3.

The Committee generally endeavors to hold one special event each year--a strategic retreat for Committee members to conduct long-range planning for the BLS that is not possible at our monthly meetings. Last year this retreat was held at a location outside the Portland metropolitan area, both to serve Committee members who do not live in the Portland metro area and to make participation in the retreat attractive to Committee members. As part of the retreat, the Committee members and their spouses or domestic partners attend an official retreat dinner. Prior to the Amendment, the BLS covered the cost of dinner for the attending spouse or domestic partner of a Committee member. In our view, the inclusion of spouses or domestic partners at the retreat (and, specifically, the BLS hosted dinner) materially increases the effectiveness of the retreat in at least two meaningful ways. One, fewer members will be willing to attend in person if it means leaving a spouse or partner at home or having to pay for a spouse's or partner's dinner at an official Committee function. Better Committee member attendance results in better and more thoughtful retreat outcomes. Two, an event that includes spouses or domestic partners helps foster better (and more meaningful) relationships among Committee members. Better relationships, in turn, improve the operation of the Committee as well as the commitment of Committee members to the objectives of the BLS.



Turning to the three reasons listed in the memorandum to justify Article IX, Section 3, we believe that none should prevent the Board of Governors from granting approval to allow BLS to reimburse the dinner expenses for the spouses or domestic partners of Committee members at the retreat.

The first reason mentioned in the memorandum is to make section bylaws consistent with the BOG bylaws, which has a similar limitation. However, I note that BOG Bylaw Section 7.501(d) allows reimbursement for dinner expenses of spouses at official bar dinners. Approving the dinner expenses of spouses or domestic partners at the Committee's official retreat dinner would thus appear to be consistent with the BOG bylaws.

The second reason is to proactively avoid potential violations of the Government ethics laws, which generally prohibit public officials from using their position to obtain a financial benefit for themselves or others. There are many exceptions to that prohibition, and the memorandum discusses one, at ORS 244.020(6)(b)(H), which allows reimbursement for food, travel and lodging for relatives or household members of a public official accompanying the official on state business. Another relevant exception is at ORS 244.020(6)(b)(M) and (N), which exempt "entertainment" provided to a public official, or a relative or member of the household. The memorandum argues that the statutory exceptions cover only relatives or household members, not mere friends or "significant others," and that it would be an administrative burden and present perceptions of unfairness for OSB to evaluate each reimbursement request to make sure it is limited to the persons set out in the exception. That is a legitimate concern. However, both "relative" and "member of the household" are clearly and unambiguously defined in the statute. The Committee clearly understands that reimbursement is appropriate only for "relatives" and "members of the household," e.g., spouses or domestic partners, just as the Committee is well aware of other restrictions on section disbursements, such as the prohibition on using section funds to pay for alcohol at section dinners. The BLS treasurer authorizes payments for the Committee retreat described above. It is entirely straightforward for the BLS treasurer to ensure that reimbursements for the dinner expenses of Committee members' spouses or domestic partners at the retreat fit within the exceptions at ORS 244.020(6)(b)(M) and (N), in the same manner that the treasurer ensures compliance with the prohibition on using section funds to pay for alcohol.

The third stated reason is to avoid the administrative expense of tracking reimbursements for guests over the year, and having to file W-9s if the cumulative reimbursements exceed \$600 per person. However, that concern is not present in this case. The Committee's practice of providing one dinner to the spouse or domestic partner of a Committee member would not come close to exceeding \$600 and, to the extent helpful, approval of our request could be conditioned upon the Committee ensuring that the reimbursements do not exceed such limit.

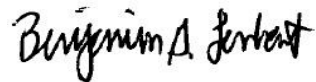
For the above reasons, the Committee respectfully requests that the Board of Governors approve this request to allow BLS to reimburse the dinner expenses of Committee members' spouses or domestic partners at the Committee retreat described above. We note that our retreat this year will be held February 7, 2014, which pre-dates the BOG meeting at which this request will be presented. We have made arrangements to have the costs of spouses or

domestic partners covered (at least in part) by other means (i.e. support from firms of various Committee members) with the understanding that if our request is approved, such funds would be returned to the sponsoring firms.

I know you are well aware of the importance of the work of the executive committees for various sections. You are also likely aware that such work is time consuming and all too easy to disregard in favor of the many interests that compete for time and attention in our lives. While hosting spouses or domestic partners at a dinner is a small thing, it matters and impacts the work and success of our Committee.

Please let me know if I can provide any further information.

Very Truly Yours,

A handwritten signature in black ink that reads "Benjamin G. Lenhart". The signature is written in a cursive, slightly slanted style.

Benjamin G. Lenhart  
Chair, Executive Committee  
OSB Business Law Section

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 23, 2013  
**Memo Date:** November 8, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Amendments to Standard Section Bylaws

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### 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.

January 30, 2014

Richard Spier, Chair  
OSB Governance and Strategic Planning Committee

Dear Chair Spier,

I am the chair of the OSB Real Estate and Land Use section's executive committee. At its January 24, 2014 meeting, the executive committee voted to request that the Board of Governors approve an exception pursuant to Section Bylaws, Article IX, Section 3, to allow RELU to reimburse payments for the expenses of committee members' spouses at two official section functions.

As amended in November 2013, Section Bylaws Article IX, Section 3 provides that "[e]xpenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors." The three rationales for this amendment are set out in a memorandum from Danielle Edwards, Director of Members Services, attached. For the reasons that follow, RELU believes that allowing the section to reimburse the expenses of committee members' spouses to attend two official section functions is consistent with the purpose of Article IX, Section 3. RELU respectfully requests that the Board of Governors approve an exception in this case.

The RELU executive committee holds two special functions each year. The first is a strategic retreat for executive committee members, to conduct long-range planning and to prepare for the section's annual general meeting in August. For many years, this retreat has been held at a location outside the Portland metropolitan area, as a convenience to members located outside that area. For the last 10 years, the retreat location has been the City of Ashland, hosted by a prominent law firm in that city. After the retreat meeting, the committee members and their spouses attend an official dinner, following by attendance at a play at the Shakespeare festival. The section's longstanding tradition is to pay for the dinner and play ticket for the attending spouse of a committee member. In our view, this tradition increases the effectiveness of the retreat, because fewer members will be willing to attend in person if it means leaving a spouse at home or having to pay for a spouse's dinner and entertainment at an official committee function.

The second special function is a year-end meeting and dinner in Portland, which is attended by both incumbent members and incoming members, to oversee the transition to new leadership. The section's long-standing tradition is to pay for the dinner expenses of members and their spouses. Again, fewer members would be willing to attend this important year-end meeting if it means leaving spouses at home or paying for the spouses' dinner.

Turning to the three reasons listed in the memorandum to justify Article IX, Section 3, we believe that none of three reasons should prevent the Board of Governors from granting an exception to

the two special functions described above, to allow the section to reimburse the dinner and entertainment expenses for the spouses of committee members.

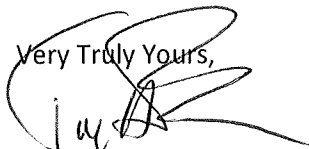
The first reason mentioned in the memorandum is to make section bylaws consistent with the BOG bylaws, which has a similar limitation. However, I note that BOG Bylaw Section 7.501(d) allows reimbursement for dinner expenses of spouses at official bar dinners. Approving the dinner expenses of spouses at the section's two official section dinners would thus be consistent with the BOG bylaws.

The second reason is to proactively avoid potential violations of the Government ethics laws, which generally prohibit public officials from using their position to obtain a financial benefit for themselves or others. There are many exceptions to that prohibition, and the memorandum discusses one, at ORS 244.020(6)(b)(H), which allows reimbursement for food, travel and lodging for relatives or household members of a public official accompanying the official on state business. Another relevant exception is at ORS 244.020(6)(b)(M) and (N), which exempt "entertainment" provided to a public official, or a relative or member of the household. The memorandum argues that the statutory exceptions cover only relatives or household members, not mere friends or "significant others," and that it would be an administrative burden and present perceptions of unfairness for OSB to evaluate each reimbursement request to make sure it is limited to the persons set out in the exception. That is a legitimate concern. However, both "relative" and "household member" are clearly and unambiguously defined in the statute. The executive committee clearly understands that reimbursement is appropriate only for "relatives" and "household members," e.g., spouses, just as the executive committee is well aware of other restrictions on section disbursements, such as the prohibition on using section funds to pay for alcohol at section dinners. The section treasurer personally pays for or directly pre-authorizes payments for the two dinners and play tickets. It should be entirely straightforward for the section treasurer to ensure that reimbursements for the dinner and entertainment expenses of members' spouses at the two functions fit within the exceptions at ORS 244.020(6)(b)(M) and (N), in the same manner that the section treasurer ensures compliance with the prohibition on using section funds to pay for alcohol.

The third stated reason is to avoid the administrative expense of tracking reimbursements for spouses over the year, and having to file W-9s if the cumulative reimbursements exceed \$600 per person. However, that concern is not present in this case. The committee's practice of providing two dinners and a theater ticket to the spouse of a committee member would not come close to exceeding \$600. The annual per person amount is typically less than \$200.

For the above reasons, the RELU executive committee respectfully requests that the Board of Governors approve an exception to Section Bylaws, Article IX, Section 3, and allow the section to continue to reimburse the dinner and entertainment expenses of members' spouses at the two section functions described above.

Please let me know if I can provide any further information.

Very Truly Yours,  


Tod Bassham  
Chair, RELU Executive Committee

Att: Nov 8, 2013 Memorandum



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 23, 2013  
**Memo Date:** November 8, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Amendments to Standard Section Bylaws

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### 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

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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

# Report of the OSB Centralized Legal Notice Task Force

**Nov. 23, 2013**

# Report of the OSB Centralized Legal Notice Task Force

Nov. 23, 2013

## Summary

The Centralized Legal Notice Task Force was established by the Oregon State Bar (OSB) Board of Governors in response to a resolution passed at the 2012 House of Delegates meeting that instructed the Board of Governors to:

reconsider<sup>1</sup> 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<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> The task force findings, conclusions and recommendations set forth herein were nearly unanimous, with only one member dissenting. Where there were significant divisions of opinion, the differing views are clarified by "some members" or "most members" or similar language.

notices. Under the proposal, rather than being published in local newspapers, legal notices from around the state would be posted to a centralized web site that would be maintained by the OLF, the Bar,<sup>3</sup> 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 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?

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<sup>3</sup> References herein to "the OSB" or "the Bar" refer to the Oregon State Bar as an organizational entity and not to any individual members.

- 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 use in Utah and by the Oregon Sheriffs' Association. The task force examined the ONPA "Public Notice Oregon" web site. The task force also had a presentation from a national vendor, NIC Inc., about the technical aspects and associated costs of developing an online system with the functionality contemplated by the task force.

The task force discussion also highlighted concerns that some 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 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 in 2012 the Deschutes County Circuit Court held that a free weekly did not meet the definition of “newspaper” because it lacked a paid subscriber base.

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(1).

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, anecdotal information suggests that they often make the decision based on which newspaper has the lowest rates for publishing notices.

## **Task Force Findings**

### ***Technical Feasibility***

After studying and evaluating the online notice systems of the Oregon Newspaper Publishers Association,<sup>4</sup> the Oregon Sheriff’s Association and the State of Utah, the task force had a presentation from NIC Inc.,<sup>5</sup> 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

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<sup>4</sup> The Oregon Newspaper Publishers Association currently maintains a website that compiles legal notices published in member newspapers. It is not clear whether this website displays all such notices, but it appears to have the nearly all of the ones run in ONPA member newspapers.

<sup>5</sup> 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](http://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 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 Bar 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 program<sup>6</sup> 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 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 minimal staff involvement because notices would be posted as submitted (similar to posting on

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<sup>6</sup> 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.



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. Moreover, notices could be “pushed” through a subscription 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 are already used to notices in their local newspapers, and know 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 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 even an interactive 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. Only more sophisticated readers, such as those who rely on public notices in their business, are likely to subscribe to a “push” notification system.

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 to some task force 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, public access to the courts and 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 ground 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. Additionally, no effort was made to quantify the cost of educating the public about an online legal notice system. Current budget projections do not include an outlay of funds for those purposes.

### ***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 would be to continue requiring newspaper publication of 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 (ONPA) regarding such an approach. That work will continue if the Board of Governors agrees.

## **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 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 Bar would also need to determine whether NIC, Inc. or a similar provider would create a system with no upfront cost to the Bar, 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 Bar 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 Bar 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 Bar 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. In short, it would be difficult albeit not impossible for the Bar to 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 Bar advocate for legislation on its own, even in light of the aforementioned difficulties.

Additionally the task force believes that in any legislative effort, the Bar 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.

**From:** S Ward Greene  
**Sent:** Thursday, January 16, 2014 11:28 AM  
**To:** Sylvia Stevens  
**Cc:** Travis Prestwich; Kathleen Evans; Patrick Ehlers; Theresa Kohlhoff  
**Subject:** ONPA

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sylvia:

I am writing to provide a report of my meeting with Jeb Bladine. Jeb is no longer on the board of ONPA, but is still quite active in connection with its committee on centralized legal notices.

Jeb was very friendly and candid in our conversation. He made it clear that he is not speaking on behalf of ONPA. He acknowledged a desire to avoid any needless confrontation, but admitted that ONPA is not inclined to enter into any agreement with the Bar which would give up (or share) the right to publish legal notices.

He reiterated the position that the ONPA website is quite robust and comprehensive. He contends that it already does everything we believe the centralized notice site should do.

Although Jeb was clear that this is not the position of ONPA, he believes that a solution to part of the perceived problem may be to adopt more streamlined notice requirements. As he explained it, if the notices were written by newspaper people instead of lawyers, they would be about a third as long. As a consequence, they would be more readable and less expensive to the party publishing the notice. He also agreed that having a reference in the published notice to the website would make sense.

He indicated that ONPA is in the process of doing a comprehensive survey of all legislative notice requirements. It might be useful for the Bar to share in their analysis. He also indicated a willingness to cooperate with respect to any legislative changes concerning the requirements of notice and the criteria for a centralized website.

Although he made no commitment, I think that Jeb would be willing to consider some approach which imposed a surcharge or "tax" in connection with the publication of certain notices. That additional fee might be earmarked for Legal Aid and for defraying the cost of maintaining the webpage.

In any event, I admire Jeb (and ONPA) for being very open and frank in his discussion with me.

It is still my view that fighting against the newspapers' historic role in providing public notice would be costly, unproductive and harmful to the public and to the Bar. If I can be of continuing assistance, please let me know.

Best regards,

Ward  
S. Ward Greene  
GREENE & MARKLEY, P.C.

1515 SW Fifth Avenue, Suite 600  
Portland, OR 97201  
Telephone: (503) 295-2668  
Fax: (503) 224-8434  
[www.greenemarkley.com](http://www.greenemarkley.com)

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**From:** [Tom Kranovich](#)  
**To:** [Caitlin Mitchel-Markley](#); [John Mansfield](#)  
**Cc:** [Patrick Ehlers](#); [Charles A. Wilhoite](#); [BOG 2014](#); [Camille Greene](#); [Elisabeth Zinser](#); [Audrey Matsumonji](#); [Hunter Emerick](#); [James C. Chaney](#); [Jenifer Billman](#); [Joshua L. Ross](#); [Matthew Kehoe](#); [Matt Kehoe](#); [Ray Heysell](#); [Richard Spier](#); [Simon Whang](#); [Sylvia Stevens](#); [Theresa Kohlhoff](#); [Timothy L. Williams](#); [Travis Prestwich](#)  
**Subject:** RE: OSB BOG: 2015 meeting schedule  
**Date:** Thursday, January 09, 2014 5:01:48 PM  
**Attachments:** [image001.jpg](#)

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Caitlin, please put this on the agenda for the February meeting.

**Tom Kranovich**  
Attorney At Law

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Tom Kranovich OSB# 824497  
KRANOVICH & LUCERO, LLC  
Attorneys at Law  
4949 Meadows Road, Suite 630  
Lake Oswego, OR 97035  
Tel: 503.992.6680  
Fax: 503.992.6681

**PLEASE NOTE THAT OUR ADDRESS HAS CHANGED**

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**From:** Caitlin Mitchel-Markley [mailto:mitchelmarkleylaw@gmail.com]  
**Sent:** Thursday, January 09, 2014 4:04 PM  
**To:** John Mansfield  
**Cc:** Patrick Ehlers; Charles Wilhoite; BOG 2014; Camille Greene; Elisabeth Zinser; Audrey Matsumonji; Hunter Emerick; James C. Chaney; Jenifer Billman; Joshua L. Ross; Matthew Kehoe; Matt Kehoe; Ray Heysell; Richard Spier; Simon Whang; Sylvia Stevens; Theresa Kohlhoff; Timothy L. Williams; Tom Kranovich; Travis Prestwich  
**Subject:** Re: OSB BOG: 2015 meeting schedule

Perhaps to accommodate both sides' interests, we could just switch one or two of the Friday meeting days to Saturdays, for example April and September, and leave the rest on the previously scheduled Fridays?

On Wed, Jan 8, 2014 at 9:20 AM, John Mansfield <[john@mansfieldlaw.net](mailto:john@mansfieldlaw.net)> wrote:  
I'm with Charles, Pat and Travis, but will work to make meetings on either day.

On Jan 7, 2014, at 4:18 PM, Patrick Ehlers <[Patrick\\_Ehlers@fd.org](mailto:Patrick_Ehlers@fd.org)> wrote:

> I'm with Charles and Travis.  
>  
> Pat  
>  
>  
>  
>  
> From: Charles Wilhoite <[cawilhoite@willamette.com](mailto:cawilhoite@willamette.com)>



> To: Travis Prestwich <[tprestwich@slamlaw.com](mailto:tprestwich@slamlaw.com)>, Theresa Kohlhoff  
> <[theresakohlhoff@gmail.com](mailto:theresakohlhoff@gmail.com)>, Caitlin Mitchel-Markley  
> <[mitchelmarkleylaw@gmail.com](mailto:mitchelmarkleylaw@gmail.com)>,  
> Cc: Camille Greene <[CGreene@osbar.org](mailto:CGreene@osbar.org)>, Audrey Matsumonji  
> <[healingsun@frontier.com](mailto:healingsun@frontier.com)>, Elisabeth Zinser  
> <[elisabethz@charter.net](mailto:elisabethz@charter.net)>, "Hunter Emerick"  
> <[hemerick@sglaw.com](mailto:hemerick@sglaw.com)>, "James C. Chaney"  
> <[jchaney@thechaneyfirm.com](mailto:jchaney@thechaneyfirm.com)>, Jenifer Billman  
> <[jeniferbillman@comcast.net](mailto:jeniferbillman@comcast.net)>, John Mansfield  
> <[john@mansfieldlaw.net](mailto:john@mansfieldlaw.net)>, "Joshua L. Ross"  
> <[jross@stollberne.com](mailto:jross@stollberne.com)>, Matt Kehoe <[Mkehoe1726@aol.com](mailto:Mkehoe1726@aol.com)>,  
> Matthew Kehoe <[mattkehoe60@gmail.com](mailto:mattkehoe60@gmail.com)>, Patrick Ehlers  
> <[Patrick\\_Ehlers@fd.org](mailto:Patrick_Ehlers@fd.org)>, Ray Heysell <[rrh@roguelaw.com](mailto:rrh@roguelaw.com)>,  
> Richard Spier <[rspier@spier-mediate.com](mailto:rspier@spier-mediate.com)>, Simon Whang  
> <[simon.c.whang@doj.state.or.us](mailto:simon.c.whang@doj.state.or.us)>, Sylvia Stevens  
> <[sstevens@osbar.org](mailto:sstevens@osbar.org)>, "Timothy L. Williams" <[tim@rdwyer.com](mailto:tim@rdwyer.com)>,  
> Tom Kranovich <[tom@tkatlaw.com](mailto:tom@tkatlaw.com)>, BOG 2014 <[BOG2014@osbar.org](mailto:BOG2014@osbar.org)>

> Date: 01/07/2014 04:08 PM

> Subject: RE: OSB BOG: 2015 meeting schedule

>

>

>

> I view my schedule in the same manner as Travis and share his views with  
> regard to Saturdays/weekends. With my wife and two teen-age kids at home, I  
> try not to schedule much of anything on the weekends because I am so  
> committed during the week.

>

> Charles

>

> Charles A. Wilhoite, CPA/ABV/CFP, CMA, ASA, CFM, CGMA, CBA, CVA  
> Managing Director  
> Willamette Management Associates  
> [\(503\) 243-7500](tel:5032437500) (o)

>

> From: Travis Prestwich [mailto:[tprestwich@slamlaw.com](mailto:tprestwich@slamlaw.com)]

> Sent: Tuesday, January 07, 2014 4:00 PM

> To: Theresa Kohlhoff; Caitlin Mitchel-Markley

> Cc: Camille Greene; Audrey Matsumonji; Charles Wilhoite; Elisabeth Zinser;

> Hunter Emerick; James C. Chaney; Jenifer Billman; John Mansfield; Joshua L.

> Ross; Matt Kehoe; Matthew Kehoe; Patrick Ehlers; Ray Heysell; Richard

> Spier; Simon Whang; Sylvia Stevens; Timothy L. Williams; Tom Kranovich; BOG

> 2014

> Subject: RE: OSB BOG: 2015 meeting schedule

>

> My two cents. I have nearly just as many commitments on Saturdays and  
> other days. Since this is work, my preference is to keep this on work  
> days. It's easier for me to schedule around work things than the other  
> commitments I have on the weekend.

>

> Travis

>

>

> Travis S. Prestwich  
> SWANSON, LATHEN, ALEXANDER,  
> MCCANN & PRESTWICH, PC  
> 3040 Commercial Street SE, Suite 200  
> Salem, Oregon 97302  
> [www.slamlaw.com](http://www.slamlaw.com)  
> T: [503.581.2421](tel:5035812421)

> F: [503.588.7179](tel:503.588.7179)

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>  
> From: Theresa Kohlhoff [mailto:[theresakohlhoff@gmail.com](mailto:theresakohlhoff@gmail.com)]

> Sent: Tuesday, January 07, 2014 3:44 PM

> To: Caitlin Mitchel-Markley

> Cc: Camille Greene; Audrey Matsumonji; Charles A. Wilhoite; Elisabeth  
> Zinser; Hunter Emerick; James C. Chaney; Jenifer Billman; John Mansfield;  
> Joshua L. Ross; Matt Kehoe; Matthew Kehoe; Patrick Ehlers; Ray Heysell;  
> Richard Spier; Simon Whang; Sylvia Stevens; Timothy L. Williams; Tom  
> Kranovich; Travis Prestwich; BOG 2014  
> Subject: Re: OSB BOG: 2015 meeting schedule

>  
> Some or all Saturdays would certainly be better for me as I have a standing  
> commitment for Fridays which causes a great deal of disruption when I  
> attend BOG meetings.

>  
> On Tue, Jan 7, 2014 at 2:52 PM, Caitlin Mitchel-Markley <  
> [mitchelmarkleylaw@gmail.com](mailto:mitchelmarkleylaw@gmail.com)> wrote:

> Hi everyone,

>  
> I was looking at the schedule for 2015 and wondering, why we don't have  
> most meetings on Saturdays instead of Fridays? I would think that more  
> board members would be able to attend and it would be easier for everyone  
> given board members' busy schedules and court dates. Is there a reason we  
> don't have most of our committee/board meetings on Saturday? Would it be  
> possible to move some of our meetings to Saturdays?

>  
> Just curious,  
> Caitlin

>  
> On Tue, Jan 7, 2014 at 11:25 AM, Camille Greene <[CGreene@osbar.org](mailto:CGreene@osbar.org)> wrote:  
> Dear Board of Governors, an updated calendar is now posted on the BOG  
> meeting website at [http://www.osbar.org/leadership/bog/bog\\_mtg.html](http://www.osbar.org/leadership/bog/bog_mtg.html) by  
> clicking on the box "BOG Calendar of Events". I have attached a pdf copy  
> for your convenience. The BOG meeting website will be updated with the 2015  
> meetings soon. In the meantime, here is an abbreviated version:

>  
>  
>  
> 2015

>  
>  
>  
>  
>  
>  
> January 9  
> OSB Center

OSB Employee Luncheon

- >
- > January 9                   BOG Special Session & Committee
- > Meetings                   OSB Center
- >
- >
- > January 9                   BOG/MBA Reception
- > Portland
- >
- >
- > February 12               Lunch with Supreme Court & Court of
- > Appeals                   Salem
- >
- >
- > February 12               Committee Meetings
- > Salem
- >
- >
- > February 12               Local Bar and Legislative Reception
- > Salem
- >
- >
- > February 13               Board Meeting
- > Salem
- >
- >
- > March 20                   BOG Committee Meetings
- > OSB Center
- >
- >
- > March 20                   50-Yer Luncheon
- > Tualatin Country Club
- >
- >
- > March 20                   BOG / ONLD Dinner
- > OSB Center
- >
- >
- > April 23                   OSB/PLF Joint Dinner
- > TBD
- >
- >
- > April 24                   Board and Committee Meetings +
- > PLF                       OSB Center
- >
- >
- > May 15                     BOG Committee Meetings
- > OSB Center
- >
- >
- > May 15                     BOG Alumni Dinner
- > OSB Center
- >
- >
- > June 25-27                 Board and Committee Meetings
- > Medford, OR
- >
- >
- >
- >

- >
- > July 1416                   HOD Regional Meetings
- > All Regions
- >
- >
- > July 24                    BOG Committee Meetings
- > OSB Center
- >
- >
- >
- >
- > September 11            Board and Committee Meetings
- > OSB Center
- >
- >
- > October 9                Board (Special) and Committee
- > Meetings                OSB Center
- >
- >
- > Oct 20-22                HOD Regional Meetings
- > All Regions
- >
- >
- > November 6              House of Delegates Meeting
- > OSB Center
- >
- >
- > November 19-20         Board & Committee Meetings & Planning
- > Retreat   Cannon Beach
- >
- > (Embedded image moved to file: pic09961.gif)OSB.gifCamille Greene
- > Executive Assistant
- > 503-431-6386
- > [CGreene@osbar.org](mailto:CGreene@osbar.org)
- >
- > Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 •
- > Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

> --  
 > Caitlin Mitchel, P.C.  
 > P.O. Box 3223  
 > Hillsboro, OR 97123  
 > [\(503\)475-9830](tel:5034759830)

> \*\*\*\*\*

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>  
>  
> --  
> Theresa M Kohlhoff  
> ATTORNEY  
>  
> 5828 North Lombard  
> Portland, Oregon 97203  
> [\(503\) 286-7178](tel:5032867178)  
>  
> (Embedded image moved to file: pic00491.jpg)  
>  
> "Now that you don't have to be perfect, you can be good." John Steinbeck,  
> East of Eden.  
> <pic09961.gif><pic00491.jpg>

--  
Caitlin Mitchel, P.C.  
P.O. Box 3223  
Hillsboro, OR 97123  
(503)475-9830  
\*\*\*\*\*

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**From:** [Richard Spier](#)  
**To:** [Sylvia Stevens](#)  
**Cc:** [Camille Greene](#)  
**Subject:** Fridays and Saturdays for BOG meetings  
**Date:** Thursday, January 09, 2014 4:57:28 PM

---

Camille, could you copy this to the full BOG?

Hi Sylvia,

Since this pertains to my year as pres, I'm requesting that you put this on the agenda for the full BOG meeting in February. At that time, perhaps you might comment briefly on any budgetary and staff scheduling/availability aspects of Saturday meetings.

See you soon,

Rich

Richard G. Spier, J.D.  
Mediator  
2536 NE 28th Avenue  
Portland, OR 97212-4916  
Phone 503-284-2511  
Fax 503-284-2519  
[rspier@spier-mediate.com](mailto:rspier@spier-mediate.com)  
[www.spier-mediate.com](http://www.spier-mediate.com)

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**Memo Date:** January 31, 2014  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Volunteer Appointments

---

### Action Recommended

The following bar groups have vacant seats. Consider appointments to these groups as requested by the committee officers and staff liaisons.

### Background

#### Advisory Committee on Diversity and Inclusion

Due to the resignation of one committee member the staff liaison recommends the appointment of **Jessica Asai** (073218). As a past OLIO student and active supporter of D&I programs, Ms. Asai offers an insight and familiarity with ACDI programs. Ms. Asai selected ACDI as her first preference for committee appointment through the volunteer opportunities survey last year.

**Recommendation:** Jessica Asai, member, term expires 12/31/2015

#### Judicial Administration Committee

Two appointments are needed to fill vacant member seats on the committee. The chair, secretary, and staff liaison recommend **Christopher Ramras** (965056) and **Morgen E. Daniels** (075739). Mr. Ramras is with the Multnomah County DA's Office and Ms. Daniels fills the committee's need for a criminal defense lawyer. Both candidates volunteered through the bar's annual process and selected JAC as their first committee choice for appointment.

**Recommendations:** Morgen E. Daniels, member, term expires 12/31/2015  
Christopher Ramras, member, term expires 12/31/2015

#### Legal Ethics Committee

Due to the resignation of one committee member the chair and staff liaison recommend the appointment of **Jeremy Markiewicz** (053195). As a prosecutor Mr. Markiewicz offers a perspective the committee has lacked for several years. Mr. Markiewicz is from Medford and selected LEC as his first choice for committee appointment.

**Recommendation:** Jeremy Markiewicz, member, term expires 12/31/2015

#### Legal Services Program Committee

One committee member resigned and the staff liaison recommends the appointment of **Andrea H. Thompson** (084923). Ms. Thompson is an associate at Stoel Rives focusing on employment defense litigation.

