

**Oregon State Bar  
Meeting of the Board of Governors  
April 25, 2014  
Oregon State Bar Center, Tigard, OR  
Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00 p.m. on April 25, 2014. Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, April 25, 2014, 1:00 p.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	Inform	Exhibit
E.	Director of Diversity & Inclusion Report [Ms. Hyland]	Inform	
F.	MBA Liaison Report [Ms. Kohlhoff and Mr. Spier]	Inform	
G.	Oregon New Lawyers Division Report [Mr. Eder]	Inform	Exhibit
- 3. Professional Liability Fund [Mr. Zarov]**

A.	Financial Statements	Inform	Exhibit
B.	CEO Profile ( <a href="#">online info</a> )	Inform	Exhibit
- 4. CEJ and OLF Presentations**

		Inform	<a href="#">Link</a>
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- 5. Law School Deans Presentations**

A.	Dean Curtis Bridgeman, Willamette University College of Law	2:40pm	
B.	Dean Robert Klonoff, Lewis & Clark Law School	3:00pm	
C.	Dean Michael Moffitt, University of Oregon School of Law	3:20pm	
D.	Discussion		
- 6. OSB Committees, Sections and Councils**

A.	Client Security Fund [Ms. Stevens]		
1.	Approve CSF Claim No. 2013-48 BERTONI(Monroy)	Action	Exhibit
2.	CSF Workgroup Recommendations	Action	Exhibit
B.	MCLE Committee [Ms. Hirschbiel]		
1.	Proposed Amendment to Rule 5.2(d)	Action	Exhibit
2.	Proposed Amendment to Regulation 7.200(a)	Action	Exhibit

<b>C.</b>	Legal Ethics Committee [Ms. Hirschbiel]		
<b>1.</b>	Proposed Ethics Opinions Revisions	Action	Exhibit
<b>D.</b>	Legal Services Committee		
<b>1.</b>	Distribution of Abandoned Client Funds	Action	Exhibit
<b>E.</b>	Unlawful Practice of Law Committee		
<b>1.</b>	Representation of Family and Friends (2014-3)	Action	Exhibit
<b>7.</b>	<b>BOG Committees, Special Committees, Task Forces and Study Groups</b>		
<b>A.</b>	Board Development Committee [Ms. Mitchel-Markley]		
<b>1.</b>	HOD Election Results	Inform	
<b>2.</b>	Public Member Recruitment	Inform	Exhibit
<b>3.</b>	BOG Outreach Packet	Inform	Exhibit
<b>B.</b>	Budget and Finance Committee [Mr. Emerick]		
<b>1.</b>	Financial Report	Inform	Exhibit
<b>C.</b>	Governance and Strategic Planning Committee [Mr. Spier]		
<b>1.</b>	Section Reimbursement of Spouse/Guest Expenses	Action	Exhibit
<b>2.</b>	Approve new Strategy 9 for Goal 7 of Diversity Action Plan	Action	Exhibit
<b>3.</b>	Diversity & Inclusion Definition Amendment	Action	Exhibit
<b>D.</b>	Public Affairs Committee [Mr. Prestwich]		
<b>1.</b>	Law Improvement Legislation Package Recommendations	Action	<a href="#">Link</a>
<b>2.</b>	Legislative Update – General election cycle update.	Inform	
<b>E.</b>	Appointments to CLNS Committee [Mr. Kranovich]	Inform	
<b>F.</b>	Indigent Defense Practitioners [Ms. Grabe]		
<b>1.</b>	Adopt Best Practice Standards	Action	Exhibit
<b>8.</b>	<b>Other Items</b>		
<b>A.</b>	Appointments to Various Bar Committees and Boards [Ms. Edwards]	Action	Exhibit
<b>9.</b>	<b>Consent Agenda</b>		
<b>A.</b>	Approve Minutes of Prior BOG Meetings		
<b>1.</b>	Regular Session – February 21 , 2014	Action	Exhibit
<b>2.</b>	Special Closed Session – April 17, 2014	Action	Exhibit

**10. Default Agenda**

- A. CSF Claims Financial Report Exhibit
- B. Claims Approved by CSF Committee Exhibit
- C. ABA House of Delegates Mid-year Meeting Report Exhibit
- D. ULTA 2013 Claims Report [Ms. Hierschbiel] Exhibit

**11. Closed Sessions – CLOSED Agenda**

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

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

- A. Correspondence
- B. Articles of Interest

OSB PRESIDENT'S ACTIVITIES

March 1 TO March 31, 2014

DATE:	EVENT	LOCATION (ACTIVITY)	Attachments
03/05/2014	Gevertz Menasche Lunch	Portland	None
03/18/2014	Garvey Schubert Lunch	Portland	None
03/25/2014	WSBC	Palm Desert, CA (four days)	Roll Call

## WSBC

Ten minute "Roll Call" March 29, 2014

### OPENING:

Martin Luther King professed to be a "Drum Major" for justice. I am Tom Kranovich, President and Head Cheerleader for the Oregon State Bar and I have on the shoes to prove it.

### DEMOGRAPHICS:

Half of our bar is under the age of 40

- 40% are women
- 25% (about 63,200) are between the ages of 55 and 65. Many, not all will leave in the next ten years; an amortization of about 320 per year.
- I doubt we will ever slip below 320 new admittees per year which translates into slower than historical growth but positive growth, nonetheless.
- The trial court bench in our larger counties is averaging 50% women and we have seen significant increases in women judges statewide.
- Our Court of Appeals has 13 judges, 2 are ethnic minorities and two are openly gay; 5 are women.
- Our Supreme Court has 7 justices, 2 are openly gay and 2 are women.
- Our Federal District Court has one openly gay judge, 2 Hispanic judges and 2 women judges

### WHAT WE ARE DOING:

- We are developing a long range strategic plan. To insure it does not end up on a shelf, our President Elect, Rich Spiers, is leading the strategic planning committee.
- As part of the strategic plan we are undertaking a program review; CLE's, which always run in the red, will be a hot topic.
- Discipline
  - Our Chief Justice, at our request, has invited the ABA to review our discipline process. We want to modernize and shorten the time for the procedure without sacrificing due process protections.
  - Receipt of the ABA report will be, of course, only a first step in implementing change but the process has started.
  - We are considering hiring a chief disciplinary judge to sit on all adjudicatory panels with the goal of increasing consistency in rulings and insuring that the court will have professionally written opinions for the review process.
- Unemployment and underemployment are still issues
  - We continue to support ONLD-many of you may remember that some of its members spoke to you, at this conference, last year.
  - We have a program connecting retiring lawyers with new lawyers looking for a practice to buy into.

- Communication between the Court, the BOG and the Law School Deans is underway with the goal of finding solutions for practical training, reduction of debt load and encouraging lawyers to look to underserved regions as a career option.
- We will take on the issue of adopting the UBWE while monitoring Washington's success with its LLLT program.

#### WHO WE ARE:

We are committed to Diversity. Our minority legal community continues to grow.

- Our HOD approved an increased assessment of \$50.00 per year, per member, for our Diversity and Inclusion Department.
- HOD approved a change to RPC 8.4 addressing the use of racism and sexism in representation of a client. The Supreme Court refused to adopt and sent it back to us for revision.
- HOD was about to approve a BOG sponsored resolution in support of marriage equality but just as the vote was to be taken a quorum call was made. Opponents fled the building and the meeting ended for lack of a quorum.
- We are committed to providing essential Member Services
  - All of our bar publication and Fastcase are available, on line, at no extra charge to members.
  - We deliver SLE's on line across the state.
  - To meet the increasing demands of our members for on line services, we are upgrading all of our software.
- We are committed to the improvement of our courts
  - 2013 was the best year in a long, long time for court funding
  - We added a new 3 judge panel to the Court of Appeals.
  - Court funding was greatly assisted by OSB lobbying efforts and by the Citizen's Coalition for Court Funding which was founded by last year's OSB President, Mike Haglund.
  - Our online E-court will soon go statewide

PERSONAL GOALS – build better bridges between the bar, sections and members via out reach

- President Elect Rich Speirs and I are meeting with minority community leaders to identify their community's legal needs and learn how we can promote profitable practices of law in those communities
- I am asking BOG members to go into the community at large as ambassadors of the bar. To facilitate that we have given them denim shirts and lapel pins with OSB logos (no if I can only get them to wear them).
- Sylvia and I meet, regularly, with the Chief Justice and with downtown firms; we will make our
- Eastern Oregon sweep in June, ending up in Pendleton with a full board meeting with the Tribal Counsel for the Confederated Tribes.
- Later this year we will do a Southern Oregon/Oregon Coast sweep.

- Bar staff has built an OSB President's Facebook page and established a perpetual presidential email address. You can reach me and future OSB presidents at president@osbar.org.

THANK YOU FOR ALLOWING ME TO SPEAK. TIMES ARE CHANGING BUT THE SKY IS NOT FALLING. TOGETHER WE WILL OVERCOME. TOGETHER, OUR MEMBERS WILL PROSPER.

## **Report of President-Elect**

Richard G. Spier

April 25, 2012

February 25	Classroom Law Project Breakfast
March 12-15	Bar Leadership Conference, Chicago, IL
March 21	BOG Committees BOG/ONLD Dinner ONLD Executive Committee
March 26-29	Western States Bar Conference, Palm Desert, CA
April 2	MBA Board
April 4	Fifty-Year Lunch
April 9	Meeting with Chief Justice, Salem
April 10	OSB/BBX Workgroup
April 15	Military & Veterans Law Section Executive Committee
April 23	Legal Citizen of the Year Dinner
April 24	BOG/PLF Board Dinner
April 25	BOG/BOG Committees/Joint PLF Board meeting BOG Alumni Dinner

(Report submitted April 2, 2014; events listed thereafter are scheduled for attendance)



# OREGON STATE BAR

## Board of Governors Agenda

Meeting Date: April 25, 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 &amp; Finance</i></p> <ul style="list-style-type: none"> <li>▪ On March 17 Jennifer Walton, who had been working as the temporary Controller, began as the regular Controller in the Accounting Department. Previously, Jennifer had been assistant Controller in an senior living housing management company. Jennifer worked diligently on closing the bar’s financial records for 2013 and was a key contributor in the audit for 2012 and 2013.</li> <li>▪ Moss Adams began audit field work at the bar on March 24. The report is expected to be ready for the May 23 Budget &amp; Finance Committee meeting.</li> <li>▪ In the next few weeks representatives of the department and HR will view demonstrations by payroll vendors with the intent to replace a soon to be unsupported system with a more efficient, state-of-the-arts system.</li> </ul> <p><i>Information Technology</i></p> <ul style="list-style-type: none"> <li>▪ The IT Manager and CFO have completed interviews and reference checks on candidates for a consultant to help the bar with the selection and implementation of a new software database. The selection will be announced at the April 25 BOG meeting.</li> </ul> <p><i>Facilities</i></p> <ul style="list-style-type: none"> <li>▪ The lease with Zip Realty ends in July, but is expected to renew its lease. The first floor 2,100 s.f. remains vacant with no recent interest.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ OSB member Eric McClendon has joined the OSB team as Referral &amp; Information Services Manger. He will focus on expansion of the Modest Means Program and completion of LRS software modules for percentage fee payments, along with staff training and development.</li> <li>▪ Event staff coordinated another successful 50-year Member Luncheon, and are preparing the nominations cycle for the annual OSB award presentations.</li> <li>▪ Marketing efforts have focused on assessment of our current outreach efforts, including effectiveness of email messages and newsletters sent by various bar programs. The RIS campaign on Craig’s List, a proven success, will expand through statewide postings and more targeted, topic-specific messages. Efforts to increase the effectiveness of CLE Seminars marketing is ongoing.</li> <li>▪ The cover story of the April Bulletin, “Taking Steps Toward Sustainability,” furthers one of the organization’s top priorities. This issue also includes lessons learned from the Client Assistance Office and an update on</li> </ul>

	<p>implementation of eCourt, including the planned roll-out for Multnomah County.</p> <ul style="list-style-type: none"> <li>▪ The OSB website continues to be a useful resource:                     <ul style="list-style-type: none"> <li>○ an <i>appreciable</i> increase in visits to the bar’s home page (+35%)</li> <li>○ <i>increased</i> traffic to the new CLE site that was launched in January.</li> <li>○ <i>Increased</i> traffic to the RIS home page <i>Getting Legal Help</i> that resulted from the Craigslist ads (+669%).</li> <li>○ <i>Increased</i> download of the bar exam application pdf (+137%)</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>CLE Seminars (Karen Lee)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Migrated to a new online live event registration system</li> <li>▪ Introduced a new CLE series, “Lunch and Learn,” which offered five sessions of legal writing and editing during the lunch hour via live seminar and live webcast.</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>▪ The annual OLIO Spring Social was held on April 4th at Willamette University College of Law. Travis Prestwich and Liani Reeves presented “Words of Wisdom.” There were 58 attendees, and eight graduates were recognized.</li> <li>▪ The annual joint ACDI/ DSEC retreat was held in March. Tom Kranovich presented welcoming remarks.</li> <li>▪ D&amp;I Awarded six public honors fellowships and eight clerkship stipends.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>General Counsel (includes CAO and MCLE) (Helen Hierschbiel)</b></li> </ul>	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> <li>▪ General Counsel arranged for Sarah McClain, the Director of Catholic Charities Immigration Legal Services, to be interviewed by Univision (an American Spanish language broadcast television network) regarding the dangers of <i>notarios publicos</i> who provide legal advice and assistance in immigration matters. The interview will be posted on the Univision website.</li> <li>▪ The May 2014 Bar Bulletin will include an article discussing the proposed recommendations of the International Trade in Legal Services Task Force.</li> <li>▪ The RPC 8.4 Drafting Committee has met three times and will have a draft proposal for the Board at its June meeting.</li> </ul> <p><i>Client Assistance Office</i></p> <ul style="list-style-type: none"> <li>▪ Department is fully staffed with the addition of Stacy Owen on March 21.</li> <li>▪ Staff is reaching out to various groups (e.g., OPDS and the Office of the Long Term Care Ombudsman) to discuss common concerns and cooperation.</li> <li>▪ The 2013 CAO Annual Report is finished.</li> <li>▪ The CAO Manager is participating on the Accessibility Review Team.</li> </ul> <p><i>MCLE</i></p> <ul style="list-style-type: none"> <li>▪ The MCLE Committee met on March 14 and recommended rule and regulation amendments that will be reviewed by the BOG at its April 25 meeting.</li> <li>▪ So far in 2014, we have processed 2,210 accreditation applications, including 377 requests for other types of CLE activities.</li> <li>▪ Notices of Noncompliance were sent to 399 members on March 4. The deadline to cure the noncompliance is May 5, 2014.</li> <li>▪ The MCLE Committee will meet at the OSB Center on Thursday, June 12, at</li> </ul>

	<p>noon.</p> <ul style="list-style-type: none"> <li>▪ Denise Cline, MCLE Program Manager, attended the CLEReg (Continuing Legal Education Regulators) mid-year meeting in Las Vegas in February. It is interesting to hear how other states are doing things. Distance learning is always a hot topic and Oregon is one of the few states that allows members to complete the entire CLE requirement with on-demand/recorded programs. On the other hand, Oregon is far behind many other states when it comes to electronically filing compliance reports.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Human Resources (Christine Kennedy)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Hired replacements for Disciplinary Counsel and Director of Regulatory Services, Client Assistance Office Attorney, Controller, and Referral and Information Services Manager.</li> <li>▪ Hiring replacements for Accounting Specialist – A/P (part time), CLE Customer Service Specialist (part time), Discipline Legal Secretary, Receptionist, and two part-time Referral and Information Services Assistants (one is bilingual).</li> <li>▪ Scheduled diversity and inclusion training, mandatory for all staff, for May 15<sup>th</sup>.</li> <li>▪ Scheduled voluntary self-defense training for June 12<sup>th</sup> presented by the Portland Police Bureau free of charge.</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>○ <i>Uniform Criminal Jury Instructions</i> 2013 supplement.</li> <li>○ <i>Uniform Civil Jury Instructions</i> 2013 supplement.</li> <li>○ Two chapters of the <i>Oregon Real Estate Deskbook</i>.</li> <li>○ Three chapters of <i>Appeal and Review: Beyond the Basics</i>.</li> </ul> </li> <li>▪ Print book revenue year-to-date is \$101,704 (compared to \$233,277 budget for the year).                         <ul style="list-style-type: none"> <li>○ Backlist sales account for \$15,939 of that revenue, which is an average of \$4,554 per month.</li> </ul> </li> <li>▪ We have started the pre-order marketing for <i>Appeal and Review: Beyond the Basics</i>, which is scheduled to go to the printer in early May.</li> <li>▪ In the next two to three weeks, we will launch our <i>Family Law</i> series eBooks on Amazon.com. There are 8 eBooks that will be sold for \$9.99 each. In the front of each eBook is a Quick Resource Guide with information about the OSB Lawyer Referral Service and about Legal Aid options.</li> <li>▪ Our new blog at <a href="http://legalpubs.osbar.org">http://legalpubs.osbar.org</a> has had 987 visitors to date. We have had 25 visitors who have found the blog through Google searches and 2 from Bing</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 Committee met and is forwarding a recommendation to the BOG’s April 25 meeting regarding disbursing both the annual unclaimed client funds and the funds that came from the Strawn v Farmers class action.</li> <li>▪ Staff is working to make the Legal Services Program information on the OSB website more transparent and updating the Legal Service Program Standards and Guidelines.</li> <li>▪ The deadline for LRAP applications was April 15. The LRAP Advisory Committee will meet in May to select loan recipients.</li> <li>▪ Staff continues to work with the American Bar Association to coordinate the</li> </ul>

	<p>Equal Justice Conference which will take place in Portland May 1-3.</p> <ul style="list-style-type: none"> <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>▪ Assisting several media outlets in preparing for eCourt, and changes in how they access information.</li> <li>▪ Assisting the OCDLA in planning a Media Relations program at their annual conference in June.</li> <li>▪ Held our Annual “Building a Culture of Dialogue” program at the bar center in March (Pat Ehlers attended)</li> <li>▪ Planning Q&amp;A programs at two TV stations regarding coverage of high-profile criminal cases.</li> <li>▪ Continuing input into planning for any potential media coverage of Cy Pres or other legislative efforts.</li> <li>▪ Managing continued coverage of numerous discipline cases.</li> <li>▪ Consulting with Oregonian on several “trend/issue” stories, including Legal Technicians movement, the challenges faced by new lawyers, and the plight of legal services funding.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Member Services (Dani Edwards)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The OSB and ABA House of Delegates election began on April 7. Both the ABA delegate and young delegate HOD races were contested this year. The number of OSB HOD seats up for election increased 27% over last year for a total of 56 open positions. There are two contested races for the OSB HOD (regions 3 and 7) and only 8 vacant seats will require BOG appointments (regions 4, 5, and out of state).</li> <li>▪ Membership enrollment lists were distributed to section chairs. In general, section membership has increased for all but four sections. There are just over 16,500 section members in the 41 sections.</li> <li>▪ The 2013 committee and section annual reports are now available online.</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>▪ Preparing for a May 15 NLMP CLE and Social at the bar center, 2:30 – 5:00, followed by reception. BOG members encouraged to attend.</li> <li>▪ Implementing a Mentor Recruitment Plan broken down by county/region, and by practice area.</li> <li>▪ Finalizing preparations for another set of new lawyers swearing in May.</li> <li>▪ Speaking at two of the three law schools – largely to 3Ls about what to expect out of the mentoring program.</li> <li>▪ Establishing our timeline and mechanisms for suspending noncompliant lawyers. We may have to employ these policies for first time this year. Two lawyers are in danger of suspension.</li> <li>▪ Attending a national legal mentoring conference in Columbus Ohio in May. Also accepted position on Executive Committee of National Legal Mentoring Consortium. In that capacity, I’ve recruited Justice De Muniz to attend the Ohio conference as keynote, to share Oregon’s experience with the mentoring program.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Public Affairs (Susan Grabe)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The Legislative Forum was held on April 17, 2014; 23 bills were be considered for bar sponsorship and introduction in the 2015 Legislative Session. Outreach to both internal and external interest groups will take place over the next few months leading up to the session.</li> <li>▪ OSB President Tom Kranovich, BOG member Rey Heysell and CEJ</li> </ul>

	<p>representatives travelled to Washington, DC for ABA Lobby Day to meet with our congressional delegation in support of federal funding for legal services as well as to voice oppositions to legislation that would require businesses providing professional services to switch to an accrual instead of a cash method of accounting. Other topics discussed included funding for the federal courts and federal public defender offices.</p> <ul style="list-style-type: none"> <li>▪ Public Affairs staff is preparing a 2014 Session edition of the Legislation Highlights Notebook which summarizes the highlights of the short session. Authors and editors have been selected and the publication should be ready for distribution sometime near the first of June.</li> <li>▪ 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. Public Affairs has been actively working with OJD to educate bar members about Oregon eCourt implementation and how it will affect their practices.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Regulatory Services (Dawn Evans)</b></li> </ul>	<p><i>Admissions</i></p> <ul style="list-style-type: none"> <li>▪ 213 applicants sat for the February 2014 Oregon bar exam. The pool for this exam was up slightly from last year’s total of 197 and slightly above the three year average (209) for February exams. The Board of Bar Examiners recently concluded the grading of the exam and the results were released on April 18<sup>th</sup>. The swearing-in ceremony is May 2, 2014 at Willamette University. Members of the Supreme Court and bar leaders will be in attendance.</li> <li>▪ The July bar exam is scheduled for July 29 and 30 at the Janzen Beach Red Lion on the River. The timely filing deadline for the July exam is April 15, so it is too early to compare the size of this applicant pool to that of previous years.</li> <li>▪ The Board of Bar Examiners continues to consider adoption of the Uniform Bar Exam (UBE)</li> <li>▪ The Annual Bar Admission Conference is scheduled May 1-4, 2014 in Seattle. The NCBE is paying for one justice and three Board or staff members to attend.</li> </ul> <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"> <li>▪ Dawn Miller Evans, new Director of Regulatory Services and Disciplinary Counsel, joined the bar on April 21, 2014.</li> <li>▪ A lunch meeting for DCO and several disciplinary defense counsel is scheduled for April 30, 2014; this will provide an opportunity for the defense counsel to meet Dawn and exchange ideas on improvements to the discipline system.</li> <li>▪ We are currently accepting applications and reviewing candidates for a vacant legal secretary position.</li> <li>▪ Since implementation of BR 7.1 last November, four lawyers have been administratively suspended for failing to respond to DCO. None have sought reinstatement.</li> <li>▪ The ABA Discipline System Evaluation is scheduled for the week of June 9, 2014. Staff is coordinating appointments for the discipline-system</li> </ul>

	<p>participants the evaluation team wants to interview and is compiling requested information for the ABA team. Included in the group of interviewees will be one or more BOG members.</p> <ul style="list-style-type: none"> <li>▪ We are gearing up for the sixth presentation of Ethics School on May 9, 2014, at the Bar Center. Staff from DCO, CAO and OAAP will present the day-long course with interactive hypotheticals and more than 500 power point slides. BOG members interested in attending should contact Matt Campbell for information or registration.</li> </ul>
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**Executive Director’s Activities November 25, 2013 – February 21, 2014**

Date	Event
2/25	Classroom Law Project Appreciation Breakfast
2/26	Lunch @ Sussman Shank
3/5	Lunch @ Gevurtz Menashe
3/5	Queen’s Bench Law School Mixer
3/8	Client Security Fund Meeting
3/11-3/15	NABE Chief Executives Retreat and ABA Bar Leaders Institute
3/17	Bryan Gruetter Sentencing
3/18	Lunch @ Garvey Schubert
3/18	Farewell Party for John Gleason
3/20	NW Investments Open House
3/21	BOG Committees and ONLD Dinner
3/25-29	Western States Bar Conference
4/4	50-Year Member Luncheon
4/9	Meeting with Chief Justice
4/10	OSB/BBX Workgroup Meeting
4/10	Tonkon Torp Litigation Dept. Spring Party
4/14	Innovation Work Group Meeting
4/17	BOG Special Meeting
4/17	MBA Past Presidents’ Reception
4/18	Partners in Diversity Breakfast of Champions
4/22	Lunch @ Ball Janik
4/23	Meeting with Chief Justice and Dawn Evans
4/23	Classroom Law Project Legal Citizen Dinner
4/24	BOG/PLF Dinner

## Notes from Meeting with Chief Justice Balmer

April 9, 2014

Supreme Court Conference Room

Present: Chief Justice Balmer, Richard Spier, Sylvia Stevens, Kingsley Click, Phil Schradle, Lisa Norris-Lampe, Phil Lemman.

1. The CJ confirmed that Tom Kranovich plans to attend the May 2 swearing-in, but that if he is unavailable, Rich Spier will speak in Tom's place.
2. Brief discussion of the failed *cy pres* bill. The CJ expects the OSB will continue to support the bill when it is reintroduced in the 2015 session. He mentioned that Senator Courtney's former chief staff aide is very interested in the bill and may want to work with the bar or others.
3. The bar member response to the roll-out of eCourt is very positive. The CJ appreciates the assistance of the OSB in getting information out to the membership. Another notice for OSB distribution will be forthcoming.
4. Mr. Spier reported on activities of the BOG, including increasing outreach for BOG candidates (both elected and appointed) and looking at ways to bridge the "justice gap." He also reported on his recent attendance at the ABA Bar Leaders Institute and the Western States Bar Conference and expressed his pleasure at seeing how well-respected the OSB is among other bars and bar leadership.
5. Ms. Stevens updated the CJ on the upcoming ABA Discipline System Evaluation that will be conducted the week of June 9. The CJ reiterated his sorrow about the departure of John Gleason, but is looking forward to working closely with John's successor. There was a brief discussion of how the BOG will follow up on the evaluation report.
6. Ms. Norris-Lampe reported on the status of the development of interactive divorce forms.
7. Ms. Stevens raised the issue of how child support delinquency suspensions are handled and there followed a discussion about whether the suspensions could be handled administratively by the OSB. Ms. Stevens will look into the statutory requirements and report further.
8. The CJ expressed support for adopting the ABA's Guidelines for an International Regulatory Information Exchange. Ms. Stevens will follow-up with the BOG and the Court as appropriate.
9. The rule increasing *pro hac vice* fees will be adopted in May. This will produce approximately \$100,000 in additional funds for legal services.
10. The CJ concluded the meeting by reporting that the Judicial Department's budget holdback issues has been resolved.



2014



# Western States Bar Conference

March 26 - 29

JW Marriott Desert Springs Resort & Spa, Palm Desert, California



# Welcome from the President



Welcome to beautiful, sunny *Palm Desert, CA* for the *2014 Western States Bar Conference!* I hope you will find the conference rewarding and enjoyable. You will find many dining options at the hotel and surrounding area as well as activities for everyone, including a fitness center, spa, swimming, biking, hiking, golf, and plenty of shopping, so I hope you take advantage of all that the Marriott and the Palm Desert/Palm Springs area has to offer.

The theme for this year's conference is "The Role of the Bar in our Changing Society." Last year's conference dealt with change. This year's conference will be a continuation of that theme. Nineteen states have legalized the use and possession of small amounts of marijuana for medical purposes with two of those states, Washington and Colorado, having legalized the use and possession of small amounts of marijuana for recreational purposes. More states are projected to legalize recreational marijuana use. Alison Holcomb, who is the primary author of Washington's I-502, and who has been invited to numerous countries since, will be

discussing marijuana legalization. She will be joined by Doug Ende, Chief Disciplinary Counsel for the Washington State Bar Association and Charles Garcia, President-elect of the Colorado Bar Association who will discuss the issues facing attorneys who practice in states where there is a tension between federal and state law.

The legal profession does not reflect the diversity of the general population – the judiciary even more so. Justice Steven Gonzalez from the Washington State Supreme Court, Justice Monica Marquez from the Colorado Supreme Court, and Erika Anderson, President of the State Bar of New Mexico, will be discussing bias in the judiciary and what the Bar should be doing.

Voters often treat judges as legislators and when judges make unpopular rulings, they are at risk for losing their seats in the next election. We will hear from former California State Supreme Court Justice, Joseph Grodin who was one such judge and from Guy Cook, President of the Iowa State Bar Association, where Iowa just went through such an election.

Our keynote speaker, Professor Erwin Chemerinsky, Dean of the University of California, Irvine School of Law, will provide an interesting and informative program on the 60th anniversary of Brown and the 50th anniversary of the Civil Rights Act of 1964.

If you are in need of anything to make your Western States Bar Conference experience more enjoyable, please contact me or the State Bar of New Mexico conference coordinators, Joe Conte and Kris Becker.

A handwritten signature in black ink that reads "Salvador A. Mungia". The signature is written in a cursive, flowing style.

Salvador A. Mungia  
President



# Activities & Events



**Attire:** Dress is resort casual.

**Golf Tournament:** Friday, March 28, 1 p.m., JW Marriott Desert Springs Resort & Spa, Palm Course. Team assignments will be posted at the WSBC registration desk on Thursday morning. Lunch is not included.

**CLE Credit:** The program has been approved for 8.5 hours of General CLE Credit in New Mexico. Each attorney will receive a Uniform Certificate of Attendance, which will need to be filed with the appropriate MCLE Board or Commission in that state within 30 days of the end of the conference to receive credit.

The program materials on the flash drive are current as of March 17, 2014; materials received after that date will be available on the Web site at <http://www.nmbar.org/Attorneys/WSBC/WSBCInfo.html>.

**Weather:** The average daily high in Palm Desert is 83° and the low is 57°.

**Dining/Activities:** Dining options at the Marriott include Rockwood Grill, Mikado Japanese Steakhouse, Fisherman's Landing, The Lobby and Sushi Bar, and Oasis Poolside Bar & Grille; the Marriott can provide a list of restaurants off-property as well. Some of the activities include a fitness center and spa, swimming, biking, hiking, golf, and shopping in the Palm Desert/Palm Springs area.

# Schedule of Events

All General Sessions will be held in Desert Salons 1-4

## Wednesday, March 26

### 9:00 a.m. – Noon

Western States Bar Executives Retreat  
Facilitator Paula Littlewood, Executive Director,  
Washington State Bar Association

#### DIRECTOR SUITE I

*Sponsored by the ABA Division for Bar Services*

### 4:30 p.m. – 5:30 p.m.

Registration  
DESERT SALONS 1-4 FOYER

### 6:00 p.m. – 8:00 p.m.

Welcome Reception Honoring Past Presidents  
THE POINTE  
*Sponsored by the State Bar of California*

## Thursday, March 27

### 7:30 a.m. – 11:30 a.m.

Registration/Exhibitors  
DESERT SALONS 1-4 FOYER

### 7:30 a.m. – 8:00 a.m.

Breakfast  
SANTA ROSA BALLROOM  
*Sponsored by Casemaker*

### 8:00 a.m. – 8:30 a.m.

Welcome to the Conference  
Salvador A. Mungia, WSBC President, 2013-2014

### 8:30 a.m. – 8:35 a.m.

Overview of the Conference  
Joe Conte, WSBC Secretary-Treasurer  
Executive Director, State Bar of New Mexico

### 8:35 a.m. – 10:05 a.m.

*The Changing Marijuana Landscape  
and What that Means for the Legal Community*  
Alison Holcomb, Director for “New Approach Washington”  
and primary drafter of I-502  
Douglas J. Ende, Chief Disciplinary Counsel, Washington  
State Bar Association  
Charles F. Garcia, President-elect, Colorado Bar Association

### 10:05 a.m. – 10:20 a.m.

Break  
DESERT SALONS 1-4 FOYER

### 10:20 a.m. – 10:50 a.m.

ABA Task Force on Preservation of the Justice System  
Wm. T. (Bill) Robinson III, Co-Chair

### 10:50 a.m. – 11:20 a.m.

Roll Call of the States (Hawaii, Arizona, Washington, Idaho)  
*Sponsored by ALPS*

### 11:20 a.m. LUNCH ON OWN

### 12:30 p.m. – 5:30 p.m.

Optional Group Event:  
Winery Tour, Temecula Valley Wine Country  
(transportation and snack included in ticket price)  
TOUR LOBBY

DINNER ON OWN

## Friday, March 28

### 7:45 a.m. – 12:30 p.m.

Registration/Exhibitors  
DESERT SALONS 1-4 FOYER

### 7:45 a.m. – 9:05 a.m.

Breakfast  
Extended Breakout Sessions for Bar Leaders  
*Sponsored by Casemaker*

#### Large State Bars

Facilitated by Chuck Turner, Executive Director,  
Colorado Bar Association  
SAN JACINTO BALLROOM

#### Small State Bars

Facilitated by Chris Manos, Executive Director,  
State Bar of Montana  
SANTA ROSA BALLROOM

### 9:05 a.m. – 9:15 a.m.

Transfer Break

### 9:15 a.m. – 9:45 a.m.

Roll Call of the States (Alaska, North Dakota, Colorado,  
Montana)  
*Sponsored by ALPS*

**9:45 a.m. – 11:15 a.m.**

*Bias in the Election/Selection/Retention of the Judiciary*  
The Hon. Steve Gonzalez, Associate Justice, Washington State Supreme Court  
The Hon. Monica M. Márquez, Associate Justice, Colorado Supreme Court  
Erika Anderson, President, State Bar of New Mexico

**11:15 a.m. – 11:30 a.m.**

Break  
**DESERT SALONS 1-4 FOYER**

**11:30 a.m. – 12:15 p.m.**

*Hot Topics in the Bar:*

- *Texas Healthcare Exchange*, Michelle Hunter, Executive Director, State Bar of Texas
- *Preventing Fraud on the Undocumented Community*, Joe Dunn, Executive Director, State Bar of California
- *Deunification of Bar Associations*, Paula Littlewood, Executive Director, Washington State Bar Association

**12:15 p.m. – 12:30 p.m.**

Nominating Committee Meeting

**1:00 p.m. – 5:00 p.m.**

Golf Tournament  
**MARRIOTT PALM COURSE (MEET AT GOLF CART BARN)**  
*Sponsored by ALPS*

**6:00 p.m. – 9:00 p.m.**

Reception/Dinner  
**SANTA ROSA BALLROOM**  
*Sponsored by Fastcase*



**7:30 a.m. – 12:30 p.m.**

Registration/Exhibitors  
**DESERT SALONS 1-4 FOYER**

**7:30 a.m. – 8:30 a.m.**

Breakfast  
**SANTA ROSA BALLROOM**  
*Sponsored by Casemaker*

Breakfast for Presidents-Elect  
Hosted by William C. Hubbard, ABA President-Elect  
**SAN JACINTO BALLROOM**

**8:30 a.m. – 9:30 a.m.**

*60<sup>th</sup> Anniversary of Brown/50<sup>th</sup> Anniversary of the Civil Rights Act of 1964*  
Keynote: Professor Erwin Chemerinsky, Dean, University of CA, Irvine School of Law

**9:30 a.m. – 10:00 a.m.**

Roll Call of the States (Utah, Texas, Wyoming, Nevada)  
*Sponsored by ALPS*

**10:00 a.m. – 10:15 a.m.**

Break  
**DESERT SALONS 1-4 FOYER**

**10:15 a.m. – 10:30 a.m.**

*Bar Services/ABA Update*  
William C. Hubbard, ABA President-Elect  
Kathryn Grant Madigan, ABA Standing Committee on Bar Activities & Services  
Linda Klein, ABA Access to Justice

**10:30 a.m. – 11:00 a.m.**

Roll Call of the States (California, South Dakota, Oregon, New Mexico)  
*Sponsored by ALPS*

**11:00 a.m. – 12:00 p.m.**

*Consequences for Judges Who Make Tough Rulings*  
The Hon. Joseph R. Grodin (ret.), California Supreme Court  
Guy Cook, President, Iowa State Bar Association

**12:00 p.m. – 12:15 p.m.**

Conclusion of Conference  
Announcement of new leadership through 2016

**12:15 p.m. ADJOURN**

**12:15 p.m. – 12:30 p.m.**

Annual Business Meeting (for WSBC leadership)

# Western States Bar Conference Presidents

Harry J. McClean, California .....	1949-1951	Reed L. Martineau, Utah .....	2001-2002
Alfred Pence, Wyoming .....	1951-1952	Hod Greeley, Hawaii .....	2002-2003
Robert A. Leedy, Oregon .....	1952-1953	Don Bivens, Arizona .....	2003-2004
Thomas H. Robertson, Idaho .....	1953-1954	Carl E. Olsson, Idaho .....	2004-2005
John Shaw Field, Nevada .....	1954-1955	Dale Carlisle, Washington.....	2005-2006
H. Cleveland Hall, Montana .....	1955-1956	Andrew Suenram, Montana .....	2006-2007
Walter E. Craig, Arizona .....	1956-1957	Thomas Fritz, South Dakota.....	2007-2008
William H. Robinson, Colorado .....	1957-1958	Daniel J. O'Brien, New Mexico.....	2008-2009
A. H. Nebeker, Utah.....	1958-1959	Eduardo Rodriguez, Texas.....	2009-2010
H. B. Kidwell, Hawaii .....	1959-1960	John J. Tiemessen, Alaska.....	2010-2011
Glenn R. Jack, Oregon .....	1960-1961	David S. Maring, North Dakota .....	2011-2012
Joseph H. Gordon, Washington.....	1961-1962	Nathan D. Alder, Utah.....	2012-2013
William Gaunt, Colorado .....	1962-1963	Salvador A. Mungia, Washington .....	2014-2015
Jess R. Nelson, New Mexico .....	1963-1964		
Roy A. Bronson, California.....	1964-1965		
Gilbert B. St. Clair, Idaho .....	1965-1966		
Herbert H. Anderson, Oregon.....	1966-1967		
Elmer J. Scott, Wyoming.....	1967-1968		
John Gavin, Washington.....	1968-1969		
Ray R. Christensen, Utah .....	1969-1970		
Edward L. Benoit, Idaho.....	1970-1971		
John Joe Wilkinson, Colorado.....	1971-1972		
John Huneke, Washington.....	1972-1973		
John U. Yerkovich, Oregon.....	1973-1974		
David K. Robinson, California .....	1974-1975		
Jerry V. Smith, Idaho .....	1975-1976		
Henry Loble, Montana .....	1976-1977		
Joseph Novak, Utah .....	1977-1978		
Mark I Harrison, Arizona.....	1978-1979		
Leo J. Puccinelli, Nevada .....	1979-1980		
James R. Crouch, New Mexico .....	1980-1981		
David D. Hoff, Washington.....	1981-1982		
Jon R. Kerian, North Dakota .....	1982-1983		
Donna C. Willard, Alaska .....	1983-1984		
Dwight M. Rush, Hawaii .....	1984-1985		
Thomas S. Smith, Wyoming .....	1985-1986		
Charles W. Deaner, Nevada .....	1986-1987		
John J. Haugh, Oregon .....	1987-1988		
O. Wood Moyle III, Utah.....	1988-1989		
John J. Bouma, Arizona.....	1989-1990		
Richard C. Fields, Idaho .....	1990-1991		
Robert R. Redman, Washington.....	1991-1992		
Burke M. Critchfield, California.....	1992-1993		
Damon Gannett, Montana .....	1993-1994		
Richard F. Rowley II, New Mexico .....	1994-1995		
Kermit Edward Bye, North Dakota .....	1995-1996		
Wiley Y. Daniel, Colorado .....	1996-1997		
Daniel E. Winfree, Alaska .....	1997-1998		
Timothy J. Kirven, Wyoming .....	1998-1999		
Steven T. Walther, Nevada.....	1999-2000		
Dennis C. Karnopp, Oregon.....	2000-2001		



## Secretaries/Treasurers

Leland M. Cummings, Utah.....	1946-1954
John H. Holloway, Oregon.....	1954-1961
Alice Ralls, Washington .....	1961-1966
Dean W. Sheffield, Utah .....	1966-1971
Eldon L. Husted, Arizona.....	1971-1973
G. Edward Friar, Washington.....	1973-1974
Ronald L. Kull, Idaho .....	1974-1978
Eldon L. Husted, Arizona.....	1978-1979
Celene Greene, New Mexico and Minnesota...	1979-1983
Robert J. Elfers, Oregon.....	1983-1985
Celene Greene, Oregon .....	1985-1986
Bruce Hamilton, Arizona .....	1986-1991
Linda L. McDonald, New Mexico and Texas.....	1991-1996
Charles C. Turner, Colorado.....	1996-2000
Diane K. Minnich, Idaho .....	2001-2005
Allen Kimbrough, Nevada .....	2005-2006
Diane K. Minnich, Idaho .....	2006-2007
Kimberly Farmer, Nevada .....	2007-2010
Joe Conte, New Mexico.....	2011-2015

# Western States Bar Conference Meeting Sites

San Francisco.....	1949	St. Thomas, Virgin Islands .....	1983
Salt Lake City .....	1950	Kauai .....	1984
Denver .....	1951	San Diego.....	1985
Portland .....	1952	Waikoloa .....	1986
Reno.....	1953	San Antonio.....	1987
Sun Valley.....	1954	Kauai .....	1988
Phoenix .....	1955	Monterey .....	1989
Cheyenne.....	1956	Waikoloa .....	1990
Santa Fe.....	1957	Santa Barbara .....	1991
San Francisco.....	1958	Maui.....	1992
Salt Lake City .....	1959	Carmel .....	1993
Honolulu .....	1960	Maui.....	1994
Seattle.....	1961	San Diego.....	1995
Denver .....	1962	Kauai .....	1996
Phoenix .....	1963	Scottsdale.....	1997
Reno.....	1964	Waikoloa .....	1998
Monterey .....	1965	San Diego.....	1999
Las Vegas.....	1966	Maui.....	2000
Guadalajara, Mexico .....	1967	Waikoloa .....	2001
Coronado .....	1968	Las Vegas.....	2002
Maui.....	1969	Kauai .....	2003
Colorado Springs .....	1970	Scottsdale.....	2004
Scottsdale.....	1971	Maui.....	2005
Albuquerque .....	1972	San Diego.....	2006
Vancouver, British Columbia .....	1973	Kohala Coast .....	2007
Guadalajara, Mexico .....	1974	Tucson.....	2008
Monterey .....	1975	Turtle Bay, Oahu .....	2009
Palm Springs.....	1976	San Antonio .....	2010
Maui.....	1977	Maui.....	2011
Scottsdale.....	1978	Las Vegas.....	2012
San Diego.....	1979	Kauai .....	2013
Acapulco, Mexico.....	1980	Palm Desert .....	2014
Tucson.....	1981	Kohala Coast .....	2015
Maui.....	1982		



**2015 Western States Bar Conference**  
**Mauna Lani Bay Hotel & Bungalows**  
**Kohala Coast, Island of Hawaii**  
**March 25-28, 2015**



Welcome Reception



Bar Executives



Breakfasts



Roll Calls of the States  
and Golf Tournament



Friday Night Dinner

Thank you to our sponsors for their support  
of the 2014 Western States Bar Conference!

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**Memo Date:** April 11, 2014  
**From:** R. Lynn Haynes, Discipline and Regulatory Services Office Manager  
**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 February 2014, the Supreme Court has taken no action in any disciplinary matters.

#### b. Disciplinary Board

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

- *In re John L. Ballard* of Hermiston (dismissal) became final on February 11, 2014; and
- *In re Susan C. Steves* of Bend (disbarment) became final on April 8, 2014.

Disciplinary Board trial panels issued the following opinions since February 2014:

- A trial panel recently issued an opinion in *In re Peter M. Schannauer* of Bend (disbarment with restitution) for failure to provide competent representation, neglect of legal matter, failure to keep a client informed, failure to explain a matter to the extent necessary to permit the client to make informed decisions, failure to account for client property upon request, and failure to respond to lawful demand for information from a disciplinary authority. This is the second of three formal proceedings alleging neglect and improper handling of client funds;
- Another trial panel issued an opinion in *In re Justin E. Throne* of Klamath Falls (1-year suspension, all stayed, pending completion of probation) for failure to respond to a lawful demand for information from a disciplinary authority, criminal conduct reflecting adversely on fitness to practice law: violation of 26 USC § 7203; and conduct involving misrepresentation; and
- Another trial panel issued an opinion in *In re Eric Einhorn* of Hood River (3-year suspension, 30 months stayed, pending completion of probation) for failure to provide competent



representation, engaging in current client conflicts of interest, and failing to respond to lawful demand for information from a disciplinary authority.

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Gregg A. McDonald* of Portland (reprimand); *In re Katherine C. Tank* of Bend (90-day suspension); and *In re Montgomery W. Cobb* of Portland (30-day suspension).

## **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; under advisement  
*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 Debbe J. vonBlumenstein*—February 27, 2014 (sanctions memo filed)

## **3. Trials.**

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

There are no trial dates on the docket at this time.

## **4. Diversions.**

The SPRB approved the following diversion agreement since February 2014:

*In re Terrance C. Hunt* – effective December 31, 2013

**5. Admonitions.**

The SPRB issued 1 letter of admonition in February. The outcome in this matter is as follows:

- 1 lawyer has accepted their admonition;
- 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	24/25
March	26/26	21/25	38/39	30/30	41/45
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>94/101</b>

\* = includes IOLTA compliance matters

As of April 1, 2014, there were 236 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 33% are less than three months old, 18% are three to six months old, and 49% are more than six months old. Fifteen of these matters will be on the SPRB agenda in April.

**7. Reinstatements.**

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

RLH

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**Memo Date:** April 11, 2014  
**From:** Ben Eder, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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Since the last BOG meeting the ONLD Executive Committee met twice to conduct business. Below is a list of updates on the ONLD's work since February.

- In conjunction with the February Executive Committee meeting we co-hosted a half-day practical skills program in Eugene with U of O and the law student association. The program featured a dual-track CLE program followed by a social with local attorneys and law students at a downtown restaurant.
- The CLE Subcommittee held monthly brown bag lunch CLE programs in Portland and co-hosted a program with the MBA Professionalism Committee.
- The Law Related Education Subcommittee launched the inaugural ONLD art contest for middle and junior high school students. Participants are challenged to submit a piece of work that focuses on American Democracy and the Rule of Law: *Why Every Vote Matters*. The contest and the topic coincide with Law Day on May 1 and this year's ABA theme.
- The Law School Outreach subcommittee hosted a practical skills program with law students and new lawyers at Lewis and Clark Law School. Attendees benefited from the two hour program and the social networking event following the program.
- The Member Services Subcommittee sponsored an informal social event in Portland the last week of February.
- The Pro Bono Subcommittee implemented an ABA's Wills for Heroes Clinic in March. More than 30 volunteers participated in the event to provide first responders basic estate planning documents.
- The Executive Committee is working on content for a resource webpage where new lawyers and recent graduates can find Oregon-specific repayment programs or OSB public interest law forgiveness options.

