

Oregon State Bar
Meeting of the Board of Governors
September 5, 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 1:00pm on September 5, 2014.
Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, September 5, 2014, 1:00pm

1. Call to Order / Finalization of Agenda

2. Report of Officers & Executive Staff

- | | | | |
|-----------|---|--------|---------|
| A. | President's Report [Mr. Kranovich] | Inform | |
| B. | President-elect's Report [Mr. Spier] | Inform | Exhibit |
| C. | Executive Director's Report [Ms. Stevens] | Inform | Exhibit |
| D. | Director of Regulatory Services [Ms. Evans] | Inform | Exhibit |
| E. | Director of Diversity & Inclusion Report [Ms. Hyland] | Inform | |
| F. | MBA Liaison Report | Inform | |
| G. | Oregon New Lawyers Division Report [Mr. Eder] | Inform | Exhibit |

3. Professional Liability Fund [Mr. Greco]

- | | | | |
|-----------|--|--------|---------|
| A. | June 30, 2014 Financial Statements | Inform | Exhibit |
| B. | Pro-rated Assessment for Part-time Lawyers | Inform | |
| C. | Approve PLF Budget and Primary Assessment for 2015 | Action | Exhibit |
| D. | Approve Revision to PLF Policy 7.700 | Action | Exhibit |
| E. | Approve Revisions to PLF Policy 3.250 | Action | Exhibit |

4. OSB Committees, Sections and Councils

- | | | | |
|-----------|---|--------|---------|
| A. | Legal Ethics Committee [Ms. Hirschbiel] | | |
| 1) | LEC Response to HOD Resolution Proposal to Amend RPC 1.2(c) | Inform | Exhibit |
| B. | Legal Services Program Committee [Ms. Baker] | | |
| 1) | Updates to Legal Services Program Standards and Guidelines | Action | Exhibit |
| C. | Client Security Fund Committee [Ms. Stevens] | | |
| 1) | Request for Review CSF Claim CONNALL(Briggs)2014-11 | Action | Exhibit |
| 2) | CSF Claims Recommended for Awards | | |
| a) | BERTONI (Monroy) 2013-48 | Action | Exhibit |
| b) | McCARTHY (Snellings) 2014-01 | Action | Exhibit |

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

- | | | | |
|-----------|---|--------|---------|
| A. | Board Development Committee [Ms. Mitchel-Markley] | | |
| 1) | Update | Inform | |
| 2) | 2015 BOG Public Member Appointment | Action | Handout |

- B. Budget & Finance Committee [Mr. Emerick]
 - 1) Report of Chair
- C. Governance & Strategic Planning [Mr. Spier]
 - 1) Sunset of Federal Procedure & Practice Committee Action Exhibit
 - 2) Out-of-State Representation on BOG Action Exhibit
- D. Public Affairs Committee [Mr. Prestwich]
 - 1) Legislative Update Inform
- E. Executive Director Evaluation Special Committee [Mr. Kehoe]
 - 1) Process for Selecting New Executive Director Action Handout
- F. International Trade in Legal Services Task Force [Ms. Hierschbiel]
 - 1) Report and Recommendations Action Exhibit
- G. OSB Awards Nominations Committee [Ms. Pulju] Action Handout

6. Other Items

- A. Appointments to Various Bar Committees and Boards [Ms. Edwards] Action Exhibit
- B. Status & Procedure for Ongoing Strategic Planning [Mr. Spier] Inform Exhibit
- C. BOG Endorsement of Ballot Measure 89 [Ms. Kohlhoff] Action Exhibit
- D. CLE Seminars Business Models Proposal [Ms. Pulju] Action Exhibit
- E. President-Elect Selection [Mr. Spier] Inform Exhibit

7. Consent Agenda

- A. Approve Minutes of Prior BOG Meetings
 - 1) Regular Session – June 27, 2014 Action Exhibit
 - 2) Special Open Session – July 25, 2014 Action Exhibit
 - 3) Amended – April 25, 2014 Action Exhibit
- B. Section Name Change Request Action Exhibit

8. Default Agenda

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

9. Closed Sessions – CLOSED Agenda

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

10. Good of the Order (Non-Action Comments, Information and Notice of Need for Possible Future Board Action)

- A. Correspondence
- B. Articles of Interest

Report of President-Elect

Richard G. Spier

September 5, 2014

July 16, 2014	HOD Regional Meeting
July 23, 2014	Meeting with Executive Director for retreat planning
July 25, 2014	BOG and BOG committees
July 28, 2014	Meeting with Executive Director and Member/Public Services Director regarding OSB efforts to increase utilization of underemployed lawyers to provide legal services to underserved middle-income clients
July 31, 2014	OMLA reception and auction
August 5, 2014	Meeting with ONLD Chair
August 7-9, 2014	National Conference of Bar Presidents, Boston
August 13, 2014	Annual award nominating committee
August 27, 2014	Meeting with Chief Justice, Executive Director, President and Director of Public Affairs, Salem
September 4, 2014	Hispanic Heritage Celebration dinner
September 5, 2014	BOG

This report was prepared August 14, 2014, and includes anticipated activities after that date.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Sylvia E. Stevens, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> Accounting & Finance/ Facilities/IT (Rod Wegener) 	<p><i>Accounting/Finance:</i> The bar has selected a new payroll service provider allow us to migrate to a web-based system. The new service will save staff time by eliminating double entry, provide a electronic timecard feature, provide more payroll information for managers, and even save a few dollars.</p> <p><i>Information Technology:</i> The focus has been gathering data for the Request for Proposal (RFP) for a new association management system (AMS)/database software. The RFP was sent to seven vendors. Three declines and three have submitted comprehensive responses. The fourth response is due soon. The vendors are scheduled for all-day demonstrations in late September. Once the demonstrations are complete, staff will have a better understanding of the relative capabilities of the different systems as well has how much customization will be required. At that point staff will present its recommendations with cost analyses to the board.</p> <p><i>Facilities:</i> The building adjacent to the bar center is now at full occupancy. With the elimination of competition for similar sized space, hopefully the vacant 2,100 s.f. on the bar center first floor can be leased. Unfortunately the tenant leasing 6,000 s.f. on the first floor wants to terminate its lease prematurely and we are in negotiations over how to do that most effectively.</p>
<ul style="list-style-type: none"> Communications & Public Services (includes RIS and Creative Services) (Kay Pulju) 	<p><i>Communications</i></p> <ul style="list-style-type: none"> The Creative Services team continues its focus on marketing CLE Seminars, including rebranding all electronic and print materials. A public outreach campaign for LRS is in development, along with ongoing marketing and communications support for other bar programs and special events such as the Notario Fraud Conference. The July edition of the Bulletin featured articles on civil rights and national security; the combined August/September edition features articles on small claims court and the anniversary of Oregon Women Lawyers. Communications staff have been updating public legal information materials and communications planning for eCourt, regulatory notices and member demographics. Revenue from the bar's online career center reached nearly \$12,000 in July, exceeding the projected total revenue for 2014.

<ul style="list-style-type: none"> ▪ CLE Seminars (Karen Lee) 	<ul style="list-style-type: none"> ▪ Sponsored a series of seven webcast-only seminars on workplace fraud. The most well-attended topics dealt with technology forensics and computers and social media. ▪ Determined a way to offer closed captioning for live webcasts using a court reporter system call Stream Text. ▪ Worked with the Creative Services and Communications Department on a facelift for CLE Seminars brochures and the CLE homepage.
<ul style="list-style-type: none"> ▪ Diversity & Inclusion (Mariann Hyland) 	<p><i>OLIO</i></p> <ul style="list-style-type: none"> ▪ Weekend was kicked-off with a welcome by BOG President, Tom Kranovich, who also provided one of the keynote speeches. Other keynote presenters were Bonnie Richardson and Washington County Circuit Court Judge Oscar Garcia. ▪ A total of 51 students this year: 19 from Lewis & Clark; 12 from Willamette; 16 from University of Oregon; 3 undergraduate guests; and 2 summer law clerks from sponsoring law firms – a University of Oregon student from Davis Wright Tremaine (counted in the UO number above), and a University of Washington student from Schwabe Williamson & Wyatt ▪ 12 judges in attendance, including 4 who said they had never been to an OLIO in the past – James Fun (Washington County), Ancer Haggerty (US District Court), Douglas Van Dyk (Clackamas County), and Kathryn Villa-Smith (Multnomah County). ▪ 43 attorneys in attendance; Dan Simon was Emcee. <p><i>Public Honors Fellowships and Clerkship Stipend Programs</i></p> <ul style="list-style-type: none"> ▪ Student awardees under these programs have either finished up, or are finishing up, their summer employment as the awards to not go into the academic year. <p><i>Explore the Law Program</i></p> <ul style="list-style-type: none"> ▪ Getting ready to kick-off the 2014-15 year ▪ 26 applicants, 22 accepted into program for the coming year <p><i>Judicial Mentorship Program</i></p> <ul style="list-style-type: none"> ▪ Reaching to out Judge Tom Rastetter to plan for 2014 programming. <p><i>Diversity Story Wall</i></p> <ul style="list-style-type: none"> ▪ Unveiling scheduled for November 7, following the HOD meeting.
<ul style="list-style-type: none"> ▪ General Counsel (includes CAO and MCLE) (Helen Hierschbiel) 	<p><i>General Counsel's Office</i></p> <ul style="list-style-type: none"> ▪ The Legal Ethics Committee met twice to discuss the Board's request that it draft either an opinion or an amendment to the Rules of Professional Conduct that will clearly permit lawyers to advise clients involved in the medical marijuana business. The LEC plans to have a proposed change to RPC 1.2 for the Board to consider at its October 3 meeting. ▪ The Notario Fraud Conference will be held on September 24, 2014 at the Oregon State Bar Center. More information can be found here: http://www.osbar.org/cle/assets/brochures/2014/NFC14.pdf#page=2. ▪ General Counsel attended the OLIO orientation on Friday August 8 and the

	<p>Say Hey event on August 21.</p> <ul style="list-style-type: none"> ▪ The Bar Accessibility Review Team (BART) was formed to ensure that the bar is meeting the needs of its members with disabilities. To that end, BART will be: <ul style="list-style-type: none"> ○ sending out a survey about the bar's accessibility to members who have self-identified as having a disability ○ co-sponsoring a CLE with the disability law section on September 13 regarding how to better serve clients with disabilities ○ holding a three-part ADA training for bar staff, the first of which will feature guest speaker Denise Spielman. ○ <p><i>Client Assistance Office</i></p> <ul style="list-style-type: none"> ▪ Since the beginning of 2014, the Client Assistance Office has handled approximately 1200 complaints, some of which are being handled exclusively via email. ▪ CAO Assistant General Counsel Troy Wood was a speaker on a panel addressing <i>Volunteerism in the Bar</i> at the National Organization of Bar Counsel conference in Boston, Massachusetts.
<ul style="list-style-type: none"> ▪ Human Resources (Christine Kennedy) 	<ul style="list-style-type: none"> ▪ Recruiting for Assistant Disciplinary Counsel – Probation and Enforcement, Accounting Specialist – A/P (part time), Discipline Paralegal, 2 RIS Assistants – Bilingual (part time), RIS Assistant (part time), and Design and Production Artist. ▪ One RIS Assistant (part time) position was filled. ▪ Meeting with all directors and managers for the mid-year performance evaluation reviews. ▪ Working with staff committees on new ways to recognize employee contributions and on the new payroll software selection and conversion.
<ul style="list-style-type: none"> ▪ Legal Publications (Linda Kruschke) 	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since my last report: <ul style="list-style-type: none"> ○ Four revised <i>Uniform Criminal Jury Instruction</i>. ○ Fifty-four reviewed or revised <i>Uniform Civil Jury Instructions</i>. ○ Twenty-five revised <i>Oregon Formal Ethics Opinions</i> and the 2014 supplement. ○ Three chapters of <i>Oregon Real Estate Deskbook</i>. ○ Eighteen chapters of the PLF book <i>Oregon Statutory Time Limitations</i>, which will be made live next week when the print book is finalized. ▪ <i>Oregon Formal Ethics Opinions</i> supplement went to the printer in early July. Revenue to date is \$8,345, against a revenue budget of \$4,400. ▪ The OSB recently signed an agreement to license our jury instructions to Thomson Reuters (Westlaw) for a 20% royalty of revenue. This is the third database provider to license the jury instructions. ▪ The PLF book <i>Oregon Statutory Time Limitations</i> is going to the printer in early September. Our PLF contact has expressed

	<p>appreciation for all of the editing and formatting work we have done and there is a consensus that this edition is a great improvement over previous editions.</p> <ul style="list-style-type: none"> Our blog at http://legalpubs.osbar.org has had 10,814 visitors to date. We have had 218 visitors who have found the blog through Google searches and several others from other search engines.
<ul style="list-style-type: none"> Legal Services Program (Judith Baker) (includes LRAP, Pro Bono and an OLF report) 	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> The LSP Committee is forwarding updates to the LSP Standards and Guidelines for the BOG's approval at the September meeting. Legal aid programs will begin collecting additional outcome information on those cases litigated or settled and will forward that information to the LSP for integration into its oversight reviews. The LSP Committee reviewed and determined next steps for two complaints received by staff concerning the Oregon Law Center. Staff continues to plan the Pro Bono Fair and Celebration, scheduled for Thursday, October 23 at the World Trade Center. <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> Columbia Bank has agreed to be an OLF Leadership Bank at the Advocacy Level resulting in an additional \$70,000 annual interest income for the OLF. IOLTA programs nationwide were awarded part of the \$17 billion Bank of America settlement, which will result in approximately \$450,000 forwarded to the OLF in the next year to be used for foreclosure prevention legal services and community redevelopment legal services.
<ul style="list-style-type: none"> Media Relations (Kateri Walsh) 	<ul style="list-style-type: none"> (No report; Kateri is on sabbatical until October.)
<ul style="list-style-type: none"> Member Services (Dani Edwards) 	<ul style="list-style-type: none"> The volunteer recruitment process is nearing an end. Though we have experienced significant growth in lawyer volunteer interest the last two years, the overall interest this year has decreased to our usual level. More than 200 of these volunteers will be appointed during the October and November Board Development Committee meetings. The Board Development Committee will conduct interviews for next year's BOG public member position on September 5. The committee's recommendation is expected to go to the full board during the meeting that same day. In September the bar will conduct a preference poll for all contested judicial positions appearing on Oregon General Election ballot. One candidate has withdrawn from the Region 5 BOG election. The remaining candidates are Christopher Piekarski and Per A. Ramfjord. Information on candidates from regions 4, 6 and 7 is available online at http://www.osbar.org/leadership/bog.
<ul style="list-style-type: none"> New Lawyer Mentoring (Kateri Walsh) 	<ul style="list-style-type: none"> (No report; Kateri is on sabbatical until October.)
<ul style="list-style-type: none"> Public Affairs (Susan Grabe) 	<ul style="list-style-type: none"> Summary. With the 2014 Legislative Session over, the Public Affairs Department has focused on looking ahead to the 2015 Legislative Session.

	<ul style="list-style-type: none"> ▪ 2015 Law Improvement Package. The Bar's package of 22 Law Improvement proposals has been sent to Legislative Counsel's office for pre-session filing and 6 have been finalized. Public Affairs staff continues to reach out to bar groups and stakeholders to address concerns regarding law improvement legislation. ▪ Liaison activities. 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, standing, adoption law and probate modernization, as well as the OSB/OJD eCourt Task Force. Staff continues to participate in numerous legislative workgroups including the Elder Abuse Task Force and Privacy workgroups. Public Affairs has also been actively working with OJD to educate bar members about Oregon eCourt implementation, and eFiling, which will become mandatory December 1, 2015. This has included facilitating UTRC modifications regarding document retention and document access. ▪ Legislative cycle and budget. The Public Affairs Department has begun preparation for the 2015 legislative cycle and budget. The move to Annual Sessions has changed timeframes, workflow and speed of response time. This has, in turn, required a shift in bar operations to ensure effective participation in the process.
<ul style="list-style-type: none"> ▪ Regulatory Services (Dawn Evans) 	<p><i>Admissions</i> The Admissions staff provided support for the July bar exam, which ran quite smoothly despite some nationally-publicized glitches that occurred in the software used by Oregon and many other states to house and upload examination answers. Because Oregon's process historically provides approximately forty-eight hours from the time the examination is completed for students to upload their answers, the crunch that caused a bottleneck in some central and eastern states in the hours immediately following the examination did not impact Oregon's law students.</p> <p><i>Disciplinary Counsel's Office</i> DCO is working to fill two positions that have been vacant for a number of months. One is for an attorney with 3-5 years' experience as a civil trial practitioner. This position will focus pursuit of postjudgment enforcement efforts involving lawyers who are on diversion, probation and suspension judgments, as well as contested reinstatement and admission proceedings. As time permits, this lawyer will handle a caseload of new matters. The second position is a paralegal position to support the trial lawyers.</p>

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

Date	Event
7/9	Lunch @ K&L Gates
7/9	CEJ Board Meeting
7/12	CSF Committee Meeting
7/15	Out-of-State Region HOD Meeting
7/16	EDs Breakfast
7/16	Region 5 HOD Meeting

7/17	Region 6 HOD Meeting
7/17	Region 4 HOD Meeting
7/21	Lunch @ Landye Bennett
7/24	CLE: The Civil Rights Act of 1964
7/25	BOG Committees and Special Meeting
7/31	OMLA Social & Action
8/5-9	NABE/NCBP Meetings—Boston
8/14	PLF Board Meeting
8/18	World Affairs Council—Meeting with Public Defense Lawyers from Ukraine
8/20	EDs Breakfast
8/21	Partners in Diversity “Say Hey” Reception
8/25	L&C Law School Professionalism Orientation
8/27	Meeting with Chief Justice
9/4	CEJ Board Meeting
9/4	Hispanic Heritage Celebration Dinner

Notes from Meeting with Chief Justice Balmer

August 27, 2014

OSB Center, Tigard, Oregon

Present: Chief Justice Balmer, Tom Kranovich, Richard Spier, Sylvia Stevens, Susan Grabe, Lisa Norris-Lampe, Phil Lemman.

1. Mr. Kranovich reported on the following BOG items:
 - a. The BOG approved revised version of RPC 8.4 that will go to the HOD in November;
 - b. The BOG will decide by early October whether it will be asking for a general membership fee increase for 2015;
 - c. The BOG is considering policy changes designed to improve the financial performance of the CLE Seminars program while also enhancing the planning and implementation of programs;
 - d. The ABA Discipline System Evaluation report is expected in February; the BOG has authorized Mr. Kranovich to appoint a Review Committee of OSB members to make recommendations to the BOG regarding any changes suggested by the ABA;
 - e. The Chief was asked to submit written support for the BOG's proposed changes to the BBX structure and authority; and
 - f. The issue of out-of-state representation on the BOG is on the agenda for September 5.
2. Ms. Grabe reported that the BOG's legislative priorities for 2015 continue to be adequate funding for the courts and for legal services, together with law improvement issues. She explained the efforts the bar is making to assist lawyers with the December 1 mandate for e-filing. The Chief expressed his appreciation for the bar's assistance with all aspects of the eCourt implementation.
3. The Chief Justice had three matters for discussion:
 - a. Funding for courthouse improvements and upgrades; the process is complicated and not well understood, but the projects deemed most urgent are moving forward. Mr. Lemman explained that funding for ADA compliance and safety projects comes from a different source.
 - b. The Chief's new budget will include funding for three new circuit court judges, family law coordinators, staffing for SFLAC, and an increase in judicial salaries. He looks forward to support from the Citizens' Coalition for Court Funding, which was very helpful during the last budget session.