**Recommendation:** Andrea H. Thompson, member, term expires 12/31/2015

#### Pro Bono Committee

The committee needs to have one of its current members appointed as secretary. **Megan Robbins** (121357) agreed to serve.

**Recommendation:** Megan Robbins, secretary, term expires 12/31/2014

**Public Service Advisory Committee**

One of this year's new appointees was unable to accept a position on the committee. As such, the chair recommends the appointment of **Debra Cohen Maryanov** (114519). Ms. Cohen Maryanov is from Salem and would likely offer an interesting perspective based on her current position with the Oregon Court of Appeals. PSAC was her first preference for appointment through the volunteer opportunities survey last year.

**Recommendation:** Debra Cohen Maryanov, member, term expires 12/31/2016

**Unlawful Practice of Law Committee**

Due to a resignation the committee needs one new member appointed. The committee would benefit from the large-firm perspective **Krista N. Hardwick** (052759) offers. UPL was Ms. Hardwick's first committee preference based upon her volunteer survey.

**Recommendation:** Krista N. Hardwick, member, term expires 12/31/2014

**Disciplinary Board**

One member from region 2 resigned from the board. Staff recommends the appointment of **Liane M. Inkster** (953940) to fill the vacant seat. Ms. Inkster is an experienced bar volunteer having served on the LPRC, Affirmative Action Committee, Professional Commission, Uniform Criminal Jury Instructions Committee, and HOD. She also indicated a willingness to serve on the Disciplinary Board through the bar volunteer preferences survey.

**Recommendation:** Liane M. Inkster, member, term expires 12/31/2016



**Oregon State Bar  
Meeting of the Board of Governors  
November 23, 2013  
Open Session Minutes**

The meeting was called to order by President Michael Haglund at 12:33 p.m. on November 23, 2013. The meeting adjourned at 5:00 p.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Audrey Matsumonji, Caitlin Mitchel-Markley, Maureen O'Connor, Travis Prestwich, Richard Spier, David Wade, Charles Wilhoite and Timothy L. Williams. New board members present were James C. Chaney, John Mansfield, Simon Whang and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, John Gleason, Kay Pulju, Mariann Hyland, Susan Grabe, Kateri Walsh, Dani Edwards, Judith Baker and Camille Greene. Also present were Ira Zarov, PLF CEO and Guy Greco, Vice-Chair PLF Board of Directors, David Eder, ONLD Chair and Ben Eder, ONLD Chair-elect, and Andrew Schpak, NLMP Chair.

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

**A. Report of the President**

As written.

**B. Report of the President-elect**

No report.

**C. Report of the Executive Director**

Operations Report as written.

**D. Director of Regulatory Services**

Mr. Gleason reported on the 2010-2012 admissions statistics from NCBE, which reflect a steady decline nationally. The OSB February bar application numbers are down, as they were in 2012. Mr. Gleason would like the BBX to look carefully at adopting the Uniform Bar Exam. On the disciplinary side, the number of cases resolved by diversions is increasing. Diversions and probations are being monitored by existing staff. Mr. Gleason reiterated his suggestion that the board undertake a comprehensive review of the disciplinary process to ensure its efficiency while retaining due process protections for accused lawyers. In addition to the appointment of a broad-based stakeholders committee to conduct the review, Mr. Gleason suggested asking the Supreme Court to request an evaluation by the ABA Center for Professional Responsibility's Professional Discipline Committee, which would cost \$7000. Mr. Gleason will present a formal request to the board on January 10, 2014. **[Exhibit]**

**E. Director of Diversity & Inclusion**

Ms. Hyland referred the Board to her written report. She then introduced the Diversity Advisory Council's draft Diversity Action Plan. The plan has eight goals with strategies and action plans. Ms. Matsumonji explained the background of this three-year plan. Mr. Wade, on behalf of the BOG Governance and Strategic Planning Committee, recommended the board adopt the goals and strategies of plan and endorse the council's further work on implementing this plan. Mr. Wilhoite

recommended that the board be given some more time to consider the plan and add some measurable outcomes. Mr. Ehlers recommended that the board vote on the plan today.

**Motion:** The board voted to approve the committee recommendation to adopt the Diversity Action Plan as presented. Ms. Mitchel-Markley and Mr. Emerick were opposed. **[Exhibit A]**

#### F. MBA Liaison Reports

Ms. Kohlhoff attended the November 6, 2013 MBA meeting. No report was given.

### 2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov provided a general update and financial report. The new CFO is Betty Lou Morrow.

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

**Motion:** Mr. Wade moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the 2014 PLF Claims Made Plan, Excess Plan and Pro Bono Plan. **[Exhibit B]**

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 to \$10.

**Motion:** Mr. Wade moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve changes to Policy 3.30 re: Installment Payments. **[Exhibit C]**

The PLF BOD requests that the Board of Governors approve the proposed changes to Article 10 of the PLF Bylaws, relating to indemnification of PLF Board members and employees.

**Motion:** Ms. Billman moved, Ms. O'Connor seconded, and the board voted unanimously to approve revisions to Bylaw Article 10 re: E&O Coverage. **[Exhibit D]**

The PLF BOD requests that underwriting rate increases for 2014 Excess Coverage be approved. The rate changes are included in the accompanying materials.

**Motion:** Mr. Spier moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the change in PLF Excess Rates. **[Exhibit E]**

### 3. ABA House of Delegates February 2014

Ms. Harbur will present the preliminary ABA HOD agenda, including the ABA HOD Resolution re: Fee Sharing with NonLawyers, to the board at the January 2014 meeting.

### 4. OSB Committees, Sections, Councils and Divisions

#### A. Oregon New Lawyers Division

Mr. David Eder reported on a variety of ONLD projects and events described in the written report and introduced the new Chair, Mr. Ben Eder. Some long-standing ONLD members recently stepped aside to allow newer members to take the lead. The ONLD provided practical skills

training at the three Oregon law schools to encourage law students to become practice-ready. They are tailoring CLEs to coincide with current legal work opportunities.

**B. Client Security Fund**

Ms. Stevens presented CSF Claim No. 2013-02 GOFF (Steidley) and asked the board to consider the CSF Committee's recommendation that the claimant be awarded \$25,000.

**Motion:** Mr. Emerick moved, Mr. Wade seconded, and the board voted unanimously to approve the claim and award Mr. Steidley \$25,000. **[Exhibit F]**

Ms. Stevens presented CSF Claim No. 2013-35 BERTONI (Cheadle) and requested the board review the CSF Committee's denial of Mr. Cheadle's application for reimbursement of \$6500, as timely requested by the claimant.

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted unanimously to uphold the committee's denial of Mr. Cheadle's application for reimbursement. **[Exhibit G]**

**C. Legal Services Program Committee**

Ms. Baker presented, and asked the board to approve, the Legal Services Program Committee's Achievements & Results Report.

**Motion:** Mr. Wade moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the committee's report. **[Exhibit H]**

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

**A. Appellate Screening Committee**

Ms. Billman reported that the committee interviewed 48 applicants of which the governor appointed three. One of those three was highly recommended by the committee. The committee is looking at changes and improvements to its process.

**B. Board Development Committee**

Mr. Kranovich updated the board on committee actions for the year. He then presented the committee's recommendations for appointments to various boards, committees and councils for board approval.

**Motion:** The board voted unanimously to accept the committee recommendation to approve the appointments as presented. **[Exhibit I]**

**C. Budget and Finance Committee**

Mr. Knight presented the committee's request for the board to approve the 2014 OSB budget.

**Motion:** The board voted unanimously to accept the committee recommendation to approve the 2014 OSB budget. **[Exhibit J]**

Mr. Knight presented the committee's recommendation to ratify the approval of Moss Adams as the auditors of the 2012-2013 OSB financial statements.

**Motion:** The board voted unanimously to accept the committee recommendation to ratify the approval of Moss Adams as auditors. **[Exhibit K]**

Ms. Kohlhoff presented a report of the research she had conduct with various real estate advisors regarding the present value and operating costs of the Fanno Creek Building. The unanimous conclusion was that selling the building at this time would not be a wise financial move.

**D. Governance and Strategic Planning Committee**

Mr. Wade presented the committee's proposed amendment to the Standard Section Bylaws, which would prohibit reimbursement of section executive committee's guest expenses. Mr. Williams argued that one of the advantages of volunteering for a section's executive committee was reimbursement for spouse/guest expenses when section travel was required. He prefers this issue is left up to each section's discretion. Mr. Haglund and Mr. Prestwich agreed with Mr. Williams, since members of the section contributed to the funds that were used for reimbursement. Ms. Stevens pointed out that considerable staff time is involved in tracking the spouse reimbursements and issuing 1099s. Ms. Hirschbiel clarified that this change would bring section bylaws into compliance with bar bylaws and the provisions of the Government Standards and Practices Act to which the OSB is subject.

**Motion:** The board voted to approve the committee recommendation to amend the section bylaws, Article IX, Sections 3 and 4, re: spouse/guest reimbursement. Mr. Williams was opposed. **[Exhibit L]**

Mr. Wade presented the committee's proposed revision to the Uniform Civil Jury Instructions Committee assignment (also referred to as a committee charge).

**Motion:** The board voted unanimously to approve the committee recommendation to revise the UCJI committee assignment as presented. **[Exhibit M]**

Mr. Wade presented the committee recommendation to 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. Mr. Zarov defended the current rule as it diminished the misperception of impropriety.

**Motion:** The board voted to approve the GSP Committee's recommendation to revise Bylaw 23.503 re: Representation in PLF Matters. Mr. Kehoe was opposed. **[Exhibit N]**

Mr. Wade presented the committee recommendation to waive the one-meeting notice requirement and adopt the amendments to Article 27 of the OSB Bylaws relating to Unclaimed Lawyer Trust Account Funds.

**Motion:** The board voted to approve the committee recommendation to waive the one-meeting notice requirement.

**Motion:** The board voted unanimously to approve the GSP Committee's recommendation and adopt the ULTA Bylaw Revisions. **[Exhibit O]**

Mr. Wade presented the committee recommendation to amend House of Delegates (HOD) Rule 6.1 to provide that a quorum, once reached, would be presumed to continue until adjournment and that calls for a quorum count would not be recognized.

**Motion:** The motion failed (3-12). Mr. Kranovich, Mr. Wade and Mr. Ehlers voted in favor. Ms. Matsumonji, Mr. Williams, Ms. Kohlhoff, Mr. Emerick, Mr. Kehoe, Mr. Knight, Ms. Mitchel-Markley, Mr. Spiers, Mr. Prestwich, Mr. Wilhoite, Mr. Heysell and Ms. O'Connor were opposed. **[Exhibit P]**

**E. Public Affairs Committee**

Mr. Kehoe reported on the interim legislative activities. He presented the Public Affairs Committee's recommendation that 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.

**Motion:** The board voted unanimously to approve the Public Affairs Committee's recommendation to oppose the limitation on use of cash accounting for law firms. **[Exhibit Q]**

**F. Special Projects Committee**

Mr. Prestwich reported on the progress of current board projects for 2013, the series of CLEs they presented on the subject of buy/selling practices, and the successful tree planting that took place on November 2, 2013.

**G. International Trade & Legal Services Task Force**

Ms. Hirschbiel reported on the activities of the task force. A report will be presented to the board for approval at a future meeting.

**H. Centralized Legal Notice Task Force**

Mr. Ehlers reported on the activities of the task force and asked for board to accept the task force report, so Task Force member, Ward Greene can share the report with the newspapers. Mr. Ehlers pointed out that the first option in the report, discussing a possible collaboration with the newspaper publishers, is already underway. If it is unsuccessful, the BOG will have to evaluate the remaining options in February. Mr. Prestwich added that financial, political and legal feasibility were acceptable.

**Motion:** The board voted to accept the task force report and allow the report to be shared with the newspapers. Ms. Mitchel-Markley was opposed. **[Exhibit R]**

**I. New Lawyer Mentoring Program**

Mr. Schpak reported on the current status of the program and the criteria for mentor selection and disqualification. Ms. Walsh reminded the board that recruitment of mentors, by geography and practice area, is necessary for the success of the program. **[Exhibit S]**

**6. Other Action Items**

**A.** Mr. Spier agreed that discussion earlier in the meeting satisfied the need for further reconsideration of the HOD Marriage Equality Resolution.

- B. Ms. Pulju presented a Lawyer Referral Service Update and presented a recommendation for a Modest Means Program Expansion. **[Exhibit T]**

Ms. Pulju asked the board to consider the special handling of case referrals for SSI/SSD, VA Benefits and Workers Compensation claims. Mr. Spier spoke in support of special handling of military disability referrals.

**Motion:** Ms. Matsumonji moved, Mr. Knight seconded, and the board voted to approve the special handling of these three types of referrals to the modest means program.

Ms. Pulju asked the board to approve expansion of the Modest Means Program through the creation of new subject matter panels.

**Motion:** Mr. Heysell moved, Mr. Wade seconded, and the board voted to approve the expansion of the program as requested.

- C. Pursuant to Bylaw 2.201 Richard Spier was deemed elected President-elect for 2014.

## **7. Consent Agenda**

**Motion:** Mr. Knight moved, Mr. Ehlers seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

## **8. Closed Sessions – see CLOSED Minutes**

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

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

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

None.

**Oregon State Bar  
Board of Governors Meeting  
November 23, 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

None.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
November 23, 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

*Christopher Buttermore, Buttermore & Associates*  
(UPL Case No. 13-10)

Ms. Hierschbiel pulled this agenda item and will present it at a future board meeting.

B. Pending or Threatened Non-Disciplinary Litigation

The BOG received status reports on the non-action items.



## Change in Law School Matriculants from 2010 to 2012

LAW SCHOOL	Total Matriculants			% Change, 2010 to 2012	LAW SCHOOL	Total Matriculants			% Change, 2010 to 2012
	2010	2011	2012			2010	2011	2012	
AKRON UNIVERSITY OF	177	175	185	-5.78%	GEORGETOWN UNIVERSITY	591	579	575	-2.71%
ALABAMA, UNIVERSITY OF	161	160	149	-7.45%	GEORGIA STATE UNIVERSITY	224	223	191	-14.73%
ALBANY LAW SCHOOL OF UNION UNIVERSITY	236	235	196	-18.95%	GEORGIA, UNIVERSITY OF	242	225	188	-24.19%
AMERICAN UNIVERSITY	502	475	491	-2.19%	GOLDEN GATE UNIVERSITY	320	229	227	-29.06%
APPALACHIAN SCHOOL OF LAW	127	146	75	-40.94%	GONZAGA UNIVERSITY	183	170	132	-27.87%
ARIZONA STATE UNIVERSITY	191	168	151	-20.94%	HAMLIN UNIVERSITY	227	205	124	-45.37%
ARIZONA, UNIVERSITY OF	157	137	109	-30.57%	HARVARD UNIVERSITY	561	569	555	-1.07%
ARKANSAS, UNIVERSITY OF	138	136	133	-3.62%	HAWAII, UNIVERSITY OF	113	116	102	-9.73%
ARKANSAS AT LITTLE ROCK, UNIVERSITY OF	157	139	150	-4.46%	HOFSTRA UNIVERSITY	365	370	320	-12.33%
ATLANTA'S JOHN MARSHALL LAW SCHOOL	265	264	181	-31.70%	HOUSTON, UNIVERSITY OF	268	252	212	-20.30%
AVE MARIA	203	151	113	-44.33%	HOWARD UNIVERSITY	150	137	150	-16.67%
BALTIMORE, UNIVERSITY OF	363	328	364	0.28%	IDAHO, UNIVERSITY OF	130	130	102	-21.54%
BARRY UNIVERSITY	254	267	295	15.35%	ILLINOIS, UNIVERSITY OF	225	184	198	-13.16%
BAYLOR UNIVERSITY	183	142	143	-21.86%	INDIANA UNIVERSITY-BLOOMINGTON	250	240	201	-19.60%
BOSTON COLLEGE	261	268	245	-6.13%	INDIANA UNIVERSITY-INDIANAPOLIS	282	314	259	-8.16%
BOSTON UNIVERSITY	288	242	210	-21.84%	INTER AMERICAN UNIVERSITY OF P.R.	869	248	129	-85.16%
BRIGHTON UNIVERSITY	150	145	140	-6.67%	IOWA, UNIVERSITY OF	203	180	155	-23.65%
BROOKLYN LAW SCHOOL	486	390	365	-24.90%	JOHN MARSHALL LAW SCHOOL	539	512	498	-7.61%
CALIFORNIA WESTERN SCHOOL OF LAW	382	265	309	-19.11%	KANSAS, UNIVERSITY OF	165	134	140	-15.15%
CALIFORNIA-BERKELEY, UNIVERSITY OF	286	254	263	-8.04%	KENTUCKY, UNIVERSITY OF	135	130	136	0.74%
CALIFORNIA-DAVIS, UNIVERSITY OF	196	192	189	-3.57%	LA VERNE, UNIVERSITY OF	166	55	44	-73.49%
CALIFORNIA-HASTINGS, UNIVERSITY OF	383	414	317	-17.23%	LEWIS AND CLARK COLLEGE	247	226	214	-13.36%
CALIFORNIA-LOS ANGELES, UNIVERSITY OF	305	319	304	-1.30%	LIBERTY UNIVERSITY	135	99	83	-38.52%
CAMPBELL UNIVERSITY	162	191	160	-1.23%	LOUISIANA STATE UNIVERSITY	222	236	199	-10.36%
CAPITAL UNIVERSITY	246	206	182	-26.02%	LOUISVILLE, UNIVERSITY OF	143	132	140	-2.10%
CASE WESTERN RESERVE UNIVERSITY	238	192	154	-34.75%	LOYOLA MARYMOUNT UNIVERSITY-LOS ANGELES	403	391	378	-6.70%
CATHOLIC UNIVERSITY OF AMERICA	274	232	141	-48.54%	LOYOLA UNIVERSITY-CHICAGO	292	274	287	-1.71%
CHAPMAN UNIVERSITY	212	160	166	-21.70%	LOYOLA UNIVERSITY-NEW ORLEANS	246	242	237	-3.66%
CHARLESTON SCHOOL OF LAW	295	224	174	-41.02%	MAINE, UNIVERSITY OF	95	91	87	-8.42%
CHARLOTTE SCHOOL OF LAW	468	529	626	33.78%	MARQUETTE UNIVERSITY	247	213	224	-9.31%
CHICAGO, UNIVERSITY OF	205	191	184	-10.24%	MARYLAND, UNIVERSITY OF	296	276	264	-10.81%
CHICAGO-KENT	310	308	286	-7.74%	MCGEORGE SCHOOL OF LAW	346	225	249	-28.03%
CINCINNATI, UNIVERSITY OF	144	119	103	-28.47%	MEMPHIS, UNIVERSITY OF	158	144	112	-29.11%
CLEVELAND STATE UNIVERSITY	195	167	140	-28.21%	MERCER UNIVERSITY	166	149	129	-22.29%
COLORADO, UNIVERSITY OF	180	163	152	-15.58%	MIAMI, UNIVERSITY OF	489	447	426	-12.08%
COLUMBIA UNIVERSITY	404	406	368	-9.41%	MICHIGAN STATE UNIVERSITY	299	307	295	-1.34%
CONNECTICUT, UNIVERSITY OF	186	181	150	-19.35%	MICHIGAN, UNIVERSITY OF	378	359	344	-8.51%
CORNELL UNIVERSITY	205	204	191	-6.83%	MINNESOTA, UNIVERSITY OF	280	248	205	-21.15%
CREIGHTON UNIVERSITY	144	135	130	-9.72%	MISSISSIPPI COLLEGE	212	214	151	-28.77%
CUNY	163	171	120	-26.38%	MISSISSIPPI, UNIVERSITY OF	199	180	157	-21.11%
DAYTON, UNIVERSITY OF	414	172	133	-67.87%	MISSOURI, UNIVERSITY OF	148	132	133	-10.14%
DENVER, UNIVERSITY OF	301	297	291	-3.32%	MISSOURI-KANSAS CITY, UNIVERSITY OF	156	149	153	-1.92%
DEPAUL UNIVERSITY	312	298	273	-12.50%	MONTANA, UNIVERSITY OF	85	85	80	-5.88%
DETROIT MERCY, UNIVERSITY OF	257	223	189	-26.48%	NEBRASKA, UNIVERSITY OF	145	128	134	-7.59%
DICKINSON SCHOOL OF LAW	228	185	162	-28.95%	NEVADA-LAS VEGAS, UNIVERSITY OF	145	140	139	-4.14%
DISTRICT OF COLUMBIA, UNIVERSITY OF THE	131	131	125	-4.58%	NEW ENGLAND SCHOOL OF LAW	393	385	450	14.50%
DRAKE UNIVERSITY	155	142	128	-17.42%	NEW MEXICO, UNIVERSITY OF	116	113	228	96.55%
DREXEL UNIVERSITY	146	147	140	-4.11%	NEW YORK LAW SCHOOL	641	488	443	-30.89%
DUKE UNIVERSITY	238	211	209	-12.16%	NEW YORK UNIVERSITY	476	450	451	-5.25%
DUQUESNE UNIVERSITY	212	191	139	-34.43%	NORTH CAROLINA CENTRAL UNIVERSITY	206	166	248	20.39%
ELON UNIVERSITY	132	130	99	-25.00%	NORTH CAROLINA, UNIVERSITY OF	254	248	238	-6.30%
EMORY UNIVERSITY	293	246	253	-13.65%	NORTH DAKOTA, UNIVERSITY OF	83	83	83	0.00%
FAULKNER UNIVERSITY	145	124	127	-12.41%	NORTHEASTERN UNIVERSITY	220	217	168	-23.64%
FLORIDA A&M	288	281	217	-24.65%	NORTHERN ILLINOIS UNIVERSITY	135	103	109	-18.26%
FLORIDA COASTAL	800	671	580	-26.22%	NORTHERN KENTUCKY UNIVERSITY	199	178	174	-12.56%
FLORIDA INTERNATIONAL	161	151	155	-3.73%	NORTHWESTERN UNIVERSITY	274	284	259	-5.47%
FLORIDA STATE UNIVERSITY	199	200	187	-6.03%	NOTRE DAME, UNIVERSITY OF	172	183	177	2.91%
FLORIDA, UNIVERSITY OF	310	295	284	-6.39%	NOVA SOUTHEASTERN UNIVERSITY	386	354	369	-4.40%
FORDHAM UNIVERSITY	477	479	433	-9.22%	OHIO NORTHERN UNIVERSITY	120	112	78	-34.17%
FRANKLIN PIERCE LAW CENTER	182	146	74	-61.48%	OHIO STATE UNIVERSITY	230	211	173	-24.76%
GEORGE MASON UNIVERSITY	303	186	147	-51.49%	OKLAHOMA CITY UNIVERSITY	224	201	172	-23.21%
GEORGE WASHINGTON UNIVERSITY	523	474	398	-23.90%					

## Change in Law School Matriculants from 2010 to 2012 (continued)

LAW SCHOOL	Total Matriculants			% Change, 2010 to 2012
	2010	2011	2012	
OKLAHOMA, UNIVERSITY OF	174	153	155	-10.92%
OREGON, UNIVERSITY OF	177	163	147	-16.95%
PACE UNIVERSITY	299	242	178	-40.47%
PENNSYLVANIA, UNIVERSITY OF	260	266	243	-2.80%
PEPPERDINE UNIVERSITY	222	202	206	-8.31%
PLOEMBY SCHOOL OF LAW	392	450	447	14.05%
PITTSBURGH, UNIVERSITY OF	259	230	210	-18.92%
PONTIFICAL CATHOLIC UNIVERSITY OF P.R.	289	304	244	-15.57%
PUERTO RICO, UNIVERSITY OF	197	184	196	-0.51%
QUINNIPAC COLLEGE	183	123	127	-32.08%
REGENT UNIVERSITY	168	154	142	-15.48%
RICHMOND, UNIVERSITY OF	146	154	153	4.79%
ROGER WILLIAMS UNIVERSITY	198	194	151	-23.74%
RUTGERS UNIVERSITY-CAMDEN	269	262	146	-56.56%
RUTGERS UNIVERSITY-NEWARK	283	224	225	-20.49%
SAMFORD UNIVERSITY	166	162	121	-27.11%
SAN DIEGO, UNIVERSITY OF	330	300	246	-25.45%
SAN FRANCISCO, UNIVERSITY OF	281	246	220	-21.71%
SANTA CLARA UNIVERSITY	371	287	237	-36.12%
SEATTLE UNIVERSITY	324	322	284	-12.35%
SETON HALL UNIVERSITY	358	286	196	-45.25%
SOUTH CAROLINA, UNIVERSITY OF	239	213	213	-10.88%
SOUTH DAKOTA, UNIVERSITY OF	75	90	62	-17.33%
SOUTH TEXAS COLLEGE OF LAW	481	424	404	-12.36%
SOUTHERN CALIFORNIA, UNIVERSITY OF	220	199	188	-14.55%
SOUTHERN ILLINOIS UNIVERSITY, CARBONDALE	144	120	112	-22.22%
SOUTHERN METHODIST UNIVERSITY	254	232	218	-14.17%
SOUTHERN UNIVERSITY	320	258	268	-16.25%
SOUTHWESTERN UNIVERSITY	410	404	351	-14.39%
ST. JOHN'S UNIVERSITY	341	293	284	-22.58%
ST. LOUIS UNIVERSITY	334	295	205	-38.62%
ST. MARY'S UNIVERSITY	301	266	248	-17.91%
ST. THOMAS UNIVERSITY (FL)	275	251	216	-21.45%
ST. THOMAS UNIVERSITY OF (MN)	536	171	143	-57.44%
STANFORD UNIVERSITY	180	180	180	0.00%
STETSON UNIVERSITY	360	344	296	-17.78%
SUFFOLK UNIVERSITY	583	538	528	-6.22%
SUNY-BUFFALO	219	175	203	-7.31%
SYRACUSE UNIVERSITY	252	255	243	-3.57%
TEMPLE UNIVERSITY	326	270	253	-22.38%
TENNESSEE, UNIVERSITY OF	169	160	120	-28.99%

LAW SCHOOL	Total Matriculants		
	2010	2011	2012
TEXAS A&M	283	236	258
TEXAS AT AUSTIN, UNIVERSITY OF	389	370	308
TEXAS SOUTHERN UNIVERSITY	212	219	185
TEXAS TECH UNIVERSITY	244	236	227
THOMAS JEFFERSON SCHOOL OF LAW	422	440	387
THOMAS M. COOLEY LAW SCHOOL	1,583	1,161	897
TOLEDO, UNIVERSITY OF	167	136	123
TOURO COLLEGE	280	280	242
TULANE UNIVERSITY	258	259	249
TULSA, UNIVERSITY OF	148	108	110
UTAH, UNIVERSITY OF	122	114	87
VALPARAISO UNIVERSITY	207	218	163
VANDERBILT UNIVERSITY	193	193	173
VERMONT LAW SCHOOL	212	151	171
VILLANOVA UNIVERSITY	251	218	220
VIRGINIA, UNIVERSITY OF	368	357	358
WAKE FOREST UNIVERSITY	165	185	125
WASHBURN UNIVERSITY	169	124	130
WASHINGTON AND LEE UNIVERSITY	144	121	167
WASHINGTON UNIVERSITY (MO)	276	243	201
WASHINGTON, UNIVERSITY OF (WA)	186	162	178
WAYNE STATE UNIVERSITY	197	181	148
WEST VIRGINIA UNIVERSITY	137	141	140
WESTERN NEW ENGLAND COLLEGE	168	108	108
WESTERN STATE SCHOOL OF LAW	242	237	144
WHITTIER COLLEGE	303	274	227
WIDENER UNIVERSITY	389	343	221
WIDENER UNIVERSITY-HARRISBURG	179	155	106
WILLEMETTE UNIVERSITY	158	141	133
WILLIAM AND MARY SCHOOL OF LAW	217	217	196
WILLIAM MITCHELL COLLEGE OF LAW	357	309	258
WISCONSIN, UNIVERSITY OF	248	242	215
WYOMING, UNIVERSITY OF	82	69	77
YALE UNIVERSITY	206	205	203
YESHIVA UNIVERSITY	362	379	374
<b>TOTALS:</b>	<b>62,841</b>	<b>47,187</b>	<b>42,976</b>
CALIFORNIA-IRVINE, UNIVERSITY OF*		89	119
MASSACHUSETTS-DARTMOUTH, UNIVERSITY OF			71

\* % Change from 2011 to 2012

Source: American Bar Association Section of Legal Education and Admissions to the Bar

**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



Exhibit A

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"> <li>Enhanced marketing and highlighting programs with diverse speakers, etc.</li> </ul>	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](http://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.

**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**

**2014 CLAIMS MADE PLAN**

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**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.

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## 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.

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## **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.

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### 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](http://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.*

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## SECTION IV — GRANT OF COVERAGE

### 1. Indemnity.

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

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

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

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

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

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

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

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

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## 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.

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## 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.*

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## 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.*

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#### 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.

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## 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.*

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## **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.

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## **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).*

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## **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.*

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## 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.*

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## 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.

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## 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.*

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## 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.*

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## 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.

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## 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.*

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### [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.*

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## 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.

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## 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.*

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## 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.

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## 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.*

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## 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.

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## 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.*

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## 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).*

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## 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.

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## 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).

<b>Extended Reporting Coverage Period</b>	<b>Additional Assessment</b>
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.