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
12/31/2013**

**TABLE OF CONTENTS**

<u>Page</u>	<u>Description</u>
2	Combined Balance Sheet
3	Primary Program Income Statement
4	Primary Program Operating Expenses
5	Excess Program Income Statement
6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Balance Sheet  
12/31/2013**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$3,354,491.17	\$2,931,542.67
Investments at Fair Value	44,675,979.03	42,396,004.86
Due from Reinsurers	1,685,944.28	1,378,613.35
Other Current Assets	280,612.93	265,996.39
Net Fixed Assets	866,682.61	980,612.12
Claim Receivables	36,258.04	66,271.00
Other Long Term Assets	<u>9,825.00</u>	<u>13,919.48</u>
<b>TOTAL ASSETS</b>	<b><u>\$50,909,793.06</u></b>	<b><u>\$48,032,959.87</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	\$155,314.46	\$193,841.75
Due to Reinsurers	\$18,893.00	\$17,381.00
Deposits - Assessments	9,794,480.00	10,128,861.50
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	11,100,000.00	14,200,000.00
Liability for Claim Expense	14,000,000.00	12,500,000.00
Liability for Future ERC Claims	2,400,000.00	2,700,000.00
Liability for Suspense Files	1,500,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	<u>2,300,000.00</u>	<u>2,400,000.00</u>
<b>Total Liabilities</b>	<b><u>\$41,639,505.45</u></b>	<b><u>\$43,985,704.76</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>5,223,032.50</u>	<u>4,828,424.53</u>
<b>Total Fund Equity</b>	<b><u>\$9,270,287.61</u></b>	<b><u>\$4,047,255.11</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$50,909,793.06</u></b>	<b><u>\$48,032,959.87</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Income Statement  
12 Months Ended 12/31/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$25,042,532.75	\$25,049,000.00	\$6,467.25	\$24,803,325.67	\$25,049,000.00
Installment Service Charge	391,097.00	390,000.00	(1,097.00)	394,631.00	390,000.00
Other Income	45,191.02	0.00	(45,191.02)	69,868.17	0.00
Investment Return	<u>4,319,796.86</u>	<u>2,462,823.00</u>	<u>(1,856,973.86)</u>	<u>4,295,120.04</u>	<u>2,462,823.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$29,798,617.63</u></b>	<b><u>\$27,901,823.00</u></b>	<b><u>(\$1,896,794.63)</u></b>	<b><u>\$29,562,944.88</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	\$18,274,500.00			\$20,760,000.00	
Actuarial Adjustment to Reserves	(133,446.01)			(2,435,227.40)	
Net Changes in AOE Liability	(100,000.00)			100,000.00	
Net Changes in ERC Liability	(300,000.00)			0.00	
Net Changes in Suspense File Liab.	100,000.00			0.00	
Coverage Opinions	151,309.11			141,424.92	
General Expense	82,748.77			68,234.72	
Less Recoveries & Contributions	16,935.88			(161,352.20)	
Budget for Claims Expense		<u>\$20,725,920.00</u>			<u>\$20,725,920.00</u>
<b>Total Provision For Claims</b>	<b><u>\$18,092,047.75</u></b>	<b><u>\$20,725,920.00</u></b>	<b><u>\$2,633,872.25</u></b>	<b><u>\$18,473,080.04</u></b>	<b><u>\$20,725,920.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$2,191,872.31	\$2,283,201.00	\$91,328.69	\$2,215,883.07	\$2,283,201.00
Accounting Department	809,275.63	786,223.00	(23,052.63)	748,742.02	786,223.00
Loss Prevention Department	1,829,742.96	1,902,969.00	73,226.04	1,824,647.59	1,902,969.00
Claims Department	2,538,325.19	2,681,914.00	143,588.81	2,398,157.09	2,681,914.00
Allocated to Excess Program	<u>(1,105,104.00)</u>	<u>(1,105,104.00)</u>	<u>0.00</u>	<u>(1,099,825.92)</u>	<u>(1,105,104.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$6,264,112.09</u></b>	<b><u>\$6,549,203.00</u></b>	<b><u>\$285,090.91</u></b>	<b><u>\$6,087,603.85</u></b>	<b><u>\$6,549,203.00</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$306,172.00	\$306,172.00	\$23,693.21	\$306,172.00
Depreciation and Amortization	\$166,574.10	\$208,000.00	\$41,425.90	\$175,500.35	\$208,000.00
Allocated Depreciation	<u>(30,056.04)</u>	<u>(30,056.00)</u>	<u>0.04</u>	<u>(35,996.04)</u>	<u>(30,056.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$24,492,677.90</u></b>	<b><u>\$27,759,239.00</u></b>	<b><u>\$3,266,561.10</u></b>	<b><u>\$24,723,881.41</u></b>	<b><u>\$27,759,239.00</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>\$5,305,939.73</u></b>	<b><u>\$142,584.00</u></b>	<b><u>(\$5,163,355.73)</u></b>	<b><u>\$4,839,063.47</u></b>	<b><u>\$142,584.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
12 Months Ended 12/31/2013**

	<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	\$335,757.69	\$4,145,085.93	\$4,148,175.00	\$3,089.07	\$3,984,099.59	\$4,148,175.00
Benefits and Payroll Taxes	38,239.58	1,382,384.15	1,576,202.00	193,817.85	1,410,430.61	1,576,202.00
Investment Services	7,119.00	28,017.75	28,000.00	(17.75)	27,718.50	28,000.00
Legal Services	2,304.00	13,738.00	16,000.00	2,262.00	13,240.50	16,000.00
Financial Audit Services	0.00	22,600.00	22,600.00	0.00	21,700.00	22,600.00
Actuarial Services	0.00	19,731.25	19,000.00	(731.25)	18,900.00	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	3,850.00	0.00
Information Services	2,372.50	136,221.29	96,000.00	(40,221.29)	86,814.17	96,000.00
Document Scanning Services	3,205.09	47,085.77	75,000.00	27,914.23	52,034.79	75,000.00
Other Professional Services	11,439.84	63,733.95	57,400.00	(6,333.95)	65,375.04	57,400.00
Staff Travel	1,946.78	17,375.84	12,450.00	(4,925.84)	16,159.55	12,450.00
Board Travel	10,197.62	35,514.23	39,000.00	3,485.77	38,011.15	39,000.00
NABRICO	0.00	10,958.51	10,500.00	(458.51)	9,996.13	10,500.00
Training	607.49	19,211.29	24,500.00	5,288.71	20,496.94	24,500.00
Rent	42,145.08	521,137.51	520,741.00	(396.51)	511,782.29	520,741.00
Printing and Supplies	7,779.16	59,290.46	79,000.00	19,709.54	60,187.24	79,000.00
Postage and Delivery	6,642.04	33,399.94	36,750.00	3,350.06	37,715.25	36,750.00
Equipment Rent & Maintenance	1,445.79	40,879.11	36,200.00	(4,679.11)	38,624.51	36,200.00
Telephone	4,879.82	48,674.50	43,000.00	(5,674.50)	36,563.64	43,000.00
L P Programs (less Salary & Benefits)	56,379.29	373,907.75	433,560.00	59,652.25	389,833.69	433,560.00
Defense Panel Training	0.00	9,969.91	23,100.00	13,130.09	0.00	23,100.00
Bar Books Grant	16,666.63	200,000.00	200,000.00	0.00	200,000.00	200,000.00
Insurance	32,593.49	71,471.49	90,129.00	18,657.51	70,792.93	90,129.00
Library	5,448.93	32,659.42	33,000.00	340.58	31,047.06	33,000.00
Subscriptions, Memberships & Other	3,618.96	36,168.04	34,000.00	(2,168.04)	42,056.19	34,000.00
Allocated to Excess Program	<u>(92,092.00)</u>	<u>(1,105,104.00)</u>	<u>(1,105,104.00)</u>	<u>0.00</u>	<u>(1,099,825.92)</u>	<u>(1,105,104.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$498,696.78</u></b>	<b><u>\$6,264,112.09</u></b>	<b><u>\$6,549,203.00</u></b>	<b><u>\$285,090.91</u></b>	<b><u>\$6,087,603.85</u></b>	<b><u>\$6,549,203.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Income Statement  
12 Months Ended 12/31/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$747,993.00	\$746,750.00	(\$1,243.00)	\$733,700.00	\$746,750.00
Prior Year Adj. (Net of Reins.)	7,912.66	1,500.00	(6,412.66)	1,478.20	1,500.00
Profit Commission	32,068.81	0.00	(32,068.81)	32,599.34	0.00
Installment Service Charge	41,433.00	38,000.00	(3,433.00)	37,180.00	38,000.00
Investment Return	<u>330,352.47</u>	<u>185,374.00</u>	<u>(144,978.47)</u>	<u>429,190.42</u>	<u>185,374.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$1,159,759.94</u></b>	<b><u>\$971,624.00</u></b>	<b><u>(\$188,135.94)</u></b>	<b><u>\$1,234,147.96</u></b>	<b><u>\$971,624.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$1,212,611.13	\$1,222,559.00	\$9,947.87	\$1,208,790.86	\$1,222,559.00
Allocated Depreciation	<u>\$30,056.04</u>	<u>\$30,056.00</u>	<u>(\$0.04)</u>	<u>\$35,996.04</u>	<u>\$30,056.00</u>
<b>NET INCOME (LOSS)</b>	<b><u>(\$82,907.23)</u></b>	<b><u>(\$280,991.00)</u></b>	<b><u>(\$198,083.77)</u></b>	<b><u>(\$10,638.94)</u></b>	<b><u>(\$280,991.00)</u></b>



**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
12 Months Ended 12/31/2013**

	<u>CURRENT MONTH</u>	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$56,197.34	\$672,433.78	\$669,654.00	(\$2,779.78)	\$675,415.08	\$669,654.00
Benefits and Payroll Taxes	20,929.02	250,994.01	253,531.00	2,536.99	238,810.28	253,531.00
Investment Services	381.00	1,982.25	3,000.00	1,017.75	2,281.50	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	278,874.00	278,874.00	0.00	275,634.96	278,874.00
Reinsurance Placement & Travel	0.00	369.49	5,000.00	4,630.51	3,933.47	5,000.00
Training	0.00	0.00	500.00	500.00	0.00	500.00
Printing and Mailing	0.00	4,035.46	5,000.00	964.54	5,300.86	5,000.00
Program Promotion	0.00	3,922.14	5,000.00	1,077.86	6,069.71	5,000.00
Other Professional Services	0.00	0.00	2,000.00	2,000.00	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>\$100,746.86</u></b>	<b><u>\$1,212,611.13</u></b>	<b><u>\$1,222,559.00</u></b>	<b><u>\$9,947.87</u></b>	<b><u>\$1,208,790.86</u></b>	<b><u>\$1,222,559.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
12 Months Ended 12/31/2013**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$512.95	\$131,162.54	\$18,087.07	\$202,322.79
Intermediate Term Bond Funds	137,191.32	316,670.35	291,236.92	519,527.14
Domestic Common Stock Funds	107,399.45	347,873.97	83,747.53	110,842.17
International Equity Fund	131,330.99	131,330.99	156,700.72	156,700.72
Real Estate	40,971.75	178,276.84	45,383.33	183,008.94
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>140,219.50</u>	<u>253,902.86</u>	<u>169,213.58</u>	<u>270,621.57</u>
<b>Total Dividends and Interest</b>	<b><u>\$557,625.96</u></b>	<b><u>\$1,359,217.55</u></b>	<b><u>\$764,369.15</u></b>	<b><u>\$1,443,023.33</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	(\$3,092.46)	(\$134,069.00)	(\$14,502.23)	\$284,635.31
Intermediate Term Bond Funds	(188,678.41)	(452,026.16)	(271,144.05)	248,701.30
Domestic Common Stock Funds	97,259.77	2,033,310.53	17,556.80	798,337.84
International Equity Fund	25,863.88	1,596,716.97	150,355.69	1,165,630.65
Real Estate	42,400.73	309,270.62	46,772.44	170,959.52
Hedge Fund of Funds	0.00	296,132.24	45,268.48	286,587.61
Real Return Strategy	<u>(84,399.24)</u>	<u>(358,403.42)</u>	<u>(134,459.99)</u>	<u>326,434.90</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>(\$110,645.73)</u></b>	<b><u>\$3,290,931.78</u></b>	<b><u>(\$160,152.86)</u></b>	<b><u>\$3,281,287.13</u></b>
<b>TOTAL RETURN</b>	<b><u>\$446,980.23</u></b>	<b><u>\$4,650,149.33</u></b>	<b><u>\$604,216.29</u></b>	<b><u>\$4,724,310.46</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$21,022.50	\$81,847.63	\$48,002.38	\$107,876.77
Gain (Loss) in Fair Value	<u>(4,171.34)</u>	<u>248,504.84</u>	<u>(10,057.60)</u>	<u>321,313.65</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$16,851.16</u></b>	<b><u>\$330,352.47</u></b>	<b><u>\$37,944.78</u></b>	<b><u>\$429,190.42</u></b>

**Oregon State Bar  
PROFESSIONAL LIABILITY FUND**

**Chief Executive Officer Profile**

**POSITION SUMMARY:**

The CEO reports to the PLF Board of Directors for overall management and operation of the organization. Key responsibility areas include organization and staffing, claims management, budgeting, investments, and relationships with the organization's constituencies (covered attorneys, the Oregon State Bar, and reinsurers).

**KEY RESPONSIBILITIES:**

1. **Internal Management:** Through subordinate managers, provide direction in the following areas: administration; underwriting; claims; accounting and investments; claim prevention and personal and practice management services.
2. **Stakeholder Relations and Communications:** As part of the OSB, maintain relationships with covered attorneys, the courts, the state legislature, and other Oregon legal institutions. Build and maintain a high level of professional credibility with the legal profession in Oregon.
3. **Staff:** Maintain and positively influence PLF staff morale and productivity.
4. **Coverage:** Review and propose revisions to the Coverage Plan as needed, including actuarial reviews and assessment adjustments.
5. **Excess Program:** Oversee operation of the excess program, including underwriting and maintaining relationships with and reporting to reinsurers. Personally participate in reinsurance negotiations.
6. **Oregon State Bar Relationships:** Maintain positive working relationships with the PLF Board of Directors, the OSB Board of Governors, and the OSB staff. Staff all committees of the PLF Board of Directors. Research and organize material for presentation to the Board of Directors and, on behalf of the Board of Directors, to the Board of Governors.
7. **Asset Management:** Assure proper control and management of PLF assets, particularly monetary assets.
8. **Productivity:** Develop and implement management programs to assure optimum productivity and efficiency within the organization, with particular attention to claims management and defense.
9. **Projects:** Perform special projects as assigned by the Board of Directors.

## CANDIDATE QUALIFICATIONS:

Candidate qualifications will be considered in relation to the unique characteristics of the Professional Liability Fund.

1. **Management Experience:** The PLF's size and complexity require high-level professional management capability. The organization manages considerable assets, has multiple operating departments, and requires well-conceived systems and procedures for operations. Management expertise is essential, and should include personnel, budget, supervision of professional staff, effective delegation, communications, and maintenance of relationships.
2. **Familiarity with the PLF and the Oregon Legal Community:** PLF covered parties are Oregon attorneys, and most PLF business issues relate to malpractice coverage for Oregon attorneys engaged in private practice. Candidates must be capable of establishing personal and professional credibility in this environment.
3. **Understanding of Coverage Issues:** While the primary PLF product is professional liability coverage, the organization is not a traditional insurance company. Instead, it is part of a public corporation and a specialized provider and processor of professional liability coverage. Because the PLF is a part of the OSB, it is not subject to usual insurance regulation, but an understanding of basic coverage issues, underwriting, and reinsurance is important.
4. **Communication Skills:** The PLF CEO is in a highly visible position. He/she spends extensive time in communication with individual attorneys, and with the Oregon State Bar and its components. Excellent communication skills with both large and small groups are essential.

CEO candidates will be evaluated against the ideal qualifications listed below. Final candidates will be selected based on judgment of their ability to perform the CEO position.

1. **Professional Experience:** Candidates must have proven leadership skills and management experience involving business planning, selection of key personnel, organization development, financial control, and workflow management. Successful experience in senior management is important whether acquired in a law practice, in a business enterprise, in a public organization or in some other relevant organization.

Preference will be given to lawyers, particularly with an Oregon connection, who have private practice and litigation experience. Knowledge of the insurance industry, specifically professional liability coverage, is desirable but not mandatory.

2. **Personal Characteristics:** Candidates must be capable of representing the PLF in public, including speaking engagements. Excellent communication skills are required. Candidates should display leadership and diplomatic abilities and be able to address conflict and perform under pressure. Strong analytical and strategic thinking skills are needed.

Judgment, integrity, and objectivity must be at high levels. Candidates must be capable of establishing credibility with the legal profession in Oregon.

Existing organizational culture is characterized by openness, informality, flexibility, collaboration, and strong support for the staff. The ideal candidate will have a management and leadership style characterized by patience, an ability to listen, an ability to delegate, mutual confidence and trust, and an ability to deal with diversity.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim Recommended for Approval

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### **Action Recommended**

Consider the Client Security Fund Committee's recommendation that Claim No. 2013-48 BERTONI (Monroy) be approved in the amount of \$5,000.

### **Background**

Anna Monroy consulted with Gary Bertoni in August 2011 regarding representation in a post-conviction proceeding. Monroy says that Bertoni agreed to take the case for a fixed fee of \$5000; she acknowledges that the written fee agreement is inconsistent (it provides for a non-refundable fee of \$2,000 to be applied against his fees of \$300/hour), but claims she signed the agreement in September on Bertoni's assurance that he would adhere to the fixed fee.

[Note: After retaining Bertoni on the post-conviction matter, Monroy retained him to defend her in civil action arising out of the same conduct as the criminal conviction and paid him an additional \$1,300. She does not seek an award in the civil matter, as Bertoni delivered the funds to another attorney who worked on the case.]

Monroy and Bertoni have very different versions of what occurred after Bertoni was retained. She claims he did virtually nothing on her case and didn't tell her in advance of his five-month suspension that began in late March 2012. Bertoni's assurances that another lawyer had been engaged to assume his responsibilities in the matter provided to be untrue. What is undisputed is that Bertoni hadn't filed Monroy's post-conviction petition by the time she terminated the representation in August 2012.

Monroy says Bertoni visited her in September 2012, trying to convince her to rescind the termination. In the course of that conversation Bertoni apologized for mishandling her case and said he would discuss reimbursement with her "in the future." By contrast (in a letter responding to DCO's inquiries about his representation of Monroy), Bertoni denies Monroy's claims and characterizes himself as diligent, generous, conscientious, sincere, and completely innocent of any wrongdoing.

The CSF Committee concluded that Monroy received no services of any value from Bertoni and recommends an award of the full \$5,000 paid for the post-conviction matter. The committee also recommends waiving the requirement for a civil judgment because there is no reason to believe Bertoni has any assets. Moreover, he is likely to be disciplined in connection with his representation of Monroy, making the need for a judgment moot under the rules.

## CLIENT SECURITY FUND INVESTIGATIVE REPORT

**FROM:** Steven R. Bennett  
**DATE:** March 4, 2014  
**RE:** CSF Claim No. 2013-48  
Claimant: Anna Monroy  
Attorney: Gary Bertoni

### **Investigator's Recommendation**

Recommend payment of claim, in the amount of \$5,000.

### **Statement of Claim**

This claim seeks reimbursement of the \$5,000 retainer fee paid for Post Conviction Relief, on the grounds that the accused did nothing to earn any fees, and lied about having done so.

### **Material Dates**

08/04/11	Claimant retained Bertoni for Post Conviction Relief (PCR), paid initial deposit of \$300
11/09/11	Claimant retained Bertoni for Civil Case in Marion County
03/27/12	Disciplinary Counsel's Office suspended Bertoni for 150 days
March 2012	Claimant discovered the loss
08/15/12	Theresa Monroy sent final termination and demand for refund
08/24/12	Bertoni is reinstated
09/23/13	CSF Claim filed
11/20/12	Civil Case settled

### **Discussion**

The accused was a foster parent, and was convicted on several counts of sexual abuse of the children in her care. She eventually hired Bertoni for post conviction relief, citing lack of evidence and lack of competent legal counsel.

To investigate this claim, I attempted to reach the accused on several occasions, and finally spoke with him January 9, 2013. His version of the facts was very different from claimant's. He claims to have fully earned all fees paid in both cases, having appeared in court several times. He also claims to have spent substantial time communicating with Claimant and

her sister (Theresa Monroy), and reviewing the court transcript. Of course, the Claimant and her sister deny all this and contend that Bertoni was dishonest on several occasions, having lied about taking certain actions to initiate the PCR process.

I also spoke twice with Amber at the Office of Disciplinary Counsel, and confirmed that this claim is part of a larger case that ODC is pursuing against the accused which, if successful, could result in disbarment as the claims involve dishonesty and conversion of client funds. After several requests, ODC finally received Bertoni's response to Monroy's accusations, and sent a copy to me. The six page narrative contains Bertoni's numerous denials of any wrongdoing, and endless self-serving statements whereby he characterizes himself as diligent, generous, conscientious, sincere, and completely innocent of any wrongdoing.

The accused was suspended from the practice for 5 months in 2012, for conduct comparable to that alleged in the current CSF claim. The claim form itself is well-prepared, and supplemented with an extensive explanation and exhibits. This was all prepared by the sister of the accused, Theresa Monroy, as the claimant is incarcerated at Coffee Creek. I interviewed Theresa, and confirmed all basic facts. In many respects, Theresa had first-hand knowledge as she was the one who interacted with the accused on her sister's behalf (by phone, email, and in person), and she personally delivered the payments for the retainer deposit to the accused.

After engaging the accused for the initial project of post conviction relief, claimant hired the accused to defend her in a civil action based on the same facts as in the criminal conviction. Deposits totaling \$1,300 were paid to Bertoni, apart from the \$5,000 deposit for post conviction relief. Claimant does not seek reimbursement of this amount as it was apparently spent on compensating another attorney, Ronnie Kliever, for working on the civil suit. Claimant was eventually dismissed from the suit.

Over the course of about 14 months, the accused made numerous promises to perform his agreed services, and repeatedly failed to perform, according to Claimant. On several occasions, he appears to have lied to claimant and/or her sister, telling them he had filed certain court documents or made certain court appearances when he did not. Claimant also reports that the accused never revealed his bar suspension, and it was Theresa that learned of the pending suspension and informed her sister. The bar suspension of the accused impaired his ability to act, despite his assurances to Claimant that it would not affect his work for Claimant. The accused claims to have arranged for another attorney, Ronnie Kliever, to handle his responsibilities for the accused. However, Ms. Kliever reported that her roll was very limited by the accused, and she was not permitted to take some necessary actions for claimant. Furthermore, Ms. Kliever is the one who revealed to claimant and her sister, all the actions that the accused had failed to take. Then the accused went so far as to tell claimant that Ms. Kliever was "doing things behind his back", and that he would terminate her role, all the while telling claimant to conceal such information from Ms. Kliever.

Eventually, the accused told claimant he could not return her deposit, as all funds were spent.

From all available information, it appears the accused took no action on behalf of claimant which was of any benefit to claimant. The action for post conviction relief is still pending, but claimant reports she is unable to hire another attorney to represent her until she gets back the unearned funds paid to the accused.

## **Findings and Conclusions**

1. The Claimant was the client of the accused.
2. The accused was an active attorney and member of the Oregon Bar at the time of the loss.
3. The accused maintained an office in Portland, Oregon.
4. Claimant engaged Bertoni to represent her regarding post conviction relief and a civil case.
5. Claimant filed her claim within 2 years of the discovery of Bertoni's misconduct and her loss.
6. Bertoni largely neglected Claimant's matter, and apparently lied about actions he had taken on behalf of Claimant.
7. Claimant demanded a refund of her retainer deposit, and the accused has failed to pay back any of it.
8. Claimant's loss arose from dishonest conduct.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Hunter Emerick, Chair, BOG Client Security Fund Workgroup  
**Re:** CSF Workgroup Recommendations

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### **Action Recommended**

Consider the recommendations of the BOG CSF Workgroup to revise CSF operating policy to enhance the integrity and sustainability of the Fund.

### **Background**

The BOG's CSF Workgroup was established in June 2013 to look at ways to protect the Client Security Fund from the consequences of catastrophic claims that exhaust the reserves and require increasing the member assessment.<sup>1</sup>

After two meetings, one of which was attended by the Chair of the CSF Committee, the Workgroup submitted its recommendations to the BOG in September 2013. The BOG voted to approve all but one of the recommendations. (See attached excerpt from September 2013 minutes.) At the time of its vote, the BOG was unaware that the CSF Committee had strong objections to some of the recommendations; unfortunately, due to client emergencies and a communications mix-up, no representative of the CSF Committee or staff was able to present those objections to the BOG prior to its vote.

Following the September 2013 meeting, then-OSB President Haglund agreed that the changes approved by the BOG would not be implemented until the BOG had an opportunity to hear from the CSF Committee. Representatives of the CSF Committee appeared at the BOG meeting on February 21, 2014 and presented the Committee's views on changes recommended by the Workgroup. Following that presentation, the BOG voted to reconvene the CSF Workgroup to reconsider its prior recommendations in light of the CSF Committee's concerns. (See attached excerpt from the February 21, 2014 minutes.)

On March 21, 2014, CSF Committee representatives met with the reconvened Workgroup. They indicated that the principal concern was the delay in making awards that would result if only the first \$5000 could be paid as claims are resolved, with the remainder held and pro-rated if necessary depending on the balance in the Fund. While the Committee believes that might be an appropriate process in some years, an absolute rule will cause unnecessary hardship in the majority of years where claim volume doesn't threaten the

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<sup>1</sup> Some BOG members will recall that in 2012-2013 the CSF paid out nearly \$900,000 to the clients of a former Bend lawyer who misappropriated their personal injury settlements. The awards exceeded the Fund's historic \$500,000 reserve as well as the annual assessment revenues.

reserve. The Committee urged that the BOG remain free to exercise the discretion available to it under the current rules.

Following a thorough discussion, the workgroup adopted by consensus the following recommendations for the BOG:

1. Increase the CSF reserve from \$500,000 to \$1 million, after which the member assessment should be reduced to a level that will maintain the reserve.
2. The CSF Rule 4.13 should be amended to clarify the discretion of the BOG to determine the amount and timing of payment of awards based on the availability of funds, using the following objectives in exercising its discretion:
  - a. All legitimate claims should receive an award;
  - b. Maintaining the integrity and stability of the CSF is critical to its sustainability; and
  - c. The member assessment should remain as constant as possible.
3. The proposed “housekeeping” amendments to the CSF Rules should be approved for clarification and conformity with current practice.
4. The Legal Ethics Committee will be asked to consider a rule prohibiting “earned on receipt” fees.

## Excerpt from February 21, 2014 BOG Meeting Minutes:

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

#### C. CSF Committee Response to BOG Workgroup Recommendations

Ms. Stevens presented an introduction to the Client Security Fund including its purpose and processes, and its history of assessments and awards paid since 1986.

Mr. Bennett asked the board to consider the request of the CSF Committee that changes to CSF policy and procedure adopted in September 2013 not be implemented, except for increasing the reserve to \$1,000,0000. Mr. Emerick stated the basis of the workgroup's recommendations was to avoid exhausting CSF reserve in years with unusually high claims and having to **dip** into general reserves to make the awards. Mr. Greco proposed that the CSF can only use the reserve fund with BOG approval. Ms. Mitchel-Markley questioned why the committee had not provided its input until after the BOG acted on the changes. Ms. Stevens clarified that then-CSF Chair was invited to the September BOG meeting but was unable to attend due to a schedule conflict. Mr. Emerick suggested the board table this action and have the workgroup reconvene and invite the CSF committee to provide input and participate in discussion. Mr. Ross will join the workgroup in place of Mr. Knight who is no longer on the board.

**Motion:** Mr. Emerick moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to reconvene the workgroup.

## 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

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** MCLE Committee  
**Re:** Amendment to MCLE Rule 5.2(d)

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### Issue

The MCLE Committee recommends amending MCLE Rule 5.2(d) to include participation on the Oregon Judicial Conference Judicial Conduct Committee to the list of activities that qualify for legal ethics credit.

### Options

Option 1 – Make no change to Rule 5.2(d) and leave as set forth below:

MCLE Rule 5.2(d) Legal Ethics Service. A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.

Option 2 - Amend Rule 5.2(d) to include service on the Oregon Judicial Conference Judicial Conduct Committee to the list of activities that qualify for legal ethics credit.

MCLE Rule 5.2(d) Legal Ethics Service. A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.

### Discussion

Judge David Schuman recently suggested that participation on the Judicial Conduct Committee be added to the list of activities that qualify for ethics credit under MCLE Rule 5.2(d). The Judicial Conduct Committee gives formal and informal advisory opinions to judges. It is basically the equivalent of the OSB's Legal Ethics Committee.

Pursuant to Judge Schuman's suggestion, the MCLE Committee recommends amending MCLE Rule 5.2(d) as set forth in Option 2 above.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** MCLE Committee  
**Re:** Amendment to MCLE Regulation 7.2(a)

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### Issue

The MCLE Committee recommends amending Regulation 7.2(a) regarding late fees.

### Options

Option 1 – Make no change to Regulation 7.2(a) and leave as set forth below:

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

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

Option 2 – Amend Regulation 7.2(a) per recommendation of the MCLE Committee:

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

(a) The late fee for curing a failure to timely file a completed compliance report is \$50 if the report is filed and the late fee is paid ~~within 30 days of the filing deadline~~ after the filing deadline and no more than 30 days after the mailing of the notice of noncompliance and \$100 if the report is filed and the late fee is paid more than 30 days after the mailing of the notice of noncompliance ~~filing deadline~~ but within the 60 day cure period; if additional time for filing is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.

### Discussion

At its July 2013 meeting, the Board of Governors approved amending various MCLE regulations regarding filing deadlines and notices to members. MCLE Regulation 7.200(a), (see Option 1 above), was amended to align with MCLE Rule 7.5 regarding curing noncompliance issues.

While preparing the Notices of Noncompliance for the 2013 reporting period, staff realized that the way Regulation 7.200(a) currently reads, the late fee for failure to timely file a completed compliance report would have already increased to \$100 before the member was notified that a late fee was due. Therefore, the MCLE Committee recommends amending Regulation 7.200(a) as set forth in Option 2 above.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Legal Ethics Committee  
**Re:** Updating Formal Ethics Opinions

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### **Issue**

The Board of Governors must decide whether to adopt the proposed amendments to the formal ethics opinions.

### **Options**

1. Adopt the proposed amendments to the formal ethics opinions.
2. Decline to adopt the proposed amendments to the formal ethics opinions.

### **Discussion**

In the last year, the Oregon Supreme Court has adopted numerous amendments to the Oregon Rules of Professional Conduct. The Legal Ethics Committee is in the process of reviewing all of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules. The attached is the first batch of opinions that require amendments.

This first batch of amended opinions consists of pure housekeeping amendments. All amendments consist of swapping out the relevant prior rule and replacing it with the amended rule. There are otherwise no changes to the analysis or substance of the attached opinions.

Staff recommends adopting the proposed amended opinions.

Attachments: OSB Formal Ethics Op Nos: 2005-23, 2005-25, 2005-39, 2005-50, 2005-55, 2005-81, 2005-95, 2005-96, 2005-117, 2005-129, 2005-133, 2005-136, 2005-148, 2005-155, 2005-157, 2005-167, 2006-176



**FORMAL OPINION NO. 2005-23**

**[REVISED 2014]**

**Information Relating to the Representation of a Client:  
Retired and Former Lawyer**

**Facts:**

Lawyer, who has retired, would like to give some files to an educational institution for historical purposes. The files to be given contain confidential information that Lawyer has obtained from clients over the years.

After Lawyer has retired, the new lawyer for one of Lawyer's former clients approaches Lawyer and asks for information about the prior representation.

**Questions:**

1. May Lawyer give the files to the educational institution?
2. May Lawyer convey client confidences or secrets to the new lawyer?

**Conclusions:**

1. No, qualified.
2. No, qualified.

**Discussion:**

These questions are governed by Oregon RPC 1.6, which provides, in pertinent part:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by law

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

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from

~~changes in the composition or ownership of a firm to provide . . . information in discussions preliminary to the sale of a law practice under Rule 1.17. . . .~~

~~(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. . . .~~

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

See ORS 9.460(3), which requires a lawyer to “[m]aintain the confidences and secrets of the lawyer’s clients consistent with the rules of professional conduct.”<sup>1</sup>

Absent informed consent from the affected clients or some other applicable exception, it would be improper for Lawyer either to turn over files to an educational institution or to inform a new lawyer for the same client about any prior confidences or secrets.

**Approved by Board of Governors, ~~August 2005~~ April 2014.**

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<sup>1</sup> Former DR 4-101 also used the phrase *confidences and secrets* to describe the information that a lawyer is ethically required to protect. The definition of *information relating to the representation of a client* in Oregon RPC 1.0(f) encompasses the definitions of *confidences* and *secrets* in former DR 4-101.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §6.1 et seq. (Oregon CLE 2003); OEC 503 (general lawyer-client privilege); LAIRD C. KIRKPATRICK, OREGON EVIDENCE §503.01 et seq. (4th ed 2002); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §59 et seq. (2003); and ABA Model Rule 1.6.

**FORMAL OPINION NO. 2005-25**

**[REVISED 2014]**

**Fee Agreements:**

**Suspended and Disbarred Lawyers, Fees and Division of Fees**

**Facts:**

Lawyer *A* has been suspended or disbarred. When the suspension or disbarment order took effect, Lawyer *A* had several open matters, including both hourly and contingent fee cases, which were subsequently taken over by Lawyer *B*. The suspension or disbarment was unrelated to the work that Lawyer *A* had done on behalf of any of the clients whose work was taken over by Lawyer *B*.

**Questions:**

1. Is Lawyer *A* entitled to be paid for the work done by Lawyer *A* before the suspension or disbarment took effect?
2. May Lawyer *B* share fees with Lawyer *A* in the contingent fee case?

**Conclusions:**

1. Yes, qualified.
2. Yes, qualified.

**Discussion:**

Oregon RPC 1.5(a) states that “[a] lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.” The mere fact that Lawyer *A* was suspended or disbarred would not mean that the collection of a fee would automatically violate this rule, and it would be proper for Lawyer *A* to seek to collect an ethically appropriate fee for past work.

The matter of the sharing of fees between Lawyer *A* and Lawyer *B* is covered by Oregon RPC 1.5(d):

A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the client gives informed consent to the fact that there will be a division of fees, and
- (2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.

Also relevant is Oregon RPC 5.4(a), which provides:

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

During the period of suspension or disbarment, a suspended or disbarred lawyer is a nonlawyer within the meaning of Oregon RPC 5.4(a).<sup>1</sup> *Cf. Parquit Corp. v. Ross*, 273 Or 900, 901, 543 P2d 1070 (1975) (treating suspended lawyer as nonlawyer); OSB Formal Ethics Op No 2005-24. Consequently, Lawyer *B* could not share any fee for Lawyer *B*'s own work with Lawyer *A*. On the other hand, there is no prohibition against Lawyer *B* forwarding to Lawyer *A* the portion of any fee to which Lawyer *A* was entitled by reason of work performed before the suspension or disbarment. *Cf. In re Griffith*, 304 Or 575, 748 P2d 86 (1987) (refusing to find violation of *former* DR 3-102(A) when nonlawyer simply acted as conduit for payment of fees to counsel).

Approved by Board of Governors, April 2014 August 2005.

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<sup>1</sup> See, e.g., *State ex rel Oregon State Bar v. Lenske*, 284 Or 23, 31, 34–35, 584 P2d 759 (1978) (employment of disbarred or suspended lawyer is permitted under same unauthorized practice limitations that govern nonlawyers generally).

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§3.38–3.41 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rules 1.5(e), 5.4.

**FORMAL OPINION NO. 2005-39**

**[REVISED 2014]**

**Lawyer as Pro Tem Judge**

**Facts:**

Lawyer A and Lawyer B are partners. Lawyer B is occasionally asked to serve as a pro tem judge or hearing officer. Both Lawyer A and Lawyer B would like to continue representing clients with matters pending before other judges or hearing officers of the same court or body for which Lawyer B acts on a pro tem basis.

**Questions:**

1. May Lawyer A and Lawyer B do so?
2. What special disclosure and consent requirements, if any, apply in such circumstances?

**Conclusions:**

1. Yes, qualified.
2. See discussion.

**Discussion:**

Pursuant to Oregon RPC 3.5(a), a lawyer shall not “seek to influence a judge, juror, prospective juror or other official by means prohibited by law.” There is no indication on the facts presented above, however, that such conduct is intended or is likely to occur.

Similarly, there is no particular reason to believe that there will be a violation of either Oregon RPC 1.12(a)<sup>1</sup> or Oregon RPC 1.11(d).<sup>2</sup> Lawyer A and Lawyer B may proceed as planned if they do not violate these rules.

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<sup>1</sup> Oregon RPC 1.12(a) provides:

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

<sup>2</sup> Oregon RPC 1.11(d) provides:

Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

With respect to disclosure and consent requirements, Oregon RPC 1.7(a)(2) provides that a current conflict of interest exists if

there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

On these facts, there is no reason to believe that the representation of any of Lawyer A's or Lawyer B's clients will be materially limited by Lawyer B's obligations as a pro tem judge. Accordingly, it is not necessary for Lawyer A or Lawyer B to make special disclosure to, or obtain consent from, their clients. *Cf. In re Zafiratos*, 259 Or 276, 486 P2d 550 (1971) (lawyer disciplined for bringing civil action for property damage arising out of motor vehicle collision when accused had acted as judge in related proceeding); *In re Lemery*, 7 DB Rptr 125 (1993) (former district attorney disciplined for representing private client adversely to state in matter significantly related to matter he worked on while serving as district attorney, without first obtaining state's consent).

**Approved by Board of Governors, ~~April 2014~~August 2005.**

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(1) is subject to Rules 1.7 and 1.9; and

(fn 1 cont'd)

(2) shall not:

...

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client. . . .

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§14.28–14.30 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§133, 135 comment f (2003); and ABA Model Rules 1.11–1.12. See also OSB Formal Ethics [Op Nos 2005-7](#), [2005-38](#), [2005-102](#).

**FORMAL OPINION NO. 2005-50**

**[REVISED 2014]**

**Conflicts of Interest, Current Clients:  
Office Sharers Representing Opposing Parties**

**Facts:**

Lawyer *A* and Lawyer *B*, who maintain independent practices, share office space. Both lawyers handle personal injury litigation.

**Questions:**

1. May Lawyer *A* represent the plaintiff in a lawsuit in which Lawyer *B* represents the defendant?
2. Would the answer be different if Lawyer *A* and Lawyer *B* share a common employee who is in possession of confidences and secrets of both Lawyer *A*'s clients and Lawyer *B*'s clients?

**Conclusions:**

1. Yes, qualified.
2. Yes.

**Discussion:**

If Lawyer *A* and Lawyer *B* were part of the same firm, the simultaneous representation of a plaintiff and a defendant in the same litigation would give rise to a prohibited, nonwaivable conflict of interest. See, e.g., Oregon RPC 1.7,<sup>1</sup> discussed in OSB Formal Ethics Op No 2005-28.

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<sup>1</sup> Oregon RPC 1.7 provides:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client;
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
  - (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.
- (b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:
  - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

Nevertheless, and as long as Lawyer A and Lawyer B (1) do not hold themselves out to the public as members of the same firm through joint advertising, a joint letterhead, or otherwise; (2) respect the confidentiality of information relating to the representation of their respective clients and cause their employees to do so; and (3) keep their respective files separately, there is no reason why Lawyer A and Lawyer B cannot represent opposite parties. *See also* Oregon RPC 1.0(d).<sup>2</sup>

We do not believe that these requirements prohibit office sharers from using the same telephone system or the same file room as long as the files are physically separated and the appropriate limitations on access to files are made clear to, and are observed by, the lawyers and their employees. If a common telephone system is used, however, office sharers may not represent adverse parties unless they have taken steps to assure that telephone messages that contain confidential client information or legal advice (i.e., information relating to the representation of a client<sup>3</sup>) are not given to or transmitted by shared personnel. Similarly, mail must not be opened by shared personnel.

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- (2) the representation is not prohibited by law;
  - (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
  - (4) each affected client gives informed consent, confirmed in writing.

<sup>2</sup> Oregon RPC 1.0(d) provides:

“Firm” or “law firm” denotes a lawyer or lawyers, including “Of Counsel” lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto law firm among the lawyers involved.

<sup>3</sup> Oregon RPC 1.6 provides, in pertinent part:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

- (1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to secure legal advice about the lawyer’s compliance with these Rules;



If, on the other hand, Lawyer A and Lawyer B share a secretary or other employee who is in possession of the confidences or secrets of both Lawyer A's clients and Lawyer B's clients, or if any of the other steps outlined above are not taken, the simultaneous representations of the plaintiff and the defendant would be prohibited by either if not both Oregon RPC 1.6 and Oregon RPC 1.7. *See also* Oregon RPC 1.0(f).<sup>4</sup> *Cf.* OSB Formal Ethics Op Nos 2005-44, 2005-28, 2005-12.

Approved by Board of Governors, ~~August 2005~~ April 2014.

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(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17. . . .

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. . . .

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

<sup>4</sup> Oregon RPC 1.0(f) provides:

Information relating to the representation of a client" denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested by held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 9.23, 12.3–12.5 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §123 (2003); and ABA Model Rules 1.6, 1.7. *See also* Barbara Fishleder, *Office Sharing*, 52 OSB BULLETIN 23 (June 1992). *Cf. State v. Charlesworth/Parks*, 151 Or App 100, 951 P2d 153 (1997) (*former* DR 4-101(D) imposed duty to exercise reasonable care to prevent employees from disclosing client secrets; but this rule is not ground to suppress evidence obtained as result of the disclosure).

**FORMAL OPINION NO. 2005-55**

**[REVISED 2014]**

**Lawyer as Escrow Agent**

**Facts:**

Lawyer has a substantial business practice.

**Questions:**

1. May Lawyer act as escrow agent in a transaction in which Lawyer represents none of the parties?
2. May Lawyer act as escrow agent in a transaction in which Lawyer represents one of the parties?
3. If the answer to the second question is no, may Lawyer nonetheless hold client funds, documents, or other property pursuant to the terms of an agreement between Lawyer's client and the other party to the agreement?

**Conclusions:**

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

**Discussion:**

The word "escrow" by definition means 'neutral,' independent from the parties to the transaction." *Banif Corp v. Black*, 12 Or App 385, 388, 507 P2d 49 (1973); ORS 696.505(3). There is no reason that a lawyer cannot play this role in a transaction in which the lawyer does not represent any of the parties. Cf. ORS 696.520(2), which exempts from the definitions and restrictions of the statute a lawyer "rendering services in the performance of duties as attorney at law." See also Oregon RPC 2.4, permitting lawyers to act as mediators.<sup>1</sup>

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<sup>1</sup> Oregon RPC 2.4 provides:

- (a) A lawyer serving as a mediator:
  - (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
  - (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.
- (b) A lawyer serving as a mediator:
  - (1) may prepare documents that memorialize and implement the agreement reached in mediation;

On the other hand, a lawyer cannot simultaneously be both counsel to a party to a transaction and a neutral escrow agent for the transaction. *Cf. In re Phelps*, 306 Or 508, 510 n 1, 760 P2d 1331 (1988); *In re Barrett*, 269 Or 264, 524 P2d 1208 (1974). The obligation of neutrality is in direct contradiction to the obligations that a lawyer has to a client. The simultaneous role would constitute a situation in which there is a significant risk that the representation of the client will be materially limited by the lawyer's responsibilities as a neutral escrow, in violation of Oregon RPC 1.7(a)(2). This self-interest conflict can be waived only if the lawyer has the informed consent of the client as required by Oregon RPC 1.7(b). Moreover, the lawyer's failure to disclose the dual role to the other party would be tantamount to "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law" in violation of Oregon RPC 8.4(a)(3).<sup>2</sup>

There is no reason, however, a lawyer cannot hold client funds, documents, or other property as part of a transaction involving a client as long as the lawyer is not described as an

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(2) shall recommend that each party seek independent legal advice before executing the documents; and

(3) with the consent of all parties, may record or may file the documents in court.

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

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

<sup>2</sup> Because of these conclusions, it is unnecessary to consider the potential applicability of Oregon RPC 1.8 and 5.4(c). For opinions discussing these rules, see, e.g., OSB Formal Ethics Op Nos 2005-10, 2005-22, and 2005-30.

“escrow agent” and the lawyer’s role is not otherwise misdescribed or misrepresented. With regard to the duty to hold client funds in trust accounts, see OSB Formal Ethics Op No 2005-48.

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COMMENT: For more information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §11.1 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§4 comment c, 44 comment b, 48 comment d (2003); and ABA Model Rules 2.6, 8.4(c). *See also In re Benjamin*, 312 Or 515, 823 P2d 413 (1991) (disbarring lawyer for spending \$1,900 of client’s money while acting as escrow agent and for withholding in lawyer’s trust account \$480 that belonged to client).

**FORMAL OPINION NO. 2005-81**

**[REVISED 2014]**

**Communicating with Represented Persons: Information Relating to the  
Representation of a Client,  
Second Opinions**

**Facts:**

Lawyer A is approached by Potential Client. Potential Client tells Lawyer A that Potential Client is unhappy with work being done for Potential Client by Lawyer B. Potential Client asks Lawyer A for a second opinion.

**Questions:**

1. May Lawyer A provide the second opinion?
2. May Lawyer A inform Lawyer B of Potential Client's request?

**Conclusions:**

1. Yes.
2. No, qualified.

**Discussion:**

Oregon RPC 4.2 provides:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

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

This rule applies when a lawyer is representing a client or the lawyer's own interests in a matter, but not when the lawyer is approached by a prospective client. Neither this rule or its predecessor, *former* DR 7-104, has ever been interpreted to prohibit a lawyer from providing a

second opinion to a represented party. *See, e.g.*, RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS<sup>1</sup> and ABA Model Rule 4.2.<sup>2</sup>

Whether Lawyer A can inform Lawyer B of Potential Client's request depends on ORS 9.460(3)<sup>3</sup> and Oregon RPC 1.6.<sup>4</sup> *Cf. State v. Keenan/Waller*, 307 Or 515, 771 P2d 244 (1989).

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<sup>1</sup> A lawyer who does not represent a person in the matter and who is approached by an already-represented person seeking a second professional opinion or wishing to discuss changing lawyers or retaining additional counsel may, without consent from or notice to the original lawyer, respond to the request, including giving an opinion concerning the propriety of the first lawyer's representation. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §99 comment c (2003).

<sup>2</sup> “[T]his Rule [does not] preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter.” ABA Model Rule 4.2 comment [4] (2002).

Other jurisdictions have issued ethics opinions similar to the Oregon position. *See, e.g.*, Florida Ethics Op No 02-5; South Carolina Ethics Op No 97-07; Utah Ethics Op No 110 (1993); Philadelphia Ethics Op Nos 91-32 and 2004-1; Kentucky Ethics Op No E-325 (1987); Michigan Ethics Op No CI-883 (1983).

<sup>3</sup> ORS 9.460(3) provides that a lawyer shall “[m]aintain the confidences and secrets of the lawyer’s clients consistent with the rules of professional conduct established pursuant to ORS 9.490.”

<sup>4</sup> Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

Potential Client's request for a second opinion would be information relating to the representation of the client. Consequently, Lawyer A cannot reveal this request to Lawyer B unless Potential Client consents or one of the other exceptions to the duty of confidentiality within Oregon RPC 1.6 applies. *Cf.* OSB Formal Ethics Op No 2005-23.

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~~(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.~~

~~(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to the representation by the purchasing lawyer.~~

COMMENT: For additional resources on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§5.1–5.3, 5.10, 6.1–6.5, 6.8, 7.42–7.43, 7.46 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§99–100, 102 (2003); and ABA Model Rules 1.6, 4.2.

FORMAL OPINION NO. 2005-95

**[REVISED 2014]**

**Duty to Report Misconduct**

**Facts:**

During the course of representing Client, Lawyer A learns that Lawyer B, who formerly represented Client, and Lawyer C, who never represented Client, have violated the Oregon RPCs.

When Lawyer A discusses these observations with Client, Client informs Lawyer A that Client does not wish Lawyer A to report these violations to the Oregon State Bar because doing so could embarrass Client or could otherwise harm Client.

**Questions:**

1. May Lawyer A report Lawyer B's or Lawyer C's violations?
2. If no information relating to the representation of a client is involved, when must a lawyer report another lawyer's violation of an Oregon RPC?

**Conclusions:**

1. No.
2. See discussion.

**Discussion:**

Oregon RPC 8.3 provides, in pertinent part:

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

....

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3). . . .

Pursuant to this rule, a lawyer may not report another lawyer's Oregon RPC violation if the source of knowledge of the violation is protected by Oregon RPC 1.6 or ORS 9.460(3), unless one of the exceptions permitting disclosure is present. In the present circumstance, it appears that no exception permitting disclosure is available. *Cf.* OSB Formal Ethics Op No 2005-81; ORS 9.460(3);<sup>1</sup> Oregon RPC 1.6.<sup>2</sup>

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<sup>1</sup> ORS 9.460(3) requires a lawyer to "[m]aintain the confidences and secrets of the lawyer's clients consistent with the rules of professional conduct established pursuant to ORS 9.490." For a discussion of the relationship between ORS 9.460(3) and *former* DR 4-101 (current Oregon RPC 1.6), see *State v. Keenan/Waller*, 307 Or 515, 771 P2d 244 (1989).



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<sup>2</sup> Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of

Even if Client authorizes or consents to the report to the Oregon State Bar,<sup>3</sup> Lawyer would be required to report a violation only if Lawyer knows,<sup>4</sup> rather than merely suspects, that the violation occurred and if the violation raises “a substantial question as to [the reported] lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” This language in Oregon RPC 8.3(a) is identical to the language in ABA Model Rule 8.3. The official comment to ABA Model Rule 8.3 provides, in pertinent part:

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. *The term “substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.* A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct. [Emphasis supplied.]

*See* 2 GEOFFREY C. HAZARD JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §64.3 (3d ed 2001) (“the rule [applies] to cases of known violations that directly implicate the integrity of the legal profession. . . . Merely technical violations of the conflict of interest rules, for example, would not qualify, whereas destruction of evidence under subpoena, suborning perjury, or self-dealing with trust funds would.”). *See also* Arizona State Bar Op No 87-26, 4 ABA/BNA Lawyers’ Manual on Professional Conduct 449 (1988 & supps) (willful failure to file tax returns meets “substantial question” test).

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~~such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

<sup>3</sup> If Client directs Lawyer to report a rule violation to the bar, Lawyer must do so. *Cf.* OSB Formal Ethics Op No 2005-26.

<sup>4</sup> Oregon RPC 1.0(h) defines *knows* as “actual knowledge of the fact in question. . . . A person’s knowledge may be inferred from circumstances.”

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.2–6.4, 6.8, 6.11–6.12, 12.23, 13.2–13.8, 20.1–20.15 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§5, 78 (2003); and ABA Model Rules 1.6, 8.3. *See also* Washington Formal Ethics Op No 175; Washington Informal Ethics Op Nos 1247, 1633, 1701 (unpublished).

**FORMAL OPINION NO. 2005-96**  
**[REVISED 2014]**  
**Information Relating to the Representation of a Client:**  
**Notarial Journals**

**Facts:**

Pursuant to ORS 194.152, an Oregon notary must keep a journal that contains the name, address, and signature of the person who signs certain notarized documents, as well as a notation of the type of document signed. When lawyers or members of their office staff are notaries, the persons whose documents are notarized may be clients.

**Question:**

What steps, if any, must a lawyer take or cause the lawyer's staff to take to protect subsequent signers of the notarial journal from reviewing prior entries?

**Conclusion:**

See discussion.

**Discussion:**

ORS 9.460(3) provides that a lawyer must “[m]aintain the confidences and secrets of the lawyer’s clients consistent with the rules of professional conduct established pursuant to ORS 9.490.” Oregon RPC 1.6 also offers broad protection to information relating to the representation of a client.<sup>1</sup> *See also State v. Keenan/Waller*, 307 Or 515, 771 P2d 244 (1989); OSB Formal Ethics Op Nos 2005-81, 2005-141.

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<sup>1</sup> Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against

If the information pertaining to a prior notarization constitutes or contains protected client information, lawyers must prohibit, and cause their office staff to prohibit, subsequent signers from reviewing these confidences or secrets. Presumably, this can be done either by covering over the names and signatures of other clients at the time of the subsequent signing or by having a separate page of the journal for notarial actions in which protected information relating to the representation of a client is involved.

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the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

~~-to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to the representation by the purchasing lawyer.~~

COMMENT: For additional information relating to this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.1–6.8, 15.21 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§59–60, 68–72, 77, 80 (2003); and ABA Model Rule 1.6. *See also* Washington Formal Ethics Op No 175.

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**FORMAL OPINION NO. 2005-117**

**[REVISED 2014]**

**Trust Accounts:  
Funds Held in IOLTA or Non-IOLTA Account,  
Types of Depository Institutions**

**Facts:**

Lawyer represents Defendant in litigation. In aid of settlement negotiations, Defendant forwards a substantial sum to Lawyer so that Lawyer will be in a position to effect payment promptly if a settlement is reached in the future. Defendant would like to see to it that the maximum possible rate of return is earned on the funds while the funds are held by Lawyer.

**Question:**

What limits exist on the type of institution or type of account in which Lawyer can place Defendant's funds?

**Conclusion:**

See discussion.

**Discussion:**

Oregon RPC 1.15-1(a) provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to Rule 1.15-2. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Oregon RPC 1.15-2 provides, in pertinent part:

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. A lawyer or law firm establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of its establishment.

(b) All client funds shall be deposited in the lawyer's or law firm's IOLTA account unless a particular client's funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule.

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

(1) a separate account for each particular client or client matter; or  
(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

(1) the amount of the funds to be deposited;  
(2) the expected duration of the deposit, including the likelihood of delay in that matter for which the funds are held;  
(3) the rates of interest at financial institutions where the funds are to be deposited;  
(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client's benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit;  
(5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and  
(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.

(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.

(f) If a lawyer or law firm determine that a particular client's funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for the lesser of either: any interest earned by the client's funds and remitted to the Oregon Law Foundation; or the interest the client's funds would have earned had those funds been placed in an interest bearing account for the benefit of the client at the same bank.~~any interest earned by the client's funds that may have been remitted to the Oregon Law Foundation.~~

(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.

(2) The Oregon Law Foundation will not refund more than the amount of interest it received from the client's funds in question. The refund shall be remitted to the



financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.

(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer's firm.

(h) A lawyer or law firm may maintain a lawyer trust account only at a financial institution that:

(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;

(2) is insured by the Federal deposit Insurance Corporation or an analogous federal government agency;

(3) has entered into an agreement with the Oregon Law Foundation:

(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned on the average daily balance in the lawyer's or law firm's IOLTA account, less reasonable service charges, if any; and

(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the lawyer or law firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily account balance for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and

(4) has entered into an overdraft notification agreement with the Oregon State Bar requiring the financial institution to report to the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or not the instrument is honored.

Because the amount of money involved is substantial and is expected to be held for enough time that it could earn net interest, Defendant's funds must be placed in an interest-bearing trust account in one of the institutions identified in Oregon RPC 1.15-2(h), with the interest accruing to the benefit of the client. Oregon RPC 1.15-2(c).

Nothing in Oregon RPC 1.15-2 prohibits Defendant from waiving the right to interest earned on funds held by Lawyer and authorizing the payment of the interest to the Oregon Law Foundation. There may be tax implications in Defendant's waiver of interest income and the corollary charitable contribution. Lawyer should inform Defendant of that possibility and recommend that Defendant seek independent tax advice before deciding how to proceed. If Lawyer chooses to advise Defendant on this point, Lawyer may have a self-interest conflict under Oregon RPC 1.7(a)(2) in giving such advice and, if so, must obtain Defendant's informed consent pursuant to Oregon RPC 1.7(b). If those steps are followed, Lawyer may, with Defendant's agreement, deposit Defendant's funds into Lawyer's IOLTA trust account.<sup>1</sup>

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<sup>1</sup> Although the client is not required to give "informed consent" to the waiver, we believe that Oregon RPC 1.4(b) applies to this situation: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Approved by Board of Governors, ~~August 2005~~April 2014.