- c. Judicial selection continues to be a concern, especially in light of the expensive and partisan campaigns that are increasingly common in other states. Ms. Stevens provided some history on what the bar has done and is doing in that area, including producing a voters' guide. Everyone agreed that Oregon is not likely to give up the right to elect its judges.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 20, 2014
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors last met in June 2014, the Supreme Court took the following action in disciplinary matters:

- Issued an opinion in *In re Michael L. Spencer* suspending this Klamath Falls lawyer for 30 days for violating RPC 1.8(a) when he entered into a business transaction with his client without advising his client to seek independent legal advice and giving his client reasonable opportunity to do so, and without obtaining his client's written consent; and
- Issued an order in *In re Karl W. Kime* suspending this Coeur d'Alene, Idaho, lawyer for 1 year in a reciprocal discipline proceeding following a 1-year suspension which was withheld pending successful completion of a probation in Idaho after conviction of felony Driving Under the Influence and stipulating that his conduct violated Idaho Commission Rule 505(b); and
- Accepted the Form B resignation from Nampa, Idaho, lawyer *B. Todd Bailey*.

b. Disciplinary Board

No appeal was filed in the following case and this trial panel opinion is now final:

- *In re Jeff Wilson Richards* of Eugene (90-day suspension) became final on August 20, 2014.

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

- A trial panel recently issued an opinion in *In re Jeff Wilson Richards* of Eugene (90-day suspension) for inadequate communication with a client, failure to properly withdraw from representation, and failure to take reasonably practicable steps to protect a client after termination of employment.

- A trial panel recently issued an opinion in *In re Jennifer L. Perez* of Mesa, Arizona, (1-year suspension) for lack of competence, neglect of a legal matter, inadequate communication with a client, knowing failure to respond to disciplinary inquiries, and dishonesty/misrepresentation.
- A trial panel recently issued an opinion in *In re Eric Kaufman* of Lake Oswego (disbarment) for neglect of a legal matter, failure to communicate with his client, failing to promptly deliver property his clients were entitled to receive, failing to take steps to the extent reasonably practicable to protect a client's interests, and failure to respond to disciplinary inquiries.
- A trial panel recently issued an opinion in *In re Debbe J. von Blumenstein* of Salem (2-year suspension) for neglect of a legal matter, duty to keep a client reasonably informed and to respond to reasonable requests for information, duty to provide competent representation, charge or collect an illegal or clearly excessive fee, duty to hold client property separate from the lawyer's own property, duty to deposit and maintain client money in trust, and duty to promptly provide client property and to account for client property upon request.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulation for discipline in: *In re Philip A. Hingson* of Portland (60-day suspension, all stayed, 2-year probation).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Alan K. Wood* of Beaverton, *In re W. Blake Simms* of Tempe, Arizona, *In re Steven M. McCarthy* of DeLand, Florida, *In re Justin E. Throne* of Klamath Falls, *In re Diarmuid Yaphet Houston* of Portland, *In re David Stanley Aman*, of Portland, *In re Matthew A. Wilson*, of Portland, and *In re Andrew J. Lopata* of Eugene.

2. Decisions Pending.

The following matters are pending before the Supreme Court:

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

In re Barnes H. Ellis and Lois O. Rosenbaum – reprimand; accuseds and OSB appealed; under advisement

In re Rick Sanai – reciprocal discipline matter referred to Disciplinary Board for trial

In re David Herman—disbarment; accused appealed; oral argument September 16, 2014

In re James C. Jagger –90-day suspension; accused appealed; awaits oral argument

In re Karl W. Kime—BR 3.4 petition pending

In re Matthew R. Aylworth -- reciprocal discipline matter referred to Disciplinary Board

In re Siovhán Sheridan – BR 3.2 petition pending

In re Eric Einhorn – 3-year suspension, 30 months stayed, probation; OSB appealed

In re Debbe J. von Blumenstein – BR 3.1 petition pending

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

None.

3. Trials.

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

In re Joseph Raymond Sanchez – October 7, 2014

4. Diversions.

The SPRB approved the following diversion agreement since February 2014:

In re Alice Harman – effective July 31, 2014

In re Gary E. Lockwood – effective August 1, 2014

5. Admonitions.

The SPRB issued 3 letters of admonition in June and July. The outcome in this matter is as follows:

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

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 #):

MONTH	2010	2011	2012	2013	2014
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	45/47
May	119/119*	143/146*	19/20	37/37	23/24
June	23/26	20/20	39/40	31/31	23/24
July	29/34	27/28	22/22	28/30	43/44
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	
TOTALS	409/428	444/459	350/359	341/349	228/240

* = includes IOLTA compliance matters

As of August 1, 2014, there were 203 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 35% are less than three months old, 28% are three to six months old, and 37% are more than six months old. Twenty of these matters are on the SPRB agenda in August. Staff has been focusing on disposing of oldest cases in the past several months.

7. Reinstatements.

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

DME/rh

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 20, 2014
From: Ben Eder, Oregon New Lawyers Division Chair
Re: ONLD Report

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

- We have continued with our brown bag lunch CLE programs in Portland with topics including access to justice, business litigation, cross examination, employment Law, and ethics.
- The Member Services Subcommittee held a raft trip. Thirty-one participants attended the July 19 event. A social is also scheduled in Portland on August 20 at Olive & Twist.
- Several members of the executive committee are finalizing school loan repayment information to place on the OSB website. The resource is expected to be available in time for the new member swearing in ceremony in October and will be followed by a live program offered by Bill Penn.
- Two members of the ONLD Executive Committee were grateful for the opportunity to attend the OLIO Orientation in Hood River this year. Karen Clevering, ONLD Chair-Elect, participated in a panel discussion on networking and David Eder, Past-Chair, was available as a resource to the students.
- A nominating committee was created to develop the slate for 2015. Four seats on the executive committee are up for election this year, two member at large seats and positions representing regions 3 and 7.
- A two-part CLE program is under development and will be co-sponsored with the OSB Litigation Section.

**Oregon State Bar
Professional Liability Fund
Financial Statements
6/30/2014**

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6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
6/30/2014**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,657,747.77	\$1,005,785.75
Investments at Fair Value	50,661,877.02	44,138,914.58
Assessment Installment Receivable	4,748,576.03	5,120,922.50
Due from Reinsurers	708,820.25	45,773.35
Other Current Assets	95,921.39	101,689.60
Net Fixed Assets	872,703.06	922,908.38
Claim Receivables	35,009.00	57,884.84
Other Long Term Assets	<u>11,167.40</u>	<u>11,288.71</u>
TOTAL ASSETS	<u>\$58,791,821.92</u>	<u>\$51,405,167.71</u>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$132,913.85	\$127,195.16
Due to Reinsurers	\$978,150.04	\$959,394.10
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	11,546,126.91	12,500,000.00
Liability for Claim Expense	14,882,498.43	13,500,000.00
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)	2,300,000.00	2,400,000.00
Excess Ceding Commission Allocated for Rest of Year	404,875.63	371,738.67
Assessment and Installment Service Charge Allocated for Rest of Year	<u>12,474,632.33</u>	<u>12,674,832.00</u>
Total Liabilities	<u>\$46,990,015.18</u>	<u>\$47,078,780.44</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$9,270,287.61	\$4,047,255.11
Year to Date Net Income (Loss)	<u>2,531,519.13</u>	<u>279,132.16</u>
Net Position	<u>\$11,801,806.74</u>	<u>\$4,326,387.27</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$58,791,821.92</u>	<u>\$51,405,167.71</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
6 Months Ended 6/30/2014**

	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>
<u>REVENUE</u>					
Assessments	\$12,307,728.34	\$12,561,499.98	\$253,771.64	\$12,479,318.50	\$25,123,000.00
Installment Service Charge	166,904.00	195,000.00	28,096.00	195,513.50	390,000.00
Other Income	35,042.45	0.00	(35,042.45)	24,653.54	0.00
Investment Return	<u>2,428,237.62</u>	<u>1,346,131.98</u>	<u>(1,082,105.64)</u>	<u>1,032,007.61</u>	<u>2,692,264.00</u>
TOTAL REVENUE	<u>\$14,937,912.41</u>	<u>\$14,102,631.96</u>	<u>(\$835,280.45)</u>	<u>\$13,731,493.15</u>	<u>\$28,205,264.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$9,198,000.00			\$9,480,000.00	
Actuarial Adjustment to Reserves	0.00			664,997.05	
Coverage Opinions	33,234.21			85,422.06	
General Expense	11,464.17			75,613.66	
Less Recoveries & Contributions	19,725.57			(3,962.90)	
Budget for Claims Expense		<u>\$10,336,320.00</u>			<u>\$20,672,640.00</u>
Total Provision For Claims	<u>\$9,262,423.95</u>	<u>\$10,336,320.00</u>	<u>\$1,073,896.05</u>	<u>\$10,302,069.87</u>	<u>\$20,672,640.00</u>
Expense from Operations:					
Administrative Department	\$1,175,819.14	\$1,241,186.10	\$65,366.96	\$1,041,442.73	\$2,482,372.00
Accounting Department	303,142.95	318,830.94	15,687.99	392,164.03	637,662.00
Loss Prevention Department	891,900.59	1,040,512.02	148,611.43	888,146.55	2,081,023.00
Claims Department	1,287,201.24	1,332,233.82	45,032.58	1,246,433.72	2,664,467.00
Allocated to Excess Program	<u>(560,394.48)</u>	<u>(560,394.48)</u>	<u>0.00</u>	<u>(552,552.00)</u>	<u>(1,120,789.00)</u>
Total Expense from Operations	<u>\$3,097,669.44</u>	<u>\$3,372,368.40</u>	<u>\$274,698.96</u>	<u>\$3,015,635.03</u>	<u>\$6,744,735.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$157,350.48	\$157,350.48	\$0.00	\$314,701.00
Depreciation and Amortization	\$83,352.75	\$84,900.00	\$1,547.25	\$84,323.11	\$169,800.00
Allocated Depreciation	<u>(12,183.00)</u>	<u>(12,183.00)</u>	<u>0.00</u>	<u>(15,028.02)</u>	<u>(24,366.00)</u>
TOTAL EXPENSE	<u>\$12,431,263.14</u>	<u>\$13,938,755.88</u>	<u>\$1,507,492.74</u>	<u>\$13,386,999.99</u>	<u>\$27,877,510.00</u>
NET POSITION - INCOME (LOSS)	<u>\$2,506,649.27</u>	<u>\$162,876.06</u>	<u>(\$2,343,773.21)</u>	<u>\$344,493.16</u>	<u>\$325,754.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
6 Months Ended 6/30/2014**

	<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>
<u>EXPENSE:</u>						
Salaries	\$345,150.38	\$2,061,763.92	\$2,166,694.98	\$104,931.06	\$2,046,198.26	\$4,333,390.00
Benefits and Payroll Taxes	127,314.13	758,564.30	806,763.12	48,198.82	725,507.10	1,613,526.00
Investment Services	7,086.00	13,839.75	13,999.98	160.23	13,884.00	28,000.00
Legal Services	1,476.00	1,476.00	6,499.98	5,023.98	4,127.50	13,000.00
Financial Audit Services	0.00	13,000.00	11,899.98	(1,100.02)	22,600.00	23,800.00
Actuarial Services	0.00	11,340.00	10,999.98	(340.02)	6,448.75	22,000.00
Information Services	3,721.80	25,328.24	48,800.04	23,471.80	48,896.58	97,600.00
Document Scanning Services	0.00	2,096.48	32,500.02	30,403.54	9,198.42	65,000.00
Other Professional Services	9,731.65	52,065.99	35,115.00	(16,950.99)	27,130.01	70,230.00
Staff Travel	5,104.31	9,476.75	7,525.02	(1,951.73)	7,316.37	15,050.00
Board Travel	8,500.98	15,301.49	19,499.94	4,198.45	9,060.47	39,000.00
NABRICO	2,707.34	2,707.34	5,299.98	2,592.64	800.00	10,600.00
Training	907.65	12,217.14	10,999.98	(1,217.16)	13,032.95	22,000.00
Rent	42,777.25	255,715.24	265,439.52	9,724.28	251,936.24	530,879.00
Printing and Supplies	3,085.16	34,825.00	30,500.04	(4,324.96)	21,730.19	61,000.00
Postage and Delivery	3,507.71	11,921.10	17,375.04	5,453.94	17,144.72	34,750.00
Equipment Rent & Maintenance	837.70	21,882.12	20,250.00	(1,632.12)	20,082.33	40,500.00
Telephone	4,331.32	23,381.48	28,980.00	5,598.52	23,712.99	57,960.00
L P Programs (less Salary & Benefits)	31,435.40	167,886.64	222,397.50	54,510.86	151,215.61	444,794.00
Defense Panel Training	76.99	76.99	750.06	673.07	219.90	1,500.00
Bar Books Grant	16,666.67	100,000.02	100,000.02	0.00	100,000.02	200,000.00
Insurance	0.00	8,221.00	19,572.48	11,351.48	8,432.00	39,145.00
Library	8,236.67	18,265.59	16,500.00	(1,765.59)	15,121.44	33,000.00
Subscriptions, Memberships & Other	1,769.43	25,234.78	22,399.98	(2,834.80)	24,391.18	44,800.00
Allocated to Excess Program	(93,399.08)	(560,394.48)	(560,394.48)	0.00	(552,552.00)	(1,120,789.00)
TOTAL EXPENSE	<u>\$531,025.46</u>	<u>\$3,086,192.88</u>	<u>\$3,360,368.16</u>	<u>\$274,175.28</u>	<u>\$3,015,635.03</u>	<u>\$6,720,735.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
6 Months Ended 6/30/2014**

	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>
<u>REVENUE</u>					
Ceding Commission	\$404,875.63	\$379,999.98	(\$24,875.65)	\$371,738.68	\$760,000.00
Prior Year Adj. (Net of Reins.)	3,446.70	750.00	(2,696.70)	3,371.55	1,500.00
Installment Service Charge	39,808.00	21,000.00	(18,808.00)	41,433.00	42,000.00
Investment Return	<u>217,660.37</u>	<u>101,321.52</u>	<u>(116,338.85)</u>	<u>135,902.11</u>	<u>202,643.00</u>
TOTAL REVENUE	<u>\$665,790.70</u>	<u>\$503,071.50</u>	<u>(\$162,719.20)</u>	<u>\$552,445.34</u>	<u>\$1,006,143.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$628,737.84	\$624,350.52	(\$4,387.32)	\$602,778.32	\$1,248,701.00
Allocated Depreciation	<u>\$12,183.00</u>	<u>\$12,183.00</u>	<u>\$0.00</u>	<u>\$15,028.02</u>	<u>\$24,366.00</u>
NET POSITION - INCOME (LOSS)	<u>\$24,869.86</u>	<u>(\$133,462.02)</u>	<u>(\$158,331.88)</u>	<u>(\$65,361.00)</u>	<u>(\$266,924.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
6 Months Ended 6/30/2014**

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
<u>EXPENSE:</u>						
Salaries	\$58,191.10	\$349,146.60	\$349,146.48	(\$0.12)	\$335,219.74	\$698,293.00
Benefits and Payroll Taxes	21,551.82	129,313.20	128,501.04	(812.16)	125,417.60	257,002.00
Investment Services	414.00	1,160.25	1,249.98	89.73	1,116.00	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,533.84	135,203.04	135,202.98	(0.06)	139,437.00	270,406.00
Reinsurance Placement & Travel	8,794.70	10,614.75	2,500.02	(8,114.73)	189.45	5,000.00
Training	0.00	0.00	250.02	250.02	0.00	500.00
Printing and Mailing	0.00	0.00	2,749.98	2,749.98	92.38	5,500.00
Program Promotion	0.00	3,300.00	3,750.00	450.00	1,306.15	7,500.00
Other Professional Services	0.00	0.00	1,000.02	1,000.02	0.00	2,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
 TOTAL EXPENSE	 <u>\$111,485.46</u>	 <u>\$628,737.84</u>	 <u>\$624,350.52</u>	 <u>(\$4,387.32)</u>	 <u>\$602,778.32</u>	 <u>\$1,248,701.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
6 Months Ended 6/30/2014**

	CURRENT MONTH THIS YEAR	YEAR TO DATE THIS YEAR	CURRENT MONTH LAST YEAR	YEAR TO DATE LAST YEAR
Dividends and Interest:				
Short Term Bond Fund	\$6,956.69	\$70,358.70	\$8,065.91	\$112,645.22
Intermediate Term Bond Funds	57,812.29	143,644.20	21,020.60	119,340.26
Domestic Common Stock Funds	40,411.26	158,733.23	44,238.77	82,719.02
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	34,110.77	72,494.95	81,339.95	90,808.77
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>62,761.68</u>	<u>160,695.86</u>	<u>29,601.90</u>	<u>68,496.13</u>
Total Dividends and Interest	<u>\$202,052.69</u>	<u>\$605,926.94</u>	<u>\$184,267.13</u>	<u>\$474,009.40</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	(\$7,130.28)	\$60,206.67	(\$82,376.74)	(\$149,823.75)
Intermediate Term Bond Funds	(12,139.73)	251,320.17	(221,753.64)	(335,905.20)
Domestic Common Stock Funds	205,158.67	439,644.36	(164,739.08)	960,762.84
International Equity Fund	90,845.12	512,176.90	(261,979.03)	284,620.37
Real Estate	65,933.29	124,276.08	59,323.48	134,418.43
Hedge Fund of Funds	0.00	0.00	(71,923.44)	197,619.47
Real Return Strategy	<u>258,610.90</u>	<u>652,346.87</u>	<u>(269,163.74)</u>	<u>(397,791.84)</u>
Total Gain (Loss) in Fair Value	<u>\$601,277.97</u>	<u>\$2,039,971.05</u>	<u>(\$1,012,612.19)</u>	<u>\$693,900.32</u>
TOTAL RETURN	<u>\$803,330.66</u>	<u>\$2,645,897.99</u>	<u>(\$828,345.06)</u>	<u>\$1,167,909.72</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$11,698.85	\$50,514.50	\$12,677.58	\$41,105.49
Gain (Loss) in Fair Value	<u>34,813.99</u>	<u>167,145.87</u>	<u>(69,667.72)</u>	<u>94,796.62</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$46,512.84</u>	<u>\$217,660.37</u>	<u>(\$56,990.14)</u>	<u>\$135,902.11</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 20, 2014
From: Ira Zarov – PLF CEO
Re: 2015 PLF Assessment and Budget

Action Recommended

Approve the 2015 Budget and Assessment.

Background

On an annual basis, the Board of Governors approves the PLF budget and assessment for the coming year. The Board of Directors proposes that the assessment remain at \$3500 (unchanged from 2014). The attached materials contain the proposed budget and recommendations concerning the assessment.