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## 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:

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**[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):

<b>1-10 attorneys</b>	USD 100,000
<b>11+ attorneys:</b>	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 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 – RELATIONOF 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, 12<sup>th</sup> 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](mailto:excess@osbplf.org) | [www.osbplf.org](http://www.osbplf.org)

**OREGON STATE BAR**

**PROFESSIONAL LIABILITY FUND**

**2014 PRO BONO PROGRAM**

**CLAIMS MADE MASTER PLAN**

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**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.

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**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.

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## 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.*

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### **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.*

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## SECTION IV – GRANT OF COVERAGE

### 1. Indemnity.

**a.** The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this 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.*

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## 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.

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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.*

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[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.*

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**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.*

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**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.*

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**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.*

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**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.

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#### [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.*

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**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.*

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[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.*

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[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.*

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**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.*

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[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.*

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[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.*

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**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.*

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## **SECTION VII - NOTICE OF CLAIMS**

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

**2.** If the COVERED PARTY becomes aware of 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.

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### 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.*

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## **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.*

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#### 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.*

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### 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).*

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**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.

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**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:*

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*[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.

**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).



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 § 30.285<sup>1</sup>**

### **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]

# 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%

# OREGON STATE BAR

## Board of Governors Agenda

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**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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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.



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

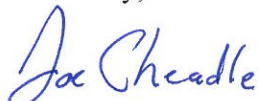
understood that I was intending to file two separate claims. It is also not clear to me at this point if, perhaps, one of the two claims I filed is still pending before the Committee. Therefore, it is difficult for me to know what to argue as a basis for finding that the Committee erred.

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](mailto:gbertoni@gbertonilaw.com), (503)243-2035.

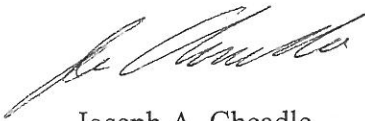
In the first claim, I seek \$1,500.00 related to the cost of a psychological evaluation, which Mr. Bertoni repeatedly promised to reimburse me but has failed to return, despite numerous requests that he do so.

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)

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**OREGON STATE BAR**  
**Board Of Governors**

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**Meeting Date:** November 23, 2013  
**Memo Date:** November 6, 2013  
**From:** Legal Services Program Committee  
**Re:** 2012 Legal Services Program Achievements and Results Report

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**Action Recommended**

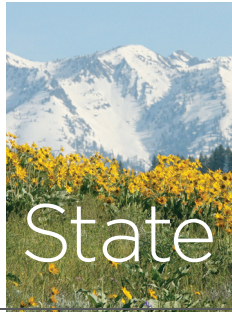
The Legal Services Program Committee is recommending that the BOG approve the 2012 Legal Services Program Achievements and Results Report.

**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



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# 2012 Legal Services Program

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## Achievements and Results

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August 2013

Judith Baker  
[jbaker@osbar.org](mailto: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](http://CNPLS.org)  
Lane County Legal Aid and Advocacy Center: [LCLAC.org](http://LCLAC.org)  
Legal Aid Services of Oregon: [LawHelp.org/program/694/index.cfm](http://LawHelp.org/program/694/index.cfm)  
Oregon Law Center: [oregonlawcenter.org](http://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*.<sup>1</sup>

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.

<sup>1</sup> 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](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*.

<b>This Report at a Glance</b>	
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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.<sup>2</sup>

- **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.<sup>2</sup>

- **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.

<sup>2</sup> 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...*

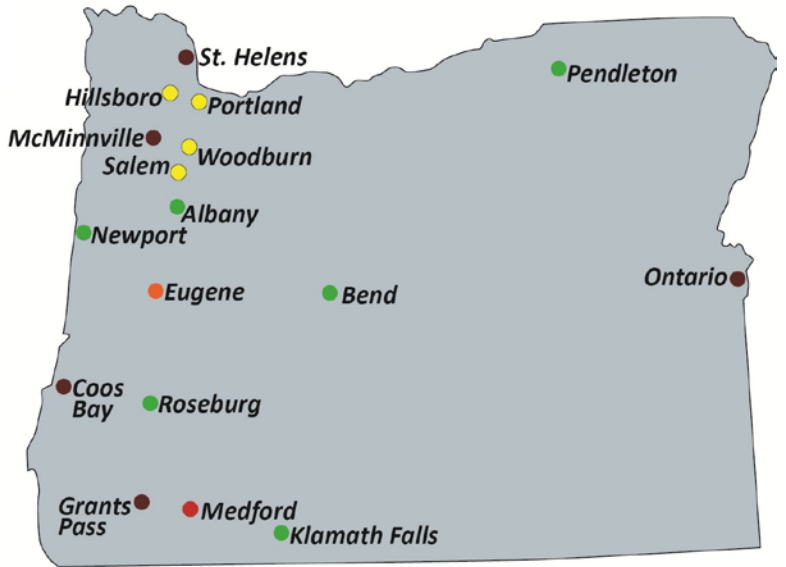
- Provides free civil (not criminal) legal assistance to low-income people.
- Is composed of four legal aid organizations with offices that collaborate closely with each other to provide access to a full range of legal services to residents of every county in the state.
- Employs 87 full time equivalent 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

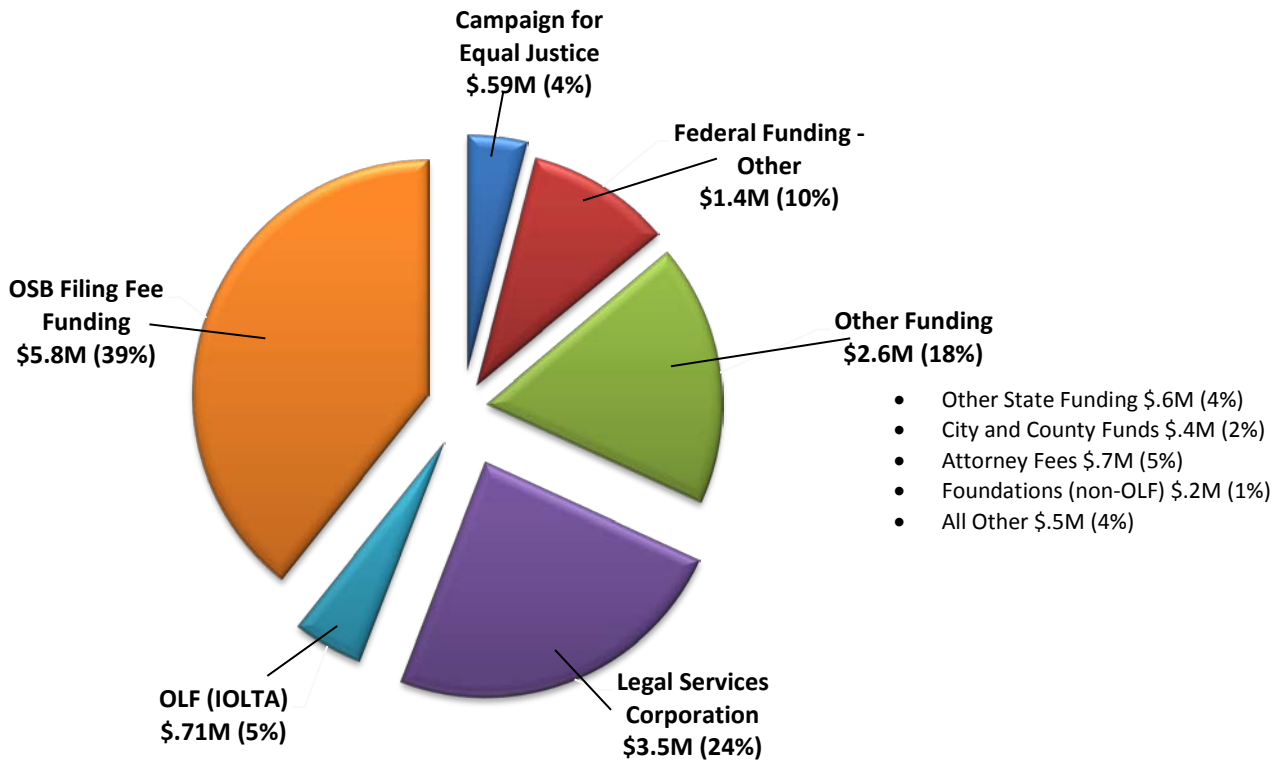
Colored dots indicate office locations.

- 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



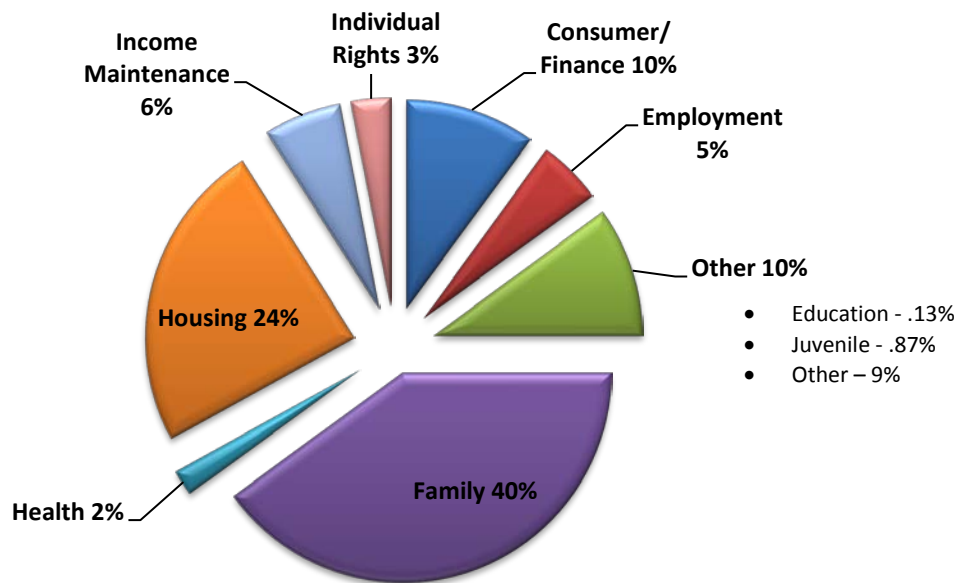
● Indicates instances of multiple programs sharing office space.

## 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*)

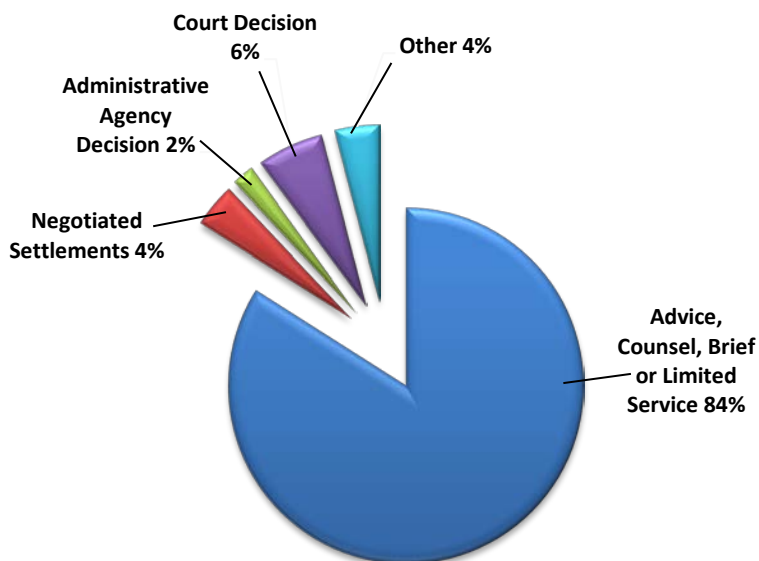
## Scope of Services: OSB legal services programs provide low-income Oregonians with access to a full range of legal services.

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](http://OregonLawHelp.org)
  - **Center for NonProfit Legal Services:** [CNPLS.org](http://CNPLS.org)
  - **Lane County Legal Aid and Advocacy Center:** [LCLAAC.org](http://LCLAAC.org)
  - **Legal Aid Services of Oregon:** [www.lasoregon.org](http://www.lasoregon.org)
  - **Oregon Law Center:** [oregonlawcenter.org](http://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 65<sup>th</sup> 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.



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# OREGON STATE BAR

## Board of Governors Agenda

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**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)

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### 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 Naucner

#### **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

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**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

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### **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 Beyrouthy (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

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# MINUTES

## BOG Board Development Committee

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**Meeting Date:** November 23, 2013  
**Location:** Brasada Ranch, Powell Butte  
**Chair:** Tom Kranovich  
**Members Present:** Ray Heysell, Ethan Knight, Caitlin Mitchel-Markley (phone), Maureen O'Connor, Rich Spier, Charles Wilhoite  
**Guests:** Jim Chaney  
**Staff Members:** Sylvia Stevens, Mariann Hyland, Danielle Edwards

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### Action Items

The following lawyer and non-lawyer volunteers were selected for appointment to a bar group as specified below:

#### Quality of Life Committee

Chair: Eva Marcotrigiano, term expires 12/31/2014  
Secretary: Amy Miller, term expires 12/31/2014  
Member: Kristina Faricy, term expires 12/31/2016  
Member: Ruben Medina Jr., term expires 12/31/2016  
Member: Mark Rauch, term expires 12/31/2016  
Member: Marilyn Heiken, term expires 12/31/2016  
Public Member: Dr. Virginia Terhar, term expires 12/31/2016  
Advisory Member: Heather Decker, term expires 12/31/2014  
Advisory Member: Kyle Dukelow, term expires 12/31/2014

#### Pro Bono Committee

Chair: Justin Sawyer, term expires 12/31/2014  
Member: Christo de Villiers, term expires 12/31/2016  
Member: Beth Ariel Eiva, term expires 12/31/2016  
Member: Samuel Heywood, term expires 12/31/2016  
Member: Darren Nakata, term expires 12/31/2016  
Member: Shalini Vivek, term expires 12/31/2016  
Member: Bill Haberlach, term expires 12/31/2016  
Advisory Member: Andrea Thompson, term expires 12/31/2016

#### Loan Repayment Assistance Program Committee

Member: Andrea Anderly, term expires 12/31/2016  
Member: Amanda Husted, term expires 12/31/2016  
Member: William Penn, term expires 12/31/2016

#### Unlawful Practice of Law Committee\*

Public Member: Sara Dorland, term expires 12/31/2017



**Disciplinary Board**

Region 3: John E Davis, Member, term expires 12/31/2016

Region 5: Sean Currie, Member, term expires 12/31/2016

**Oregon Law Foundation Board**

Member: Howard Arnett, term expires 12/31/2015

Member: Traci Ray, term expires 12/31/2017

**House of Delegates**

Region 3: Peter Carini, term expires 4/20/2015

Region 7: Wendy Leik, term expires 4/20/2015

**Oregon Law Center and Legal Aid Services Boards**

*Three year terms*

Amy Edwards

Gayle Patterson

Wayne Belmont

Michael Mason

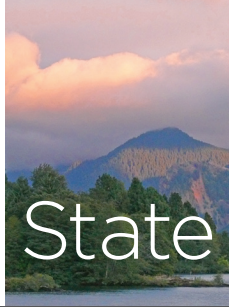
Manuel Perez

Ed Goodman

Lane Shetterly

\*All votes were unanimous except the vote on the Unlawful Practice of Law Committee public member position where Caitlin Mitchel-Markley abstained.

Oregon State Bar



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# 2014 Budget

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Report to the  
Board of Governors

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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**

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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**

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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**

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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

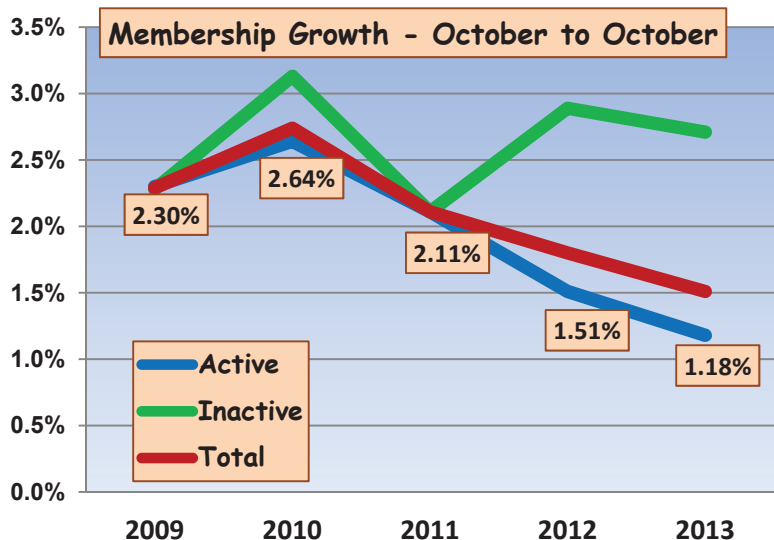
Year	Actual	\$ Chg YOY	% YOY
<b>2014 B</b>	<b>\$7,076,000</b>	<b>\$65,000</b>	<b>0.93%</b>
<b>2013 B</b>	<b>\$7,011,000</b>	<b>\$51,300</b>	<b>0.74%</b>
2012	\$6,959,700	\$145,657	2.14%
2011	\$6,814,043	\$183,588	2.77%
2010	\$6,630,455	\$153,872	2.38%
2009	\$6,476,583	\$159,808	2.53%
2008	\$6,316,775	\$127,911	2.07%
2007	\$6,188,864	\$156,947	2.60%
2006	\$6,031,917		
<b>Average 2007 to 2012</b>			<b>2.41%</b>

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
<b>2%</b>	<b>\$ 136,900</b>	<b>\$ 453,471</b>
<b>3%</b>	\$ 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.*



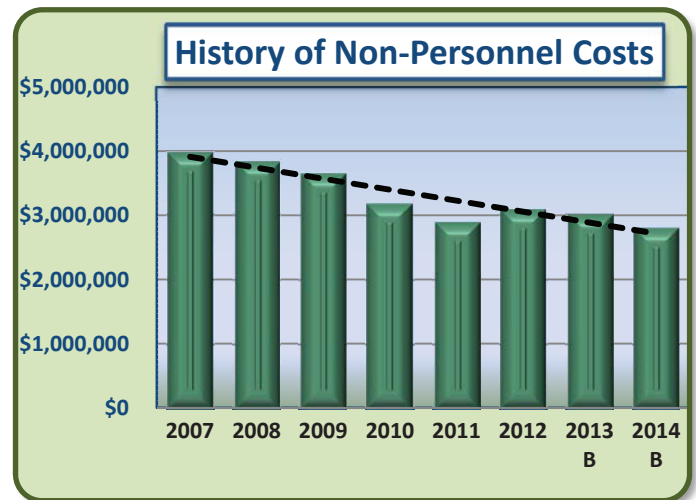
The lower rate is a result of SB 822. Although other PERS-related bills have since passed legislative action within the past few weeks, the impact of those changes on the current or future rate is not known yet.

- 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)

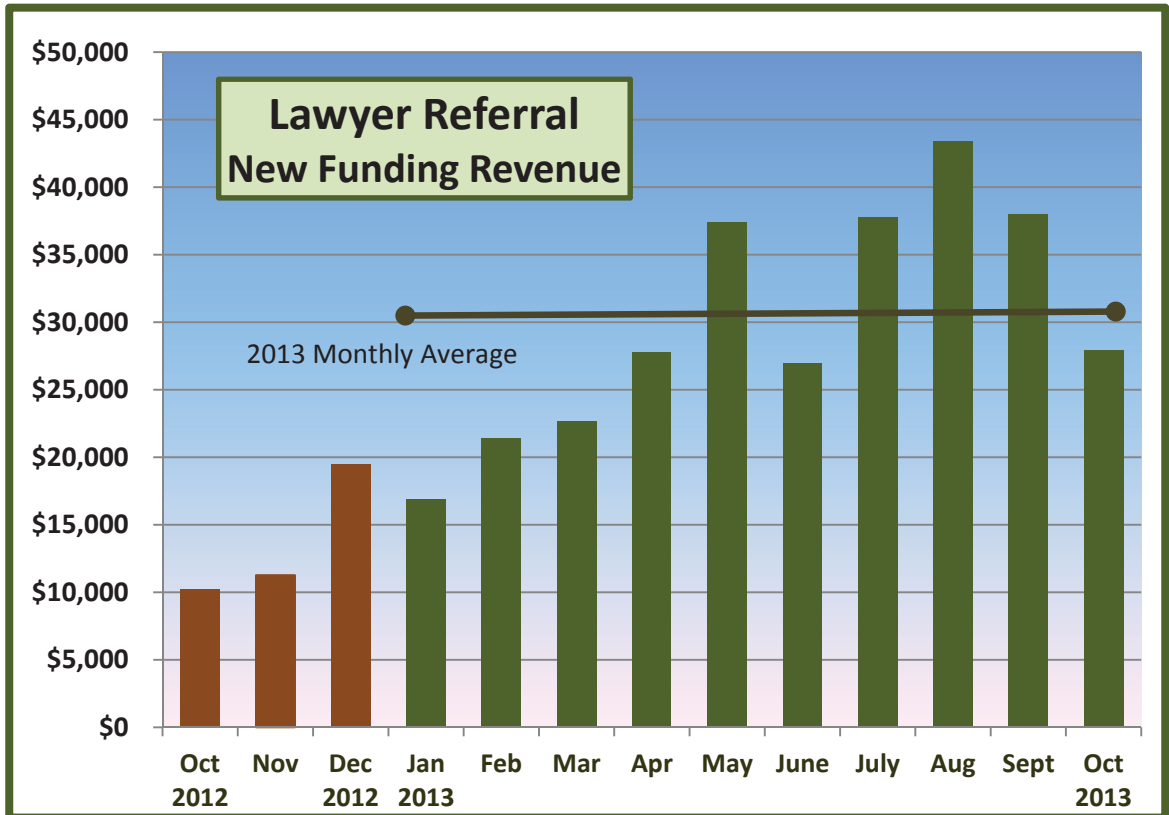
**Exhibit C** is an updated report on the plan to replace the bar's database and software planned for 2014.

## 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
<b>Revenue</b>		
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	<b>\$115,700</b>	
<b>Cost Reductions</b>		
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	<b>\$63,701</b>	
<b>Cash Available Adjustments</b>		
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	<b>\$31,600</b>	
<b>Total Changes from Oct 25 Budget Report</b>	<b>\$211,001</b>	



### 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 &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$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
<b>TOTAL PROGRAMS</b>	<b>\$4,162,423</b>	<b>\$6,315,491</b>	<b>\$1,891,156</b>	<b>\$278,939</b>	<b>\$8,485,586</b>	<b>\$2,149,417</b>	<b>(\$6,472,579)</b>
<b>ALLOCATIONS:</b>							
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)
<b>TOTAL OPERATIONS</b>	<b>\$11,113,473</b>	<b>\$7,852,135</b>	<b>\$2,445,563</b>	<b>\$355,784</b>	<b>\$10,653,482</b>	<b>\$6,521</b>	<b>\$453,471</b>
Fanno Creek Place	\$837,340	\$117,400	\$1,544,515	\$15,279	\$1,677,194	(\$160,459)	(\$679,395)
<b>TOTAL GENERAL FUND</b>	<b>\$11,950,813</b>	<b>\$7,969,535</b>	<b>\$3,990,078</b>	<b>\$371,063</b>	<b>\$12,330,676</b>	<b>(\$153,938)</b>	<b>(\$225,925)</b>
<b>DESIGNATED FUNDS:</b>							
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)
<b>TOTAL ALL FUNDS</b>	<b>\$19,393,413</b>	<b>\$8,420,008</b>	<b>\$10,348,178</b>	<b>\$408,463</b>	<b>\$19,176,649</b>	<b>\$0</b>	<b>\$216,764</b>

### 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
<b>REVENUE</b>							
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
<b>EXPENDITURES</b>							
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
<b>REVENUE</b>								
<b>RENTAL INCOME</b>								
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	
<b>TOTAL REVENUE</b>	<b>801,871</b>	<b>837,340</b>	<b>868,798</b>	<b>846,732</b>	<b>861,615</b>	<b>900,616</b>	<b>866,465</b>	
<b>EXPENDITURES</b>								
<b>OPERATING EXPENSE</b>								
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	
<b>DEBT SERVICE</b>								
Interest	720,801	707,655	693,699	678,884	663,158	646,462	628,729	
<b>TOTAL OPERATING EXPENSES</b>	<b>1,664,441</b>	<b>1,677,194</b>	<b>1,680,599</b>	<b>1,679,684</b>	<b>1,678,258</b>	<b>1,686,362</b>	<b>1,683,829</b>	
ICA to Operations	(160,459)	(160,459)	(160,500)	(164,500)	(164,500)	(164,500)	(168,600)	
<b>NET EXPENSES</b>	<b>1,503,982</b>	<b>1,516,735</b>	<b>1,520,099</b>	<b>1,515,184</b>	<b>1,513,758</b>	<b>1,521,862</b>	<b>1,515,229</b>	
<b>NET REVENUE/(EXPENSE) - FC Place</b>	<b>(\$702,111)</b>	<b>(\$679,395)</b>	<b>(\$651,301)</b>	<b>(\$668,452)</b>	<b>(\$652,143)</b>	<b>(\$621,246)</b>	<b>(\$648,764)</b>	
<b>ACCRUAL TO CASH ADJUSTMENT</b>								
<b>SOURCES OF FUNDS</b>								
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								
<b>USES OF FUNDS</b>								
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)	
<b>NET CASH FLOW - FC Place</b>	<b>(\$405,518)</b>	<b>(\$394,748)</b>	<b>(\$377,610)</b>	<b>(\$410,576)</b>	<b>(\$408,993)</b>	<b>(\$184,792)</b>	<b>(\$430,033)</b>	

**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
<b>FUNDS AVAILABLE</b>							
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
<b>SOURCES OF FUNDS</b>							
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		
<b>Projected HIGHER Net Operating Revenue</b>	<b>100,000</b>						
<b>USES OF FUNDS</b>							
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						
<b>CHANGE IN FUNDS AVAILABLE</b>	<b>(127,717)</b>	<b>103,123</b>	<b>(120,370)</b>	<b>455,324</b>	<b>(252,093)</b>	<b>(569,492)</b>	<b>(814,633)</b>
<b>Funds Available - End of Year</b>	<b>\$1,368,493</b>	<b>\$1,471,616</b>	<b>\$1,351,246</b>	<b>\$1,806,570</b>	<b>\$1,554,477</b>	<b>\$984,985</b>	<b>\$170,352</b>
<b>RESERVE REQUIREMENT</b>							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	525,000	550,000	575,000	600,000
<b>Total - Reserve Requirement</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,025,000</b>	<b>\$1,050,000</b>	<b>\$1,075,000</b>	<b>\$1,100,000</b>
<b>RESERVE VARIANCE</b>							
Over/(Under) Reserve Requirement	\$368,493	\$471,616	\$351,246	\$781,570	\$504,477	(\$90,015)	(\$929,648)
<b>RECONCILIATION</b>							
<b>CASH to ACCRUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>	<b>FORECAST</b>				
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$703,996</b>	<b>\$721,998</b>	<b>\$743,446</b>	<b>\$21,448</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$304,735</b>	<b>\$321,132</b>	<b>\$302,545</b>	<b>(\$18,587)</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$280,315</b>	<b>\$290,850</b>	<b>\$273,235</b>	<b>(\$17,615)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$16,030</b>	<b>\$17,481</b>	<b>\$18,104</b>	<b>\$623</b>
<b>Total Expenses</b>		<b>\$601,080</b>	<b>\$629,463</b>	<b>\$593,884</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$102,916</b>	<b>\$92,535</b>	<b>\$149,562</b>	
101-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$141,397</b>	<b>\$130,881</b>	<b>\$118,128</b>	
<b>Net Revenue (Expense)</b>		<b>(\$38,481)</b>	<b>(\$38,346)</b>	<b>\$31,434</b>	

## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$614,568</b>	<b>\$656,374</b>	<b>\$662,790</b>	<b>\$6,416</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$181,177</b>	<b>\$190,900</b>	<b>\$184,300</b>	<b>(\$6,600)</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$319,967</b>	<b>\$346,833</b>	<b>\$335,904</b>	<b>(\$10,929)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$7,001</b>	<b>\$2,670</b>	<b>\$4,186</b>	<b>\$1,516</b>
<b>Total Expenses</b>		<b>\$508,145</b>	<b>\$540,403</b>	<b>\$524,390</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$106,423</b>	<b>\$115,971</b>	<b>\$138,400</b>	
123-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$89,915</b>	<b>\$130,589</b>	<b>\$161,930</b>	
<b>Net Revenue (Expense)</b>		<b>\$16,508</b>	<b>(\$14,618)</b>	<b>(\$23,530)</b>	

## **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 &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$498,754</b>	<b>\$543,900</b>	<b>\$506,800</b>	<b>(\$37,100)</b>
<i>Direct Program Expenses</i>					
112-7450-000	Inquiry/investigation related expense	747	500	600	100
<b>Total Direct Program Expenses</b>		<b>\$747</b>	<b>\$500</b>	<b>\$600</b>	<b>\$100</b>
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$16,673</b>	<b>\$20,149</b>	<b>\$16,792</b>	<b>(\$3,357)</b>
<b>Total Expenses</b>		<b>\$516,174</b>	<b>\$564,549</b>	<b>\$524,192</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$516,174)</b>	<b>(\$564,549)</b>	<b>(\$524,192)</b>	
112-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$137,364</b>	<b>\$134,271</b>	<b>\$118,989</b>	
<b>Net Revenue (Expense)</b>		<b>(\$653,538)</b>	<b>(\$698,820)</b>	<b>(\$643,181)</b>	



## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$1,172,284</b>	<b>\$1,311,455</b>	<b>\$1,252,485</b>	<b>(\$58,970)</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$467,620</b>	<b>\$409,700</b>	<b>\$458,700</b>	<b>\$49,000</b>
<b>Direct Program Expenses</b>					
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/Mtce	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
<b>Total Direct Program Expenses</b>		<b>\$417,152</b>	<b>\$424,025</b>	<b>\$411,800</b>	<b>(\$12,225)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$15,668</b>	<b>\$25,390</b>	<b>\$24,998</b>	<b>(\$392)</b>
<b>Total Expenses</b>		<b>\$900,440</b>	<b>\$859,115</b>	<b>\$895,498</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$271,844</b>	<b>\$452,340</b>	<b>\$356,987</b>	
109-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$366,540</b>	<b>\$414,138</b>	<b>\$359,364</b>	
<b>Net Revenue (Expense)</b>		<b>(\$94,696)</b>	<b>\$38,202</b>	<b>(\$2,377)</b>	

## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$5,639</b>	<b>\$14,400</b>	<b>\$23,300</b>	<b>\$8,900</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$361,274</b>	<b>\$412,200</b>	<b>\$488,000</b>	<b>\$75,800</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$19,740</b>	<b>\$17,250</b>	<b>\$18,600</b>	<b>\$1,350</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$5,703</b>	<b>\$7,200</b>	<b>\$7,600</b>	<b>\$400</b>
<b>Total Expenses</b>		<b>\$386,717</b>	<b>\$436,650</b>	<b>\$514,200</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$381,078)</b>	<b>(\$422,250)</b>	<b>(\$490,900)</b>	
108-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$93,948</b>	<b>\$127,807</b>	<b>\$115,681</b>	
<b>Net Revenue (Expense)</b>		<b>(\$475,026)</b>	<b>(\$550,057)</b>	<b>(\$606,581)</b>	

## **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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$94,327</b>	<b>\$76,250</b>	<b>\$78,750</b>	<b>\$2,500</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$1,569,129</b>	<b>\$1,704,600</b>	<b>\$1,671,300</b>	<b>(\$33,300)</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$143,615</b>	<b>\$112,600</b>	<b>\$114,550</b>	<b>\$1,950</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$61,002</b>	<b>\$69,314</b>	<b>\$79,832</b>	<b>\$10,518</b>
<b>Total Expenses</b>		<b>\$1,773,746</b>	<b>\$1,886,514</b>	<b>\$1,865,682</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$1,679,419)</b>	<b>(\$1,810,264)</b>	<b>(\$1,786,932)</b>	
115-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$426,088</b>	<b>\$442,948</b>	<b>\$361,389</b>	
<b>Net Revenue (Expense)</b>		<b>(\$2,105,507)</b>	<b>(\$2,253,212)</b>	<b>(\$2,148,321)</b>	

## 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
<b>Revenues</b>					
117-4285-000	Filing Fees - Fee Arbitration	2,100	2,500	2,500	0
<b>Total Revenues</b>		<b>\$2,100</b>	<b>\$2,500</b>	<b>\$2,500</b>	<b>\$0</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$352,188</b>	<b>\$363,200</b>	<b>\$392,100</b>	<b>\$28,900</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$31,789</b>	<b>\$53,250</b>	<b>\$43,450</b>	<b>(\$9,800)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$13,921</b>	<b>\$15,681</b>	<b>\$16,227</b>	<b>\$546</b>
<b>Total Expenses</b>		<b>\$397,898</b>	<b>\$432,131</b>	<b>\$451,777</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$395,798)</b>	<b>(\$429,631)</b>	<b>(\$449,277)</b>	
117-9000-000	<b>Less: Indirect Cost Allocation</b>	<b>\$82,323</b>	<b>\$76,588</b>	<b>\$74,804</b>	
<b>Net Revenue (Expense)</b>		<b>(\$478,121)</b>	<b>(\$506,219)</b>	<b>(\$524,081)</b>	



## 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
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$300,567</b>	<b>\$310,100</b>	<b>\$301,100</b>	<b>(\$9,000)</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$152,859</b>	<b>\$146,300</b>	<b>\$152,750</b>	<b>\$6,450</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$18,639</b>	<b>\$26,178</b>	<b>\$23,008</b>	<b>(\$3,170)</b>
<b>Total Expenses</b>		<b>\$472,065</b>	<b>\$482,578</b>	<b>\$476,858</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$472,065)</b>	<b>(\$482,578)</b>	<b>(\$476,858)</b>	
107-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$69,512</b>	<b>\$72,433</b>	<b>\$73,242</b>	
<b>Net Revenue (Expense)</b>		<b>(\$541,577)</b>	<b>(\$555,011)</b>	<b>(\$550,100)</b>	

## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$259,341</b>	<b>\$246,040</b>	<b>\$321,802</b>	<b>\$75,762</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$621,019</b>	<b>\$577,400</b>	<b>\$578,000</b>	<b>\$600</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$115,809</b>	<b>\$100,275</b>	<b>\$115,677</b>	<b>\$15,402</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$23,335</b>	<b>\$21,798</b>	<b>\$21,527</b>	<b>(\$271)</b>
<b>Total Expenses</b>		<b>\$760,163</b>	<b>\$699,473</b>	<b>\$715,204</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$500,822)</b>	<b>(\$453,433)</b>	<b>(\$393,402)</b>	
111-9000-000	<b>Less: Indirect Cost Allocation</b>	<b>\$268,084</b>	<b>\$278,020</b>	<b>\$260,816</b>	
<b>Net Revenue (Expense)</b>		<b>(\$768,906)</b>	<b>(\$731,453)</b>	<b>(\$654,218)</b>	

## 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
<b>Total Revenues</b>		<b>\$73,561</b>	<b>\$73,800</b>	<b>\$74,900</b>	<b>\$1,100</b>
<i>Direct Program Expenses</i>					
106-7183-000	LRAP Loan Disbursements	83,900	84,000	88,000	4,000
<b>Total Direct Program Expenses</b>		<b>\$83,900</b>	<b>\$84,000</b>	<b>\$88,000</b>	<b>\$4,000</b>
<b>Total Expenses</b>		<b>\$83,900</b>	<b>\$84,000</b>	<b>\$88,000</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$10,339)</b>	<b>(\$10,200)</b>	<b>(\$13,100)</b>	
106-9000-000	<i>Less: Indirect Cost Allocation</i>				
<b>Net Revenue (Expense)</b>					

## **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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$308,510</b>	<b>\$304,600</b>	<b>\$300,300</b>	<b>(\$4,300)</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$150,884</b>	<b>\$158,088</b>	<b>\$161,881</b>	<b>\$3,793</b>
<b>Direct Program Expenses</b>					
121-7090-000	Bank Fees - Credit Card Processing	1,224	1,500	1,500	0
<b>Total Direct Program Expenses</b>		<b>\$1,224</b>	<b>\$1,500</b>	<b>\$1,500</b>	<b>\$0</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$9,107</b>	<b>\$13,561</b>	<b>\$11,591</b>	<b>(\$1,970)</b>
<b>Total Expenses</b>		<b>\$161,215</b>	<b>\$173,149</b>	<b>\$174,972</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$147,295</b>	<b>\$131,451</b>	<b>\$125,328</b>	
121-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$69,749</b>	<b>\$69,384</b>	<b>\$70,759</b>	
<b>Net Revenue (Expense)</b>		<b>\$77,546</b>	<b>\$62,067</b>	<b>\$54,569</b>	



## 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
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$189,142</b>	<b>\$197,774</b>	<b>\$169,048</b>	<b>(\$28,726)</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$5,508</b>	<b>\$16,250</b>	<b>\$11,750</b>	<b>(\$4,500)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$6,732</b>	<b>\$13,975</b>	<b>\$5,097</b>	<b>(\$8,878)</b>
<b>Total Expenses</b>		<b>\$201,382</b>	<b>\$227,999</b>	<b>\$185,895</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$201,382)</b>	<b>(\$227,999)</b>	<b>(\$185,895)</b>	
125-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$96,083</b>	<b>\$81,592</b>	<b>\$102,649</b>	
<b>Net Revenue (Expense)</b>		<b>(\$297,465)</b>	<b>(\$309,591)</b>	<b>(\$288,544)</b>	

## **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
<b>Revenues</b>					
116-4565-000	NLMP Registration Fee Revenue	17,800	40,000	20,000	-20,000
<b>Total Revenues</b>		<b>\$17,800</b>	<b>\$40,000</b>	<b>\$20,000</b>	<b>(\$20,000)</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$123,518</b>	<b>\$139,500</b>	<b>\$140,700</b>	<b>\$1,200</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$537</b>	<b>\$2,150</b>	<b>\$2,950</b>	<b>\$800</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$570</b>	<b>\$1,648</b>	<b>\$1,890</b>	<b>\$242</b>
<b>Total Expenses</b>		<b>\$124,625</b>	<b>\$143,298</b>	<b>\$145,540</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$106,825)</b>	<b>(\$103,298)</b>	<b>(\$125,540)</b>	
116-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$40,806</b>	<b>\$45,820</b>	<b>\$50,467</b>	
<b>Net Revenue (Expense)</b>		<b>(\$147,631)</b>	<b>(\$149,118)</b>	<b>(\$176,007)</b>	

## **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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$13,296</b>	<b>\$4,000</b>	<b>\$6,650</b>	<b>\$2,650</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$58,302</b>	<b>\$59,900</b>	<b>\$64,500</b>	<b>\$4,600</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$76,217</b>	<b>\$42,800</b>	<b>\$77,200</b>	<b>\$34,400</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$2,845</b>	<b>\$5,680</b>	<b>\$4,680</b>	<b>(\$1,000)</b>
<b>Total Expenses</b>		<b>\$137,364</b>	<b>\$108,380</b>	<b>\$146,380</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$124,068)</b>	<b>(\$104,380)</b>	<b>(\$139,730)</b>	
124-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$38,908</b>	<b>\$39,269</b>	<b>\$45,830</b>	
<b>Net Revenue (Expense)</b>		<b>(\$162,976)</b>	<b>(\$143,649)</b>	<b>(\$185,560)</b>	

## **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
<i>Salaries &amp; Benefits</i>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$426,142</b>	<b>\$454,800</b>	<b>\$439,900</b>	<b>(\$14,900)</b>
<i>Direct Program Expenses</i>					
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
<b>Total Direct Program Expenses</b>		<b>\$10,768</b>	<b>\$29,900</b>	<b>\$20,750</b>	<b>(\$9,150)</b>
<i>General &amp; Administrative Expenses</i>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$22,874</b>	<b>\$32,855</b>	<b>\$32,638</b>	<b>(\$217)</b>
<b>Total Expenses</b>		<b>\$459,784</b>	<b>\$517,555</b>	<b>\$493,288</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$459,784)</b>	<b>(\$517,555)</b>	<b>(\$493,288)</b>	
119-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$101,303</b>	<b>\$98,197</b>	<b>\$91,614</b>	
<b>Net Revenue (Expense)</b>		<b>(\$561,087)</b>	<b>(\$615,752)</b>	<b>(\$584,902)</b>	



## 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
<b>Total Revenues</b>		<b>\$175,492</b>	<b>\$170,500</b>	<b>\$475,500</b>	<b>\$305,000</b>
<i>Salaries &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$358,723</b>	<b>\$330,556</b>	<b>\$440,717</b>	<b>\$110,161</b>
<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
<b>Total Direct Program Expenses</b>		<b>\$28,861</b>	<b>\$32,680</b>	<b>\$49,240</b>	<b>\$16,560</b>
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$11,560</b>	<b>\$10,167</b>	<b>\$10,444</b>	<b>\$277</b>
<b>Total Expenses</b>		<b>\$399,144</b>	<b>\$373,403</b>	<b>\$500,401</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$223,652)</b>	<b>(\$202,903)</b>	<b>(\$24,901)</b>	
128-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$147,091</b>	<b>\$161,226</b>	<b>\$143,755</b>	
<b>Net Revenue (Expense)</b>		<b>(\$370,743)</b>	<b>(\$364,129)</b>	<b>(\$168,656)</b>	

## **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
<b>Total Revenues</b>		<b>\$0</b>	<b>\$300,000</b>	<b>\$200,000</b>	-100,000
<i>Salaries &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$8,514</b>	<b>\$15,900</b>	<b>\$15,900</b>	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
<b>Total Direct Program Expenses</b>		<b>\$181,039</b>	<b>\$223,800</b>	<b>\$173,200</b>	-50,600
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$203</b>	<b>\$350</b>	<b>\$325</b>	-25
<b>Total Expenses</b>		<b>\$189,756</b>	<b>\$240,050</b>	<b>\$189,425</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$189,756)</b>	<b>\$59,950</b>	<b>\$10,575</b>	

## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$246,333</b>	<b>\$682,100</b>	<b>\$688,700</b>	<b>\$6,600</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$36,990</b>	<b>\$39,400</b>	<b>\$42,500</b>	<b>\$3,100</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$678,669</b>	<b>\$202,650</b>	<b>\$253,650</b>	<b>\$51,000</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$1,254</b>	<b>\$2,624</b>	<b>\$2,624</b>	<b>\$0</b>
<b>Total Expenses</b>		<b>\$716,913</b>	<b>\$244,674</b>	<b>\$298,774</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$470,580)</b>	<b>\$437,426</b>	<b>\$389,926</b>	
113-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$13,048</b>	<b>\$14,625</b>	<b>\$26,622</b>	
<b>Net Revenue (Expense)</b>		<b>(\$483,628)</b>	<b>\$422,801</b>	<b>\$363,304</b>	

## **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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$458,369</b>	<b>\$478,200</b>	<b>\$698,900</b>	<b>\$220,700</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$287,796</b>	<b>\$295,300</b>	<b>\$311,973</b>	<b>\$16,673</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$187,378</b>	<b>\$145,700</b>	<b>\$169,450</b>	<b>\$23,750</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$20,722</b>	<b>\$19,150</b>	<b>\$32,899</b>	<b>\$13,749</b>
<b>Total Expenses</b>		<b>\$495,896</b>	<b>\$460,150</b>	<b>\$514,322</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$37,527)</b>	<b>\$18,050</b>	<b>\$184,578</b>	
103-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$74,020</b>	<b>\$78,582</b>	<b>\$76,163</b>	
<b>Net Revenue (Expense)</b>		<b>(\$111,547)</b>	<b>(\$60,532)</b>	<b>\$108,415</b>	



## 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$6,066,328</b>	<b>\$6,055,000</b>	<b>\$6,055,000</b>	<b>\$0</b>
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$88,428</b>	<b>\$95,200</b>	<b>\$96,000</b>	<b>\$800</b>
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$5,946,328</b>	<b>\$5,935,000</b>	<b>\$5,935,000</b>	<b>\$0</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$3,083</b>	<b>\$2,710</b>	<b>\$1,877</b>	<b>(\$833)</b>
<b>Total Expenses</b>		<b>\$6,037,839</b>	<b>\$6,032,910</b>	<b>\$6,032,877</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$28,489</b>	<b>\$22,090</b>	<b>\$22,123</b>	
120-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$23,771</b>	<b>\$45,818</b>	<b>\$51,153</b>	
<b>Net Revenue (Expense)</b>		<b>\$4,718</b>	<b>(\$23,728)</b>	<b>(\$29,030)</b>	



## 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		
<b>Totals</b>	<b>\$2,391,242</b>	<b>\$2,303,355</b>	<b>(\$87,887)</b>	<b>-3.7%</b>

\* 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
<b>Revenues</b>					
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
	<b>Total Revenues</b>	<b>\$7,081,540</b>	<b>\$6,879,312</b>	<b>\$6,951,050</b>	<b>\$71,738</b>
<b>Salaries &amp; Benefits</b>					
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)
	<b>Total Salaries &amp; Benefits</b>	<b>\$1,382,355</b>	<b>\$1,582,820</b>	<b>\$1,536,644</b>	<b>(\$46,176)</b>
<b>Direct Program Expenses</b>					
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
	<b>Total Direct Program Expenses</b>	<b>\$1,027,768</b>	<b>\$925,550</b>	<b>\$772,647</b>	<b>(\$152,903)</b>
<b>General &amp; Administrative Expenses</b>					
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
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$95,600</b>	<b>\$70,092</b>	<b>\$76,005</b>	<b>\$5,913</b>
<b>Total Expenses Before Allocations:</b>		<b>\$2,505,723</b>	<b>\$2,578,462</b>	<b>\$2,385,296</b>	
<b>Service Reimbursements</b>					
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
<b>Total Service Reimbursements</b>		<b>(\$139,208)</b>	<b>(\$136,700)</b>	<b>(\$156,300)</b>	<b>(\$19,600)</b>
<b>Offsets</b>					
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
<b>Total Offsets</b>		<b>(\$142,127)</b>	<b>(\$136,100)</b>	<b>(\$114,850)</b>	<b>\$21,250</b>
<b>Total Expense Allocations</b>		<b>(\$281,335)</b>	<b>(\$272,800)</b>	<b>(\$271,150)</b>	
<b>Net Expenses</b>		<b>\$2,224,388</b>	<b>\$2,305,662</b>	<b>\$2,114,146</b>	
<b>Net Revenue Before Indirect Cost Allocation</b>		<b>\$2,351,429</b>	<b>\$1,995,188</b>	<b>\$2,451,608</b>	
<b>Indirect Cost Allocations to Bar Programs:</b>					
<i>Admissions</i>		\$141,397	\$130,881	\$118,128	(\$12,753)
<i>Diversity &amp; 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 &amp; 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)
<b>Total Indirect Cost Allocations</b>		<b>\$2,344,717</b>	<b>\$2,499,596</b>	<b>\$2,303,355</b>	
<b>Net Revenue (Expense)</b>		<b>\$4,696,146</b>	<b>\$4,494,784</b>	<b>\$4,754,963</b>	

## 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 &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$235,762</b>	<b>\$251,720</b>	<b>\$255,544</b>	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
<b>Total Direct Program Expenses</b>		<b>\$129,489</b>	<b>\$167,300</b>	<b>\$153,000</b>	-14,300
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$10,737</b>	<b>\$11,717</b>	<b>\$9,685</b>	-2,032
<b>Total Expenses</b>		<b>\$375,988</b>	<b>\$430,737</b>	<b>\$418,229</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$375,988)</b>	<b>(\$430,737)</b>	<b>(\$418,229)</b>	



## 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
<b>Total Revenues</b>		<b>\$0</b>	<b>\$0</b>	<b>\$10,000</b>	10,000
<i>Salaries &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$0</b>	<b>\$0</b>	<b>\$319,500</b>	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
<b>Total Direct Program Expenses</b>		<b>\$0</b>	<b>\$0</b>	<b>\$2,600</b>	2,600
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$0</b>	<b>\$0</b>	<b>\$3,785</b>	3,785
<b>Total Expenses</b>		<b>\$0</b>	<b>\$0</b>	<b>\$325,885</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$0</b>	<b>\$0</b>	<b>(\$315,885)</b>	

## 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
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$60,037</b>	<b>\$63,100</b>	<b>\$50,100</b>	-13,000
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$297,525</b>	<b>\$312,640</b>	<b>\$194,200</b>	-118,440
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$3,623</b>	<b>\$5,400</b>	<b>\$6,050</b>	650
<b>Total Expenses</b>		<b>\$361,185</b>	<b>\$381,140</b>	<b>\$250,350</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$361,185)</b>	<b>(\$381,140)</b>	<b>(\$250,350)</b>	



## 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)		
	<b>\$ 6,749,700</b>	<b>\$ 6,810,300</b>	<b>60,600</b>	<b>0.90%</b>	<b>\$ 432.00</b>
Bulletin	188,000	191,300	3,300		10.00
LRAP	73,300	74,400	1,100		5.00
<b>Total General Fund</b>	<b>\$ 7,011,000</b>	<b>\$ 7,076,000</b>	<b>65,000</b>	<b>0.93%</b>	<b>\$ 447.00</b>
D&I	419,700	637,100	217,400		45.00
CSF	675,000	684,400	9,400		45.00
<b>Total All Funds</b>	<b>\$ 8,105,700</b>	<b>\$ 8,397,500</b>	<b>\$ 291,800</b>	<b>3.60%</b>	<b>\$ 537.00</b>

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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$7,081,540</b>	<b>\$6,879,312</b>	<b>\$6,941,050</b>	61,738
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$352,225</b>	<b>\$359,300</b>	<b>\$259,800</b>	-99,500
<b>Direct Program Expenses</b>					
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
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$364,355</b>	<b>\$237,900</b>	<b>\$217,200</b>	-20,700
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$66,575</b>	<b>\$35,815</b>	<b>\$38,005</b>	2,190
<b>Service Reimbursements</b>					
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
<b>Total Service Reimbursements</b>		<b>(\$139,208)</b>	<b>(\$136,700)</b>	<b>(\$156,300)</b>	-19,600
<b>Offsets</b>					
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
<b>Total Offsets</b>		<b>(\$142,127)</b>	<b>(\$136,100)</b>	<b>(\$114,850)</b>	21,250
<b>Total Expenses</b>		<b>\$783,155</b>	<b>\$633,015</b>	<b>\$515,005</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$6,298,385</b>	<b>\$6,246,297</b>	<b>\$6,426,045</b>	



## 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 &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$193,942</b>	<b>\$203,600</b>	<b>\$205,400</b>	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
<b>Total Direct Program Expenses</b>		<b>\$16,066</b>	<b>\$13,600</b>	<b>\$13,600</b>	0
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$10,281</b>	<b>\$12,220</b>	<b>\$11,560</b>	-660
<b>Total Expenses</b>		<b>\$220,289</b>	<b>\$229,420</b>	<b>\$230,560</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$220,289)</b>	<b>(\$229,420)</b>	<b>(\$230,560)</b>	

## **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
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$543,631</b>	<b>\$705,100</b>	<b>\$446,300</b>	-258,800
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$220,333</b>	<b>\$194,110</b>	<b>\$192,047</b>	-2,063
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$4,624</b>	<b>\$5,055</b>	<b>\$6,920</b>	1,865
<b>Total Expenses</b>		<b>\$768,588</b>	<b>\$904,265</b>	<b>\$645,267</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$768,588)</b>	<b>(\$904,265)</b>	<b>(\$645,267)</b>	

## **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
<b>Total Revenues</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<i>Salaries &amp; 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
<b>Total Salaries &amp; Benefits</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<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
<b>Total Direct Program Expenses</b>		<b>\$32,097</b>	<b>\$32,510</b>	<b>\$27,910</b>	<b>(\$4,600)</b>
<i>General &amp; 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
<b>Total General &amp; Administrative Expenses</b>		<b>\$5,236</b>	<b>\$850</b>	<b>\$840</b>	<b>(\$10)</b>
<b>Total Expenses</b>		<b>\$37,333</b>	<b>\$33,360</b>	<b>\$28,750</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$37,333)</b>	<b>(\$33,360)</b>	<b>(\$28,750)</b>	

## 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
<b>Total - Tenants</b>	<b>31,209</b>	<b>45.54%</b>	<b>\$ 765,753</b>	
Oregon State Bar (owner)	37,316	54.46%		
<b>Totals</b>	<b>68,525</b>	<b>100.00%</b>		

- 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
<b>Revenues</b>					
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
<b>Total Revenues</b>		<b>\$764,084</b>	<b>\$801,871</b>	<b>\$837,340</b>	35,469
<b>Salaries &amp; Benefits</b>					
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
<b>Total Salaries &amp; Benefits</b>		<b>\$113,518</b>	<b>\$119,800</b>	<b>\$117,400</b>	-2,400
<b>Direct Program Expenses</b>					
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
<b>Total Direct Program Expenses</b>		<b>\$1,540,382</b>	<b>\$1,528,341</b>	<b>\$1,544,515</b>	16,174
<b>General &amp; Administrative Expenses</b>					
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
<b>Total General &amp; Administrative Expenses</b>		<b>\$12,853</b>	<b>\$16,300</b>	<b>\$15,279</b>	-1,021
<b>Total Expenses</b>		<b>\$1,666,753</b>	<b>\$1,664,441</b>	<b>\$1,677,194</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$902,669)</b>	<b>(\$862,570)</b>	<b>(\$839,854)</b>	



## NOTES

## NOTES



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# OREGON STATE BAR

## Board of Governors Agenda

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**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

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### 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.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 23, 2013  
**Memo Date:** November 8, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Amendments to Standard Section Bylaws

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### 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 23, 2013  
**Memo Date:** November 6, 2013  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Uniform Civil Jury Instructions Committee Assignment Revisions

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### 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.~~
32. 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

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**Meeting Date:** November 23, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** Amendment of OSB Bylaw 23.503

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### 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,<sup>1</sup> 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.<sup>2</sup>

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 are 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.

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<sup>1</sup> 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.

<sup>2</sup> 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).~~

## 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.

Rule 6-Quorum

6.1 A majority of the total number of delegates shall constitute a quorum for the transaction of business by the House of Delegates. See ORS 9.142(1). Notwithstanding Roberts Rules of Order, once a quorum is present it is deemed to continue until the meeting is adjourned. A request for a quorum call will not be recognized.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 23, 2013  
**From:** Matt Kehoe, Public Affairs Committee Chair  
**Re:** Public Affairs Committee Recommendations

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### **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:

reconsider<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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,<sup>3</sup> the Oregon Sheriff’s Association and the State of Utah, the task force had a presentation from NIC Inc.,<sup>4</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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](http://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 program<sup>5</sup> 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

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<sup>5</sup> 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,<sup>6</sup> 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

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<sup>6</sup> 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 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.



November 20, 2013

Sylvia Stevens  
Oregon State Bar  
16037 SW Upper Boones Ferry Road  
PO Box 231935  
Tigard, OR 97281

Re: Centralized Legal Notice Task Force

Dear Sylvia:

Thank you for allowing me to comment on the draft of the November 20, 2013 Task Force report. One comment I have applies to multiple places in the report. Toward the end of the report there is often a qualification about “many task force members” or “a majority of task force members,” etc. That is not as clear in the first half of the report, however. For example, the statement that “the task force believes that the options available to the OSB Board of Governors are” would be more accurate if it said “a majority” or “most.” I won’t try to detail every spot that occurs, but that qualification would be helpful.

Near the top of page 3 there is a statement that we invited guests to discuss similar “systems” in other states, with a helpful description of limitation. I missed one meeting but I think the only state we looked at was Utah so I have a question about the plural “systems.” Similarly in that paragraph there is mention of the “costs of implementing such a system.” I respectfully think that “implementing” is too strong a word, because there wasn’t any discussion of the costs of making the public aware of the system. Could I respectfully suggest “putting a system online”?

In the next sentence could we insert “some” before “lawyers”?

In the next to the last line above “Current State of the Law” following “deemed” could we insert “by a majority of the task force members as”?

On page 4, the statement at the end of the first paragraph that “unless its distribution can be verified by audit” is not supported. No case has ever held that; and the *Imel* case held the opposite. The footnote says “That case has not been appealed,” but it was before the Oregon Supreme Court in a mandamus proceeding. The Court let *stand* the trial court ruling that

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contradicts the Report's current statement that it is okay if a newspaper's distribution is merely "verified by audit."

In the fourth paragraph on page 4, there is an editorial "While that choice may be wise public policy" which seems improper. I don't believe there is any support for that statement. The legislature has made clear with its language concerning "best suited to give actual notice," that the legislature is actually attempting to get notice out. That is the existing statement of public policy. I must also object to the statement that "it is unclear if it is technically in conformance with the statute" is not supported, and was not a conclusion reached. It should be stricken. We do know that the statute doesn't say "best suited to have the right cost" but rather points to best notice. If anything, we might point out that significant questions were raised about the propriety of placing a notice in the *Jefferson Review*, circulation 428, as a means of complying with the statutory commandment regarding notice throughout a county of 320,000. I believe these statements are not properly part of the report. It is correct that there are no "reported" cases, but this matter has been litigated before, regarding "best suited," and I can provide you with detail if there remains any question.

In footnote 3, the Report wrongly states that a mere "majority" of notices are online. In fact, as I described, it is extraordinarily rare that even the smallest newspaper ever fails to place a notice online. "Majority" is not accurate. Moreover, footnote 6 is simply false. It is a part of the ONPA Bylaws that *all* members are *required* to post *all* notices online. The current statement that "many do not" is simply false. In the meetings that I attended, which were all but one, the only comment I heard was from one member who didn't think she could find what she had placed in the *Jefferson Review*. The *Jefferson Review* was, from time to time, a very special case. In any event, these statements are not accurate.

On page 4, under "Task Force Findings," there is a statement that the presentation from NIC "satisfied the task force." I would ask for either a "majority" or "most" qualifier there. My point is very simple. NIC was very specific in saying that they handle systems that are only "if you build it they will come" systems. If you want a fishing license you find NIC. This is not congruent with notice.

At the top of page 5 the statement that the ONPA website can only be sorted geographically is not true. The ONPA website allows searching by many variations of key words, both inclusive and exclusive, as well as by date. The ONPA website also provides for automatic notices to be sent to people based on their identified search parameters. The report currently states the opposite.

In the first full paragraph on page 6, the statement that "the task force is confident" should be qualified with regard to "most" or "many." That same point is made with regard to the beginning of the fourth full paragraph.

Sylvia Stevens  
November 20, 2013  
Page 3

The last bullet point on page 6 compares what might be created to what exists right now. It is not correct that "pushing" notifications to individuals who subscribe to such a service would be a new function. That already exists on the ONPA website.