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§11.1–11.5, 11.7, 11.9, 11.11–11.13 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§44–45 (2003); and ABA Model Rule 1.15. *See also* Washington Formal Ethics Op Nos 174, 193.

**FORMAL OPINION NO. 2005-129**

**[REVISED 2014]**

**Competent Representation,  
Information Relating to the Representation of a Client:  
Responsibilities on Death of a Sole Practitioner**

**Facts:**

Lawyer is a sole practitioner with no partners, associates, or employees. Lawyer's files contain information relating to the representation of clients.

**Questions:**

1. Must Lawyer take steps to safeguard the interests of Lawyer's clients, and the information relating to their representations, if Lawyer dies or is disabled?
2. If Lawyer makes arrangements for a successor lawyer to disburse his or her files if Lawyer dies or becomes disabled, what steps must or may the successor lawyer undertake?

**Conclusions:**

1. See discussion.
2. See discussion.

**Discussion:**

Oregon RPC 1.1 provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Oregon RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).<sup>1</sup>

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<sup>1</sup> Oregon RPC 1.6(b) provides:

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

- (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to secure legal advice about the lawyer's compliance with these Rules;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

~~to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of~~

ORS 9.705–9.755 set forth a statutory scheme pursuant to which a nonperforming lawyer’s law practice may be placed under the jurisdiction of the court and steps taken to protect the interests of the nonperforming lawyer’s clients. For a lawyer who has no partners, associates, or employees, however, there could well be a significant lapse of time after the lawyer’s death or disability during which the lawyer’s telephone would go unanswered, mail would be unopened, deadlines would not be met, and the like.

The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such circumstances. The person may, but need not, be a lawyer. Depending on the circumstances, it may be sufficient to instruct the person that if the lawyer dies or becomes disabled, the person should contact the presiding judge of the county circuit court so that the procedure set forth in ORS 9.705–9.755 can be commenced.<sup>2</sup> The person also should be instructed, however, about the lawyer’s duties to protect information relating to the representation of a client pursuant to Oregon RPC 1.6. *Cf.* OSB Formal Ethics Op Nos 2005-50, 2005-44, 2005-23.

A lawyer may, however, go further than this and may specifically arrange for another lawyer to come in and disburse the lawyer’s files if the lawyer dies or becomes disabled. Nothing in ORS 9.705–9.755 makes it the exclusive means of handling such circumstances. Like a court-

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~~such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

*See also* Oregon RPC 5.3:

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

<sup>2</sup> There may be circumstances, however, in which the lawyer must do more. This would be true if, for example, a client were to request that particular steps be taken. It would also be true if the lawyer learns in advance that he or she would be able to continue practicing law for only a limited additional time. In this event, the lawyer should begin the process of notifying the lawyer’s clients as soon as possible to inquire how each client wishes to have his or her files handled.

appointed custodial lawyer, a voluntary lawyer must be mindful of the need to protect the client's confidential information. Also like a court-appointed custodial lawyer, the voluntary lawyer must promptly inform the clients of the sole practitioner that the voluntary lawyer has possession of the client's files and must inquire what the clients wish the voluntary lawyer to do with the files.

Unlike the court-appointed custodial lawyer, however, the voluntary lawyer may offer in writing to take over the work of the lawyer's clients, if the voluntary lawyer complies with Oregon RPC 7.3 on solicitation of clients.<sup>3</sup> *Cf.* ORS 9.730; OSB Formal Ethics Op No 2005-127.

**Approved by Board of Governors, ~~August 2005~~April 2014.**

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<sup>3</sup> The voluntary lawyer could not do so if, for example, the voluntary lawyer is not qualified to handle the work in question or if doing so would create conflict of interest problems under Oregon RPC 1.7. *Cf.* Oregon RPC 1.1; OSB Formal Ethics Op Nos 2005-119, 2005-110. With regard to the sale of a law practice, see Oregon RPC 1.17.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.2–7.5 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§16, 59–60 (2003); and ABA Model Rules 1.1, 1.6.

**FORMAL OPINION NO. 2005-133**

**[REVISED 2014]**

**Attorney Fees:  
Financing Arrangement**

**Facts:**

A company owned by nonlawyers (“Company”) offers a plan in Oregon (“the Financing Plan”) to enable clients to finance legal fees through Company. Under the Financing Plan, participating lawyers negotiate fee agreements with their clients in accordance with their customary practice. In appropriate circumstances, however, Lawyer may inform Client of the availability of the Financing Plan. If Client is interested, Lawyer will describe the Financing Plan in greater detail.<sup>1</sup> If Client is interested in using the Financing Plan, Client will complete Company’s written credit application at Lawyer’s office, and Lawyer will forward to the application Company.<sup>2</sup>

Company will review the credit application and, if it is approved, establish a “credit facility” for Client to pay Lawyer’s legal fees up to the credit limit established by Company.

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<sup>1</sup> It is assumed that either Company or Lawyer will provide Client full disclosure regarding the interest rate charged and all other material terms and conditions of the credit agreement used in connection with the Financing Plan. It is also assumed that all disclosures required under Regulation Z and Oregon consumer lending laws will be properly given and that the terms of the Financing Plan and the documents used in connection with the Financing Plan will be consistent with all applicable credit laws. Failure to comply with these requirements could involve Lawyer’s violation of applicable substantive law as well as Oregon RPC 8.4(a)(3), which provides that it is professional misconduct for a lawyer to “[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

<sup>2</sup> It is assumed that the Financing Plan will not be actively marketed to the public by either Company or Lawyer and that in discussing the Financing Plan option with Client, Lawyer will present the option in a low-key, factual manner, as a convenience to Client without attempting to induce Client to choose this option. Public advertising of the Financing Plan could raise issues under Oregon RPC 7.1–7.3 (advertising and solicitation).



Lawyer will submit a voucher to Company as services are rendered. Only vouchers for uncontested services will be submitted to Company. Before Lawyer submits a voucher to Company, Client must confirm that the amount of the voucher is appropriate for the services.<sup>3</sup> Vouchers will be submitted only for services actually rendered.<sup>4</sup>

On receipt of a voucher, Company will pay to Lawyer the amount of the voucher (up to Client's unused credit limit), minus a service charge of 10%.

Client must repay the amount of each voucher plus interest, on an installment basis. Interest will be charged at a rate that is comparable to the rates of interest charged on bank credit cards. Company will require Client to deposit a substantial reserve to reduce Company's collection risks.

Company will be responsible for collecting amounts owed by Client and, with certain limited exceptions, Company will have no recourse against Lawyer for uncollected amounts.

**Question:**

May Lawyer participate in the Financing Plan?

**Conclusion:**

Yes, qualified.

**Discussion:**

The Financing Plan is designed to serve the interests of both Lawyer and Client. The Financing Plan enables Lawyer to reduce the risk of nonpayment by Client and to reduce the delay and expense involved in collecting client accounts. At the same time, it enables Client to finance legal fees through a credit facility offered by Company.

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<sup>3</sup> If such approvals result in Client's waiver of his or her rights to contest the legal fee at a later point in the representation, the Financing Plan would create a conflict of interest under Oregon RPC 1.7. See discussion at 2.a below.

<sup>4</sup> If payments are received for future services, Lawyer may be required to deposit such payments in his or her trust account. *See* Oregon RPC 1.15.

Discussed below are potential issues raised under the Oregon RPC by each of these aspects of the Financing Plan.

1. *Collection Aspect.*

Oregon RPC 5.4(a) provides:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

Because Company will deduct 10% as a service charge from loan proceeds used to pay the legal fees, an issue arises whether such arrangement constitutes an impermissible division of legal fees by Lawyer and a nonlawyer. The purpose of Oregon RPC 5.4(a), however, is to protect Lawyer's professional independence of judgment. It does not prohibit Lawyer from using a nonlawyer to collect legal fees, even when the nonlawyer is paid from the collected fees. *See In re Griffith*, 304 Or 575, 611, 748 P2d 86 (1987).

2. *Financing Aspect.*

As a general matter, the financing aspect of the Financing Plan is analogous to Client's using a credit card to finance legal fees. See OSB Formal Ethics Op No 2005-97, which recognizes that lawyers may accept credit cards for payment of legal fees. In addition, that opinion sanctioned a rate of interest comparable to that charged on "many credit cards."<sup>5</sup>

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<sup>5</sup> If the Financing Plan involves an excessive interest rate, it is possible that Lawyer's fee could be deemed excessive. *See* Oregon RPC 1.15. *See also* OSB Formal Ethics Op No 2005-98 (lawyer could enter into flat fee arrangement that might result in more or less fees than what lawyer would earn under hourly billing rate; question is not whether lawyer would earn more than permissible hourly billing rate with respect to particular case but "whether agreement, as a whole, provides excessive compensation"); OSB Formal Ethics Op No 2005-54 (agreement that transforms contingent fee into hourly fee if client rejects settlement offer that lawyer

Nevertheless, the financing aspect of the Financing Plan raises two potential issues that should be considered:

a. *Conflict of interest.*

Oregon RPC 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

...

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer;

....

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

Oregon RPC 1.0(b) and (g) provide:

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

....

(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.

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deems reasonable could "very well turn an otherwise lawful fee into a 'clearly excessive fee'").

Although negotiation of fee arrangements with clients does not, in general, involve a conflict of interest under Oregon RPC 1.7, certain features of the Financing Plan might not be in a particular client's best interest, which could create a conflict of interest for Lawyer's offering the Financing Plan to Client. For example, Lawyer may have an incentive to encourage Client to participate in the Financing Plan to accelerate Lawyer's receipt of fees or to avoid the risk and expense of collecting fees. If there is a significant risk that Lawyer's professional judgment will be materially limited by Lawyer's own financial interest in having Client choose this payment option, then Lawyer should not offer the Financing Plan to Client without obtaining Client's consent to acceptance or continuation of the employment relationship based on informed consent, confirmed in writing. Oregon RPC 1.7(a)(2), (b).<sup>6</sup>

b. *Preservation of information relating to the representation of a client.*

Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

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<sup>6</sup> If the Financing Plan were structured so that Client's obligation to repay Company is not subject to all the claims and defenses arising in connection with the legal representation that Client could assert against Lawyer, the Financing Plan could significantly diminish Client's rights. Under such circumstances, disclosure of this fact would be required to meet the requirements of Oregon RPC 1.7 and 1.0.

(6) ~~\_\_\_\_\_ in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~(7) \_\_\_\_\_ to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.~~

~~(c) \_\_\_\_\_ A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

It is possible that the Financing Plan could involve disclosure of information relating to the representation of Client through the submission of detailed billing vouchers. Either appropriate permission to disclose must be obtained from Client or the vouchers must not disclose protected information.

Approved by Board of Governors, ~~August 2005~~ April 2014.

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§3.22, 3.32 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§10, 59–62, 125 (2003); and ABA Model Rules 1.6–1.7, 5.4.

FORMAL OPINION NO. 2005-136

**[REVISED 2014]**

**Information Relating to the Representation of a Client:  
Lawyer's Wrongful Termination Claim**

**Facts:**

Lawyer is in-house counsel and general manager of Company. In the course of applying for a patent on behalf of Company, Lawyer learned that the product was not invented by Company, but was in fact invented by Company's customer. The patent application required Lawyer to swear on behalf of Company that Company was the "original and first inventor." A person who makes a misrepresentation on a patent application is subject to criminal prosecution. Lawyer refused to make the representation that Company was the original and first inventor, and was fired. Lawyer wishes to pursue a civil action for wrongful termination in which it will be necessary to disclose information about these events.

**Question:**

May Lawyer bring a civil action for wrongful termination if bringing the action requires disclosure of information relating to Lawyer's representation of Company?

**Conclusion:**

Yes, qualified.

**Discussion:**

Relying on the general rule that "a client may terminate the relationship between himself and his lawyer with or without cause,"<sup>1</sup> some courts decline to recognize the tort of wrongful discharge in the case of in-house counsel. Some courts reach that conclusion, in part, because recognizing the claim would permit lawyers to disclose client confidences and secrets. *Balla v. Gambro, Inc.*, 585 NE2d 104, 109, 145 Ill2d 492 (1991); *Eckhous v. Alfa-Laval, Inc.*, 764 F Supp 34, 37 (SDNY). There are presently no dispositive Oregon Supreme Court cases on this issue.

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<sup>1</sup> *Herbster v. North American Co. For Life & Health Insurance*, 501 NE2d 343 (Ill 1986). See generally D. Reynolds, *Wrongful Discharge of Employed Counsel*, 1 GEO J LEGAL ETHICS 553 (1988).

A discussion of whether, or under what circumstances, a former in-house counsel can state a claim for wrongful termination is a matter of substantive law, and beyond the scope of this opinion. For purposes of discussion, however, we assume that such a claim can be stated.

In asserting such a claim, Lawyer is bound by Oregon RPC 1.6, which provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

~~to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the~~



~~legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

*See also* ORS 9.460(3). Lawyer is bound to protect information relating to the representation of Company even after termination of employment. OSB Formal Ethics Op No 2005-23.

Because the information at issue here is protected from disclosure by Oregon RPC 1.6, Lawyer may not use it in the claim for wrongful termination unless one of the applicable exceptions is satisfied. Oregon RPC 1.6(b)(4) applies to a “claim or defense on behalf of a lawyer in a controversy between the lawyer and the client.” If a legally viable and nonfrivolous claim exists, disclosure may be made. Nevertheless, there are limits on how much Lawyer may reveal and the circumstances of the revelation. The information that Lawyer seeks to disclose must be reasonably necessary to establish the claim asserted. *See* OSB Formal Ethics Op No 2005-104. Lawyer must ensure that any confidential information is revealed in the least public manner, including insistence on an appropriate protective order. *Cf. In re Huffman*, 328 Or 567, 983 P2d 534 (1999) (lawyer disciplined for making disclosures of confidential information that were not required for lawyer to assert viable defense).

**Approved by Board of Governors, ~~August 2005~~April 2014.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§4.3, 6.13 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§59–60, 64–65 (2003); and ABA Model Rule 1.6.

**FORMAL OPINION NO. 2005-148**

**[REVISED 2014]**

**Conflicts of Interest, Former Clients:  
Representing One Spouse in Dissolution  
aAfter Joint Estate Planning**

**Facts:**

Lawyer previously represented Wife and Husband in family estate-planning matters. Wife now has asked Lawyer to represent her in the dissolution of the parties' marriage. Neither Husband nor Wife is still a current client of Lawyer.

**Question:**

May Lawyer undertake the representation of Wife against Husband in the dissolution proceedings?

**Conclusion:**

See discussion.

**Discussion:**

1. *Former Client Conflicts Generally.*

Oregon RPC 1.9(a) and (c) provide:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

....

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Oregon RPC 1.0(b) and (g) provide:

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

. . . .

(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 give

Finally, Oregon RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).<sup>1</sup>

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<sup>1</sup> The exceptions in Oregon RPC 1.6(b) do not apply here:

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

- (1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to secure legal advice about the lawyer’s compliance with these Rules;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;
- (5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client’s identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

In this scenario, Wife is a potential current client and Husband is a former client. It is necessary to determine whether the proposed representation would constitute a former client conflict under Oregon RPC 1.9(a). We do this by determining whether the current and former matters are the same or substantially related within the meaning of the rule. As with former client conflicts under *former* DR 5-105(C), matters are substantially related if there is either a matter-specific conflict as discussed in OSB Formal Ethics Op No 2005-11 or an information-specific former client conflict as discussed in OSB Formal Ethics Op No 2005-17. If either type of former client conflict exists, Lawyer may proceed only if both Wife and Husband give their informed consent and the consent is suitably confirmed in writing. If neither type of former client conflict exists, Lawyer may proceed without the consent of either Husband or Wife.

On the limited facts presented, it does not appear that Lawyer would be in possession of information relating to the representation of Husband that would not already be known to Wife or to which Wife would not otherwise have access. *Cf. In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985); OEC 503(4)(e) (no privilege as between jointly represented clients who have a falling-out); OSB Formal Ethics Op No 2005-17. If this is so, no information-specific former client conflict would exist.

Are the estate planning and the marital dissolution the same or substantially related matters because they are “matter-specific”? Without more, it cannot be said that estate planning on the one hand and marital dissolution on the other constitute the same matter. *See, e.g., PGE v. Duncan, Weinberg, Miller & Pembroke*, 162 Or App 265, 986 P2d 35 (1999); *cf.* OSB Formal Ethics Op No 2005-11.

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(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer’s clients, except to the extent reasonably necessary to carry out the monitoring lawyer’s responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

~~to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client’s identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

The key question, then, is whether Lawyer's representation of Wife in the marital dissolution is a matter-specific conflict because it will work to Husband's injury or prejudice in connection with the estate planning that Lawyer did for him. Even though it may generally be true, pursuant to ORS 112.315, that a divorce revokes all provisions in a will in favor of the testator's former spouse, the revocation of wills in that manner is not sufficient to create a conflict of interest unless the parties are legally bound not to revoke or change their wills. *Cf.* ABA Formal Ethics Op No 05-434 (absent additional factors, there is no conflict in representing testator in disinheriting beneficiary who is also client, because testator is free to change will at any time).

If, however, Wife and Husband had legally bound themselves not to change their wills or if Lawyer's representation of Wife would require Lawyer to try to wrest control away from Husband of business or estate planning entities that Lawyer had formed while representing Wife and Husband, a matter-specific former client conflict would exist. *In re Brandsness, supra.* In this case, Lawyer could not represent Wife adversely to Husband in the marital dissolution without first obtaining informed consent from both Wife and Husband that is confirmed in writing.

**Approved by Board of Governors, ~~August 2005~~ April 2014.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§9.3–9.6 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121, 132 (2003); and ABA Model Rule 1.9.

**FORMAL OPINION NO. 2005-155**

**[REVISED 2014]**

**Conflicts of Interest:  
Multiple “Of Counsel” Relationships**

**Facts:**

Lawyer *A* operates Law Firm 1 as a sole practitioner. Lawyer *A* is also Of Counsel to Law Firm 2 and is listed as such on Law Firm 2’s letterhead. Lawyer *B* is a sole practitioner who wishes to be Of Counsel to Law Firm 1.

**Question:**

What conflict-of-interest issues are implicated by the proposed arrangement?

**Conclusion:**

See discussion.

**Discussion:**

The Oregon RPC do not provide a precise definition of the “Of Counsel” relationship, but such relationships clearly are permitted. Oregon RPC 1.0(d) provides:

(d) “Firm” or “law firm” denotes a lawyer or lawyers, including “Of Counsel” lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto law firm among the lawyers involved.

Oregon RPC 7.5(~~be~~) provides in part:

(~~eb~~) A lawyer may be designated “Of Counsel” on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as ~~a~~ partner or associate. ...

As Of Counsel, Lawyer *B* is a member of Law Firm 1 and Lawyer *A* is a member of Law Firm 2. As a result, Law Firm 1, Law Firm 2, and Lawyer *B*’s sole practice will be treated as a single unit for conflict-of-interest purposes. The clients of Law Firm 2 are deemed to be clients of Law Firm 1 (through the Of Counsel relationship of Lawyer *A* and Law Firm 2) while the clients of Law Firm 1 (including the clients of Law Firm 2), will be deemed to be clients of Lawyer *B*.

The Of Counsel relationship can and should be distinguished from the situation in which law firms, or a lawyer and a law firm, associate with each other or are employed as co-counsel



on specific cases. An occasional collaboration with no indicia sufficient to establish a de facto law firm among the lawyers will avoid the implication that they are members of the same firm.

Approved by Board of Governors, ~~August 2005~~ April 2014.

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COMMENT: *See* OSB Formal Ethics [Op Nos 2005-50](#), [2005-44](#), [2005-12](#). For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §2.19 (Oregon CLE 2003) and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§9, 123 (2003).

**FORMAL OPINION NO. 2005-157**

**[REVISED 2014]**

**Information Relating to the Representation of a Client:  
Submission of Bills to Insurer's Third-Party Audit Service**

**Facts:**

Lawyer represents Client whose insurance carrier is paying the bills. The insurance carrier asks Lawyer to submit Client's detailed bills to a third-party audit service.

**Questions:**

1. May Lawyer submit Client's bills to a third-party audit service at the request of Client's insurance carrier?
2. May Lawyer ethically seek Client's consent to submit Client's bills, which contain information relating to the representation of a client, to a third-party audit service?

**Conclusions:**

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

**Discussion:**

Absent an agreement to the contrary, an Oregon lawyer who represents an insured in an insurance defense case will generally have two clients: the insurer and the insured. OSB Formal Ethics Op Nos 2005-121, 2005-77, 2005-30. Both the Oregon RPCs and insurance law as interpreted in Oregon require that a lawyer hired by the insurer to defend an insured must treat the insured as "the primary client" whose protection must be the lawyer's "dominant" concern. OSB Formal Ethics Op No 2005-121.

One of a lawyer's most important duties is the preservation of information relating to the representation of a client. Oregon RPC 1.6 provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
  - (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
  - (2) to prevent reasonably certain death or substantial bodily harm;
  - (3) to secure legal advice about the lawyer's compliance with these Rules;
  - (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil

claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

~~to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.~~

#### 1. *Submission of Bills to Third Party.*

If the bills contain no information protected by Oregon RPC 1.6, Lawyer may submit the bills to the third-party audit service. On the other hand, if the bills contain such information, Lawyer may not disclose them unless one of the exceptions contained in Oregon RPC 1.6 applies. In effect, this means that absent Client's consent, Lawyer must not reveal the information. Depending on the facts of the matter and the substantive law applicable to such situations, Lawyer may need to discuss with Client the risks, if any, that the submission of the detailed bills to the third-party audit service may entail. This might include, for example, a risk

of inappropriate disclosure of protected information, a risk of waiver of the lawyer-client privilege,<sup>1</sup> or a risk of adverse effects on the insurer-insured relationship.

2. *Seeking Consent to Disclose Bills.*

Oregon RPC 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

Oregon RPC 1.0(b) and (g) provide:

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

....

(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.

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<sup>1</sup> For a discussion regarding the waiver of lawyer-client privilege on the disclosure of bills to a government auditor, see *U.S. v. Massachusetts Institute of Technology*, 129 F3d 681 (1st Cir 1997).

Whether an insurer's demand for Lawyer to provide confidential client information to a third party would give rise to a conflict and, if so, whether the conflict would be waivable or nonwaivable, will depend on the specific facts of the matter. *Cf.* Washington Formal Ethics Op No 195 (1999) ("it is almost inconceivable that it would ever be in the client's best interests to disclose confidences or secrets to a third party"). *See also* New York Formal Ethics Op No 716 (1999); Massachusetts Informal Ethics Op No 1997-T53 (1997) (auditor must take steps to protect confidentiality of disclosed information). Unless a conflict exists that cannot be waived, it is permissible for Lawyer to ask Client for consent.

**Approved by the Board of Governors, ~~August 2005~~ April 2014.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.10, 9.17 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§59–60, 62, 121, 128 (2003); and ABA Model Rules 1.6–1.7.

**FORMAL OPINION NO. 2005-167**

**[REVISED 2014]**

**Lawyer as Mediator:  
Attempted Fraud by One Party**

**Facts:**

Lawyer-Mediator is retained by parties to mediate a domestic relations matter. During the mediation, Party A discloses to the mediator the existence of assets that are unknown to Party B. Lawyer-Mediator knows that the assets are important to decision-making by Party B. Party A instructs Lawyer-Mediator to withhold these facts from Party B.

**Questions:**

1. May Lawyer-Mediator continue to mediate the matter to conclusion?
2. Does it make any difference if Lawyer-Mediator is unfamiliar with the substantive law of the matter?

**Conclusions:**

1. No.
2. No.

**Discussion:**

Oregon RPC 2.4 provides:

- (a) A lawyer serving as a mediator:
  - (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
  - (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.
- (b) A lawyer serving as a mediator:
  - (1) may prepare documents that memorialize and implement the agreement reached in mediation;
  - (2) shall recommend that each party seek independent legal advice before executing the documents; and
  - (3) with the consent of all parties, may record or may file the documents in court.

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

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

In light of Oregon RPC 2.4(a)(1), Lawyer-Mediator cannot have a lawyer-client relationship with a mediating party with respect to the mediation. Oregon RPC 2.4(a)(1) does not, however, prohibit Lawyer-Mediator from mediating a matter involving persons who are represented by Lawyer-Mediator in other separate matters.

Whether or not Lawyer-Mediator represents either of the parties on other matters, Lawyer-Mediator is bound by the applicable rules of professional conduct, including Oregon RPC 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation”), Oregon RPC 8.4(a)(4) (prohibiting “conduct that is prejudicial to the administration of justice”), and Oregon RPC 3.3(a)(5) (prohibiting illegal conduct generally). Thus, a lawyer who is also a mediator cannot engage in a knowing misrepresentation or concealment of a material fact. *See, e.g., In re Williams*, 314 Or 530, 840 P2d 1280 (1992). It follows that Lawyer-Mediator cannot complete a mediation based in whole or in part on the fraud of a mediating party.<sup>1</sup>

At a minimum, Lawyer-Mediator must inform Party A that as a result of Party A’s nondisclosure, Lawyer-Mediator will be obligated to withdraw from the mediation. *Cf.* OSB Formal Ethics Op No 2005-34. Lawyer-Mediator may also go one step further and inform Party A that if Party A does not allow disclosure, Lawyer-Mediator will inform Party B that no further reliance should be placed on any statements that may theretofore have been made to Party B. ABA Formal Ethics Op No 92-366.<sup>2</sup>

The remaining question is whether Lawyer-Mediator may go still further and inform Party B of the attempted fraud. ORS 36.220 provides:

- (1) Except as provided in ORS 36.220 to 36.238:
  - (a) Mediation communications are confidential and may not be disclosed to any other person.

Unless the disclosure falls within a statutory exception, the mediator is bound to keep the communication confidential. The exceptions include communications that the mediator or a party reasonably believes must be disclosed “to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.” ORS 36.220(6). Neither this exception nor any other exception permits disclosure to prevent a commercial or monetary fraud. Alternatively stated, the mediation privilege statute lacks the broad exception for future criminal conduct of all types that is contained in Oregon RPC 1.6(b)(1) (permitting disclosure of a client’s “intention . . . to commit a crime and the information necessary to prevent the crime”). In other words, Lawyer-Mediator may not disclose Party A’s intended fraud. *Cf. Rojas v.*

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<sup>1</sup> For a discussion of a lawyer’s duty when the lawyer’s client has lied in the course of a proceeding or intends to perpetrate a fraud, see OSB Formal Ethics Op Nos 2005-131 and 2005-132.

<sup>2</sup> In the context of a lawyer-client relationship, this kind of withdrawal-plus-disclaimer is known as a “noisy withdrawal.” *See, e.g.,* ABA Formal Ethics Op No 92-366; THE ETHICAL OREGON LAWYER §§21.11, 21.15 (Oregon CLE 2003).



*Superior Ct.*, 33 Cal4th 407, 93 P3d 260, 15 Cal Rptr3d 643 (2004) (declining to create exception to parallel California statute when legislature did not create one).

We reject the argument that Lawyer-Mediator could make the disclosure if, in fact, Party A happened to be a client in one or more other matters. At least in the absence of contrary holdings by courts of competent jurisdiction, the statutory nondisclosure obligation appears to us to predominate over the right of permissive disclosure contained in Oregon RPC 1.6(b)(1).

**Approved by Board of Governors, ~~August 2005~~April 2014.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 7.35, 7.39 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§94, 130 (2003); and ABA Model Rule 2.4.

**FORMAL OPINION NO. 2006-176**

**[REVISED 2014]**

**Conflicts of Interest:  
Lawyer Functioning in Multiple Roles  
in Client's Real Estate Transaction**

**Facts:**

Client informs Lawyer that Client would like to buy or sell real estate. Lawyer is willing to represent Client in the transaction and does not represent any other party in the transaction. Lawyer would, however, like to act not only as lawyer but also as a real estate agent or broker and as a mortgage broker or loan officer in the transaction.

**Question:**

May Lawyer serve in all three capacities?

**Conclusion:**

Yes, qualified.

**Discussion:**

1. *Potential Limitations of Substantive Law.*

This Committee is authorized to construe statutes and regulations pertaining directly to lawyers but not to construe substantive law generally. We therefore begin with the observation that if this joint combination of roles is prohibited by substantive law pertaining to real estate agents or brokers, mortgage brokers, or loan officers, Lawyer could not play multiple roles. Similarly, Lawyer would be obligated to meet in full any licensing, insurance, disclosure, or other obligations imposed by the substantive law pertaining to these lines of business. In the discussion that follows, therefore, we assume that there are no such requirements or, alternatively, that Lawyer will meet all such requirements.

2. *Lawyer-Client Conflicts of Interest.*

These facts present the potential for conflicts of interest between the client and the lawyer. Oregon RPC 1.7 states, in part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) . . . .

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

Under Oregon RPC 1.7, Lawyer's other business interests in the real estate transaction would give rise to a conflict under Oregon RPC 1.7(a)(2) since there is a significant risk that these other roles would interfere with Lawyer's representation of Client. This would be true whether Lawyer plays the nonlawyer roles as the owner or co-owner of a non-law business or as an employee or independent contractor for such a business. In either instance, Lawyer's interest in fees or income from these other roles, if not also Lawyer's liability concerns from those other roles, would create a significant risk that Lawyer's ability to "exercise independent professional judgment and render candid advice" (Oregon RPC 2.1) would be compromised.

It follows that Lawyer can undertake multiple roles only if Lawyer can and does comply with each of the requirements of Oregon RPC 1.7(b).<sup>1</sup> Before we turn to the requirements of Oregon RPC 1.7(b), however, we note that since Lawyer will be doing business with Client in Lawyer's additional roles, it is also necessary to consider the conflict-of-interest limitations in Oregon RPC 1.8(a):

(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;

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<sup>1</sup> As noted above, we have assumed that the multiple roles are legally permissible under applicable substantive law and thus need not consider Oregon RPC 1.7(b)(2). And since it is assumed that Lawyer represents Client and only Client, we need not consider Oregon RPC 1.7(b)(3).

(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.

There is significant overlap between Oregon RPC 1.7(b) and Oregon RPC 1.8(a). For example, both rules would apply whether Lawyer plays the nonlawyer role (or roles) as the owner or co-owner of a non-law business or as an employee or independent contractor for such a business. In addition, both rules require Lawyer to obtain Client's informed consent<sup>2</sup> and to confirm that consent in a contemporaneous writing.<sup>3</sup> See Oregon RPC 1.7(b)(4), 1.8(a)(3).<sup>4</sup> The informed consent requirements under Oregon RPC 1.8(a)(3) are more stringent, however:

- It is not enough that Lawyer confirm Client's waiver by a writing sent by Lawyer, as would be the case under Oregon RPC 1.7. Lawyer must also receive Client's informed consent "in a writing signed by the client."
- Lawyer's writing must clearly and conspicuously set forth each of the essential terms of each aspect of Lawyer's business relations with Client and the role that Lawyer will play in each such regard, as well as the role that Lawyer will play as Client's lawyer. This would include, for example, the fees that Lawyer or others would earn in each capacity

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<sup>2</sup> Oregon RPC 1.0(g) provides:

"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.

<sup>3</sup> Oregon RPC 1.0(b) provides:

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

<sup>4</sup> For prior formal opinions citing to both Oregon RPC 1.7(a) and Oregon RPC 1.8(a), see OSB Formal Ethics Op Nos 2005-10 (in addition to lawyer's private practice, lawyer also owns a real estate firm and a title insurance company that occasionally do business with lawyer's clients) and 2005-28 (discussing conflict of interest in representing both sides in adoption).

and the circumstances under which each such fee would be payable (e.g., only upon closing or without regard to closing). It would also include a clear explanation of any limitation of liability provisions that might exist regarding Lawyer's other roles.<sup>5</sup>

- In addition to recommending that Client consult independent counsel, Lawyer must expressly inform Client *in writing* that such consultation is desirable and must make sure that Client has a reasonable opportunity to secure the advice of such counsel.
- Communications between Lawyer and Client as part of their lawyer-client relationship are subject to Lawyer's duties of confidentiality under Oregon RPC 1.6.<sup>6</sup> Communications between Lawyer and Client in other capacities would not be subject to Oregon RPC 1.6, and Lawyer must explain to Client why this distinction is potentially significant.<sup>7</sup> This explanation must be given whether Lawyer's multiple roles are carried out from a single office or from physically distinct offices.<sup>8</sup>

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<sup>5</sup> For cases and ethics opinions discussing the general level of disclosure requirements when lawyers do business with clients, see, for example, OSB Formal Ethics Op No 2005-32.

<sup>6</sup> Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. . . . to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17.

<sup>7</sup> See, e.g., *United States v. Huberts*, 637 F2d 630, 639–640 (9th Cir 1980), *cert. denied*, 451 US 975 (1981) (lawyer as business agent; no privilege); *United States v. Davis*, 636 F2d 1028, 1043–1044 (5th Cir), *cert. denied*, 454 US 862 (1981) (lawyer as tax preparer; no privilege); *Diamond v. City of Mobile*, 86 FRD 324, 327–328 (SD Ala 1978) (lawyer as investigator; no privilege); *Neuder v. Battelle Pacific Northwest Nat'l Lab*, 194 FRD 289, 292–297 (DDC 2000) (when corporate lawyer acts in nonlegal capacity in connection with

Two requirements remain to be discussed. One requirement is that the terms of the business aspects of the transactions between Lawyer and Client be “fair and reasonable” pursuant to Oregon RPC 1.8(a)(1). We assume that this requirement will be met if Client would be unable to obtain the same services from another under more favorable terms. Whether, or to what extent, the “fair and reasonable” requirement could be met if there were other available suppliers at materially lower cost is a subject on which this Committee cannot define any bright-line rule. Other jurisdictions have been more inclined to approve lawyers’ business relations with clients when the client is relatively sophisticated. *See, e.g., Atlantic Richfield Co. v. Sybert*, 441 A2d 1079 (Md Ct Spec App 1982) (lawyers who acted as realty brokers for sophisticated corporate seller were not barred from recovering real estate commission); *McCray v. Weinberg*, 340 NE2d 518 (Mass App Ct 1976) (declining to set aside foreclosure of lawyer’s mortgage loan, one of a series, to knowledgeable and experienced client).

The other requirement is that Lawyer must “reasonably believe[ ] that [Lawyer] will be able to provide competent and diligent representation to” Client under Oregon RPC 1.7(b)(1). This means not only that Lawyer must have the subjective belief that Lawyer can do so but also that Lawyer’s belief must be objectively reasonable under the circumstances. *See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS* §126, comment e (2000). Other state bar ethics committees have split on whether such an objectively reasonable belief can exist if, for example, a lawyer wishes to act both as legal counsel to and insurance agent for a client or as legal counsel to and securities broker for a client.<sup>9</sup> We cannot say that it will always be unreasonable for a lawyer to conclude that the lawyer can provide competent and diligent legal advice to a client while also fulfilling other roles. We note, however, that there will be times when the lawyer’s conflicting obligations and interests will preclude such roles. *Cf. In re Phelps*, 306 Or 508, 510 n 1, 760 P2d 1331 (1988) (lawyer cannot be both counsel to

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employment decisions, communications between lawyer and corporate representatives not privileged). A variant could arise if Lawyer’s role were ambiguous, resulting in Client’s inability to carry the burden of proof on lawyer-client privilege. *See Groff v. S.I.A.C.*, 246 Or 557, 565–566, 426 P2d 738 (1967) (person asserting privilege has burden of showing that one asserting privilege and nature of testimony offered are both within ambit of privilege); ORS 40.030(1) (OEC 104(1)).

<sup>8</sup> The explanation about privilege and confidentiality issues might, for example, include a discussion about the effect that a lack of confidentiality could have on an opposing party’s ability to call Lawyer as a witness in any subsequent litigation and thus on Lawyer’s ability to represent Client in that litigation in light of the lawyer-witness rule, Oregon RPC 3.7.

<sup>9</sup> *See, e.g., Cal Formal Ethics Op No 1995-140* (lawyer as insurance broker); *NYSBA Formal Ethics Op No 2002-752* (lawyer may not provide real estate brokerage services in the same transaction as legal services); *NYSBA Formal Ethics Op No 2005-784* (lawyer also acting in entertainment management role).

a party in a transaction and escrow for that transaction); OSB Formal Ethics Op No 2005-55 (same).

3. *Additional Caveats and Concluding Remarks.*

Given these numerous and delicate potential issues, one might fairly conclude that multidisciplinary practice means having multiple opportunities to be disciplined. *See generally In re Phillips*, 338 Or 125, 107 P3d 615 (2005) (36-month suspension for violation of multiple provisions in former Code of Professional Responsibility in connection with program to help insurance agents sell insurance products to lawyer's estate planning clients and share in resulting commissions). Nevertheless, it will sometimes, but not always, be permissible for Lawyer to play these multiple roles. The answer will depend on factors including the fairness and reasonableness of the multiple roles, whether it is objectively reasonable to believe that Lawyer can provide competent and diligent representation while playing multiple roles, and whether Lawyer can and does obtain Client's informed consent in a writing signed by the client. Before concluding this opinion, however, we note three caveats:

- If someone other than Client were to pay Lawyer for the provision of legal services to Client, Lawyer would also have to comply with Oregon RPC 1.8(f).<sup>10</sup>
- If Lawyer were to endeavor to use Lawyer's role as real estate broker or agent or mortgage broker or loan officer to obtain clients for Lawyer's practice of law, Lawyer would have to comply with applicable advertising and solicitation requirements in Oregon RPC 7.1 et seq.<sup>11</sup>
- Lawyers covered by the Oregon State Bar Professional Liability Fund who do not wish to risk losing potentially available legal malpractice coverage should review Form ORPC 1 and Exclusions 5 and 8 of the PLF 2006 Claims Made Plan, which can be found at page 66 of the 2006 Oregon State Bar Membership Directory, or any later amendments thereto.

**Approved by Board of Governors, ~~July 2006~~April 2014.**

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<sup>10</sup> Oregon RPC 1.8(f) provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

For an ethics opinion discussing this rule, see OSB Formal Ethics Op No 2005-30 (legal fees paid by insurer).

<sup>11</sup> For the present text and prior formal ethics opinions addressing these requirements, see OSB Formal Ethics Op Nos 2005-106 (lawyer who purchases tax advice business may not use that business to engage directly or indirectly in improper solicitation of legal clients), 2005-101 (lawyer and psychologist may market a joint "Family Mediation Center"), and 2005-108 (lawyer may advertise family mediation service in marriage and family therapy section of Yellow Pages).



## **OREGON STATE BAR**

### **Legal Services Program Committee**

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**Meeting Date:** April 25, 2014

**Memo Date:** April 11, 2014

**From:** Legal Services Program Committee

**Re:** Disbursing Unclaimed Client Funds from the Legal Services Program

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#### **Action Recommended**

1) Approve disbursing the annual unclaimed client funds for 2014 as outlined in the chart below titled 2014 Distribution. This includes approving the current reserve policy.

2) Approve disbursing the unclaimed client funds from the Strawn v Farmers class action as outlined in the chart below titled 2014 Distribution.

#### **Background**

Unclaimed or abandoned client funds held in a lawyers' trust account are sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received is used for the funding of legal services by the legal aid providers, the payment of claims and the payment of expenses incurred by the OSB in the administration of the Legal Services Program.

In 2012 the committee and subsequently the BOG approved a recommendation regarding the distribution method of the unclaimed client funds. The distribution method was that the LSP hold \$100,000 in reserve to cover potential claims and distribute the revenue that arrives each year above that amount. The amount of funds disbursed changes from year to year depending on the unclaimed funds received and claims made each year. In addition, the OSB entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the allotted reserve gets diminished or depleted. This disbursement method and reserve policy was approved again in 2013.

#### **2014 Disbursement Recommendation Unclaimed Funds Received 2013/14**

There is currently about \$161,000 funds available for distribution in 2014. The LSP Committee recommends that the reserve policy remain the same allowing \$100,000 to be held in reserve and \$61,000 disbursed to the legal aid providers. The legal aid providers are recommending that the amount be disbursed according to the formula used last year (6% CNPLS, 11% LCLAC, 1% CCLA, 41% LASO, 41% OLC). The amounts each provider will receive are outlined in the chart below.

#### **Distribution of Unclaimed Client Funds Strawn v Farmers Class Action**

The LSP Program received approximately \$520,000 in one time unclaimed client funds from the Strawn v Farmers Class Action on January 31, 2014. It is recommended that the funds be distributed as follows:

- Distribute the one-time funds in equal amounts over three years with 1/3 of the funds being disbursed in 2014 and the remainder of the funds held in

reserve. Disbursing the one-time funds over three years is more sustainable and allows the legal aid providers to make the most efficient and effective use of the funds. It will also allow time to understand the amount of funds that may be claimed in the future.

- Disburse the funds by poverty population with 6% going to the Center for Nonprofit Legal Services (CNPLS), 11% to Lane County Legal aid and Advocacy Center (LCLAC), and 1% to Columbia County Legal Aid (CCLA). The remaining 82% which is usually divided by Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC) for statewide services shall be allocated entirely to LASO. This is pursuant to legal aid’s strategic plan that calls for using new funds to add new staff positions on a prioritized list. The highest priority positions in the strategic plan are to be located at LASO.
- Allow the CNPLS to receive its full share of the distribution in 2014. CNPLS has lost both county and city funds. Allowing them to get their full three year allocation will prevent them from having to lay off staff.

	<b>Annual Unclaimed Fund</b>	<b>Farmers Class Action Fund</b>
<b>Total Received to Date</b>	\$ 454,221	\$518,900
<b>Claims</b>	\$(31,118)	\$(6,363)
<b>Previous Distributions to Programs</b>	\$(262,000)	
<b>Subtotal</b>	\$161,103	\$ 512,537
<b>Reserve Policy</b>	\$100,000	\$321,190
<b>Funds Available for Distribution</b>	<b>\$61,103</b>	<b>\$191,347</b>
<b>Total Funds Available</b>	<b>\$673,640</b>	
<b>Number of Properties Received</b>	<b>1138</b>	<b>476</b>
<b>Number of Properties Claimed</b>	<b>16</b>	<b>7</b>

<b>2014 Distribution</b>		
Center for Non Profit Legal Services	\$3,666	\$30,752
Lane County Law & Advocacy	\$6,721	\$17,665
Columbia County Legal Aid	\$611	\$1,606
Legal Aid Services of Oregon	\$25,052	\$141,324
Oregon Law Center	\$ 25,052	\$ -
<b>Total Distribution</b>	<b>\$61,103</b>	<b>\$191,347</b>

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**OREGON STATE BAR**  
**Board of Governors Agenda**

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**Meeting Date:** April 25, 2014  
**From:** Amber Hollister, Deputy General Counsel  
**Re:** Proposed Unauthorized Practice of Law Advisory Opinion: Representation of Family and Friends (2014-3)

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**Action Recommended**

Approve the Unlawful Practice of Law Committee's advisory opinion regarding unlawful practice of law issues that arise in the context of non-lawyer representation of friends and family.

**Background**

The UPL Committee has drafted its third advisory opinion regarding unlawful practice of law issues. The opinion focuses on questions that arise in the context of practice of law issues that arise in the context of non-lawyer representation of friends and family.

The UPL Committee has the authority to draft advisory opinions, pursuant to OSB Bylaw 20.704. Advisory opinions must be submitted to the Board of Governors for final approval prior to publication. *Id.*

The representation of family and friends advisory opinion advises that non-lawyers may not represent other individuals in circuit court or small claims court, but may represent others in justice courts. The opinion also advises that non-lawyers may not select pleading forms or draft pleadings forms for others.

**Recommendation**

Staff recommends that the BOG approve UPL Advisory Opinion No. 2014-3 for publication.

**Attachment:** UPL Advisory Opinion No. 2014-3

**UPL ADVISORY OPINION NO. 2014 - 3**

**REPRESENTATION OF FAMILY AND FRIENDS**

**FACTS:**

1. Mother graduated from law school but is not licensed to practice law in Oregon or any other state. She would like to defend her son in a criminal matter in circuit court.
2. A contractor with no background in law would like to represent his friend in a construction dispute with a homeowner in a county justice court.
3. A contractor with no background in law would like to represent his friend in a construction dispute with a homeowner before the small claims department of a circuit court.
4. Friend, who has worked as a legal assistant, would like to assist her acquaintance, wife, with selecting pleading forms and drafting pleadings to file in a pending divorce case in circuit court.

**QUESTIONS:**

1. Can mother represent her son in circuit court?
2. Can contractor represent his friend in justice court?
3. Can contractor represent his friend in small claims court?
4. Can friend assist wife with selecting pleading forms and drafting pleadings to file in a divorce case?

**ANSWERS:**

1. No.
2. Yes.
3. No.
4. No.

**DISCUSSION:**

- I. Question No. 1 (Non-lawyer Parent Representing Child in Circuit Court)

A non-lawyer mother who tries to represent her child in circuit court would very likely engage in the unlawful practice of law.<sup>1</sup> Although people may represent themselves *pro se* in circuit court, only active members of the Oregon State Bar and out-of-state lawyers admitted *pro hac vice* may represent other persons. ORS 9.320 (a party may only prosecute or defend a lawsuit *pro se* or through an attorney).<sup>2</sup>

It makes no difference that mother seeks to represent her own child. As a general rule, non-lawyer parents do not have a right to provide legal advice to their children or serve as their children's lawyers.<sup>3</sup> Because mother is not an active member of the Oregon State Bar or any other state bar, she may not defend son in a criminal matter in circuit court. Mother's legal education does not give her the right to defend son. Attending law school or having a law degree does not give a person the right to represent others in court.<sup>4</sup>

## II. Question No. 2 (Non-lawyer Representation of Friend in Justice Court)

Non-lawyers such as contractor may represent other people in justice courts. ORS 52.060 states "[a]ny person may act as attorney for another in a justice court, except a person or officer serving any process in the action or proceeding, other than a subpoena." Therefore, in this example, the contractor would likely be able to represent his friend in justice court regarding the construction dispute with the homeowner.

## III. Question No. 3 (Non-lawyer Representation of Friend in Small Claims Department)

Non-lawyer contractor would likely be engaging in the unlawful practice of law if he tried to represent his friend in a small claims department of a circuit court. Generally, people must represent themselves in small claims courts unless the court orders otherwise. ORS 46.415(4) (in small claims proceedings, no "person other than the plaintiff and defendant . . . shall appear on behalf of any party").<sup>5</sup>

## IV. Question No. 4 (Non-lawyer Selecting Forms and Drafting Pleadings for Friend)

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<sup>1</sup> ORS 9.160(1).

<sup>2</sup> Accord ORS 9.160(2); see *Oregon Peaceworks Green, PAC v. Sec'y of State*, 311 Or 267, 270-71, 810 P2d 836, 837 (1991) ("ORS 9.160 unequivocally prohibits a nonattorney from practicing law. ORS 9.320 states the key exception to the ORS 9.160 prohibition: representation of oneself. Neither statute empowers a nonattorney to represent another in state court, a fundamental aspect of law practice.").

<sup>3</sup> In some cases involving minor children, parents may have independent, enforceable rights to prosecute on their own behalf. See e.g., *Winkelman v. Parma City School District*, 550 US 516 (2007) (holding parents have authority to bring an action under the Individuals with Disabilities Education Act (IDEA) as an aggrieved party with independent rights).

<sup>4</sup> But see Rules for Admission of Attorneys in Oregon 13.05 (Law School Appearance Program allowing limited court appearances by eligible law students who are certified by the court and supervised by an active member of the bar).

<sup>5</sup> Exceptions may apply when a party is a government entity (e.g., the State of Oregon) or a party obtains permission from the court to be represented by an attorney. ORS 46.415.

Non-lawyer friend may not select legal forms or draft pleadings for wife's divorce case because to do so would very likely be the unlawful practice of law. ORS 9.160 (1). As a general rule, non-lawyers may not select legal forms or draft pleadings for others to file in circuit court, because such activity would amount to the unlawful practice of law.<sup>6</sup> Even though friend has some limited training and experience as a legal assistant, she may not give legal advice to another person.

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<sup>6</sup> *Oregon State Bar v. Security Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962) (holding that the practice of law "includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served").

The Oregon State Bar regulates the practice of law in Oregon, and provides numerous public services to enhance the state's justice system, and to help the public understand and access the system. The following volunteer positions are available to members of the public located in Oregon. Diverse candidates are encouraged to apply.

## **Board of Governors (one statewide vacancy)**

The Board of Governors (BOG) is charged with the executive functions of the state Bar and directs its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It has the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for regulation and management of the affairs of the state Bar not inconsistent with law. The BOG meets 5 times each year and holds an additional 5 committee meetings each year. The BOG consists of 18 members, 14 lawyers and 4 public members. Terms are 4-years and public members must be residents of this state and cannot be an active or inactive member of the Oregon State Bar. Some travel expenses for members of the board are reimbursed.

## **Disciplinary Board (several statewide vacancies)**

The Disciplinary Board (DB) is a component of the disciplinary process. After formal charges have been filed against a lawyer, 2 lawyer members and one public member of the DB will be selected to serve as the trial panel for the case. The trial panel evaluates the evidence presented by the bar and the accused lawyer and decides whether the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. Hearings are usually conducted Monday through Friday 8:00 am to 5:00 pm and can last anywhere from 1 to 3 days. Travel may be required for some hearings. Mileage, meals and lodging can be reimbursed for panel members. Appointed members serve a 3 year term.

## **Fee Arbitration and Mediation (several statewide vacancies)**

Works to resolve disputes regarding attorneys' fees. Volunteer panels, including two lawyer members and one public member, listen to both sides and then make a decision. Each matter can take one-half to an entire day. Terms are generally three years and members may be reappointed. There is a greater need for volunteers from Eastern and Southern Oregon.

## **House of Delegates (two statewide vacancies)**

The House of Delegates (HOD) is a governance forum for the OSB and consists of one public member from each in-state region and more than 200 lawyer members from in and outside the state. The HOD debates and decides matters of bar policy during the one annual meeting held during the year. Terms are for three years and some travel expenses for attendance at the annual meeting are reimbursed. There is a greater need for volunteers from outside the Portland-metro area.

## **Professional Liability Fund Board of Directors**

The Professional Liability Fund (PLF) Board of Directors consists of nine members, including two public members. It has the necessary authority to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage. The board also establishes the terms of the liability coverage and the defense and payment of claims under such coverage. The PLF Board meets approximately 6 times and holds an additional 5-10 telephone conferences per year. Public members serve terms of 5 years, must be residents of this state, and cannot be an active or inactive member of the Oregon State Bar. Travel expenses for members of the board are reimbursed.

## **State Professional Responsibility Board (one statewide vacancy)**

The State Professional Responsibility Board (SPRB) is a 10 member board, composed of 8 resident attorneys and 2 members of the public. The board acts as the grand jury in the discipline system, making probable cause decisions on complaints. The board meets monthly on either Friday or Saturday for several hours and the workload is substantial. SPRB members serve 4-year terms. Reimbursement for mileage, meals, and lodging is available for SPRB members.