The highlights of the budget include a 3% salary pool, a \$200,000 contribution to the OSB for BarBooks and a new Practice Management Advisor position. The overall increase to the 2015 budget is 3.31 percent higher than the 2014 budget. The main reasons for the increases are the 3% salary increase and related benefits costs, new loss prevention position, the E&O premium, employee training and travel, scanning of old claims, and the ongoing update of the PLF website.

Attachments

August 12, 2014

To: PLF Finance Committee (John Berge, Chair; Tim Martinez, and Dennis Black) and
PLF Board of Directors

From: Ira Zarov, Chief Executive Officer
Betty Lou Morrow, Chief Financial Officer

Re: 2015 PLF Budget and 2015 PLF Primary Assessment

I. Recommended Action

We recommend that the Finance Committee make the following recommendations to the PLF Board of Directors:

1. Approve the 2015 PLF budget as attached. This budget uses a 2015 salary pool recommendation of **3.0%**. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2015 PLF Primary Program assessment. We recommend that the 2015 assessment be \$3,500, which is the same amount as the past four years.

II. Executive Summary

1. In addition to the aforementioned 3% salary pool, the medical benefits have increased by 1.09%, as a percentage of total salaries. One (1) FTE claims attorney position was eliminated through attrition. The OAAP PMA staffing was increased by 1 FTE.
2. The actuarial 2015 Assessment study estimates a cost of \$2,731 per lawyer for new 2015 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.

III. 2015 PLF Budget

Number of Covered Attorneys

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. (The figures are found on pages 1 and 8 of the budget document.) These statistics illustrate the changes in the number of lawyers covered by each program and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,064 full-pay attorneys for 2014. For the past five years, the average annual growth of full-pay attorneys has been .92 percent. We have chosen to use the growth rate of 1% for 2015 which translates to 7135 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. Covered attorneys dropped 5.2% from 2012 to 2013, and 3.1% year to date 2013 to 2014. For those reasons we have chosen a decline of 3% from 2014 levels to 2015. This will translate to a total of 2110 covered attorneys through our Excess program in 2015.

Full-time Employee Statistics (Staff Positions)

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

	<u>2014 Projections</u>	<u>2015 Budget</u>
Administration	9.00 FTE	9.00 FTE
Claims	19.75 FTE	18.75 FTE
Loss Prevention (includes OAAP)	13.58 FTE	14.58 FTE
Accounting	7.95 FTE	7.95 FTE
Total	50.28 FTE	50.28 FTE

We continue to have some permanent positions staffed at less than full-time levels for both 2014 and 2015. Some staff members work from 30 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

During the first half 2014, two Claims Attorneys, and a Claims Secretary retired. One of the attorneys and the claims secretary will be replaced. An additional OAAP attorney has been hired and will start in the fall of 2014.

The Accounting Supervisor will retire in August of 2014. Her position will be filled at a full time equivalent but the duties will be reduced and the salary will reduce accordingly.

The two IT staff that had previously been budgeted in Administration are now included in the Accounting budget to follow their line of supervision.

The CEO announced his retirement and will be finished at the PLF in September of 2014. His replacement has been hired and will start in October of 2014.

Allocation of Costs between the Excess and Primary Programs

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program.

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2015 allocation of salary, benefits and overhead is about 15.73 percent of total administrative operating expense. This is HIGHER than the percentage used in the 2014 budget (14.35 percent).

Primary Program Revenue

Projected assessment revenue for 2014 is based upon the \$3,500 basic assessment paid by an estimated 7,064 attorneys. The budget for assessment revenue for 2015 is based upon a \$3,500 assessment and 7,135 full-pay attorneys.

Investment returns were better than expected for the first six months of 2014. However, in doing the 2014 full year projections we used the more conservative rolling seven year return at March 31, 2014. That provided an overall rate of 6.11%. Our investment consultants recommended 6% for 2015 so we used the 6.11% for 2015 as well. While the percentage chosen is significantly lower than nearer term results (i.e. a period shorter than seven years) it reflects the ongoing conservative expectations of our investment consultants.

Primary Program Claims Expense

By far, the largest cost category for the PLF is claim costs for indemnity and defense. Since claims often don't resolve quickly, these costs are paid over several years after the claim is first made. The ongoing calculation of estimated claim costs is the major factor in determining Primary Program profit or loss.

For any given year, financial statement claim expense includes two factors – (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of costs for claims pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2. However, problems would develop if the effects of factor 2 were never considered, particularly if there were consistent patterns of adjustments. The “indicated average claim cost” in the actuarial rate study calculates an amount for factor 1. The report also discusses the possibility of adding a margin to the indicated costs. Adding a margin could cover additional claims costs from adverse development of pending claims (factor 2) or other possible negative economic events such as poor investment returns. We have included margins in the past several years to good effect.

The 2014 budget included \$1,076,700 (approximately \$150 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The June 30, 2014 actuarial review of claim liabilities recommended an increase of about \$71,375 as a result of adverse development of pending claims. This amount is so small as to be immaterial so we have let the budgeted number stand as is.

Primary Program new claims expense for 2015 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13 percent, 7,135 covered attorneys and an average claim cost of \$21,000. Multiplying these three numbers together gets a 2015 budget for claims expense of \$19.5 million. This would also translate to about 926 claims at \$21,000 for 2015.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2015. If pending claims do not develop adversely, this margin could offset

higher 2014 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,070,250 (\$150 times the estimated 7,135 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2015 assessment.

Salary Pool for 2014

The total dollar amount that is available for staff salary increases in a given year is calculated by multiplying the salary pool percentage increase by the current employee salary levels. The salary pool is the only source available for cost of living *and* merit increases. Although there is no policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Sylvia Stevens, a three percent salary pool increase is recommended for 2015. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$40,908 in PLF salary expense and \$18,887 in PLF benefit costs. The total cost of the three percent salary pool is less than one half of one percent of total expenses (0.3 percent). Comparing the PLF to local employers, Multnomah County has identified 2.7% as the COLA factor they have used in their 2015 budget. They have also identified 1.5% as an additional merit/step increase pool. (<https://multco.us/file/35347/download>)

Because all salary reclassifications cannot be accomplished within the three percent salary pool allocation, we are also requesting \$35,000 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

Benefit Expense

The employer cost of PERS and Medical / Dental insurance are the two major benefit costs for the PLF.

The employer contribution rates for PERS are stable in the current biennium which ends July 2015. We are budgeting the rates for the entirety of 2015 however as we will do an adjustment in July

2015 to the projected budget when we know what the change, if any, will be. Best research on the topic currently is revealing nothing around any potential changes. It should be noted however that in 2015 many of the new staff hired in 2014 are now PERS eligible, so that increases the cost of PERS, even in the absence of an overall increase.

Unlike many state and local employers, the PLF does not “pick up” the employee contribution to PERS. PLF employees have their six percent employee contribution to PERS deducted from their salaries.

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents. We have included about a 2 percent increase for the cost of medical and dental insurance.

Capital Budget Items

The two major capital purchases in 2015 will be new servers for our IT infrastructure and new AV equipment for the Boardroom.

There is a three year plan laid out to expand the existing infrastructure creating efficiencies in our data processing and also creating heightened security and crash resistance. The first of the three years is 2014 and we have already purchased servers in this fiscal year. The second and third year in the plan is 2015 and 2016.

There have been ongoing maintenance problems with the PLF boardroom audiovisual equipment. We have included funds in the capital budget to potentially replace the equipment in 2015. Historically this equipment has been budgeted at \$25,000 so we have left it at that. However, we will be carefully researching best possible technologies matching our needs without under or over buying.

Other Primary Operating Expenses

Professional Services have increased over projected 2014 by about 32%. The majority of this increase is to cover the cost of scanning 2013 claims files, the cost of continuing with the creation of the new PLF website, and a sizeable increase to investment consultant fees (from \$27,000 to \$40,000). The updates to the website in 2015 will include online renewal applications for the Excess program and the development of templates for Universe web interface.

Auto, Travel, and Training has increased substantially from 2014 projected due to the addition of new staff in Loss Prevention and the anticipation that new staff members across the organization will require training and offsite travel to bring them up to speed in their positions. Additionally, monies have been allocated for a consultant to provide training to the Claims Attorneys on the Universe database software.

Defense Panel Program has increased over 2014 as the bi-annual Defense Panel Conference will be held in 2015. An increase of 10% over 2013 conference costs has been allowed. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers.

Insurance expense in the 2015 budget is higher than 2014 as we are actively seeking out E&O coverage for the claims attorneys. This coverage was removed in 2013 as the premiums were deemed to high subsequent to the effect of significant payout on a claim made against the PLF. We are working to find a carrier that will provide adequate coverage at a reasonable premium and deductible. We have budgeted \$55,000 premium for that coverage. We expect to hear back from the broker by the end of August 2014. Note that we do have D&O coverage still in place.

OSB Bar Books includes a \$200,000 contribution to the OSB Bar Books. The PLF Board of Directors believes there is substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims.

Contingency for 2015 has been set at 3%. For many years, the PLF Primary Program has included a contingency budget item. The contingency amount has usually been set between two and four percentage of operating costs. In 2014, the contingency budget was raised to 4% of operating costs to cover potential succession costs.

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2014 Primary Program operating costs to be about 5% lower than the budget amount.

The 2015 Primary Program operating budget is 3.31% percent higher than the 2014 budget. The main reasons for the increases are the 3% salary increase and related benefits costs, new LP position, the E&O premium, employee training and travel, scanning of old claims, and the ongoing

update of the PLF website.

Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2015 Primary Program assessment. We do include a budget for the Excess Program (page 8). Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. Staff is actively working with AON and the reinsurers to create a more competitive premium structure as well as providing additional claims information at both the primary and excess levels.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$760,000 for 2015. This represents an expectation of the commission remaining flat from expected 2014 levels.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2014 projections or 2015 budget.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section. For the 2015 budget year we have removed all directly charged Excess staff salaries and benefits. We are now allocating all staff positions related to Excess as no staff person spends 100% of their time involved in Excess related work.

IV. Actuarial Assessment Study for 2015

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2015 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2014. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2015 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2015 claim cost per attorney using two different methods. The first

method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2015 claims frequency rate of 13 percent and \$21,000 as the average cost per claim (severity). We feel the \$21,000 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is 13%, the same rate as used in 2014. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,731 per attorney, which is \$1 more than 2014. This amount would only cover the estimated funds needed for 2015 new claims.

It is necessary to calculate a provision for operating expenses not covered by assessment revenue. As can be seen in the budget, the estimate of assessment revenue does not cover the budget for operating expenses. The 2015 shortfall is about \$586 per lawyer assuming 7,135 full-pay lawyers. This is an increase of \$11 or 2% from 2014.

In their Year 2015 Assessment report, the actuaries discuss the theoretical and practical considerations of having a margin (additional amount) in the calculated assessment to cover operational shortfalls and adverse claims development. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

V. Staff Recommendations

If you add the operating shortfall expense portion of \$586 per lawyer to the actuaries' indicated claim cost of \$2,731, you would have an assessment of \$3,316. We feel that it is appropriate to include a margin of \$150 per attorney for in year adverse development of pending claims. This allows for a budget of about \$1.3 million for adverse development of pending claims. Over the past six years the in year adverse claims development margin has been as low as \$100 (2009) and as high as \$300 (2012).

An assessment of \$3,500 would allow a projected budget profit of about \$245,472.

Because of good financial results for 2013 and the first six months of 2014, the PLF currently has positive combined Primary and Excess retained earnings of about \$11.8 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2015 assessment with some margin makes it more likely continued progress will be made toward that retained earnings

goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2015. Accordingly, we recommend setting the 2015 Primary Program assessment at \$3,500.

The Finance Committee will discuss the actuarial report during its telephone conference meeting at 9:30 a.m. on August 12, 2014 and prepare recommendations for the Board of Directors. The full Board of Directors will then act upon the committee's recommendations at their board meeting on August 14, 2014.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<u>Revenue</u>					
Assessments	\$24,803,326	\$25,042,533	\$25,123,000	\$24,722,389	\$24,972,500
Installment Service Charge	394,631	391,097	390,000	391,000	335,000
Investments and Other	<u>4,364,988</u>	<u>4,364,988</u>	<u>2,692,264</u>	<u>4,254,239</u>	<u>2,702,765</u>
Total Revenue	<u>\$29,562,945</u>	<u>\$29,798,618</u>	<u>\$28,205,264</u>	<u>\$29,367,628</u>	<u>\$28,010,265</u>
<u>Expenses</u>					
Provision for Claims					
New Claims	\$20,908,307	\$18,225,493	\$19,595,940	\$19,278,000	\$19,478,550
Pending Claims	<u>(\$2,435,227)</u>	<u>(\$133,446)</u>	<u>\$1,076,700</u>	<u>\$1,076,700</u>	<u>\$1,070,250</u>
Total Provision for Claims	<u>\$18,473,080</u>	<u>\$18,092,047</u>	<u>\$20,672,640</u>	<u>\$20,354,700</u>	<u>\$20,548,800</u>
Expense from Operations					
Administration	\$2,200,578	\$2,482,372	\$2,482,372	\$2,389,557	\$2,552,652
Accounting	748,742	637,662	637,662	785,895	827,287
Loss Prevention	1,824,653	2,070,773	2,070,773	1,911,333	2,139,706
Claims	<u>2,398,157</u>	<u>2,640,466</u>	<u>2,640,466</u>	<u>2,395,228</u>	<u>2,570,768</u>
Total Operating Expense	\$7,172,130	\$7,831,273	\$7,831,273	\$7,482,013	\$8,090,412
Contingency	23,693	0	314,701	0	242,712
Depreciation	175,500	166,575	169,800	168,527	174,800
Allocated to Excess Program	<u>(1,135,822)</u>	<u>(1,135,160)</u>	<u>(1,145,155)</u>	<u>(1,121,002)</u>	<u>(1,291,933)</u>
Total Expenses	<u>\$24,708,581</u>	<u>\$24,954,735</u>	<u>\$27,843,259</u>	<u>\$26,884,238</u>	<u>\$27,764,791</u>
Net Income (Loss)	<u>\$4,854,364</u>	<u>\$4,843,883</u>	<u>\$362,005</u>	<u>\$2,483,390</u>	<u>\$245,474</u>
Number of Full Pay Attorneys	7,030	7,093	7,104	7,064	7,135

CHANGE IN OPERATING EXPENSES:

Increase from 2014 Budget 3.31%

Increase from 2014 Projections 8.13%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
CONDENSED STATEMENT OF OPERATING EXPENSE
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<u>Expenses</u>					
Salaries	\$3,984,100	\$4,145,086	\$4,333,390	\$4,137,733	\$4,279,989
Benefits and Payroll Taxes	1,395,115	1,457,187	1,613,525	1,469,131	1,630,430
Professional Services	289,644	331,128	319,630	337,261	410,092
Auto, Travel & Training	95,137	92,557	96,650	99,350	178,225
Office Rent	511,782	521,138	530,879	512,379	520,065
Office Expense	136,526	133,569	136,250	143,250	146,250
Telephone (Administration)	36,564	48,675	57,960	47,000	49,560
L P Programs	389,839	373,908	434,544	417,719	485,394
OSB Bar Books	200,000	200,000	200,000	200,000	200,000
Defense Panel Program	0	9,970	1,500	2,000	11,979
Insurance	70,793	71,471	39,145	36,340	94,928
Library	31,047	32,659	33,000	39,000	39,000
Memberships & Subscriptions	20,512	21,458	22,200	35,000	35,000
Interest & Bank Charges	11,071	5,213	12,600	9,500	9,500
 Total Operating Expenses	 <u>\$7,172,130</u>	 <u>\$7,444,018</u>	 <u>\$7,831,273</u>	 <u>\$7,485,663</u>	 <u>\$8,090,412</u>
 Allocated to Excess Program	 <u>(\$1,099,826)</u>	 <u>(\$1,105,104)</u>	 <u>(\$1,120,789)</u>	 <u>(\$1,096,636)</u>	 <u>(\$1,264,472)</u>
 Full Time Employees (See Explanation)	 44.56	 43.88	 45.88	 50.86	 51.28
 Number of Full Pay Attorneys	 7,030	 7,093	 7,104	 7,064	 7,135
 Non-personnel Expenses	 \$1,792,915	 \$1,841,746	 \$1,884,358	 \$1,878,799	 \$2,179,993
Allocated to Excess Program	<u>(\$275,635)</u>	<u>(\$278,874)</u>	<u>(\$270,406)</u>	<u>(\$270,406)</u>	<u>(\$338,705)</u>
Total Non-personnel Expenses	<u>1,517,280</u>	<u>1,562,872</u>	<u>1,613,952</u>	<u>1,608,393</u>	<u>1,841,288</u>

CHANGE IN OPERATING EXPENSES:

Increase from 2014 Budget 3.31%

Increase from 2014 Projections 8.08%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
ADMINISTRATION**

Presented to PLF Board of Directors on August 14, 2014

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<u>Expenses</u>					
Salaries	\$632,504	\$641,274	\$807,152	\$755,854	\$733,389
Benefits and Payroll Taxes	231,342	238,566	296,206	254,723	269,643
Staff Travel	23,832	21,363	19,550	19,250	23,050
Board of Directors Travel	38,011	35,514	39,000	39,000	40,000
Training	9,701	8,947	15,000	12,000	20,000
Investment Services	27,719	28,018	28,000	28,000	40,000
Legal Services	13,251	13,738	13,000	12,000	3,500
Actuarial Services	18,900	19,731	22,000	19,000	25,000
Information Services	86,814	136,221	97,600	134,705	111,000
Offsite System Backup	0	0	0	0	0
Electronic Record Scanning	52,035	47,086	65,000	60,000	65,000
Other Professional Services	65,375	63,734	70,230	60,956	139,592
Pro Services - Medicare Reporting	3,850	0	0	0	0
OSB Bar Books	200,000	200,000	200,000	200,000	200,000
Office Rent	511,782	521,138	530,879	512,379	520,065
Equipment Rent & Maint.	36,000	38,672	39,000	44,000	44,000
Dues and Memberships	20,512	21,458	22,200	35,000	35,000
Office Supplies	51,613	51,661	52,000	69,000	70,000
Insurance	70,793	71,471	39,145	36,340	94,928
Telephone	36,564	48,675	57,960	47,000	49,560
Printing	8,573	7,629	9,000	3,000	5,000
Postage & Delivery	37,715	33,400	34,750	25,750	25,750
NABRICO - Assoc. of Bar Co.s	9,996	10,959	10,600	10,600	27,175
Bank Charges & Interest	11,071	5,213	12,600	9,500	9,500
Repairs	2,625	2,207	1,500	1,500	1,500
Miscellaneous	0	0	0	0	0
Total Operating Expenses	<u>\$2,200,578</u>	<u>\$2,266,674</u>	<u>\$2,482,372</u>	<u>\$2,389,557</u>	<u>\$2,552,652</u>
 Allocated to Excess Program	 <u>(\$430,118)</u>	 <u>(\$430,857)</u>	 <u>(\$461,595)</u>	 <u>(\$426,696)</u>	 <u>(\$563,239)</u>
 Administration Full Time Employees	 8.75	 8.00	 10.00	 9.00	 9.00
 CHANGE IN OPERATING EXPENSES:					
Increase from 2014 Budget			2.83%		
Increase from 2014 Projections			6.83%		