The sentence on page 7 that begins "This belief is difficult to quantify" is not accurate as stated. An accurate statement is "This belief is difficult to quantify, because the task force did not have before it data on the frequency with which public notices published in newspapers result in direct or indirect notification of parties who were otherwise unaware of any issue, nor did the task force have any data on how an online system would actually reach persons."

The discussion at the bottom of page 7 carrying on to the top lines of page 8 simply does not mention those who accidentally come across notice. In that regard the Report is incomplete.

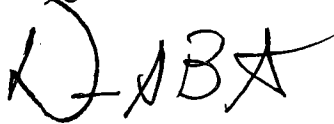
With regard to the statement that "Furthermore, as with newspapers, the Bar is only very rarely an interested party in matters for which statutory notice is required," that is true if we mean only the *entity* that is the Oregon State Bar. If we are referring to members of the bar, however, that statement is not so true and I believe that distinction was raised at one or more points during our meetings and is significant.

In the last paragraph on page 8, there is no reference to the costs of making the public aware of a "public notice system" online. I believe that paragraph should say that is a matter that the task force did not investigate.

With regard to the first sentence under "Conclusions," I ask that the report insert that "a majority of" the task force, etc. Although I said I wouldn't detail all of the "majority" insertions, I think that is also important in the next to the last paragraph on page 10 with regard to a "secondary recommendation."

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "DAB" with a stylized flourish.

Duane A. Bosworth

DAB:cp

# OREGON STATE BAR

## Board of Governors Agenda

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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

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### 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.

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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.

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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.

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## **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 <sup>nd</sup> MOST REQUESTED	3 <sup>rd</sup> 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 (1<sup>st</sup>, 2<sup>nd</sup> +3<sup>rd</sup> choices) from all enrolled NLs not yet matched and the counties selected.

# NEW LAWYER MENTORING PROGRAM

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## 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](mailto:mentoring@osbar.org).

# OREGON STATE BAR

## Board of Governors Agenda

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**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**  
**Special Open Meeting of the Board of Governors**  
**January 10, 2014**  
**Minutes**

The meeting was called to order by President Tom Kranovich at 9:00 a.m. on January 10, 2014. The meeting adjourned at 10:23 a.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Patrick Ehlers, Hunter Emerick, Ray Heysell, Matt Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Josh Ross, Richard Spier, Simon Whang, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hierschbiel, Susan Grabe, Mariann Hyland, Kay Pulju, Dani Edwards, Kateri Walsh, Catherine Petrecca, and Camille Greene. Also present were Ira Zarov, PLF CEO; Marilyn Harbur, ABA HOD Delegate; and Michael Haglund, 2013 OSB President.

**1. Call to Order**

Mr. Kranovich asked whether there were any additions to the agenda.

**Motion:** Ms. Zinser moved, Mr. Spier seconded, and the board voted unanimously to approve the agenda.

**2. Welcome and Introductions**

Mr. Kranovich welcomed new board members: Mr. Chaney, Mr. Mansfield, Mr. Whang and Ms. Zinser. Mr. Kranovich discussed his three new communication tools: a Facebook® page; a BOG email address (president@osbar.org); and a blog.

The board discussed the best practice for disseminating information among the board and the use of email for this purpose. They concurred the best practice was to send information to the Executive Director or the President for placement on the agenda. This would also address any public meeting implications.

**3. Meal Planning – February BOG Meetings in Salem**

Ms. Stevens asked the board for feedback on variety and quantity of meals at future board meetings.

**4. Request for Discipline System Evaluation**

In Mr. Gleason's absence, Ms. Stevens made a request of the board:

- 1.** Ask the Oregon Supreme Court to invite the ABA Center for Professional Responsibility Standing Committee on Discipline to conduct an on-site review of the OSB discipline system. The review would cost \$7000. Two additional memos were handed out. **[Exhibits A & B]**

**Motion:** Ms. Billman moved, Mr. Wilhoite seconded, and the board voted to make the request to the Oregon Supreme Court, as amended by Ms. Zinser to include review of Mr. Gleason's specific recommendations. Ms. Mitchel-Markley, Ms. Kohlhoff and Mr. Ross opposed.

## **5. Preview of ABA HOD Agenda**

Ms. Harbur discussed the ABA HOD resolutions and fielded questions from the board regarding the draft ABA HOD Agenda. Ms. Harbur presented the possible Illinois State Bar resolution opposing ABA EOP 464 re: joint ownership of law firms with non-lawyers. The board took no action.

## **6. Request for Sponsorship for NLADA Conference**

Ms. Petrecca presented an informal written request from Mr. Ed Harnden, Chair of the NLADA Conference Host Committee, who asked the board to contribute to the NLADA Conference scheduled for May 1-3, 2014 at the Portland Art Museum.

**Motion:** Mr. Wilhoite moved, Mr. Mansfield seconded, and the board voted unanimously to approve a contribution of \$5000 to the NLADA Conference.

## **7. Response Supreme Court Deferral of RPC 8.4 Amendments**

Ms. Stevens presented the Oregon Supreme Court's deferred action on the proposed amendments to RPC 8.4 approved by the HOD on November 1, 2013, and the court's request to the bar to submit a revised proposal. She asked the board to appoint board members to help draft a revised proposal. Ms. Kohlhoff will be involved as LEC liaison, and Ms. Mitchell-Markley volunteered to participate.

**Motion:** Ms. Zinser moved, Mr. Kehoe seconded, and the board voted unanimously to authorize Mr. Kranovich and Ms. Stevens to appoint suitable members to work with representatives of the OSB LEC.

## **8. Assignment to Bar Press Broadcasters Council**

Mr. Kranovich asked the board for a volunteer to be liaison to the Bar Press Broadcasters Council. Mr. Ehlers volunteered.

## **9. OSB Participation in the Innovation Workgroup**

Mr. Haglund asked the board for formal authority for OSB participation in the Innovation Work Group. This started out as an informal gathering, coordinated by Mike and Judge Aiken, comprised of state and federal judges, law school representatives, and legal services providers. The goal of the group is to assist new lawyers in fulfilling their professional potential and to assist practicing lawyers to adapt to the rapid changes in the legal marketplace. After the second meeting the group decided on action items, including one of which involves the OSB sending out a survey to new admittees regarding employment status. The plan is to follow up with a full-day program offering information and resources identified by the survey as needed and desired by the new lawyers. Mr. Haglund asked the OSB to have a role in coordinating the event.

## **10. Report on Regulatory Monitoring**

As written.





WILLIAM G. BLAIR, PC  
ATTORNEY AT LAW  
503-608-7222

PO BOX 5476  
BEAVERTON OR 97007  
BILL@BLAIRLAWOREGON.COM

January 9, 2014

Board of Governors  
Oregon State Bar  
c/o Tom Kranovich, Pres.  
*Via e-mail only*

Re: OSB Disciplinary Counsel Proposal for Review of Disciplinary Procedure

Greetings:

With the press of year-end business and holiday obligations it seems that there has been little time for those not “in the loop” to review and digest Mr. Gleason’s proposals. Ms. Yee, with whom I have served on the Disciplinary Board for several years, has written a letter of caution generally supporting the thoughts of Greg Hendrix, 2013 SPRB Chair, and I received a copy today.

I hope you will take my views into consideration as well when you decide how to proceed with Mr. Gleason’s recommendations.

I have been involved, off and on, in the disciplinary process since sometime in 1970 – before there was a disciplinary counsel’s office and before there was a disciplinary board. I am currently in my second series of consecutive terms on the DB, having once been a member of the Region 6 panel for several years and currently a member of the Region 4 panel (as well as its past chair). I have served as bar counsel, have served on the Ethics Committee, and have been asked to speak several times at annual DB conferences.

All of that said, I have never served on an LPRC or the SPRB. What I know of those bodies is purely second-hand, and from reading the Bar Rules and publications.

When considering whether a system or process needs change, it is important to understand what that system or process is as an integrated whole. Every process and every system can almost certainly be improved. Every organization such as the Bar (and society itself) changes, whether we like it or not. The trick is to understand the effect of those changes at a particular point in time so that the system may evolve and not be scrapped needlessly or spiral off into unwanted consequences.

A few years ago when I served on the HOD, we heard rather vocal and spirited criticism from a few Oregon lawyers whose principal brief seemed to be that the discipline process was 1) too slow, and 2) discriminated against the solo and small firm practitioner. Frankly, I have heard criticisms of the justice system precisely analogous from parties in civil and criminal litigation; *i.e.*, it takes too long and favors those who can afford the time and money to navigate the system.

Last summer I had the pleasure of hearing Mr. Gleason present a CLE segment on the Oregon disciplinary process and his ideas for alternatives. Much of what he said made sense, but his presentation did not include specific ideas such as reducing volunteer lawyer and public participation.

From the perspective of one who has written a fair number of opinions in discipline cases, I found myself agreeing with him that the past several years has seen an increase in what he calls "overcharging." In fact, I asked Mr. Sapiro at a DB conference whether it was expected by anyone that a DB opinion would address each and every charge alleged in the formal complaint. He told us that the opinion should normally address only the charge bringing the most significant sanction on which the accused is found culpable.

Mr. Gleason also expressed his view that the process should focus more on reformation than on retribution, a sentiment that I likewise share. The strong opposition taken by the Bar, and, indeed, discouragement by the Supreme Court, in diversion and probation as alternatives to traditional formal discipline have left several panels on which I have served with a very unsatisfied feeling that a more just decision was out of our hands.

The lawyer discipline process in Oregon has changed drastically in the past 30 years. It is simply unfair and illogical to look back at the process as it was 30 years ago and suggest that state of affairs is a reason for overhauling the process as it is today.

One central and non-negotiable principle, from my perspective, is that the process of lawyer discipline should meaningfully and centrally involve citizen participants and volunteer practitioners at every stage. Whether this is unique to Oregon I cannot say, but it is something we must cherish and protect. Ours is a calling and a profession. The clients and the system of justice we serve absolutely require that the practice of law be regulated in a partnership with lawyers and the public.

Turning to the system as it has evolved to the present day, we have instituted a more satisfying intake system by setting up the Client Assistance Office where citizen complaints are initially screened and sorted.

A full-time disciplinary counsel with several assistants reviews those matters that are referred for possible disciplinary action, and they are investigated by Bar staff as well as an LPRC, if needed. DC gathers the facts and presents them to the SPRB, functioning as a sort of prosecutor presenting to a grand jury, where a charging decision is made.

Unlike a grand jury, however, once charges are filed the role of the SPRB does not end. SPRB retains significant authority in the final decision as to whether an alternative to trial before a disciplinary panel is appropriate.

DC, with the assistance of Bar Counsel, if appropriate, manages the prosecution of an adversary proceeding before a trial panel composed of both practicing lawyers and a public member.

The trial panel is constrained by deadlines in holding its hearing and filing its opinion. That opinion is appealable to the Oregon Supreme Court by either the Bar or the accused. In short, the lawyer discipline process follows, generally, the model of the justice system.

Like the justice system, the lawyer discipline system is inherently burdened by time. Unlike the justice system, the "grand jury" and the "court" are both composed of volunteers, all of whom have busy, full-time lives in the real world.

Some of the delays inherent in past years have been more or less effectively addressed by evolutionary changes. Stipulations for discipline, built-in deadlines, the addition of a number of full-time assistant disciplinary counsel, and the finality of a disciplinary panel decision unless affirmatively appealed have gobbled great chunks of time from the process.

The simple expedient of disciplinary counsel's new policy of not overcharging is likewise helpful to the process.

Appointment of a presiding discipline judge and centralization of scheduling hearings and other administrative functions in the Bar office would quite probably further reduce the time between complaint and resolution, as well as bring some consistency and uniformity to trial opinions.

Absent from Mr. Gleason's recommendations are other measures, such as mediation (which could shortcut the process in many cases but prolong it in others), and a review of the role of the LPRC. I have been involved in a number of cases where the need for bar counsel was not apparent, and having yet another volunteer lawyer's schedule to work around often adds to the overall delay.

The one suggestion made by Mr. Gleason that I fail to see the rationale for is that of limiting SPRB responsibility. To me, the role of SPRB is a keystone in the public involvement so vital to lawyer discipline in Oregon.

I am personally unpersuaded that the Bar needs to look to the ABA or any other outside consultant to foster effective change to the process to address the current evolution of the profession in Oregon. I am confident that there is sufficient collective wisdom and experience in Oregon to assemble a committee to evaluate the system at its current stage of evolution and recommend course corrections that can be made without compromising the fundamental principle of volunteerism that includes both practitioners and the public.

Thank you for your kind attention to these thoughts.

Sincerely,

A handwritten signature in cursive script, appearing to read 'William G. Blair', written in dark ink.

William G. Blair  
OSB No. 69021

C: (See transmittal e-mail)

**SCHMIDT & YEE, PC**

*Attorneys at Law*  
18525 S.W. Vincent St.  
Aloha, Oregon 97007-1579

**Exhibit B**

Michael A. Schmidt

Pamela E. Yee\*

\*licensed in Oregon and Washington

PHONE: (503) 642-7641  
FAX: (503) 649-1823

e-mail: [pam@schmidtandye.com](mailto:pam@schmidtandye.com)  
Website: [www.schmidtandye.com](http://www.schmidtandye.com)

January 8, 2014

COURTESY COPY

**VIA FIRST CLASS US MAIL and**  
**EMAIL: [tom@tkatlaw.com](mailto:tom@tkatlaw.com)**

Tom Kranovich  
Kranovich & Lucero LLC  
Suite 630  
4949 Meadows Road  
Lake Oswego, OR 97035

RE: SPRB Memorandum of Concern

Dear Mr. Kranovich:

I am the current State Chair of the 2014 Disciplinary Board. I have been on the Region 4 panel since July 1998 and was the panel chair for Region 4 in 2012 and 2013. I am also a current HOD member, serving as a delegate from 2004-2006 and 2008-2009. I believe it is important for attorneys to be active in Bar committees and I am a firm believer in the disciplinary system.

I am quite concerned as to the proposed changes made by John Gleason, OSB Disciplinary Counsel, as to the State Professional Responsibility Board ("SPRB") in his October 23, 2013 "Memo to SPRB." I would not say that the current Oregon disciplinary system is not flawless, but the proposed changes definitely need a comprehensive review by a committee as noted by Mr. Gleason.

The parties signing hereon join in the Memorandum of Concern prepared by the SPRB and request that the Board of Governors ("BOG") appoint the committee to undertake the review process. Pursuant to the duties of the BOG set forth in ORS 9.080, the BOG would have the authority to establish this committee, if one is to be formed, as opposed to being outsourced or selected solely by the Bar.

It is my understanding this matter is being reviewed on January 10, 2014, by the BOG. I was not aware of that meeting until January 7, 2014, so the time constraint may have prevented other Region chairs and panel members from signing hereon. If I receive notification from other parties interested in signing and joining in this request, I will forward those to you.

Thank you for your consideration.

Very truly yours,

SCHMIDT & YEE, PC



By

PAMELA E. YEE

RESPECTFULLY JOINING:

---

MARY KIM WOOD, 2013 State Chair

---

GILBERT FEIBLEMAN, 2011 State Chair

---

LEAH JOHNSON, Region 5 Member

---

WILLIAM CROW, 2012 State Chair

---

KATHY PROCTOR, Region 4 Chair

PEY:jdm

Tom Kranovich  
January 8, 2014  
Page 2

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By

PAMELA E. YEE

RESPECTFULLY JOINING:

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MARY KIM WOOD, 2013 State Chair



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LEAH JOHNSON, Region 5 Member

PEY:jdm

Tom Kranovich  
January 8, 2014  
Page 2

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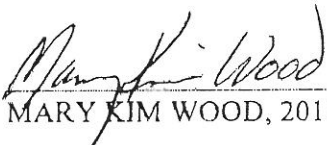
Very truly yours,

SCHMIDT & YEE, PC

By

  
PAMELA E. YEE

RESPECTFULLY JOINING:

  
MARY KIM WOOD, 2013 State Chair

LEAH JOHNSON, Region 5 Member

PEY:jdm

jj\oab\discipl\bd - kranovich ltr wpd



Tom Kranovich  
January 8, 2014  
Page 2

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Very truly yours,

SCHMIDT & YEE, PC

By

PAMELA E. YEE

RESPECTFULLY JOINING:

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MARY KIM WOOD, 2013 State Chair

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GILBERT FEIBLEMAN, Prior State Chair

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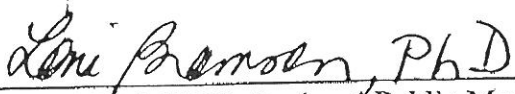
LEAH JOHNSON, Region 5 Member

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WILLIAM CROW, 2011-2012 State Chair

---

KATHY PROCTOR, Region 4 Chair

---

LONI BRAMSON, Region 4 Public Member

PEY:jdm

jploeb discipl bd - kranovich ltr.wpd

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Very truly yours,

SCHMIDT & YEE, PC

By

  
PAMELA E. YEE

RESPECTFULLY JOINING:

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---

GILBERT FEIBLEMAN, 2011 State Chair

---

LEAH JOHNSON, Region 5 Member

---

WILLIAM CROW, 2012 State Chair

---

KATHY PROCTOR, Region 4 Chair

PEY:jdm

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Eleven Months Ending November 30, 2013**

Description	November 2013	YTD 2013	Budget 2013	% of Budget	November Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$7	\$1,817	\$3,100	58.6%	\$132	\$3,060	-40.6%
Judgments	150	17,781	4,000	444.5%	420	5,699	212.0%
Membership Fees	2,610	673,500	675,000	99.8%	945	225,072	199.2%
<b>TOTAL REVENUE</b>	<b>2,767</b>	<b>693,098</b>	<b>682,100</b>	<b>101.6%</b>	<b>1,497</b>	<b>233,831</b>	<b>196.4%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,229	26,494	28,200	93.9%	2,159	25,648	3.3%
Employee Taxes & Benefits - Reg	879	9,520	11,200	85.0%	858	8,415	13.1%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,107</b>	<b>36,014</b>	<b>39,400</b>	<b>91.4%</b>	<b>3,016</b>	<b>34,063</b>	<b>5.7%</b>
<b>DIRECT PROGRAM</b>							
Claims	13,600	661,410	200,000	330.7%	144,533	586,922	12.7%
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%
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>13,600</b>	<b>671,975</b>	<b>202,800</b>	<b>331.3%</b>	<b>144,533</b>	<b>589,066</b>	<b>14.1%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Messenger & Delivery Services			50				
Office Supplies			150				
Photocopying			150				
Postage	23	337	500	67.4%	37	498	-32.3%
Professional Dues		300	200	150.0%		200	50.0%
Telephone		60	150	40.0%		47	29.0%
Training & Education		425	600	70.8%		475	-10.5%
Staff Travel & Expense		60	874	6.9%			
<b>TOTAL G &amp; A</b>	<b>23</b>	<b>1,182</b>	<b>2,674</b>	<b>44.2%</b>	<b>37</b>	<b>1,219</b>	<b>-3.1%</b>
<b>TOTAL EXPENSE</b>	<b>16,730</b>	<b>709,171</b>	<b>244,874</b>	<b>289.6%</b>	<b>147,586</b>	<b>624,348</b>	<b>13.6%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(13,964)</b>	<b>(16,073)</b>	<b>437,226</b>		<b>(146,089)</b>	<b>(390,517)</b>	<b>-95.9%</b>
Indirect Cost Allocation	1,219	13,409	14,625		1,119	12,309	8.9%
<b>NET REV (EXP) AFTER ICA</b>	<b>(15,183)</b>	<b>(29,482)</b>	<b>422,601</b>		<b>(147,208)</b>	<b>(402,826)</b>	<b>-92.7%</b>
Fund Balance beginning of year		123,493					
<b>Ending Fund Balance</b>		<b>94,011</b>					
<b>Staff - FTE count</b>		<b>.00</b>	<b>.00</b>			<b>.35</b>	

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	71	Sanchez-Serrano, Jonathan Alejandro	McBride, Jason	\$ 4,950.00	\$ 4,500.00	Cousineau	pd 12/5/13
2012	90	Vega de Garibay, Maria	McBride, Jason	\$ 10,000.00	\$ 5,000.00	Angus	pd 12/20/13
2012	102	Hernandez, Javier (Pio)	McBride, Jason	\$ 5,100.00	\$ 4,650.00	Atwood	pd 2/6/14
2012	105	Cisneros, Javier Ramirez	McBride, Jason	\$ 4,000.00	\$ 2,500.00	Miller	pd 12/12/13
2013	2	Steidley, James J	Goff, Daniel	\$ 40,000.00	\$ 25,000.00	Davis	pd 12/20/13
2013	24	Mantell, Ellitott J	Goff, Daniel	\$ 47,609.00	\$ 47,609.00	Davis	Appeal to BOG 2/21/14
2013	32	Conley, Kimberly	Kaufman, Eric	\$ 600.00	\$ 600.00	Brown	pd 01/30/14
2013	35	Cheadle, Joseph	Bertoni, Gary	\$ 6,500.00	\$ 6,500.00	Bennett	BOG denied 11.23.2013
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	39	Watkins, Sandra and Ronald	Handy, Paul	\$ 3,800.00	\$ 740.35	Reinecke	pd 12/20/13
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	CSF Denied 11/16/13
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	pd 01/23/14
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	ck req 2/03/14
2013	51	Pedro, Robert James	Kelly Ireland	\$ 3,500.00	\$ -	Reinecke	CSF Denied 01/11/2014
2013	52	Guardado, Ivonne T	Kelly Ireland	\$ 300.00	\$ 335.00	Reinecke	pd 01/30/14
2014	1	Snellings, Calvin James	McCarthy, Steven M.	\$ 7,000.00	\$ 7,000.00	Butterfield	
2014	2	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Bennett	
2014	3	Azcue, Fabiola	McBride, Jason	\$ 2,300.00	\$ 2,300.00	Atwood	
2014	4	Keene, Matthias Catto	Hudson, Howard	\$ 2,400.00	\$ 2,400.00	Keeler	
2014	5	Mundon, Carolyn	Allen, Sara	\$ 2,500.00	\$ 2,500.00	Dougherty	
2014	6	Stoery, Scott Thomas	Steves, Susan	\$ 2,924.50	\$ 2,924.50	Naucler	
2014	7	Wong, Martha and Bernath, Daniel A.	Foster, Rosemary	\$ 20,000.00	\$ 20,000.00	Reinecke	
2014	8	Clark, Frank R. and Martha J.	Goff, Daniel	\$ 12,203.00	\$ 12,203.00	Davis	
					\$ 157,165.98		
		Funds available for claims and indirect costs allocation as of November 2013		Total in CSF Account	\$ 94,011.00		
				Fund Excess	\$ (63,154.98)		

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 21, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Client Security Fund Awards Less than \$5,000

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The Client Security Fund made the following awards at its January 11, 2014 meeting:

No. 2013-46 VON BLUMENSTEIN (Houck)	\$1,010.00
No. 2013-50 SCHANNAUER (Powell)	300.00
No. 2013-52 IRELAND (Guardado)	335.00
<b>TOTAL</b>	<b>\$1,645.00</b>

Chief Justice Thomas A. Balmer



Oregon Supreme Court

February 13, 2014

Ms. Ellyn S. Rosen  
Deputy Director  
ABA Center for Professional Responsibility  
321 North Clark Street, 17<sup>th</sup> Floor  
Chicago, IL 60654-7598

Dear Ms. Rosen:

On behalf of the Oregon Supreme Court and in consultation with the leadership of the Oregon State Bar, I invite the ABA Standing Committee on Professional Discipline to conduct a consultation and evaluation of Oregon's lawyer discipline system. We believe that is an important first step to our own comprehensive review to assure that our system serves the public and the profession appropriately in the 21<sup>st</sup> century. The Oregon State Bar will contribute \$7000 to help underwrite the cost of the consultation.

Please contact OSB Executive Director Sylvia Stevens at your earliest convenience to arrange an agreeable time for the on-site portion of the consultation and to discuss additional details regarding the consultation. As you know, Oregon's disciplinary records are open to public inspection. However, if you need specific court authority for the consultation team's work, please let Ms. Stevens know.

Thank you again for offering the Discipline Committee's services to the Court. We look forward to speaking with the team and to receiving its report and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Balmer".

Thomas A. Balmer

cc: Sylvia Stevens, Oregon State Bar

THE LAWYERS' CAMPAIGN for EQUAL JUSTICE

RECEIVED

JAN 28 2014

Oregon State Bar Executive Director

January 27, 2014

Rod Wegener
Chief Financial Officer
Oregon State Bar
P.O. Box 231935
Tigard, OR 97281

Dear Rod:

We received Bar's generous check for \$45,000, and I wanted to take a moment to personally thank you and the OSB for your partnership in supporting legal aid. As always, the Campaign for Equal Justice and Oregon's legal aid programs greatly appreciate the support we receive from the OSB.

I am pleased to announce that the American Bar Association has recently recognized the Oregon Access to Justice Coalition, our collaborative Oregon efforts supporting Oregon's legal aid programs.

We are working hard again this year to reach our revenue goal of \$1.225 million in the annual fund drive in support of legal aid - and we're getting close! Also, we've been working hard this year to build the future of legal aid. In January we launched a Task Force on Legal Aid Funding with a goal of doubling the statewide funding for legal aid in the next ten years.

After our fiscal year ends (March 31), we will send you our Executive Director's Report on activities. Our audit will be completed in July, and we will send that information as well. In the meantime, we look forward to seeing you at our Annual Awards Luncheon in Portland on February 19 at the Governor Hotel.

Sincerely,

Sandra
SANDRA HANSBERGER
Executive Director

c: Sylvia Stevens
Tom Kranovich

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Richard S. Yugler
Ira Zarov

**THOMAS L. GALLAGHER, JR.**  
ATTORNEY AT LAW

Phone: (541) 754-1968  
527 NW Third Street  
Corvallis, Oregon 97330

Fax: (541) 754-2503

e-mail: [tlgcorval@peak.org](mailto:tlgcorval@peak.org)

December 4, 2013

**VIA FACSIMILE (503) 684-1366**

Oregon State Bar MCLE  
P.O. Box 231935  
Tigard, Oregon 97281-1935



**Re: Thomas L. Gallagher, Jr., Attorney At Law, MCLE Compliance Report**  
**Bar No.: 680527**

To Whom It May Concern:

Enclosed please find my MCLE Compliance Report with the attachment of Page 2 MCLE Compliance Report Itemization for the reporting period January 1, 2011 through December 31, 2013.

This will be my last MCLE Compliance Report. I am retiring at the end of this year. I have been a member of the Oregon State Bar for over 45 years. I have valued and enjoyed the CLE programs, especially those presented by the Oregon State Bar. I wish to thank all of those that have made these CLE programs possible.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Thomas L. Gallagher, Jr.', written in a cursive style.

Thomas L. Gallagher, Jr.  
Attorney at Law

TLG:skm

Enclosures



## Sylvia Stevens

---

**From:** Adrienne.NELSON@ojd.state.or.us  
**Sent:** Thursday, January 23, 2014 3:02 PM  
**To:** Sylvia Stevens; Tom Kranovich; Richard Spier  
**Cc:** Mariann Hyland

Sylvia, Tom and Richard,

I write this email to acknowledge how pleased I was to see that the Oregon State Bar (OSB) was present (including being a table sponsor) at the 2014 Skanner Foundation's Martin Luther King Jr. breakfast. By having a presence at the Skanner breakfast and similar events of importance to diverse communities in Oregon, OSB's commitment to respecting and valuing diverse communities is publicly demonstrated. Thank you for OSB's continued diversity efforts both within and outside the legal community.

Judge Adrienne Nelson  
Multnomah County Circuit Court  
1021 SW Fourth Ave., Courtroom 708  
Portland, OR 97204-1123  
Phone: [503-988-5047](tel:503-988-5047)  
email address: [adrienne.nelson@ojd.state.or.us](mailto:adrienne.nelson@ojd.state.or.us)

January 2, 2014

Mr. Willard Ransom  
Sorenson, Ransom, Ferguson & Kirchoff, LLP  
133 NW "D" Street  
Grants Pass, OR 97526

Re: Kudos from Jon Carroll

Dear Mr. Ransom:

Enclosed is a letter I received today from Jon Carroll of Complete Home Repair & Construction, Inc. Mr. Carroll called me a week or so ago to let me know the letter was on its way. He was as effusive in his compliments in that call as he is in the letter. Clearly, you have favorably impressed your client with your professionalism, timeliness, and overall handling of his legal matter.

Yours is the kind of conduct that inspires confidence in the public and sets an example for your peers. I hope you will consider becoming a mentor in the bar's New Lawyer Mentoring Program. I will also be sharing Mr. Carroll's letter with the Board of Governors.

Sincerely,



Sylvia E. Stevens  
Executive Director  
Ext. 359, Fax: (503) 598-6959  
Email: sstevens@osbar.org

# Complete Home Repair & Construction Inc.

P.O. Box 789, Larkspur, Ca 94977  
Ca Lic # 661688 415-828-4585

8171 Deer Creek Rd, Selma Or 97538  
Oregon Lic # 137696 877-494-9269

12-26-13

Miss. Mrs. Sylvia Stevens  
Executive Director  
Oregon State Bar Association  
P.O. Box 231935  
Tigard, Oregon 97281-1935

Re: Willard Ransom Esq.  
OSB# 031372  
Sorenson, Ransom, Ferguson, & Kirchoff, LLP  
133 N.W. "D" Street  
Grants Pass, Oregon 97526  
541-476-3883

RECEIVED

JAN 01 2014

Oregon State Bar  
Executive Director

Dear Miss/Ms Stevens,

I am writing you concerning Mr. Willard Ransom, whom is my attorney. He was hired by me back in 2011, on an easement issue concerning my residence located in Cave Junction, Oregon. Herein lies the reason for my letter to the board.