## Committees

Committees assist the Board of Governors in its oversight and policy-making responsibilities by pursuing the assignments described below. Appointments are made by the Board of Governors in November and terms begin on January 1 of the following year. Unless otherwise noted, committee members serve three-year terms.

### **Advisory Committee on Diversity and Inclusion (two statewide vacancies)**

Advise on programs designed to increase racial and ethnic minority participation in the Oregon legal profession. Meets 3rd Monday of every month at 3:00 p.m. at the Oregon State Bar, and consists of 19 members, 17 lawyers and 2 public members.

### **Client Security Fund**

Investigate and recommend acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. Meets on Saturdays, every other month, 9:30 a.m. at various locations, and consists of 13 members, 12 lawyers and 1 public member.

### **Judicial Administration (one statewide vacancy)**

Advise Board of Governors on judicial selection and administration issues. Meets the 1st Thursday of every month, 3:30 p.m. at the Oregon State Bar, and consists of 15 members, 14 lawyers and 2 public members.

### **Legal Services (one statewide vacancy)**

The Legal Services program is responsible for reviewing and reporting to the Board of Governors on filing fee funds. The committee meets three to four times a year at various times and locations, and consists of 9 members, 7 lawyers and 2 public members.

### **Minimum Continuing Legal Education**

Provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. Meets at various locations, four times a year on a Friday at noon, and consists of 7 members, 6 lawyers and 1 public member.

### **Professionalism Commission (one statewide vacancy)**

Promotes educational opportunities for lawyers, judges and the public. It also promotes professionalism and designs and develops creative approaches to the promotion of professionalism and equality. Meets quarterly on a Friday at the Oregon State Bar, and consists of 21 members, 5 judges and lawyers, 1 public member and several ex-officio members of the legal community.

### **Public Service Advisory**

Provides volunteer opportunities to increase understanding and respect of the justice system by adult Oregonians. Meets quarterly on Saturday, at 10:00 a.m. at the Oregon State Bar, and consists of 13 members, 12 lawyers and 1 public member.

### **Quality of Life**

Educate lawyers and firms about the benefits of balancing personal life and career obligations. Meets the 2nd Thursday at noon every month at the Oregon State Bar, and consists of 10 members, 9 lawyers and 1 public member.

### **State Lawyers Assistance**

Investigate and resolve complaints about lawyers whose conduct impairs their ability to practice law. Meets on the 4th Thursday every month, 4:00 p.m. at the Oregon State Bar, and consists of 12 members, 10 lawyers and 2 public members. Terms are for four years.

### **Unlawful Practice of Law**

Review and evaluate complaints concerning individuals who are not licensed or otherwise permitted to practice law in Oregon. Members are assigned individual complaints to investigate and recommend action in accord with the Committee's authority. The Committee reviews member reports and makes recommendations to the Board of Governors whether to seek injunctive relief against violators. Meets 2nd Friday of each month, 3:00 p.m. at the Oregon State Bar, and consists of 17 members, 15 lawyers and 2 public members. Terms are for four years.



# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last)		
Residence Address: (number, street, city, state, zip)		Residence Phone:
County:		Office Phone:
Office Address: (number, street, city, state, zip)		E-Mail Address:
County:		
Office Mailing Address: (if different)		Occupation: (and job title, if any)
County:		

## **College and Post-Graduate Education:**

School	Location	Dates	Degrees

## **Employment:** *List major paid employment chronologically beginning with most recent experiences.*

Dates (from/to)	Employer and Position Held	City/State

## **Community/Volunteer Services:** *List significant volunteer activities chronologically beginning with most recent services.*

Dates (from/to)	Organization and Position Held	City/State

**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

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**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime?  Yes  No  
Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?  Yes  No  
If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

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**Opportunities:** If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

- Board of Governors  Disciplinary Board  Fee Arbitration and Mediation  House of Delegates  
 Professional Liability Fund  State Professional Responsibility Board

**Committees:**

- Advisory Committee on Diversity and Inclusion  Client Security Fund  Judicial Administration  
 Legal Services  Minimum Continuing Legal Education  Professionalism Commission  
 Public Service Advisory  Quality of Life  State Lawyers Assistance  Unlawful Practice of Law
- 

**References:** List names and contact information of three people who may be contacted as references.

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Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Where did you learn about the public member opportunities available at the Oregon State Bar? \_\_\_\_\_

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Application deadline is July 3, 2014. Return applications to:

- Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935 •
- [dedwards@osbar.org](mailto:dedwards@osbar.org) • 503-598-6994 (fax) •



# Request for Demographics Information (Optional)

Collecting and maintaining accurate demographic data is critical to fulfilling the mission of the Oregon State Bar (OSB). The OSB is committed to cultivating a diverse and inclusive bar, which 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. You can help support the OSB mission by voluntarily providing the following information about yourself.<sup>1</sup>

### Race/Ethnicity:

Please check all that apply, including multiple categories for two or more race/ethnicity:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black or African American
- Hispanic or Latino
- White or Caucasian
- Self-Identification \_\_\_\_\_

### Disability:

I have a disability (physical or mental) that substantially limits one or more major life activity.

- Yes
- No

### Sexual Orientation:

- Heterosexual
- Lesbian, Gay, Bisexual
- Self-Identification \_\_\_\_\_

### Gender Identity:

- Male
- Female
- Transgender
- Self-Identification \_\_\_\_\_

I choose not to disclose any or all information.

<sup>1</sup> Information submitted to the OSB is subject to disclosure under the Public Records Law. ORS 192.410 et seq.

## MEMORANDUM

**TO: Board of Governors**  
**FROM: Caitlin Mitchel-Markley, Chair, Board Development Committee**  
**RE: BOG Outreach Packet**  
**DATE: April 8, 2014**

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Per the Board Development Committee's charge to search "for individuals who have an interest in serving and possess the requisite criteria" and to "recruit candidates for other governance positions," the Committee has created this packet to assist BOG members in their outreach and recruitment efforts. This memorandum briefly discusses the existing OSB volunteer recruitment methods, along with suggestions for outreach by BOG members to OSB members and the public. It is the hope of the Committee that this packet will also be a resource for BOG members when meeting with their constituents, the legal community as a whole, and members of the public.

### **A. EXISTING RECRUITMENT METHODS**

There are several methods currently used to recruit volunteers for the BOG, HOD, and other OSB committees. These methods vary depending on whether the recruitment is for public members or for lawyer volunteers. Regarding public member recruitment, general information and an application are available on the OSB website. Announcements are also placed on the OSB website, and sent to local bar presidents and to a list of diversity stakeholders. Press releases for these vacancies are distributed in late spring and early summer. Unfortunately, the number of public member volunteers has dwindled each year, so BOG members and senior staff are also asked to help get the word out about public member vacancies.

On the other hand, the number of potential lawyer volunteers has increased for BOG appointed positions. Currently an online questionnaire/application is available. Since using the online questionnaire/application, the number of volunteers has increased by 60%. While this turnout is positive, the flip-side is that the OSB is not able to utilize all the volunteers because there are a finite number of positions available. In addition to the online questionnaire, announcements are placed in the Bulletin, on the OSB website, and in the emailed Bar News and BOG Updates. Emails are also sent to county bar presidents with a request to have the information shared with local attorneys. Separate recruitment is done for the OSB's HOD and BOG elections. Similar to the lawyer volunteer recruitment, the OSB website, county bar president communications, and Bar News and BOG Update emails are used to recruit for the HOD and BOG positions. It is the Committee's hope that BOG members will also be more involved and proactive in the recruitment of and outreach to attorney volunteers and candidates.

### **B. POTENTIAL OUTREACH AND RECRUITMENT**

The following is a list of potential outreach and recruitment strategies for BOG members to inform attorneys and the public of OSB volunteer and election opportunities.

- Local Bar Associations: Contact your constituent county bar associations and attend one or more meetings. The Committee intends to create a brief powerpoint presentation for BOG members who would like to have a formal presentation for such meetings, instead of simply an elevator pitch and informal discussions.
- Publications: Post an article/notice on Facebook, Twitter, or LinkedIn.
- Social Events: BOG members attend various dinners and other sponsored events throughout the

year (see the enclosed Calendar of Events) and these are an opportunity to discuss the OSB with potential volunteers/candidates at your table or during the cocktail hour.

- Other Organizations: BOG members that are members of fraternal, charitable, service, religious, or business organizations can use such membership to discuss the OSB's volunteer opportunities with members of the public.
- CLEs: Take the opportunity to discuss the OSB's various programs, as well as volunteer opportunities, during the breaks when you are attending CLEs.
- HOD Regional and Annual Meeting(s): At these meetings you already have a captive audience of individuals who have expressed an interest in bar governance. This is an opportunity to encourage them to become further involved with the OSB through volunteer opportunities and BOG elections.
- Liaison Duties: Many OSB members are members of an OSB Section, but not otherwise involved with OSB governance or committees. When attending section meetings as a BOG liaison, you can use meeting breaks or your BOG Liaison Report to inform the section leadership/members of OSB election and volunteer opportunities.
- Other Opportunities: Reach out to your constituents and make yourself available to answer their questions and otherwise discuss the OSB election and volunteer opportunities. Remind attorneys and members of the public that most OSB committee meetings and BOG meetings are open to the public and invite them to attend. Never underestimate the power of a personal invitation!

Enclosed in your packet, please find the following materials:

- BOG Descriptive Statement and Overview
- BOG Calendar of Events
- OSB Functions, Missions, and Values sheet
- OSB By the Numbers
- OSB At a Glance
- OSB Volunteer Opportunities
- OSB Organization Chart
- OSB 2014 Budget Summary by Program
- OSB Active Membership Fee Break Down
- BOG Frequently Asked Questions
- BOG Election Information and Candidate Statement
- Public Member Opportunities and Application
- Outreach and Involvement Report (to be completed quarterly by BOG members)

## BOARD OF GOVERNORS

### DESCRIPTIVE STATEMENT AND OVERVIEW

The OSB Board of Governors is to the OSB what a board of directors is to a private corporation. The BOG is responsible for:

- ensuring that the OSB fulfills its statutory mission of protecting the public by regulating the profession, improving the law and the legal system, and promoting access to justice,
- establishing broad policies and objectives for bar programs,
- ensuring the financial stability to accomplish the mission.

The BOG is accountable to the public, the Supreme Court and the membership for the OSB's performance. The BOG hires and reviews the performance of the Executive Director, who administers, implements and supervises the OSB's operations.

The BOG is comprised of 14 lawyer members elected from the 7 geographical regions of the state and 4 lay members appointed by the BOG. OSB programs under the general oversight of the BOG are discipline, MCLE, member services, CLE Seminars, Legal Publications, media relations, public affairs and legal services. With the exception of member reinstatements, the board has no input on or knowledge of alleged ethical violations or disciplinary actions.

**BOG Calendar of Events**  
**\*\*\*SUBJECT TO CHANGE\*\*\***

**2014**

<b>April 4</b>	<b>50-Year Luncheon</b>	<b>Tualatin Country Club</b>
April 8-10	ABA Day in Washington, D.C.	Wa, D.C.
April 11	SPRB Meeting	Conference Call 8:30am
April 17	Basic Rights Oregon Leaders Luncheon	TBD
April 17	The Asian Reporter Foundation Banquet	TBD
April 23	CLP Legal Citizen of the Year Award Dinner	TBD
<b>April 24</b>	<b>OSB/PLF Joint Dinner</b>	<b>TBD</b>
<b>April 25</b>	<b>Board and Committee Meetings + PLF</b>	<b>OSB Center</b>
April 25	PLF Board of Directors	Tigard
April TBD	HNBA Legal Education Fund Scholarship Lunch	TBD
May 5-6	Northwest Bars Conference	Seattle, WA
May 17	SPRB Meeting	OSB Center
May TBD	Hispanic Metro Chamber Scholarship Lunch **	TBD
May TBD	BOG Candidate Statements Due	For October Election
May TBD	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
May TBD	Asian American Youth Leadership Conference	TBD
<b>May 23</b>	<b>BOG Committee Meetings</b>	<b>OSB Center</b>
<b>May 23</b>	<b>BOG Alumni Dinner</b>	<b>OSB Center</b>
May 28-30	National Conf. on Prof. Responsibility	Long Beach, CA
May 22	Partners in Diversity Say Hey Spring **	TBD
May 30	MBA Annual Meeting & Dinner **	Marriott Portland Downtown Waterfront
June 13	SPRB Meeting	Conference Call 8:30am
June 20	PLF Board of Directors	Steamboat
<b>June 26-27</b>	<b>Board and Committee Meetings</b>	<b>Pendleton, OR</b>
<b>July 15-17</b>	<b>HOD Regional Meetings</b>	<b>All Regions</b>
July 19	SPRB Meeting	TBD
<b>July 25</b>	<b>BOG Committee Meetings</b>	<b>OSB Center</b>
July 29-30	Bar Exam	Red Lion Jantzen Beach
August TBD	Oregon Minority Lawyers Assoc. Social/Auction**	TBD
August 7-12	ABA Annual Meeting	Boston, MA
August 14	PLF Board of Directors	Blue River
August 22	SPRB Meeting	Conference Call 8:30am
September 4	HMCC Celebration Dinner**	Oregon Convention Center
<b>September 5</b>	<b>Board and Committee Meetings</b>	<b>OSB Center</b>
September 15	Hispanic Heritage Month Breakfast**	Salem Convention Center
September 20	SPRB Meeting	OSB Center
September 23	HOD Resolution Deadline	Received by OSB
September TBD	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
October TBD	BOG Election Ballots Sent	Online voting only
<b>October 3 – date change</b>	<b>Board (Special) and Committee Meetings</b>	<b>OSB Center</b>
October 10	PLF Board of Directors	Yachats
October 17	HOD Agenda Published	Distributed by OSB
October 17	SPRB Meeting	Conference Call 8:30am
October 18	OGALLA Dinner & Silent Auction**	Hotel Vintage Plaza
<b>Oct 21-23</b>	<b>HOD Regional Meetings</b>	<b>All Regions</b>
October TBD	BOG Ballots due to OSB by 5pm	Online voting only
October TBD	Pro Bono Fair*	TBD
October 2015	CEJ Laf-Off (only in ODD years)	
<b>November 7</b>	<b>House of Delegates Meeting</b>	<b>OSB Center</b>
<b>November 13-15</b>	<b>Board &amp; Committee Meetings &amp; Planning Retreat</b>	<b>Salishan</b>
November 22	SPRB Meeting	OSB Center
December TBD	OSB Annual Awards Luncheon*	TBD

December 5	PLF Board of Directors & Annual dinner	Tigard
December 19	SPRB Meeting	Conference Call 8:30am
<b><u>2015</u></b>		
<b>January 9</b>	<b>OSB Employee Luncheon</b>	<b>OSB Center</b>
<b>January 9</b>	<b>BOG Special Session &amp; Committee Meetings</b>	<b>OSB Center</b>
<b>January 9</b>	<b>BOG/MBA Reception</b>	<b>Portland</b>
January TBD	SPRB Meeting	TBD
January 19	Dr. Martin Luther King Breakfast**	TBD
February 4-10	ABA Mid-Year Meeting	Houston, TX
February TBD	PLF Board of Directors	TBD
February TBD	Partners in Diversity Say Hey**	TBD
February TBD	SPRB Meeting	TBD
February TBD	CEJ 23rd Annual Awards Luncheon**	TBD
<b>February 12</b>	<b>Lunch with Supreme Court &amp; Court of Appeals</b>	<b>Salem</b>
<b>February 12</b>	<b>Committee Meetings</b>	<b>Salem</b>
<b>February 12</b>	<b>Local Bar and Legislative Reception</b>	<b>Salem</b>
<b>February 13</b>	<b>Board Meeting</b>	<b>Salem</b>
February TBD	Oregon Hispanic Bar Assoc. Dinner**	TBD
February 24-25	Bar Exam	TBD
March TBD	ABA Bar Leader Institute	TBD
March TBD	Oregon Women Lawyers Dinner/Auction**	TBD
March TBD	SPRB Meeting	TBD
<b>March 20</b>	<b>BOG Committee Meetings</b>	<b>OSB Center</b>
<b>March 20</b>	<b>50-Year Luncheon</b>	<b>Tualatin Country Club</b>
<b>March 20</b>	<b>BOG / ONLD Dinner</b>	<b>OSB Center</b>
March 25-27	Western States Bar Conference	Big Island, HI
April 7-9?	ABA Day in Washington, D.C.	Wa, D.C.
April TBD	SPRB Meeting	TBD
<b>April 23</b>	<b>OSB/PLF Joint Dinner</b>	<b>TBD</b>
<b>April 24</b>	<b>Board and Committee Meetings + PLF</b>	<b>OSB Center</b>
April TBD	PLF Board of Directors	Tigard
April TBD	Basic Rights Oregon Leaders Luncheon	TBD
April TBD	HNBA Legal Education Fund Scholarship Lunch	TBD
April TBD	CLP Legal Citizen of the Year Award Dinner	TBD
April TBD	The Asian Reporter Foundation Banquet	TBD
May 4-5?	Northwest Bars Conference	TBD
May TBD	MBA Annual Meeting & Dinner	TBD
May TBD	SPRB Meeting	TBD
May TBD	Hispanic Metro Chamber Scholarship Lunch **	TBD
May TBD	BOG Candidate Statements Due	For October Election
May TBD	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
May TBD	Asian American Youth Leadership Conference	TBD
<b>May 15</b>	<b>BOG Committee Meetings</b>	<b>OSB Center</b>
<b>May 15</b>	<b>BOG Alumni Dinner</b>	<b>OSB Center</b>
May TBD	National Conf. on Prof. Responsibility	TBD
May TBD	Partners in Diversity Say Hey Spring	TBD
June TBD	SPRB Meeting	TBD
June TBD	PLF Board of Directors	TBD
<b>June 25-27</b>	<b>Board and Committee Meetings</b>	<b>Medford, OR</b>
<b>July 14-16</b>	<b>HOD Regional Meetings</b>	<b>All Regions</b>
July TBD	SPRB Meeting	TBD
<b>July 24</b>	<b>BOG Committee Meetings</b>	<b>OSB Center</b>
July 28-29	Bar Exam	TBD
July 30 - Aug 4	ABA Annual Meeting	Chicago, IL



August TBD	Oregon Minority Lawyers Assoc. Social/Auction**	TBD
August TBD	PLF Board of Directors	TBD
August TBD	SPRB Meeting	TBD
<b>September 11</b>	<b>Board and Committee Meetings</b>	<b>OSB Center</b>
September TBD	SPRB Meeting	TBD
September 22	HOD Resolution Deadline	Received by OSB
September TBD	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
October TBD	BOG Election Ballots Sent	Online voting only
<b>October 9</b>	<b>Board (Special) and Committee Meetings</b>	<b>OSB Center</b>
October TBD	PLF Board of Directors	TBD
October 16	HOD Agenda Published	Distributed by OSB
October TBD	SPRB Meeting	TBD
<b>Oct 20-22</b>	<b>HOD Regional Meetings</b>	<b>All Regions</b>
October TBD	BOG Ballots due to OSB by 5pm	Online voting only
October TBD	Pro Bono Fair*	TBD
October TBD	OGALLA Dinner & Silent Auction**	TBD
October 2015	CEJ Laf-Off (only in ODD years)	TBD
<b>November 6</b>	<b>House of Delegates Meeting</b>	<b>OSB Center</b>
<b>November 19-20</b>	<b>Board &amp; Committee Meetings &amp; Planning Retreat</b>	<b>Cannon Beach</b>
November TBD	SPRB Meeting	TBD
December TBD	OSB Annual Awards Luncheon*	TBD
December TBD	PLF Board of Directors & Annual dinner	TBD
December TBD	SPRB Meeting	TBD

**BOG Meetings and Committee Meetings are in BOLD type.**

Other events announced, as information is available. Events added since last BOG meeting are highlighted in yellow.

\* OSB Board members are encouraged to attend. \*\* indicates **sponsored** events which OSB Board members have made a commitment to attend.

For more ABA events: [http://www.abanet.org/abanet/oc/abatoday/?gnav=global\\_calendar\\_lead](http://www.abanet.org/abanet/oc/abatoday/?gnav=global_calendar_lead)

## Functions of the Oregon State Bar

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

## Mission

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

## Values of the Oregon State Bar

### Integrity

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

### Fairness

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

### Leadership

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

### Diversity

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

### Justice

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

### Accountability

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

### Excellence

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

### Sustainability

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

## ACTIVE MEMBERSHIP

14,905 active members / 12,331 active members in Oregon

## LAWYERS BY GENDER

9,750 male / 5,155 female

## ACTIVE MEMBERSHIP

## LAWYERS BY ETHNICITY

983 minority / 7,621 white / 6,301 declined to state

## METHOD OF ADMISSION

by exam: 13,866 / by reciprocity: 796 / as house counsel: 60

## FEES & ASSESSMENTS

Bar fees: \$522<sup>2</sup>

Professional Liability Fund Assessment: \$3,500

## REVENUE & EXPENSES<sup>3</sup>

Annual revenue: \$10.817 million

Annual expense: \$10.789 million

## VOLUNTEER ACTIVITY

Sections: 17,687 members in 42 sections

Committees, Boards and Councils: 785 members

Legislative volunteers: 200 members

## MEMBER DISCIPLINE

Discipline: 359 complaints (245 from CAO, 64 overdraft notification, 23 other)

Discipline budget: Revenue: \$69,500 / Expense: \$2,147,250 (includes indirect costs)

## MEMBER AND PUBLIC CONTACT

Client Assistance Office: 2,100 matters<sup>4</sup>

Ethics Assistance: 4,800 inquiries<sup>4</sup>

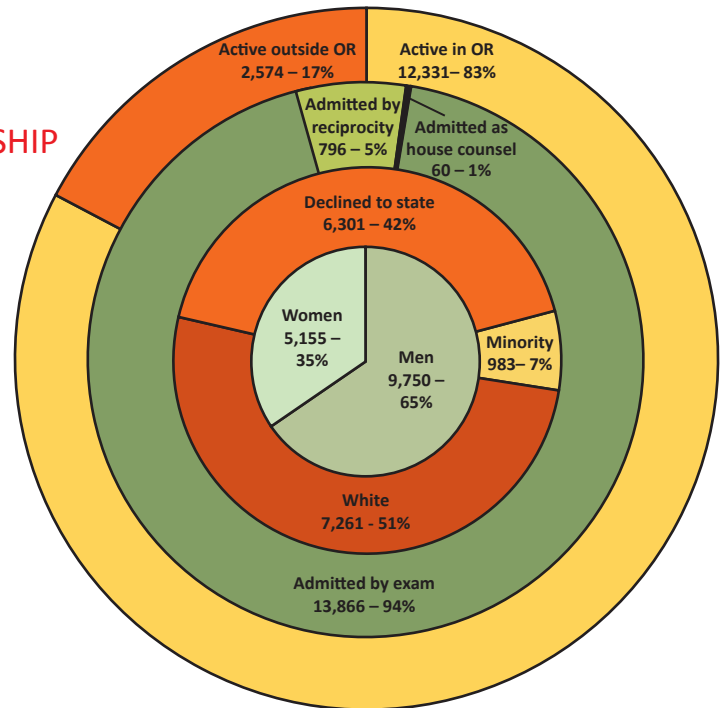
Client Security Fund: 21 claims paid totaling \$186,000<sup>4</sup>

Referral & Information Service calls<sup>5</sup>: 58,000

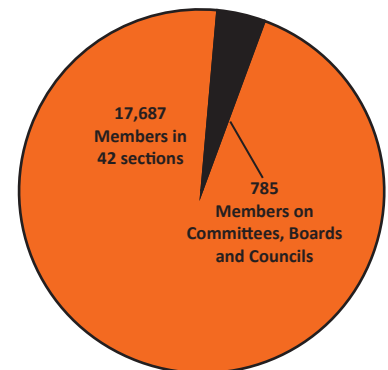
BarBooks: 156,000 average page views per month<sup>6</sup>

CLE Seminars: 50 (31 co-sponsored with sections)<sup>7</sup>

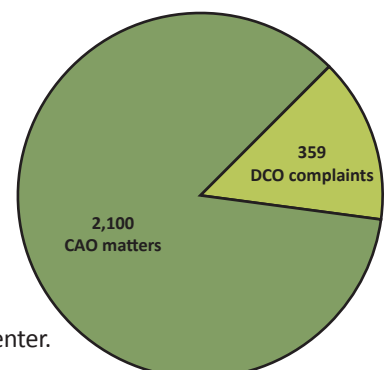
Capital Insider Subscribers: 3,600



## VOLUNTEER ACTIVITY



## COMPLAINTS & CAO MATTERS



<sup>1</sup> All figures are for 2012 except as otherwise noted.

<sup>2</sup> Excludes \$30 Affirmative Action and \$45 Client Security Fund Assessments.

<sup>3</sup> Does not include \$8.018 million restricted to legal services, CSF, Diversity & Inclusion, and the bar center.

<sup>4</sup> 2010 figures

<sup>5</sup> Based on historical activity.

<sup>6</sup> June 2010.

<sup>7</sup> New original programs, does not reflect replays.

## Mission of the Oregon State Bar

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

## Functions of the Oregon State Bar

1. We are a regulatory agency providing protection to the public.
2. We are a partner with the judicial system.
3. We are a professional organization.
4. We are a provider of assistance to the public.
5. And the bar does this as a “public” corporation—as an instrumentality of the Oregon Supreme Court.

<b>Active Members:</b>	14,374
<b>Inactive Members:</b>	4,081

## Programs of the Oregon State Bar

### Admissions

- Administers the bar exam (twice per year)
- Administers Reciprocity/Alternative admissions programs
- Conducts character and fitness evaluations of all bar applicants

### CLE Seminars

- Produces more than 40 live seminars each year
- Provides recorded CLE seminars through hosted replay events, online access and CD/DVD format

### Client Assistance Office

- Screens all initial complaints about lawyers
- Attempts to resolve communication issues between lawyers and their clients
- Refers possible ethical violations to Disciplinary Counsel

### Communications

- Publishes the Bulletin magazine, electronic Bar News and BOG Updates
- Works with all media outlets
- Produces public information on legal subjects for print, video, audio and the web
- Coordinates special events including the annual awards ceremony

### Discipline

- Investigates and prosecutes ethics complaints against lawyers
- Reviews overdrafts on lawyer trust accounts
- Provides access to records to the public

## Diversity

- Works to increase the diversity of the Oregon bench and bar
- Provides scholarships, grants and training opportunities to Oregon law students
- Administers the Opportunities for Law in Oregon program

## Executive Services

- Supports the Board of Governors and its committees
- Administers the Client Security Fund to assist clients in case of lawyer theft
- Administers the Fee Arbitration Program to resolve fee disputes between Oregon lawyers and their clients

## General Counsel

- Provides ethics advice to bar members
- Serves as legal counsel for the BOG and Executive Director
- Reviews decisions of the Client Assistance Office as requested
- Assists with enforcement of restrictions against the unlawful practice of law

## Information Technology

- Maintains online Membership Directory and Resource Directory
- Supports Fastcase™ online research service for active bar members

## Legal Publications

- Produces books and research tools to assist lawyers in their practices
- Maintains online BarBooks™ library of legal publications

## Legal Services & Pro Bono

- Administers court filing fees dedicated to legal aid through the Legal Services Program
- Works to increase pro bono activities of bar members
- Administers the Loan Repayment Assistance Program providing forgivable loans to lawyers serving the public interest

## Member Services

- Supports bar groups including sections, committees, local and specialty bars and the Oregon New Lawyers Division
- Conducts bar elections and judicial polls
- Recruits volunteers for bar groups and programs and assists the BOG in making appointments

## MCLE

- Administers rules for Minimum Continuing Legal Education
- Assists lawyers in complying with MCLE rules

## New Lawyer Mentoring Program

- Offers new bar members one-on-one guidance on elements of a highly competent practice
- Promotes increased professionalism, civility and collegiality

## **Oregon Law Foundation**

- Administers program for Interest on Lawyer Trust Accounts (IOLTA)
- Awards grants to legal aid organizations and other service programs

## **Public Affairs**

- Works with bar sections on law improvement legislation
- Informs bar leaders, members and government bodies on bar-related legislation and public policy issues
- Provides legal expertise and assistance to lawmakers
- Monitors legislative activities and the initiative process for issues affecting courts and lawyers

## **Referral & Information Services**

- Administers Lawyer Referral Service, matching potential clients with lawyers and other resources for help with legal issues
- Administers Modest Means Program for reduced-fee legal services in high priority areas of law
- Administers specialty pro bono panels for children and deployed military personnel
- Administers Lawyer to Lawyer Program matching experienced bar members with lawyers seeking brief advice

## **Regulatory Services**

- Processes changes in membership status
- Processes pro hac vice certifications

## **Oregon State Bar Support Services:**

### **Accounting & Finance**

- Processes accounts payable, accounts receivable and payroll
- Conducts annual and ongoing billing and collection of member fees
- Administers and oversees bar budget, reserves and investments

### **Customer Service**

- Greets and assists bar visitors and operates main switchboard
- Provides host support for meetings held at the bar center

### **Facilities**

- Manages physical facilities, including maintenance and daily set-up of meeting rooms
- Provides shipping, receiving and distribution for all bar programs

### **Human Resources**

- Assures compliance with all labor and employment laws
- Manages all employment-related programs, actions and benefits

### **Information Design & Technology**

- Provides IT support for bar staff
- Designs publications and web pages for bar programs and others

# Oregon State Bar Volunteer Opportunities

Apply online at [www.osbar.org](http://www.osbar.org)

## OSB Governance

### **Board of Governors (BOG) \***

The Board of Governors is the governing board of the Oregon State Bar.

## Committees and Councils

OSB committees advise the BOG on issues that require ongoing member oversight.

### **Advisory Committee on Diversity and Inclusion\***

Advise on law student programs designed to advance the access to justice mission.

### **Bar/Press/Broadcasters Council**

Enhance both quantity and quality of communications among bar members and print and broadcast journalists.

### **Client Security Fund\***

Investigate and recommend acceptance or rejection of claims for reimbursement of lawyer misappropriation of client money.

### **Federal Practice & Procedure**

Liaison between the membership and the federal judiciary.

### **Judicial Administration\***

Advise BOG on judicial selection and administration issues.

### **Legal Ethics**

Develop opinions interpreting rules of professional conduct; recommend changes to the rules of professional conduct.

### **Legal Heritage Interest Group\***

Preserve and communicate the history of the OSB to interested groups.

### **Legal Services Program\***

Responsible for reviewing and reporting to the Board of Governors on filing fee funds being distributed to legal aid.

### **Loan Repayment Assistance Program**

Select LRAP participants, amend and set program policy guidelines as needed, and raise funds to achieve programmatic objectives if necessary.

### **House of Delegates (HOD) \***

The House of Delegates is a governance forum for the membership through elected and ex-officio representatives.

### **Minimum Continuing Legal Education \***

Provides input, analysis, and evaluation of the program that accredits educational programs for Oregon attorneys.

### **New Lawyer Mentoring Committee**

Advise on development and administration of the New Lawyer Mentoring Program, a new requirement for most 1st-year members of the OSB  
Staff liaison: Kateri Walsh, ext 406

### **Pro Bono**

Assist with expansion and support of free legal services to low-income clients in civil matters.

### **Procedure & Practice**

Study, monitor, and recommend changes in procedures governing civil cases in Oregon.

### **Public Service Advisory\***

Provide volunteer opportunities to increase understanding and respect of the justice system by adult Oregonians.

### **Quality of Life\***

Educate lawyers and firms about the benefits of balancing personal life and career obligations.

### **State Lawyers Assistance\***

Investigate and resolve complaints about lawyers whose conduct impairs their ability to practice law.

### **Uniform Civil Jury Instructions**

Develop uniform jury instructions for use in civil trials.

### **Uniform Criminal Jury Instructions**

Develop uniform jury instructions for use in criminal trials. The committee requires a split in membership between prosecutors and defense attorneys.

### **Unlawful Practice of Law\***

Investigate complaints of unlawful practice; recommend prosecution where appropriate.

\*Non-lawyer positions available

## **OSB Programs and Regulatory Boards**

### **Bar Counsel in Unlawful Practice Litigation**

These volunteers represent the bar in lawsuits to obtain injunctive relief against persons and entities accused of engaging in the unlawful practice of law.

### **Board of Bar Examiners (BBX)**

The BBX is responsible for overseeing the licensing of all lawyers in Oregon.

### **Counsel for Client Security Fund Claimants**

On occasion a person will request assistance in presenting a claim to the Client Security Fund. The CSF maintains a list of members who are willing to assist CSF claimants on a pro bono basis.

### **Fee Arbitration and Mediation Panels**

Fee arbitration and mediation panel members provide clients and lawyers an informal method to resolve disputes regarding the reasonableness of lawyer's fees.

## **Disciplinary Programs**

### **Bar Counsel in Disciplinary Matters**

These volunteers work together with disciplinary counsel staff in preparing and presenting at hearing formal charges against an accused lawyer.

### **Disciplinary Board (DB) \***

The Disciplinary Board is another component of the disciplinary process. If the State Professional Responsibility Board authorizes formal charges, members of the DB act as the hearing or trial panel for each contested case

## **Program Support**

The OSB often utilizes interested members in program support volunteer positions as Bulletin authors, CLE seminar speakers, CLE publication authors, or an expert source for Oregon journalists.

### **New Lawyer Mentoring Program- Mentor**

The New Lawyer Mentoring Program is a new 1st-year requirement established by the OSB and Oregon Supreme Court in 2011. The NLMP will provide new lawyers a mentor to guide and support them in their transition from student to practitioner, and to instill core values of competence and professionalism to those just entering the profession.

### **Oregon Law Foundation (OLF)**

The Oregon Law Foundation is an independent non-profit organization that grants funds to programs providing legal aid to low income Oregonians and other law related charitable programs.

### **Professional Liability Fund (PLF) \***

A governing board for the mandatory provider of primary malpractice coverage for Oregon lawyers.

### **Local Professional Responsibility Committees (LPRCs) \***

Conduct interviews, gather and analyze records and ultimately prepare written findings in reports that are submitted back to the State Professional Responsibility Board (SPRB) for evaluation and action.

### **State Professional Responsibility Board (SPRB) \***

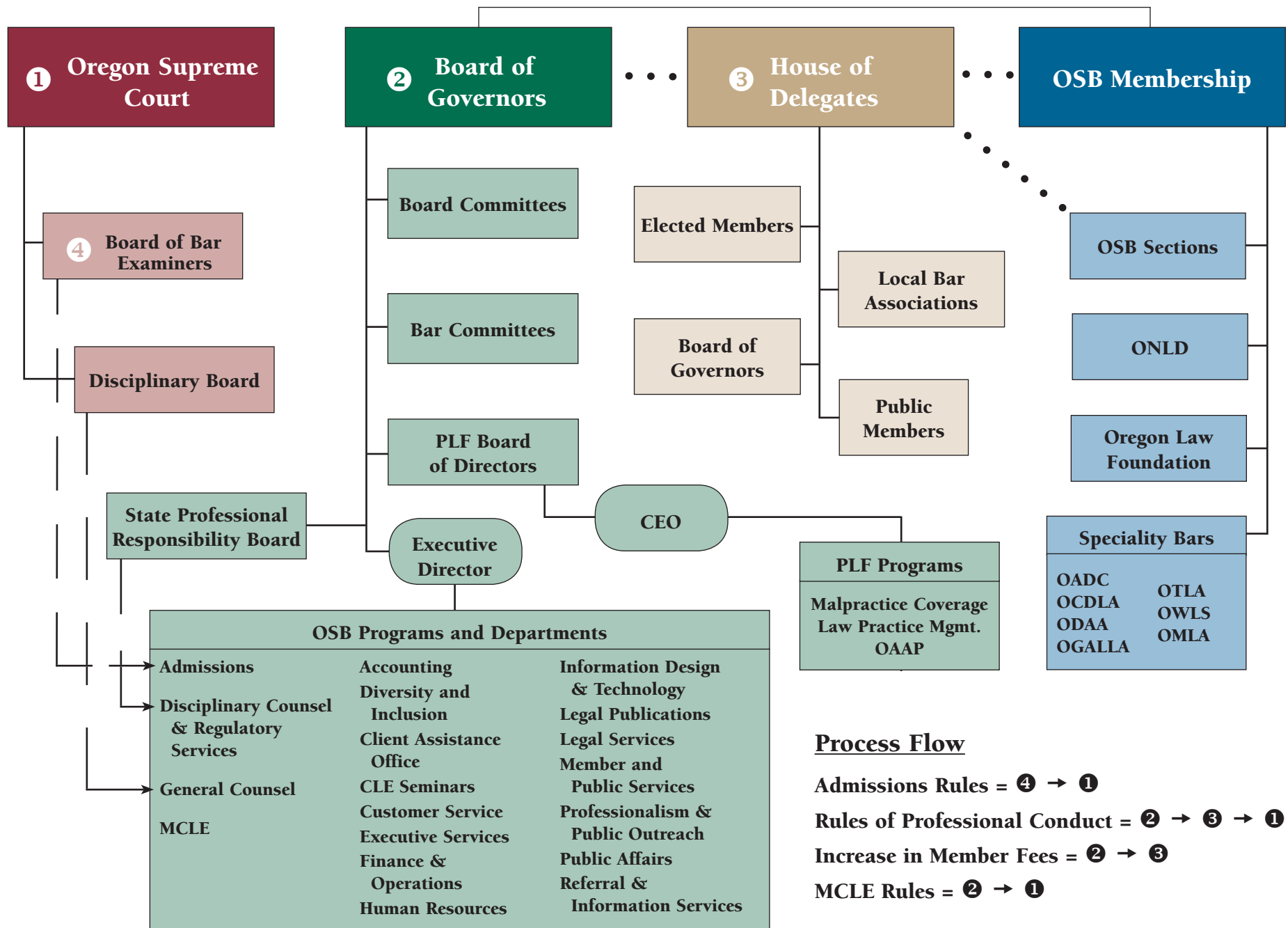
This ten-member board, composed of eight resident attorneys and two members of the public, acts as the grand jury in the discipline system, making probable cause decisions on complaints.

### **Volunteer Defense Counsel for Bar Disciplinary Proceedings**

Volunteers on this panel provide pro bono representation for accused lawyers in disciplinary matters, as their time and availability permits.

\*Non-lawyer positions available

# Oregon State Bar



## Process Flow

Admissions Rules = ④ → ①

Rules of Professional Conduct = ② → ③ → ①

Increase in Member Fees = ② → ③

MCLE Rules = ② → ①

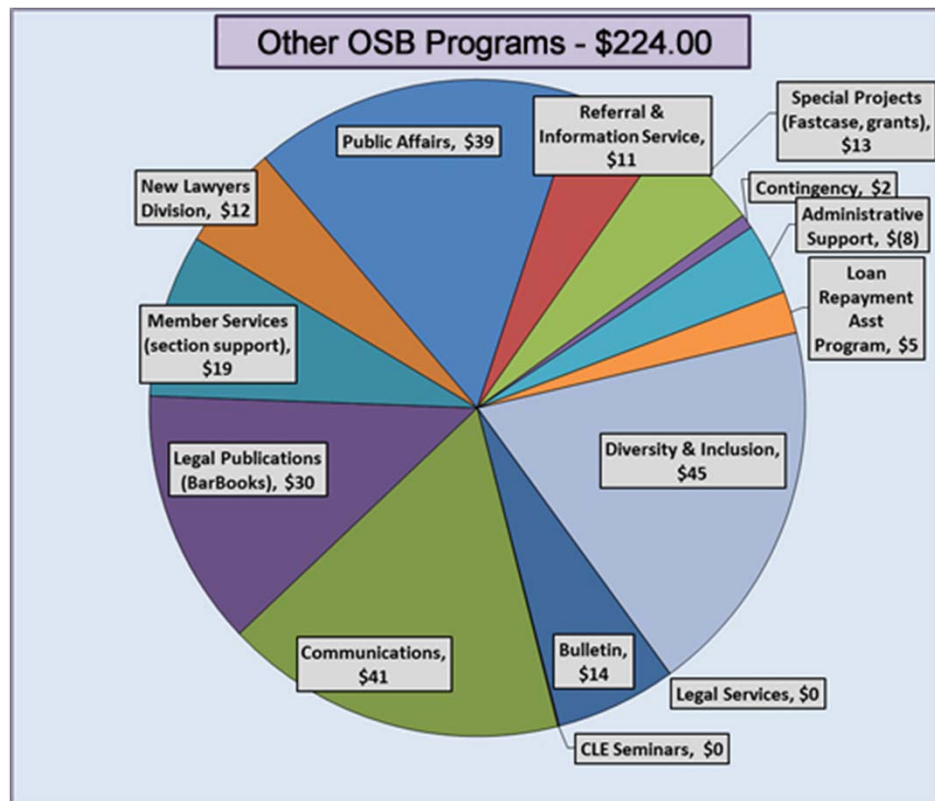
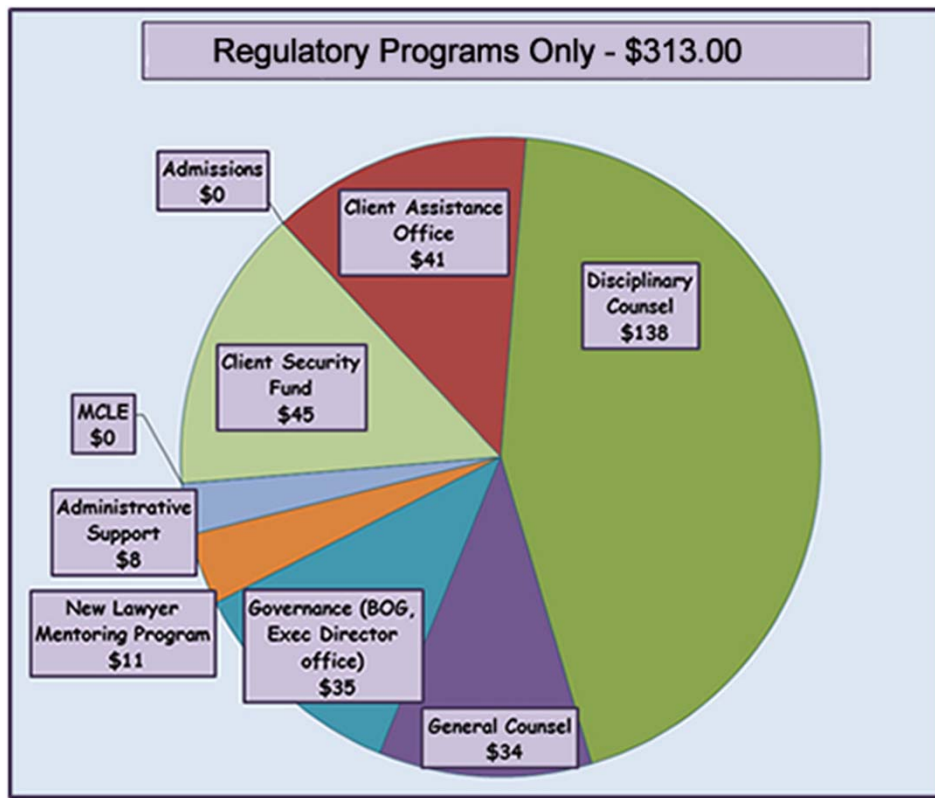


## OREGON STATE BAR 2014 Budget Summary by Program

<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>

## How are my active member fees used by the bar?

The active member fee of \$537.00 pays for the cost of regulatory programs and other bar services. During 2013 the Board of Governors reviewed the allocation of those costs and the two charts shown below indicate the cost of services included in the bar's 2014 budget. The allocations by program are estimates developed from the 2014 budget. Actual results may vary.



# Board of Governors

## Election and Position Frequently Asked Questions

### **What type of time commitment is involved in serving as a member of the Board of Governors (BOG)?**

The commitment for a BOG member is considerable and not easy to estimate. A rough estimate of time spent by a BOG member in meetings and special events is 300 hours annually or an average of 25 hours per month, excluding travel time. While this varies for each member, travel time could be considerable for those living outside of Portland. BOG members from the eastern or southern area of the state may become frequent drivers/flyers attending meetings at the bar center once or twice a month. Use is made of telephone conference calls whenever possible to reduce travel requirements.

### **What are the duties required of a member serving on the BOG?**

The BOG is charged with the executive functions of the state bar and directs its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It has the authority to adopt, alter, and amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law.

The BOG has five regular meetings a year typically held on Fridays. Nearly half of the meetings are in the Portland area and the remainder at locations around the state. A social hour is scheduled on Thursday evening with members of local bar associations at “out-of-town” meetings. Special board meetings are called for emergency matters and are often held by conference call.

The board’s first meeting, the annual planning retreat in November, begins on a Thursday and ends on a Sunday. “Homework” for a board meeting includes a full agenda with 100+ pages of exhibits and preparation for various committee meetings.

Each BOG member will also serve on two to three board committees. Meetings are held three to four weeks prior to regular board meetings in the Portland area. Board members are assigned as contacts for three to six OSB committees or sections. Staying in touch with leaders of these groups is key to facilitating communications with the BOG and about issues before the bar. Attendance at these meetings is not normally required.

Reimbursement is provided for travel expense for BOG-related business. Travel time is a factor for board members living outside the Portland metro area as a majority of meetings are held at the OSB Center in Tigard.

Inquiries regarding a variety of bar-related matters may be received by phone and in the mail. The amount of time devoted to this activity, whether proactive or reactive, varies for each individual.

### **What are the eligibility requirements for serving on the BOG?**

An elected governor may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. No full-time or pro tempore judge of a municipal, state or federal court or any other judicial officer shall be eligible for appointment or election to the BOG.

The term of a governor automatically ends upon: death or resignation; termination of the governor’s active membership in the state bar; ceasing to maintain the governor’s principal office in the region the governor represents; or upon recall pursuant to ORS 9.050.

### **How many openings are there for the BOG?**

The number of vacant seats varies each year. For details on this year’s vacancies including the number of positions and the regions they represent, go to <http://www.osbar.org/leadership/bog>.

### **Are there any conflicts that would prevent me from running or serving on the BOG?**

No full-time or pro tem judge of a municipal, state or federal court or any other judicial officer shall be eligible for appointment or election to the BOG.

Members of the House of Delegates, State Professional Responsibility Board, Disciplinary Board, MCLE Committee, Professional Liability Fund Board of Directors, and Commission on Judicial Fitness and Disability are not eligible to serve on the BOG. Additionally, the chair of any bar section is also ineligible to serve on the BOG.

**How do you run for election to the BOG?**

Members interested in running for a seat on the Board of Governors must submit a completed candidate statement before the statutory deadline. Appropriate forms and deadlines are available at <http://www.osbar.org/leadership/bog>.

**Who can I contact to find out more information about serving on the BOG?**

For more information contact Danielle Edwards, Director of Member Services, [dedwards@osbar.org](mailto:dedwards@osbar.org) or 503-431-6426.

BOG meetings are open to the public. Interested candidates may wish to attend a meeting or contact their current BOG representative for further information.

## Oregon State Bar Board of Governors Election Information

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On the following pages you will find the Board of Governors candidate statement. The following points are very important when filling out the form:

- (1) Although May 13, 2014 is the deadline for submitting your candidate statement, please respond as early as possible to assist us in our printing and mailing workload.
- (2) Your candidate statement will be reproduced as submitted without any revisions or retyping. Please restrict your information to the front side of the form.
- (3) Please send a current digital photograph to Danielle Edwards at [dedwards@osbar.org](mailto:dedwards@osbar.org).
- (4) The bar conducts its elections and preference polls online. Your candidate statement will be made available on the bar's website throughout the election period.
- (5) Contact lists for the bar members in your BOG region are available for campaign mailings. The lists can be e-mailed to you in electronic format so you can create your own customized mailing labels and other campaign materials. Please allow 3-5 days lead time and email your request to [listsales@osbar.org](mailto:listsales@osbar.org), or call us at 503.431.6411, or toll-free in Oregon at 800.452.8260, ext. 411.

If you have any questions about the election, please contact Danielle Edwards at [dedwards@osbar.org](mailto:dedwards@osbar.org).

# Oregon State Bar Board of Governors Election Information

## Board of Governors Positions

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There are four positions open:

**Region 4:** 1 position

*Clatsop, Columbia, Lincoln, Tillamook, Yamhill, and Washington Counties*

**Region 5:** 1 position

*Multnomah County*

**Region 6:** 1 position

*Benton, Linn, Marion, and Polk Counties*

**Region 7:** 1 position

*Clackamas County*

## Election Schedule

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**May 13**

Deadline for filing candidate statements with the bar office by 5:00 p.m.

**June 12**

Challenges due

**June 26**

Board decision due\*

**September 26**

Final decision

**October 6**

Ballots and candidate statements sent to members via an email link to an online ballot

**October 20**

Ballots due by 5:00 p.m.

**January 1, 2015**

Elected board members assume office.

\* *Supreme Court Petitions are due 15 days after the BOG decision is issued [ORS 9.042(3)]. This is the latest date that could occur.*

## Terms

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BOG members serve for terms of four years.

## Candidate Statement

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1. Candidate statements are limited to the front page of the form provided by Member Services.
2. The completed BOG candidate statement must arrive at the bar office not later than 5:00 p.m., Tuesday, May 13, 2014. Faxed or email versions of the form are acceptable.

3. Except where editing is necessary for compliance with the rules, candidate statements will be duplicated as received by Member Services and will accompany the ballots when sent to the active membership within the candidate's region.

## Ballots

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Ballots will be made available to all active bar members who maintain their principal office address in the region the candidate seeks to represent.

Ballots will contain the name of each candidate for whom a candidate statement is properly and timely filed.

## Forms

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Forms are available for download on the bar's website ([www.osbar.org](http://www.osbar.org)) or through the OSB Member Services Department: Danielle Edwards: (503) 431-6426 or toll-free in Oregon (800) 452-8260, ext. 426, or [dedwards@osbar.org](mailto:dedwards@osbar.org)

**Return completed forms to:**

Danielle Edwards  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281  
[dedwards@osbar.org](mailto:dedwards@osbar.org)  
503-598-6994 (Fax)

## References

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1. Oregon State Bar Bylaw, Articles 2 and 9.
2. State Bar Act, ORS Chapter 9.

# ***Board of Governors***

## ***Candidate Statement***

***for Region Number \_\_\_\_\_***

*Candidate's Name*

*Law Firm Name (If Applicable)*

*Principal Office Address (Street, City, Zip)*

*Law School from which graduated*

*Date Admitted to OSB*

Please email a current  
full-face digital photograph  
to Danielle Edwards at  
dedwards@osbar.org

*List of candidate's professional and community activities, professional history and other pertinent information.*

\_\_\_\_\_  
*Candidate's Signature*

\_\_\_\_\_  
*Date*

The Oregon State Bar regulates the practice of law in Oregon, and provides numerous public services to enhance the state's justice system, and to help the public understand and access the system. The following volunteer positions are available to members of the public located in Oregon. Diverse candidates are encouraged to apply.

## **Board of Governors (one statewide vacancy)**

The Board of Governors (BOG) is charged with the executive functions of the state Bar and directs its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It has the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for regulation and management of the affairs of the state Bar not inconsistent with law. The BOG meets 5 times each year and holds an additional 5 committee meetings each year. The BOG consists of 18 members, 14 lawyers and 4 public members. Terms are 4-years and public members must be residents of this state and cannot be an active or inactive member of the Oregon State Bar. Some travel expenses for members of the board are reimbursed.