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
ACCOUNTING**

Presented to PLF Board of Directors on August 14, 2014

	2012 <u>ACTUAL</u>	2013 <u>ACTUAL</u>	2014 <u>BUDGET</u>	2014 <u>PROJECTIONS</u>	2015 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$542,180	\$584,637	\$445,453	\$554,768	\$566,781
Benefits and Payroll Taxes	183,646	199,808	162,909	206,027	222,006
Travel	178	544	1,500	500	5,000
Financial Audit	21,700	22,600	23,800	22,600	26,000
Training	<u>1,038</u>	<u>1,687</u>	<u>4,000</u>	<u>2,000</u>	<u>7,500</u>
Total Operating Expenses	<u>\$748,742</u>	<u>\$809,276</u>	<u>\$637,662</u>	<u>\$785,895</u>	<u>\$827,287</u>
Allocated to Excess Program	<u>(\$128,721)</u>	<u>(\$111,674)</u>	<u>(\$90,264)</u>	<u>(\$112,050)</u>	<u>(\$119,057)</u>
Accounting Full Time Employees	6.10	5.95	5.95	7.95	7.95

CHANGE IN OPERATING EXPENSES:

Decrease from 2014 Budget

29.74%

Decrease from 2014 Projections

5.27%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
LOSS PREVENTION (Includes OAAP)
Presented to PLF Board of Directors on August 14, 2014**

	2012 <u>ACTUAL</u>	2013 <u>ACTUAL</u>	2014 <u>BUDGET</u>	2014 <u>PROJECTIONS</u>	2015 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,053,974	\$1,065,411	\$1,189,806	\$1,094,563	\$1,194,861
Benefits and Payroll Taxes	380,840	390,424	446,423	402,701	459,451
In Brief	44,854	46,731	62,000	71,782	70,000
PLF Handbooks	5,872	4,949	6,000	6,000	6,000
Library	436	389	500	400	5,000
Video and Audio Tapes	35,454	44,382	35,000	30,000	32,000
Mail Distribution of Video and Audiotape	11,949	14,607	12,000	14,000	14,000
Web Distribution of Programs	24,180	25,215	18,000	25,000	20,000
Program Promotion	28,664	16,863	20,000	18,000	22,000
Expense of Closing Offices	15,861	3,691	10,500	4,000	10,500
Facilities	47,282	42,828	47,000	45,000	47,000
Speaker Expense	(1,311)	4,466	5,000	2,500	5,000
Accreditation Fees	1,632	1,205	1,600	1,000	1,600
Beepers & Confidential Phone	4,107	5,110	5,000	5,210	5,300
Expert Assistance	300	0	5,000	2,000	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	11,053	10,517	11,400	10,623	14,150
Travel	36,171	26,541	34,500	23,860	43,600
Training	25,038	25,420	41,300	24,250	42,500
Downtown Office	98,297	100,992	119,744	130,444	141,744
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$1,824,653</u>	 <u>\$1,829,743</u>	 <u>\$2,070,773</u>	 <u>\$1,911,333</u>	 <u>\$2,139,706</u>
 Allocated to Excess Program	 <u>(\$202,122)</u>	 <u>(\$209,540)</u>	 <u>(\$225,930)</u>	 <u>(\$209,248)</u>	 <u>(\$241,636)</u>
 L P Depart Full Time Employees (Includes OAAP)	 11.83	 11.83	 13.58	 14.58	 14.58

CHANGE IN OPERATING EXPENSES:

Increase from 2014 Budget	3.33%
Increase from 2014 Projections	11.95%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
CLAIMS DEPARTMENT
Presented to PLF Board of Directors on August 14, 2014**

	2012	2013	2014	2014	2015
	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>BUDGET</u>	<u>PROJECTIONS</u>	<u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,755,442	\$1,853,764	\$1,890,979	\$1,732,548	\$1,784,958
Benefits and Payroll Taxes	599,287	628,388	707,987	605,680	679,331
Claims Audit	0	0	0	0	0
Training	9,758	8,577	3,000	12,000	49,000
Travel	2,623	4,966	4,000	4,000	6,500
Library & Information Systems	31,047	32,659	33,000	39,000	39,000
Defense Panel Program	<u>0</u>	<u>9,970</u>	<u>1,500</u>	<u>2,000</u>	<u>11,979</u>
 Total Operating Expenses	 <u>\$2,398,157</u>	 <u>\$2,538,325</u>	 <u>\$2,640,466</u>	 <u>\$2,395,228</u>	 <u>\$2,570,768</u>
 Allocated to Excess Program	 <u>(\$338,865)</u>	 <u>(\$353,033)</u>	 <u>(\$343,000)</u>	 <u>(\$348,642)</u>	 <u>(\$340,540)</u>
 Claims Depart Full Time Employees	 17.88	 18.10	 20.33	 19.75	 18.75
 CHANGE IN OPERATING EXPENSES:					
Decrease from 2014 Budget			-2.64%		
Increase from 2014 Projections			7.33%		

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 PRIMARY PROGRAM BUDGET
CAPITAL BUDGET**

Presented to PLF Board of Directors on August 14, 2014

	2012 <u>ACTUAL</u>	2013 <u>ACTUAL</u>	2014 <u>BUDGET</u>	2014 <u>PROJECTIONS</u>	2015 <u>BUDGET</u>
<u>Capital Items</u>					
Furniture and Equipment	\$21,188	\$0	\$10,000	\$8,000	\$7,000
Telephone	0	0	5,000	0	0
Copiers / Scanners	71,253	0	8,500	2,500	5,000
Audiovisual Equipment	0	0	25,000	0	25,000
Data Processing					
Hardware	9,434	0	12,000	12,000	22,000
Software	5,574	0	6,000	4,000	6,000
PCs, Ipads and Printers	27,077	0	7,500	7,500	7,500
Leasehold Improvements	<u>1,700</u>	<u>0</u>	<u>5,000</u>	<u>15,000</u>	<u>5,000</u>
 Total Capital Budget	 <u>\$136,226</u>	 <u>\$0</u>	 <u>\$79,000</u>	 <u>\$49,000</u>	 <u>\$77,500</u>

Increase from 2014 Budget **-1.90%**

Increase from 2014 Projections **58.16%**

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2015 EXCESS PROGRAM BUDGET
Presented to PLF Board of Directors on August 14, 2014**

	2012 ACTUAL	2013 ACTUAL	2014 BUDGET	2014 PROJECTIONS	2015 BUDGET
<u>Revenue</u>					
Ceding Commission	733,700	747,993	760,000	675,000	760,000
Profit Commission	32,599	32,069	0	0	0
Installment Service Charge	37,180	41,433	42,000	41,500	42,000
Other	1,478	7,913	1,500	6,900	69,001
Investment Earnings	<u>429,191</u>	<u>330,352</u>	<u>202,643</u>	<u>355,101</u>	<u>203,434</u>
Total Revenue	<u>\$1,234,148</u>	<u>\$1,159,760</u>	<u>\$1,006,143</u>	<u>\$1,078,501</u>	<u>\$1,074,435</u>
<u>Expenses</u>					
Allocated Salaries	\$608,431	\$599,356	\$621,781	\$621,781	\$672,520
Direct Salaries	66,984	73,078	76,512	0	0
Allocated Benefits	215,760	226,874	228,602	228,602	253,247
Direct Benefits	23,050	24,120	28,400	27,684	0
Program Promotion	6,070	3,922	7,500	7,500	7,500
Investment Services	2,282	1,982	2,500	2,500	2,500
Allocation of Primary Overhead	275,635	278,874	270,406	278,874	338,705
Reinsurance Placement Travel	3,933	369	5,000	500	5,000
Training	0	0	500	500	500
Printing and Mailing	5,301	4,035	5,500	5,500	5,500
Other Professional Services	1,345	0	2,000	2,000	2,000
Software Development	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expense	<u>\$1,208,791</u>	<u>\$1,212,611</u>	<u>\$1,248,701</u>	<u>\$1,175,441</u>	<u>\$1,287,472</u>
Allocated Depreciation	<u>\$35,996</u>	<u>\$30,056</u>	<u>\$24,366</u>	<u>\$30,056</u>	<u>\$27,461</u>
Net Income	<u>(\$10,639)</u>	<u>(\$82,907)</u>	<u>(\$266,924)</u>	<u>(\$126,996)</u>	<u>(\$240,498)</u>
Full Time Employees	1.00	1.00	1.00	0.00	0.00
Number of Covered Attorneys	2,313	2,193	2,395	2,175	2,140

CHANGE IN OPERATING EXPENSES:

Increase from 2014 Budget	3.10%
Increase from 2014 Projections	9.53%

Rudd and Wisdom, Inc.

CONSULTING ACTUARIES

Mitchell L. Bilbe, F.S.A.
Evan L. Dial, F.S.A.
Philip S. Dial, F.S.A.
Philip J. Ellis, A.S.A.
Charles V. Faerber, F.S.A., A.C.A.S.
Mark R. Fenlaw, F.S.A.
Carl L. Frammolino, F.S.A.

Christopher S. Johnson, F.S.A.
Oliver B. Kiel, A.S.A.
Robert M. May, F.S.A.
J. Christopher McCaul, F.S.A.
Edward A. Mire, F.S.A.

Rebecca B. Morris, A.S.A.
Michael J. Muth, F.S.A.
Khiem Ngo, F.S.A.
Coralie A. Taylor, F.S.A.
Ronald W. Tobleman, F.S.A.
Kenneth Torng, A.S.A.
David G. Wilkes, F.S.A.

August 6, 2014

Mr. Ira Zarov
Ms. Betty Lou Morrow
Oregon State Bar Professional
Liability Fund
Post Office Box 1600
Lake Oswego, Oregon 97035-0889

Re: Year 2015 Assessment

Dear Ira and Betty Lou:

At your request, we have analyzed the PLF Primary Fund's historical claims data available through June 30, 2014. Based on this analysis, we have projected the expected claim cost for the Primary Fund for the Calendar Year 2015 (CY 2015) and developed recommendations concerning the CY 2015 assessment for the Primary Fund.

Our assignment for this study was to focus on a projection of the Primary Fund's projected claim cost for CY 2015. We have not attempted to address the impact of investment income, installment surcharges, underwriting expenses or unallocated loss adjustment expenses. Based on our analysis we estimate that the PLF Primary Fund's CY 2015 average claim cost per attorney will lie in a range of \$2,100 to \$3,190 (see table on page 7 of this report) with an indicated average claim cost of \$2,730 per attorney.

At June 30, 2014, the PLF Primary Fund has retained earnings (the equivalent of surplus for an insurance company) of approximately \$11.8 million. The Primary Program had net income of approximately \$2.5 million for the first six months of 2014. At June 30, 2000, the PLF Primary Fund had retained earnings in excess of \$7 million. Shortly after that, a combination of claims experience and investment results eliminated the Primary Fund's surplus. With a recent history of negative retained earnings, it is important that the PLF Primary Fund charge an adequate rate and add a

margin to regenerate surplus. Net investment income and installment surcharges offset part of the PLF's operating expenses. A supplement to provide for operating expenses is also appropriate. As stated above, a pure premium in the neighborhood of \$2,730 per attorney for the 2015 claim year is reasonably likely to cover the Primary Fund's claim costs. If the Primary Fund covers approximately 7,100 full pay attorneys in CY 2015, then the Primary Fund should expect to increase its surplus by approximately \$710,000 for each \$100 that the assessment rate exceeds the Fund's claim and administrative costs on a per-attorney basis.

In our claim reserve report dated August 5, 2014 we recommended that the Primary Fund keep at least \$5 million of surplus to be able to absorb adverse claim or investment experience which may occur in the future. We also described an approach for quantifying desired surplus levels using statistical confidence levels. In prior studies, we have noted the need for caution in establishing assessment rates for the PLF Primary Fund. This has not changed, and there are several reasons for the Board to exercise caution in setting the rate at this time.

1. The Fund's frequency has been volatile varying from a low rate of 11.4% in 1990 to a high rate of 14.7% in 2004. It has also varied significantly from year to year. This volatility makes it difficult to predict the Fund's frequency for a given year.
2. The Fund's claim costs have had a moderately positive trend since 1993, indicating that claim costs are increasing. Since 1999, the average claim cost per attorney has hovered in a range of \$2,300 to \$3,000 after being in the \$1,800 to \$2,000 range for most of the 1990's. The 2000 and 2001 claim years are the exceptions, as the average claim cost in 2000 spiked to \$3,214 and the claim cost in 2001 dropped to \$1,958.
3. The market value of the Fund's assets has been volatile, producing large gains in some years and losses in others during the past 20 years.
4. The Fund currently has a surplus position of approximately \$8.5 million. This is a good position for the Fund. It must be noted, however, that the Primary Fund had accumulated a \$10 million surplus at the end of 1999 that evaporated rather quickly due to bad investment and claim experience. Volatile asset values tend to exacerbate a low or negative surplus position. Surplus enables an insurance company or fund to withstand adverse experience (whether it is due to claims or asset values) without having to take drastic measures.

Data and Methodology

The analysis utilizes case incurred amounts for indemnity and expense as of June 30, 2014, provided by the PLF staff. The term "case incurred" is used herein to describe the estimated value placed on a claim by the PLF staff. The value includes both the paid and unpaid portions of the claim. The indemnity and expense components of incurred claims for each semiannual reporting period are reviewed separately. These amounts have been developed based on actuarial development factors, which are used to estimate the amount by which ultimate losses can be expected to differ from the case incurred amounts established by the PLF. We make this determination by analyzing the actual periodic changes (measured at semiannual intervals) in case incurred amounts. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience data.

The methodology and judgment utilized in selecting the actuarial development factors for this review are consistent with that utilized in our determination of reserves for unpaid losses as of June 30, 2014. While the development factors used in this analysis represent our best judgment concerning future development patterns, it should be noted that attorneys professional liability insurance is a volatile line of business that is affected by legislation, judicial interpretation and the economy. This may cause future development patterns to differ from those exhibited in the claim data at June 30, 2014.

The PLF has provided information concerning the historical and estimated future number of full pay equivalent attorneys. This has provided the basis for the exposure data used in our analysis. The number of full pay attorneys is determined as the total assessment for a given year divided by the assessment rate for the year. Effective with the 2006 plan year, the PLF reduced the discounts given to attorneys with limited prior PLF coverage ("step rating"). This distorts the calculation of the number of full pay attorneys as the same number and distribution of attorneys will now generate more assessment dollars. Based on data from 2001 through 2005, this change generates approximately 2% more assessment dollars and therefore 2% more full pay equivalent attorneys. Seven years ago, we adjusted the number of full pay attorneys for 2006 and 2007 to get the exposure data on a basis consistent with prior years. For this analysis the change in the number of full pay equivalent attorneys does not appear to have a material impact on the results. For that reason we have used the unadjusted number of full pay equivalent attorneys as provided.

In this analysis, we have concentrated only on the claim costs. We have made no calculations of 2015 investment income or operating expenses. It is our understanding that the PLF staff will include a discussion of those factors in their recommendations regarding the 2015 assessment.

Provision for Claims

The foundation for the determination of a provision for claims is the expected claim cost for the assessment period. This analysis anticipates a calendar year 2015 assessment period with the bulk of the policies written January 1, 2015. To determine the expected claim cost for this period, we used the following approach:

1. Claims experience was analyzed for calendar years 1983 through 2013. The ultimate incurred claims used in this analysis are the same as those determined in connection with our estimate of PLF Primary Fund reserves as of June 30, 2014. We have described the methodology used in that determination in separate correspondence.

Exhibit 1 presents a summary of this analysis, including ultimate incurred claims, number of claims, frequency, severity, and claim cost for calendar years 1983 through 2013. The average claim cost per attorney for calendar years 1983 through 2013 is displayed in the column captioned "Untrended Claim Cost." The untrended claim cost is determined by dividing (a) the ultimate incurred claim amounts reported during each calendar year by (b) the attorney exposure for that year. Therefore, the claim cost represents the average incurred claims for an average attorney insured for the full calendar year. The values described above are also displayed for the first six months of 2014.

There is a special claim situation for this study. In 2012 and 2013, 160 claims were reported from a single attorney. The aggregate limit for these claims is \$350,000. We have valued those claims at \$220,000 for indemnity and \$130,000 for expense. For claim count and frequency purposes, these claims were treated as a single claim. To do otherwise would distort our results.

2. The current coverage limits (\$300,000 per claim) have been in place since 1987. We have focused our analysis on the experience period, which includes calendar years 2004 through 2013. We note that a \$25,000 claim expense allowance was implemented in 1995 and an additional \$25,000 claim expense allowance (for a total of \$50,000) was added in 2005. The experience for periods since 1995

reflects the first allowance. Only the 2005 through 2013 experience reflects the second expense allowance. We do not believe that the impact of the second allowance on claims expense is significant enough to invalidate the use of data from previous periods in our analysis. We have omitted the 2014 claims from the experience period because these claims are new, and there is only six months of data. Each calendar year claim cost is trended to the middle of CY 2015, the approximate midpoint of the exposure to be incurred during the assessment period. The purpose of trending is to recognize the tendency of claim costs to increase over time.

3. Selecting an appropriate trend rate is an important step in applying the methodology described above. The 1996 - 2013 experience period indicates a trend of approximately 2.0%. Between 1992 and 1998, claim costs were flat (i.e., no measurable trend) with values in a range of \$1,800 to \$2,000 per attorney. The 1999 and later claim years give the trend line an upward slope because average claim cost increased by approximately \$560 per attorney in 1999 and the average cost has been in the mid to high \$2,000 range since that time. The net effect of this experience is that it is difficult to select a specific trend. However, we note that the Primary Fund's claim cost trend has generally been in the 1% to 3% range.
4. Having established a framework for reviewing the claims experience, we must develop a method for determining the expected cost of claims to be reported in CY 2015. For this purpose, we have employed two different approaches:
 - a. Based on the analysis described in (1) through (3) above we have selected a range of claim cost trends that we believe to be appropriate. These trends are applied to each calendar year's untrended claim cost to produce for each calendar year a range of claim costs trended to July 1, 2015. The averages of these trended claim costs provide a range of expected claim costs for claims to be reported in 2015. These calculations are displayed in Exhibit 1.
 - b. As an alternative to the approach described above we have used the claims data and professional judgment to select a range of claim frequencies and a range of average claim severities. Multiplying the claim frequencies by the average severities also produces a range of expected claim costs. This approach is displayed in Exhibit 2.

5. For each of the methods described above parameters representing expected future claim experience must be selected. The following paragraphs describe our rationale for the parameters we have selected.
 - a. As stated above, the first method requires the selection of appropriate trend rates for annual claim costs. In Exhibit 1, we have selected 1.00%, 2.00%, and 3.00% trends for our range of values. As we noted in the reserve report, the selection of beginning and ending points can have a significant impact on the conclusions about average trend rates. Depending on the period selected, the PLF Primary Fund has had claim cost trends in the 1% to 3% range.
 - b. To implement the second method, selection of appropriate claim frequency and claim severity parameters is required. At the low end, we have selected a 12% frequency and a \$17,500 average severity. Since 1995, there have been only five years with claim frequencies less than 13%. It should be noted that the frequency since 2012 (including the first six months of 2014) has been less than 13%. The average claim size has been at or below \$17,500 in four of the past 13 years. Even so, these parameters would be characterized as optimistic.