Mr. Willard Ransom is by far, the most excellent attorney I have ever had the pleasure to meet or work with. The attention he has given my case is unbelievable on many fronts and I will gladly explain. He gives me copies of ALL communications ie:, letters to opposing attorneys, all court related documents, anything in writing concerning this case. He gives or CC'S me all e mails concerning this case. He answers ALL e- mails and he does this no matter what time it is. I have received e-mail responses as late as 10pm at night, and on weekends. He ALWAYS returns his telephone messages in a timely fashion,( within 60 minutes usually). I am his client and I have got frustrated,( not with Mr.Ransom),but with different circumstances surrounding this case and Bill always seems to calm me down with an intelligent assessment of the case, making sure not to give me false hope, but making sure I see the utmost reality of what I am facing. It always succeeded in "snapping" me to attention and "inspiring" me to do a better, more honest, more ethical job of being pro active in my case.

Mr. Bill Ransom made absolutely sure that he dealt with all parties involved by means of Integrity, Honesty( I believe Mr. Ransom is unable to tell an untruth), complete Ethical Guidelines, and complete respect for all.

His statements are impeccable and outline everything that was done and by Whom. His accounting of time involved in this case was perfect and without a flaw.

Miss/Ms Stevens, I can not think of a more professional, ethical, knowledgeable, honest attorney than Mr. Willard Ransom. Mr. Ransom, I would think, would be the utmost embodiment of what the Oregon State Bar wants/requires from their members. Mr. Ransom is still currently working on my case and continues to keep me FULLY informed as to all that transpires through e-mails/Copies of ALL

paperwork,( I have two large binders packed with these copies), and phone calls which he regularly brings me up to date on all aspects of this case. I am the owner of a General Construction firm in San Francisco and can honestly say how impressed I am with the way Mr. Ransom conducts his business. Thank you for your time in reading my letter. Cordially,

  
Jon A. Carroll  
Chief Executive Officer  
Complete Home Repair & Construction Inc.

Cc:fc  
OSB-1

## Board Members as Bar Ambassadors

Over the years, we've devoted a lot of space in BoardLink to the board's fiduciary responsibility, particularly its direction-setting and oversight roles. In this issue, we'd like to address a role that tends to get short shrift because, frankly, we tend to take for granted that everyone already knows and understands it. That's the board member's role as ambassador for the organization.

Like all the other board member roles discussed in this column, the ambassador role is grounded in board members' legal responsibilities. The Duty of Care and Duty of Loyalty require board members to protect the organization's assets, and those assets include the organization's reputation. But beyond the expectation that, as board members, we don't do anything to harm the organization's reputation, most boards expect that board members will *actively support and advance* the organization's positive reputation with members, within the profession and within the community-at-large.

In other words, it's not just the president who sets the tone for the organization. Our members, our partners in the profession, our donors and community leaders are all influenced by the engagement demonstrated by the board of directors. So what makes a great ambassador? Below we've listed a handful of great practices. None of them are difficult, but they take time and attentiveness. Talk about them with your board, prioritize them, and make a commitment to carry out those responsibilities that will advance your organization best.

### So, how can you be a great ambassador for your bar organization?

#### 1. Show up and be visible by committing to:

- Put all the organization's must-attend events on your calendar early.
- Talk to at least three people at every event you didn't previously know.
- Sit with members you don't typically see. At large, sit-down events, each board member might host a table, for example.
- Introduce or connect at least four people.
- Make sure your name is on the list of contributors. Provide financial support at fundraisers. If money is an issue, commit your time.
- Deploy board members strategically. Presidents and staff: Do you hold events where representation from two or three board members is adequate? If so, don't ask everyone to participate. Make assignments and spread the responsibility throughout the year.

#### 2. Play a part in the membership recruitment and retention effort by committing to:

- Develop a 30-second elevator speech that describes why the bar is important to you and why a lawyer should join or stay a member.
- Contact lapsed members to find out why they haven't renewed and encourage them to do so.
- Identify colleagues (especially within your firm or practice setting) who are not

members, and encourage them to join.

- Reach out to individuals from underrepresented groups.

### **3. Cultivate member engagement and be on the lookout for new leaders by committing to:**

- Be a point person for information about bar activities within your firm or place of employment.
- Bring a less-involved attorney to a committee or section meeting.
- Contact a new member and invite them to meet you at an event.
- Have the board host a formal welcome for new members.
- Reach out to individuals who may not be as well connected with the bar: new lawyers, solos, and government attorneys, for example.
- Encourage two colleagues to take on more responsibility within the bar.
- Identify two individuals each year who you think would make great future leaders. Share those names with the president and the executive director.

### **4. Help get the word out by committing to:**

- Actively represent the bar in everything you do in the community. Look for opportunities to share what the bar is doing in other aspects of your personal and professional life. For example, share information about a bar resource that may be relevant to members of your church, synagogue or mosque.
- Support the bar through social media. For example, "Like" the organization on Facebook, and periodically comment on bar activities in which you participate.
- Be attuned to opportunities where the bar may have a role or be able to assist. Be sure to discuss those opportunities with the president and executive director before making any type of proposal or commitment.
- Be a conduit. Share any feedback you receive from bar members or members of the community with the board so that the organization can respond, if necessary.

Again, you can't do it all, so prioritize. Which aspects are requirements for board service? What's optional? Create an action plan for the year, and hold yourselves accountable. Six months through the term, evaluate your performance:

- How have we performed as a governing body and as individual board members?
- Are our efforts making a difference?
- Do we need to do anything differently?

With a plan, you're giving the board a greater chance for success and yourselves an opportunity to have a more meaningful board experience.

*(BoardLink, ABA Division for Bar Services, Issue 11, Spring 2012)*

## Law Students

# 'Cultural cachet' of a JD is one reason students go to law school, law prof says

Posted Dec 17, 2013 8:12 AM CST

By [Debra Cassens Weiss](#)

University of Tennessee law professor Lucy Jewel agrees with the critics on some points: The price tag for legal education, at \$100,000 or more, is too high, she says, and the idea that you can do anything with a law degree doesn't work.

But Jewel says law school continues to attract some students because of the "cultural cachet" of the degree—and it would be paternalistic and misguided to impose restraints on the ability to pursue a degree at lower-tier schools. The Wall Street Journal [Law Blog](#) notes Jewel's argument in an article for the Journal of the Legal Profession, [available at SSRN](#).

Jewel acknowledges the argument that some people likely attend costly lower-tier law schools because of the faulty belief that they will do better in the job market than others. She notes that before moving to the University of Tennessee, she taught at a fourth-tier, for-profit law school, where her experiences suggested another factor is at play.

"One thing to consider is cultural capital," she writes, "the non-economic value that a law degree affords. Social mobility has long been associated with obtaining a law degree, and obviously, the argument that a law degree will help one move up in society's structure is a difficult one to make, given the financial hole one must dig in order to obtain the degree. But there is more to the story of social mobility than just economics. Some law students, as the first in their family to obtain a J.D., may see the opportunity to practice law as an important cultural marker in their community. The cultural cachet of a law degree might mean something, even if the newly minted J.D. can only find full-time work in a non-legal job and must enter the profession via a part-time solo practice.

"I only have anecdotal evidence to support this theory; it derives mostly from listening to my former students who are struggling to make their way economically in the profession but who are nonetheless ecstatic to have the J.D. and the power that it signifies within their communities and families. These are students with relatively low merit indicators (LSAT scores/undergraduate GPAs), and but for the opportunity afforded by lower-tier law schools, these students would not get the chance to enter the legal profession. Every graduation, when I see the beaming smiles from my students' family members, I do not think about the fact that they are getting a degree from a so-called fourth-tier toilet law school; I see people who have achieved a dream (albeit at great financial expense) and obtained a credential that signifies membership in a powerful profession."

She goes on to say that professors "should not impose our hyper-snobbery on the rest of the world. For all the professional elitism about rank of law school and type of law practice, most lay people, especially in underserved communities, view being a lawyer as being a lawyer. It doesn't matter what school one graduated from or what type of law one practices."

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No. 11-681

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IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
PAMELA HARRIS *et al.*,

*Petitioners,*

v.

PAT QUINN, Governor of Illinois, *et al.*,

*Respondents.*

\_\_\_\_\_  
*On Writ Of Certiorari  
To The United States Court of Appeals  
for the Seventh Circuit*

\_\_\_\_\_  
**BRIEF OF 21 PAST PRESIDENTS OF THE  
D.C. BAR AS *AMICI CURIAE*  
SUPPORTING RESPONDENTS**

\_\_\_\_\_  
JOHN W. NIELDS, JR.  
*Counsel of Record*  
ROBERT D. LENHARD  
LEAH E. POGORILER  
MATTHEW J. BERNS  
Covington & Burling LLP  
1201 Pennsylvania Ave., NW  
Washington, DC 20004  
jniels@cov.com  
(202) 662-6000

December 2013

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are 21 former Presidents of the District of Columbia Bar.<sup>2</sup> We submit this brief because Petitioners have asked the Court to “overrule” *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), a case that provides support for mandatory bars such as the D.C. Bar. See *Keller v. State Bar of California*, 496 U.S. 1, 12 (1990).

Petitioners say that *Abood* is an “errant exception” to this Court’s First Amendment jurisprudence: that it is an “anomaly.” Petitioner’s Brief at 3, 14. But *Abood* is no such thing. *Abood* has for over thirty years stood at the heart of a well-developed, well-reasoned body of law that has been refined and reaffirmed in numerous opinions of this Court, and whose reasoning has been applied by this Court not only to union shops, but to mandatory

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, *amici curiae* affirm that no counsel for any party authored this brief in whole or in part, that no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Letters from the parties consenting to the filing of *amicus curiae* briefs are on file with the Clerk.

<sup>2</sup> The signatories to this brief are Jamie S. Gorelick, Shirley Ann Higuchi, George W. Jones, Jr., Kim Michele Keenan, John C. Keeney, Jr., Carolyn B. Lamm, Myles V. Lynk, Andrew H. Marks, Darrell G. Mottley, Stephen J. Pollak, E. Barrett Prettyman, Jr., Daniel A. Rezneck, the Honorable James Robertson (Ret.), Robert J. Spagnoletti, Joan H. Strand, Marna S. Tucker, Mark H. Tuohey, III, Robert L. Weinberg, Robert N. Weiner, Melvin White, and Charles R. Work. *Amici* are acting in their personal capacities and not as representatives of any organizations with which they are affiliated.

bars, agricultural cooperatives, and public universities.

The *Abood/Keller* line of cases represents a stable body of law upon which integrated bars, including the D.C. Bar, have relied for many years in structuring their activities. Overruling *Abood* would have a profoundly destabilizing impact on bars all over the country. We ask this Court to leave *Abood* undisturbed.

### SUMMARY OF ARGUMENT

The body of law at issue in this case holds that dissenting members of a collective bargaining unit may properly be required to pay their fair share of the costs of the union's core collective-bargaining-related services, but not of the union's unrelated political or ideological activities. Similarly, this body of law holds that members of mandatory bars may properly be required to pay their fair share of the core functions of mandatory bars, but not of the bar's unrelated political activities or policy initiatives. The Court has reasoned that where an entity such as a union or a mandatory bar has a statutory duty to perform services for the benefit of a defined group of people, members of that group may properly be required to pay for the costs of those services. *Abood*, 431 U.S. at 221-22; *Keller*, 496 U.S. at 12.

The Petitioners have characterized the principal rationale for this body of law — that individuals who benefit from services may properly be required to pay their *fair share* of the costs — as an “anomaly” that should be declared “invalid.” Petitioners’ Brief at 14, 34. This “fair share” rationale is no anomaly in the union shop or

mandatory bar contexts. As we show immediately below, this “fair share” rationale has been repeated and reaffirmed in opinion after opinion after opinion issued by this Court over a 50-year period in both the union shop and mandatory bar contexts. It was explained, perhaps most forcefully, in a concurring and dissenting opinion in *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507 (1991).

Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them; or, looked at from the other end, where the state creates in the nonmembers a legal entitlement from the union, it may compel them to pay the cost. . . . In the context of bargaining, a union *must* seek to further the interests of non-members; it cannot, for example, negotiate particularly high wage increases for its members in exchange for accepting no increases for others.

*Id.* at 556 (Scalia, J. concurring in part and dissenting in part).

The request by Petitioners that this Court overrule *Abood* should be firmly rejected. *Abood* is part of a soundly reasoned and stable body of law to which bars throughout the country have conformed their behavior. A decision overruling *Abood* and its fair share rationale would, at a minimum, create uncertainty and instability injurious to the important work that mandatory bars do both for the legal profession and for the administration of justice.

## ARGUMENT

### I. **ABOOD IS AT THE HEART OF A WELL-DEVELOPED BODY OF LAW AND SHOULD NOT BE OVERRULED.**

#### A. *Hanson*

The line of precedent at issue in this case begins with *Railway Employees' Department v. Hanson*, 351 U.S. 225 (1956). *Hanson* arose out of the Railway Labor Act (RLA), a federal statute that overrode State “right to work” laws and permitted the railroads and unions to enter into collective bargaining agreements that provided for “union shops.” *See id.* at 231-32. Under such agreements, employees in a collective bargaining unit who do not wish to join the union are nonetheless required to pay their fair share of the costs of the unions’ collective bargaining services. *See id.* at 236-38.

In *Hanson*, several employees claimed that the mandatory dues requirement violated their First Amendment rights of free association. *See id.* at 236-38. The Court held that Congress’ enactment of the RLA constituted government action that implicated the First Amendment’s right to free association, but it rejected the First Amendment claim on the merits. *Id.* at 238.

The Court took note of the concern that motivated Congress in enacting the RLA: “while non-union members got the benefits of the collective bargaining of the unions, they bore ‘no share of the cost of obtaining such benefits.’” *Id.* at 231 (quoting H.R. Rep. No. 81-2811, at 4 (1950)).

The Court then *held* that:



[T]he requirement for financial support of the collective bargaining agency *by all who receive the benefits of the work* . . . does not violate either the First or Fifth Amendments.

*Id.* at 238 (emphasis added).<sup>3</sup>

The Court also stated, however, that requiring non-union members to provide financial support to the unions' political activities, not "germane" to collective bargaining, would raise a very different problem not presented on the record in *Hanson*. *Id.* at 235-36.

#### **B. *Street***

Four years later, the Court answered the question not reached in *Hanson*, concluding that non-union employees could not lawfully be required to fund political activities unrelated to collective bargaining. *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 768-69 (1961).

The Court began its opinion by reaffirming *Hanson*. *Id.* at 746-49. As Justice Douglas explained

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<sup>3</sup> The Court also stated, presaging the parallel development of the Court's First Amendment decisions on the subject of mandatory bar dues:

On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar.

*Id.* at 238.

further in his concurring opinion, “all the members of the laboring force” are beneficiaries of the union’s collective bargaining services, and it is “permissible for the legislature to require *all who gain from collective bargaining to contribute to its cost.*” *Id.* at 776 (Douglas, J., concurring) (emphasis added).

The concurring opinion elaborated:

The collection of dues for paying the costs of collective bargaining of which each member is a beneficiary is one thing. If, however, dues are used . . . to promote [a variety of unrelated political or ideological causes] then the group compels an individual to support with his money causes beyond what gave rise to the need for group action.

*Id.* at 777.<sup>4</sup>

### C. *Abood*

The court first addressed union shops in the context of public employment in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Declining to distinguish between the public employees in *Abood* and the private employees in *Hanson* and

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<sup>4</sup> In *Street*, the Court *construed* the Railway Labor Act to prohibit collection of dues from objecting non-members to pay for political or ideological causes unrelated to collective bargaining activities, and it therefore did not reach the question whether the United States *Constitution* would have forbidden the union from doing so. However, the desire to avoid First Amendment issues strongly influenced the Court’s construction of the RLA. *Id.* at 749-50.

*Street, id.* at 226, 229, the Court stated that “[t]he plaintiffs’ claims in *Hanson* failed, not because there was no governmental action, but because there was no *First Amendment* violation.” *Id.* at 226 (emphasis added). Accordingly, it held that all public employees in the bargaining unit could constitutionally be required to pay their fair share of the union’s services related to “collective bargaining, contract administration and grievance adjustment,” but objecting non-members could *not* constitutionally be required to contribute funds for the unions’ unrelated political activities. *Id.* at 225-26, 232, 234.

The *Abood* Court began by reaffirming *Hanson* and *Street* and elaborating on the Court’s fair share rationale. The Court explained that having a single exclusive union representative for a given category of employees was a central principle of congressional labor policy. Multiple unions — each one negotiating a different contract, with different terms, for different employees — would create massive confusion and undermine the advantages of collective bargaining. This congressional policy thus *necessarily brings a group of employees together* for the purpose of negotiating a single collective bargaining agreement covering all employees in the group. *See id.* at 220-21.

The Court then explained that a union elected to be the single exclusive representative of a group of employees had “great” and “continuing” responsibilities under the law that included the legal duty “fairly and equitably to represent *all* employees . . . *union and non-union*’ within the relevant unit.” *Id.* at 221 (citation omitted) (emphasis added). As a result, the Court explained:

[A] unionshop arrangement has been thought to *distribute fairly the cost* of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become “free riders” — to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees.

*Id.* at 221-22 (emphasis added).

The Court concluded its review and reaffirmation of *Hanson* and *Street* by saying:

As long as [the union] act[s] to promote the cause which justified *bringing the group together*, the individual cannot withdraw his financial support merely because he disagrees with the group’s strategy.

*Id.* at 223 (quoting *Street*, 367 U.S. at 778 (Douglas, J., concurring)) (emphasis added).

Turning to the use of compulsory dues to fund the union’s political activities unrelated to collective bargaining, the Court held that a union may not

spend[] a part of [objecting employees’] required service fees to contribute to political candidates and to express political views *unrelated to its duties as exclusive bargaining representative*.

*Id.* at 234 (emphasis added).

#### D. *Ellis*

In *Ellis v. Brotherhood of Railway, Airline & Steamship Clerks*, 466 U.S. 435 (1984), the Court refined the lines drawn in *Abood* and *Street* between costs that are properly included in the fee objecting employees had to pay and those that are not.

The Court began its analysis, once again, by reviewing and reaffirming the “fair share” rationale underlying *Hanson*, *Street* and *Abood*. Specifically, the Court stated:

We remain convinced that Congress’ essential justification for authorizing the union shop was the desire to eliminate free riders — employees in the bargaining unit *on whose behalf the union was obliged to perform its statutory functions, but who refused to contribute to the cost thereof*.

*Id.* at 447 (emphasis added).

The Court then articulated the First Amendment “test” to be applied in drawing the line between union expenditures chargeable to objecting employees, and those that are not chargeable:

[T]he test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their *fair share* of not

only the direct costs of negotiating and administering a collective bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit.

*Id.* at 448 (emphasis added). Applying this test, the Court held three of the categories of activities to be properly chargeable to dissenting employees: national conventions, social activities, and certain publications. Three others — litigation unconnected to collective bargaining, general organizing efforts, and certain other publications — were held not chargeable. *Id.* at 448-57.

#### **E. *Hudson***

In *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986), the Court addressed the internal *procedures* that must be developed by unions to prevent the improper charging to objecting employees of non-chargeable expenditures.

Before addressing the procedures of the defendant union, the Court reaffirmed the fair share principles of its prior cases, stating that, in *Abood*,

We . . . rejected the claim that it was unconstitutional . . . to require nonunion employees, as a condition of employment, to pay *a fair share of the union's cost* of negotiating and

administering a collective-bargaining agreement.

*Id.* at 301-02 (emphasis added).

The Court then turned to the procedures in place at the defendant union, finding them inadequate in three respects, and ordered the inadequacies to be corrected. *Id.* at 304-11.

#### **F. *Lehnert***

The Court reaffirmed the core holding of the *Abood* line of cases in *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991). While the Court split regarding the precise test for identifying chargeable expenses, all nine justices agreed that the *Abood* doctrine is sound.

Once again, the Court began by reaffirming *Hanson*, *Street*, *Ellis*, and *Abood*. As to the RLA cases, the court stated that “those cases make clear that expenses that are relevant or ‘germane’ to the collective bargaining functions of the union generally will be constitutionally chargeable to dissenting employees.” *Id.* at 516.

As to *Abood*, the Court said that compulsory financial support of the collective-bargaining-related services of a public-employment union does not, without more, violate the First Amendment:

[A]n employee’s free speech rights are not unconstitutionally burdened because the employee opposes positions taken by a union in its capacity as collective-bargaining representative.

*Id.* at 517.

The Court then held that, in order to be chargeable to dissenting public employees, the expenditures must be 1) germane to collective bargaining activity; 2) justified by the government's interest in labor peace and avoiding "free riders"; and 3) not significantly adding to the burdening of free speech inherent in a union shop. *Id.* at 519.<sup>5</sup>

Although the portion of the Court's opinion described above received only five votes, the concurring and dissenting opinion of Justice Scalia (joined in by Justices O'Connor, Souter and, as to the portion quoted below, Justice Kennedy) gave emphatic support to the proposition that objecting members of a bargaining group may be required to pay their fair share of the cost of the union's core collective bargaining services. Thus, the concurring opinion, hewing closely to the language and holdings in *Abood* and *Ellis*, stated:

Our First Amendment jurisprudence . . . recognizes a correlation between the rights and the duties of the union, on the one hand, and the nonunion members of the bargaining unit, on the other. Where the state imposes upon

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<sup>5</sup> The challenged expenditures included lobbying and publicity not involving ratification of the collective bargaining agreement, attending conventions, a union newsletter, collective bargaining training and other services of the national union, and preparations for a strike, that if carried out, would have been illegal. Applying this standard, the Court upheld some of the challenged expenditures and ruled that others violated the First Amendment.



the union a duty to deliver services, it may permit the union to demand reimbursement for them; or, looked at from the other end, where the state creates in the nonmembers a legal entitlement from the union, it may compel them to pay the cost. The “compelling state interest” that justifies this constitutional rule is not simply elimination of the inequity arising from the fact that some union activity redounds to the benefit of “free-riding” nonmembers; private speech often furthers the interests of nonspeakers, and that does not alone empower the state to compel the speech to be paid for. What is distinctive, however, about the “free riders” who are nonunion members of the union’s own bargaining unit is that in some respects *they* are free riders whom the law *requires* the union to carry — indeed, requires the union to go *out of its way* to benefit, even at the expense of its other interests. In the context of bargaining, a union *must* seek to further the interests of its nonmembers; it cannot, for example, negotiate particularly high wage increases for its members in exchange for accepting no increases for others. Thus, the free ridership (if it were left to be that) would be not incidental but calculated, not imposed by circumstances but mandated by government decree.

Once it is understood that the source of the state's power, despite the First Amendment, to compel nonmembers to support the union financially, is elimination of the inequity that would otherwise arise from mandated free-ridership, the constitutional limits on that power naturally follow. It does not go beyond the expenses incurred in discharge of the union's "great responsibilities" in "negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances," *Abood*, 431 U.S., at 221; the cost of performing the union's "statutory functions," *Ellis*, 466 U.S., at 447; the expenses "necessary to 'performing the duties of an exclusive representative.'" [*Communications Workers of Am. v. Beck*, 487 U.S. 735, 762 (1988).]

*Id.* at 556-57 (Scalia, J., concurring in the judgment in part and dissenting in part).

Consequently, all nine Justices in *Lehnert* endorsed the Court's fair share rationale in upholding union shop provisions for public employees.

### **G. *Locke***

In *Locke v. Karass*, 555 U.S. 207 (2009), the Court addressed whether a local union's *pro rata* share of litigation expenses incurred by the national

union was properly chargeable to the local's dissenting non-members. The expenses were incurred in connection with collective-bargaining-related litigation involving a different local. The Court held the expenses were properly chargeable because — as the parties had conceded — other locals had a reciprocal obligation to contribute their *pro rata* share of similar litigation expenses involving the objecting non-members' local. *Id.* at 219-21.

The opinion of the Court, joined in by all of its nine members, reaffirmed *Hanson*, *Street*, *Abood*, *Ellis*, and *Lehnert* and specifically endorsed the Court's prevention-of-free-riding rationale. *Id.* at 213.<sup>6</sup>

\* \* \* \* \*

The above decisions constitute an unbroken line of holdings by this Court that non-union employees may — consistent with First Amendment principles — be required to pay service fees to the union for costs of collective-bargaining-related services. And each decision rests on the common-sense proposition that those who benefit from

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<sup>6</sup> There is language in the Court's opinion in *Knox v. Service Employees International Union, Local 100*, 132 S. Ct. 2277 (2012), to the effect that prevention of free riding is not generally sufficient to overcome First Amendment objections, citing examples *unrelated* to union shops or mandatory bars. *Id.* at 2290. *Knox* itself involved union expenditures *unrelated* to collective bargaining that were treated procedurally by the union in a way that failed to comply with *Hudson*, *supra*. *Knox* did not overturn any of the union shop First Amendment law discussed above.

services required by law to be performed for them may properly be required to pay their *fair share* of the costs.

**II. A CLOSELY RELATED BODY OF CASE LAW SUPPORTS THE CONSTITUTIONALITY OF MANDATORY BAR DUES.**

This Court's decisions supporting the constitutionality of compulsory "fair share" fees for a union's collective-bargaining-related services have developed hand-in-hand with its decisions upholding the constitutionality of the common state-law requirement that all attorneys licensed to practice law in a state must pay dues representing their "fair share" of the cost of an integrated bar's services.

Some thirty-two States and the District of Columbia have created what are known as "integrated bars." An integrated bar is "an association of attorneys in which membership and dues are required as a condition of practicing law in a State." *Keller*, 496 U.S. at 5. In general, integrated bars are charged by the courts or the legislatures with responsibilities for regulating lawyers licensed to practice in particular States and improving the administration of justice.

This Court has twice been presented with challenges — on First Amendment freedom of association grounds — to a bar's mandatory dues requirement. Each case was brought by bar members who objected to the use of their dues for what they claimed to be political or ideological activities with which they disagreed. Each time, this Court drew on its union shop decisions and applied a

rule for bars analogous to the one adopted for union shops. And each time, the Court relied heavily on its “fair share” rationale repeated so often in the union shop cases.

Thus, these decisions establish that objecting bar members may constitutionally be required to pay dues representing their fair share of the cost of a bar’s services in regulating the profession and improving the administration of justice, but not to fund unrelated political activities.

**A. *Lathrop***

This Court addressed the subject of mandatory bar dues directly in *Lathrop v. Donahue*, 367 U.S. 820 (1961).<sup>7</sup> The Supreme Court of Wisconsin, exercising authority provided by the Wisconsin legislature, had created an integrated bar: *i.e.*, it had required everyone licensed to practice law in Wisconsin to join the State Bar and to pay prescribed annual dues to it. The integrated State Bar was created to “elevat[e] the educational and ethical standards of the Bar to the end of improving the quality of the legal service available to the people of the State.” *Id.* at 843.

A member of the State Bar objected to the mandatory dues requirement, on freedom of association grounds, claiming that the Bar engaged in political activities which he opposed. Because there was no factual basis for the claim that the Bar

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<sup>7</sup> As noted above, the Court had assumed in *Hanson* that mandatory bar dues, generally, were consistent with the requirements of the First Amendment. *See supra* n.3.

had used the challenger's funds for political activities, this Court treated the case as a facial challenge to the requirement that all licensed lawyers pay mandatory dues. *Id.* at 847-48.

The opinion for a four-member plurality rejected the Constitutional claim, stating:

In our view, the case presents a claim of impingement upon freedom of association no different from that which we decided in *Railway Employees' Dep't v. Hanson*, 351 U.S. 225.

*Id.* at 842.

The plurality explained that “the bulk of State Bar’s activities serve the function . . . of elevating the educational and ethical standards of the Bar to the end of improving the quality of the legal service available to the people of the State,” and concluded that the Supreme Court of Wisconsin

may constitutionally require that the *costs of improving the profession* in this fashion *should be shared by the subjects and beneficiaries* of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity.

*Id.* at 843 (emphasis added).

In an opinion authored by Justice Harlan and joined in by Justice Frankfurter, these two additional justices concurred, stating:

The *Hanson* case . . . surely lays at rest all doubt that a State may Constitutionally condition the right to practice law upon membership in an integrated bar association, a condition fully as justified by state needs as the union shop is by federal needs.

*Id.* at 849 (Harlan, J., concurring in the judgment).

**B. *Keller***

The Court addressed mandatory bar dues again in *Keller v. State Bar of California*, 496 U.S. 1 (1990). In *Keller*, members of the California integrated bar challenged the State Bar's use of their dues on freedom of association grounds, claiming that the bar had used those dues to finance certain ideological or political activities to which they were opposed. A unanimous Court, drawing heavily on its opinion in *Abood*, held that the members' dues could be used over their objection in furtherance of the bar's core purposes, but that they could not be used for unrelated political or ideological activities.

The Court found that the Bar had been given the responsibility by the State to examine applicants for admission to the bar; to formulate rules of professional conduct; to discipline bar members for misconduct; to prevent the unlawful practice of the law; and to engage in the study of and recommend changes in procedural law and improvement of the administration of justice. *Id.* at 5. The Court pointed out that the California Legislature wanted recommendations concerning "admissions," "discipline," "codes of conduct and the like," "to be

*made to the courts or legislature by the organized bar.” Id.* at 12 (emphasis added). The Court pointed out further that this regime benefitted lawyers generally, because they “prefer a large measure of self-regulation to regulation conducted by a government body which has little or no connection with the profession.” *Id.*

Turning to the constitutional issue, the Court reiterated a theme it had sounded since *Hanson*:

There is . . . a substantial analogy between the relationship of the State Bar and its members, on the one hand, and the relationship of employee unions and their members, on the other.