## **Disciplinary Board (several statewide vacancies)**

The Disciplinary Board (DB) is a component of the disciplinary process. After formal charges have been filed against a lawyer, 2 lawyer members and one public member of the DB will be selected to serve as the trial panel for the case. The trial panel evaluates the evidence presented by the bar and the accused lawyer and decides whether the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. Hearings are usually conducted Monday through Friday 8:00 am to 5:00 pm and can last anywhere from 1 to 3 days. Travel may be required for some hearings. Mileage, meals and lodging can be reimbursed for panel members. Appointed members serve a 3 year term.

## **Fee Arbitration and Mediation (several statewide vacancies)**

Works to resolve disputes regarding attorneys' fees. Volunteer panels, including two lawyer members and one public member, listen to both sides and then make a decision. Each matter can take one-half to an entire day. Terms are generally three years and members may be reappointed. There is a greater need for volunteers from Eastern and Southern Oregon.

## **House of Delegates (two statewide vacancies)**

The House of Delegates (HOD) is a governance forum for the OSB and consists of one public member from each in-state region and more than 200 lawyer members from in and outside the state. The HOD debates and decides matters of bar policy during the one annual meeting held during the year. Terms are for three years and some travel expenses for attendance at the annual meeting are reimbursed. There is a greater need for volunteers from outside the Portland-metro area.

## **Professional Liability Fund Board of Directors**

The Professional Liability Fund (PLF) Board of Directors consists of nine members, including two public members. It has the necessary authority to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage. The board also establishes the terms of the liability coverage and the defense and payment of claims under such coverage. The PLF Board meets approximately 6 times and holds an additional 5-10 telephone conferences per year. Public members serve terms of 5 years, must be residents of this state, and cannot be an active or inactive member of the Oregon State Bar. Travel expenses for members of the board are reimbursed.

## **State Professional Responsibility Board (one statewide vacancy)**

The State Professional Responsibility Board (SPRB) is a 10 member board, composed of 8 resident attorneys and 2 members of the public. The board acts as the grand jury in the discipline system, making probable cause decisions on complaints. The board meets monthly on either Friday or Saturday for several hours and the workload is substantial. SPRB members serve 4-year terms. Reimbursement for mileage, meals, and lodging is available for SPRB members.



## Committees

Committees assist the Board of Governors in its oversight and policy-making responsibilities by pursuing the assignments described below. Appointments are made by the Board of Governors in November and terms begin on January 1 of the following year. Unless otherwise noted, committee members serve three-year terms.

### **Advisory Committee on Diversity and Inclusion (two statewide vacancies)**

Advise on programs designed to increase racial and ethnic minority participation in the Oregon legal profession. Meets 3rd Monday of every month at 3:00 p.m. at the Oregon State Bar, and consists of 19 members, 17 lawyers and 2 public members.

### **Client Security Fund**

Investigate and recommend acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. Meets on Saturdays, every other month, 9:30 a.m. at various locations, and consists of 13 members, 12 lawyers and 1 public member.

### **Judicial Administration (one statewide vacancy)**

Advise Board of Governors on judicial selection and administration issues. Meets the 1st Thursday of every month, 3:30 p.m. at the Oregon State Bar, and consists of 15 members, 14 lawyers and 2 public members.

### **Legal Services (one statewide vacancy)**

The Legal Services program is responsible for reviewing and reporting to the Board of Governors on filing fee funds. The committee meets three to four times a year at various times and locations, and consists of 9 members, 7 lawyers and 2 public members.

### **Minimum Continuing Legal Education**

Provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. Meets at various locations, four times a year on a Friday at noon, and consists of 7 members, 6 lawyers and 1 public member.

### **Professionalism Commission (one statewide vacancy)**

Promotes educational opportunities for lawyers, judges and the public. It also promotes professionalism and designs and develops creative approaches to the promotion of professionalism and equality. Meets quarterly on a Friday at the Oregon State Bar, and consists of 21 members, 5 judges and lawyers, 1 public member and several ex-officio members of the legal community.

### **Public Service Advisory**

Provides volunteer opportunities to increase understanding and respect of the justice system by adult Oregonians. Meets quarterly on Saturday, at 10:00 a.m. at the Oregon State Bar, and consists of 13 members, 12 lawyers and 1 public member.

### **Quality of Life**

Educate lawyers and firms about the benefits of balancing personal life and career obligations. Meets the 2nd Thursday at noon every month at the Oregon State Bar, and consists of 10 members, 9 lawyers and 1 public member.

### **State Lawyers Assistance**

Investigate and resolve complaints about lawyers whose conduct impairs their ability to practice law. Meets on the 4th Thursday every month, 4:00 p.m. at the Oregon State Bar, and consists of 12 members, 10 lawyers and 2 public members. Terms are for four years.

### **Unlawful Practice of Law**

Review and evaluate complaints concerning individuals who are not licensed or otherwise permitted to practice law in Oregon. Members are assigned individual complaints to investigate and recommend action in accord with the Committee's authority. The Committee reviews member reports and makes recommendations to the Board of Governors whether to seek injunctive relief against violators. Meets 2nd Friday of each month, 3:00 p.m. at the Oregon State Bar, and consists of 17 members, 15 lawyers and 2 public members. Terms are for four years.

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last)		
Residence Address: (number, street, city, state, zip)		Residence Phone:
County:		Office Phone:
Office Address: (number, street, city, state, zip)		E-Mail Address:
County:		
Office Mailing Address: (if different)		Occupation: (and job title, if any)
County:		

## **College and Post-Graduate Education:**

School	Location	Dates	Degrees

## **Employment:** *List major paid employment chronologically beginning with most recent experiences.*

Dates (from/to)	Employer and Position Held	City/State

## **Community/Volunteer Services:** *List significant volunteer activities chronologically beginning with most recent services.*

Dates (from/to)	Organization and Position Held	City/State

**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

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**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime?  Yes  No  
Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?  Yes  No  
If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

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**Opportunities:** If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

- Board of Governors  Disciplinary Board  Fee Arbitration and Mediation  House of Delegates  
 Professional Liability Fund  State Professional Responsibility Board

**Committees:**

- Advisory Committee on Diversity and Inclusion  Client Security Fund  Judicial Administration  
 Legal Services  Minimum Continuing Legal Education  Professionalism Commission  
 Public Service Advisory  Quality of Life  State Lawyers Assistance  Unlawful Practice of Law
- 

**References:** List names and contact information of three people who may be contacted as references.

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Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Where did you learn about the public member opportunities available at the Oregon State Bar? \_\_\_\_\_

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*Application deadline is July 3, 2014. Return applications to:*

- Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935 •
- [dedwards@osbar.org](mailto:dedwards@osbar.org) • 503-598-6994 (fax) •



# Request for Demographics Information (Optional)

Collecting and maintaining accurate demographic data is critical to fulfilling the mission of the Oregon State Bar (OSB). The OSB is committed to cultivating a diverse and inclusive bar, which 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. You can help support the OSB mission by voluntarily providing the following information about yourself.<sup>1</sup>

### Race/Ethnicity:

Please check all that apply, including multiple categories for two or more race/ethnicity:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black or African American
- Hispanic or Latino
- White or Caucasian
- Self-Identification \_\_\_\_\_

### Disability:

I have a disability (physical or mental) that substantially limits one or more major life activity.

- Yes
- No

### Sexual Orientation:

- Heterosexual
- Lesbian, Gay, Bisexual
- Self-Identification \_\_\_\_\_

### Gender Identity:

- Male
- Female
- Transgender
- Self-Identification \_\_\_\_\_

I choose not to disclose any or all information.

<sup>1</sup> Information submitted to the OSB is subject to disclosure under the Public Records Law. ORS 192.410 et seq.

# Outreach and Involvement Report

## Board of Governors

January 1 – March 31

### Outreach events:

*List the outreach events you have attended since your last report. Examples include section or committee meetings, sponsorship events, county bar meetings, and non legal-related community events.*

### Constituency contact:

Indicate the type and amount of outreach you conducted with constituents not already reported above.

Calls \_\_\_\_\_ Emails \_\_\_\_\_ In Person \_\_\_\_\_ Other \_\_\_\_\_

### Meeting preparation:

How many hours have you spent preparing for BOG and Committee meetings? \_\_\_\_\_

### Constituency concerns:

Are there any pertinent details you would like to share regarding your contact with bar members?

# REPORT

## BOG Budget & Finance Committee

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**Report Date:** April 25, 2014  
**Location:** Oregon State Bar Center  
**Chair:** Hunter Emerick  
**Vice-Chair:** Matthew Kehoe  
**Members:** Jim Chaney, Patrick Ehlers, Ray Heysell, Theresa Kohlhoff, Joshua Ross, Richard Spier, Charles Wilhoite, Elisabeth Zinser. Staff Liaison: Rod Wegener

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### INFORMATION ITEMS/REPORTS

#### 1. This is a Report Only

There is no Budget & Finance Committee meeting scheduled for April 25 except a joint meeting with the Governance & Strategic Planning Committee to review CLE Seminars and other program matters scheduled for 11:00am.

The purpose of this report is to update the Committee and BOG on bar-related financial matters.

#### 2. Financial Report – March 31, 2014

With the personnel change in the Accounting Department near the end of the fiscal year and the audit preparation, the monthly financial statements have been delayed. Each month statement is prepared and the March statements and report will be finalized and sent to the board before the meetings on April 25.

The data for the first quarter is very promising for a financially successful 2014. The preliminary Net Operating Revenue (NOR) through March 31 is \$313,098. This compares favorably with the \$277,918 Net Operating Revenue at March 31, 2013.

The very positive NOR is generally due to expenses well below budget (but not likely to continue through the rest of the year). An item that will be addressed in the report is Membership Fee revenue which is 1.4% less than a year ago, and the reasons for that decline.

*For more information contact:*

Rod Wegener, [rwegener@osbar.org](mailto:rwegener@osbar.org)

503-431-6313, 1-800-452-8260, ext. 313

#### 3. Investment Portfolio Reports

At the April meeting typically the first quarter benchmarks and reports from the two investment firms are presented. However, the bar has not received either except the detail of the first quarter transactions from Becker Capital. Washington Trust Bank is in the process of creating a new online system, but has had delays and neither the first quarter or March 2014 reports are available.

The March 31 financial statements will report the Becker Capital portfolio balance is \$2,648,768. The balance at December 31, 2013 was \$2,633,534, so there has been little gain on that portfolio so far in 2014.

If a member wants a copy of the Becker March 31 statement, call or send me an email.

#### **4. Other Business**

- The bar's CFO and Controller are finishing the draft of the report for the auditors' review and acceptance. The report is expected to be presented to the Committee at its May 23 meeting.
- Jennifer Walton, who had served as the temporary Controller since mid November, accepted the regular position at the bar on March 17.
- The bar's IT manager and CFO interviewed three IT consulting services firms and their references and narrowed the list to one candidate. Bar's general counsel is currently reviewing the agreement. More will be shared once the agreement is executed.

#### **5. Next Committee meeting**

The next meeting is scheduled for May 23, 2014 at the bar center. Here are the key topics for the next upcoming meetings:

May 23 Review and accept the 2012-2013 audit report

June 27 Discussion of items, changes for the 2015 budget

July 25 Review the 2015 Executive Summary Budget report – a report based on trends, estimates, and program considerations for the 2015 budget



# FINANCIAL STATEMENTS SUMMARY

March 31, 2014

## Narrative Summary

The first quarter for 2014 reports a promising Net Operating Revenue of \$313,098. *Total Revenue* is about the same as the first quarter 2013 after excluding the \$100,000 transfer from reserves in 2013. All expense categories are below their respective budget. Personnel costs so far are less than \$2,000 more than a year ago.

The cash position also is very positive. Looking at the balance sheet, cash and investments are \$1.4 million than a year ago. Even though that is extremely positive, much of the higher balances are due to the increase in the Diversity & Inclusion assessment, few Client Security Fund dollars expended, sections dues collections exceeding its expenditures, and the large deposit from unclaimed assets to the Legal Services program. . . Summing up – it's early in the year, but positive nonetheless.

### EXECUTIVE SUMMARY

	Actual 3/31/2014	Seasonal Budget 3/31/2014	Budget Variance	% of Budget	Actual 3/31/2013
<b>Revenue</b>					
Member Fees	\$ 1,755,092	\$1,737,028	\$18,064	1.0%	\$ 1,780,891
Program Fees	1,014,670	1,219,048	(204,378)	-16.8%	1,006,591
Other income	87,454	93,993	(6,539)	-7.0%	175,703
<b>Total Revenue</b>	<b>2,857,216</b>	<b>3,050,068</b>	<b>(192,852)</b>	<b>-6.3%</b>	<b>2,963,185</b>
<b>Expenses</b>					
Salaries & Benefits	2,006,989	2,114,036	(107,047)	-5.1%	2,005,054
Direct Program, G & A	537,129	628,524	(91,395)	-14.5%	640,098
Contingency	-	25,000	(25,000)	-100.0%	0
<b>Total Expense</b>	<b>2,544,118</b>	<b>2,767,560</b>	<b>(223,442)</b>	<b>-8.1%</b>	<b>2,645,152</b>
<b>Net Operating Rev (Exp)</b>	<b>313,098</b>	<b>\$ 282,508</b>	<b>30,590</b>		<b>318,033</b>
Fanno Creek Place	(179,496)	(209,089)			(188,183)
Net Rev Bef Mkt Adj	133,602	73,420			129,850
Unrealized Investment Gains /(Losses)	241				139,793
Realized Investment Gains/(Losses)	(25,111)				71,097
Publ Inventory Increase/Decrease (COGS)	5,523				(4,405)
<b>Net Revenue</b>	<b>\$ 114,255</b>	<b>\$ 73,420</b>			<b>\$ 336,335</b>



## Notes on Selected Programs

### ■ Membership Fee Revenue

In the continuing trend of slower membership fee revenue growth, the start of 2014 is extending the trend. After three months, membership fee revenue is 1.4% or \$25,800 less than a year ago. Most of the lower revenue is due to actions by members prior to the January 31, 2014 fee payment deadline. The chart below shows that 67 more members changed their status for 2014 than 2013. These changes approximate \$29,000 in less fee revenue than in January 2013.

OSB Members in January	2014	2013
Transferred from <b>Active to Inactive</b> Status	341	301
Transferred from <b>Active to Other</b> Status	89	62
<b>Total Transfers</b>	<b>430</b>	<b>363</b>
Net Lost Fee Revenue in Transfers	\$157,600	\$128,600

Positive  
Budget  
Variance

On a promising note, the number of candidates who sat for the February 2014 bar exam was 213. This count is more than the 197 that sat for the February 2013 exam and just less than the 216 for the February 2012 exam. This count doesn't promise more members, but is a small indication for a few more members in 2014.

### ■ CLE Seminars

Seminars revenue is 3.9% less than a year ago, but with increasing the arrangement with the online program provider, the revenue will be spread out more evenly throughout the year. Season Tickets are no longer available. The current year's schedule includes four institutes – *Administrative Law*, *Bankruptcy*, *Litigation*, and *Tax* which typically are the highest revenue programs during the year.

### ■ Lawyer Mentoring

One hundred and nine (109) new members have completed and paid for the program this year. That's already at half the year's budget and 65 more than a year ago.

### ■ Lawyer Referral

Revenue from percentage fees is at \$104,491 – well on the way to reaching the 2014 budget estimate. Even though 2013's revenue was unexpectedly high, this year's already is \$43,500 more than the three months a year ago.

Even though 2013's (percentage fee) revenue was unexpectedly high, this year's already is \$43,500 more than the three months a year ago.

## Restricted Fund Programs

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### ■ Diversity & Inclusion

The \$15.00 assessment increase has generated about \$216,200 additional revenue for the Diversity & Inclusion program so far this year. The fund balance at March 31 is \$551,218 and depending on other funding sources should end the year with a fund balance in excess of \$150,000.

### ■ Client Security Fund

Since \$650,000 in assessment revenue has been collected and only \$8,741 in claims paid after three months, the CSF fund balance is \$676,640. The estimate still holds that if claims approximate \$175,000 for the year the fund balance should settle at \$500,000 by year end.

## Reserves vs Funds Available

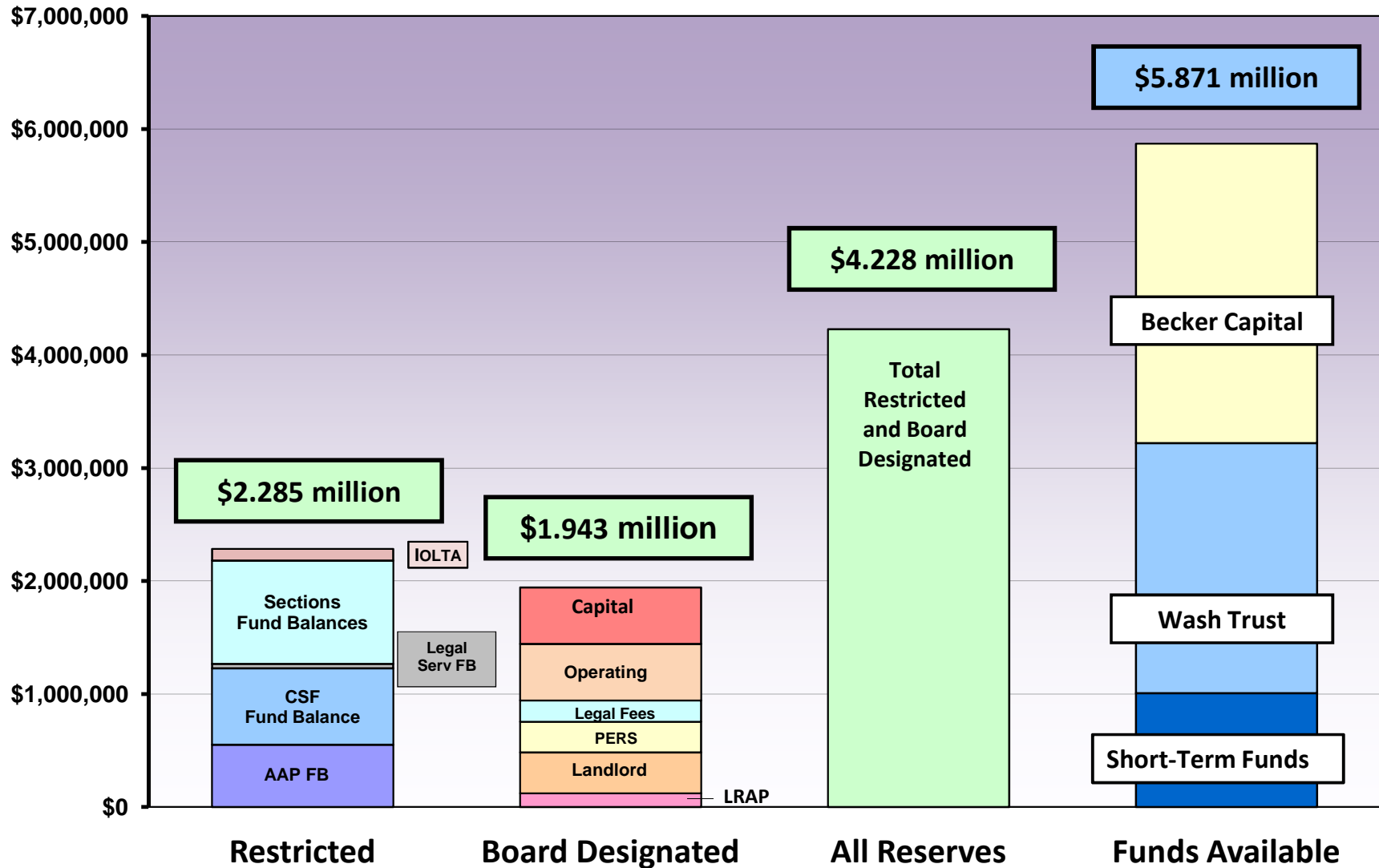
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The amount of **Funds Available** exceeds the amount of funds in **Restricted** and **Designated** accounts by \$1.643 million (see the chart on page 4). Although this is less than the \$2.132 million excess reported at the end of 2013, this smaller amount is due to the increase in the funds deposited into the sections, Diversity & Inclusion, and CSF fund balances with the payment of 2014 membership assessments and section dues. The amount in **Short-Term Funds** is set aside to fund those three activities through the rest of 2014.

The Washington Trust Bank portfolio balance is the same as the February 28 balance. Due to upgrades in the bank's online system the print and online reports have been delayed. The Becker Capital portfolio reported a \$15,234 increase since the beginning of the year.

# OSB Reserves and Funds Available

March 31, 2014



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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Rich Spier, Chair, Governance & Strategic Planning Committee  
**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 all section chairs of the bylaw amendment the Business Law Section and the Real Estate and Land Use Section requested exception to the bylaw.

The Governance & Strategic Planning Committee reviewed these requests during the February meeting and directed staff to draft policy language allowing guest expense reimbursements in limited situations.

### Discussion

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.

An exception is made to Bylaw 7.500 which allows reimbursement of BOG guests in certain situations. Taking this exception into account, as well as the Oregon Government Ethics Laws, the following policy wording is offered to allow sections the option of reimbursing guest expenses:

**With prior approval from a Section's Executive Committee, guest expenses will be reimbursable under the following conditions:**

1. **Guests must be a spouse, domestic partner, or household member of an executive committee member;**
2. **Reimbursement is only allowed for official executive committee meals (not including alcohol) which the spouse, domestic partner, or household member is expected to attend. Reimbursement is not allowed for guest transportation or lodging expenses separate and above the executive committee member's expense, and;**
3. **Reimbursement of guest expenses made to an executive committee member must be less than \$600 per calendar year.**

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.

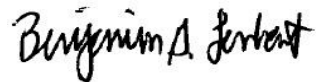
For the above reasons, the Committee respectfully requests that the Board of Governors approve this request to allow BLS to reimburse the dinner expenses of Committee members' spouses or domestic partners at the Committee retreat described above. We note that our retreat this year will be held February 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.

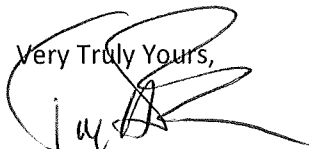
The first reason mentioned in the memorandum is to make section bylaws consistent with the BOG bylaws, which has a similar limitation. However, I note that BOG Bylaw Section 7.501(d) allows reimbursement for dinner expenses of spouses at official bar dinners. Approving the dinner expenses of spouses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

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Mariann Hyland, Director of Diversity & Inclusion  
**Re:** Addition of new Strategy to Goal 7 of Diversity Action Plan

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### **Issue**

During the November 23, 2013 meeting the BOG voted to adopt the OSB Diversity Advisory Council's (DAC) recommended Diversity Action Plan goals and strategies. The DAC is recommending that the BOG approve the addition of a new strategy for Goal 7, Strategy 9, which addresses accessibility.

### **Discussion**

The previously adopted Diversity Action Plan does not include strategies specifically addressing accessibility. This proposed revision clarifies that addressing accessibility is a key strategy necessary to fulfill the Diversity Action Plan's goals.



## **Goal 7: Expand public and bar member education, outreach, and service**

<b>Strategy 9 - Identify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities and premises</b>			
<b>Action Items</b>	<b>Target Measures</b>	<b>Lead</b>	<b>Timeline</b>
9.1 Establish an assessment review team and implement an assessment process to identify barriers to accessibility experienced by individuals with disabilities.	Assessment team established and assessment of bar's programs, services, activities and premises complete	General Counsel; Director of Communications and Public Services	2014
9.2 Develop and implement a plan to remedy identified accessibility barriers.	Prioritize action items and implement plan with steady progress toward remedying identified barriers	General Counsel; Director of Communications and Public Services	Yearly for 2014-16
9.3 Develop and implement a process to facilitate reporting and tracking of accessibility concerns. Communicate with constituents when barriers addressed.	Reporting and feedback process established	General Counsel; Director of Communications and Public Services	Yearly for 2014-16

# Oregon State Bar | 2014–2016 Diversity Action Plan

## GOAL #1 Increase the diversity of the Oregon bar and bench

- 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

- 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

- 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

- 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

- 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

- 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

- 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
- Strategy 9 – Identify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities and premises

## 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
- Strategy 2 – Increase pro bono representation of low income Oregonians
- Strategy 3 – Enhance legal services provider accountability for serving diverse clients

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Mariann Hyland, Director of Diversity & Inclusion  
**Re:** Diversity & Inclusion Definition Revisions

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### Issue

During the June 2012 meeting the BOG voted to adopt a definition for diversity & inclusion for the bar. Given the evolving language and distinctions used to describe the concepts of sex, gender, gender identity and expression, I am recommending revisions for the bar's diversity & inclusion definition.

### Discussion

The bar's diversity & inclusion definition does not include the word "sex," which is a demographic category the bar began tracing in 2012 (instead of gender) as an indication of a person's biological status. Therefore, I am recommending the inclusion of the word "sex" in the definition.

In addition, the definition does not include "gender expression," which is protected under Oregon's 2007 Equality Act, which prohibits discrimination against individuals in employment, housing, etc. based on sexual orientation. Therefore, I am recommending the inclusion of "gender expression" in the diversity & inclusion definition.



## **OSB Diversity & Inclusion Definition, Business Case Statement and Tag Line**

**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 or expression; geographic location; national origin; race; religion; sex; sexual orientation; and socio-economic status.

**Business Case Statement:** 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.

**Tag Line:** Diversity and Inclusion: Making us Stronger.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**From:** Travis Prestwich, Public Affairs Committee Chair  
**Re:** Best Practices for Indigent Defense Providers

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### Issue

Whether to adopt proposed changes to the Standards for Representation in Adult Criminal and Juvenile Delinquency Cases to provide guidance to practitioners.

### Options

Adopt proposed changes to the Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and include a foreword with a statement of intent that these guidelines are not intended to establish a legal standard of care.

Adopt proposed changes to the Standards for Representation in Adult Criminal and Juvenile Delinquency Cases to provide guidance to practitioner.

Decline to adopt proposed changes to the Standards for Representation in Adult Criminal and Juvenile Delinquency Cases.

### Discussion

The Oregon State Bar has a history of concern for the quality of representation provided to persons, in criminal, delinquency, dependency, civil commitment, and post-conviction proceeding. There have been at least four OSB task forces devoted to this subject. Adoption of the performance standards by the Bar was a key recommendation of the first task force in 1996. They have become a critical component of training and education efforts for lawyers practicing in the areas addressed by the standards. Oregon Public Defense Services Commission considers them an essential part of its mission to "ensure the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice." ORS 151.216(1)(a). Public defense services have improved significantly since the first OSB task force in 1996, but further improvement is still needed in criminal, delinquency and dependency representation. Keeping the OSB standards updated and relevant is important.

Nonetheless, concerns have been raised that the standards might create a standard of care and create a malpractice trap for indigent defense practitioners. One suggestion in light of the last Public Affairs Committee discussion is to include a statement similar to what is contained in the 2006 version as follows:

"These guidelines are not rules of practice and are not intended to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however, which are mandatory."

Identical language was included in the foreword to the standards for post-conviction relief practitioners, which the BOG adopted in 2009.

In the 18 years since the standards were originally adopted malpractice claims against criminal defense attorneys have been rare. This is due to case law in Oregon holding that a malpractice claim against a criminal defense trial attorney does not accrue unless "that person has been exonerated of the criminal offense through reversal on direct appeal, through post-conviction relief proceedings, or otherwise." *Stevens v. Bispham*, 316 Or 221, 238, 851 P2d 556 (1993).

## **Background**

In 1996, the Oregon State Bar Board of Governors approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. In 2006, the Board revised the 1996 standards. In 2012, two separate task forces revised the standards in criminal, delinquency and dependency cases. One group focused on juvenile dependency standards (expected to be completed soon). The other revised adult criminal and juvenile delinquency standards.

## **Proposed Revised Adult Criminal and Juvenile Delinquency Standards**

Attached are new standards produced by the criminal workgroup which replace what is published on the OSB website as "Specific Standards for Representation in Criminal and Juvenile Delinquency Cases". These changes, when combined with the proposed revisions to the third specific standard (juvenile dependency – expected to be completed soon) will make the "general standards" in Section 1 unnecessary.

The task force included academia, the bench, private practice, and public defender offices. Task force members were Margie Paris, Professor of Law, University of Oregon; Shaun McCrea, in private practice in Eugene; the Honorable Lisa Grief, Jackson County Circuit Court; Lane Borg, Executive Director, Metropolitan Public Defender; Julie McFarlane, Supervising Attorney, Youth, Rights & Justice; Shawn Wiley, Chief Deputy Defender, Appellate Division, Office of Public Defense Services. Paul Levy, General Counsel, Office of Public Defense Services, served as chair of the task force.

The task force examined existing standards and reviewed other state and national standards. The task force found that although Oregon's standards are grounded in the

standards promulgated by the National Legal Aid and Defender Association (NLADA) in 1994, Oregon's standards differed.

The variations from the NLADA standards were good and bad. On the positive side, they recognized that the role of a juvenile defender is highly specialized and complex, requiring skills unique to delinquency cases in addition to those required in adult criminal cases. The standards emphasized the collateral consequences of criminal convictions, addressed in the U.S. Supreme Court's decision in *Padilla v. Kentucky*, 559 US 356 (2010). Indeed, the existing Oregon standards serve as guideposts to effective criminal and juvenile defense.

The task force decided that the organization of NLADA's standards provided the best structure for our own standards, while preserving the best of Oregon's standards. Thus, within a new structure we keep a format of the short standard, followed by more detailed one. Also included is a revised commentary for the standards which provides additional guidance regarding criminal or delinquency defense.

The task force also benefited from National Juvenile Defense Standards (2012), which present a systematic approach to defense practice in juvenile court. (The NJDC standards are available at <http://www.njdc.info/publications.php>.) While the revision recognizes this work as establishing a national norm for representation in delinquency cases, it melds parts of this work into Oregon standards.

The revision, if approved by the BOG, will serve as a useful tool for both the new and experienced lawyer as a guide on the best practices for diligent and high quality representation. The revision may also serve as a helpful guide for courts, clients, the media and who wish to understand the expectations for defense lawyers in criminal and delinquency cases.

In conclusion, the revised standards may serve to increase Oregon Lawyers' expertise while not increasing exposure to malpractice claims.

## **Foreword to the 2014 revision of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases**

The original version of the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases (hereafter, the performance standards) was approved by the Board of Governors on September 25th, 1996. Significant changes to the original performance standards were adopted in 2006, and a new set of standards pertaining to representation in post-conviction standards were adopted in 2009.

As noted in the earlier revision, in order for the performance standards to continue to serve as valuable tools for practitioners and the public, they must be current and accurate in their reference to federal and state laws and they must incorporate evolving best practices.

The Foreword to the original performance standards noted that “[t]he object of these [g]uidelines is to alert the attorney to possible courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best representation possible.” This continues to be the case, as does the following, which was noted in both the Foreword to the 2006 revision and the Foreword to the 2009 post-conviction standards:

“These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however, which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

We hope that the revised Performance Standards, like the originals, will serve as a valuable tool both to the new lawyer or the lawyer who does not have significant experience in criminal and juvenile cases, and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation.

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Tom Kranovich  
Oregon State Bar President



Oregon State Bar

# Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases

**April 25, 2014**

# **Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases**

## **Summary and Background**

In September of 1996, the Oregon State Bar Board of Governors approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. In May of 2006, the Board accepted revisions to the 1996 standards. In 2012, at the direction of the OSB Board of Governors, the two separate workgroups began meeting to work on significant revisions to the standards in criminal, delinquency and dependency cases. One group focused on juvenile dependency standards, and the other on adult criminal and juvenile delinquency standards.

On the following pages will find new standards produced by the criminal workgroup which are recommended to replace what is currently published on the OSB website as the second specific standard “Specific Standards for Representation in Criminal and Juvenile Delinquency Cases”. These changes, when combined with the proposed revisions to the third specific standard (juvenile dependency – expected to be completed soon) will make the “general standards” in Section 1 unnecessary.

The task force included representative from academia, the bench and from both private practice and public defender offices. Task force members were Margie Paris, Professor of Law, University of Oregon; Shaun McCrea, in private practice in Eugene; The Honorable Lisa Grief, Jackson County Circuit Court; Lane Borg, Executive Director, Metropolitan Public Defender; Julie McFarlane, Supervising Attorney, Youth, Rights & Justice; Shawn Wiley, Chief Deputy Defender, Appellate Division, Office of Public Defense Services. Paul Levy, General Counsel, Office of Public Defense Services served as chair of the task force.

The task force began its work by conducting a detailed examination of the existing standards and a review of other states' standards and the standards of national organizations. The task force found that although Oregon's standards, like those of most other states, are firmly grounded in the standards first promulgated by the National Legal Aid and Defender Association (NLADA) in 1994, the structure and substance of Oregon's standards had significant changes.

The variations from the NLADA standards were both good and bad. On the positive side, through an earlier revision of the Bar standards in 2005, they reflected a growing recognition that the role of a juvenile defender is highly specialized and complex, requiring knowledge and skills unique to delinquency cases in addition to those required in adult criminal cases. The standards also placed emphasis on the collateral consequences of criminal convictions, presaging the U.S. Supreme Court's seminal decision on that subject in *Padilla v. Kentucky*, 559 US 356 (2010). Indeed, overall, the existing Oregon standards serve as strong and valid guideposts to effective criminal and juvenile defense.

But the task force also found that the structure of the standards was confusing and unhelpful. Why, for instance, should we have five "general standards," only to repeat them again in another set of "specific standards"? And is it really necessary to set out in the standards specific provisions of the Oregon Rules of Professional Conduct when those obligations already exist for all attorneys in the state? More fundamentally, since the last revision in 2005, the defense of both criminal and delinquency cases has become increasingly complex and challenging. Advances in neuroscience, for instance, have challenged traditional notions of accountability in both delinquency and adult criminal cases. Adult criminal defense has changed dramatically with the evolution of constitutional doctrine applying the right to jury trial to some sentencing proceedings.

The ubiquity of computers and smartphones has dramatically changed the type of evidence lawyers are likely to encounter, as well as how lawyers are likely to do their own work.

The task force decided that the original organization of NLADA's standards provided the best structure for our own standards, while preserving much of the good work that had already been done to update the Oregon standards prior to our revision. Thus, within a new structure we have maintained a format of a short statement of a standard, followed by more detailed implementation language. New for this revision, and in keeping with the NLADA and many other state standards, is commentary following many of the standards, which provides additional background and guidance regarding a particular aspect of criminal or delinquency defense.

The task force also had the benefit of recently published National Juvenile Defense Standards (2012), a work of the highly regarded National Juvenile Defender Center, which present a systematic approach to defense practice in juvenile court. (The NJDC standards are available at <http://www.njdc.info/publications.php>.) While the new revision specifically recognizes this work as establishing a national norm for representation in delinquency cases, it also incorporates specific elements of this work into relevant Oregon standards.

The task force also brought its own considerable expertise and perspective to the review of existing standards and the drafting of revisions, consulting as required with other practitioners with recognized expertise in certain areas of practice. Building on an existing set of very good standards, the revision, if approved by the BOG, will serve as a useful tool for both the lawyer new to criminal and delinquency defense and the experienced lawyer who seeks guidance on the best practices for diligent and high quality representation. As such, the revision should be a useful tool for lawyers and law firms providing training for new lawyers. And they should serve as a helpful guide for courts, clients, the media and others in the interested public who wish to understand the expectations for defense lawyers in criminal and delinquency cases.

## Introduction to the Revised Standards

Since 2005, when these performance standards were last revised, the defense of criminal and delinquency cases has become increasingly complex and challenging. Advances in neuroscience, for instance, have challenged traditional notions of the legal status of juveniles under the United States Constitution, as reflected in cases limiting the authority of states to impose the most severe penalties on juvenile offenders<sup>1</sup> and requiring consideration of a youth's age in determining whether *Miranda* warnings should be given.<sup>2</sup> Likewise, adult criminal defense has changed dramatically with the evolution of constitutional doctrine applying the right to jury trial to sentencing proceedings<sup>3</sup> and expanding the obligations of lawyers to advise clients concerning

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<sup>1</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

<sup>2</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 502 (2011).

<sup>3</sup> *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

the collateral consequences of guilty pleas.<sup>4</sup> The performance standards that follow reflect new best practices that have developed in response to these and other developments in the law, science and professional responsibilities of lawyers.

As in earlier versions of these standards, most of the guidance that follows applies in both adult criminal and juvenile delinquency cases. However, this revision reflects a growing recognition, already evident in the 2005 revision, that the role of a juvenile defender is highly specialized and complex, requiring knowledge and skills unique to the duties of counsel in delinquency cases in addition to those required to perform most of the functions of counsel in an adult criminal case. In addition, since the last revision, the National Juvenile Defender Center has published the *National Juvenile Defense Standards* (2012), which present a systematic approach to defense practice in juvenile court and establish a national norm for this work. These new standards have informed the standards presented here but should also be consulted directly for detailed guidance on the obligations of counsel in delinquency cases.

The standards that follow do not address the special obligations of counsel in capital cases. While lawyers representing clients facing the death penalty will ordinarily be expected to meet the standards that follow here, additional duties of counsel in capital cases are presented and explained in detail in the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003). Lawyers in death penalty cases should continue to consult the ABA standards as well as the standards in this revision.

As noted in earlier versions of these standards, the guidance here will serve as a valuable tool for both the lawyer new to criminal or delinquency cases but also the experienced lawyer who seeks guidance on the best practices for diligent and high quality legal representation. But these standards should serve others as well. While they are not intended, nor should they be used, to establish a mandatory course of action in every case, they do reflect the current best practices for representation in criminal and delinquency cases. As such, they are a useful tool for lawyers and organizations providing training for new lawyers. They should also serve as a helpful guide for courts, clients, the media and others in the interested public who wish to understand the expectations for defense lawyers in criminal and delinquency cases.

## **Specific Standards for Representation in Criminal and Juvenile Delinquency Cases**

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<sup>4</sup> *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010).

## **STANDARD 1.1 – ROLE OF DEFENSE COUNSEL**

**The lawyer for a defendant in a criminal case and for a youth in a delinquency case should provide quality and zealous representation at all stages of the case, advocating at all times for the client’s expressed interests. The lawyer shall abide by the Oregon Rules of Professional Conduct and applicable rules of court.**

### Implementation:

1. In abiding by the Oregon Rules of Professional Conduct, a lawyer should ensure that each client receives competent, conflict-free representation in which the lawyer keeps the client informed about the representation and promptly responds to reasonable requests for information.
2. The defense of a delinquency case requires knowledge and skills specific to juvenile defense in addition to what is required for the defense of an adult criminal case. Lawyers representing clients in juvenile court should be familiar with and follow the National Juvenile Defender Center’s *National Juvenile Defense Standards* (2012).
3. In both criminal and juvenile delinquency cases, a lawyer is bound by the client’s definition of his or her interests and should not substitute the lawyer’s judgment for that of the client regarding the objectives of the representation. In delinquency cases, a lawyer should explain to the client and, where appropriate, to the client’s parents that the lawyer may not substitute either his or her own view of the client’s best interests or a parent’s interests or view of the client’s best interests for those expressed by the client.
4. A lawyer should provide candid advice to the client regarding the probable success and consequences of pursuing a particular position in the case and give the client the information necessary to make informed decisions. A lawyer should consult with the client regarding the assertion or waiver of any right or position of the client.
5. A lawyer should consult with the client on the strategy and means by which the client’s objectives are to be pursued and exercise the lawyer’s professional judgment concerning technical and tactical decisions involved in the representation.

### Commentary:

The paramount obligation of a lawyer is to advocate for a client’s cause with zeal, skill and devotion. It is wrong to assert that the vague notion that a lawyer’s role as an “officer of the court” should temper a lawyer’s commitment to a client’s cause. “The basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the [client’s] counselor and advocate with courage and devotion and to render effective, quality representation.” *ABA Standards for Criminal Justice, Standard 4.1.2 The Function of Defense Counsel* (3d ed. 1993). Indeed, a former Oregon State Bar General Counsel and Executive

Director has argued convincingly that “the notion that [lawyers] have ethical duties to courts and judges as ‘officers of the court’ is erroneous and confusing.” [Officers of the Court: What does it mean?](#) George Riemer, Bar Counsel Column, Oregon State Bar Bulletin, August 2001.

Especially in criminal and delinquency cases, where lawyers often represent troubled clients accused of conduct that may be widely condemned, the overarching duty of counsel is a “vigorous advocacy of the client’s cause,” guided by “a duty of loyalty” and the employment of the skill and knowledge necessary for a reliable adversarial system of justice. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). As a matter of professional responsibility, “[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer must act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” *ABA Model Rules of Professional Conduct, Commentary to Rule 1.3*, ABA Center for Professional Responsibility (2007).

The same obligations of counsel in criminal cases apply with equal force in representing youth in juvenile delinquency proceedings. “At each stage of the case, juvenile defense counsel acts as the client’s voice in the proceedings, advocating for the client’s expressed interests, not the client’s ‘best interest’ as determined by counsel, the client’s parents or guardian, the probation officer, the prosecutor, or the judge.” [The Role of Juvenile Defense Counsel in Delinquency Court](#), p. 7, National Juvenile Defender Center (2009). Likewise, “[t]here is no exception to attorney-client confidentiality in juvenile cases for parents or guardians,” nor in service of what counsel or others consider the client’s “best interest.” *Id.*, p. 12. Nor does a juvenile’s minority status “automatically constitute diminished capacity such that a juvenile defense attorney can decline to represent the client’s expressed interests.” *Id.*, p. 10.

In both delinquency and criminal cases, “[c]ertain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for defense counsel.” *ABA Standards for Criminal Justice, The Defense Function, Standard 4-5.2, Control and Direction of the Case* (3<sup>rd</sup> ed. 1993). In both circumstances, however, decisions by either the client or lawyer should be made after full consultation between the two. The ABA standards identify decisions for the client as what pleas to enter; whether to accept a plea agreement; whether to waive jury trial; whether to testify in his or her own behalf; and whether to appeal. The ABA standards likewise identify strategic and tactical decisions to be made by the lawyer to include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions to make, and what evidence should be introduced.

As noted, that allocation of decisional authority applies with equal force in delinquency cases. See, [National Juvenile Defense Standards](#), Standard 2.2, Explain the Attorney-Client Relationship, National Juvenile Defender Center (2012). However, in delinquency cases a lawyer may need to emphasize that the client is “in charge” of the critical decisions in the case. “In

clear, concise, and developmentally appropriate terms, counsel must exercise special care at the outset of representing a client to clarify the scope and boundaries of the attorney-client relationship.” *Id.*

Although Standard 1.1 calls for a strong client-centered model of advocacy, “[d]efense counsel is the professional representative of the accused, not the accused’s alter ego.” *ABA Standards for Criminal Justice, Standard 4.1.2 The Function of Defense Counsel* (3d ed. 1993). Thus, defense counsel “has no duty to execute any directive of the accused which does not comport with law” or with the lawyer’s obligations under standards of professional conduct. *Id.* Moreover, in those areas of strategic and tactical decision making that are committed to the informed judgment of counsel after consultation with the client, there is no obligation on counsel “to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to press those points.” *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983). Indeed, it would be an abdication of counsel’s professional responsibilities to acquiesce to a client’s ill-advised directions in these matters for the sake of expediency or to mollify a difficult client.

Previous versions of these standards often repeated verbatim applicable provisions of the Oregon Rules of Professional Conduct and predecessor rules of professional responsibility. The absence of specific reference to the Rules of Professional Conduct in the current version of these standards should not be taken as reflecting a position that they apply with any less force to defense counsel.

## **STANDARD 1.2 – EDUCATION, TRAINING AND EXPERIENCE OF DEFENSE COUNSEL**

- A. To provide quality representation, a lawyer must be familiar with the applicable substantive and procedural law, and its application in the particular jurisdiction where counsel provides representation. A lawyer has a continuing obligation to stay current with changes and developments in the law, and with changing best practices for providing quality representation in criminal and delinquency cases. Where appropriate, a lawyer should also be informed of the practices of the specific judge before whom a case is pending.**
- B. Prior to handling a criminal or delinquency matter, a lawyer should have sufficient experience or training to provide quality representation.**

Implementation:



1. In order to remain proficient in the law, court rules and practice applicable to criminal and delinquency cases, a lawyer should regularly monitor the work of Oregon and pertinent Federal appellate courts, and the Oregon State Legislature.
2. To stay current with developments in the law and practice of criminal and delinquency cases, a lawyer should maintain membership in state and national organizations that focus on education and training in the practice of criminal and delinquency cases and subscribe to listservs, consult available online resources, and attend continuing legal education programs devoted to the practice of criminal and delinquency cases.
3. A lawyer practicing criminal or juvenile delinquency law should complete at least 10 hours of continuing legal education training in criminal and delinquency law each year.
4. A lawyer practicing in criminal or juvenile delinquency law should become familiar with the basics of immigration law pertinent to the possible immigration consequences of a criminal conviction or an adjudication in a delinquency case for noncitizen clients. At least two hours of a lawyer's mandatory continuing legal education training requirements each year should involve training on such immigration consequences. Lawyers should also be familiar with other non-penal consequences of a criminal conviction or delinquency adjudication, such as those affecting driving privileges, public benefits, sex offender registration, residency restrictions, student financial aid, opportunities for military service, professional licensing, firearms possession, DNA sampling, HIV testing, among others.
5. Before undertaking representation in a criminal or delinquency case, a less experienced lawyer should obtain training in the relevant areas of practice and should consult with others in the field, including nonlawyers. A less experienced lawyer should observe and, when possible, serve as co-counsel to more experienced lawyers prior to accepting sole responsibility for a criminal or delinquency case. More experienced lawyers should mentor less experienced lawyers.
6. Lawyers in delinquency cases and, where relevant, in criminal cases, should develop a basic knowledge of child and adolescent development, including information concerning emotional, social and neurological development that could impact effective communication by the lawyer with clients and the defense of charges against the client. Lawyers in delinquency cases should have training in communicating with youth in a developmentally appropriate way.
7. Lawyers representing youth who are prosecuted in the adult criminal system should have the specialized training and experience of a juvenile defender in addition to the training and experience required to handle the most serious adult criminal cases.
8. A lawyer providing representation in criminal and juvenile delinquency cases should be familiar with key agencies and services typically involved in those cases, such as the Oregon Department of Corrections, local community corrections programs, the Oregon Youth Authority, the Department of Human Services, the county Juvenile Department, private treatment facilities

and programs, along with other services and programs available as dispositional alternatives to detention and custody.

Commentary:

The complexity and seriousness of criminal and juvenile delinquency cases require specialized training and expertise in a broad area of law and practical skills. Moreover, as the practice of law in these areas continues to develop, lawyers must devote a substantial amount of time to on-going training. From complex, ever-changing sentencing schemes to the increased role of scientific evidence and forensic experts, defense lawyers must master not only the skills of trial advocacy but also the complex legal and factual issues attendant to many cases. For instance, recent advances in neuroscience and the understanding of infant and adolescent brain development undermine traditional notions of culpability and blameworthiness for both juvenile and adult offenders, requiring defense lawyers to learn the pertinent scientific principles and present them as evidence in appropriate cases. Likewise, as computers, smartphones and other electronic devices become an integral part of everyday life for most youth and adults, counsel must understand and utilize their evidentiary potential.

As criminal and delinquency cases have become more serious and complex, the collateral consequences of convictions and adjudications have become more numerous and significant. Lawyers must now understand and explain the immigration consequences of a criminal conviction to noncitizen clients in order to fulfill the Sixth Amendment rights of those clients. *Padilla v. Kentucky*, 559 US 356, 130 S Ct 1473, 176 L Ed 2d 284 (2010). Depending upon the particular circumstances of a client, other collateral consequences may be just as important as deportation, requiring a lawyer to understand and seek to mitigate the impact of a conviction on a client's employment, housing, public assistance, schooling and other fundamental life activities.

The increased complexity and seriousness of criminal and delinquency cases require lawyers to take advantage of membership organizations that provide not only seminars and other training but also access to blogs, listservs, videos, motions and memoranda, and other online resources that alert lawyers to the latest developments in a pertinent area of law, provide a forum to seek case-specific guidance, and promote a culture of zealous, client-centered representation. The days of the solo practitioner toiling alone are in the past. In Oregon, the Oregon Criminal Defense Lawyers Association, the Oregon State Bar, National Association of Criminal Defense Lawyers and the National Juvenile Defender Center help provide the tools essential to successful practice in these areas. While direct peer-to-peer consultation, mentoring or guidance remains important, membership in an organization focused on criminal and juvenile defense has become the norm for the best practice in Oregon.

**STANDARD 1.3 – OBLIGATIONS OF DEFENSE COUNSEL REGARDING WORKLOAD**

**Before agreeing to act as counsel or accept appointment by a court, a lawyer has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a criminal matter or a youth in a delinquency case. If it later appears that the lawyer is unable to offer quality representation in the case, the lawyer should move to withdraw.**

Implementation:

1. A lawyer, whether court-appointed or privately retained, should not accept workloads that, by reason of size or complexity, interfere with the ability of the lawyer to meet professional obligations to each client.
2. A lawyer should have access to sufficient support services and resources to allow for quality representation.

Commentary:

In 2007, the Oregon State Bar Board of Governors approved Formal Ethics Opinion No. 2007-178, which was based upon the American Bar Association Formal Ethic Opinion No. 06-441, entitled “Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation.” The OSB opinion, which makes clear that it speaks to both appointed and retained counsel, commands lawyers to control their workloads to enable them to discharge their ethical obligations “to provide each client with competent and diligent representation, keep each client reasonably informed about the status of his or her case, explain each matter to the extent necessary to permit the client to make informed decisions regarding the representation, and abide by the decisions that the client is entitled to make.” The opinion observes, quoting the ABA opinion, that for every client a lawyer is required to “keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; and communicate effectively on behalf of and with clients[.]” The opinion observes that a “lawyer who is unable to perform these duties may not undertake or continue with representation of a client.”

**STANDARD 2.1 – OBLIGATIONS OF DEFENSE COUNSEL AT INITIAL APPEARANCE**

**At the initial court appearance in a criminal or delinquency case, a lawyer should inform the client of the offenses alleged in the charging instrument or petition, assert pertinent statutory and constitutional rights of the client on the record and, where appropriate, attempt to secure the pretrial release of detained clients under the conditions most favorable and acceptable to the client.**

Implementation:

1. A lawyer should be familiar with the law regarding initial appearance, arraignment, and juvenile detention.
2. A lawyer should be familiar with the local practice regarding case docketing and processing so that the lawyer may inform the client regarding expected case events and the dates for upcoming court appearances.
3. A lawyer should be prepared to enter an appropriate assertion that preserves the client's rights and demands due process, whether that is a not guilty plea or a denial of the allegations in a delinquency petition, demand for preliminary hearing or request for some other further proceeding. A lawyer should make clear that the defendant reserves the following rights in the present and any other matter:
  - a. Right to remain silent under State and Federal Constitutions;
  - b. Right to counsel under State and Federal Constitutions;
  - c. Right to file challenges to the charging instrument or petition;
  - d. Right to file challenges to the evidence;
  - e. Right to file notices of affirmative defenses; and
  - f. Right to a speedy trial.
4. A lawyer should be prepared to object to the court's failure to comply with the law regarding the initial appearance process, such as the statute requiring an ability to confer confidentially with the client during a video arraignment.
5. If the client is in custody, a lawyer should seek release from custody or detention (See Standard 2.3).
6. A lawyer should obtain all relevant documents and orders that pertain to the client's initial appearance.
7. A lawyer may waive formal reading of the allegations and advice of rights by the court, providing the lawyer advises the client what rights are waived, the nature of the charges, and the potential consequences of relinquishing his rights.
8. If the adjudicatory judge is assigned at the initial appearance, the lawyer must be familiar with the law and local practice for filing motions to disqualify a judge, discuss this with the client, and be prepared to timely file appropriate documents challenging an assigned judge.