The indicated estimate is based on 13.00% frequency and \$21,000 severity. These are the same parameters we employed in the assessment study we performed last year. The PLF Primary Fund's average frequency since 2003 is 13.1% if we ignore the 160 claims generated by the one attorney in 2012 and 2013. The average frequency since 2003 is 13.3% if we include those claims. The claim frequency for 2012 and 2013 is less than 13% without the 160 claims. The Primary Fund experienced claim frequency of 13% or higher every year between 1997 and 2005. The frequency for 2008 through the 2011 averaged 13.60% after two years at 11.90%. We believe that we should pick parameters that give the program a good chance to be adequate.

The Primary Fund's average claim size (i.e., severity) is a more difficult selection. Between 1993 and 1998, the average severity never exceeded \$14,500, falling in a range of \$12,600 to \$14,500. In 1999, severity jumped to \$16,530 and spiked to \$23,593 in 2000. The average claim severity for the last 10 years is \$19,411 without the 160 claims and \$19,066 with those claims. Over the past five years it has been \$20,077 without the 160 claims and \$19,403 with those claims. Based on recent experience, we believe that \$21,000 will prove to be an adequate severity estimate for 2015 claims.

With a surplus of approximately \$11.8 million, we believe that the Board should set the assessment rate for 2014 to cover the claim cost and operating expenses. At the current surplus level, the need to increase the Primary Fund's retained earnings is not as important as it has been in prior years.

At the upper end of the range, we have selected a 14.5% frequency and a \$22,000 average severity. The PLF Primary Fund has experienced frequency in excess of 14% in 1995, 1999, 2004, and 2009. Two of the ten full years since 2004 have produced an average severity at or above \$21,000. The first half of 2014 is also above \$21,000. The average severity for claim year 2000 (\$23,593) is the largest in the Fund's history.

- c. We have noted in the past that attorneys professional liability insurance is a volatile line of business. It is reasonable to expect that there will be years in the future that will have significantly higher than expected claim costs. Years with lower than expected claim costs are also to be expected. This uncertainty with regard to future experience suggests the need for caution in rating.

6. The table below summarizes our estimates of the CY 2015 expected claim cost.

<i>Estimate</i>	<i>Method 1 Average Trended Claim Cost</i>	<i>Method 2 Frequency x Severity</i>
Low	\$ 2,719	\$ 2,100
Indicated	2,899	2,730
High	3,093	3,190

These results are not significantly different from the analysis we did last year. The results from Method 1 are slightly lower in this year's analysis than the corresponding values from last year's study. The results from Method 2 are identical to the results from last year because we used the same parameters. As a check on the reasonableness of the results from Method 2, we have determined the trend rates applied to the average trended claim costs over the 2004 – 2013 period, which produce expected claim costs approximately the same as the three estimates. A negative 2.20% trend reproduces the low estimate, while a 0.90% trend produces the indicated estimate and a 2.75% trend is needed for the high estimate. These determinations were made to provide additional perspective to the analysis. The Method 1 calculations are presented in Exhibit 1. The Method 2 calculations are presented in Exhibit 2.

Rating Margin: Theoretical Considerations

Generally, it is appropriate to include in an insurance rate a provision for adverse deviation from expected experience. The purpose of this rating margin is to increase the insurance organization's chances for rating adequacy by making a reasonable provision for adverse fluctuation in claims experience.

Because this methodology utilizes the average trended claim cost from the experience period, statistically, there is a 50% probability that actual results will be better than expected and a 50% probability that actual results will be worse than expected, assuming the trend factor provides an appropriate basis for projection. The typical insurance organization considers it prudent to increase its probability of success substantially above the 50/50 position. This is accomplished by establishing a rating margin either statistically, based on the observed fluctuations in the experience data, or subjectively, based on actuarial and management judgment.

It is sometimes appealing to establish the margin based on a mathematical measure of the statistical fluctuation observed in the experience data, e.g., the standard deviation. Frequently, however, the data is not sufficiently credible for such a purpose and, in any event, the approach may be too esoteric. As a result, it is often convenient and equally effective to establish the margin based on a subjectively chosen percentage of the expected claim cost. The selection of the percentage margin requires management to exercise judgment based on the organization's willingness to accept risk, its ability to withstand adverse experience, its position in the competitive market, etc.

The ability of the typical insurance organization to withstand adverse experience depends in part on the adequacy of its surplus (the equivalent of the PLF Primary Fund's retained earnings). A strong surplus position permits a lower rating margin, while a weaker surplus position would require a larger margin. Likewise, an organization's surplus relative to its surplus goal might also influence management's judgment regarding the margin to be included in its rates.

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing its rates. The mandatory participation requirement and PLF's ability to establish future assessments to fund prior deficits provide at least as much protection against adverse experience as a strong surplus position provides to the typical commercial insurer. As a result, a rating margin is not nearly as important to the PLF Primary Fund as it is to the typical insurer and management has more

discretion in the judgment it exercises in this regard. While there is certainly an argument to be made that under normal circumstances the PLF Primary Fund should incorporate no margin in its rating, some consideration may be in order concerning minimizing the frequency of rate adjustments, retained earnings position and goals, etc.

Rating Margin: Practical Considerations

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing rates. Nevertheless, there are several considerations, which indicate that under certain conditions some additional margin in the rate may be appropriate:

1. The Primary Fund presently has a reasonable amount of positive retained earnings. A margin in the assessment rate would enable the Primary Fund to increase its retained earnings and provide a better cushion to absorb adverse claim experience, such as a higher than expected number of reported claims or adverse development on existing and future claims. This point is not as important as it has been in past years. However, the Primary Fund's current surplus should not be considered excessive.
2. The Primary Fund's assets are reported at market value, and investment results vary from year to year. The PLF uses asset allocation to limit volatility but investment income can not be predicted precisely for rating purposes. Thus, investment risk, as well as claim risk, becomes an important consideration in the rating process.

In spite of the considerations listed above, there are also factors, which indicate that an additional margin in the rate may not be needed at this time:

1. Attorneys are required to participate in the PLF's Primary Fund, and the PLF has the ability to set future rates at whatever level it deems necessary to maintain the financial soundness of the Fund.
2. The PLF also operates an Excess Fund to provide attorneys with coverage in excess of \$300,000. The Excess Fund currently (through May 31, 2014) has retained earnings of approximately \$2.7 million. While the accounting on the two Funds is separate and it is not the goal of the PLF staff for the Excess Fund to subsidize the Primary Fund, the assets of the two Funds are commingled, and nothing prevents the two Funds from supporting each other financially.

3. Unlike other members of NABRICO, the PLF's Primary Fund is not constrained by competition. Since the coverage is mandatory, the PLF has the ability to assess policyholders to meet the Primary Fund's financial needs without fear of losing market share. The staff and Board of Directors of the PLF believe that they have an obligation to the attorneys of the state of Oregon not to abuse this privilege. Thus, they are reluctant to overreact to adverse experience. They will implement rate increases when experience clearly dictates that increases are required.

For your consideration, we have developed expected CY 2015 claim costs without a margin and with 10% and 15% margins. A 10% margin is subjective and is a commonly used level in much of our rate work with other insurance entities. For the values displayed in Exhibit 1, one standard deviation is approximately 15% of the expected claim cost. The table below summarizes our estimates of the CY 2015 claim costs:

<i>Claim Cost Estimates</i>	<i>Expected CY 2015 Average Claim Cost</i>					
	<i>Average Trended Claim Cost Method</i>			<i>Frequency x Severity Method</i>		
	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>
Low	\$2,719	\$2,991	\$3,127	\$2,100	\$2,310	\$2,415
Indicated	2,899	3,189	3,334	2,730	3,003	3,140
High	3,093	3,402	3,557	3,190	3,509	3,669

Prior to 1999, we had recommended rates that proved (with the benefit of hindsight) to be too high. The rates proposed for the 2000 through 2004 rate studies have proven to be inadequate. For the 2000 through 2014 policy years, we have projected pure premiums (i.e., claim costs) between \$1,958 and \$2,768. At this point, we believe that the actual claim costs for those years will be between \$1,843 and \$3,214. The table below summarizes these results:

<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2014</i>
2000	\$ 1,958	\$ 3,214
2001	1,980	1,958

<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2014</i>
2002	2,160	2,338
2003	2,236	2,623
2004	2,228	2,542
2005	2,520	2,556
2006	2,538	2,204
2007	2,544	1,869
2008	2,470	3,015
2009	2,527	3,067
2010	2,633	2,538
2011	2,730	2,574
2012	2,700	2,571
2013	2,768	2,558
2014	2,730	2,569

We believe that \$2,730 per attorney is reasonably likely to cover the cost of 2015 claims. This is identical to the claim cost we proposed in the analysis we performed last year. This value reflects the same frequency (13.00%) and claim severity (\$21,000) that we used last year. Please note that this rate is based on professional judgment and a focus on recent claim experience.

Important Considerations

Credibility

Attorneys professional liability insurance is a low frequency, high severity exposure. Accordingly, a block of attorneys professional liability insurance policies generates lower credibility than a similar-sized block of a high frequency, low severity exposure like automobile insurance. Due to its size and nature, the PLF Primary Fund's block of business does not possess as much credibility as an actuary would prefer in developing rates. While one would prefer to enhance the predictability of

experience by relying upon an outside source of data to compliment PLF Primary Fund's actual experience, we do not believe that any reasonably comparable body of data exists. This is the result of the lack of industry loss data for this line of coverage and the tremendous variations in risk among jurisdictions. We believe that the economic and judicial climate that exists in Oregon is substantially different from that of other jurisdictions. In addition, due to its mandatory nature, the PLF Primary Fund claim experience can be expected to be substantially different from that of other jurisdictions. This difference renders loss data developed in other jurisdictions inapplicable for the purpose of establishing rates for Oregon attorneys. Accordingly, despite expected weaknesses in the credibility of the historical data, we believe it is the best basis for establishing PLF Primary Fund rates.

Retained Earnings

We understand that the PLF Primary Fund has a goal of maintaining a level of retained earnings (surplus) sufficient to stabilize assessments. The question of how much surplus the PLF Primary Fund should maintain has been considered. In our reserve report dated August 5, 2014, we have discussed an approach that may help the PLF Primary Fund quantify its desired surplus level. It is clear to us that it is beneficial for the Primary Fund to have some surplus. It is also clear that the PLF was not established for the purpose of making a profit. The mandatory nature of the PLF Primary Fund and its ability to assess covered attorneys suggests a significantly smaller amount of surplus than would be appropriate for a commercial insurer or for one of the PLF's sister organizations in other states.

Miscellaneous Issues

Attorneys professional liability insurance has been a volatile line of coverage subject to sudden adverse change. To the extent that unexpected adverse occurrences influence the PLF Primary Fund's experience, projections of expected claim cost and the assessment based on these conclusions could prove inadequate. Significant upward trends in the claim cost of attorneys professional liability insurance have occurred in some jurisdictions. The potential for change makes periodic rate analyses necessary. We suggest that these analyses continue to be performed on an annual basis.


While the PLF must cope with the uncertainty and volatility associated with the attorneys professional liability line of coverage, it has significant advantages over other organizations. These advantages enhance the PLF's chances for appropriately establishing the assessment. The mandatory nature of the program avoids the

Mr. Ira Zarov
Ms. Betty Lou Morrow
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August 6, 2014

disruption that occurs in a commercial company's block of business that results from consumer response to the competitive market. The PLF is not required to make assumptions regarding its exposure base for the period for which the assessment is to be established. Also, writing one policy form with uniform coverage features and limits and a common renewal date greatly strengthens the rating process. Because of these attributes, the PLF does not have to "aim at a moving target," as do its sister organizations in other states. While periodic analyses are important to the PLF's success, the resulting revisions are more likely to be refinements than sudden large increases.

As in the past, we have enjoyed the opportunity to work with you and we look forward to discussing the results of this analysis. If you have any questions, or if there are other issues that should be addressed, please let us know.

Sincerely,

A handwritten signature in black ink that reads "Charles V Faerber". The signature is written in a cursive, flowing style.

Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms
Enclosure

cc: Mr. Philip S. Dial

N:\clients\oplf\wpfiles\2014\assess15.doc

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 22, 2014
From: Ira Zarov, PLF CEO
Re: Recommended Changes to PLF Policies Section 7

Action Recommended

Approve recommended changes to PLF Policy 7.700. These changes were approved by the PLF Board of Directors at its August 14, 2014 board meeting.

Background

PLF Bylaws and Policies Section 7 sets forth how the PLF Excess Coverage Program is both underwritten and operated. Section 7.200(L)(1) provides for a continuity credit that benefits law firms who maintain continuous excess coverage with the PLF. This continuity credit begins at 2% for the first year of coverage, and builds each year by 2% to provide a maximum credit of 20% after ten years. As Section 7 is currently written, awarding this continuity credit to covered law firms is not optional for the underwriter. This one-size-fits-all approach has the effect of providing a financial benefit to firms with a negative claims history or different level of excess risk. This policy is not consistent with best underwriting practices. Elimination of the “one-size-fits-all,” automatic nature of the continuity credit would allow the underwriters increased flexibility to provide this credit to firms that do not pose increased risk.

The changes to PLF Policy 7.700(N) are necessary to make that policy consistent with PLF Policy 7.700(L).

PLF Policy 7.700(L)(1)

This Policy currently reads:

Continuity Credit: Firms which are offered excess coverage will receive the following continuity credits for the following periods of continuous PLF excess coverage:

Full Years of Continuous PLF Coverage	Continuity Credit (As Percentage of Applicable Firm Assessment)
10 or more	20%
9	18%
8	16%
7	14%
6	12%
5	10%

Full Years of Continuous PLF Coverage	Continuity Credit (As Percentage of Applicable Firm Assessment)
4	8%
3	6%
2	4%
1	2%

The PLF Board of Directors proposes changing PLF Policy 7.700(L)(1) to the following:

Discretionary Continuity Credit: Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years) at the underwriters discretion if the firm has no negative claims experience, does not practice in a Higher Risk Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A)&(C). A renewing firm currently receiving a continuity credit may see a reduction in that credit if, at the time of renewal, the firm had a negative claims experience, is practicing in a Higher Risk Practice Area, or fails to meet acceptable practice management criteria.

PLF Policy 7.700(N)

The last sentence in PLF Policy 7.700(N) reads:

Renewing firms will qualify for continuity credits pursuant to subsection (L) so long as the firm renews its coverage no later than January 31.

If the changes are made to PLF Policy 7.700(L)(1) as proposed above, the PLF Board recommends the following corresponding change to PLF Policy 7.700(N):

Renewing firms may qualify for the discretionary continuity credit pursuant to subsection (L) so long as the firm renews its coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: July 30, 2014
From: Ira Zarov, PLF CEO
Re: PLF Policy 3.250 – Step-Rated Assessment

Action Recommended

Please approve the recommended changes to PLF Policy 3.250. These revisions were approved by the PLF Board of Directors at its August 14, 2014 board meeting.

Background

Prior to 2005, the Step-Rated Assessment policy was more generous than the current policy. The former policy provided a 50% credit in the first year, 30% in year two, and 15% in year three. The change was made for purely economic reasons as the PLF's fiscal experience had recently been negative. The relevant Board minutes stated:

The step-rated discounts cost about \$1.1 million with the current assessment. The staff and Finance Committee recommend reducing the discount by modifying the existing policy. This change would increase revenue approximately \$349,000. Staff hopes that this change would increase the chances that the Primary Program assessment would remain at \$3,000 for 2007.

Circumstances have changed in several ways. First, in recent years the PLF balance sheet has been very positive. Second, the economics of law practice have become more problematic, especially for new attorneys (the group who benefit most from the step-rated credits).

The suggested change (see PLF Policy 3.250 attached) has a cost. The cost, however, is estimated to be at the high end, \$350,000 per year and at the lower end, \$210,000. This range is a reflection of how many individuals would make use of the credit.

Attachment:
PLF Policy 3.250 – tracked.

3.250 STEP-RATED ASSESSMENT

(A) Attorneys will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an attorney's PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the attorney has maintained in all prior years as of January 1 of the current year (the "Prior Coverage Period Total"). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney's annual assessment rate as stated in the following table:

Prior Coverage Period Total	Step Rating Credit
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months <u>to 36 months</u>	<u>20</u> percent
<u>Over 36 months</u>	<u>0 percent</u>

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any ~~Special Underwriting Assessment~~, installment service charge, late payment charge, or any other charge.

(BOD 9/25/96; BOG 11/17/96; BOD 9/14/05; BOG 9/30/05)

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RESOLUTION – AMENDMENT TO ORPC 1.2

Whereas Oregon attorneys wish clarify the ethical duties of Oregon attorneys complying with current Oregon law now therefore be it,

RESOLVED, THAT the Board of Governors formulate an amendment and/or subsection to ORCP 1.2(c), for approval by the House of Delegates and adoption by the Supreme Court, that clarifies ORCP 1.2(c) to allow a lawyer to assist a client in conduct that the lawyer reasonably believes is permitted by the Oregon Medical Marijuana Program, the Medical Marijuana Dispensary Program and any other Oregon law (including the 2014 Initiative Measure 91 – The Control, Regulation, and Taxation of Marijuana and Industrial Hemp if it passes) related to the use and regulation of marijuana and/or hemp including regulations, orders, and other state or local provisions implementing those laws. The clarification should also include a provision requiring the lawyer to advise the client regarding conflicting federal law and policy.

Submitted by Delegate: Eddie D. Medina
OSB Number: 054345

Background Statement: Currently, ORPC 1.2(c) states that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

ORPC 1.2(c) is vague regarding the scope of counsel and assistance an Oregon attorney may give to clients wishing to conduct business under Oregon’s Medical Marijuana Program, the Medical Marijuana Dispensary Program and the imminent legalization of recreational marijuana and hemp. This amendment would merely clarify that an attorney is not in violation of the ORPC’s by working with businesses complying with Oregon law.

Clarification of ORCP 1.2 is necessary because the Colorado Bar Assoc. Ethics Committee recently interpreted a nearly identical rule (Colo. RPC 1.2(d)) to prohibit lawyers from (1) drafting or negotiating contracts to facilitate the purchase and sale of marijuana between businesses and/or (2) drafting or negotiating leases for properties or facilities, or contracts for resources or supplies, that clients intended to use to cultivate, manufacture, distribute, or sell marijuana. In addition, the Committee interpreted the rule to prohibit a lawyer from representing the lessor or supplier in such a transaction if the lawyer knew the client’s intended uses of the property, facilities or supplies was related to marijuana. The Committee found that violation of the ethics rule occurred even though those transactions complied with Colorado law. Colo. Bar Assoc., *Formal Opinion 125 – The Extent to Which Lawyers May Represent Clients Regarding Marijuana-Related Activities*, 42 The Colo. Lawyer 19 (2013), http://www.cobar.org/tcl/tcl_articles.cfm?articleid=8370.