*Id.*

The Court then turned to its union shop jurisprudence and the “fair share” rationale that underlies it:

The reason behind the legislative enactment of “agency-shop” laws is to prevent “free-riders” — those who receive the benefit of union negotiation with their employers, but who do not choose to join the union and pay dues — from avoiding their *fair share of the cost* of a process from which they benefit.

*Id.* (emphasis added). Then, after noting that members of state *bars* generally benefit from participating in their own regulation, the Court stated:



It is entirely appropriate that all of the lawyers who derive benefit from the unique status of being among those admitted to practice before the courts should be called upon to pay a *fair share of the cost* of the professional involvement in this effort.

*Id.* (emphasis added).

The Court then turned to the claim that the State Bar had expended dues-paid funds on a variety of political activities unrelated to the Bar's core functions, and said:

*Abood* held that a union could not expend a dissenting individual's dues for ideological activities not "germane" to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.

*Id.* at 13-14.

The Court further emphasized, however, that:

[P]etitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the Bar or proposing ethical codes for the profession.

*Id.* at 16.

Thus, while there are differences between bars and unions and the relevant state interests may vary, they are part and parcel of the same body of First Amendment law, and each is governed by the same sound fair-share principles, the overruling of which would create uncertainty for and cause harm to both.

### **III. OTHER APPLICATIONS OF THE *ABOOD* AND *KELLER* BODY OF CASE LAW**

This Court has also repeatedly looked to *Abood* and *Keller* to guide its First Amendment analysis in compulsory-funding cases outside the union and bar-association context.<sup>8</sup> The Court has

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<sup>8</sup> Many federal and state courts have come to view *Abood* and *Keller* as representing closely related lines of authority. *See, e.g., Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 230 (2000) (“The *Abood* and *Keller* cases, then, provide the beginning point for our analysis.”); *Acevedo-Delgado v. Rivera*, 292 F.3d 37, 42 (1st Cir. 2002) (referring to “the *Abood/Keller* line of cases”); *R.J. Reynolds Tobacco Co. v. Shewry*, 423 F.3d 906, 917 (9th Cir. 2005) (discussing “the rationale of the *Abood* and *Keller* line of cases”); *Gerawan Farming, Inc. v. Kawamura*, 90 P.3d 1179, 1185 (Cal. 2004) (“*Abood* and *Keller* are the cornerstones of United States Supreme Court jurisprudence regarding government-compelled funding of private speech.”); *BellSouth Adver. & Publ’g Corp. v.* (continued...)

relied, in part, on *Abood* and *Keller* to hold that a public university may “require[] its students to pay fees to support the extracurricular speech of other students,” *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000), even though “[i]t is all but inevitable that the fees will result in subsidies to speech which some students find objectionable and offensive to their personal beliefs,” *id.* at 232; *see also id.* at 230-34. And the Court has applied *Abood* and *Keller* to delineate the circumstances in which the First Amendment permits the government to require participants in an industry to contribute financially to advertising that supports the industry as a whole. *See United States v. United Foods, Inc.*, 533 U.S. 405 (2001); *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997). A decision overruling *Abood* would thus disturb the settled doctrine on which a wide variety of social and economic arrangements depend.

#### **IV. PRINCIPLES OF *STARE DECISIS* COUNSEL AGAINST OVERRULING *ABOOD*.**

One of the advantages of stability in the law is that it provides people and institutions with the opportunity to conform their behavior to the law’s requirements. Bars across the country have taken steps over the past two-plus decades to bring their practices into compliance with the substantive and

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*Tenn. Regulatory Auth.*, 79 S.W.3d 506, 518 (Tenn. 2002) (discussing “the *Abood-Keller* standards”).

procedural requirements of *Keller*.<sup>9</sup> The overruling of *Abood* would inevitably inject significant uncertainty and instability into a body of law that has been stable for over fifty years.

This risk is by no means only a theoretical one. Earlier this month, the Nebraska Supreme Court made substantial changes to the rules governing its Bar. It did so because language in *Knox, supra*, created “doubt” about the constitutionality of opt-out systems for dissenting members.<sup>10</sup> *Knox* was a case involving only *unions*, yet it had immediate repercussions for bars, prompting the Nebraska Supreme Court to rewrite its rules, greatly restricting the activities of the bar that may be funded by mandatory dues.<sup>11</sup> The Nebraska court narrowed the approved scope of its Bar’s activities not because it found that the First Amendment required it, but out of an abundance of caution because of uncertainty and in order to avoid the risk of disputes over the Bar’s activities.<sup>12</sup> The overruling of *Abood* could be expected to inject into

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<sup>9</sup> See, e.g., *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 709 (7th Cir. 2010); *Gardner v. State Bar of Nev.*, 284 F.3d 1040, 1043 (9th Cir. 2002); *Morrow v. State Bar of Cal.*, 188 F.3d 1174, 1175 (9th Cir. 1999); *Petition of the R.I. Bar Ass’n*, 650 A.2d 1235, 1237 (R.I. 1994) (per curiam).

<sup>10</sup> *Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, No. S-36-120001, 286 Neb. R. 1018, 1031-32, 1034-37, -- N.W.2d --, Neb. Advance Sheets (Dec. 6, 2013) (per curiam).

<sup>11</sup> *Id.* at 1035.

<sup>12</sup> *Id.* at 1035-37.

the law governing bars much more uncertainty than *Knox* already has.

This is precisely the kind of uncertainty that *stare decisis* principles are meant to prevent. Petitioners nonetheless ask the Court to “overrule *Abood*,” with no mention of principles of *stare decisis* and no effort to explain why circumstances here would justify a departure from those principles. The request is made in spite of the fact that Petitioners did not challenge the continued validity of *Abood* in the courts below; the Court of Appeals has had no opportunity to consider or address such a challenge; and the continued validity of *Abood* is not an issue raised or suggested by either of the questions presented. Petitioners point to no changes in factual circumstances that have rendered existing law unworkable. See *Planned Parenthood v. Casey*, 505 U.S. 833, 854-55 (1992). They point to no change in the law that might leave the *Abood/Keller* body of law “no more than a remnant of abandoned doctrine.” *Id.* And they say nothing about the disruptive effect that the overruling of *Abood* would have on institutions that have conformed their practices to comply with longstanding doctrine.

*Amici* submit that the body of law represented by *Abood* and *Keller* is sound and well-reasoned, and that its overruling would have disruptive effects on bars across the country. We urge the Court to reject Petitioners’ invitation to overrule it.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

JOHN W. NIELDS, JR.

*Counsel of Record*

ROBERT D. LENHARD

LEAH E. POGORILER

MATTHEW J. BERNES

Covington & Burling LLP

1201 Pennsylvania Ave., NW

Washington, DC 20004

jnieids@cov.com

(202) 662-6000

December 2013

## Business of Law

# Is the law firm pyramid collapsing? BigLaw is aging with more partners than associates

Posted Dec 16, 2013 5:45 AM CST

By [Debra Cassens Weiss](#)

[1988 was a peak year](#) for associates in BigLaw.

The percentage of associates in the nation's top 250 law firms was at its highest point that year, comprising more than 60 percent of the lawyers, Indiana University law professor William Henderson has found. Beginning in 2008, there have been fewer associates than partners in large firms.

Henderson discusses the issue in a [monograph](#), in a post at the [Legal Whiteboard](#) and in an interview with [Above the Law](#). "Large firms are not going extinct," he writes at the Legal Whiteboard. "But as a matter of demographics, they are greying. If BigLaw were trading on the Nasdaq, the analysts would be very critical of this trend."

The pyramid has been replaced by a diamond, Henderson says in the monograph, with "a relatively small number of entry-level associates, a growing bulge in the non-equity and counsel ranks, a sizable but largely invisible group of permanent staff attorneys, and a proportionately smaller equity class of partners who grow and control valuable client relationships." In the short-term, the result is higher partner profits.

But Henderson sees the current leverage ratio as shortsighted and unsustainable in the long run. He cites a 2012 survey by American Lawyer Media in which 74 percent of managing partners forecast an increase in lateral hiring over the next five years, but only 15 percent foresaw hiring more first-year associates. "These numbers suggest that the market for lateral associates is in the process of thinning out," he says, "and thus will not be a reliable source for high-quality legal talent."

Henderson tells Above the Law why law firms aren't acting on the problem. Top law firms are so large, he says, that it is "essentially impossible to have a partnership meeting over firmwide strategy." The partners in control of law firms are 55 to 60 years old, he adds, and they have little incentive to act. They enjoy peak earnings and they have enough clients to last until retirement.

"If the executive committee meets and formulates a long-term strategy that requires retention of current earnings to finance," he tells Above the Law, "the 55- to 60-year olds who essentially have to pay for it may leave the firm, leading to a Heller-Howrey-Dewey-type run on the bank."

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## Law Schools

# Is your law school outperforming its US News academic reputation ranking? Or falling short of it?

Posted Dec 17, 2013 5:00 PM CST

By [Victor Li](#)

Academic reputation isn't everything.

According to [TaxProf Blog](#), some law schools are ranked significantly higher on the [U.S. News and World Report Law School Rankings](#) than their academic reputations would suggest, while other schools are performing worse than expected.

In a Tuesday blog post, Paul Caron, a professor at Pepperdine University School of Law, listed 53 law schools that are overperforming and underperforming their overall rankings. Florida International University College of Law showed the greatest level of overperformance, which meant that its overall rank far exceeded its academic reputation. The school ranked 105th overall, despite ranking 159th in academic reputation.

Caron explained in a [separate blog post](#) that a school that significantly overperforms its reputational ranking is one that is doing well in other statistical indicators used in the rankings, including admissions selectivity, alumni giving, financial and faculty resources and graduation and retention rates.

Other schools that ranked among the top 25 overperforming law schools were Campbell Law School, Samford University's Cumberland School of Law, and Penn State Dickinson School of Law. Of those overperforming schools, the University of Alabama School of Law was the only one whose overall ranking was in the top 25 (Alabama is tied for 21st in the latest law school rankings). Alabama obtained its lofty overall mark despite ranking 42nd in academic reputation.

"An overperforming school's undergraduate reputation among its academic peers has not kept pace with what it has achieved in the underlying academic indicators," Caron explained in a separate blog post examining the U.S. News rankings for undergraduate institutions. "This could be because academic reputation is a lagging indicator—it can take time for a school's academic peers to understand the real progress of a university."

On the flip side of the coin, Caron found that **University of Oregon School of Law showed the greatest level of underperformance in that its overall rank was far lower than its academic reputation rank.** Caron listed an additional 27 underperforming schools, including the University of Pittsburgh School of Law, University of San Francisco School of Law, and Santa Clara University School of Law. Of those underperforming schools, only one school had an overall ranking in the top 40 (UC Davis School of Law ranked 38th despite having the 23rd-highest academic reputational ranking). "Some flagship public universities may not be serving students as well as their reputations would suggest," Caron wrote.

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## Law Schools

# Law school's online-hybrid degree program gets first-ever approval from ABA

Posted Dec 19, 2013 1:45 PM CST

By [Victor Li](#)

In September, the American Bar Association Task Force on the Future of Legal Education [called on law schools](#) (PDF) to innovate and embrace technology as a means for educating future attorneys.

William Mitchell College of Law in St. Paul, Minn., has answered the call. The ABA Council of the Section of Legal Education and Admissions to the Bar has approved the school's plan to offer a hybrid curriculum, scheduled to begin in 2015, that includes both online and in-person classes.

School officials met with the council two weeks ago to request a variance from [ABA accreditation standards](#) (PDF) which state that no more than one-third of an accredited law school's curriculum can take place outside of the traditional classroom setting. The council [announced yesterday](#) (PDF) that it had granted the variance to William Mitchell's proposed program, which provides for a 50-50 split between online and in-person class work.

The program, which has a four-year duration, will be offered alongside the traditional full-time and part-time J.D. programs. In addition to web-based lectures, discussion boards and chat rooms for students and faculty, the program will emphasize skills training over lectures. Classroom sessions will include simulations as to what law students can expect when they're practicing attorneys. The program will also include externships.

Under the terms of the ABA's variance, the school will be allowed to admit four entering classes of students under this program, and must limit individual class sizes to 96 students. The school must also provide detailed reports to the council, providing information such as applications and admissions, attrition, course evaluations and skills training.

Barry Currier, the ABA's managing director of accreditation and legal education, says they considered several factors before granting the variance, including the school's 113-year history and experience with part-time law students. Currier said that the school's application for a variance was highly detailed and very well-thought-out, and it was clear to him that the school was extremely dedicated to making the program work.

"It's fair to say that this is most substantial variance that's been granted," said Currier, who characterized applications for variances as uncommon. "And it's not an exclusive agreement between the ABA and William Mitchell. Any school that submits a variance application as carefully thought out and researched, and demonstrates this level of commitment will get a serious listen from the council."

"Our research demonstrates that when implemented thoughtfully, courses blending face-to-face and online instruction offer students the best of both worlds," Eric Janus, dean of William Mitchell, said in a [press release](#). "By harnessing e-learning technologies, professors expand their repertoire of pedagogical tools, allowing greater creativity and flexibility in achieving desired learning."

Currier, meanwhile, encouraged other law schools to come up with their own innovative programs. "William Mitchell should get credit from the legal education field for taking the time and committing the resources necessary to create this program," said Currier.

Hat tip: [Lawyerist](#).

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## You say you want a revolution?

By Jordan Furlong

If you've been reading my blog for a while, you'll know that I'm convinced of a couple of things: (1) Fundamental shifts in the legal services environment will spawn a diverse population of new providers that will expand access to those services while destroying lawyers' market exclusivity; and, (2) This is, on balance, a good thing. I've never been more certain than I am today, at the close of 2013, about the first — but I've never been less certain about the second.

I've contributed a few thoughts recently about the state of the legal market to [Lexis-Nexis](#), [JD Supra](#), and [the CBA's National magazine](#), among others. My basic message is the same throughout: we're no longer predicting a new legal future, we're living in a new legal present.

- [All but the most elite large and midsize law firms](#) in the US, the UK, and Canada are bleeding. Revenue is down, realization is nearing 80%, profits have fallen, clients are driving change, and partners are [angry](#) or scared. The cutting and the firing and the free-agent lateral hiring have all been done; there's nothing left now but recognition and acceptance that [the traditional law firm business structure](#) is no longer competitive in this market.
- Lawyer control of the legal market is fading fast. In England & Wales, more than [200 Alternative Business Services](#), owned wholly or in part by people who are not lawyers, now provide legal services. [Three US states](#) have either licensed "non-lawyers" to [provide basic services](#) or are figuring out [how to do so](#). Independent paralegals are licensed by law societies or [on the way there](#) in four [Canadian provinces](#), with [ABSs not far behind](#).
- [Legal technology](#) and process companies are in ascendance. [Neota Logic](#) has [partnered](#) with [two](#) AmLaw 100 law firms. [United Lex](#) has taken over the litigation support functions of a third. [LegalZoom is working with ODR pioneer Modria](#). [Novus Law](#) is taking untold dollars away from law firms. Apps can [draft contracts](#) and [answer legal questions](#). [Predictive coding](#) is taking [discovery work](#) away from litigators. And on and on.
- New ways to organize legal talent and sell its services are flourishing. Four major British law firms ([Berwin Leighton Paisner](#), [Eversheds](#), [Pinsent Masons](#), and [Allen & Overy](#)) have set up affiliated project lawyer agencies. [Axiom Law](#) is taking on complete deal work. [Keystone Law](#) is expanding to Australia. [Quality Solicitors](#) is offering a completely new business model to consumer law providers (at fixed prices, no less). [LegalZoom has just soft-launched in the UK](#) in conjunction with Quality Solicitors, neck-and-neck with Rocket Lawyer.
- And I haven't even mentioned all the other significant new or reoriented players in the market, like [AdventBalance](#), [ATD Legal](#), [Clearspire](#), [Conduit](#), [Cognition](#), [Curo Legal](#), [Delegatus](#), [Exigent](#), [Fair Outcomes](#), [FlatLaw](#), [Jacoby & Meyers](#), [KM Standards](#), [Legal Force](#), [Obelisk](#), [Potomac Law](#), [Practical Law](#), [Riverview Law](#), [Slater & Gordon](#), [WeVorce](#), and many others. Each of these names has its own story to tell about the new legal market.

And yet I still see people in this industry asking, "Where's the revolution? When is the change going to come?" Folks, the change is *here*. We're living it. Cast your mind back five years, when Richard Susskind had just published *The End Of Lawyers?*, and ask if you thought this much upheaval and advancement and innovation was possible in such a short period. Cast it back 10 years, when the blawgosphere barely existed, and ask the same. The legal market is becoming more diverse and more accessible every year; legal services are more affordable and more predictably priced every year.

Most importantly, *the pace of that change is accelerating*. More new things happened in this market in 2013 than in 2012. More happened in 2012 than in 2011, in 2011 than in 2010, and so on. Alternatives to the traditional — in terms of service providers, business models, workflow systems, delivery vehicles, pricing strategies, and so on — are becoming normalized; that is, they're spoken of less frequently as "alternative" and more frequently as simply another option. We don't even talk about the "new normal" as much — it's *all* becoming normal. These are not the signs of change in retreat; these are the signs of change becoming mainstream — ceasing to be "change" and starting to become "the way things are."

The normalization of alternatives comes at a steep price to the incumbents, and I'm aware of that. Lawyers have it tough right now, tougher than most of us have ever experienced, and I'm sorry to say it's going to get worse [before it gets better](#). I don't take that lightly. But clients have it better already — better than they've had it before, in terms of knowledge and access and choice and affordability, with the prospect of much better yet to come. And at the end of the day, as much as I care about lawyers, I care about clients more, because they're the reason we're here: to help them use the law to reach their goals, [enhance their dignity](#), and better their lives.

So what's the problem? Why am I suddenly also concerned about whether all this change will, in fact, be a good thing? Because while I hope and trust that the traditional legal market will fall away and that a better one will replace it, I'm increasingly alive to another possibility — that the traditional legal market may fall away, and *nothing* will replace it.

One of my very few hobbies is geopolitics (yes, I know I need to get out more often). I'm a dabbler in this field at best, but I've had an interest for many years, and I still remember what I was thinking on the day the Berlin Wall came down. Certainly those were extraordinary images and wonderful times, a lifetime marker for the generations that helped bring it about or watched it happen. But what was going through my mind, watching the Wall come down and totalitarian governments all over eastern Europe collapse with it, was: *This is happening too fast*. Corrupt, decrepit regimes were falling over like dead trees in a windstorm, but in many cases, there was nothing — no replacement regime, no legitimate constitution, no rule of law — to step into the breach. Some of these countries, to their great credit, grew reasonably healthy liberal democracies out of the rubble. Many did not. Evolutionary Road

[George Friedman](#) has observed, accurately, that the people who start revolutions are often not the people who finish them, and that revolutions do not always end up where their instigators hoped they would. I think it's fair to say that we're at the start of a revolution in the legal services market. That should be, and is, exhilarating. But it should also summon us to the barricades to make sure that, if the incumbent regime falls, looting and chaos are not the immediate outcome and the lasting legacy.

If you want an example, take a look at law schools. You're probably aware that applications to US law schools have been dropping like a stone and that enrolment is now down to its [lowest level since 1977](#). As [Bruce MacEwen](#) notes (and as [I've been saying for some time now](#)), this story has only one ending: many American law schools will close or will become so small as to turn into veritable cottage businesses. There's no question that there are too many law schools providing too little value to their students and to the clients they'll someday struggle to serve, and that a major correction is overdue here. There's also a lot of *schadenfreude* throughout the profession right now as these schools wriggle on the hook.

We can hope for and work towards a renaissance and [reinvention](#) of law school. But what if that fails? What if 80% of US law schools close and are not replaced? Will the profession and the public be well served by a legal education system that features Harvard, Yale, Stanford and a few other clones, and nobody else? Or what if the failed law schools are followed by profiteering private law degree factories that replace the passive academic lecture with cookie-cutter “practical training” packages bereft of jurisprudence and professionalism? I think this is an unlikely outcome. But it is a *possible* outcome — a possibility that didn’t exist 10 years ago, but does today.

Or take a much bigger and broader example: the legal profession itself. This blog contains six years’ worth of mounting criticism of lawyers and warnings of dire consequences should opportunities for reform be ignored too long. But it also contains staunch defences of the inherent value of lawyers as expert counsellors to troubled clients and defenders of the rule of law. Lawyers are both desirable and necessary. But we’ve exploited our protected and prestigious position in this market for so long that an *over-correction* is now possible — not lawyer reform, but outright lawyer rejection. Alternatives to lawyers, as I’ve detailed above, are here and are flourishing, and we’ve encouraged them to develop by our failure to fully serve the market. These alternatives should complement us, not replace us. But it might not work out that way.

Let me be clear: I’m not backtracking, not one inch, on my belief that this market needs serious, structural reform, that access to legal services must be expanded and improved, and that lawyers should be playing different (but still important) roles in this market than we do today. Don’t mistake the foregoing for the kind of fear-mongering employed by protectionists and [lawyer exceptionalists](#) to beat back change in their own interest. Instead, this is a call for the legal profession to recognize that change is really happening — and that we now need to throw our efforts into trying to manage, to the extent possible, the enormously strong forces coming into play.

How can we avoid the worse- and even worst-case scenarios? How do we manage the effects of revolutionary forces? This has to be a collective effort — everyone in the legal profession and its associated institutions has to play a part. Here are my recommendations.

1. **Regulators** must lead the way by recognizing these trends and staying well ahead of them. Every regulatory activity and initiative must clearly enhance either access to legal services or lawyers’ professional standards. Every barrier to “non-lawyer” entry to the marketplace must be immediately examined and, unless objectively justifiable in the public interest, set aside. The self-governance of lawyers in the public interest must be protected and prioritized. Regulators that spend their time on trivia, such as [declaring lawyer blogs to be improper advertising](#), are running enormous risks in a market environment this volatile.

2. **Bar Associations** must promote the value and professionalism of lawyers in a crowded market. Forget about any efforts to keep “non-lawyers” off our turf; that battle is over, and we lost. Now is the time to create “image campaigns” that tell clients, [not why we want to law school](#), but why a lawyer’s ethics, professionalism, expertise, reliability and integrity are worth the premium that we inevitably will cost. These are marketing campaigns that communicate the extraordinary value that a lawyer brings — while recognizing and readily conceding that [not every situation requires a lawyer’s services](#).

3. **Law Schools** must preserve and promote the importance of professional values in legal education. Those schools that survive the coming purge will be under enormous pressure to provide “practical,” “real world” training and clinical opportunities, and so they should. But they must also recognize and embrace their role as the incubator of ethics and professionalism, because the competitors that will emerge in the education and training space likely will not care about these facets of the future market as much as law schools do or ought. Law schools will provide lawyer training simply to survive in this market; they must also provide the primary foundations of ethical lawyer behaviour.

4. **Courts** must recognize that their traditional role as the arbiter of private legal disputes is in mortal danger. Ninety-eight percent of disputes never see the inside of a courtroom, and 90% of all disputes never even enter the process. Courts are [utterly agonizing](#) to many of the people who use them and utterly irrelevant to all those who cannot; this is a short road to disaster. Train staff to help self-represented litigants, because they will shortly and permanently outnumber lawyers; deputize senior lawyers to resolve conflicts locally; [institute ODR services](#) affiliated with courts' enforcement powers. Above all, rip off the blinders and recognize how close you are to the edge of the chasm.

5. **Lawyers** must accept and act upon a single new reality: we cannot continue to make a living in the law the way we used to. Full stop. We must create sustainable cost advantages through adoption of technologies and processes. We must cede to new competitors work that we cannot do as efficiently, effectively and profitably as they can, forming partnerships where appropriate to integrate services in a complementary fashion. We must learn to price rationally, fairly, and predictably. We must remember and pursue [the true purpose of law](#). Above all, we must resist every temptation, no matter how small or how great, to compromise our ethics and professional stature for any business reason. These will soon be our sole competitive advantages.

Revolutions are powerful, frightening, and unpredictable things. Once they're really underway, they can't be controlled or directed. Market revolutions are less violent and bloody than political ones, but they can be just as destructive. In times of revolution, you figure out very quickly just what it is you need to really safeguard. I believe we need to safeguard the rule of law, the independence of the profession, and the fundamental values to which lawyers have always sworn oaths. Everything else is replaceable or negotiable; these are not.

In 2014, the revolution in the legal market will continue to foment, to bubble away, to push in from the edges and from underneath. One of these days, it will break out in full, and it will be a wonder and a terror to behold. I truly don't know when that's going to happen. But I do know that if we want there to be a viable legal profession afterwards, we need to act *now* – to lock down and preserve the critical few things that we really, truly can't afford to lose.

*Jordan Furlong delivers dynamic and thought-provoking presentations to law firms and legal organizations throughout North America on how to survive and profit from the extraordinary changes underway in the legal services marketplace. He is a partner with [Edge International](#) and a senior consultant with [Stem Legal Web Enterprises](#).*

**From:** James R. Silkenat [abapresident@americanbar.org]  
**Sent:** Wednesday, January 15, 2014 12:59 PM  
**To:** Sylvia Stevens  
**Subject:** Making Law Day 2014 a Success



**James R. Silkenat**  
 President

**AMERICAN BAR ASSOCIATION**

321 N. Clark Street  
 Chicago, IL 60654  
 (312) 988-5109

January 15, 2014

Dear Bar Leader,

As you know, this year's Law Day theme is **American Democracy and the Rule of Law: Why Every Vote Matters**. State and local bar associations are the key to making Law Day successful. Through the efforts of bar groups, diverse public audiences throughout the country have the opportunity to learn about and discuss the important issues highlighted by the Law Day theme.

The 2014 Law Day Planning Guide is now available for download on [www.lawday.org](http://www.lawday.org). The guide includes talking points, ideas for programs, publicity strategies, a planning timeline, classroom lesson plans, and much more. The guide (available both as a downloadable PDF and in a tablet-friendly version) and the other resources available on [www.lawday.org](http://www.lawday.org) will help ensure your Law Day program is a success.

As bar leaders, it is our responsibility to educate citizens on how the law affects their lives. The 2014 theme provides an excellent platform for spotlighting the importance of voting rights in a representative democracy and the role of the law in protecting and promoting those rights. When voters participate in free and fair elections, they reinforce the legitimacy of the rule of law. We hope that you will join us in in this nationwide educational effort by hosting an event or activity highlighting the 2014 Law Day theme. Downloading the 2014 Law Day Planning Guide is a great way to start. Once you have your Law Day activities planned, please share them with us on [www.lawday.org](http://www.lawday.org) so that other planners can be made aware of and benefit from your many excellent ideas. Best wishes to you as you plan your Law Day events.

Sincerely,

James R. Silkenat  
 President,  
 American Bar Association

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## 21st Century Task Force White Paper and Report

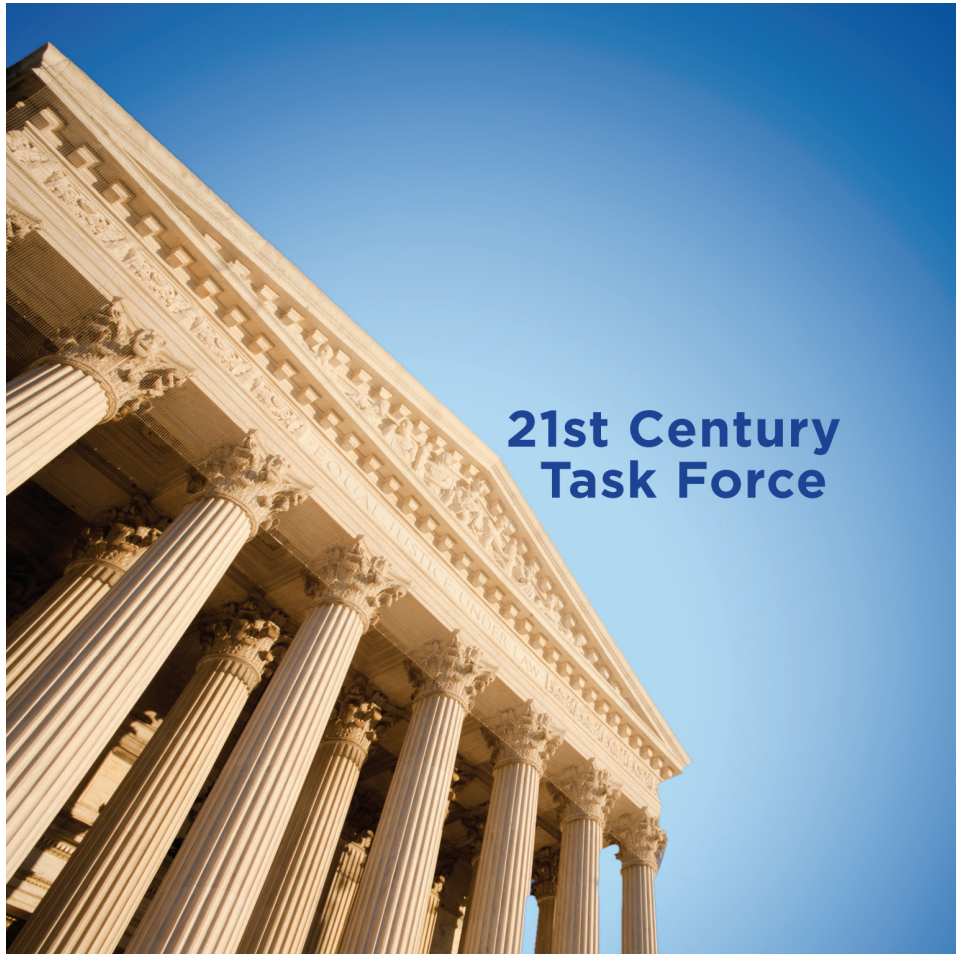
# Time for Creativity, Imagination, and Innovation

By Chrys A. Martin

*Daily articles in the legal press have made clear that the basic assumptions about practicing law in the twenty-first century have undergone a “paradigm shift.” DRI President Mary Massaron Ross, a leader in recognizing the shift and its urgency, created the DRI 21st Century Task Force to identify the skill sets that lawyers will need to succeed in the new practice environment and to develop programmatic proposals that would assist DRI members to master those skills. The task force recently presented these proposals to the DRI Board of Directors. This article explains the task force’s charge, work, and proposals.*

There is no doubt that the entire law profession—law firms, lawyers, law schools, and professional associations—are operating in a totally new context in the twenty-first century. In this century, we will continue to witness a decline in civil litigation work, a flattening in litigation—including insurance defense, a decline in demand for traditional legal services, a focus on maximizing law firm owners’ earnings, and limited funds and time allotments for continuing legal education and training for new lawyers. John S. Smock, Peter A. Giuliani, Joseph V. Walker, & Gary B. Fiebert, *Déjà vu All Over Again: Legal Marketplace Outlook for 2013 and Beyond*, 32 *Of Counsel* 6 (Apr. 2013); Marc Galanter & Angela Frosz, *The Decline of Civil Trials in American Court* 1–2 (2011 Forum for State Appellate Court Judges, Pound Civ. Just. Inst., July 7, 2011); Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis* 70 (Basic Books 2013).