Commentary:

While substantive law has been largely standardized throughout the state, court procedural rules still vary significantly by county or judicial district. A lawyer should be familiar with the local practice codified in the Supplementary Local Rules (SLRs) but also preserved only as oral tradition (the local unwritten rules). Because Oregon allows for self-bail on posting security, the lawyer should be familiar with local sheriff office practices regarding posting security and when deposited moneys will be available to clients.

Jurisdictions vary on when a trial judge is actually assigned and, therefore, the time for filing motions for change of judge will vary. Some counties require all plea discussions to occur prior to entry of the not guilty plea, but will often set over plea entry to allow for discovery and negotiations. Some counties will stick closely to the time requirements in the Uniform Trial

Court Rules, but constitutional due process rights may trump a jurisdiction's procedural requirements or administrative rules. *State v. Owens*, 68 Or App 343 (1984).

## **STANDARD 2.2 – CLIENT CONTACT AND COMMUNICATION**

**A lawyer should conduct a client interview as soon as practicable after representation begins and thereafter establish a procedure to maintain regular contact with the client in order to explain the allegations and nature of the proceedings, meet the ongoing needs of the client, obtaining necessary information from the client, consult with the client about decisions affecting the course of the defense, and to respond to requests from the client for information or assistance concerning the case.**

### Implementation:

1. A lawyer should provide a clear explanation, in developmentally appropriate language, of the role of both the client and the lawyer, and demonstrate appropriate commitment to the client's expressed interests in the outcome of the proceedings. A lawyer should elicit the client's point of view and encourage the client's full participation in the defense of the case.
2. The initial interview should be in person in a private setting that allows for a confidential conversation. When the client is a youth, a lawyer should not allow parents or other people to participate in the initial meeting with the client, in order to maintain privileges and assure that the client knows the communication is confidential.
3. If the client is in custody and a release or detention hearing is pending, the lawyer should be familiar with the law regarding detention, the criteria for release and discuss with the client release factors and resources available to the client to obtain pretrial release.
4. At the initial meeting the lawyer should review the charges facing the client and be prepared to discuss the necessary elements of the charges, the procedure the client will be facing in subsequent court appearances, and inquire if the client has any immediate needs regarding securing evidence or obtaining release.
5. Prior to all meetings the lawyer should:
  - a. Be familiar with the elements of the charged offense(s) and the potential punishment;
  - b. Obtain copies of any relevant documents that are available, including any charging documents, recommendations and reports made by agencies concerning pretrial release, and law enforcement reports that might be available;
  - c. Be familiar with the legal procedure the client will encounter and be prepared to discuss the process with the client;
  - d. If a client is in custody, be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release, and in a juvenile proceeding be prepared to discuss the process of ongoing detention review;
6. During an initial interview with the client, a lawyer should:
  - a. Obtain information concerning:

- (1) The client's ties to the community, including the length of time he or she has lived at current and former addresses, family relationships, immigration status (if applicable), employment record and history;
- (2) The client's history of service in the military, if any;
- (3) The client's physical and mental health, educational and military services records;
- (3) The client's immediate medical needs;
- (5) The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges and also whether he or she is on probation or parole and the client's past or present performance under supervision;
- (6) The ability of the client to meet any financial conditions of release;
- (7) The names of individuals or other sources that counsel can contact to verify the information provided by the client; and the client's permission to contact these individuals;

b. Provide to the client information including but not limited to:

- (1) An explanation of the procedures that will be followed in setting the conditions of pretrial release;
- (2) An explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
- (3) An explanation of the lawyer-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the lawyer;
- (4) The charges and the potential penalties, as well as potential collateral consequences of any conviction and sentence;
- (5) A general procedural overview of the progression of the case, where possible;
- (6) Advice that communication with people other than the defense team is not privileged and, if the client is in custody, may be monitored.

7. A lawyer should use any contact with the client as an opportunity to gather timely information relevant to preparation of the defense. Such information may include, but is not limited to:

- a. The facts surrounding the charges against the client;
- b. Any evidence of improper police investigative practices or prosecutorial conduct that affects the client's rights;
- c. Any possible witnesses who should be located;
- d. Any evidence that should be preserved;
- e. Where appropriate, evidence of the client's competence to stand trial and/or mental

state at the time of the offense.

Commentary:

The purpose of the initial contact is to quickly ascertain and identify work that needs to be done to prepare for the defense, including documenting the status or condition of evidence that could be lost, such as injuries to the defendant or crime scene conditions; establishing a relationship with the client; informing the client of the charges against him or her and the possible consequences; and reviewing next steps such as preparing for a release hearing or preliminary hearing. The relationship between a criminal defendant or youth charged with delinquency and a lawyer will be directly affected by the quality of their communication, which starts with the initial interview where the lawyer can provide the client important information and obtain relevant case information from the client. There is a strong correlation between good lawyer/client communication and the lack of complaints from clients about poor representation or requests for substitute counsel. If this correlation is more than coincidence then it is likely that the key to successful representation is good communication that begins with a timely and thorough initial interview.

The duty to communicate is found in Oregon Rule of Professional Conduct 1.4 and forms a core duty that the lawyer owes the client. Aside from addressing the immediate needs of the client to secure release or preserve evidence, the initial interview (along with subsequent meetings) forms the source of another core duty, the duty to investigate. A review of information with the client may assist in determining who needs to be interviewed or what evidence may need expert evaluation.

Communication and contact with the client is an important source for the lawyer to assess the client's mental status to understand the proceedings. The lawyer should make note of concerns and consult appropriate experts regarding concerns over competency.

### **STANDARD 2.3 – RELEASE OF CLIENT**

- A. A lawyer has a duty to seek release from custody or detention of clients under the conditions most favorable and acceptable to the client.**
- B. Release should be sought at the earliest possible opportunity and if not successful a lawyer should continue to seek release at appropriate subsequent hearings.**

Implementation:

1. If the client is in custody or detention the lawyer should review the documents supporting probable cause and, if appropriate, challenge any finding of probable cause, and in all cases where detention continues the lawyer should move for release if appropriate or ask that bail be reduced to an amount the client can afford.
2. If the court will not consider release at initial appearance, the lawyer should request a release hearing and decision within the statutory time requirements. In delinquency proceedings the lawyer should be familiar with the law and procedures for detention hearings and the risk factors that the court is likely or required to consider. In criminal cases, at any release hearing the lawyer should be familiar with the statutory criteria for release and be prepared to address those release factors on the record.

3. In preparation for a release hearing the lawyer should discuss statutory release criteria with the client and be prepared to address the court regarding these factors including residence, employment, compliance with release conditions such as no contact with victims, and any release compliance monitoring.
4. If the client is subject to release on security, the lawyer should be familiar with the rules and requirements to post security, including procedures for client “self-bailing” with funds from an inmate account, posting a security interest in property, or third party posting requirements.

### **STANDARD 3 - INVESTIGATION**

**A lawyer has the duty to conduct an independent review of the case, regardless of the client’s admissions or statements to the lawyer of facts constituting guilt or the client’s stated desire to plead guilty or admit guilt. Where appropriate, the lawyer should engage in a full investigation, which should be conducted as promptly as possible and should include all information, research, and discovery necessary to assess the strengths and weaknesses of the case, to prepare the case for trial or hearing, and to best advise the client as to the possibility and consequences of conviction or adverse adjudication. The lawyer should not knowingly use illegal means to obtain evidence or instruct others to do so.**

#### **Implementation**

1. A lawyer should obtain copies of all charging documents and should examine them to determine the specific charges that have been brought against the client.
2. A lawyer should engage in research, including a review of all relevant statutes and case law, in order to determine:
  - a. The necessary elements of the charged offenses;
  - b. Any defects in the charging instrument, both constitutional and non-constitutional, including statute of limitations and double jeopardy;
  - c. Whether the court’s jurisdiction can be challenged;
  - d. Applicability of defenses, ordinary and affirmative, including defenses based on mental disease or defect, diminished capacity, or partial responsibility, and whether any notice of such defenses is required and specific timelines for giving notice; and
  - e. Potential consequences of conviction or adverse adjudication, including those relating to immigration and possible deportation.
3. A lawyer should conduct an in-depth interview with the client as described in Standard 2.2. The interview should be used to identify:
  - a. Additional sources of information concerning the incidents or events giving rise to the charges and to any defenses;



- b. Evidence concerning improper conduct or practices by law enforcement, juvenile authorities, mental health departments, or the prosecution, which may affect the client's rights or the admissibility of evidence;
- c. Information relevant to the court's jurisdiction;
- d. Information relevant to pretrial or prehearing release and possible pretrial or prehearing disposition; and
- e. Information relevant to sentencing or disposition and potential consequences of conviction or adverse adjudication.

4. A lawyer should consider whether to interview potential witnesses, whether adverse, neutral, or favorable, and when new evidence is revealed during the course of witness interviews, the lawyer should locate and assess its value to the client. Witness interviews should be conducted by an investigator or in the presence of a third person who will be available, if necessary, to testify as a defense witness at the trial or hearing. When speaking with third parties, the lawyer has a duty to comply with the Oregon Rules of Professional Conduct, including Rule 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 4.2 (Communication with Person Represented by Counsel), and 4.3 (Dealing with Unrepresented Persons). The lawyer also has a duty, where appropriate, to comply with statutory rights of victims, such as those embodied in ORS 135.970(2) and (3).

5. A lawyer should attempt to interview all law enforcement officers involved in the arrest and investigation of the case and should obtain all pertinent information in the possession of the prosecution, juvenile authorities, or law enforcement, including, where relevant, law enforcement personnel records and documentation of prior officer misconduct. In cases involving child witnesses or victims, the lawyer should seek records of counseling sessions with those children. The lawyer should pursue formal and informal discovery with authorities as described in Standard 4.1.

6. Where appropriate, a lawyer should inspect the scene of the alleged offense under circumstances (including weather, lighting conditions, and time of day) as similar as possible to those existing at the time of the alleged incident.

7. Where appropriate, a lawyer should obtain school, mental health, medical, drug and alcohol, immigration, and prior criminal offense and juvenile records of the client and witnesses.

Commentary:

A skilled and knowledgeable lawyer will be of little use to a client without a thorough understanding of the facts of a case. As explained in the Commentary to the *National Juvenile Defense Standards*:

Most cases are won on facts, not legal arguments, and it is investigation that uncovers the facts. The facts are counsel's most important asset, not only in litigating the case at trial, but in every other function counsel performs, including negotiating for reduced or dismissed charges, diversion, or a plea agreement, as well as influencing a favorable disposition.

An investigation is important even when the client has admitted culpability or expresses a desire to plead guilty. An investigation may yield evidence that can lead to suppression of key state evidence, negate or block the admissibility of state evidence, or limit the client's liability. Even if the investigation does not result in an acquittal or dismissal, it may yield evidence that can be useful in negotiating a more favorable plea agreement or mitigation of disposition.<sup>5</sup>

## **STANDARD 4.1 – DISCOVERY**

**A lawyer has the duty to pursue formal and informal discovery in a prompt fashion and to continue to pursue opportunities for discovery throughout the case.**

### **Implementation:**

1. A lawyer should be familiar with all applicable statutes, rules, and case law governing discovery, including those concerning the processes for filing motions to compel discovery or to preserve evidence, as well as those making sanctions available when the prosecution has engaged in discovery violations.
2. A lawyer should also be familiar with and observe the applicable statutes, rules and case law governing the obligation of the defense to provide discovery. A lawyer should file motions for protective orders or otherwise resist discovery where a lawful basis exists to shield information in the possession of the defense from disclosure.
3. A lawyer should make a prompt and comprehensive demand for discovery pursuant to applicable rules and constitutional provisions, and should continually seek all information to which the client is entitled, especially any exculpatory, impeaching, and mitigating evidence. Discovery should include, but is not limited to, the following:
  - a. Potentially exculpatory, impeaching, and mitigating information;
  - b. Law enforcement reports and notes, 911 recordings and transcripts, inter-officer transmissions, dispatch reports, and reports or notes of searches or seizures and the circumstances in which they were accomplished;

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<sup>5</sup> National Juvenile Defender Center, *National Juvenile Defense Standards*, Sec. 4.1, at 68-69 (citations omitted).

- c. Written communications, including emails, between prosecution, law enforcement, and/or witnesses;
- d. Names and addresses of prosecution witnesses, their prior statements, their prior criminal records, and their relevant digital, electronic, and social media postings;
- e. Oral or written statements by the client, and the circumstances under which those statements were made;
- f. The client's prior criminal or juvenile record and evidence of any other misconduct that the prosecution may intend to use against the client;
- g. Copies of, or the opportunity to inspect, books, papers, documents, photographs, computer data, tangible objects, buildings or places, and other material relevant to the case;
- h. Results or reports of physical or mental examinations, and of scientific tests or experiments, and the data and documents on which they are based;
- i. Statements and reports of experts, and the data and documents on which they are based; and
- j. Statements of co-defendants.

4. A lawyer should consider filing motions seeking to preserve evidence where it is at risk of being destroyed or altered.

## **STANDARD 4.2 – THEORY OF THE CASE**

**A lawyer should develop and continually reassess a theory of the client's case that advances the client's goals and encompasses the realities of the client's situation.**

### **Implementation:**

1. A lawyer should use the theory of the case when evaluating strategic choices throughout the course of the representation.
2. A lawyer should allow the theory of the case to focus investigation and trial or hearing preparation, seeking out and developing facts and evidence that the theory makes material.
3. A lawyer should remain flexible enough to modify or abandon the theory if it does not serve the client.

### **Commentary:**

The theory of the case is a construct that can guide the preparation and presentation of a case. A theory of the case should explain the facts of the case in such a way that a judge or jury will understand why the client is entitled to a favorable verdict. As such, it is first and foremost a factual narrative that presents the client's story in straightforward common sense terms that

support a favorable verdict under the law applicable to the case. It must be informed by thorough investigation and preparation so that a lawyer will know which facts a judge or jury is likely to accept as proven. It must also account for what fact finders are likely to believe based upon their own life experiences. Finally, a theory of the case must account for the jury instructions and other law applicable to the case. Although a theory of the case should be developed early in the representation of a client and be largely built upon the client's version of events, a lawyer must be able to revisit and revise the theory, in consultation with the client, as investigation and preparation continue to develop the facts that a judge or jury are likely to accept as true at the conclusion of the trial.

## **STANDARD 5.1 – PRETRIAL MOTIONS AND NOTICES**

**A lawyer should research, prepare, file and argue appropriate pretrial motions and notices whenever there is reason to believe the client may be entitled to relief.**

### Implementation:

1. The decision to file a particular pretrial motion or notice should be made after thorough investigation, and after considering the applicable law in light of the circumstances of the case.
2. Among the issues the lawyer should consider addressing in pretrial motions are:
  - a. the pretrial custody of the accused;
  - b. the competency or fitness to proceed of the accused (see Standard 5.3);
  - c. the constitutionality of relevant statutes;
  - d. potential defects in the charging process or instrument;
  - e. the sufficiency of the charging document;
  - f. the severance of charges and/or co-defendants for trial;
  - g. change of venue;
  - h. the removal of a judicial officer from the case through requests for recusal or the filing of an affidavit of prejudice;
  - i. the discovery obligations of both the prosecution and the defense, including:
    - (1) motions for protective orders;
    - (2) *Brady v. Maryland* motions;
    - (3) motions to compel discovery;

j. violations of federal and/or state constitutional or statutory provisions, including:

- (1) illegal searches and/or seizures;
- (2) involuntary statements or confessions;
- (3) statements obtained in violation of the right to counsel or privilege against self-incrimination;
- (4) unreliable identification evidence;
- (5) speedy trial rights; and
- (6) double jeopardy protections;

k. requests for, and challenges to denial of, funding for access to reasonable and necessary resources and experts, such as:

- (1) interpreters;
- (2) mental health experts;
- (3) investigative services; and
- (4) forensic services;

l. the right to a continuance in order to adequately prepare and present a defense, or to respond to prosecution motions;

m. matters of trial evidence that may be appropriately litigated by means of a pretrial motion *in limine*, including:

- (1) the competency or admissibility of particular witnesses, including experts and children;
- (2) the use of prior convictions for impeachment purposes;
- (3) the use of prior or subsequent bad acts;
- (4) the use of reputation or other character evidence;
- (5) the use of evidence subject to “rape shield” protections;

n. notices of affirmative defenses and other required notices to present particular evidence;

o. the dismissal of charges on the basis of a civil compromise, best interests of a youth in delinquency cases, in the furtherance of justice, and the general equitable powers of the court.

3. Before deciding not to file a motion or to withdraw a motion already filed, a lawyer should carefully consider all facts in the case, applicable law, case strategy, and other relevant information, including:

- a. the burden of proof, and the potential advantages and disadvantages of having witnesses testify at pretrial hearings and to what extent a pretrial hearing reveals defense strategy to a client's detriment;
- b. whether a pretrial motion may be necessary to protect the client's rights against later claims of waiver, procedural default or failure to preserve an issue for later appeal;
- c. the effect the filing of a motion may have upon the client's speedy trial rights; and
- d. whether other objectives, in addition to the ultimate relief requested by a motion, may be served by the filing and litigation of a particular motion.

## **STANDARD 5.2 – FILING AND ARGUING PRETRIAL MOTIONS**

**A lawyer should prepare for a motion hearing just as he or she would prepare for trial, including preparing for the presentation of evidence, exhibits and witnesses.**

### **Implementation:**

1. Motions should be timely filed, comport with the formal requirements of the court, and succinctly inform the court of the authority relied upon.
2. When a hearing on a motion requires taking evidence, a lawyer's preparation should include:
  - a. investigation, discovery and research relevant to the claims advanced;
  - b. subpoenaing all helpful evidence and witnesses;
  - c. preparing witnesses to testify; and
  - d. fully understanding the applicable burdens of proof, evidentiary principles and court procedures, including the costs and benefits of having the client or other witnesses testify and be subject to cross examination.
3. A lawyer should consider the strategy of submitting proposed findings of fact and conclusions of law to the court at the conclusion of the hearing.

4. After an adverse ruling, a lawyer should consider seeking interlocutory relief, if available, taking necessary steps to perfect an appeal, and renewing the motion or objection during trial in order to preserve the matter for appeal.

### **STANDARD 5.3 – PRETRIAL DETERMINATION OF CLIENT’S FITNESS TO PROCEED**

**A lawyer must be able to recognize when a client may not be competent to stand trial and take appropriate action.**

Implementation:

1. A lawyer must learn to recognize when a client’s ability to aid and assist in the proceedings may be compromised due to mental health disorders, developmental immaturity, or developmental and/or intellectual disabilities.
2. A lawyer must assess whether the client’s level of functioning limits his or her ability to communicate effectively with counsel, as well as his or her ability to have a factual and rational understanding of the proceedings.
3. When a lawyer has reason to doubt the client’s competency to stand trial, the lawyer should gather information and consider filing a pretrial motion requesting a competency determination.
4. In deciding whether to request a competency determination, a lawyer must consider, among other things:
  - a. his or her obligations, under Oregon Rule of Professional Conduct 1.14, to maintain a normal attorney-client relationship, to the extent possible, with a client with diminished capacity; and
  - b. the likely consequences of a finding of incompetence, and whether there are other ways to resolve the case, such as dismissal upon obtaining services for the client or referral to other agencies.
5. If the lawyer decides to proceed with a competency hearing, he or she should secure the services of a qualified expert. When the client is a youth, such an expert should be versed in the emotional, physical, cognitive, and language impairments of children and adolescents; the forensic evaluation of youth; the competence standards and accepted criteria used in evaluating juvenile competence; and effective interventions or treatment for youth.
6. If a court finds an adult client incompetent to proceed, a lawyer should advocate for the least restrictive level of supervision and the least intrusive treatment available. If the client is a youth,

a lawyer should seek to resolve the delinquency case by having the petition converted to a dependency petition or through a motion to dismiss in the best interests of the youth.

7. If a court finds a client is competent to proceed, a lawyer should continue to raise the matter during the course of the proceedings if the lawyer has a good faith concern about the client's continuing competency to proceed, and in order to preserve the matter for appeal.

#### **STANDARD 5.4 – CONTINUING OBLIGATIONS TO FILE OR RENEW PRETRIAL MOTIONS OR NOTICES**

**During trial or subsequent proceedings, a lawyer should be prepared to raise any issue which is appropriately raised pretrial but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Counsel should also be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.**

##### Commentary:

In many cases, the dispositive issue may concern some issue other than whether the client committed the alleged offense. Invariably these issues should be the subject of pretrial motions, supported by thorough factual investigation and legal research. The range of such issues is broad, as illustrated by the foregoing standard. The timing of motions is a strategic consideration and a function of court rule and, in many instances, local court practice. In every case, in order to determine whether to litigate a pretrial motion, a lawyer must be knowledgeable about current developments in the defense of criminal and delinquency cases and be skilled in presenting evidence and argument on complex legal issues.

The potential advantages of litigating pretrial motions are many. This point is perhaps best summarized by the commentary on this subject in the *National Juvenile Defense Standards*, which reads as follows:

Pre-trial motions hearings provide immediate and long-term benefits. Immediately, counsel has the opportunity to convince the judge that the case should be dismissed, or at the very least that certain evidence should be suppressed. Counsel also has the benefit of additional discovery through the state's responses to the motion prior to trial.



In the long-term, when motions generate a hearing, counsel can gain invaluable opportunities to pin down prosecution witnesses on the record and develop transcripts that could be used to impeach the witnesses with their prior inconsistent statements. Counsel has the opportunity to strengthen his or her relationship with the client through a demonstration of counsel's willingness to fight for the client. Because in many jurisdictions the vast majority of cases are resolved through a plea agreement, pre-trial motions practice may have an enormous impact on the kind of plea offer the prosecutor is willing to consider.

## **STANDARD 6.1 - EXPLORATION OF DISPOSITION WITHOUT TRIAL**

**A lawyer has the duty to explore with the client the possibility, advisability, and consequences of reaching a negotiated disposition of charges or a disposition without trial. A lawyer has the duty to be familiar with the laws, local practices, and consequences concerning dispositions without trial.**

### Implementation:

1. A lawyer should explore and consider mediation, civil compromise, diversion, Formal Accountability Agreements, having the case filed as a juvenile delinquency or dependency case, alternative dispositions including conditional postponement, motion to dismiss in the interest of justice, negotiated pleas or disposition agreements, and other non-trial dispositions.
2. A lawyer should explain to the client the strengths and weaknesses of the prosecution's case, the benefits and consequences of considering a non-trial disposition and discuss with the client any options that may be available to the client and the rights the client gives up by pursuing a non-trial disposition.
3. A lawyer should assist the client in weighing whether there are strategic advantages to be gained by taking a plea or whether the sentence or disposition results would likely be the same.
4. With the consent of the client, a lawyer should explore with the prosecutor and, in juvenile cases, the juvenile court counselor, when appropriate, available options to resolve the case without trial. The lawyer should obtain information about the position the prosecutor and juvenile court counselor will take as to non-plea dispositions and recommendations that will be made about sentencing or disposition. Throughout negotiation, a lawyer must zealously advocate for the expressed interests of the client, including advocating for some benefit for the client in exchange for a plea.

5. A lawyer cannot accept any negotiated settlement or agree to enter into any non-trial disposition without the client's express authorization.
6. A lawyer must keep the client fully informed of continued negotiations and convey to the client any offers made by the prosecution or recommendations by the juvenile court counselor for a negotiated settlement. The lawyer must assure that the client has adequate time to consider the plea and alternative options.
7. A lawyer should continue to take steps necessary to preserve the client's rights and advance the client's defenses even while engaging in settlement negotiations.
8. Before conducting negotiations, a lawyer should be familiar with:
  - a. the types, advantages and disadvantages, and applicable procedures and requirements of available pleas or admissions to juvenile court jurisdiction, including a plea or admission of guilty, no contest, a conditional plea or admission of guilty that reserves the right to appeal certain issues, and a plea or admission in which the client is not required to acknowledge guilt (*Alford* plea);
  - b. whether agreements between the client and the prosecution would be binding on the court or on prison, juvenile, parole and probation, and immigration authorities; and
  - c. the practices and policies of the particular prosecuting authorities, juvenile authorities, and judge that may affect the content and likely results of any negotiated settlement.
9. A lawyer should be aware of, advise the client of, and, where appropriate, seek to mitigate the following, where relevant:
  - a. rights that the client would waive when entering a plea or admission disposing of the case without trial;
  - b. the minimum and maximum term of incarceration that may be ordered, including whether the minimum disposition would be indeterminate, possible sentencing enhancements, probation or post-confinement supervision, alternative incarceration programs, and credit for pretrial detention;
  - c. the likely disposition given sentencing guidelines;
  - d. the minimum and maximum fines and assessments, and court costs that may be ordered, and the restitution that is being requested by the victim(s);
  - e. arguments to eliminate or reduce fines, assessments and court costs; challenges to liability for and the amount of restitution; the possibilities of civil action by the victim(s), and asset forfeiture; and the availability of work programs to pay restitution and perform community service;
  - f. consequences relating to previous offenses;

- g. the availability and possible conditions of, protective supervision, conditional postponement, probation, parole, suspended sentence, work release, conditional leave, and earned release time;
- h. the availability and possible conditions of deferred sentences, conditional discharges, alternative dispositions, and diversion agreements;
- i. for non-citizen juvenile clients, the possibility of temporary and permanent immigration relief through the available legislative or administrative immigration programs and Special Immigrant Juvenile Status,
- j. for non-citizen clients, the possibility of adverse immigration consequences;
- k. for non-citizen clients, the possibility of criminal consequences of illegal re-entry following conviction and deportation;
- l. the possibility of other consequences of conviction, such as:
  - i. requirements for sex offender registration, relief, and set-aside;
  - ii. DNA sampling, and AIDS and STD testing;
  - iii. loss of civil liberties such as voting and jury service privileges;
  - iv. affect on driver's or professional licenses and on firearms possession;
  - v. loss of public benefits;
  - vi. loss of housing, education, financial aid, career, employment, vocational, or military service opportunities; and
  - vii. risk of enhanced sentences for future convictions;
- m. the possible place and manner of confinement, placement, or commitment;
- n. the availability of pre- and post-adjudication diversion programs and treatment programs;
- o. standard sentences for similar offenses committed by offenders with similar backgrounds; and
- p. the confidentiality of juvenile records and the availability of expungement.

10. A lawyer should identify negotiation goals with the following in mind:

- a. concessions that the client might offer to the prosecution, including an agreement:
  - i. not to contest jurisdiction;
  - ii. not to dispute the merits of some or all of the charges;
  - iii. not to assert or litigate certain rights or issues;
  - iv. to fulfill conditions of restitution, rehabilitation, treatment, or community service; and
  - v. to provide assistance to law enforcement or juvenile authorities in investigating and prosecuting other alleged wrongful activity;
- b. benefits to the client, including an agreement:
  - i. that the prosecution will refile allegations in juvenile court and will not contest juvenile court jurisdiction;
  - ii. that the prosecution will not oppose release pending sentence, disposition, or appeal;
  - iii. that the client may reserve the right to contest certain issues;
  - iv. to dismiss or reduce charges immediately or upon completion of certain conditions;

- v. that the client will not be subject to further investigation for uncharged conduct;
- vi. that the client will receive, subject to the court's agreement, a specified set or range of sanctions;
- vii. that the prosecution will take, or refrain from taking, a specified position with respect to sanctions, and/or that the prosecution will not present certain information, whether at the time of sentencing, during preparation of a pre-sentence report, or in determining the client's date of release from confinement; and
- viii. that the client will receive, or that the prosecution will recommend, specific benefits concerning the place and manner of confinement, conditions of parole or probationary release, and the provision of pre- or post-adjudication treatment programs.

11. A lawyer has the duty to inform the client of the full content of any tentative negotiated settlement or non-trial disposition, and to explain to the client the advantages, disadvantages, and potential consequences of the settlement or disposition.

12. A lawyer should not recommend that the client enter a dispositional plea or admission unless appropriate investigation and evaluation of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced if the case were to go forward.

## **STANDARD 6.2 – ENTRY OF DISPOSITIONAL PLEA OR ADMISSION**

**A decision to enter a plea resolving the charges, or to admit the allegations, rests solely with the client. The lawyer must not unduly influence the decision to enter a plea and must ensure that the client's acceptance of the plea is voluntary and knowing, and reflects an intelligent understanding of the plea and the rights the client will forfeit.**

### Implementation:

1. A lawyer has the duty to explain to the client the advantages, disadvantages, and consequences of resolving the case by entering a dispositional plea or by admitting the allegations.

2. A lawyer has the duty to explain to the client the nature of the hearing at which the client will enter the plea or admission and the role that the client will play in the hearing, including participating in the colloquy to determine voluntary waiver of rights and answering other questions from the court and making a statement concerning the offense. The lawyer should be familiar with the Model Colloquy for juvenile waiver of the right to trial. The lawyer should explain to the client that the court may in some cases reject the plea.

3. At the hearing, a lawyer has the duty to assist the client and to ensure that :

- a. any plea petition is legible and accurate and clearly sets forth terms beneficial to the client;
  - b. the court, on the record, inquires, using any applicable model colloquy, into whether the client's decision is knowing, voluntary, and intelligent;
  - c. the court enters the plea or admission only after finding that the client's decision was knowing, voluntary, and intelligent; and
  - d. the judicial record is legible, clear, accurate and contains the full contents and conditions of the client's plea or admission.
4. If during the plea hearing, the client does not understand questions being asked by the court, the lawyer must request a recess to assist the client.

### **STANDARD 7.1 – GENERAL TRIAL PREPARATION**

**A. A trial or juvenile adjudicatory hearing (hereinafter referred to as a trial) is a complex event requiring preparation, knowledge of applicable law and procedure, and skill. A defense lawyer must be prepared on the law and facts, and competently plan a challenge to the state's case and, where appropriate, presentation of a defense case.**

**B. The decision to proceed to trial with or without a jury rests solely with the client. The lawyer should discuss the relevant strategic considerations of this decision with the client.**

**C. A lawyer should develop, in consultation with the client, an overall defense strategy for the conduct of the trial.**

#### **Implementation:**

1. A lawyer should ordinarily have the following materials available for use at trial:
  - a. Copies of all relevant documents filed in the case;
  - b. Relevant documents prepared by investigators;
  - c. Voir dire questions;
  - d. Outline or draft of opening statement;
  - e. Cross-examination plans for all possible prosecution witnesses;
  - f. Direct examination plans for all prospective defense witnesses;
  - g. Copies of defense subpoenas;
  - h. Prior statements of all prosecution witnesses (e.g., transcripts, police reports);

- i. Prior statements of all defense witnesses;
- j. Reports from experts;
- k. A list of all exhibits, and the witnesses through whom they will be introduced;
- l. Originals and copies of all documentary exhibits;
- m. Proposed jury instructions with supporting authority;
- n. Copies of all relevant statutes and cases;
- o. Evidence codes and relevant statutes and/or compilations of evidence rules and criminal or juvenile law most likely to be relevant to the case;
- p. Outline or draft of closing argument; and
- q. Trial memoranda outlining any complex legal issues or factual problems the court may need to decide during the trial.

2. A lawyer should be fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. The lawyer should analyze potential prosecution evidence for admissibility problems and develop strategies for challenging inadmissible evidence. The lawyer should be prepared to address objections to defense evidence or testimony. The lawyer should be prepared to raise affirmative defenses. The lawyer should consider requesting that witnesses be excluded from the trial.

3. A lawyer should evaluate whether expert testimony is necessary and beneficial to the client. If so, the lawyer should seek an appropriate expert witness and prepare the witness to testify, including possible areas of cross examination.

4. A lawyer should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, the lawyer should prepare motions and memoranda for such advance rulings.

5. Throughout the trial process a lawyer should endeavor to establish a proper record for appellate review. As part of this effort, a lawyer should request, whenever necessary, that all trial proceedings be recorded.

6. Where appropriate, a lawyer should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, a lawyer should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing.

7. A lawyer should plan with the client the most convenient system for conferring throughout the trial. Where necessary, a lawyer should seek a court order to have the client available for

conferences. A lawyer should where necessary secure the services of a competent interpreter/translator for the client during the course of all trial proceedings.

8. Throughout preparation and trial, a lawyer should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

Commentary:

Trial preparation and execution is both an intellectual and logistical exercise. A lawyer must prepare adequately and in a timely manner so that when the trial begins the lawyer has the necessary exhibits, witnesses, trial materials, and any other items necessary during the trial. A lawyer will be performing a number of tasks over the course of trial that must be coordinated so that an adequate defense is presented. A trial judge has a great deal of discretion in managing the courtroom and an unprepared attorney is likely to jeopardize a client's defense.

When appropriate to preserve an important legal issue or prevent inappropriate comment in opening statement, a lawyer should consider obtaining a pretrial ruling by filing a motion in limine to prevent comment on evidence that may not be ultimately admitted or to inform final analysis of the trial worthiness of a particular case or trial theory.

Expert witnesses present a unique challenge to lawyers. They are chosen for their knowledge base rather than because circumstances made them a percipient witness. The lawyer should evaluate and consider whether a particular expert is helpful to the defense case. Once selected the expert needs to be given all appropriate information to prepare to testify. Finally, the lawyer should prepare the witness for testimony and anticipate possible lines of cross examination. This preparation can include where appropriate a list of questions and it is advisable to have the expert commit to answers prior to calling them as a witness. The expert has his or her own duty as a witness to follow the oath and testify truthfully, and therefore the lawyer must determine what the witness will say prior to presenting the witness. If the witness is not helpful to the defense then the witness should not be called to the stand.

## **STANDARD 7.2 – VOIR DIRE AND JURY SELECTION**

**A. A lawyer should be prepared to question prospective jurors and to identify individual jurors whom the defense should challenge for cause or exclude by preemptory strikes.**

**B. A lawyer should carefully observe the prosecutor's questioning of jurors to inform defense challenges for cause and use of preemptory challenges, and to object if the prosecutor is attempting to exclude jurors for impermissible reasons.**

Implementation:

### *Preparation*

1. A lawyer should be familiar with the procedures by which a jury is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.
2. A lawyer should be familiar with the local practices and the individual trial judge's procedures for selecting a jury, and should be alert to any potential legal challenges to these procedures.
3. Prior to jury selection, a lawyer should seek to obtain a prospective juror list.
4. A lawyer should develop voir dire questions in advance of trial, and tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:
  - a. to elicit information about the attitudes of individual jurors, which will provide the basis for peremptory strikes and challenges for cause;
  - b. to convey to the panel certain legal principles which are critical to the defense case;
  - c. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;
  - d. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and
  - e. to establish a relationship with the jury.
5. A lawyer should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.
6. A lawyer should be familiar with the law concerning challenges for cause and peremptory strikes.
7. In a group voir dire, a lawyer should avoid asking questions that may elicit responses that are likely to prejudice other prospective jurors.
8. If the voir dire questions may elicit sensitive answers, a lawyer should request that questioning be conducted outside the presence of the remaining jurors.
9. A lawyer should challenge for cause all persons about whom a legitimate argument can be made for actual prejudice or bias if it is likely to benefit the client.
10. A lawyer should be familiar with the requirements for preserving appellate review of any defense challenges for cause that have been denied.
11. Where appropriate, the lawyer should consider whether to seek expert assistance in the jury selection process.



### Commentary:

Highlighting the importance of jury selection, some commentators maintain that trials are won or lost during jury selection. It is also among the most challenging stages of a jury trial, requiring knowledge, training and skill to accomplish successfully. It is the occasion, of course, for a lawyer to seek to remove potential jurors from the trial panel who may be biased against the client or who may not be favorably disposed to the defense case. And it is well recognized that a lawyer has a right to ascertain if a juror is prejudiced against the client, even if that requires broader latitude in time and scope by the judge than originally allowed. *State v Williams, 123 Or App 546 (1993)*. But jury selection is also an opportunity for a lawyer to establish a relationship with jurors, to convey legal principles essential to the defense, and to place the client and the defense case in a favorable light. To do so successfully, however, requires a thorough understanding of the law applicable to jury selection, a thoughtful and sensitive approach to interpersonal relations, and a well crafted theory of the defense. Without these components, a lawyer may very well do more harm than good during jury selection.

### **STANDARD 7.3 – OPENING STATEMENT**

**An opening statement is a lawyer’s first opportunity to present the defense case. The lawyer should be prepared to present a coherent statement of the defense theory based on evidence likely to be admitted at trial, and should raise and, if necessary, preserve for appeal any objections to the prosecutor’s opening statement.**

#### Best Practice:

1. Prior to delivering an opening statement, a lawyer should ask that the witnesses be excluded from the courtroom, unless a strategic reason exists for not doing so.
2. A lawyer’s objective in making an opening statement may include the following:
  - a. provide an overview of the defense case emphasizing the defense theme and theory of the case;
  - b. identify the weaknesses of the prosecution’s case;
  - c. emphasize the prosecution’s burden of proof;
  - d. summarize the testimony of witnesses, and the role of each in relationship to the entire case;
  - e. describe the exhibits which will be introduced and the role of each in relationship to the entire case;
  - f. clarify the jurors’ responsibilities;
  - g. state the ultimate inferences which the lawyer wishes the jury to draw; and
  - h. humanize the client.

3. A lawyer should listen attentively during the state's opening statement in order to raise objections and note potential promises made by the state that could be used in summation.
4. A lawyer should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.
5. Whenever the prosecutor oversteps the bounds of a proper opening statement, a lawyer should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:
  - a. the significance of the prosecutor's error;
  - b. the possibility that an objection might enhance the significance of the information in the jury's mind;
  - c. whether there are any rulings made by the judge against objecting during the other attorney's opening argument.
6. A lawyer should consider giving an opening statement during a court trial if either the law or facts are sufficiently complex to justify it. In all cases, a lawyer should evaluate if in the particular circumstances giving an opening would help or hurt the client's case. If the consideration is neutral then the lawyer should give an opening.

Commentary:

Opening statement is the lawyer's opportunity to set forth the defense theory and preview the case for the jury. Judges will vary on their view of the permissible scope of opening statement. In general the purpose and rule of opening is for each side to preview their case and offer a summary of any evidence that they have a good faith belief will be admitted at trial. For this reason, a lawyer should consider whether evidence available to the state but that may have significant prejudice and may be inadmissible should be challenged prior to opening statements. (See 5.1 on pretrial motions) In the alternative, a lawyer should consider seeking a ruling that the prosecutor be precluded from discussing particular evidence that may or may not be admitted at trial.

Historically, opening statements could be strictly limited to a sterile and bland recitation of what witnesses might say. Objections on argumentative grounds were common and lawyers were restricted from making any conclusions. This has evolved and opening statements in the modern case may include discussions of the law or suggest conclusions that the jury could make. Further, by stipulation or with court permission opening statements can include the use of exhibits that are pre-admitted. Finally, in many cases effective use of computer graphics and slides may enhance the opening statement, including actual pieces of evidence such as recorded phone calls or videos. When these presentations are used by the state, the lawyer for the defendant should ask to preview it and challenge material that may not be received in evidence.

## **STANDARD 7.4 – CONFRONTING THE PROSECUTION'S CASE**

**The essence of the defense in most cases is confronting the prosecution's case. The lawyer should develop a theme and theory of the case that directs the manner of conducting this confrontation. Whether it is refuting, discrediting or diminishing the state's case, the theme and theory should determine the lawyer's course of action.**

Implementation:

1. A lawyer should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.
2. A lawyer should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.
3. In preparing for cross-examination, a lawyer should be familiar with the applicable law and procedures concerning cross-examination and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, a lawyer should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.
4. In preparing for cross-examination, a lawyer should:
  - a. consider the need to integrate cross-examination, the theory of the defense and closing argument;
  - b. consider whether cross-examination of each individual witness is likely to generate helpful information;
  - c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
  - d. consider a cross-examination plan for each of the anticipated witnesses;
  - e. consider an impeachment plan for any witnesses who may be impeachable;
  - f. be alert to inconsistencies in a witness testimony;
  - g. be alert to possible variations in witness testimony;
  - h. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
  - i. if available, review investigation reports of interviews and other information developed about the witnesses;
  - j. review relevant statutes and police procedural manuals and regulations for possible use in cross-examining police witnesses;
  - k. be alert to issues relating to witness credibility, including bias and motive for testifying.
5. A lawyer should be aware of the applicable law concerning competency of witnesses and admission of expert testimony in order to raise appropriate objections.
6. Before beginning cross-examination, a lawyer should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If the lawyer does not receive prior statements of prosecution witnesses until they have completed

direct examination, the lawyer should request, at a minimum, adequate time to review these documents before commencing cross-examination.

7. At the close of the prosecution's case and out of the presence of the jury, a lawyer should move for a judgment of acquittal on each count charged. The lawyer should request, when necessary, that the court immediately rule on the motion, in order that the lawyer may make an informed decision about whether to present a defense case.

Commentary:

The lawyer should be mindful of how cross-examination may affect the case and whether particular questions might “open the door” to otherwise inadmissible evidence. For example, where the defense attorney questioned the adequacy and thoroughness of the investigating officer's interview of defendant—an interview that was cut short by the defendant's invocation of the right to counsel—the prosecutor was allowed to respond by informing the jury that the detective was unable to conduct a more thorough inquiry because of that invocation. [\*State v. Guritz\*, 134 Or. App. 262 \(1995\)](#).

Cross-examination should be conducted purposefully to cast doubt on the state's evidence or discredit a state's witness, and in all cases should be consistent with the defense theory of the case. Simply reiterating a witness's direct examination is at best tedious and at worst strengthens the prosecution's case in the mind of the trier of fact.

In preparing any topic or questions for cross examination, a lawyer should prepare the legal basis for asking the question and anticipate objections to admissibility. If the court prohibits questioning on a particular topic, a lawyer should make an appropriate record to preserve the error through an offer of proof.

**STANDARD 7.5 – PRESENTING THE DEFENSE CASE**

**A lawyer should be prepared to present evidence at trial where it will be advance a defense theory of the case that best serves the interest of the client.**

Implementation:

1. A lawyer should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, a lawyer should consider whether the client's interests are best served by not putting on a defense case, and instead rely on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.
2. A lawyer should discuss with the client all of the considerations relevant to the client's decision whether or not to testify.
3. A lawyer should be aware of the elements of any affirmative defense and know whether the client bears a burden of persuasion or a burden of production.

4. In preparing for presentation of a defense case, a lawyer should:
  - a. develop a plan for direct examination of each potential defense witness, and assure each witness' s attendance by subpoena if necessary;
  - b. determine the implications that the order of witnesses may have on the defense case;
  - c. consider the possible use of character witnesses;
  - d. consider the need for expert witnesses; and
  - e. consider whether to present a defense based on mental disease or defect or diminished capacity or partial responsibility, and provide notice of intent to present such evidence and consult with the client about the implications of an insanity defense.
5. In developing and presenting the defense case, a lawyer should consider the implications it may have for a rebuttal by the prosecutor.
7. A lawyer should prepare all witnesses for direct and possible cross-examination. Where appropriate, a lawyer should also advise witnesses of suitable courtroom dress and demeanor.
8. A lawyer should conduct redirect examination as appropriate.
9. At the close of the defense case, the lawyer should renew the motion for judgment of acquittal on each charged count.
10. A lawyer should be prepared to object to an improper state's rebuttal case, and offer surrebuttal witnesses if allowed.

Commentary:

The Oregon Rules of Professional Conduct properly affirm the constitutional requirement that the client decides whether to testify or not. The lawyer must consult with the client concerning the risks and benefits of testifying. Whether to present other defense evidence, however, is a strategic and tactical decision to be made by the lawyer in consultation with the client. A lawyer should carefully consider the most effective defense presentation that advances the client's cause, or whether the client is best served by not presenting evidence.

**STANDARD 7.6 – CLOSING ARGUMENT**

**A lawyer should be prepared to deliver a closing summation that presents the trier of fact with compelling reasons to render a verdict for the client based upon the evidence presented at trial and the law applicable to the case.**

Implementation:

1. A lawyer should be familiar with the substantive limits on both prosecution and defense summation.
2. A lawyer should be familiar with local rules and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
3. A lawyer should prepare the outlines of the closing argument prior to the trial and refine the argument at the end of trial by reviewing the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:
  - a. highlighting weaknesses in the prosecution's case;
  - b. describing favorable inferences to be drawn from the evidence;
  - c. what the possible effects of the defense arguments are on the prosecutor's rebuttal argument; and
  - d. incorporating into the argument:
    - i. helpful testimony from direct and cross-examinations;
    - ii. verbatim instructions drawn from the jury charge; and
    - iii. responses to anticipated prosecution arguments.
4. Whenever the prosecutor exceeds the scope of permissible argument, the lawyer should object, request a mistrial, or seek a cautionary instructions unless tactical considerations suggest otherwise.
5. In a delinquency case, a lawyer should, where appropriate, ask the court, even if sufficient evidence is found to support jurisdiction, not to exercise jurisdiction and move to dismiss the petition (or defer finding jurisdiction until after the dispositional hearing) on the ground that jurisdiction is not in the best interests of the youth or society.

Commentary:

Because summation is argument, parties will be given broad latitude in drawing inferences and suggesting conclusions. The closing should be tailored to the audience, where legal doctrines may better be emphasized in arguments to a judge, while jurors may be more receptive to arguments focused on the facts. Even in bench trials, it is good practice to prepare jury instructions and use them in preparing the closing argument.

The most likely areas for improper argument by the prosecution are discussion of facts not in evidence and unconstitutional comments on the defendant's right not to testify and attempts to

impermissibly shift a burden of proof to the defense. A lawyer should be alert to such improper arguments and raise appropriate objections when they occur.

## **STANDARD 7.7 – JURY INSTRUCTIONS**

**A lawyer should ensure that instructions to the jury correctly state the law, and seek special instructions that provide support for the defense theory of the case.**

### Implementation:

1. A lawyer should be familiar with the local rules and individual judges' practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.
2. Where appropriate, a lawyer should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, a lawyer should provide case law in support of the proposed instructions.
3. A lawyer should object to and argue against improper instructions proposed by the court or prosecution.
4. If the court refuses to adopt instructions requested by the lawyer, or gives instructions over the lawyer's objection, the lawyer should take all steps necessary to preserve the record for appeal.
5. During delivery of the charge, the lawyer should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.
6. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, a lawyer should request that the judge state the proposed charge to the lawyer before it is delivered to the jury and take all steps necessary to preserve a record of objection to improper instructions.

### Commentary:

Preservation of jury instruction error can be critical to a defense based on the misapplication of the law. Therefore, a lawyer should carefully review all proposed jury instructions, including uniform jury instructions and others proposed by the court or prosecution, to ensure that they accurately state the applicable law. However, if a jury instruction error is not objected to properly, a client may be deemed to have waived any objection.

## **STANDARD 8.1 – OBLIGATIONS OF COUNSEL CONCERNING SENTENCING OR DISPOSITION**

**A lawyer must work with the client to develop a theory of sentencing or disposition and an individualized sentencing or disposition plan that is consistent with the client’s desired outcome. The lawyer must present this plan in court and zealously advocate on behalf of the client for such an outcome.**

### Implementation:

1. In every criminal or delinquency case, a lawyer should:

- (a) be knowledgeable about the applicable law governing the length and conditions of any applicable sentence or disposition, and the pertinent sentencing or dispositional procedures, and inform the client at the commencement of the case of the potential sentence(s) or disposition for the alleged offense(s);
- (b) be aware of the client’s relevant history and circumstances, including prior military service, physical and mental health needs, and educational needs and be sensitive to the client’s sexual orientation or gender identity to the extent this history or circumstance impacts sentencing or the disposition plan.
- (b) understand and advise the client concerning the availability of deferred sentences, conditional discharges, early termination of probation, informal dispositions, alternative dispositions including conditional postponement and diversion agreements (including for servicemember status);
- (c) understand and explain to the client the consequences and conditions that are likely to be imposed as probation requirements, or requirements of other dispositions, and the potential collateral consequences of any sentence or disposition in a case, including the effect of a conviction or adjudication on a sentence for any subsequent crime;
- (d) be knowledgeable about treatment or other programs, out-of-home placement possibilities for juveniles, including group homes, foster care, residential treatment programs and mental health treatment facilities, that may be required as part of disposition or that are available as an alternative to incarceration or out of home placement for youth, that could reduce the length of a client’s time in custody or in out-of-home placement;
- (e) be knowledgeable about the requirements of placements that receive Title IV-E of the Social Security Act funding through contracts with the Juvenile Departments or the Department of Human Services and be able to request “no reasonable efforts” findings from the juvenile court when it would benefit the client;



- (f) develop a plan in conjunction with the client, supported where appropriate by a written memorandum addressing pertinent legal and factual considerations, that seeks the least restrictive and burdensome sentence or disposition, which can reasonably be obtained based upon the facts and circumstances of the case and that is acceptable to the client ;
- (g) where appropriate obtain assessments or evaluations that support the client's plan;
- (h) investigate and prepare to present to a prosecutor, when engaged in plea negotiations, or to the court at sentencing or disposition, available mitigating evidence and other favorable information that might benefit the client at sentencing or disposition;
- (i) ensure that the court does not consider inaccurate information or immaterial information harmful to the client in determining the sentence or disposition to be imposed;
- (j) be aware of and prepare to address express or implicit bias that impacts sentencing or disposition, and
- (k) review the accuracy of any temporary or final sentencing or disposition orders or judgments of the court, and move the court to correct any errors that disadvantage the client.

2. In understanding the sentence or disposition applicable to a client's case, a lawyer should:

- a. be familiar with the law, and any applicable administrative rules, governing the length of sentence or disposition, including the Oregon Sentencing Guidelines, and laws that establish specific sentences for certain offenses or for repeat offenders, and be familiar with juvenile code and case law language that supports a less restrictive disposition that best meets the expressed needs of the youth;
- b. be knowledgeable about potential court-imposed financial obligations, including fines, fees and restitution, and where appropriate challenge the imposition of such obligations when not supported by the facts or law;
- c. be familiar with the operation of indeterminate dispositions, and the law governing credit for pretrial detention, earned time credit, time limits on post-trial and post disposition juvenile detention and out-of-home placement, eligibility for correctional programs and furloughs, and eligibility for and length of post-prison supervision or parole from juvenile dispositions;
- d. as warranted by the circumstances of a case, consult with experts concerning the collateral consequence of a conviction and sentence on a client's immigration status or other collateral consequences of concern to the client, e.g. civil disabilities, sex-offender registration, disqualification for types of employment, consequences for clients involved in the child welfare system, DNA and HIV

testing, military opportunities, availability of public assistance, school loans and housing, and enhanced sentences for future convictions;

- e. be familiar with statutes and relevant cases from state and federal appellate courts governing legal issues pertinent to sentencing or disposition, such as the circumstances in which consecutive or concurrent sentences may be imposed, or when offenses should merge for the purpose of conviction and sentencing;
- f. establish whether the client's conduct occurred before any changes to sentencing or dispositional provisions that increase the penalty or punishment to determine whether application of those provisions is contrary to statute or *ex post facto* prohibitions;
- g. in cases where prior convictions are alleged as the basis for the imposition of enhanced repeat offender sentencing, determine whether the prior convictions qualify as predicate offenses or are otherwise subject to challenge as constitutionally or statutorily infirm;
- h. determine whether any mandatory sentence would violate the state constitutional requirement that the penalty be proportioned to the offense; and
- i. advance other available legal arguments that support the least restrictive and burdensome sentence.