In direct response to the Committee’s findings, the Colorado Supreme Court clarified Colo. RPC 1.2(d) and stated that it was not a violation of the Colo. RPC’s for a lawyer to

“counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, **and [a lawyer] may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them.** In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.” Colo. Rules of Prof.’l Conduct, Rule. 1.2[14].

In conclusion, without additional clarification of ORPC 1.2(c), Oregon attorneys run the risk of violating the ORPC’s by merely drafting or negotiating a contract on behalf of a business participating in Oregon’s legal marijuana/hemp marketplace. The fact that no disciplinary action has been taken to date against any Oregon lawyer regarding this specific ethical issue does not provide sufficient guidance or assurances to Oregon lawyers that wish to provide valuable and needed legal services to clients in this highly regulated industry.

Financial Impact: None.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 25, 2014
From: Judith Baker Legal Services Program Committee
Re: Updates to Legal Services Program Standards and Guidelines

Action Recommended

The Legal Services Program (LSP) Committee is recommending that the BOG approve the revisions to the LSP Standards and Guidelines.

Background

The Legal Services Program Standards and Guidelines (Standards and Guidelines) were developed in 1998 and apply to all programs providing civil legal aid services in Oregon who receive funding from the OSB Legal Services Program (LSP). The Standards and Guidelines outline the OSB's governing structure and oversight authority as well as provider structure and use of fund requirements.

The LSP Committee is charged with reviewing and making recommendations to the BOG on the Standards and Guidelines and their periodic review. The LSP Committee has reviewed and is recommending approval of the revisions to the Standards and Guidelines (see attached). The revisions are mostly updates to the following: statutory authority; provider structure; additional standards.

Oregon State Bar Legal Services Program Standards & Guidelines

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Appendices

- A. Statutory Authority
 - A1 ORS 9.572 et seq.
 - A2 Ors 21.480
- B. Oregon State Bar Board of Governor's Policies Section 15.300 et seq.
- C. "Standards for Providers of Civil Legal Services to the Poor," as approved by the ABA House of Delegates, August, 1996
- D. "Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," adopted by the American Bar Association House of Delegates, February 1996.
- E. OSB Civil Legal Services Task Force Final Report, May, 1996
- F. Selected Legal Services Corporation Performance Criteria, 1996
- G. Declaration of Angel Lopez and Charles Williamson

I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

*OSB Civil Legal Services Task Force Final Report, May 1996
Appendix I, Page 1 & 2*

"Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon's statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- * *Protect the individual rights of low income clients;*
- * *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- * *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*
- * *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of ~~filing fee~~ funds appropriated to the OSB by ORS ~~21.480-9.577 (Appendix A2)~~ ORS 98.386 (2) and ORS 9.241 (3) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. **Purpose:** The Governing Committee (OSB LSP Committee) is charged with oversight of the OSB LSP and the funds appropriated to the Bar by the Oregon Legislature under ORS 9.572. The OSB LSP Committee will receive direction from the Board of Governors.

2. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

The Standards and Guidelines for the OSB LSP and their periodic review
Applications for funding to the OSB LSP
Disbursement of funds and annual OSB LSP budget
Assessment of Provider Programs
Annual reporting by the Providers
Legislative issues involving the legal aid filing fee funds
Complaints and grievances about Providers
Additional work of the OSB LSP

3. Membership

a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

- b. Membership:** The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:
 - (1) Commitment to the basic principles of access to justice
 - (2) Ability to advance the mission of the OSB LSP
 - (3) Knowledge and understanding of providing quality legal services to low-income people.
 - (4) History of support for legal services providers
 - (5) Representation of a geographic area with special attention given to practice area specialties.
- 4. **Term of Appointment:** Appointments will be made for 3 year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
- 5. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
- 6. **Meetings:** The OSB LSP Committee will meet quarterly. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
- 7. **Quorum:** Five members constitute a quorum for voting purposes.
- 8. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. **Director of Legal Services Program:** The OSB will hire a Director of Legal Services Program (OSB LSP Director) who will be supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director will staff the OSB LSP Committee and be responsible for supporting its work and for the effective administration of all aspects of the LSP.

- a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

These Standards and Guidelines and their periodic review
Applications for funding
Disbursement of funds and Annual OSB LSP budget
Assessment of Provider Programs
Annual Reporting by the Providers
Legislative Issues regarding the filing fee funds
Complaints and grievances about Providers
Additional work of the OSB LSP

- b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996, (Appendix E). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (Appendix G), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of

the areas served by the Provider including race, ethnicity, gender and similar factors.

- a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
 - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and community based organizations which advocate for or deliver services or resources to the client community served by the Provider.
3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 15.300 *et seq.* of the Oregon State Bar Board of Governors' Policies (Attachment B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider's ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. **Provider Use of Funds and Eligibility Guidelines**

1. **Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 *et seq.* only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.
3. **Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 *et seq.* However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
4. **Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

1. **Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the

need for outreach, training of the program's employees, and support services.

b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.

- (1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
- (2) The resources of the Provider;
- (3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
- (4) The availability of other sources of training, support, and outreach services;
- (5) The relative importance of particular legal problems to the individual clients of the Provider;
- (6) The susceptibility of particular problems to solution through legal processes;
- (7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
- (8) Whether legal efforts will result in efficient and economic delivery of legal services; and
- (9) Whether there is a need to establish different priorities in different parts of the Provider's service area.

2. **Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided

as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

- 1. Grievance Committee:** The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.
- 2. Grievance Process:** The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.
 - a.** The procedures shall minimally provide:
 - (1)** Information to a client at the time of the initial visit about how to make a complaint;
 - (2)** Prompt consideration of each complaint by the director of the program, or the director's designee; and
 - (3)** If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

1. ~~"Standards for Providers of Civil Legal Services to the Poor," as approved by the American Bar Association House of Delegates, August, 1986. (Appendix C)~~
1. American Bar Association Standards for the Provision of Civil Legal Aid, August, 2006 (Appendix C)
2. "Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August, 2013 ~~February, 1996~~. (Appendix D)

3. Legal Services Corporation Performance Criteria, ~~1996~~ 2007. (Appendix F)
4. Oregon Rules of Professional Conduct ~~Code of Professional Responsibility~~.

G. ~~Columbia County Exception~~

~~The Columbia County Legal Aid program is a Pro Bono Program, which currently does not have an attorney on staff as required by B.3. of this section. However, the Columbia County Legal Aid program shall make efforts over the next four (4) years to comply with B.3. of this section. In addition, the Columbia County Legal Aid program shall comply with the ABA Standards for Programs Providing Civil Pro Bono Services to Persons of Limited Means, February 1996, Standard 4.8, (Appendix D) requiring appropriate attorney supervision of its non-attorney staff. Finally, the Columbia County Legal Aid program shall take steps to comply with all other Standards.~~

~~This exception is based on the fact that since the early 1980s the Columbia County Legal Aid program has been a successful Pro Bono program. Over the years the program received filing fees.~~

~~The program does not currently have a staff attorney due to the lack of financial resources. The program has been able to provide pro bono legal services without a staff attorney. Based on this history, the Columbia County Legal Aid program is granted an exception to B.3. of this section for no more than four (4) years.~~

IV. Cooperative Collaboration by Providers

- A. **Mechanism for Cooperation:** Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

To facilitate additional communication between organizations;

To coordinate and integrate key functions across program lines;

To create a forum for identifying client needs;

To collaborate and strategize how best to meet the needs of the client community;

To discuss funding needs and potential funding mechanisms;

To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.

To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad based, full range of advocacy approaches and services to clients.

A. Funding of Providers

1. **Presumptive funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

- a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September, 1998.

Funding will continue under presumptive funding until:

1. Provider is found not in compliance at which point Section V.F. will be implemented; 2. Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or 3. OSB LSP no longer receives funding under ORS 9.572 *et seq.*

- b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions **c.** and **d.** of this Section to modify

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors November 12, 2010- Page 16

grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

- c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.
- d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:
 - (1) The subcontract is for no more than one year;
 - (2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
 - (3) The subcontract is for services within the parameters of these Standards and Guidelines;
 - (4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
 - (5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
 - (6) For all subcontracts, the Provider must give the OSB LSP 30 days notice of intent to subcontract along with a copy of the proposed subcontract.

- 2. **Additional Funds:** If there are funds over those allocated for presumptive

funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association's Standards for Monitoring and Oversight of Civil Legal Services Programs.

C. Annual Reporting Requirements

- 1. Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
- 2. Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
 - a.** The numbers and types of cases and matters in which legal services were delivered;
 - b.** A listing of the Provider's staff and Governing Body;
 - c.** A copy of its budget;
 - d.** A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance

processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. ACCOUNTABILITY PROCESS

1. Process: The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

1. A periodic self assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
2. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
3. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

E. Complaint Procedure

1. Complaints about Legal Services Providers:

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below.

Providers will furnish the OSB LSP with the resolutions to the referred complaints.

- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. Complaints from Applicants to the OSB LSP

Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

F. Non-Compliance by Provider

- 1. **Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair. The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing. The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision.

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until

the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Committee, in consultation with the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

6. **Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2014-11 CONNALL (Briggs) Request for Review

Action Recommended

Consider the claimant's¹ request for review of the CSF Committee's denial of the claim.²

Background

In 2009 Clayton Briggs was charged with various Measure 11 offenses and defense counsel was appointed. However, Clayton and his mother did not believe the public defender was representing Clayton adequately and in late July 2009, Clayton retained Shannon and Des Connall to handle his defense. Ms. Briggs paid a \$10,000 "minimum flat fee" that was designated as "earned on receipt."

Ms. Briggs claims that the Connalls assured her of their confidence in Clayton's innocence, promised to get Clayton into a drug treatment program and also promised that he would never go to jail. However, she claims once the fee was paid the Connall's didn't communicate with her or Clayton, missed court appointments, failed to conduct an investigation, exercised poor judgment, and generally neglected the case. At Des Connall's urging, Clayton pleaded no contest and in February 2010 was sentenced to 130 months.

Not surprisingly, Des Connall presented a different view of his representation when the matter was investigated by DCO. He claims to have reviewed the discovery and carefully reviewed the state's evidence with Clayton; he also analyzed the issues and was prepared on the applicable law. By the time the Connall's entered the case, the ADA had already determined that Clayton was her principal target; Clayton's former girlfriend was going to testify against him in exchange for a reduced sentence. At the settlement conference, the ADA indicated she would agree to cap his sentence at 130 months if Clayton pled to the indictment but would seek 160 months if the matter went to trial. Des Connall arranged for two psychological examinations of Clayton to support his theory that Clayton was marginally intellectual and suffered from an antisocial personality disorder. Des provided a summary of his work during the

¹ This claim was submitted by Lagale Briggs on behalf of her son Clayton, who is currently serving a prison term and suffers from some cognitive deficits. Although Clayton signed the application, most of the information about the claim came from Ms. Briggs and from DCO's investigation of a related disciplinary complaint.

² Ms. Briggs responded to the notice of the Committee's decision with a lengthy letter disputing the Committee's findings and conclusions and expressing her concerns about the justice system. While she did not expressly request BOG review, I decided to treat her letter as such in the hope that a further review will, regardless of outcome, give her some confidence in the process.

representation which included in-person and telephonic meetings with both Clayton and his mother, conferences with the psychologists, and appearances at hearings.

The bar began to receive complaints about Des and Shannon Connall in August 2010 and by October 2010 was investigating 8-10 of them. Shannon Connall submitted a Form B resignation on December 23, 2010.³ The disciplinary matters continued to be investigated against Des Connall; he was negotiating his resignation when he died on December 7, 2013.

While DCO questioned the veracity of Des Connall's after-the-fact summary of the time he spent on the case, it found no probable cause to charge him with incompetence, neglect or charging an excessive fee. The charges for which DCO found probable cause were failing to keep the client informed and dishonesty in his responses to disciplinary counsel (regarding the time records).

The relevant CSF rules provide:

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

2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney. Based on all of the information available, the CSF Committee concluded that the Connall's provided more than de minimis services to Clayton

Based on the information available, the CSF Committee concluded there was no false promise to provide legal services and the Connalls didn't wrongfully fail to maintain funds in trust. The Committee also concluded that the Connalls provided much more than de minimis services in exchange for the fees paid. Accordingly, the claim was denied.

Attachments: Application for Reimbursement
CSF Investigative Report
Letter from Lagale Briggs

³ Shannon passed away unexpectedly on July 24, 2013.

July 29, 2014

RE: CLIENT SECURITY FUND CLAIM NO 2014-11 : LAWYER: DES CONNALL, SHANNON CONNALL

YOUR DENIAL WAS EXACTLY WHAT I EXPECTED. THE COMMITTEE IS WRONG, DES. CONNALL AND SHANNON CONNALL DID NOT DO EXTENSIVE WORK FOR THEIR FEE. AS SOON AS THE FEE WAS PAID, THEY DID NOTHING TO DEFEND THEIR CLIENT, THEY WERE NOT EVEN CONSIDERATE ENOUGH TO RETURN PHONE CALLS. THE CONNALL'S STAFF STATED THAT THEY DID NOT DO ANY WORK REGARDING CLAYTON'S CASE.

A DISPUTE OVER THE REASONABLENESS OF THE FEE IS NOT EVIDENCE OF DISHONESTY, THEN WHAT IS? NO ONE WOULD PUT THEMSELVES THROUGH FILING A COMPLAINT AND JUMPING THROUGH THE HOOPS WHEN THEY KNOW THEY WILL NOT GET ANY HELP. I FILED A COMPLAINT WITH THE BAR, AND SHANNON AND DES, BOTH, GAVE UP THEIR LICENSE, INSTEAD OF FACING THE CHARGES AND ANSWERING FOR THEIR DISHONESTY AND DISREGARD FOR THEIR CLIENT. I CONSIDER THIS A GUILTY PLEA. THE EVIDENCE IS QUITE OBVIOUS IN THE CIRCUMSTANCES THAT HAVE TAKEN PLACE SINCE 2010.

ACCORDING TO THE CONSTITUTION EVERY PERSON IS ENTITLED TO REPRESENTATION.

WELL MY SON DID NOT GET ANY REPRESENTATION PERIOD, CLAYTON DID WRONG AND HE IS PAYING FOR IT, BUT THE ILLEGAL ALIEN WHO PROVIDED THE DRUGS AND WHO IS SELLING DRUGS TO OUR CHILDREN, AND THE GIRL WHO ALSO HAD A CRIMINAL RECORD, AND WAS PROSTITUTING, AND WHO SET THE WHOLE SITUATION UP. IS ON OUR STREETS STILL DOING THE SAME THING, EVIDENTLY THEY GOT REALLY GOOD REPRESENTATION, WHILE CLAYTON IS IN PRISON, WHERE HIS HEALTH HAS DECLINED UNTIL THE PRISON DOCTOR HAS HIM ON MULTIPLE MEDICATIONS. THE PRISON PERSONNEL EVEN TOOK HIS TEETH (BRIDGE) FROM HIM AND SENT THEM TO ME, SO THAT HE HAS TO ENDURE NO FRONT TEETH, AND

[illegible]

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AFTER SIX YEARS THEY HAVE NOT FIXED ANY TEETH, WHICH WERE KNOCKED OUT AND DAMAGED DUE TO BEING IN PRISON. IN THIS DAY AND AGE, HOW CAN IT BE POSSIBLE, THAT SOMEONE HAS TO ENDURE SUCH INHUMANE TREATMENT, AND YOU HAVE THE AUDACITY TO TELL ME THE CONNALLS DID NO WRONG. THE CONNALLS WERE NOT HELD ACCOUNTABLE FOR THEIR ACTIONS. I THOUGHT THE BAR ASSOCIATION HELD THE ATTORNEYS TO A HIGHER STANDARD AND BEING LICENSED HELD THEM TO CERTAIN STANDARDS OF CONDUCT. I HIRED SHANNON AND I KNOW THE BAR IS AWARE OF HER ADDICTION AND ALSO OF HER ACTIONS, WHICH WERE CRIMINAL, NOT WITHSTANDING HER CONDUCT AS AN ATTORNEY. AS FOR DES CONNALL I DO NOT KNOW WHAT HIS EXCUSE IS OR WAS. OTHER THAN HE THOUGHT HE WAS ABOVE THE LAW, AND EVERYONE WAS SUPPOSE TO WORSHIP HIM AND NOT QUESTION ANY OF HIS ACTIONS. HE WAS A SENILE OLD MAN WHO SHOULD HAVE STOPPED PRACTICING LAW YEARS AGO, NOT TO MENTION HE WAS RUDE AND DID NOT KNOW THE TRUTH OR SEEK TO FIND THE TRUTH. OUR JUSTICE SYSTEM IS IN A SAD STATE, DUE TO PEOPLE LIKE THE CONNALLS, AND THE FACT THAT ATTORNEYS ARE NOT HELD ACCOUNTABLE FOR THEIR ACTIONS. THAT IS THE REASON ALL THE JOKES ABOUT LAWYERS. THE PUBLIC KNOWS THAT THE BAR AND THE CLIENT SECURITY FUND COMMITTEE AND ALL THE ATTORNEYS ARE PROTECTING EACH OTHER SO THAT IF YOU ARE A LAWYER YOU CAN DO AS YOU DAM WELL PLEASE.

OUR JUSTICE SYSTEM IS IN A HORRIBLE STATE AND THERE IS NO JUSTICE, IT IS JUST A MONEY THING, I E PROBATION, FINES, TREATMENT, IMPRISONMENT SO THAT YOU CAN'T EVEN GET A PHONE CALL UNLESS YOU HAVE MONEY, AND A LOT OF IT. JOB SECURITY FOR ATTORNEYS, JUDGES, CORRECTIONAL OFFICERS, PROBATION OFFICERS, TREATMENT PERSONNEL, AND ALL OF THESE PEOPLE JUDGE AND TREAT THE PUBLIC AS GARBAGE BECAUSE THEY DON'T HAVE TO GO BY OUR RULES. THEY ARE ABOVE THE LAW

WHAT HAPPENED TO JUSTICE, WHERE SOMEONE PAID FOR THEIR WRONG DOING AND THEN WERE ABLE TO GET ON WITH THEIR LIFE, NO THEY PAY FOR THE REST OF THEIR LIFE AND THERE IS NOT CHANCE TO START OVER, BECAUSE THE SYSTEM WILL NOT LET THEM.

I DID NOT HIRE DES CONNALL, I HIRED SHANNON CONNALL, I DID NOT KNOW SHANNAN WAS AN ADDICT AND THAT SHE WAS NOT COMPETENT. I WAS TRYING TO TAKE CARE OF A VERY SICK HUSBAND, THAT IS WHY I HIRED SHANNON CONNALL. MY HUSBAND IS A TRANSPLANT PATIENT, HAS A HEART CONDITION (8 HEART ATTACKS) DIABETIC, AND HAS CANCER FROM THE IMMUNE SUPPRESSANT DRUGS. SO HE WAS NOT IN ANY CONDITION TO HELP CLAYTON. I HAD TO PAY THE ATTORNEY FEES WITH A CREDIT CARD, AND HAD TO PAY INTEREST FOR A YEAR BEFORE I COULD PAY IT OFF, BUT I KNOW IT WAS A SMALL AMOUNT TO THE CONNALLS, CLAYTON'S TRIAL WAS FEBRUARY 9, 2010, AND MY MOTHER PASSED AWAY ON FEBRUARY 1ST AND MY SISTER ON FEBRUARY 14TH. THIS WAS A VERY STRESSFUL TIME FOR ME AND I DEPENDED ON THE CONNALLS TO DO WHAT I HAD RETAINED THEM TO DO.