Clients view billing rates as too high and new attorneys as not ready to practice law efficiently. They are no longer willing to pay law firms to train their associates. Richard



## 21st Century Task Force

Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* 4–5 (Oxford Univ. Press 2013). Corporations are under pressure to reduce their “legal spend” and at the same time are bringing more work in-house. William D. Henderson, *A Blueprint for Change*, 40 *Pepp. L. Rev.* 461, 479 (2013).

Scores of books, articles, and blogs chronicle the paradigm shift in our profession and

the need to change radically the way that the profession delivers and prices legal services, and the way that law schools educate lawyers. At the same time, new legal services providers have emerged that have very effectively reduced the market share of traditional law firms. As a result, according to Bruce MacEwen, one of the foremost specialists on law firm economics, “clients are pushing back as never before.” Bruce MacEwen, *Growth Is Dead. Now What? Law Firms on the Brink* 4 (Adam Smith Esq. 2013). MacEwen cites corporate seriousness about alternative fees, resistance or refusal to pay for junior associates and requiring major segments of legal work to be handled by alternative legal services providers as ways



■ Chrys A. Martin is a partner of Davis Wright Tremaine LLP in Portland, Oregon, where she focuses her practice on employment law and employee benefits issues. She is a former member of the DRI Board of Directors, and a past chair of both the DRI Law Institute and the DRI Employment Law Committee. She currently serves as chair of the DRI 21st Century Task Force.

that clients have rejected traditional legal business practices. *Id.* at 4–5.

So what is the result of this significant paradigm shift in our profession? As one prolific law blogger notes,

these two forces—a decline in overall legal spend and innovative new options for legal services—combine to reduce demand for the services of lawyers... This one-two punch produces a large and growing pool of unemployed and underemployed lawyers, downward pressure on lawyer incomes (especially among inexperienced practitioners), and succession crises at law firms in which senior partners who control client relationships grip the reins of power even tighter.

Jordan Furlong, *The Evolution of the Legal Services Market: Stage 2*, Law21 (Nov. 6, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-2/>.

Welcome to the twenty-first century law profession.

Commentators also agree that legal education is in crisis. Huge proportions of law school graduates cannot find jobs in the legal field. Press Release, Nat'l Assoc. for Legal Career Professionals, *Law School Grads Face Worst Job Market Yet—Less Than Half Find Jobs in Private Practice* (June 7, 2012), <http://www.nalp.org/2011selectefindingsrelease>. Law firms and corporations find that new lawyers are not prepared to practice law. Scores of legal articles, symposia, and seminars in the legal education field have tried to address these issues. In a strategy memo to fellow legal educators, William D. Henderson, director of the Center on the Global Legal Profession at Indiana University Bloomington Maurer School of Law, stated that “the demand for our core product—traditionally educated law school graduates—is collapsing.” Henderson, *supra*, at 462. He noted that “creating more ‘practice ready’ graduates will help some law schools more effectively place their graduates in the finite—and likely shrinking—market for traditional entry level legal jobs.” *Id.* He then discussed “the principles that a twenty-first century U.S. law school needs to follow in order to survive the shift.” *Id.* at 464. Henderson identified a competency-based, experientially taught curriculum, including

“team work, communication skills, emotional self-control, problem-solving, and decision-making.” *Id.* at 505. Continuing legal education (CLE) providers can provide opportunities to acquire these skills in an experiential setting immediately with new offerings in the critical areas. Experienced as well as new lawyers need these new skills, and the DRI 21st Century Task Force members believe that DRI can and should provide those skills.

Law firms and CLE service providers

Clients demand change right now. They want lawyers who have project-management skills, team skills, communication skills, budgeting skills, and leadership skills.

cannot wait for law schools to retool their programs, holding off on hiring until a new wave of lawyers trained in more practical skills emerge from these new programs. Margaret Martin Barry, *Practice Ready: Are We There Yet?* 32 B.C. J. Law & Social Just. 247, 256 (2012). Clients demand change right now. They want lawyers who have project-management skills, team skills,

communication skills, budgeting skills, and leadership skills. Blogger Jordan Furlong, after chronicling the decline of “big law” and predicting a resurgence in the future of our profession, offers suggestions for the skills that our lawyers will need. He notes, “[p]roject-management is about as close to a silver bullet as the legal profession could ask for these days.” Jordan Furlong, *How I Learned to Stop Worrying and Love Project Management*, Law21 (Apr. 9, 2010), <http://www.law21.ca/2010/04/how-i-learned-to-stop-worrying-and-love-project-management/>. Kenneth S. Siegel, chief administrative officer and general counsel of Starwood Hotels and Resorts Worldwide, Inc., recently stated that he is looking for teams: “These virtual teams help facilitate knowledge and goal sharing while also keeping costs within reason.” General

Counsel File: Kenneth S. Siegel, *Practical Law*, The Journal (Apr. 1, 2013), <http://us.practicallaw.com/0-525-4223>. Deanell Reece Tacha, dean of the Pepperdine University School of Law, asserts that lawyers and law students must learn “to work together in teams to solve problems and to understand the business aspects of law practice like project management, the needs of cli-

## DRI 21st Century Task Force Members

**Chrys A. Martin**, Chair; Davis Wright Tremaine LLP, Portland, OR

**Craig R. Mayfield**, Vice Chair; Hill Ward Henderson, Tampa, FL

**Eileen E. Buholtz**, Connors & Corcoran PLLC, Rochester, NY

**James M. Campbell**, Campbell Trial Lawyers, Boston, MA

**Sandra L. Corbett**, Field Law, Edmonton, Alberta, Canada

**Steven Gerber**, Gonzalez Saggio & Harlan LLP, Wayne, NJ

**Toyja E. Kelley**, Tydings & Rosenberg LLP, Baltimore, MD

**Christopher A. Kenney**, Kenney & Sams PC, Boston, MA

**Mary Massaron Ross**, Plunkett & Cooney PC, Detroit, MI

**Stephen O. Plunkett**, Bassford Remele, Minneapolis, MN

**Steven R. Schwegman**, Quinlivan & Hughes PA, St. Cloud, MN

**Alka Srivastava**, Cranfill Sumner & Hartzog, Raleigh, NC

**Sara M. Turner**, Baker Donelson, Birmingham, AL

**Mike Weston**, Lederer Weston Craig PLC, Cedar Rapids, IA

**Glenn M. Zakaib**, Cassels Brock Lawyers, Toronto, Ontario, Canada

**Tyler M. Howes**, DRI Deputy Executive Director, Chicago, IL

**Kelly L. Tiffany**, DRI Project Manager, Chicago, IL



ents, and creative resolution of controversies.” Deanell Reece Tacha, *The Lawyer of the Future*, 40 Pepp. L. Rev. 337, 339 (2013). Tacha notes that our profession is responding: “Refreshingly, this very discussion is occurring in law schools, courts, bar associations, and throughout the legal profession.” *Id.* at 337. DRI needs to emerge at the forefront of this discussion and become a leader in implementing solutions.

As a result of these trends, closer cooperation between legal education providers, law firms, and clients is advocated to “emphasize tighter ties between legal training and practice, whether the focus is on writing skills, decision-analysis, management, business and financial literacy, time management or multi-cultural competence.” Martha L. Minow, *Making Global Lawyers for the 21st Century: A Blue Paper* 6. (Harv. L. Prog. Legal Prof. 2010) (Keynote Address to FutureEd 2 Conference, Harv. L. School Oct. 15, 2010). Commentators suggest returning to apprenticeships such as those practiced in the United Kingdom and Canada for new lawyers. Brian Z. Tamanaha, *Failing Law Schools* 175 (Univ. of Chicago Press 2012). Thus, to save our relationships with our clients, we increasingly need to partner with clients and achieve global understanding, diversity, a team approach, and associate understanding of law firm economics. We have a “lost generation of lawyers” that does not have these skills, including associates and partners at all levels currently providing services in law firms. The current economic realities further hamper law firms because senior lawyers currently do not retire and pass on their clients and trial opportunities to younger lawyers, either due to the economic need to stay employed or lack of succession planning by lawyers and law firms. Law firms and bar associations have not understood all the realities: “Most successful partners eventually will need help finding a path that reshapes their self-identity while preserving their dignity. For firms that care, the challenge is to permit disengagement with honor.” Harper, *supra*, at 190.

As Furlong has predicted, in the future “traditional volume-based lawyer organizations (bar groups, publishers, CLE providers, etc.) either radically reinvent

themselves or close.” The 21st Century Task Force agrees that DRI, to remain a viable organization, must supplement its traditional educational delivery model and courses to teach new and existing lawyers the skills that they will need to succeed in the twenty-first century.

### Task Force Charge

Lawyers, law firms, and their clients need new skills immediately, a pool of well-trained new lawyers for the future, visionary leaders, and bold succession planning

Lawyers, law firms, and their clients need new skills immediately, a pool of well-trained new lawyers for the future, visionary leaders, and bold succession planning to succeed.

to succeed. DRI President Mary Massaron Ross has been a leader in recognizing these issues and their urgency. She created the 21st Century Task Force to identify the skill sets needed by the twenty-first century lawyer and to develop curricula and delivery methods to assist DRI and its member law firms and corporate clients to meet the training challenges.

The DRI task force is composed of diverse lawyers in terms of years of practice, practice areas, firm size, and geographic location. (See page 7 for a complete list).

The task force began its work in October 2012, during the DRI Annual Meeting, followed by several lengthy conference calls and brain-storming sessions designed to identify what the practice of law will look like in the twenty-first century and the new skill sets that lawyers would require to practice in that environment successfully. We studied reports of legal scholars, read papers from symposiums analyzing legal education, and turned to consultant commentators about the future of our profession—particularly litigation. We identified a list of critical skills and categorized them into four general areas: litigation skills, client and professional relationship skills, law firm management skills, and alternative dispute resolution (ADR) skills.

We were tasked with preparing a comprehensive report explaining our work and suggesting new topics and delivery mechanism systems that would make DRI a leader in CLE for the twenty-first century lawyer.

### Identifying the Challenges

Before we started working on programmatic proposals, we identified the challenges to skills acquisition in the four crucial skills areas for twenty-first century lawyers. We broadly categorized the challenges as falling into four segments: litigation, client relations, alternative dispute resolution and technology, and law firm management. Identifying these challenges would inform our skills-acquisition proposals. Some of the many recommendations include the following.

#### Litigation Challenges

Noting that the base of DRI membership is composed mostly of litigators and corporate in-house counsel who manage outside litigation, we focused on the shifting paradigm within that particular area of the law. Based on their own personal experiences, task force members agreed with commentators that the twenty-first century practice of law will continue to encounter a diminishing number of cases advancing to trials, resulting in few opportunities for new lawyers to hone trial practice skills. With corporate legal budgets constrained, lawyers will have to practice in a much more efficient manner. Clients also now require lawyers to prepare and stick to accurate budgets, provide fee estimates, and embrace alternative fee arrangements. This all requires precision in litigation management, which is accomplished through strategic planning, project management principles, and creating teams of diverse experts. Working cross-border and with non-lawyer team members will become the new norm.

#### Client Relations Challenges

On the client relationship front, as clients become more globalized and diverse, lawyers need to learn business etiquette and how to behave professionally in diverse business and social situations, including cross-border etiquette for international

clients and referral sources. In the age of corporate convergence programs, it is critical that lawyers provide services in a manner that will allow them to be seen as loyal and trusted client advisors rather than as providers of fungible legal services. Thus, attorneys need to understand how to get and keep clients in this changing environment.

### **Alternative Dispute Resolution and Technology Challenges**

More senior lawyers must embrace the skills that Gen X and Gen Y bring to the table: the powerful use of technology and social media to manage cases efficiently and to obtain clients. Presenting to Gen X and Gen Y jurors also requires that litigators use new types of trial skills because these generations process information in different ways. Taking short attention spans into account, increased reliance upon technology and eye-catching visual experiences are required and have joined traditional oral advocacy as valued and necessary skills.

Clients have become focused on ADR as a cost-effective alternative to litigation in the courts. With the continuing shrinkage in the number of jury trials and the rise of ADR, lawyers handling disputes between clients will need a different set of skills than before. Negotiation skills have fallen by the wayside due to the overreliance on professional mediators rather than face-to-face negotiations between the attorneys for disputing parties. A direct negotiation may be much more efficient and reduce the costs of settlement efforts for clients. Approaching and effectively undertaking the “trial” of a case before an arbitrator or a panel of arbitrators involves different presentation skills from those that lawyers used before a jury of the twentieth century. Lawyers need to learn skills to help them partner with clients to develop reasonable, efficient, and enforceable arbitration programs that will withstand judicial scrutiny.

### **Law Firm Management Challenges**

On the law firm management front, rapid technological changes, the inability of lawyers to retire early due to recent economic declines, and the eventual exo-

odus of Boomer lawyers when they can afford to depart, all create the need for law firm managers to be visionary leaders and change agents possessing financial acumen—all skills that law schools do not teach. It will be equally important that senior lawyers remain loyal to their firms and engage in thoughtful transitions of clients and opportunities to younger lawyers. Compensation structures will have to incent such behavior as well as reward practical skills training and mentorship of younger lawyers.

In the age of corporate convergence programs, it is critical that lawyers provide services in a manner that will allow them to be seen as loyal and trusted client advisors rather than as providers of fungible legal services.

### **DRI'S Role**

So what does this mean for DRI? DRI has always been at the forefront of providing quality legal education, both nationally and internationally. DRI seminars are lauded by in-house counsel, private law firms, and claims professionals. Despite shrinking CLE budgets, DRI seminars remain fairly well attended. However, if DRI does not enhance its CLE offerings to meet the skills needed by the twenty-first century lawyer, law firm, and client, it will suffer negative consequences. More to the point, instead of just supplementing traditional legal education offerings, DRI should “radically reinvent” itself to emerge on the cutting edge of providing the type of CLE needed by the twenty-first century lawyer. Jordan Furlong, *The Evolution of the Legal Services Market: Stage 4*, Law21 (Nov. 8, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-4/>. DRI should lead this transformation. Furlong urges all involved in the legal profession to rise to the occasion, noting that

it involves screwing up our courage, building up our confidence, and letting our imaginations roam over the possibilities of 21st Century lawyering. It requires lateral thinking and

creative brainstorming, anchored by a clear-eyed assessment of both our own strengths as professionals and the evolving needs of a globalized society. Once we've done that, once we've cleared that enormous (for us) hurdle, then the second stage is not only easy—it's almost fun. What could we do? What might we be? There is a vast, uncharted and unclaimed territory out there—what could we build on that new landscape?

Jordan Furlong, *The Evolution of the Legal Services Market: Stage 5*, Law21 (Nov. 9, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-5/>.

DRI should rise to this challenge and let its imagination run.

### **Task Force Skills Findings**

Partly in response to the national consensus that alternative delivery systems for learning will be critical for all types of legal education, the task force studied potential alternative educational delivery models and evaluated ways to supplement the traditional DRI educational service delivery model with alternative options. Many ideas for new CLE delivery methods and topics emerged during our work, including some that DRI would deliver and some that DRI would develop but that others would deliver. As mentioned, we also identified the new skills that lawyers will need, concluding that the successful twenty-first century lawyer would need unique skills in four areas: litigation, client and professional relationship, law firm management, and alternative dispute resolution. Some of the many recommendations include the following.

### **Litigation Skills**

The task force identified the following litigation skills as necessary to success:

- Trial skills with fewer trials and new age jurors
- Case evaluation skills, specifically so that a lawyer will know how to evaluate cases and prepare useful report letters and exposure analysis
- Witness interviewing skills that will allow a lawyer to obtain critical information in an efficient manner

- Budgeting skills, ranging from how to prepare accurate budgets to providing good fee estimates
- Strategic planning for litigation management skills, in particular how to use teams to make strategic decisions on legal matters

As previously mentioned, some of these skills have become very challenging to acquire since so few cases reach the trial stage at this point.

#### **Client and Professional Relationship Skills**

A lawyer also will need the following client and professional relationship skills to succeed in the profession:

- Business development skills to obtain and keep clients
- Social media use for business development and networking
- Civility and professionalism skills
- Skills to develop, budget, and manage alternative fee arrangements
- Project management skills
- Ethics skills, which would partly depend on having professional ethics knowledge, so that a lawyer could navigate effectively in the electronic age

#### **Law Firm Management Skills**

- To thrive in the profession, the task force concluded that a lawyer will need these law firm management skills:
- Technology and social media skills
- Retirement planning skills
- Firm leadership and professional leadership capabilities
- Succession planning ability to assist a senior lawyer to know how and when to introduce and “sell” other attorneys to clients properly

#### **ADR Skills**

A thriving twenty-first century lawyer will need these skills that are crucial to ADR:

- Negotiation skills, both direct with opposing counsel and in mediation
- Arbitration skills to enable an attorney to handle arbitrations properly, from selecting a forum and an arbitrator to understanding the applicable rules

#### **New CLE Proposals**

After further deliberations and refinement in subgroups, the task force merged these twenty-first century skills with promising

twenty-first century educational delivery mechanisms to recommend several new educational offerings. Many of the recommendations involve alternative delivery options to create more meaningful learning experiences.

The task force determined that educators could not teach and attorneys could not learn many of the most critical skills effectively in the traditional day-and-a-half DRI seminar model.

Under a mandate from the DRI Board and Executive Committee the organization will develop prototype programs based on many of the findings and recommendations of the task force.

#### **Summary of Recommendations**

The task force members determined that every one of these proposals represented significant responses to twenty-first century challenges. The proposals have built-in adaptability so that DRI or others could present the programs in diverse formats. They would provide valuable education and support to the DRI substantive law committees, improve relationships with SLDOs, and offer unique services to DRI members and their firms. Individual members will receive cutting-edge legal education. Law firms will have better-trained lawyers with skills to practice law and to lead their firms successfully during this paradigm shift. Clients’ in-house lawyers will become educated in these critical skills areas as well as experience improved services, efficiency, and customer service from their outside lawyers.

The task force hopes that DRI will undertake a critical analysis of these programs and decide on an implementation schedule. The advice that MacEwen gave to law firms seeking to prepare for the twenty-first century is equally pertinent to DRI: “We have to find our own new answer to the changes in our profession. Time for creativity, imagination, innovation. Try things. But don’t try one big thing, try lots of little things. Don’t put all your chips in the center of the table; learn as you go along, make mid-course corrections, seek continuous feedback, react.” MacEwen, *supra*, at 105. He prefers “nimbleness, decisiveness, and immediate readjustment” to “grand plans.” *Id.*

To paraphrase MacEwen, if DRI does not also embark on this new direction, our competitors will “do it for us and to us.” *Id.* at 106.



## THE NATIONAL LAW JOURNAL

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# Nation's Law Schools See Lowest Enrollment Since 1975

Karen Sloan

The National Law Journal

2013-12-17 11:29:19.0

The number of entering law students nationwide dropped below 40,000 this fall for the first time in close to four decades.

According to figures released by the American Bar Association, law schools enrolled 39,675 new students this fall—an 11 percent decrease from the 44,481 students who enrolled last fall. The last time law schools saw such low 1L enrollment was 1975, when there were 163 ABA-accredited law schools. There are 202 such schools today.

Even more ominous for law schools administrators, this fall's new enrollment represents a 24 percent decline from the 52,488 new students who matriculated in 2010—the all-time high.

First-year enrollment has steadily declined since 2010, and the number of law school applicants during the last admission cycle fell by more than 12 percent, according to the Law School Admission Council.

University of St. Thomas School of law professor Jerome Organ in June wrote a blog post predicting 38,300 to 39,900 matriculants in 2013.

“Fall 2013 is going to be another year in which many law schools see significant enrollment declines while most law schools see further declines in their LSAT and GPA profiles,” Organ wrote in his post, which appeared on the blog The Legal Whiteboard. “This will be an admissions season in which ‘success’ may be measured by not doing quite as poorly as others in terms of enrollment and profile.”

Indeed, 135 law schools saw the size of their entering class shrink this year, and a full 81 percent of schools saw declines of 10 percent or more, according to the ABA. At the same time, 63 schools saw increased enrollment, 27 of them by 10 percent or more. The ABA did not identify which schools fell into which category, but said it would release more details in the coming months.

Meanwhile, non-J.D. enrollment held fairly steady this year, with 11,139 new students in masters of law (LL.M.s) or other legal programs. That compared to 11,067 in fall 2012. Many law schools have launched LL.M. or other masters programs for non-lawyers in hopes of attracting new students and generating revenue amid waning interest in the traditional J.D.

Most of the nation's non-J.D. students are concentrated at a relatively small number of law schools, according to the ABA. A full 75 percent of them attend one of 48 law schools, and the five schools with the largest non-J.D. enrollment account for a full 20 percent of all non-J.D. students nationwide.

Contact Karen Sloan at [ksloan@alm.com](mailto:ksloan@alm.com). For more of The National Law Journal's law school coverage, visit: <http://www.facebook.com/NLJLawSchools>.

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29 Law. Man. Prof. Conduct 796

### Regulation of Bar Nebraska Reaffirms Mandatory Bar But Puts Limits on Compulsory Dues



By Joan C. Rogers

Dec. 11 — The Nebraska Supreme Court Dec. 6 reaffirmed mandatory membership in the state bar association as a condition of practicing law in that state, but limited the expenditure of compulsory bar dues to specific categories of activities germane to regulation of the legal profession, and made dues for all other bar activities voluntary (*In re Petition for a Rule Change to Create a Voluntary State Bar of Neb.*, Neb., No. S-36-120001, 12/6/13).

In a per curiam opinion, the court turned down a bar member's petition to jettison the mandatory bar and change it to a voluntary association. It said the constitutional legitimacy of mandatory bars is beyond question and that the reasons underlying the court's 1937 decision to integrate the Nebraska bar have even more force today.

Nevertheless, the court decided that bar members will be required to pay dues only to fund the bar's regulatory functions: admissions, membership records, enforcement of ethics rules, continuing legal education, trust fund records and fighting unauthorized practice. A separate fee is already assessed for discipline.

**"By limiting the use of mandatory assessments to the arena of regulation of the legal profession, we ... avoid embroiling this court and the legal profession in unending quarrels and litigation...."**  
**Nebraska Supreme Court**

Confining mandatory dues to these expenditures will avoid the protracted litigation experienced in some other states regarding which bar activities lawyers may be compelled to fund without violating the First Amendment, the court explained.

#### Two-Forum Front

The court's action comes against the backdrop of a pending federal court action against the Nebraska State Bar Association challenging the constitutionality of mandatory dues that bar members are required to pay.

Scott Lautenbaugh, a Nebraska lawyer and state senator, filed a civil rights suit against the bar more than a year ago, alleging that the bar's imposition of mandatory dues to fund activities he does not support violates his First Amendment right to be free from compelled speech and association (*Lautenbaugh v. Neb. State Bar Ass'n*, D. Neb., No. 4:12-cv-03214, filed 10/10/12).

Lautenbaugh is also the petitioner in the state-court matter. His petition, which he filed before his federal court lawsuit, asked the state supreme court to disunify the mandatory bar.

The court invited public comment and heard oral argument on the issue. The bar association opposed the requested shift to a voluntary bar.

#### Compelled-Speech Jurisprudence

In responding to Lautenbaugh's petition, the court pointed out that the U.S. Supreme Court established more than half a century ago that a state may constitutionally require a lawyer to be a member of a mandatory or unified bar to which compulsory dues are paid. Thirty-two states and the District of Columbia require lawyers to become bar members and pay dues as a condition of practicing law in that jurisdiction, the court said.

As background for its decision, the court recounted recent efforts some have mounted in New Hampshire, New Mexico and Wisconsin to abolish the mandatory state bar. Aside from the temporary suspension of mandatory bar membership in Wisconsin from 1988 to 1992, no state bar association has converted from mandatory to voluntary status, it found.

In addition, the court canvassed constitutional challenges over the years to mandatory bars. The seminal case is *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), which held that use of compulsory bar dues to finance political and ideological activities with which bar members disagree violates those members' First Amendment free speech rights, to the extent such expenditures are incurred for purposes other than regulation of the legal profession or improvement in the quality of legal services.

Reviewing First Amendment compelled-speech jurisprudence after *Keller*, the court found that the legal landscape was altered by *Knox v. Service Employees*, 2012 BL 153979, 80 U.S.L.W. 4512 (U.S. 2012), which involved a challenge to certain fees that a public sector union imposed on employees.

In particular, the court found signals in *Knox* supporting the view that the constitutional validity of a bar's use of compulsory dues for a particular activity turns on whether the activity is germane to the bar's regulatory purposes, not whether the activity is ideological or political in nature. Moreover, *Knox* casts doubt on the constitutional validity of an "opt-out" system for dealing with members who object to a bar's expenditures, the court said.

#### Administrative Resolution

Rather than declaring precisely which activities may be funded with compulsory bar dues or what mechanism the bar association must put in place to accommodate objections, the court focused on the administrative task of how best to structure the Nebraska State Bar Association to meet the needs of the judicial system, lawyers and citizens.

The court decided that the mandatory bar should be preserved for the same reasons it was created: to regulate the profession, ensure that ethics rules are enforced, combat the unauthorized practice of law and maintain the public's favorable view of the

#### BNA Snapshot

*In re Petition for a Rule Change to Create a Voluntary State Bar of Neb.*, Neb., No. S-36-120001, 12/6/13

**Holding:** Lawyers will be members of the Nebraska State Bar Association to practice in that state, but mandatory dues will be limited to seven types of expenditures.

**Significance:** Illustrates one way for states to retain a mandatory bar yet avoid First Amendment challenges to compulsory dues.

practicing bar.

Nebraska statutes and constitutional provisions referring to the bar association indicate that the state's citizens have come to rely on its existence and the court's oversight of the bar, the court said.

The court concluded, however, that the Nebraska rules relating to the bar should be modified to limit the use of mandatory dues to the regulation of the legal profession. Along with discipline, the court said, the regulation of the profession includes these bar functions:

- admitting applicants for bar membership;
- maintaining membership records;
- enforcing ethics rules;
- regulating the continuing legal education mandate;
- keeping records of trust fund requirements; and
- pursuing those who engage in unauthorized practice.

For those activities, the court directed, each bar member will pay a mandatory fee—\$98 for 2014—to be collected by the bar association and forwarded to the court. For the bar's other programs and services, it must look to separate sources such as voluntary dues, grants and gifts, the court said.

### **Avoids Constitutional Challenges**

This approach, the court explained, preserves the mandatory bar while avoiding a burdensome item-by-item analysis of each activity's germaneness to the bar's purposes. The new fee structure draws the line for use of mandatory bar assessments well within the boundaries of compelled-speech jurisprudence, the court emphasized.

"By limiting the use of mandatory assessments to the arena of regulation of the legal profession, we ensure that the Bar Association remains well within the limits of the compelled-speech jurisprudence of the U.S. Supreme Court and avoid embroiling this court and the legal profession in unending quarrels and litigation over the germaneness of an activity in whole or in part, the constitutional adequacy of a particular opt-in or opt-out system, or the appropriateness of a given grievance procedure," the court stated.

Attached to the court's opinion are extensive rule amendments to implement its decision. Some of them take effect Jan. 1; the rest become effective April 1, 2014.

Scott Lautenbaugh, Omaha, Neb., argued in favor of the petition. Arguing for the Nebraska State Bar Association were Michael Kinney and G. Michael Fenner, both of Omaha.

To contact the reporter on this story: Joan C. Rogers in Washington at [jrogers@bna.com](mailto:jrogers@bna.com)

To contact the editor responsible for this story: Kirk Swanson at [kswanson@bna.com](mailto:kswanson@bna.com)

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