3. In understanding the applicable sentencing and dispositional hearing procedures, a lawyer should:

- a. determine the effect that plea negotiations may have on the sentencing discretion of the court;
- b. determine whether factors that might serve to enhance a particular sentence must be pleaded in a charging instrument and/or proven to a jury beyond a reasonable doubt;
- c. consult with the client concerning the strategic or tactical advantages of resolving factual sentencing matters before a jury, a judge or by stipulation;
- d. understand the availability of other evidentiary hearings to challenge inaccurate or misleading information that might harm the client, and to present evidence favorable to the client, and ascertain the applicable rules of evidence and burdens of proof at such a hearing;
- e. determine whether an official presentence report will be prepared for the court and, if so, take steps to ensure that mitigating evidence and other favorable information is included in the report, that inaccurate or misleading information

harmful to the client is deleted from it, and determine whether the client should participate in an interview with the report writer, advising the client concerning the interview and accompanying the client during any such interview;

- f. determine whether the prosecution intends to submit a sentencing or dispositional memorandum, how to obtain such a document prior to sentencing or disposition, and what steps should be followed to correct inaccurate or misleading statements of fact or law; and
- g. undertake other available avenues to present legal and factual information to a court or jury that might benefit the client, and challenge information harmful to the client.

4. In advocating for the least restrictive or burdensome sentence or disposition for a client, a lawyer should:

- a. inform the client of the applicable sentencing or dispositional requirements, options and alternatives, including liability for restitution and other court-ordered financial obligations, and the methods of collection;
- b. maintain regular contact with the client before the sentencing or dispositional hearing and keep the client informed of the steps being taken in preparation for sentencing or disposition, work with the client to develop a theory for the sentencing or disposition phase of the case;
- c. obtain from the client and others information such as the client's background and personal history, prior criminal record, employment history and skills, current or prior military service, education and current school issues, medical history and condition, mental health issues and mental health treatment history, current and historical substance abuse history, and treatment, what if any relationship there is between the client's crime(s) and the client's medical, mental health or substance abuse issues, and the client's financial status, and sources through which the information can be corroborated;
- d. determine with the client whether to obtain a psychiatric, psychological, educational, or neurological or other evaluation for sentencing or dispositional purposes;
- e. if the client is being evaluated or assessed, whether by the state or at the lawyer's request, provide the evaluator in advance with background information about the client and request that the evaluator address the client's emotional, educational, and other needs as well as alternative dispositions that will best meet those needs and society's needs for protection;

- f. prepare the client for any evaluations or interviews conducted for sentencing or disposition purposes;
- g. be familiar with and, where appropriate, challenge the validity and/or reliability any risk assessment tools;
- h. investigate any disputed information related to sentencing or disposition, including restitution claims;
- i. inform the client of the client's right to address the court at sentencing or disposition and, if the client chooses to do so, prepare the client to personally address the court, including advice of the possible consequences that admission of guilt may have on an appeal, retrial, or trial on other matters;
- j. ensure the client has adequate time prior to sentencing to examine any presentence or dispositional report, or other documents and evidence, that will be submitted to the court at sentencing or disposition;
- k. prepare a written disposition plan that the lawyer and the client agree will achieve the client's goals in a delinquency case and, in a criminal case, prepare a written sentencing memorandum where appropriate to address complex factual or legal issues concerning the sentence;
- l. be prepared to present documents, affidavits, letters and other information, including witnesses, that support a sentence or disposition favorable to the client;
- m. as supported by the facts and circumstances of the case and client, challenge any conditions of probation or post-prison supervision that are not reasonably related to the crime of conviction, the protection of the public or the reformation of the client;
- n. in a delinquency case, be prepared to present evidence on the reasonableness of Oregon Youth Authority, Juvenile Department or Department of Human Services efforts that could have been made concerning the disposition and, when supported by the evidence, request a "no reasonable efforts" finding by the court;
- o. in a delinquency case, after the court has found jurisdiction, move the court, when supported by the facts, to not exercise jurisdiction and dismiss the petition, amend the petition, or find jurisdiction on fewer than all charges, on the ground that jurisdiction is not in the best interests of the youth or society;
- p. when the court has the authority to do so, request specific orders or recommendations from the court concerning the place of confinement, parole

eligibility, mental health treatment or other treatment services, and permission for the client to surrender directly to the place of confinement;

- q. be familiar with the obligations of the court and district attorney regarding statutory or constitutional victims' rights and, where appropriate, ensure that the record reflects compliance with those obligations;
- r. take any other steps that are necessary to advocate fully for the sentence or disposition requested by the client and to protect the interests of the client; and,
- s. advise the client about the obligations and duration of sentence or disposition conditions imposed by the court, and the consequence of failure to comply with orders of the court. In a delinquency case, where appropriate counsel should confer with the client's parents regarding the disposition process to obtain their support for the client's proposed disposition.

Commentary:

In the vast majority of criminal and delinquency cases, there will be a sentencing or disposition hearing and it will be the most significant event in the case. An indispensable first step, in being a good advocate at this stage of a case, is educational so that the lawyer has a good working knowledge and access to resources on what is often an ever-changing array of available sentencing and dispositional options. A lawyer should plan for this stage of the case, at or near the beginning of representation. That planning will ordinarily require an in-depth interview of the client, and if appropriate, the client's parent or custodian, legal research concerning the applicable terms and conditions of sentencing or dispositional options, discussions with the client about his or her preferred option and a realistic portrayal of the various possibilities, and an investigation into factual matters, such as evidence of aggravating or mitigating factors, that may affect the outcome.

Sentencing and dispositional considerations have long been matters that should take place in the context of an overall plan for achieving the client's stated objectives for the case that works in concert with the handling of plea negotiations and the preparation and presentation of the case at trial. Several developments or trends, some pulling in opposite directions, make a coordinated case approach especially imperative.

First, in criminal cases, the potential role of juries in sentencing hearings weighs in favor of a thoughtful approach to the conduct of a trial if the same jury is reasonably likely to later consider some sentencing matters. Meanwhile, the continued viability of "mandatory minimum" laws in Oregon, which place considerably control over case outcomes in the hands of prosecutors, weighs in favor of an early and vigorous investigation of both the underlying allegations and any available mitigation evidence, in order for the lawyer to put the client in the best possible position for plea negotiations with the prosecutor.

In juvenile delinquency cases the court has broad discretion and will receive reports from the Juvenile Court Counselor and the DHS caseworker or OYA parole officer if DHS or OYA are involved. These reports can be cookie cutter and often view the delinquent from a social worker perspective that can lead to overreaching into the lives of the client and the client's family. Counsel for the youth should advocate for a client-driven disposition plan that is individualized and tailored to the offense and not overly expansive. A written client driven disposition plan is the only effective way of countering the written plans of government agents. A written disposition plan should always be requested as part of any evaluation. In complex cases, the assistance of a qualified social worker can be obtained to help develop the client-driven disposition plan.

The proliferation and significance of collateral consequences of both criminal and delinquency adjudications also require an informed, vigorous and coordinated approach to sentencing and disposition. It is now better understood that the non-penal consequences of a conviction or adjudication, such a deportation or the loss of employment, housing, public assistance or opportunities for service in the military, may be of greater significance to a client than the time he or she spends in custody or out of the home. Some of these consequences may be triggered by the offense of conviction or adjudication, while others may be triggered by the duration or conditions of sentencing or disposition. The lawyer is now obligated to understand these consequences and conduct the defense in order to avoid or mitigate their impact.

Since the last revision of these standards, there is increased interest by courts and community corrections officials in "smart sentencing," with an emphasis on evidence based practices that are known to be effective in reducing recidivism. Even without major legislative reforms that embrace this new focus, there are opportunities for clients to benefit from research about what sentencing or dispositional elements work best to protect the public. Lawyers handling criminal and delinquency cases, therefore, should be knowledgeable about the research and its possible application in their cases. To the extent that implementation of evidence based practices also relies upon the use of risk assessment tools, counsel should be aware of the tools used in reports considered by the court at sentencing or disposition, and be prepared to challenge the validity and reliability of them, both facially and as applied to a client, where appropriate.

Because sentencing and disposition are subject to frequent legislative attention and vigorous litigation in the trial and appellate courts, lawyers representing clients in both criminal and delinquency cases must stay current with the latest developments in the law and be prepared to undertake litigation on issues such as the retroactive application of changes in punishment, the validity of prior convictions that trigger sentence enhancements, the merger of convictions, and the proportionality of punishment.

Finally, lawyers representing youth should take special care to confer with clients in developmentally appropriate language about disposition planning. Although a lawyer must make clear to the client and the client's parents that the youth controls decisions concerning disposition

options, to the extent appropriate, and with the permission of the youth, a lawyer should explain the disposition process to parents and enlist their support of the youth's choices. The plan submitted to the court by the lawyer, which ordinarily should be in writing, should address the youth's strengths and particular medical, mental health, educational or other needs, and the use of available resources in the home, the community or elsewhere through which the client is most likely to succeed.

## **STANDARD 9.1 – CONSEQUENCES OF PLEA ON APPEAL**

**In addition to direct and collateral consequences, a lawyer should be familiar with and advise the client of the consequences of a plea of guilty, an admission to juvenile court jurisdiction, or a plea of no contest on the client's ability to successfully challenge the conviction, juvenile adjudication, sentence or disposition in a appellate proceedings.**

### **Implementation:**

1. A lawyer should be familiar with the effects of a guilty plea, admission to juvenile court jurisdiction, or a no contest plea on the various forms of appeal.
2. During discussions with the client regarding a possible admission, plea of guilty or no contest, a lawyer must inform the client of the consequences of such a plea on any potential appeals.
3. A lawyer should be familiar with the procedural requirements of the various types of pleas, including the conditional guilty plea, that affect the possibility of appeal.

### **Commentary:**

A plea of guilty or no contest severely limits the scope of a client's direct appeal. A defendant who has pleaded guilty or no contest must identify a "colorable claim of error" simply in order to file a notice of appeal. ORS 138.050. Even if the client satisfies that procedural hurdle, in cases in which the client pled guilty or pled no contest, the Court of Appeals is limited by statute to reviewing only the sentence imposed by the court. ORS 138.050; see *State v. Anderson*, 113 Or App 416, 419, 833 P2d 321 (1992) ("[A] disposition is legally defective and, therefore, exceeds the maximum allowable by law if it is not imposed consistently with the statutory requirements."). Although ORS 138.050 does not limit appeals in juvenile cases, and thus there is no requirement that "a colorable claim of error" be identified, as a practical matter the client's admission to facts constituting jurisdiction greatly limits the scope of appeal.

## **STANDARD 9.2 – PRESERVATION OF ISSUES FOR APPELLATE REVIEW**

**A lawyer should be familiar with the requirements for preserving issues for appellate review. A lawyer should discuss the various forms of appellate review with the client and apprise the client of which issues have been preserved for review.**

Implementation:

1. A lawyer must know the requirements for preserving issues for review on direct appeal and in federal habeas corpus proceedings.
2. A lawyer should review with the client those issues that have been preserved for appellate review, and the prospects for a successful appeal.

Commentary:

A trial lawyer faces the often-challenging task of zealously advocating for the best result for her client at trial while simultaneously preserving legal issues for later challenge on appeal in the event of conviction or adjudication. Some issues require only an objection from the lawyer sufficient to alert the court to the issue and the client's position in order to preserve the issue for appellate review. *State v. Wyatt*, 331 Or 335, 15 P3d 22 (2000).

However, other types of issues require additional steps to be taken. For example, if the trial court excludes evidence over the objection of the lawyer, the lawyer often must make an offer of proof to the court detailing what the evidence would have been, so that appellate courts can determine the merits of the legal issue and the harm of the exclusion. OEC 103(1)(b) ("Error may not be predicated upon a ruling which \* \* \* excludes evidence unless a substantial right of a party is affected" and "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked."); *State v. Bowen*, 340 Or 487, 500, 135 P3d 272 (2006) ("[A]n offer of proof ordinarily is required to preserve error when a trial court excludes testimony."); see also *State v. Wirfs*, 250 Or App 269, 274, 281 P3d 616 (2012) (defendant not required to make an offer of proof "because the trial court and the prosecutor were aware of the substance of the testimony that defendant would elicit.").

Another example of a more complex preservation requirement involves arguments for or against proposed jury instructions. ORCP 59H, which applies to criminal trials through ORS 136.330(2), requires a party to state its objections to the giving of an instruction (or the failure to give an instruction) "with particularity" and to except after jury instructions have been delivered.

A lawyer's most important goal at trial is to obtain a favorable ruling for her client. Should that effort fail, the lawyer must insure that she has met the specific requirements for preserving the issue for appellate review, should the client decide to appeal the conviction, adjudication, sentence or disposition.



As a subset of the duty to keep the client informed, a lawyer should discuss with the client the various forms of appeal, including the right to a de novo rehearing by a judge of a juvenile adjudication by a referee and the specific issues presented in the client's case that could be pursued on appeal. The lawyer should advise the juvenile client that the time to file an appeal of an adjudication starts running from the time of the adjudication, not the disposition, and if necessary a separate appeal of the disposition can be filed. *State ex rel Juv Dept. v. J.H.-O.*, 223 OrApp 412 (2008).

### **STANDARD 9.3 -UNDERTAKING AN APPEAL**

**A lawyer must be knowledgeable about the various types of appeals and their application to the client's case, and should impart that information to the client. A lawyer should inquire whether a client wishes to pursue an appeal. When requested by the client, a lawyer should assure that a notice of appeal is filed, and that the client receives information about obtaining appellate counsel.**

#### Implementation:

1. Throughout the trial proceedings, but especially upon conviction, adjudication, sentencing and disposition, a lawyer should discuss with the client the various forms of appellate review and how they might benefit the client.
2. If the client chooses to pursue a re-hearing of a juvenile referee's order or an appeal, a lawyer should take appropriate steps to preserve the client's rights, including requesting a re-hearing, filing notice of appeal or referring the case to an appellate attorney or public defender organization to have the notice of appeal filed.
3. When the client pursues an appeal, a lawyer should cooperate in providing information to the appellate lawyer concerning the proceedings in the trial court. A trial lawyer must provide the appellate lawyer with all records from the trial case, the court's final judgment, and any other relevant or requested information.
4. If a lawyer is representing a client is financially eligible for appointed counsel, the lawyer shall determine whether the client wishes to pursue an appeal and, if so, transmit to the Office of Public Defense Services the information necessary to perfect an appeal, pursuant to ORS 137.020(6).
5. If the client decides to appeal, a lawyer should inform the client of the possibility of obtaining a stay pending appeal and file a motion in the trial court if the client wishes to pursue a stay.

#### Commentary:

If the client has been convicted despite the best efforts of a lawyer, a lawyer must discuss the various methods of appealing the conviction or adjudication and resulting sentence or disposition

that are available to the client, including rehearing, direct appeal, post-conviction relief, and a petition for federal habeas corpus. Each of those forms of appeal has unique applications and requirements, and the client should be informed of the potential benefits and disadvantages of all types of appeal. In particular, a lawyer should review filing deadlines and requirements to insure the client does not lose the opportunity to pursue an appeal.

A lawyer is constitutionally mandated to confer with the client about the right to appeal. *Roe v. Flores-Ortega*, 528 US 470, 480, 120 S Ct 1029, 145 L Ed 2d 985 (2000) (“We instead hold that counsel has a constitutionally-imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.”). A lawyer should explain both the meaning and consequences of the court’s decision and provide the client with the lawyer’s professional judgment regarding whether there are meritorious grounds for appeal and the probable consequences of an appeal, both good and bad.

There may be circumstances in which a lawyer should file a notice of appeal on behalf of the client to preserve the client’s right to appeal in the face of a looming deadline, despite the fact that the lawyer will not eventually represent the client on appeal. The preferred course of action is to refer the case to the attorney or organization that will represent the client on appeal in time to allow that lawyer or entity to timely file notice of appeal. However, the primary concern is that the client’s right to appeal is preserved.

Communication between lawyers who represent the client at the various stages of a criminal or delinquency case (trial, direct appeal, post-conviction relief, etc.) is critical to the client’s success. That is particularly true of communication between a client’s trial lawyer and the lawyer helping the client file a petition for post-conviction or post-adjudication relief.

## **STANDARD 9.4 – POST SENTENCING AND DISPOSITION PROCEDURES**

**A lawyer should be familiar with procedures that are available to the client after disposition. A lawyer should explain those procedures to the client, discern the client’s interests and choices, and be prepared to zealously advocate for the client.**

### **Implementation:**

1. Upon entry of judgment, a lawyer should immediately review the judgment to ensure that it reflects the oral pronouncement of the sentence or disposition and is otherwise free of legal or

factual error. In a delinquency case, a lawyer should insure that the judgment includes the disposition probation plan, including any actions to be taken by parents, guardians, or custodians.

2. The lawyer must be knowledgeable concerning the application and procedural requirements of a motion for new trial or motion to correct the judgment.

3. The lawyer representing a youth in delinquency proceedings should be versed in relevant case law, statutes, court rules, and administrative procedures regarding the enforcement of disposition orders, as well as the methods of filing motions for post-disposition and post-adjudicatory relief, for excusal or relief from sex offender registration requirements, and/or to review, reopen, modify or set aside adjudicative and dispositional orders. For youth whose circumstances have changed; youth whose health, safety, and welfare is at risk; or youth not receiving services as directed by the court, a lawyer should file motions for early discharge or dismissal of probation or commitment, early release from detention, or modification of the court order. Where commitment is indeterminate and youth correctional authorities have discretion over whether and when to release a youth from secure custody, when the period of incarceration becomes excessive, the lawyer should advocate to terminate or limit the term of commitment, if desired by the youth.

Commentary:

In general, when the written judgment conflicts with the court's oral pronouncement of sentence at trial, the written judgment controls. See *State v. Swain/Goldsmith*, 267 Or 527, 530, 517 P2d 684 (1974); *State v. French*, 208 Or App 652, 655, 145 P3d 305, 307 (2006); *State v. Mossman*, 75 Or App 385, 388, 706 P2d 203 (1985). It is therefore imperative that the written judgment accurately reflects the favorable aspects of the sentence imposed by the court at the sentencing hearing.

Under ORCP 64 and ORS 136.535, a trial court may grant a motion for new trial if certain conditions are met, including irregularities in the proceedings, juror misconduct, or newly discovered evidence that could not have been discovered and produced at trial. Similarly, the trial court has the authority to correct an erroneous term in the judgment under ORS 138.083, even if the case is on appeal. The juvenile court may modify or set aside a jurisdictional order. ORS 419C.610. The lawyer should be knowledgeable about the availability and procedural requirements of these motions.

A lawyer should be familiar with the authority of a trial court to stay execution of the sentence, or part of a sentence, pending appeal, and seek such relief where appropriate.

**STANDARD 9.5- MAINTAIN REGULAR CONTACT WITH YOUTH FOLLOWING DISPOSITION**

**A. A lawyer for a youth in delinquency proceedings should stay in contact with the youth following disposition and continue representation while the youth remains under court or agency jurisdiction.**

**B. A lawyer should inform a youth of procedures available for requesting a discretionary review of, or reduction in, the sentence or disposition imposed by the trial court, including any time limitations that apply to such a request.**

Implementation:

1. The lawyer should reassure a youth that the lawyer will continue to advocate on the youth's behalf regarding post-disposition hearings, including probation reviews and probation or parole violation hearings, challenges to conditions of confinement, and other legal issues, especially when the youth is incarcerated. The lawyer should also provide advocacy to get the client's record expunged or to obtain relief from sex offender registration.

2. A lawyers for youth convicted as adults but who were under 18 years of age at the time of the offense should be familiar with and inform the client of the "second look" provisions of ORS 420A.203 and ORS 420A.206.

Commentary:

Post-disposition access to counsel is critical for youth under the continuing jurisdiction of the court or a state agency. Issues such as significant waiting lists for residential facilities, the failure to provide services ordered by the court, conditions of confinement, and enforcement of disposition requirements require the legal acumen and advocacy of counsel.

In addition, a lawyer should check in periodically with the youth and routinely ensure that the facility or agency is adhering to the court's directives and that the youth's needs are met and the client's health, welfare, and safety are protected.

Special attention is required to insure that secure facilities are providing educational, medical, and psychological services.

If the youth is committed to a state agency, a lawyer should maintain regular contact with the caseworker, juvenile court counselor, youth correctional facility staff or juvenile parole officer, advocate for the youth as necessary, and ask to be provided copies of all agency reports documenting the youth's progress. A lawyer should participate in case review meetings and administrative hearings. When appropriate, the lawyer should request court review to protect the client's right to treatment.

The lawyer may be the youth's only point of contact within the community when the youth is placed in a residential or correctional facility. The lawyer should advocate for adequate contact between the youth and his or her family and home visits when appropriate, if desired by the

youth.

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 2014  
**Memo Date:** April 11, 2014  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Committee Appointments

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### Action Recommended

Consider appointments to the Legal Ethics, Uniform Civil Jury Instructions, and Unlawful Practice of Law Committees as requested by the committee officers and staff liaisons.

### Background

#### Legal Ethics Committee

Due to the resignation of one committee member the chair and staff liaison recommend the appointment of **Alexander Wylie** (014570). As the committee begins reviewing opinions on lawyer advertising Mr. Wylie's offers valuable experience as a private practitioner focusing on personal injury. He indicated LEC was his first choice preference for appointment on the volunteer survey.

**Recommendation:** Alexander Wylie, member, term expires 12/31/2014

#### Uniform Civil Jury Instructions Committee

Since the beginning of the year three committee members have resigned. To fill these vacant positions the committee officers and staff liaison recommend the appointment of **Jeremiah Vail Ross** (105980), **Jodie Ayura** (051918), and **Jennifer L. Coughlin** (065781). All three of these members completed the volunteer survey and confirmed their ability to commit the necessary time to fully participate on the committee.

**Recommendation:** Jennifer L. Coughlin, member, term expires 12/31/2014

Jodie B. Ayura, member, term expires 12/31/2015

Jeremiah V. Ross, member, term expires 12/31/2015

#### Unlawful Practice of Law Committee

Due to a resignation the committee needs one new member appointed. The committee officers and staff liaison recommend the appointment of **Erin K. Fitzgerald** (083243). Ms. Fitzgerald selected UPL as her first committee preference and is enthusiastic about serving.

**Recommendation:** Erin K. Fitzgerald, member, term expires 12/31/2014

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 21, 2014  
**Open Session Minutes**

The meeting was called to order by President Tom Kranovich at 9:00 a.m. on February 21, 2014. The meeting adjourned at 1:40 p.m. Members present from the Board of Governors were Jenifer Billman, James Chaney, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Joshua Ross, Richard Spier, Simon Whang, Charles Wilhoite, Timothy L. Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Mariann Hyland, Judith Baker, John Gleason, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair, Ira Zarov, PLF CEO, Guy Greco and John A. Berge, PLF Board of Directors, and Steven R. Bennett and Mark Reinecke, Client Security Fund Committee.

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

**A. Report of the President**

Mr. Kranovich reported on the decline of the brick and mortar law practice and the increase of the sole practitioner. Mr. Kranovich acknowledged a request to move the CLNS Task Force discussion to the beginning of the meeting.

**Motion:** Mr. Mansfield moved, Mr. Whang seconded, and the board voted unanimously to amend the agenda to move item 5G to the top of the agenda.

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

As written.

**C. Report of the Executive Director**

To be distributed via email. **[Exhibit A]**

**D. Director of Regulatory Services**

As written.

**E. Director of Diversity & Inclusion**

Ms. Hyland reported that there is a major change in the criteria for OLIO enrollment. D&I will review interest forms with attention to whether students: Can contribute to the bar's historically or currently underrepresented membership; Have experienced economic, social, or other barriers; Have a demonstrated commitment to increase access to justice; or Have experienced discrimination or oppression. The Employment Retreat in January was a successful event. The Spring Social will be at Willamette University in April.

**F. MBA Liaison Reports**

Ms. Kohlhoff attended the December 4, 2013 MBA board meeting and Mr. Spier attended the January 8, and February 5, 2014 MBA meetings. Mr. Spier noted the MBA discussed the

possibility of discontinuing the group health program of which OSB is the greatest user. The MBA is concerned it will lose members who join the MBA just for health insurance. Ms. Kohlhoff had no report.

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

Mr. Zarov submitted a general update on the PLF's financial status. **[Exhibit B]** 2013 was a very successful year in two ways: positive investment gain and lower claim count. Due to the lower claim count, they will not replace the claims attorney that retired. Mr. Mansfield relayed concerns from the Sole and Small Firm Practitioners Section regarding interest charges on assessments paid in installments. Mr. Zarov responded that the Board of Directors has discussed this concern at some length, but he will remind them about the lingering issue.

## **3. OSB Committees, Sections, Councils and Divisions**

### **A. Oregon New Lawyers Division Report**

Mr. Eder reported on a variety of ONLD projects and events described in his written report. One big project is the new lawyer CLE in Eugene, held February 21, 2014. Future projects include a two-day crash course on family law, and CLEs in Multnomah and outlying counties.

### **B. CSF Claims**

Ms. Stevens presented Mr. Pedro's request for review of the CSF Committee's denial of his claim for reimbursement. Mr. Ehlers questioned the calculation of attorney hours spent on the case. Ms. Stevens stated that the successor attorney on the case estimated the hours. The CSF committee investigator, Mr. Reinecke, said he was concerned that Ms. Ireland was not experienced enough to work on this case, but the successor attorney used Ms. Ireland's pleadings and estimated she had put in about 20 hours of work. The Committee's decision followed Mr. Reinecke's conclusion that this was a fee dispute, not a CSF issue.

**Motion:** Ms. Billman moved, Mr. Prestwich seconded, and the board voted unanimously to affirm the CSF's denial of Mr. Pedro's claim.

### **C. CSF Committee Response to BOG Workgroup Recommendations**

Ms. Stevens presented an introduction to the Client Security Fund including its purpose and processes, and its history of assessments and awards paid since 1986.

Mr. Bennett asked the board to consider the request of the CSF Committee that changes to CSF policy and procedure adopted in September 2013 not be implemented, except for increasing the reserve to \$1,000,000. Mr. Emerick stated the basis of the workgroup's recommendations was to avoid exhausting CSF reserve in years with unusually high claims and having to dip into general reserves to make the awards. Mr. Greco proposed that the CSF can only use the reserve fund with BOG approval. Ms. Mitchel-Markley questioned why the committee had not provided its input until after the BOG acted on the changes. Ms. Stevens clarified that then-CSF Chair was invited to the September BOG meeting but was unable to attend due to a schedule conflict. Mr. Emerick suggested the board table this action and have the workgroup reconvene and invite the CSF committee to provide input and participate in discussion. Mr. Ross will join the workgroup in place of Mr. Knight who is no longer on the board.



**Motion:** Mr. Emerick moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to reconvene the workgroup.

**D.** MCLE Committee

Ms. Hirschbiel presented the committee's proposed amendments to the MCLE rule re: Child and Elder Abuse Reporting requirements. The committee considered combining the two requirements but what constitutes abuse differs greatly for elders and children. **[Exhibit C]**

**Motion:** Ms. Matsumonji moved, Mr. Whang seconded, and the board voted to approve the MCLE rule changes as requested. Mr. Emerick and Mr. Williams were opposed.

Ms. Hirschbiel presented the committee's proposed amendments to MCLE Rule 3.5(a) and Regulation 3.260. **[Exhibit D]**

**Motion:** Ms. Zinser moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the MCLE rule and regulation changes as requested.

**E.** Legal Services Program Committee

Ms. Baker reported on the work of the Task Force on Legal Aid Funding. Currently Oregon has 1 lawyer for every 10,000 low-income clients. In the next 10 years Legal Aid would like to have 2 lawyers for every 10,000 low-income clients. Ms. Baker also mentioned that the OSB had received a check in excess of \$500,000 representing unclaimed client funds in a case handled by former OSB President Rick Yugler. BOG Committees, Special Committees, Task Forces and Study Groups

**F.** Board Development Committee

Ms. Mitchel-Markley updated the board on the committee's actions and discussed the skills and attributes for BOG and HOD candidates. The committee welcomes additional skill/attribute suggestions from board members.

**G.** Budget and Finance Committee

Mr. Wegener gave a positive financial update due to increased admissions fees and underestimated lawyer referral revenue. CLE Seminars' revenue was down as was the Client Security Fund reserve.

Mr. Emerick asked the board to approve the committee's recommendation to authorize the OSB Executive Director and CFO to establish a \$500,000 line of credit with a local bank. **[Exhibit E]**

**Motion:** The board voted unanimously to approve the committee recommendation to establish a line of credit as recommended.

Mr. Emerick gave an update on the database upgrade project and asked the board to approve the committee's recommendation to authorize the bar to expend up to \$20,000 in funds from the Capital Reserve to engage a consultant to assist the bar in the analysis of proposals and selection of a vendor for the new database. **[Exhibit F]**

**Motion:** The board voted unanimously to approve the committee's recommendation to expend the funds from the Capital Reserve to fund the consultant for the database upgrade project.

**H. Governance and Strategic Planning Committee**

Mr. Spier presented the committee motion to amend the bar bylaws re: board member officer titles. **[Exhibit G]**

**Motion:** The board voted unanimously to amend the OSB Bylaws to (1) eliminate the office of vice-president, and (2) clarify the manner of electing officers.

Mr. Spier presented the committee motion to change the name of the President's Affirmative Action Award to the President's Diversity & Inclusion Award.

**Motion:** The board voted unanimously to approve the committee recommendation.

Mr. Spier presented the committee motion to deny the request of the Animal Law Section to modify its bylaws to eliminate the offices of chair-elect and immediate past chair and extend the term limits for the secretary and member at large positions. **[Exhibit H]**

**Motion:** The board approved the committee motion on a unanimous vote.

Mr. Spier presented the committee recommendation to amend the Quality of Life Committee charge. **[Exhibit I]**

**Motion:** The board unanimously approved the proposed amendment to the Quality of Life Committee assignment (also referred to as a committee charge.)

Mr. Spier presented the committee recommendation that the Board of Governors approve a variety of changes to the Loan Repayment Assistance Program Policies and Guidelines, most significantly to increase in the salary cap from \$55,000 to \$60,000 for eligible applicants. **[Exhibit J]**

**Motion:** The board voted unanimously to approve the committee motion.

Mr. Spier presented the committee's suggestion to invite the deans of Oregon's three law schools to meet with the BOG and to discuss developments in law school curricula that will prepare students for the practice of law.

**Motion:** The board voted unanimously to approve the committee recommendation.

Mr. Spier presented the committee's amended version of the Action Plan 2014. The board will discuss and take action on the plan in coming months, including a review of OSB programs. No action is required of the board at this meeting. **[Exhibit K]**

Mr. Spier presented the committee decision to develop a policy allowing section guest reimbursement in a particular set of circumstances. No action required by the board. **[Exhibit L]**

**I. Public Affairs Committee**

Mr. Prestwich gave an update on the legislative session and possible minimum fee changes for Pro Hac Vice cases. The Chief Justice has the authority to make this fee decision but has asked for the BOG's input.

**Motion:** Mr. Kehoe moved, Mr. Ehlers seconded, and the board voted to recommend to the Chief Justice that he doubles the Pro Hac Vice fee.

**J. International Trade and Legal Services Task Force**

Ms. Hirschbiel reported on the progress of the task force and the three recommendations from the Task Force that they would like to send out to the membership for comment:

Open up RPC 5.5(c) to foreign lawyers; open up House Counsel Admission to lawyers licensed in foreign jurisdictions; and to issue formal legal ethics opinion interpreting the applicability of RPC 8.5 to foreign lawyers. No action is required from the board at this time.

**K. New Lawyer Mentoring Program**

No report.

**L. Centralized Legal Notice System (CLNS) Task Force**

Mr. Ehlers reported on the CLNS Task Force report **[Exhibit M]** and the ONPA Handout in opposition to the report **[Exhibit N]**. There followed a vigorous discussion at which the following points were raised: (1) a centralized online notice system is desirable and will be a reality in the future but newspapers continue to play an important role, particularly outside the Portland metro area and the valley; (2) the OSB would have difficulty getting legislative support in the face of strong opposition from newspapers and their impact on legislative elections; (3) it is not clear that a CLNS would generate as much money as originally thought; (4) there is a risk that funds raised from a CLNS would be directed by the legislature to some other purpose; (5) it wouldn't be wise for the bar to expend the necessary political capital when a successful outcome is unlikely; (6) the OSB is not the proper entity to develop and maintain a CLNS, as it is not germane to the bar's mission; (7) the OSB could use its considerable influence to build a coalition of support for the concept of a CLNS among banks, government agencies, business, etc.

**Motion:** On motion of Ms. Zinser, seconded by Mr. Ehlers, the BOG adopted the following statement: We reaffirm the value to the public and to institutions in Oregon of a centralized legal notice system that will provide high-quality and affordable notice at the same time that it becomes a sustainable long-term funding source for legal services. The motion included creating a board committee to develop alternative proposals that address that goal. Mr. Ehlers and Mr. Prestwich will co-chair the committee; Mr. Kranovich will make additional appointments.

**4. Other Action Items**

Mr. Kranovich presented the request for the board to consider changing the board meeting days to Fridays with overflow on Saturdays if needed, rather than committees on Thursdays and board meetings on Fridays. After discussion, Mr. Kranovich determined a consensus was reached and no change will be made.

Ms. Edwards asked the board to approve the appointments to various bar committees and boards. **[Exhibit P]**

**Motion:** Mr. Spier moved, Mr. Mansfield seconded, and the board voted unanimously to approve the various appointments.

**5. Consent Agenda**

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

**6. 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

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

None.

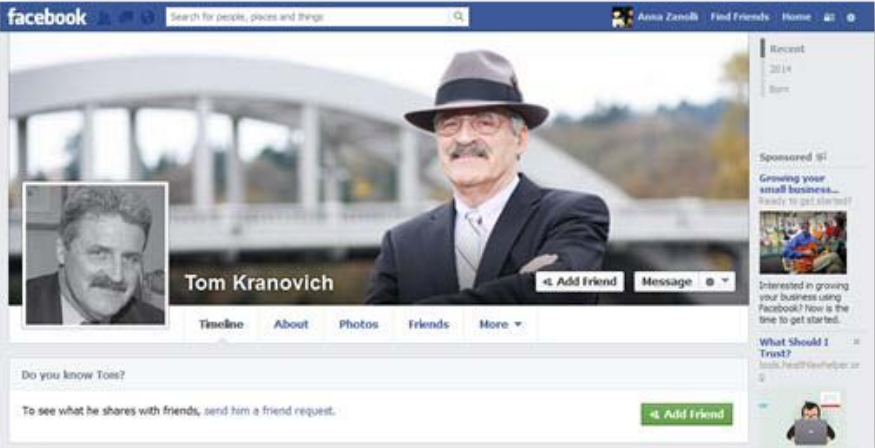
# OREGON STATE BAR

## 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

**II. PRIMARY PROGRAM CLAIMS HANDLING OVERVIEW**

(through November 2013)

	2010	2011	2012	2013
<b>INDEMNITY PAID</b>	<b>\$ 8,806,003</b>	<b>\$ 8,021,342</b>	<b>\$ 9,270,238</b>	<b>\$ 8,660,620</b>
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>	<b>\$ 8,945,497</b>	<b>\$ 10,556,264</b>	<b>\$ 10,054,535</b>	<b>\$ 8,956,909</b>
<b>TOTAL INDEMNITY &amp; EXP</b>	<b>\$ 17,751,500</b>	<b>\$ 18,577,605</b>	<b>\$ 19,324,773</b>	<b>\$ 17,617,529</b>

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

<b>ANNUALIZED</b>	
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**

<b><u>EXPENSE:</u></b>	<b><u>CURRENT</u></b>	<b><u>YEAR</u></b>	<b><u>YEAR</u></b>	<b><u>VARIANCE</u></b>	<b><u>YEAR</u></b>	<b><u>ANNUAL</u></b>
	<b><u>MONTH</u></b>	<b><u>TO DATE</u></b>	<b><u>TO DATE</u></b>		<b><u>TO DATE</u></b>	<b><u>BUDGET</u></b>
		<b><u>ACTUAL</u></b>	<b><u>BUDGET</u></b>		<b><u>LAST YEAR</u></b>	<b><u>BUDGET</u></b>
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>

# 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

<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.

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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

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### 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.~~

# 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.

DRAFT



# 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 GAAP, 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.~~

*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, 2013*

**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 certification 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.

<u>Strategy 1</u>	<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.
<u>Strategy 3</u>	<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>
Strategy 2	<del>Break down the barriers to justice for diverse clients.</del>
Strategy 3	<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~~

## OSB Board of Governors

### Action Plan 2014

#### INTRODUCTION

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Strategy	Implement the OSB Diversity Action Plan.
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# 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.

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.

February 18, 2014

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
Tigard, OR 97281



Reference: Bar Task Force Report on proposed centralized legal notice site

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We appreciate opportunities in recent months for open discussion between ONPA and the Bar concerning Oregon legal notices.

Concerning the Bar Task Force report, we feel it necessary to point out a couple things:

1) The report misrepresents current functionality of the ONPA legal notices website. The website allows users to search by preset category, by newspaper, by county, by city, by date range, by key words, or by any combination of the above. The website also provides users with a "push" function that delivers desired legal notices to users via email notification.

2) The report gives inadequate weight to the expertise and time spent by hundreds of Oregon newspaper staff members in formatting, timely publication and verification of legal notices for many hundreds of local government bodies and special districts.

ONPA's position on Oregon legal notice issues includes the following:

- 1) Publication of legal notices should remain in newspapers, where they are most accessible to and best-read by Oregonians;
- 2) ONPA should continue publication of all newspaper legal notices on a free website that best serves the public;
- 3) ONPA will talk with interested parties about content and pricing of legal notices, and engage OSB interests in discussion of ways to solve deficiencies in the legal aid fund.
- 4) We appreciate the efforts of attorney and Task Force member, S. Ward Greene, to maintain open communications with ONPA in recent months. We agree with the opinion that concluded his written report to the Bar: "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."

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February 19, 2014

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
Tigard, OR 97281

Re: Centralized "Legal Notice" Task Force

Dear Governors:

I write to comment briefly on the Report of the OSB Centralized "Legal Notice" Task Force, which addressed public notices in Oregon. As you may know, I provided Sylvia Stevens with a number of requested corrections to a draft of the Report, in order to correct inaccuracies, only. Many but not all of those corrections were made and I thank Sylvia very much for considering that input. What follows here is an extremely truncated response to the substance of the final Report. I would be happy to answer any questions or provide additional information.

I very respectfully disagree with the Report's conclusions regarding Technical Feasibility, Economic Feasibility, and Public Policy Considerations. I leave to others, especially this Board, the issue of the Advisability of OSB Involvement. Let me explain, briefly.

### **I. Brief Background regarding the Task Force's work**

The Task Force held five meetings: on January 9, February 28, April 11, June 6, and September 11, 2013. The first meeting was preceded by distribution of an agenda calling for a review of the charge to the Task Force and a review of various papers already submitted to this Board. The first meeting resulted in a wide-ranging discussion, as reflected in minutes subsequently distributed. No votes were taken on any matter in that meeting.

At the conclusion of the first meeting, the chair moved that the second meeting focus on "evaluating existing online systems, including especially the existing systems in place in Utah." In the interim between the two meetings, the chair had testified before the Oregon House Committee on Consumer Protection and Government Efficiency that

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we're going to invite to the Task Force representatives from the State of Utah who are involved in a public notification system. In Utah they have, it's my information now, gone to a completely Internet-based public notification system .... [W]e invited stakeholders in that process to come and speak to the Task Force by conference call and to walk us through their website to show us what they've been able to achieve in that state."

House Committee, February 21, 2013.

The minutes of the second meeting properly indicate that it was devoted to the "Utah system demonstration." What the minutes do not capture, however, despite discussion at that meeting and in two subsequent meetings, is that the Utah system importantly: (1) did *not* move any public notice of any kind from Utah's newspapers of general circulation, despite the repeated contention that all public notices had been moved to the Internet, only; and (2) did not generate any revenue, for Legal Aid or for any purpose. In fact, it was explained that a Utah State Senator initiated legislation that would have accomplished the very kind of Internet-only public notice system being proposed to the Oregon State Bar, but that after thorough investigation, that senator found that an Internet-only system would not provide the *effective* notification required both by due process and by good government. The initially proposed system, which would have been identical to the one proposed to this Bar, was expressly rejected. The actual Utah system continues to depend on newspapers, just as in Oregon (and indeed in all states), coupled with online posting of all notices, just as already exists in Oregon.

An agenda was distributed for the third meeting, April 11, which was devoted very largely to the work that a company called "NIC" is doing for governmental bodies in Oregon and in 28 other states and some 500 cities and counties. These programs are generally known as "eGovernment." They involve transactions with government, including, as the presenter described, buying fishing licenses, paying taxes, renewing business licenses, registering businesses, and paying parking tickets.

In answer to questions, the presenter for NIC stated that in none of their 29 states or other government bodies did they have experience pushing out public *notification* regarding legal matters or information on proposals from government. In his words, they are comfortable with an "if you build it they will come" system of handling transactions with governments, that is, when a citizen knows she needs a business license or needs to pay her taxes, she finds the NIC systems online and engages them to conduct her transaction with government. In the presenter's words, NIC "only supports government transactions." It does not have experience with public notice, nor does it have any experience with trying to bring the public's attention to, or to educate the public about, proposed government actions, reports, or other matters that require public notice.

The fourth meeting of the Task Force was held on June 6. No minutes were provided for the previous, April 11, meeting. Nor was there any agenda distributed for the June 6 meeting. Similarly, there were no minutes subsequently distributed concerning the June 6 meeting. I was out of the state and I do not know what was discussed at that meeting, alone. I am assured that, as with all previous meetings, no votes were taken.

The next meeting of the Task Force was held on September 11, 2013. No agenda was provided for that meeting. Very shortly before the meeting, I was informed that the group had apparently agreed at the June 6 meeting that September 11 would be the last meeting of the Task Force. That was unknown to me and unknown to Ward Greene, also, because there had been no minutes of the June 6 meeting. Although there are no minutes of the September 11 meeting, either, in my presence the Task Force had a very wide-ranging and lengthy discussion of a variety of issues. Both Mr. Greene and I had to separately leave this exceptionally long meeting before it ended. I am informed that a number of votes were taken in the final 30 minutes of the meeting but there are no records of those votes.

## II. Technical Feasibility

I respectfully disagree with the Report's conclusion regarding Technical Feasibility. The presentation by NIC *did* demonstrate that NIC could handle the volume of information involved in Oregon's myriad public notices. It did not, however, provide any information regarding the precise issue of public notice, and NIC has no experience in that regard. Moreover, one of the four charges to the Task Force was to "determine what kind of *public outreach* would be required for successful implementation and develop a budget and schedule for the outreach." November 28, 2012 Memorandum from Mitzi Naucler, OSB President, to the new Task Force members (emphasis added). With all due respect, the Task Force did not gather information on this subject and did not address this part of its four-part charge. There is nothing mentioned in the Report about the cost of or effort needed in making the public fully aware of a proposed Internet-only system, as would be required both by due process and by good government. Neither NIC nor any other source provided any information regarding that subject.

In fact, throughout all discussion there was a persistent theme by proponents of a move to an Internet-only system that the Internet would "vastly improve notification," because it would make notice "more *available* to the public," as the chair contended consistently, beginning with his July 24, 2012 memorandum to this Board. That contention confuses "access" and "notice." That confusion was addressed by the House Consumer Protection and Government Efficiency Committee, on February 21, 2013, during the course of the Task Force's work. In that hearing, Representative Smith noted that the purpose of "public notice"

is to inform. It's to educate. It's to notify. And to me, I'm struggling with, who better to do that than newspapers with general

circulation. Their job is to go out and to inform the public of what's going on in their community, in their neighborhood, and to me it seems like one goes with the other. The struggle I'm having with the Internet, the *Internet to me seems like a great place for someone to go to search, but not to be notified.*

In response Mr. Ehlers testified:

If you've ever had an item, any kind of personal property item in the last five years that you've wanted to sell to another person ... [you've] probably placed it, and many of the committee members here would have placed it, on *Craigslist, which is a centralized notification system* ....

(Testimony February 21, 2013, 1:00 p.m.) (emphases added).

Representative Smith was asking a question the Task Force did not answer. That a citizen *could* find information about government or other public matters, *if* she knew what she was looking for, is access. That is the Craigslist model. Creating a system to alert a citizen to important information which the citizen may have *absolutely no idea exists* or any idea they would be *interested in*, is public notice. Craigslist is *access* for those *seeking* something, but it is *not notice*. I believe that a survey of constitutional law professors and civil procedure professors across the nation would illustrate this important distinction. I believe that same survey would take issue with the chair's testimony before the House Committee that "the market will determine what is the better notification, what is the least costly notification, and what is the most effective notification," which, it was contended, is Internet-only. It is not to be doubted that the market will determine what is the *least costly* "notification," but it is to be gravely doubted that the market alone will determine the *most effective* notification with regard to either due process or good government concerns.

In short, I respectfully disagree with the Report's conclusions regarding Technical Feasibility. It was proposed that the Utah experience demonstrated technical feasibility, but in fact Utah rejected the very idea of Internet-only notice that is being proposed here. (It should be noted that just as in Oregon, Utah newspapers publish searchable public notices online, also, already.) The report from NIC demonstrated that although it could handle the *volume* of information at issue, it does not have experience in public notice. The Report's conclusion regarding Technical Feasibility omits consideration of an essential part of any proposed system of notice, which is to consider notice in terms of both due process and good government requirements.

### **III. Economic Feasibility**

Regarding Economic Feasibility, as stated the Task Force was to “determine what kind of public outreach would be required for successful implementation and develop a budget and schedule for the outreach.” With all due respect, the Task Force did not address this issue and certainly did not determine the millions of dollars in public outreach that would be involved in any such attempt to begin to address concerns of due process and good government. With this in mind, I do not believe there was any demonstration of Economic Feasibility that could satisfy what must be the concerns of the State Bar, of all institutions, regarding the requirements of due process and good government.

### **IV. Public Policy Considerations**

With regard to Public Policy Considerations, I have described the Task Force’s confusion concerning access and public notice. Representative Smith succinctly captured public policy concerns. I believe that the vast majority of legal and other professors across the country could further elaborate on the concerns of going to an Internet-only system of notice at this juncture in the history of technology. As mentioned, the Utah legislature looked at precisely the issue being urged here and rejected it. I respectfully disagree with the Report’s conclusion regarding Public Policy Considerations.

One problem the Task Force had, which relates to its conclusions, concerns compliance with the requirements of Oregon’s Public Meetings laws. The Task Force was advised at its outset of the requirement to follow all Public Meetings law statutes, which it discussed in its first meeting. ORS 192.640 requires an agenda, missing for at least the last two meetings. Much more importantly, ORS 192.650 requires minutes for every public meeting, which shall be available within a reasonable time and which “shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, ... the vote of each member by name;
- (d) The substance of any discussion on any matter.”

Unfortunately, there are no minutes for three of five meetings and no records of any motion or of any votes made by this Task Force at any time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. A. Bosworth", is written over a large, light gray watermark that says "DRAFT".

Duane A. Bosworth

DAB:cp

# 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

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### 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  
Board of Governors Meeting  
February 21, 2014  
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

**A. Unlawful Practice of Law**

1. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Mr. Buttermore.

**Motion:** Mr. Mansfield moved and Ms. Mitchel-Markley seconded to accept the recommendation that the Board approve the cease and desist agreement. The board unanimously approved the motion.

**Motion:** Mr. Whang moved and Mr. Spier seconded to recommend that the UPL committee send the case to the home jurisdiction of Florida. The board unanimously approved the motion.

**B. Pending or Threatened Non-Disciplinary Litigation**

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

**C. Other Matters**

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



**Oregon State Bar**  
**Special Closed Meeting of the Board of Governors**  
**April 17, 2014**  
**Minutes**

The meeting was called to order by President Tom Kranovich at 8:00 a.m. on April 17, 2014. The meeting adjourned at 9:00 a.m. Members present from the Board of Governors were Jim Chaney, Hunter Emerick, Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchell-Markley, Josh Ross, Richard Spier, Simon Whang, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel and Camille Greene. Board members not present were Jenifer Billman, Patrick Ehlers, Matt Kehoe, Travis Prestwich and Charles Wilhoite.

**1. Call to Order**

Mr. Kranovich called the meeting to order.

**2. Other Matters**

Request to Join Amicus Curiae Brief

Mr. Kranovich asked the board to decide whether to join the North Carolina State Bar's *amicus curiae* brief in the case of *North Carolina Board of Dental Examiners v. Federal Trade Commission*, United States Supreme Court, No. 13-534.

**Motion:** On motion of Mr. Spier, seconded by Mr. Chaney, the board voted unanimously not to join in the North Carolina State Bar's *amicus curiae* brief.