CLAYTON HAS SERVED SIX YEARS FOR BEING STUPID AND HAS SUFFERED A BROKEN ARM, WHICH WAS NOT EVEN SET FOR THREE MONTHS, AND HAD TO UNDERGO SURGERY TO REPAIR, AND STILL IS NOT RIGHT. A PUNCTURED LUNG,

July 29, 2014

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WHICH THEY MADE HIM RETURN TO HIS CELL AND SUFFER ALL NIGHT TRYING TO BREATHE, AND THEY GAVE HIM A GERD COCKTAIL FOR A PUNCTURED LUNG, IT IS A MIRACLE HE IS ALIVE. INSECT BITES, LOSS OF HIS TEETH, UNABLE TO EVEN EAT SOLID FOODS. I EVEN FOUND A DENTIST WHO WOULD FIX HIS TEETH, AND THE PRISON IN SALEM AGREED TO TRANSPORT HIM FOR THE DENTAL WORK, BUT HE WAS MOVED FOR NO REASON TO ONTARIO. WHERE I HAVE NOT EVEN BEEN ABLE TO VISIT HIM FOR FOUR YEARS, BECAUSE OF HIS FATHER'S HEALTH. WE HAD DOCTOR'S LETTERS AND THE DA SAID HE COULD BE KEPT IN SALEM, BECAUSE OF HIS FATHERS' HEALTH, BUT SOMEONE CHANGED THAT. NO MATTER WHAT I TRY TO DO TO GET PROPER CARE, A PROPER DEFENSE NOTHING WORKS RIGHT IN THE SYSTEM. I GUESS IT IS ALRIGHT SINCE CLAYTON HAS ADS AND DIDN'T DO WELL IN WELL IN SCHOOL, HE IS NOT SMART ENOUGH TO CARE SO WE CAN JUST LOCK HIM UP AND FORGET HIM.

SO YOU THINK YOUR DECISION IS RIGHT, WELL I DO NOT HAVE TO JUDGE YOU, SHANNON OR DES CONNALL, THEY HAVE TO ANSWER TO A HIGHER POWER. I HOPE HE IS AS UNDERSTANDING AS YOU ARE.

SINCERELY

A handwritten signature in blue ink that reads "Lagale Briggs". The signature is written in a cursive, flowing style. Below the signature, the name "LAGALE BRIGGGS" is printed in a simple, sans-serif font.

LAGALE BRIGGGS

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Awards

Action Recommended

Consider the recommendation of the Client Security Fund Committee to make awards in the following cases:

No. 2013-48 BERTONI (Monroy)	\$5,000.00
No. 2014-01 McCARTHY (Snellings)	\$7,000.00

Discussion

No. 2013-48 BERTONI (Monroy) \$5,000

Anna Monroy consulted with Gary Bertoni in August 2011 regarding representation in a post-conviction proceeding.¹ Monroy claims that Bertoni agreed to take the case for a fixed fee of \$5,000; 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. Monroy paid \$2,000 at or near the time of signing the fee agreement; a second payment of \$3,000 was made in February 2012.² Bertoni asserts he was handling the case on an hourly basis and earned more than he was paid.

Monroy and Bertoni have very different versions of what occurred after Bertoni was retained. Monroy says he did virtually nothing on her case and didn't tell her that he was going to be suspended for five months beginning on March 26, 2012. When she learned about it, Bertoni assured her that he had arranged for attorney Kliewer to assume his responsibilities in the post-conviction case. Kliewer contends that her role was very limited by Bertoni and that she was instructed not to take some actions that she believed were necessary for Monroy. It was Kliewer who informed Monroy that Bertoni hadn't done anything on her case.

After the initial consultation, Bertoni claims he reviewed the discovery and the transcript from Monroy's criminal trial and participated in a telephone status conference. He also claims that he worked as Kliewer's "legal intern" during his suspension, arranging scheduling, performing legal research, and attempting unsuccessfully to attend a meeting in

¹ Shortly 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, for which she paid him \$1,300. She does not seek an award in the civil matter, as Bertoni eventually delivered the funds to another attorney who handled the case.

² Monroy was incarcerated during all relevant times and the fees were paid by her sister, Teresa.

Monroy's case as a legal assistant. Bertoni was reinstated in late August, 2012. A few days later, Monroy terminated his services. Bertoni doesn't deny that he 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.

At a meeting in March 2014, the CSF Committee concluded that Bertoni was dishonest in retaining funds for which no services of any value were received and recommended an award of the full \$5,000 paid for the post-conviction matter. (The committee also believed that Bertoni had failed to retain the funds in trust until earned.) Additionally, the committee recommended 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.

When Bertoni was informed of the Committee's recommendation, he asked to present additional information in support of his position. The Committee reviewed Bertoni's submission at its meeting on July 12, 2014 and voted unanimously to affirm its earlier recommendations.

*Attachments: Application for Reimbursement
Committee Investigator's Report
Bertoni Letter to Investigator*

No. 2014-01 McCARTHY (Snellings) \$7,000

Claimant seeks an award of his portion of the proceeds of a personal injury claim handled by Steven McCarthy.

Beginning at least in March 2012, Snellings was in a joint venture ("7777 Quarter Horses") with Vicky McCarthy and her son Scott Newman. At the time, Vicky McCarthy was Steven McCarthy's wife. Snellings lived on property owned by Steve and Vicky McCarthy and apparently received room and board in exchange for services he contributed to the venture.

On August 18, 2012, Snellings was involved in a motor vehicle accident and hired McCarthy to pursue a claim for injuries sustained in the accident. The fee agreement provided for a standard 1/3 fee to McCarthy, but according to Snellings, McCarthy subsequently agreed to take a fee of only \$3,000, with the balance going to Snellings.

On October 3, 2012, State Farm issued a check for \$10,000 to Snellings and McCarthy. The check was endorsed "In Trust for Calvin Snellings by Trustee" by Steven McCarthy.

According to Snellings, upon receipt of the settlement check, McCarthy told Snellings he was in temporary financial trouble, needed to borrow Snellings' portion of the settlement, and would repay it as soon as received the proceeds of another case that was close to completion. Snellings claims he was unwilling to make the loan, but felt he couldn't object since McCarthy had possession of the funds. Despite numerous demands, McCarthy has never delivered Snellings' funds.

Although McCarthy did not respond to the investigator's inquiries, he provided the OSB with a copy of a civil complaint he drafted (but apparently never filed) alleging that beginning in early 2012, the joint venturers conspired and acted in concert to deprive him of his property and cause the dissolution of his marriage. He also alleges having been told by Vicky and the others that Snelling had donated his share of the insurance settlement to the venture as working capital. (In response to inquiries from DCO,³ Vicky denied that Snellings donated his settlement to the joint venture and says she never received any such sum.)

The CSF Committee had a spirited discussion of the claim and was not unanimous in its decision. The majority believed that McCarthy was dishonest in "luring" Snellings into letting McCarthy keep the funds and also believed that McCarthy took advantage of Snellings by essentially "requesting" the loan while he was in possession of Snellings' funds. The majority noted that Snellings has limited education and little knowledge of the legal system and they believed that McCarthy used his influence as a lawyer to discourage Snellings from refusing the loan or making a fuss when McCarthy refused to repay him. The majority was also suspicious about McCarthy's conflicting descriptions of what the funds were ultimately used for.

In contrast, a minority of the committee found no evidence of dishonesty, only a loan gone bad. They also were not persuaded that "but for" the lawyer-client relationship, Snellings would not have made the loan to McCarthy. They also pointed out that Snellings made no apparent effort to collect the loan from McCarthy prior to making a claim with the CSF. (To the best of staff's knowledge, based on information provided by Snellings, McCarthy has relocated to Florida.)

Ultimately, the Committee voted 9-2 to award Snellings \$7,000 (and, implicitly, to waive the requirement that he first obtain a judgment against McCarthy).

*Attachments: Application for Reimbursement
Committee Investigator's Report*

³ DCO recommends that the SPRB authorize formal charges against McCarthy for failing to secure proper consent to a business transaction with his client and for failure to respond to disciplinary inquiries; DCO does not believe there is probable cause to charge McCarthy with dishonesty in connection with the loan.

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 Kliewer, 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 Kliewer, to handle his responsibilities for the accused. However, Ms. Kliewer reported that her roll was very limited by the accused, and she was not permitted to take some necessary actions for claimant. Furthermore, Ms. Kliewer 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. Kliewer was "doing things behind his back", and that he would terminate her role, all the while telling claimant to conceal such information from Ms. Kliewer.

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.

CLIENT SECURITY FUND INVESTIGATIVE REPORT

From: Lisanne M. Butterfield

Date: July 10, 2014

Re: **CSF Claim No.:** 20114-01
Claimant: Calvin James Snellings
OSB Lawyer: Steven M. McCarthy

I. Summary Recommendation

This claim should be allowed in the amount of \$7,000.¹

II. Summary of Claim

Claimant Calvin James Snellings (“Claimant”) seeks recovery of \$7,000 based on the settlement proceeds (the “Insurance Settlement”) that his attorney Steven McCarthy (“McCarthy”)² obtained through settlement of a motor vehicle accident claim.

III. Background Facts

Claimant is an unsophisticated middle-aged man, with limited formal education and a compromised ability to read or write (due to dyslexia). Claimant’s compromised ability to effectively communicate in writing created an opportunity for his attorney’s defalcation and conversion of funds, which was against Claimant’s best interests. Accordingly, this case includes special and unusual circumstances. The Claimant suffered extreme hardship because of his lawyer’s misconduct.

Prior to 2012, Claimant had entered a business venture, 7777 Quarter Horses (the “Partnership”) with Victoria Karen Newman, formerly Vicky McCarthy (“Vicky McCarthy”) and her adult son, Scott Charles Newman. Until she filed for a divorce in October 2013, Vicky McCarthy was married to Steven McCarthy.

¹ In his Application for Reimbursement, the Claimant stated that he agreed to pay McCarthy a $\frac{1}{3}$ contingency fee. The amount of \$10,000 was allegedly paid to McCarthy, who later expressly agreed to keep only \$3,000 as his fees. There is no evidence of costs paid or advanced by McCarthy to secure the Insurance Settlement. Therefore, Claimant was entitled to receive \$7,000, the net amount of the Insurance Settlement.

² Steven M. McCarthy is, and was at all times relevant, an individual residing in Polk County, Oregon. He is a lawyer licensed in Oregon as 081030, and he is the owner of record of improved agricultural real estate located at 1265 Highway 51, Independence, Oregon. See Complaint, Marion County Circuit Court, State of Oregon, Civ. Case No. 14C11375, styled as *McCarthy v. Newman, et. al.* (the “McCarthy Complaint,” a copy of which is attached as **Exhibit A**). The McCarthy Complaint names Claimant as a defendant. It was filed on February 4, 2014, but has not yet been served on Claimant.

Claimant and Vicky McCarthy had a personal and business relationship related to their joint venture/Partnership formed to breed, train, and sell quarter horses from their ranch in Hermiston, Oregon. For the benefit of the Partnership, Claimant provided horse-breeding labor and related services, and contributed assets such as equines, equipment, and hay.

When Claimant worked for and with the Partnership, he sometimes received room and board from McCarthy. While working for the Partnership, Claimant was injured while operating a one-ton extended cab (the “Truck”) insured by State Farm Mutual Automobile Insurance Company (“State Farm”). It’s unclear who owned the truck; however, Alex and Aurora Cuellar are listed in State Farm’s claims file and settlement documentation as the “policy-holders.”

Claimant alleges that on August 18, 2012, he retained³ McCarthy, on a 1/3rd contingency fee basis, to represent Claimant’s interests in resolving his claim for personal injuries associated with the motor vehicle incident. McCarthy does not dispute that he agreed to represent Claimant’s legal interests in connection with the prosecution and settlement of Claimant’s personal injury claim against the at-fault driver. On or about October 2012, McCarthy settled the claim for \$10,000 (*see Exhibit B*, the Settlement Check and Release Agreement).

McCarthy represented to Claimant that the former would limit his fee to \$3,000 of the \$10,000 recovery, and the latter would receive the net balance. However, after State Farm paid the insurance proceeds to Claimant in care of his attorney, McCarthy, the latter requested a loan from Claimant. At the time, McCarthy claimed he was suffering temporary financial troubles. Claimant agreed to “loan” McCarthy the money, yet despite repeated demands, McCarthy failed to pay Claimant his 2/3rd split of the Insurance Settlement.

In recently filed McCarthy Complaint, McCarthy concedes that he received the Insurance Settlement, and applied the full amount of \$10,000 as Claimant’s capital contribution to the Partnership. Claimant denies that he was ever asked, or ever agreed, to make such a capital contribution. Notwithstanding McCarthy’s disputed “capital contribution” allegation, Claimant does not dispute that he agreed to “lend” McCarthy the entire \$10,000 Insurance Settlement, at least until McCarthy had other cases settled that would allow better cash flow to reimburse Claimant. Given these facts, it’s unclear if Claimant’s losses stem “*from [a] business or investment relationship [between McCarthy and Claimant, which included] a loan... to the lawyer,*” McCarthy. Regardless of whether or not the losses were, at some point, related to a loan by Claimant to McCarthy, the latter converted that loan to his own personal use and acted dishonestly when faced with multiple requests for payout by Claimant.

For at least several weeks beginning on or about September 26, 2013, McCarthy was out of the state in New Jersey because of the death of his mother. During that time period, McCarthy may have been unavailable to respond to Claimant regarding his claim for the Insurance Settlement. Claimant reports that he delayed the filing of the subject claim for reimbursement because he “didn’t want to get McCarthy in trouble.” The history of the parties’ communications reveals that McCarthy lured Claimant into falsely believing that, eventually, McCarthy would settle his other cases and pay Claimant the money due from the Insurance Settlement.

³ The record in this case does not include a written retainer agreement. The Claimant believes he signed one, but does not have a copy.

On November 12, 2013, the Claimant contacted the Client Assistance Office to pursue a formal complaint against McCarthy based on the latter's misappropriation of client funds. On January 2, 2014, Claimant filed the subject Application for Reimbursement from the Client Security Fund.

The Oregon State Bar disciplinary files on McCarthy reveal that he failed to respond to many staff inquiries and requests for information, except to forward a copy of his civil complaint (Exhibit A) against Claimant, and others. In his complaint, McCarthy alleges, *inter alia*, that Vicky and Scott informed McCarthy that "the \$10,000 settlement proceeds for Calvin Snelling (sic) secondary to his total destruction of [McCarthy's] truck had been donated by him to the partnership as working capital." Vicky McCarthy and Claimant deny that they ever informed McCarthy that Claimant had intended to, or agreed, to donate his Insurance Settlement to the business partnership. Moreover, Vicky McCarthy affirmatively stated that she never received any such sum.

Effective March 17, 2014, McCarthy was suspended 90 days for violation of RPC 1.1 [lack of competence], RPC 1.4(a) and (b) [failure to communicate with a client] and RPC 1.15-1(c) [failure to properly maintain client funds]. As of this date, McCarthy has not yet applied for reinstatement and has attempted to resign Form A.

FINDINGS & CONCLUSIONS

1. At the relevant time, Claimant Calvin Snellings was a client of Steven McCarthy, who was an active, licensed member of the Oregon State Bar. Previously, Mr. McCarthy was admitted to practice law in California.
2. Effective March 17, 2014, Mr. McCarthy was suspended from the practice of law in Oregon, and he has attempted to resign via Form A.
3. In the context of Mr. McCarthy providing legal services to Claimant Snellings, the former agreed to take the case on a contingent fee basis. Mr. McCarthy, however, failed to comply with ORS 20.340,⁴ which *voids* any post-September 26, 1987, contingent fee agreement which does not comply with the requirements of the statute. In this case, the Claimant may otherwise be entitled to claim reimbursement of the full \$10,000 amount from McCarthy because the contingent fee agreement was void *ab initio*. Given the Client Security Fund's primary function to reimburse clients who lose money as a result of dishonest conduct by their lawyer, and given the scarcity of resources available to pay other competing claims, it is recommended that the Client Security Fund nevertheless

⁴ ORS 20.340 provides that: (a) The contingent fee agreement shall be written in plain and simple language reasonably believed to be understandable by the plaintiff; (b) The attorney shall explain the terms and conditions of the agreement in compliance with a model explanation in plain and simple language prepared by the Oregon State Bar a reasonable time before the agreement is signed; and (c) The contingent fee agreements must contain a provision allowing the plaintiff to rescind the agreement within 24 hours after signing upon written notice to the attorney. (In this case, the evidence shows that McCarthy's contingent fee agreement failed to meet all of these requirements.)

limit the recovery in this case to \$7,000 as the amount that Claimant understood he would be paid after the \$3,000 contingent fee paid to McCarthy.

4. In relation to McCarthy's failure to pay the Insurance Settlement to Claimant, McCarthy's dishonest conduct caused Claimant to incur a \$7,000 loss. At relevant times, McCarthy acted against Claimant's interests.
5. McCarthy was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the subject claim arose. The subject transaction clearly arose out of McCarthy's practice of law in Oregon.
6. Although McCarthy has not been found guilty of a crime arising out of the dishonest conduct, the extreme hardship and special and unusual circumstances of this claim dictate a waiver of the conditions of ORS 9.655(1), and a payment of \$7,000 to Claimant.

Exhibits:

- A. *McCarthy v. Newman* Complaint
- B. State Farm Release and Settlement Check

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 25, 2014
From: Rich Spier, Governance and Strategic Planning Committee Chair
Re: OSB Federal Practice and Procedure Committee

Action Recommended

Consider the Committee's recommendation to disband the OSB Federal Practice and Procedure Committee.

Background

At its January 10, 2014, meeting the Governance and Strategic Planning Committee discussed the status of the Federal Practice & Procedure (FPP) Committee. Minutes from the meeting show that Benjamin Haile, Past Chair, indicated the committee's concern that it had no apparent meaningful purpose. He reported that the group is pretty aimless and not sure what they could be doing. After some discussion, it was suggested that the committee be discontinued at the earlier of the end of 2014 or when any existing projects are completed. The committee asked Mr. Haile to get a sense of the committee's position and report back.

In early March the FPP Committee met to discuss the Policy and Governance Committee's position. Committee members agreed many of their functions are duplicative of those conducted by the local chapter of the Federal Bar Association, the district and appellate court lawyer representative group, the US District Court Historical Society, the Federal Local rules Committee, and the Federal Inns of Court. The FPP Committee concluded that other than tracking the activity of these groups and reporting to the OSB the committee had very little to focus on. Unfortunately the FPP Committee did not have a quorum for this meeting and has not met again since.

Staff spoke with Kelly Zusman, 2014 FPP Committee Chair, in late July regarding committee's progress in completing existing projects. Ms. Zusman indicated the committee had successfully updated the OSB website to serve as a resource for bar members practicing in Federal Court (<http://www.osbar.org/courts/fedcourtinfo.html>). The page includes a description and link to all relevant groups and organizations related to federal practice.