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Two Months Ending February 28, 2014**

Description	February 2014	YTD 2014	Budget 2014	% of Budget	February Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$47	\$82	\$3,300	2.5%	\$294	\$347	-76.4%
Judgments	50	150	1,000	15.0%	9,127	9,227	-98.4%
Membership Fees	630	648,712	684,400	94.8%	630	644,535	0.6%
<b>TOTAL REVENUE</b>	<b>727</b>	<b>648,944</b>	<b>688,700</b>	<b>94.2%</b>	<b>10,051</b>	<b>654,109</b>	<b>-0.8%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,273	5,683	30,800	18.5%	2,201	5,503	3.3%
Employee Taxes & Benefits - Reg	831	1,653	11,700	14.1%	802	1,874	-11.8%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,104</b>	<b>7,336</b>	<b>42,500</b>	<b>17.3%</b>	<b>3,003</b>	<b>7,377</b>	<b>-0.6%</b>
<b>DIRECT PROGRAM</b>							
Claims	800	7,395	250,000	3.0%	14,300	80,654	-90.8%
Collection Fees			2,000		3,706	3,706	-100.0%
Committees			250				
Travel & Expense		608	1,400	43.4%	50	125	386.4%
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>800</b>	<b>8,003</b>	<b>253,650</b>	<b>3.2%</b>	<b>18,056</b>	<b>84,485</b>	<b>-90.5%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Office Supplies			150				
Photocopying			150				
Postage	38	88	500	17.6%	5	64	37.1%
Professional Dues			200				
Telephone		14	150	9.5%		21	-33.2%
Training & Education			600			425	-100.0%
Staff Travel & Expense			874				
<b>TOTAL G &amp; A</b>	<b>38</b>	<b>102</b>	<b>2,624</b>	<b>3.9%</b>	<b>5</b>	<b>510</b>	<b>-80.0%</b>
<b>TOTAL EXPENSE</b>	<b>3,942</b>	<b>15,441</b>	<b>298,774</b>	<b>5.2%</b>	<b>21,064</b>	<b>92,372</b>	<b>-83.3%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(3,216)</b>	<b>633,502</b>	<b>389,926</b>		<b>(11,013)</b>	<b>561,736</b>	<b>12.8%</b>
Indirect Cost Allocation	1,357	2,714	16,279		1,219	2,438	11.3%
<b>NET REV (EXP) AFTER ICA</b>	<b>(4,573)</b>	<b>630,788</b>	<b>373,647</b>		<b>(12,232)</b>	<b>559,298</b>	<b>12.8%</b>
Fund Balance beginning of year		50,801					
<b>Ending Fund Balance</b>		<b>681,589</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
2013	24	Mantell, Elliott J	Goff, Daniel	\$ 47,609.00	\$ 47,609.00	Davis	CSF Denied 11.16.13 Appeal?
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	42	Meier-Smith, Mary	Hall, C. David	\$ 27,500.00	\$ 27,500.00	Brown	
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	47	Herbert, Rebecca D	Browning, Robert	\$ 5,000.00	\$ 5,000.00	Franco	CSF Denied 03.08.2014
2013	48	Monroy, Anna	Bertoni, Gary	\$ 5,000.00	\$ 5,000.00	Bennett	CSF approve 3/8 send to BOG 4/25
2013	49	Babb, Avon Lee	Goff, Daniel	\$ 3,000.00	\$ 3,000.00	Davis	
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	Dougherty	
2014	3	Azcue, Fabiola	McBride, Jason	\$ 2,300.00	\$ 2,300.00	Atwood	CSF Approved 03.08.2014
2014	4	Keene, Matthias Catto	Hudson, Howard	\$ 2,400.00	\$ 2,400.00	Keeler	CSF Denied 03.08.2014
2014	5	Mundon, Carolyn	Allen, Sara	\$ 2,500.00	\$ 2,500.00	Dougherty	
2014	6	Stoery, Scott Thomas	Steves, Susan	\$ 2,924.50	\$ 1,345.50	Naucler	pd 03.20.14
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	
2014	9	Hernandez, Trinity	McBride, Jason	\$ 4,000.00	\$ 4,000.00	Atwood	
2014	10	Jensen, Dana L.	Eckrem, John P	\$ 1,000.00	\$ 1,000.00	Miller	
2014	11	Briggs, Lagale for Clayton Briggs	Connall, Des & Shannon	\$ 10,000.00	\$ 10,000.00	Naucler	
2014	12	Austin, Evan Roy	Landers, Mary	\$ 11,000.00	\$ 11,000.00	Keeler	
2014	13	Neel, Rian Nicole	Schannauer, Peter M	\$ 800.00	\$ 800.00	Bennett	
2014	14	Plancarte, Gladys for Pedro Lagunas Dominguez	McBride, Jason	\$ 1,300.00	\$ 1,300.00	Franco	
2014	15	Soto-Santos, Armando	McBride, Jason	\$ 5,000.00	\$ 5,000.00	Atwood	
					\$ 98,909.00		
		Funds available for claims and indirect costs allocation as of February 2014	Total in CSF Account		\$ 681,589.00		
			<b>Fund Excess</b>		\$ 582,680.00		

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 25, 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 March 8, 2014 meeting:

No. 2014-03 McBRIDE (Azcue/Serna)	\$2,300.00
No. 2014-06 STEVES (Stoery)	\$1,345.50
<b>TOTAL</b>	<b>\$3,645.50</b>

## MEMORANDUM

**TO:** Oregon State Bar (OSB) Board of Governors and Sylvia Stevens, OSB Executive Director

**FROM:** Hon. Adrienne Nelson, Ben Eder, Marilyn Harbur and Christine Meadows

**SUBJECT:** 2014 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

**DATE:** March 6, 2014

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### REPORT ON THE ABA MIDYEAR MEETING

The 76<sup>th</sup> Midyear Meeting of the American Bar Association (the “ABA” or the “Association”) was held February 10, 2014, at the Hyatt Regency Chicago Hotel, in Chicago, Illinois. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for one day. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, February 9, 2014. Linda A. Klein of Georgia, candidate for President-Elect, seeking nomination at the 2015 Midyear Meeting, gave a speech to the Nominating Committee and to the members of the Association present.

### THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, February 10, 2014. Robert M. Carlson of Montana presided as Chair of the House. The Chicago Fire Department Honor Guard presented the colors. The invocation for the House was delivered by Maury B. Poscover of Missouri. The Chair of the House Committee on Credentials and Admissions, Reginald M. Turner, Jr. of Michigan, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was **approved**.

Chair Carlson welcomed new members of the House and recognized all those lawyers who had served in the House of Delegates for more than 25 years.

Deceased members of the House were named and remembered by a moment of silence. Chair Carlson recognized Alice E. Richmond of Massachusetts to speak in honor of John “Jack” Curtin, Jr. of Massachusetts, former ABA President.

Hilarie Bass of Florida, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House. She moved to adopt the final calendar and approve Mark Leopold who sought privileges of the floor to speak regarding Resolution

102A. Both motions were **approved**. Ms. Bass noted that the deadline for submission of Resolutions with Reports for the 2014 Annual Meeting is Tuesday, May 6, 2014, while the deadline for Informational Reports is Friday, June 6, 2014. She also referred to the consent calendar, noting the deadline for removing an item from the consent calendar. Ms. Bass also reminded the House of the process for removing items from Report 400 regarding the archiving of policies and that 32 policies were identified as appropriate for archiving. Later that day, Ms. Bass moved the items remaining on the consent calendar. The motion was **approved**.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

## **I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES**

### **Naturalization Ceremony**

Robert M. Carlson, Chair of the House, informed the Delegates that instead of the traditional welcome from one of the Chicago area leaders, the House would be welcomed by a group of people who were becoming United States citizens today and that the House would have the privilege of being the first to welcome them as new citizens of the United States. He advised the Delegates that it was appropriate to have such a ceremony in the House because the ABA, through policy set by the House, has taken the lead over the years on issues related to immigration. It was also timely because immigration is one of ABA President Silkenat's initiatives.

Chair Carlson noted that immigration is an issue that touches us all and that the history of this country has been a celebration of welcoming immigrants to join us in this continuing experiment of democracy, freedom and the rule of law. He stated that the people becoming citizens are about to take a major step in their lives – the culmination to years of sacrifice, hard work, commitment and dedication to the civic principles that form the basis for this country.

Chair Carlson welcomed and thanked the U.S. Citizenship and Immigration Services for its partnership in arranging for a Naturalization Ceremony at the commencement of the House's proceedings. Twenty four individuals from nineteen countries became United States citizens in the presence of the House. Rose Cavazos of the U.S. Citizenship and Immigration Services served as master of ceremonies. Gladys Lugo, Courtroom Deputy of the U.S. District Court for the Northern District of Illinois opened a special court session for purposes of the ceremony. District Judge Marvin E. Aspen presided over the Court session. Nicole S. Flores, Associate Counsel for U.S. Citizenship and Immigration Services, moved for admission of the applicant for citizenship. The motion was granted by the Court. Judge Aspen then noted the role lawyers have played in protecting and advancing the rights of citizens. Judge Aspen then administered the oath of citizenship and declared each of them citizens of the United States. The House welcomed the new citizens with a standing ovation. Chair Carlson led those assembled in the Pledge of Allegiance. The Court was then adjourned. The new citizens were welcomed by a video message from United States

President Barack Obama. ABA President James Silkenat then addressed the House in keynote remarks. President Silkenat took special note of the unique and vital role immigrants have played in America's life. He identified fairness and due process as hallmarks of America and observed that it was particularly apt that the ceremony was witnessed by lawyers and judges from across America. Each new citizen was then presented with a citizenship certificate by Judge Aspen and congratulated by Lori A. Pietropoli, District Director for U.S. Citizenship and Immigration Services, President Silkenat and Chair Carlson. Ms. Cavazos thanked the participants and concluded the ceremony.

After the naturalization ceremony, Chair Carlson cataloged the nationalities of those seeking citizenship and thanked them for allowing the House to join in the ceremony. He thanked Judge Marvin Aspen and his staff and Rose Cavazos and her staff at U.S. Citizenship and Immigration Services for their assistance and participation in the ceremony.

### **Statement by the Chair of the House**

Robert M. Carlson of Montana, Chair of the House, welcomed those present to the 76<sup>th</sup> Midyear Meeting of the House of Delegates. He thanked the ABA Communications and Media Relations Division for continuing to inform ABA members, the legal community and the general public about developments in the House of Delegates. He recognized and thanked members of the various House Committees. He recognized the Committee on Rules and Calendar and reminded members where they could find the House Rules of Procedure. He introduced the Tellers Committee and reviewed procedures for speaking. He announced that key speeches and debates would be publicized and that the House Committee on Technology and Communications would be reporting on the proceedings of the House via Twitter @ABAhod.

Chair Carlson announced that an election for one member of the Committee on Scope and Correlation of Work would occur at the 2014 Annual Meeting. The position would be for a five-year term. He encouraged those interested in the position to contact members of the Scope Nominating Committee and submit an application by March 14, 2014. Chair Carlson also announced that President-Elect William Hubbard of South Carolina would be seeking nominations for appointments through February 28, 2014.

Chair Carlson reminded Delegates of the ABA Legal Opportunity Scholarship Fund and encouraged them to consider donating to this fund which to date has provided scholarships to 200 minority law students from around the country. He encouraged Delegates also to contribute to the Fund for Justice and Education (FJE) and that they encourage their constituents to contribute as well.

Chair Carlson voiced his support for Law Day 2014 and announced that its theme would be "American Democracy and the Rule of Law: Why Every Vote Matters"; he then directed the Delegates to review materials distributed to them at their tables.

Chair Carlson informed the Delegates that complimentary copies of the Judges' Journal were placed at each Delegate's seat and commended the articles in the journal

to them.

Chair Carlson highlighted the upcoming ABA celebration of the 800<sup>th</sup> anniversary of the sealing of the Magna Carta to be held in June, 2015 and announced that pre-registration for the event is open.

Chair Carlson advised the Delegates that the ABA Commission on Sexual Orientation and Gender Identity (SOGI) has published a Best Practices Guide on Promoting LGBT Diversity and Inclusion and that copies of the guide were available on the publication table in the House.

### **Statement by the Secretary**

Hon. Cara Lee T. Neville of Minnesota, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2013 Annual Meeting, which was **approved** by the House. Judge Neville then listed those House members who had died since the 2013 Annual Meeting, who were honored with a moment of silence. On behalf of the Board of Governors, Secretary Neville presented and referred to the House Report Nos. 177, 177A and 177B, the Board's Informational, Transmittal and Legislative Priorities reports.

### **Statement by the ABA President**

In his remarks to the House, President James R. Silkenat of New York, thanked the Delegates for braving the cold and coming to Chicago. He then touched on three major sets of issues.

He discussed the Association's efforts in resolving America's "access to justice paradox:" the unmet legal needs of America's poor and middle classes and the shrinking job opportunities that young lawyers face today. He detailed the efforts the ABA's Legal Access Job Corps has undertaken to address this paradox in low income and rural areas in order to alleviate the pressure to deliver more legal services to those underserved. He cataloged positive steps in Iowa, New York, South Dakota, Utah, Nebraska, Vermont and California. President Silkenat was careful to note that these efforts were designed to complement and not undercut traditional pro bono legal services.

President Silkenat went on to note the Association's commitment to address inequalities and irregularities involving voting rights and linked these efforts to the theme for ABA Law Day. He encouraged the House to undertake steps in support of Law Day 2014: American Democracy and the Rule of Law: Why Every Vote Matters.

President Silkenat next addressed the issue of gun violence and lamented the lack of effective action undertaken by Congress in the wake of the Newtown disaster. After noting that this record was unacceptable, President Silkenat insisted that the Association play a key role in developing a national conversation on gun violence so that lawyers can help educate and inform the public and the Congress on this extremely important issue.



## **Statement by the Treasurer**

The Treasurer, Lucian T. Pera of Tennessee, addressed the House and supplemented his electronically transmitted report to the Delegates.

He stated that the finances of the ABA are sound and pointed out several important areas of financial improvement during the last fiscal year. He noted the Association's \$39.4 million net asset increase during FY2013 largely due to strong performance by investments and a decrease in pension liability. He also noted the ABA's low debt levels.

Mr. Pera nonetheless noted that, while the ABA's balance sheet is strong, it still faces significant operational financial issues. Specifically, he outlined that a deficit of approximately \$28.3 million over the next three years is projected if programming and operations were kept at roughly existing levels.

Mr. Pera reported that the FY2013 audit has been completed by our auditors, Grant Thornton, and the Association received a clean, unqualified opinion. Only one change to the financial reports concerning depreciation expense on the ABA's prior lease in Washington, D.C. was needed.

With regard to FY2013 results, Mr. Pera remarked that the ABA enjoyed approximately \$206 million in revenue for FY 2013. Income exceeded budget and expenses were modestly under budget. He also noted a continuing decline in dues revenue as well a modest increase in non-dues revenue.

As to the ABA's cash position, Mr. Pera noted that the annual "cash crunch" caused a combination of short-term borrowing and liquidation of investments in FY2013, but, although authorized, the need to use that authority may be avoided in FY2014.

The Association's investments have grown by approximately \$23.3 million to \$305.8 million in the first quarter of FY2014. This represents an 8.2% increase.

Mr. Pera noted with approval that the ABA's unfunded pension liability dropped by approximately \$17.5 million as the end of FY2013, chiefly because of a recent rise in interest rates.

Finally, Mr. Pera praised former Chief Financial Officer Larry Gill and congratulated him for his promotion to Chief Revenue Officer and Deputy Executive Director. Mr. Pera also congratulated Comptroller Jerry Kiska, who has been promoted to Deputy Chief Financial Officer. Finally, Mr. Pera introduced the Association's new Chief Financial Officer, William "Bill" Phelan, and commended him for his initial work for the Association.

## **Statement by the Executive Director**

Jack L. Rives of Illinois, Executive Director and Chief Operating Officer of the American Bar Association, addressed the House. He reflected on the challenges presented by declining dues revenue. Mr. Rives advised that reducing expenses has

been a major management priority for the past several years. He highlighted millions of dollars of savings that have been achieved through large and small cost-cutting measures and efficiencies, including a new review process for the use of consultants that saved almost \$2 million in FY2013, its first year of use.

Mr. Rives updated the House on ABA Action! progress since the 2013 Annual Meeting. He recently completed a staff reorganization to work ABAAction! issues more effectively. He stressed that ABAAction! initiatives permeate all areas of staff work for the Association.

One of the ABA Action! focal points involves law student recruitment. Mr. Rives noted that the ABA now has representatives at 182 law schools, an increase of 30 schools over the past year. There has been an increase of 38% in law student membership over last year, and despite a decrease of 11% in first year class size since the prior year, the ABA achieved a 25% increase in market share penetration among first year law students.

Mr. Rives highlighted some superb publication successes, including an increase of over 20% in ABA Journal advertising revenue year over year, to almost \$1 million for the first four months of this fiscal year.

ABA Advantage has improved with an expanded program of affinity relationships for Association members. Mr. Rives singled out the Ricoh and Mercedes Benz programs as leading the way for increased non-dues revenue for the Association.

Mr. Rives observed that the ABA Academy will provide offerings in core practice areas through the “ABA Essentials” program and “Minding Your Business,” which focuses on the business of law. Mr. Rives stated that more than one-third of sections and divisions are now collaborating on CLE through the ABA Academy.

Mr. Rives concluded by noting that he and the entire ABA Staff are eager to take on the challenges facing the Association, and that they will work with members and volunteer leaders to seize the opportunities and secure our future.

### **Remarks on the Task Force on the Future of Legal Education**

Justice Randall T. Shepard, Chair of the Task Force on the Future of Legal Education made a presentation to the House that summarized that group’s January 2014 report. The Task Force concentrated its focus on rising tuition costs and the use of scholarships. Over the past several years, financial aid approaches have changed significantly such that a need-based system has been largely abandoned in favor of aid chiefly based upon an applicant’s GPA and LSAT score. This phenomenon has the effect of making a law school seem more competitive, and, in turn, raises its position in national polls.

The Task Force also found that only 56% of recent law school graduates achieve full-time employment as an attorney within twelve months of graduation. Over the last

five years, applicants to law schools have declined by roughly 50% from approximately 100,000 to approximately 50,000 per year.

The Task Force has called upon a re-engineering of the financial aid regime to help a broader range of applicants absorb the costs of a law school education.

The Task Force also recommended adjustment of the accreditation system to widen the potential audience of applicants by eliminating some requirements which have the effect of increasing costs without conferring commensurate benefits.

Dean Jay Conison, the Reporter of the Task Force, encouraged feedback as well as commitments to discuss and implement the report of the Task Force.

### **Remarks on the “State of the State Courts”**

The Honorable Michael G. Heavican, President of the Conference of Chief Justices (“CCJ”), advised the House on the status of the state court systems in the face of budgetary pressures and the ever-increasing incidence of self-representation. Chief Justice Heavican noted that state courts handle over 100 million cases a year which is in excess of 95% of the litigation in the United States. He urged transparency and adequate financing to insure that this mammoth caseload is efficiently adjudicated. He praised coordination between the Bench and the Bar, such as the successful effort in South Dakota’s rejection of the “Jail for Judges” proposal. Chief Justice Heavican singled out steps by Past Presidents Stephen N. Zack and Wm. T. Robinson III to facilitate improvements in the administration of justice as helpful examples of how the Bench and Bar can work together. Joint meetings are slated between ABA entities and the CCJ in Louisville, Philadelphia and St. Louis.

Chief Justice Heavican noted that that not all courts have recovered from the recent Great Recession and the budget challenges. He then announced that a new joint committee of lawyers, chief justices and business leaders has been formed to speed the processing of civil case loads with new models based on the various state courts’ best practices.

Chief Justice Heavican concluded by encouraging future collaboration between the CCJ and the ABA.

### **Report of the Nominating Committee**

The Nominating Committee met on Sunday, February 9, 2014. On behalf of the committee, Beverly J. Quail of Colorado, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

### **Members of the Board of Governors for the 2014-2017 Term**

#### **District Members**

District 1: Wendell G. Large of Maine  
District 2: Alice A. Bruno of Connecticut  
District 4: Herbert B. Dixon, Jr. of the District of Columbia

District 6: David F. Bienvenu of Louisiana  
District 12: Harry Truman Moore of Arkansas

### Section Members-at-Large

Section of Intellectual Property Law  
Donald R. Dunner of the District of Columbia

Section of Litigation  
William R. Bay of Missouri

Minority Member-at-Large  
Ruthe C. Ashley of California

Woman Member-at-Large  
Pamela A. Bresnahan of Maryland

Young Lawyer Member-at-Large  
Min K. Cho of Florida

### **Officers of the Association**

Chair of the House of Delegates for 2014-2016 term  
Patricia Lee Refo of Arizona

President-Elect for 2014-2015  
Paulette Brown of New Jersey

### **Remarks by President-Elect Nominee**

In her remarks to the House, Paulette Brown of New Jersey, President-Elect Nominee, thanked the Nominating Committee for its support of her nomination. She also singled out her law firm, Edwards Wildman Palmer, for its support for her candidacy and its commitment to full-firm ABA membership.

Ms. Brown thanked the Law Student Division and the Young Lawyers Division for their support. She also made special mention of the more seasoned lawyers and their help.

Ms. Brown noted that the Association can build on its success and do even better through collaboration, working together, widening our net of inclusiveness and having diversity of opinion and thought.

Ms. Brown committed to continuing the important initiatives of President Silkenat and President-Elect Hubbard regarding legal education and the lack of sufficient employment opportunities for graduating law students.

Ms. Brown acknowledged the honor bestowed upon her brought with it the added responsibility to do one's very best. She emphasized that she believes in the ABA

fundamentally and looked forward to working with all of the Delegates as she prepares to execute her plans as President.

## **II. RESOLUTIONS VOTED ON BY THE HOUSE**

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets.

### **ARCHIVING**

**[400]** The House **approved on consent** Revised Resolution 400 recommending that certain Association policies that pertain to public issues that were adopted through 1990 be archived. Hilarie Bass of Florida, noted that Resolution 400 was revised wherein Resolution 119 from August 1981 was reactivated and Item Nos. 259, 260, 262, 263 and 346 were removed from the list of policies to be archived and will remain active policies of the Association.

### **BUSINESS LAW**

**[102A]** On behalf of the Section of Business Law, Maury B. Poscover of Missouri moved Resolution 102A urging governmental bodies to engage in actions designed to reduce unnecessary tension, expense and litigation, and to foster inter-court, inter and intra-agency, and inter-party cooperation and coordination in cases where parallel actions or proceedings arise under both (i) bankruptcy or insolvency law and (ii) asset forfeiture or analogous regulatory enforcement law. The resolution was **approved**.

**[102B]** On behalf of the Section of Business Law, William D. Johnston of Delaware moved Revised Resolution 102B adopting the black letter Model Principles of the *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, dated February 2014, and urging businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor that are consistent with the Model Principles of the ABA Model. E. Christopher Johnson of Michigan, Laurel G. Bellows of Illinois and Jimmy Goodman of Oklahoma spoke in support of the resolution. The resolution was **approved as revised**. See [video](#) of remarks.

### **CRIMINAL JUSTICE**

**[103A]** On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Resolution 103A urging governments to ensure that juveniles are provided effective appellate representation and have access to appeals consistent with state statutes and/or state constitutional provisions. The resolution was **approved**.

**[103B]** On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Resolution 103B urging state governments to apply generally applicable administrative procedure acts' notice-and-comment rule-making provisions to regulations governing correctional facilities and officers. The resolution was **approved**.

## **HOMELESSNESS AND POVERTY**

[107] On behalf of the Commission on Homelessness and Poverty, Antonia Fasanelli of Maryland moved Resolution 107 urging governments to promote the human right to adequate food and nutrition for all through increased funding, development and implementation of strategies to prevent infringement of that right. Robert L. Weinberg of the District of Columbia spoke in support of the resolution. The resolution was **approved**.

## **INTELLECTUAL PROPERTY LAW**

[108A] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts **withdrew** Resolution 108A opposing the proposed “Innovation Act” of the 113<sup>th</sup> Congress (H.R. 3309) or other similar legislation that would circumvent the judicial rulemaking process set forth in the Federal Rules Enabling Act (28 U.S.C. §§ 2071 – 2077). This Resolution was withdrawn because Congress acted earlier than anticipated so the section submitted its comments through blanket authority.

[108B] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts **withdrew** Resolution 108B opposing a mandatory award of attorney fees to the prevailing party in a civil action arising under the patent laws of the United States and supporting the discretionary authority of federal district courts to award attorney fees to the prevailing party in a patent case in circumstances that are less restrictive than those currently required by judicial precedent. This Resolution was withdrawn because Congress acted earlier than anticipated so the section submitted its comments through blanket authority. This Resolution was withdrawn because Congress acted earlier than anticipated so the section submitted its comments through blanket authority.

[108C] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts **withdrew** Resolution 108C supporting amendment of patent law to reduce the estoppel effect of an adverse ruling to a challenge to a patent in a Patent Office administrative proceeding and opposing changing the standard for construing claims in two types of Patent Office administrative proceedings. This Resolution was withdrawn because Congress acted earlier than anticipated so the section submitted its comments through blanket authority.

## **INTERNATIONAL LAW**

[105] On behalf of the Section of International Law, Glenn P. Hendrix of Georgia **withdrew** Resolution 105 supporting modernization and simplification of the requirements and procedures related to verification of signatures in cross-border contexts. This Resolution was withdrawn in order to allow additional input from other ABA entities.

## **JUDICIAL INDEPENDENCE**

**[106]** On behalf of the Standing Committee on Judicial Independence, Peter Bennett of Maine moved Resolution 106 encouraging governments to adequately fund judicial system security protocols and urging courts to create and review judicial system security protocols so that they may effectively communicate their needs to policymakers and appropriators. Dwight L. Smith of Oklahoma spoke in support of the resolution. The resolution was **approved**.

### **LAW AND AGING**

**[110]** On behalf of the Senior Lawyers Division, Albert C. Harvey of Tennessee moved Resolution 110 urging Congress to enact the Improving Access to Medicare Coverage Act of 2013 (H.R. 1179) (S. 569), or similar legislation, that deems an individual receiving outpatient observation care services in a hospital to be an inpatient with respect to satisfying the three-day inpatient hospital stay requirement for Medicare coverage of a post-hospitalization stay in a skilled nursing facility. David M. English of Missouri spoke in support of the resolution. The resolution was **approved**.

### **MEMBERSHIP DUES**

**[177C]** On behalf of the Board of Governors, Treasurer Lucian T. Pera of Tennessee moved Resolution 177C recommending that membership dues be increased effective with Fiscal Year 2014-2015 and further recommending that in each of the fiscal years 2016, 2017 and 2018, the dues levels of each of the categories affected shall be increased by an amount equal to the Cost of Living Increase, as the Board of Governors in its discretion may determine annually, subject to approval by the House. Joseph D. O'Connor of Indiana and Daniel W. Van Horn of Tennessee spoke in support of the resolution. The resolution was **approved**.

### **MILITARY LAW**

**[10A]** On behalf of the Bar Association of San Francisco, Mark I. Schickman of California **withdrew** Resolution 10A urging Congress to enact legislation that creates and adequately funds alternative avenues of redress for victims of unwanted sexual contact in the military. The Resolution was withdrawn because of the passage of recently enacted federal legislation that had rendered portions of the Resolution moot.

### **PARALEGAL EDUCATION**

**[101]** The House **approved on consent** Resolution 101 as submitted by the Standing Committee on Paralegals granting approval and re-approval to several paralegal education programs, withdrawing the approval of one program at the request of the institution, and extending the term of approval to several paralegal education programs.

### **SPECIALIZATION**

**[104]** The House **approved on consent** Resolution 104 as submitted by the Standing

Committee on Specialization reaccrediting the Criminal Trial Advocacy and Family Law Trial Advocacy programs of the National Board of Trial Advocacy as designated specialty certification programs for lawyers for an additional five-year term, and extending the period of accreditation of the Child Welfare Law program of the National Association of Counsel for Children until August 2014.

### **UNIFORM ACTS**

**[100]** The House **approved on consent** Resolution 100 as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Powers of Appointment Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested herein.

### **YOUTH AT RISK**

**[109A]** On behalf of the Commission on Youth at Risk, Vanessa P. Williams of Michigan moved Resolution 109A urging governments to enact and implement legislation and policies which prohibit youth from transitioning from foster care to a status of homelessness, or where a former foster youth will lack a permanent connection to a supportive adult. The resolution was **approved**.

**[109B]** On behalf of the Commission on Youth at Risk, Vanessa P. Williams of Michigan moved Revised Resolution 109B urging the development and adoption of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children and youth who have been exposed to violence, including victims of child abuse and neglect or other crimes and those subject to delinquency or status offense proceedings. The resolution was **approved as revised**.

### **Closing Business**

At the conclusion of the meeting of the House and after various expressions of thanks and recognitions, the Massachusetts delegation was recognized to make a presentation to the Delegates regarding the 2014 Annual Meeting in Boston.

Alan Olson of Iowa moved a resolution in appreciation of the Chicago Bar Association and Special Advisors for their efforts in hosting the meeting. The motion was **approved**.

At the conclusion of the meeting, Chair Carlson thanked the Delegates for their attention during the deliberations of the House as well as for the courtesies extended to the House Committees and staff.

Chair Robert M. Carlson recognized Hilarie Bass of Florida who then moved that



the House adjourn *sine die*. The motion was **approved**.

**ULTA 2013 Annual Report**

Annual Unclaimed Fund	Farmers Class Action Fund	
<b>Statistics since inception of program</b>		
\$ 486,072.15	\$ 518,899.76	Total of all Submitted Unclaimed Property
\$ 3,958.82	\$ 1,994.68	Total of all Claimed Property
\$ 31,851.40		Total of Property Returned/Forward to Other Jurisdictions
\$ 262,000.00		Total Funds Distributed to Programs
\$ 188,261.93	\$ 516,905.08	Balance of Funds on Hand by Fund
<b>\$</b>	<b>705,167.01</b>	<b>Total of Funds</b>

<b>Breakdowns by Year</b>		
\$ 148,911.56		Funds Collected in 2010
\$ 94,020.70		Funds Collected in 2011
\$ 146,327.91		Funds Collected in 2012
\$ 96,811.98	\$ 518,899.76	Funds Collected in 2013
\$ 486,072.15	\$ 518,899.76	Total by Fund
<b>\$</b>	<b>1,004,971.91</b>	<b>Total of all Submitted Unclaimed Property</b>
\$ 1,539.49		Funds Claimed in 2011
\$ 1,146.39		Funds Claimed in 2012
\$ 1,272.94		Funds Claimed in 2013
	\$ 1,994.68	Funds Claimed to Date 2014
\$ 3,958.82	\$ 1,994.68	Funds Claimed by Fund
<b>\$</b>	<b>5,953.50</b>	<b>Total of all Claimed Property</b>
\$ 14,108.62		Funds forwarded to Other Jurisdictions in 2011
\$ 3,197.29		funds forwarded to Other Jurisdictions in 2012
\$ 9,575.73		funds forwarded to Other Jurisdictions in 2013
\$ 4,969.76		funds returned to holder in 2014
\$ 31,851.40		Total of Property Forward to Other Jurisdictions
\$ 125,000.00		Funds Distributed to Programs in 2012
\$ 137,000.00		Funds Distributed to Programs in 2013
\$ 125,000.00		Total Funds Distributed to Programs

<b>Claimed Fund Detail</b>		
Amount	Claimed By	Date Paid
\$ 305.00	Holder	5/23/2011
\$ 10.09	Law Firm reclaimed closed IOLTA	6/28/2011
\$ 1,212.15	Estate	6/28/2011
\$ 12.25	Owner	8/29/2011
\$ 999.80	Holder	1/9/2012
\$ 6.00	Owner	5/15/2012
\$ 50.00	Owner	7/31/2012
\$ 52.55	Attorney reclaimed closed IOLTA	7/31/2012
\$ 38.04	Owner	11/14/2012
\$ 68.70	Attorney	6/3/2013
\$ 599.24	Owner	7/15/2013
\$ 155.00	Owner	10/9/2013
\$ 300.00	Holder	10/28/2013
\$ 150.00	Owner	12/2/2013
	\$ 1,622.34	Owner
	\$372.34	Owner
\$ 3,958.82	\$ 1,994.68	
<b>\$</b>	<b>5,953.50</b>	

**From:** [Sylvia Stevens](#)  
**To:** [Camille Greene](#)  
**Subject:** FW: 50 year bar awards  
**Date:** Tuesday, April 15, 2014 3:39:26 PM

---

Another for the BOG agenda.

Sylvia Stevens  
Executive Director  
503-431-6359  
sstevens@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •  
www.osbar.org

-----Original Message-----

From: Leone Gholston  
Sent: Tuesday, April 15, 2014 2:29 PM  
To: Sylvia Stevens  
Subject: FW: 50 year bar awards

Here is one from last week.

Leone Gholston  
Multimedia Specialist  
503-431-6348  
lgholston@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •  
www.osbar.org

-----Original Message-----

From: Jim Donnell [<mailto:jamescdonn@gmail.com>]  
Sent: Friday, April 11, 2014 10:26 AM  
To: Leone Gholston  
Subject: 50 year bar awards

Dear Leone,

This is a just note to let you know that I have received the package from the bar, including the framed Certificate of Membership, the bar's history book, the pin, a copy of the Bulletin, and the Memory Booklets. Everything seems to be so well done, and I wanted to thank you very much for sending them.

With kind regards,

Jim Donnell

OSB No. 64020  
[doncrane7@gmail.com](mailto:doncrane7@gmail.com)

**Donald R. Crane**  
*Attorney at Law*  
37070 Highway 62  
Chiloquin, OR 97624

*Tel (541)783-7725*  
*Fax (541)783-2245*

April 10, 2014

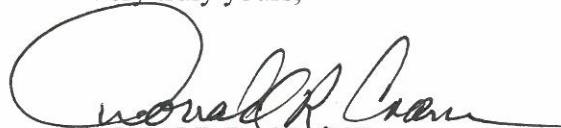
Oregon State Bar  
Leone Gholston  
16037 S.W. Upper Boones Ferry Rd.  
Tigard, OR 97224

Dear Leone:

I want to thank you and all the members of the OSB Staff who contributed to a very enjoyable presentation luncheon last week. The plaque and lapel pin and the other information you had gathered gave me proof that it was a first class bar association of which I was being honored to be a part.

I will take this experience with me as the equivalent of being notified that I had passed the bar.

Very truly yours,

  
DONALD R. CRANE

4040 Douglas Way  
P.O. Box 1146  
Lake Oswego, OR 97035  
(503) 635-9393  
Fax No. (503) 635-1526  
jacklundee@aol.com

March 4, 2014

Tom Kranovich, President  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281

RECEIVED

MAR 07 2014

Oregon State Bar  
Executive Director

Re: **Helen Hiershbiel**

Dear Tom:

Last week I had a particularly annoying encounter in a case where I had been appointed a court-annexed arbitrator. The encounter raised some lawyer or judicial ethics questions and, as I am wont to do, I corresponded with Helen Hiershbiel and Judge Waller about the situation, seeking their sage advice. Not surprisingly, Helen got back to me immediately, letting me know that this really was more on the judicial than lawyer side of things.

That prompt reply prompted me to do something I should have done long ago. I cannot tell you what an asset Helen Hiershbiel has been to me personally, and what an asset she probably is to others in the Bar. If I have a question that is giving me some ethical heartburn, I pick up the phone and call Helen. She has always been able to walk me down the ethical path with consideration, attention to detail, and a good sense of humor. Those attributes are exactly what an attorney needs when he or she is having ethical heartburn.

Helen Hiershbiel deserves appropriate accommodation for what she brings to the services that the Oregon State Bar offers.

Best regards,

  
John W. Lundeen

JWL:gg



# Legal Aid Services of Oregon

Central Administrative Office • 921 SW Washington, Suite 570 • Portland, Oregon 97205 • (503) 224-4094 • Fax: (503) 417-0147

April 21, 2014

RECEIVED

APR 22 2014

Oregon State Bar  
Executive Director

Tom Kranovich  
President  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281

Dear Mr. Kranovich:

As you know, Legal Aid Services of Oregon receives a significant part of its annual funding through the Legal Services Corporation (LSC) in Washington, DC. As part of this year's grant application for continued funding, we are asked to provide professional references. We have provided your name as one of our references. Because we think it is highly unlikely that anyone else will be competing for this grant, we do not anticipate that you will be contacted by anyone at LSC about our program, but please let me know if you have any concerns about being listed as one of our references.

We greatly appreciate your support for our program and your assistance in addressing the legal needs of low-income Oregonians.

Very truly yours,

Janice R. Morgan  
Executive Director

### EMPLOYMENT SUMMARY FOR 2013 GRADUATES

EMPLOYMENT STATUS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	144	2	4	5	155
Employed - J.D. Advantage	21	3	1	1	26
Employed - Professional Position	7	0	1	3	11
Employed - Non-Professional Position	1	2	2	5	10
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					5
Unemployed - Start Date Deferred					0
Unemployed - Not Seeking					6
Unemployed - Seeking					33
Employment Status Unknown					4
<b>Total Graduates</b>					<b>250</b>

LAW SCHOOL/UNIVERSITY FUNDED POSITIONS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	15	0	1	0	16
Employed - J.D. Advantage	1	0	0	0	1
Employed - Professional Position	0	0	0	0	0
Employed - Non-Professional Position	0	0	0	0	0
<b>Total Employed by Law School/University</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>17</b>

EMPLOYMENT TYPE	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Law Firms					
Solo	14	0	0	2	16
2 - 10	32	1	2	3	38
11 - 25	9	0	1	0	10
26 - 50	6	0	0	0	6
51 - 100	4	0	0	0	4
101 - 250	0	0	0	0	0
251 - 500	2	0	0	0	2
501 +	1	0	0	0	1
Unknown Size	1	1	0	0	2
Business & Industry	19	2	4	6	31
Government	30	1	0	0	31
Pub. Int.	26	1	0	2	29
Clerkships - Federal	3	0	0	0	3
Clerkships - State & Local	22	0	0	0	22
Clerkships - Other	1	0	0	0	1
Education	3	0	1	1	5
Employer Type Unknown	0	1	0	0	1
<b>Total</b>	<b>173</b>	<b>7</b>	<b>8</b>	<b>14</b>	<b>202</b>

EMPLOYMENT LOCATION	STATE	NUMBER
State - Largest Employment	Oregon	135
State - 2nd Largest Employment	Washington	17
State - 3rd Largest Employment	California	12

Employed in Foreign Countries	5
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- **Employed – Bar Passage Required.** A position in this category requires the graduate to pass a bar exam and to be licensed to practice law in one or more jurisdictions. The positions that have such a requirement are varied and include, for example, positions in law firms, business, or government. However, not all positions in law firms, business, or government require bar passage; for example, a paralegal position would not. Positions that require the graduate to pass a bar exam and be licensed after beginning employment in order to retain the position are included in this category. Judicial clerkships are also included in this category.
- **Employed – J.D. Advantage.** A position in this category is one for which the employer sought an individual with a J.D., and perhaps even required a J.D., or for which the J.D. provided a demonstrable advantage in obtaining or performing the job, but which does not itself require bar passage or an active law license or involve practicing law. Examples of positions for which a J.D. is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a J.D. is uncommon among persons holding such a position.
- **Employed – Professional Position.** A position in this category is one that requires professional skills or training but for which a J.D. is neither required nor a demonstrable advantage. Examples of persons in this category include a math or science teacher, business manager, or performing arts specialist. Other examples include professions such as doctors, nurses, engineers, or architects, if a J.D. was not demonstrably advantageous in obtaining the position or in performing the duties of the position.
- **Employed – Non-Professional Position.** A position in this category is one that does not require any special professional skills or training.
- **Short-term.** A short-term position is one that has a definite term of less than one year. Thus, a clerkship that has a definite term of one year or more is not a short-term position. It also includes a position that is of an indefinite length if that position is not reasonably expected to last for one year or more.  
  
A position that is envisioned by the graduate and the employer to extend for one year or more is not a short-term position even though it is conditioned on bar passage and licensure. Thus, a long-term position that is conditioned on passing the bar exam by a certain date does not become a short-term position because of the condition.
- **Long-term.** A long-term position is one that does not have a definite or indefinite term of less than one year. It may have a definite length of time as long as the time is one year or longer. It may also have an indefinite length as long as it is expected to last one year or more. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.
- **Full-time.** A full-time position is one in which the graduate works a minimum of 35 hours per week. A full-time position may be either short-term or long-term.
- **Part-time.** A part-time position is one in which the graduate works less than 35 hours per week. A part-time position may be either short-term or long-term.

**Submitted On**

**Last Updated** 3/14/2014 2:26:31 PM



## EMPLOYMENT SUMMARY FOR 2013 GRADUATES

EMPLOYMENT STATUS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	76	4	1	5	86
Employed - J.D. Advantage	19	1	1	5	26
Employed - Professional Position	3	0	2	2	7
Employed - Non-Professional Position	1	1	0	0	2
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					3
Unemployed - Start Date Deferred					0
Unemployed - Not Seeking					1
Unemployed - Seeking					18
Employment Status Unknown					8
Total Graduates					151

LAW SCHOOL/UNIVERSITY FUNDED POSITIONS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	0	0	0	4	4
Employed - J.D. Advantage	0	0	0	3	3
Employed - Professional Position	0	0	0	2	2
Employed - Non-Professional Position	0	0	0	0	0
Total Employed by Law School/University	0	0	0	9	9

EMPLOYMENT TYPE	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Law Firms					
Solo	5	0	0	0	5
2 - 10	21	1	2	2	26
11 - 25	9	0	0	0	9
26 - 50	2	0	0	0	2
51 - 100	1	0	0	0	1
101 - 250	1	0	0	0	1
251 - 500	1	0	0	0	1
501 +	3	0	0	0	3
Unknown Size	0	0	0	1	1
Business & Industry	11	1	1	0	13
Government	11	0	0	2	13
Pub. Int.	10	0	0	4	14
Clerkships - Federal	4	0	0	0	4
Clerkships - State & Local	19	3	0	0	22
Clerkships - Other	0	0	0	0	0
Education	1	1	1	3	6
Employer Type Unknown	0	0	0	0	0
Total	99	6	4	12	121

EMPLOYMENT LOCATION	STATE	NUMBER
State - Largest Employment	Oregon	65
State - 2nd Largest Employment	California	17
State - 3rd Largest Employment	Washington	13

Employed in Foreign Countries	1
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- **Employed – Bar Passage Required.** A position in this category requires the graduate to pass a bar exam and to be licensed to practice law in one or more jurisdictions. The positions that have such a requirement are varied and include, for example, positions in law firms, business, or government. However, not all positions in law firms, business, or government require bar passage; for example, a paralegal position would not. Positions that require the graduate to pass a bar exam and be licensed after beginning employment in order to retain the position are included in this category. Judicial clerkships are also included in this category.
- **Employed – J.D. Advantage.** A position in this category is one for which the employer sought an individual with a J.D., and perhaps even required a J.D., or for which the J.D. provided a demonstrable advantage in obtaining or performing the job, but which does not itself require bar passage or an active law license or involve practicing law. Examples of positions for which a J.D. is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a J.D. is uncommon among persons holding such a position.
- **Employed – Professional Position.** A position in this category is one that requires professional skills or training but for which a J.D. is neither required nor a demonstrable advantage. Examples of persons in this category include a math or science teacher, business manager, or performing arts specialist. Other examples include professions such as doctors, nurses, engineers, or architects, if a J.D. was not demonstrably advantageous in obtaining the position or in performing the duties of the position.
- **Employed – Non-Professional Position.** A position in this category is one that does not require any special professional skills or training.
- **Short-term.** A short-term position is one that has a definite term of less than one year. Thus, a clerkship that has a definite term of one year or more is not a short-term position. It also includes a position that is of an indefinite length if that position is not reasonably expected to last for one year or more.  
  
A position that is envisioned by the graduate and the employer to extend for one year or more is not a short-term position even though it is conditioned on bar passage and licensure. Thus, a long-term position that is conditioned on passing the bar exam by a certain date does not become a short-term position because of the condition.
- **Long-term.** A long-term position is one that does not have a definite or indefinite term of less than one year. It may have a definite length of time as long as the time is one year or longer. It may also have an indefinite length as long as it is expected to last one year or more. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.
- **Full-time.** A full-time position is one in which the graduate works a minimum of 35 hours per week. A full-time position may be either short-term or long-term.
- **Part-time.** A part-time position is one in which the graduate works less than 35 hours per week. A part-time position may be either short-term or long-term.

**Submitted On**

**Last Updated** 3/14/2014 2:39:39 PM



1 of 8 DOCUMENTS

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March 20, 2014 Thursday

**LENGTH:** 1002 words

**HEADLINE:** The Time Is Now For Nonlawyer Ownership;  
Guest Commentary

**BYLINE:** Frederic S. Ury

**BODY:**

It's time for the legal profession to wake up and begin discussing what it will look like in five years.

A recent editorial in the Connecticut Law Tribune, which takes a stance against nonlawyer ownership of law firms, and columnist Mark Dubois' neutral piece reciting the facts about nonlawyer ownership around the world tee up the ball for the argument in support of the proposition.

I have been beating the drum for change for a long time. I was privileged to serve on the American Bar Association's Commission on Ethics 20/20. I, along with some other members, fought for proposals to change the rules to allow nonlawyer ownership. But we lost that fight before it even started. But what is the big deal here? Just the mention of nonlawyer ownership or multidiscipline practice and most lawyers would jump to side with this paper's Editorial Board against such changes. Most lawyers believe it will be the end of the legal profession as we know it.

However, the fact of the matter is that we already have nonlawyer-owned law firms and legal service providers providing legal services. Axiom is a 1,000-person firm owned by nonlawyers providing legal and other law-related services. Notice that I did not use the term "law firm." Why? Because Axiom's own website does not identify itself as a law firm but rather as an entity "in the business of law..." In cyberspace Axiom is just as much a law firm as any firm in

Connecticut.

What about law offices in this state that are owned by insurance companies? These so-called in-house law firms are funded by insurance companies owned by nonlawyers. The fact of the matter is that our present business model is dying. Look around. The facts on the ground are telling us what we already know but don't want to admit because we are so afraid of disruptive change.

As a profession we are failing to offer legal services to the middle class, not to mention the poor. Why do 85 percent of all the divorces in Connecticut have at least one self-represented party? The reason is because most people cannot afford an attorney or they believe that an attorney will only complicate an already difficult situation. We are graduating 45,000 law students each year, yet we only have 22,000 jobs nationwide. Still, there is a significant part of the population that is unable to access an attorney.

Big Law is coming apart at the seams because the power has shifted to in-house counsel. More than 40 years ago, the profession began to abandon our bread and butter, the individual consumer, in favor of representing large corporations, which were willing to pay ever-increasing hourly rates to support hordes of young associates willing to work obscene hours for large salaries. Today, corporations have decided they are not going to continue to pay the large fees charged by these firms. They are looking for the same value that the consumer is looking for.

The reason that LegalZoom, Rocket Lawyer, and myriad other online legal service providers have eaten away at our core business is that we have let them do it. They may not be better than the lawyer down the street, but they are cheaper and faster. And if you think the Internet revolution is limited to the commoditized parts of legal practice, you are wrong. Look at Fairoutcomes.com, Completercase.com, Squaretrade, Cybersettle, Virtual Courthouse and many other online dispute resolution websites. Internet providers have made themselves accessible and easy to use, which is what consumers in today's world want. And these sites are only going to become more robust as they add artificial intelligence to their platforms. Not only will they provide the consumer with forms, they will work with the consumer to help find the correct solution to their legal problem. Sounds like practicing law?

We are the last of the self-regulated professions. Both the accounting and the medical professions are now regulated by various governmental agencies. Ask doctors and accountants if they are happy with their new governmental regulators. They are no longer in control of the direction of their profession and their destiny. We still are.

But standing still while the rest of the world is changing is not good stewardship. Refusing to change while large segments of the population have no access to an attorney is just one problem inviting a governmental response. Disruptive change is occurring all around us and we are not participating. We act as if we are above it all.

We need to become part of the solution. If nonlawyer ownership is not an answer then what is? Saying no to change is not a solution. Relying on our 100-year-old business model is not going to work in today's 21st-century Internet world.

The following changes are good starting points for the discussion:

- 1) Allow multidiscipline practice to permit accountants, financial planners, counselors and attorneys to form new entities to allow one-stop shopping for consumers. All employees and shareholders will have to live up to the high standards of the Code of Professional Responsibility.
- 2) Allow nonlawyer ownership in stages over the next five years. This will allow those bright new, tech-savvy attorneys to formulate new forms of law firms that have computer programmers and social networkers as owners.
- 3) License and regulate paralegals/legal technicians so they can offer commoditized work to consumers at a reasonable cost.
- 4) Offer a two-year master's degree in law, which is in between a paralegal and a juris doctorate. It would allow

someone who is interested in a specific area of the law to learn and concentrate in just that area.

5) Modify the ABA accreditation requirements for law schools so they can really innovate and experiment with new models and programs without any fear of losing their accreditation.

Let's begin the discussion. The legal profession is made up of many of the best and the brightest. We should be able to come up with some great ideas and solutions so that we can remain independent, relevant and self-regulated in the 21st century.

**LOAD-DATE:** March 20, 2014

### EMPLOYMENT SUMMARY FOR 2013 GRADUATES

EMPLOYMENT STATUS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	76	3	3	4	86
Employed - J.D. Advantage	16	1	1	1	19
Employed - Professional Position	3	0	0	0	3
Employed - Non-Professional Position	2	0	1	2	5
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					0
Unemployed - Start Date Deferred					0
Unemployed - Not Seeking					6
Unemployed - Seeking					3
Employment Status Unknown					1
Total Graduates					123

LAW SCHOOL/UNIVERSITY FUNDED POSITIONS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	0	2	1	2	5
Employed - J.D. Advantage	0	0	0	1	1
Employed - Professional Position	0	0	0	0	0
Employed - Non-Professional Position	0	0	0	0	0
Total Employed by Law School/University	0	2	1	3	6

EMPLOYMENT TYPE	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Law Firms					
Solo	9	0	0	0	9
2 - 10	32	2	1	2	37
11 - 25	7	0	0	0	7
26 - 50	2	0	0	0	2
51 - 100	0	0	0	0	0
101 - 250	2	0	0	0	2
251 - 500	0	0	0	0	0
501 +	0	0	0	0	0
Unknown Size	0	0	0	0	0
Business & Industry	18	2	2	3	25
Government	16	0	0	0	16
Pub. Int.	5	0	1	0	6
Clerkships - Federal	0	0	0	0	0
Clerkships - State & Local	4	0	0	0	4
Clerkships - Other	0	0	0	0	0
Education	1	0	0	1	2
Employer Type Unknown	1	0	1	1	3
Total	97	4	5	7	113

EMPLOYMENT LOCATION	STATE	NUMBER
State - Largest Employment	Oregon	86
State - 2nd Largest Employment	Washington	9
State - 3rd Largest Employment	California	3

Employed in Foreign Countries	0
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- **Employed – Bar Passage Required.**

A position in this category requires the graduate to pass a bar exam and to be licensed to practice law in one or more jurisdictions. The positions that have such a requirement are varied and include, for example, positions in law firms, business, or government. However, not all positions in law firms, business, or government require bar passage; for example, a paralegal position would not. Positions that require the graduate to pass a bar exam and be licensed after beginning employment in order to retain the position are included in this category. Judicial clerkships are also included in this category.
- **Employed – J.D. Advantage.**

A position in this category is one for which the employer sought an individual with a J.D., and perhaps even required a J.D., or for which the J.D. provided a demonstrable advantage in obtaining or performing the job, but which does not itself require bar passage or an active law license or involve practicing law. Examples of positions for which a J.D. is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a J.D. is uncommon among persons holding such a position.
- **Employed – Professional Position.**

A position in this category is one that requires professional skills or training but for which a J.D. is neither required nor a demonstrable advantage. Examples of persons in this category include a math or science teacher, business manager, or performing arts specialist. Other examples include professions such as doctors, nurses, engineers, or architects, if a J.D. was not demonstrably advantageous in obtaining the position or in performing the duties of the position.
- **Employed – Non-Professional Position.**

A position in this category is one that does not require any special professional skills or training.
- **Short-term.**

A short-term position is one that has a definite term of less than one year. Thus, a clerkship that has a definite term of one year or more is not a short-term position. It also includes a position that is of an indefinite length if that position is not reasonably expected to last for one year or more.

A position that is envisioned by the graduate and the employer to extend for one year or more is not a short-term position even though it is conditioned on bar passage and licensure. Thus, a long-term position that is conditioned on passing the bar exam by a certain date does not become a short-term position because of the condition.
- **Long-term.**

A long-term position is one that does not have a definite or indefinite term of less than one year. It may have a definite length of time as long as the time is one year or longer. It may also have an indefinite length as long as it is expected to last one year or more. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.
- **Full-time.**

A full-time position is one in which the graduate works a minimum of 35 hours per week. A full-time position may be either short-term or long-term.
- **Part-time.**

A part-time position is one in which the graduate works less than 35 hours per week. A part-time position may be either short-term or long-term.

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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](#).*