A few members of the FPP Committee spent time promoting the federal district court's pro bono program and assisting with volunteer recruitment. Again, there were concerns that this activity overlapped with the OSB Pro Bono Committee's efforts. However, if disbanded the FPP Committee wants to ensure these efforts will continue. Cathy Petrecca, OSB Pro Bono Coordinator and liaison to the OSB Pro Bono Committee, agreed to continue assisting the federal district's pro bono coordinator with this program if the BOG sunsets the FPP committee.

The FPP Committee's charge (revised in 2011) is attached for reference.

FEDERAL PRACTICE AND PROCEDURE COMMITTEE CHARGE

General:

Assist in update and review of federal practices and procedures, keep the members of the Bar apprised of changes, and assist judiciary in its efforts to modernize this area of law. Advise Board of Governors on issues relating to federal practice. Coordinate liaison efforts between Bar membership and the federal judiciary.

Specific:

1. Identify and report to BOG improvements and proposed changes in federal practices and procedures.
2. Continue liaison activities with Oregon federal judges and staff to maintain communication and cooperation on issues affecting practice in the federal courts.
3. Continue liaison activities with Litigation Section.
4. Continue liaison activities with Federal Bar Association, federal court Local Rules Committee and 9th Circuit Lawyer Representatives.
5. Publish from time to time federal practice and procedure updates and other relevant information in appropriate forums, such as the Oregon State Bar Bulletin, to keep the Bar apprised of federal practice issues and developments.
6. Study the procedures used to nominate district court judges and magistrate judges to determine how the Bar can provide input into this process and make a recommendation to the Board of Governors.
7. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Richard Spier, Chair, Governance & Strategic Planning Committee
Re: Out-of-State Members on the Board of Governors

Action Recommended

Submit a resolution to the HOD seeking support for creating an out-of-state region for the Board of Governors.

Discussion

At the July 15 Out-of-State Region HOD meeting, there was a lively discussion of having out-of-state representation on the Board of Governors. The GSP Committee discussed the idea at some length on July 25 (joined by the Public Affairs Committee) and concluded that the issue should be presented to the HOD.

The composition of the BOG is set out in the Bar Act.¹ Although the provisions relating to the make-up of the BOG have been amended from time to time (principally to move from congressional districts to BOG-established regions, and to increase the size of the BOG), the core requirement that the governors be practicing in the state has remained the same since 1935. Of course, it was only in relatively recent years that it became commonplace for lawyers to be licensed in multiple states.

Only three US jurisdictions have out-of-state members on their governing boards. Two are unified bars (Florida and Wisconsin). Thirteen unified bars (including Washington) have one or more “at-large” positions that can be filled by any active member.

Interestingly, and for reasons that are not found in the historical record, when the House of Delegates was created, the participation of out-of-state members was expressly

¹ **9.025 Board of governors; number; eligibility; term; effect of 687 membership.** (1) The Oregon State Bar shall be governed by a board of governors consisting of 18 members. Fourteen of the members shall be active members of the Oregon State Bar who...maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices.....Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and may not be active or inactive members of the Oregon State Bar....

(2) The board of governors shall divide the State of Oregon into regions for the purpose of determining eligibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board of governors, and eligibility to vote in board of governors elections. The regions shall be based on the number of attorneys who have their principal offices in the region....

provided for.² This was likely because the HOD was a replacement for the “town hall” meeting, at which any bar member was entitled to vote.

There are 2,575 out-of-state active members³ of the Oregon State Bar. An out-of-state region would be second only to Region 5 in the number of members:

Region 1	798
Region 2	886
Region 3	687
Region 4 (2)	1,599
Region 5 (6)	5,748
Region 6 (2)	1,521
Region 7	1,017

This suggests that a sizeable portion of the membership is disenfranchised from participation on (or even selection of) the board of governors.

Changing the composition of the BOG to allow out-of-state lawyers would require amending the Bar Act, if only to provide for an out-of-state region. Even if the BOG chose not to increase the size of the board, redistricting would be required to meet the statutory requirement of having, as nearly as possible, equal representation among the regions.⁴

There are a few fairly obvious consequences of adding out-of-state representatives to the BOG. One is the additional cost attributable to adding members to the board (travel expenses being the most significant). The second is more esoteric, and that is whether any out-of-state member who lives or practices more than about four hours away would be interested in serving. Additionally, since 1,211 of the 2,575 out-of-state active members live in Washington (nearly half of those are in the Seattle-Tacoma area and another 309 or so are in or within a short distance of Vancouver), so the out-of-state representative is more likely than not to always come from Washington.

At their recent regional meeting, the HOD delegates expressed strong interest in having a voice in OSB governance. That group wasn’t concerned about having equal representation, instead saying a single out-of-state BOG member would be sufficient. They were also

² **9.136 House of delegates created; membership; terms.**

* * *

(5) Elected delegates shall be elected from the regions established by ORS 9.025 and an additional region composed of all areas not located in this state....

³ As of May 30, 2014.

⁴ ORS 9.025(2) requires that “[a]t least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation.” This was last done in 2008 (and finally implemented in 2010), so the next mandatory review would be in 2018.

unconcerned that the out-of-state representative would generally be someone from the Northwest or northern California. Their concern is with having some voice on the BOG.

Accompanying this memo is a draft of what an amendment to the Bar Act could look like, enlarging the BOG by one governor who would represent all out-of-state members. If the BOG submits this proposal to the HOD and if it is approved by the HOD, it likely could not be introduced as a legislative bill until the 2016 (or possibly even the 2017) session.

9.025 Board of governors; number; eligibility; term; effect of membership. (1) The Oregon State Bar shall be governed by a board of governors consisting of ~~18-19~~ members. ~~Fourteen~~ Fifteen of the members shall be active members of the Oregon State Bar, ~~who at the time of appointment, at the time of filing a statement of candidacy, at the time of election, and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices.~~ Four of the members shall be appointed by the board of governors from among the public. ~~Who~~ They shall at all time throughout their full term be residents of this state and may not be active or inactive members of the Oregon State Bar. A person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may not serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) The board of governors shall divide the State of Oregon into regions for election of fourteen of the board members. ~~the purpose of determining eligibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board of governors, and eligibility to vote in board of governors elections.~~ The regions shall be based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation. There shall also be an out-of-state region comprised of the active members who maintain their principal office outside of the State of Oregon, and which shall have one representative on the board regardless of the number of members in the region.

(3) Attorney candidates for the board of governors shall at all times during their candidacy and throughout their full term maintain the principal office for the practice of law in the region for which they seek election or appointment. Members of the board of governors 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. The regular term of a member of the board is four years. The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. The board must identify a position with a special term before accepting statements of candidacy for the region in which the position is located. The board shall establish rules for determining which of the elected members for a region is assigned to the position with a special term.

* * *

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Helen M. Hirschbiel, General Counsel
Re: International Trade in Legal Services Task Force Recommendation
To Amend Oregon Rule of Professional Conduct 5.5

Issue

The Board of Governors must decide whether to recommend that the House of Delegates approve the ITLS Task Force's proposed amendment to Oregon RPC 5.5.

Background

On May 13, 2013, at the suggestion of then-President Michael E. Haglund, the OSB Board of Governors established a Task Force on International Trade in Legal Services ("OSB ITLS Task Force"). In his memo to the Board, Mr. Haglund explained that, as of 2010, Oregon ranked 22nd in the United States in foreign exports with \$17.6 billion in goods and services and that Oregon businesses and their lawyers are regularly involved in international trade and dealings with foreign lawyers, particularly in the Pacific Rim. Despite this, Oregon had not specifically studied or addressed the issues of lawyer regulation arising from globalization, cross-border practice and lawyer mobility. Mr. Haglund noted that the State Bar of Georgia and the Georgia Supreme Court adopted what appear to be fairly progressive and forward-looking regulations in this area and referenced a recent memorandum from the ABA Task Force on International Trade in Legal Services as a guide for pursuing a similar process here in Oregon.

The BOG charged the Task Force with the following mission:

"The Task Force shall study the impact of international developments on the legal profession including, but not limited to, the effect of the General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), other free trade agreements having an impact on delivery of legal services, changes in the regulation of the legal profession in foreign countries that may have local impact, and all other events affecting the delivery of legal services across international borders. It shall consider these matters from the perspective of both outbound legal services delivered in foreign countries by member lawyers and inbound delivery of legal services in this state by foreign lawyers."

The following individuals were appointed to the OSB ITLS Task Force: Allan R. Abravanel (Perkins Coie LLP), John R. Bachofner (Jordan Ramis PC), Frederic E. Cann (Cann Lawyers PC), Kritic L. Gibson (Garland Nelson McCleery Wade), Dorothy E. Gilbert (K&L Gates LLP), Rene G. Gonzalez (Gonzalezlc), Michael L. Goodman (Nike, Inc.), M Christie Helmer (Miller Nash LLP),

Sharlei Hsu (Smith Freed & Eberhard PC), Akana K. J. Ma (Ater Wynne LLP), Brendan R. McDonnell (K&L Gates LLP), Tim Myers (IPinfonomics LLC), Stuart Patterson (Hewlett-Packard Co.), Alexander James Wall (Discover-e Legal LLC).

OSB ITLS Task Force Mission and Scope

During its initial meeting on July 8, 2013, the OSB ITLS Task Force discussed the premise underlying its formation, that is, that free trade agreements have an effect on the delivery of legal services in Oregon and should be considered in developing lawyer regulation.

Data recently compiled by the Business Roundtable shows the increasing importance of international trade to Oregon. International trade — exports and imports — supports nearly 490,000 Oregon jobs. Oregon exports tens of billions of dollars in goods and services annually. Customers in 203 countries around the world buy Oregon-grown and manufactured goods and services. Foreign-owned companies invest in Oregon and employ more than 40,000 Oregonians. Free trade agreements in particular have led to rapid export growth to partner countries. See www.brt.org/trade.

While many lawyers may be familiar with the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA) and their application to legal services, they may not know that the United States has negotiated 15 other international trade agreements that also apply to legal services. In her article, *FROM GATS TO APEC: THE IMPACT OF TRADE AGREEMENTS ON LEGAL SERVICES*, 43 Akron L Rev 875, 878 (2010), Penn State Dickinson School of Law Prof. Laurel S. Terry suggests that the routine inclusion of legal services in U.S. international trade agreements may be due to the significant role that such services play in the U.S. economy. She cites a 2009 U.S. International Trade Commission report that “described U.S. legal services as ‘very competitive in the global market,’ noting that they accounted for 54 percent of global revenue in 2007 and comprised 75 of the top 100 global firms ranked by revenue.” *Id.* at 880-881. Moreover, legal services facilitate other trade by, among other things, providing support for commercial transactions and buyer/seller relationships. *Id.* at 881.

These trade agreements are relevant to lawyer regulation because they contain a common clause requiring that parties to the treaty consider establishing “any necessary disciplines” to ensure that domestic regulation measures do not create unnecessary barriers to trade. While GATS does not override the states’ authority to regulate the practice of law within its borders, under the federal enabling legislation, the federal government arguably could compel the states to change their lawyer regulations to ensure that they do not interfere with trade agreement obligations. *Id.* at 916-917. Thus, there is general consensus that reviewing regulations relating to the practice of law for “unnecessary barriers to trade” is a prudent undertaking.

Given the complexity and scope of the issues presented, the OSB ITLS Task Force concluded that its report and recommendations should be limited to the following six potential

areas of practice by foreign lawyers physically present in Oregon (sometimes referred to herein collectively as the “**Foreign Practice Areas**” and individually as a “**Foreign Practice Area**”):

1. Temporary Transactional Practice by Foreign-Licensed Lawyers;
2. Foreign-Licensed In-House Counsel;
3. Permanent Practice as a Foreign Legal Consultant;
4. Temporary Court Appearance by Foreign-Licensed Lawyers (Pro Hac Vice Admission);
5. Full Licensure of Foreign-Licensed Lawyers as U.S. Lawyers; and
6. Multijurisdictional Delivery of Legal Services and Choice of Law.

The OSB Task Force continues to work on its final report and recommendations. This memo summarizes its findings and recommendations relating to Temporary Transactional Practice by Foreign-Licensed Lawyers so that the Board can make a decision about whether to include the Task Force’s proposed amendment to RPC 5.5(c) in the 2014 HOD agenda.

Temporary Transactional Practice by Foreign-Licensed Lawyers

A. Existing Rules

ORS 9.241 authorizes the Oregon Supreme Court to adopt rules allowing the temporary practice of law in Oregon by lawyers not licensed in the state. To that end, when the Court adopted the Oregon Rules of Professional Conduct in 2005, it included a temporary practice rule. Oregon RPC 5.5(c) allows lawyers licensed in another U.S. jurisdiction to provide legal services in Oregon on a temporary basis under certain circumstances. In addition, Oregon RPC 5.5(d) allows lawyers licensed in other U.S. jurisdictions to provide legal services in Oregon when federal law specifically authorizes them to do so. Out-of-state lawyers may not establish a “systematic or continuous presence” within Oregon, nor hold themselves out to the public as admitted to practice in Oregon unless that is, in fact, the case.

Notably, RPC 5.5(c) and (d) do not apply to or otherwise address temporary law practice by lawyers licensed outside of the United States.

B. Potential Problems with Existing Rule

There are problems with the current approach. Given the pervasive expansion of international business transactions noted above, and lawyers’ interests in supporting and advancing their clients’ objectives in such matters, the OSB ITLS Task Force believes that more lawyers from outside the United States will seek to visit Oregon to provide legal services to their clients and that Oregon lawyers have an interest in encouraging such visits for the benefit

of their clients. Although the OSB ITLS Task Force found no empirical evidence for this belief, its members recounted numerous examples from their own experiences of needing or wanting foreign lawyers to provide legal services on a temporary basis to their clients.

In one case, the general counsel of a company headquartered in France came to Oregon to provide legal assistance to its client in the purchase of a company in Oregon. The general counsel hired a local lawyer to handle the Oregon transaction, but it was vital for the Oregon lawyer to have the general counsel present to participate in negotiating and advising the client regarding the transaction. While one could argue that the French general counsel was not really practicing law in Oregon, task force members expressed concerns that the activities were not clearly authorized under current Oregon rules.

More importantly, the ITLS Task Force was unable to identify a good reason for this barrier to the provision of legal services by foreign lawyers. OSB ITLS Task Force members found it difficult to determine how a foreign-licensed lawyer would pose any more of a risk to consumers than an out-of-state lawyer would when providing services on a temporary basis as allowed under RPC 5.5(c).

Under both RPC 5.5(c)(1) and (2), any legal services provided by the out-of-state lawyer must be undertaken in association with a lawyer admitted to practice in Oregon. In those cases, the consumer is protected by virtue of the participation of a locally-licensed lawyer. Moreover, as noted in the section of this report on *pro hac vice* admission, UTCR 3.170 affords additional protections and oversight by the judiciary.

Under RPC 5.5(c)(3) and (4), any legal services provided must arise out of or be reasonably related to the lawyer's practice in the jurisdiction in which the lawyer is admitted. Although this phrase has not been interpreted in Oregon, the ABA Model Rule 5.5, Comment [14] says that:

A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

In sum, where services arise under RPC 5.5(c)(3) and (4), clients are protected by virtue of the fact that they either have a past relationship with the lawyer or the lawyer has some expertise

in the area of law at issue. The OSB ITLS Task Force believes that protection would not be any less were the lawyer licensed in a jurisdiction outside of the United States.

Under RPC 5.5(c)(5), legal services may be provided to the lawyer's employer or its organizational affiliates. Again, as noted by the ABA Model Rules commentary, provision of services in this context generally serves the interest of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. The risk is no different when considering the provision of such services by a foreign-licensed lawyer.

Finally, RPC 5.5(d) recognizes that federal law preempts state licensing requirements to the extent that the state requirements hinder or obstruct the goals of the federal law. See *Sperry v. Florida ex rel. Florida Bar*, 373 US 379 (1963). Thus, where federal law allows foreign lawyers to practice, Oregon could not prohibit it, notwithstanding the current rule.

C. OSB ITLS Task Force Recommendation

Because of the potential problems with the current rule, the OSB ITLS Task Force recommends that Oregon RPC 5.5(c) & (d) be amended to allow the temporary practice of law in Oregon by lawyers licensed in jurisdictions outside of the United States. Specifically, the OSB ITLS Task Force proposal is to remove the words "United States" from RPC 5.5(c) & (d). A copy of the proposed amendment is attached.

The effect of the proposed change would be to allow a lawyer licensed in any jurisdiction—rather than just a lawyer licensed in another U.S. jurisdiction—to temporarily practice in Oregon with the assistance of an Oregon lawyer in the circumstances described in RPC 5.5(c). In addition, foreign lawyers would be allowed to practice law in Oregon when federal law specifically allows the practice.

In many foreign countries, non-lawyers perform functions similar to those performed by lawyers here. This is also true where non-lawyers are allowed to be advocates in arbitration, both domestic and international. Those foreign quasi-lawyer professionals are outside the proposed modifications to this rule.

D. Other Approaches

ABA Model Rule 5.5 takes a narrower approach than what the ITLS Task Force recommends. The ABA Rule provides that:

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or

the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates; are not services for which the forum requires *pro hac vice* admission; and, when performed by a foreign lawyer a requires advice on the law of this or another jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal law or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

In short, the ABA rule limits temporary practice by foreign lawyers to situations where either the services are provided to the lawyer's employer or organizational affiliates (similar to Oregon RPC 5.5(c)(5)) or where federal law specifically authorizes a foreign lawyer to provide legal services. Connecticut, Indiana, Kansas and Wisconsin have adopted rules that are the same or similar to the ABA rule. Arizona and Alabama allow practice by foreign lawyers only when authorized by federal law. Other jurisdictions (Colorado, Delaware, the District of Columbia, Florida, Georgia, Idaho, New Hampshire, North Carolina, Pennsylvania, and Virginia) have amended their Rule 5.5 as proposed by the ITLS Task Force.

E. Possible impacts

If amended as proposed, RPC 5.5(c)(1) and (2) will continue to contemplate that foreign lawyers engaged in Oregon and non-Oregon domestic litigation will be assisted—if not supervised by—other Oregon lawyers. The proposed change will have little effect on judicial administration because, not only will Oregon lawyers continue to have a substantive role, but the courts will continue to oversee the admission and participation of foreign lawyer in litigation *pro hac vice*.

The primary effect of the proposed change on Oregon lawyers will be to allow foreign lawyers to perform work in Oregon to the same extent as lawyers licensed in U.S. jurisdictions other than Oregon. They will be permitted to do so without associating local counsel, provided the services here are related to the foreign lawyer's "home" practice. While this change would increase competition for a narrow slice of legal services in Oregon, those services are not now reserved for Oregon lawyers.

Consumers of the services at issue tend to be sophisticated clients who will largely benefit from the change because they will have more options for legal representation and for lawyers with the specialized knowledge necessary for the matter. Concerns about competence of foreign lawyers providing legal services in Oregon are largely addressed by the limitations of practice already imposed by RPC 5.5(c). Even so, the OSB ITLS Task Force recognizes that differences likely exist between admissions standards and ethical responsibilities in Oregon versus in foreign countries. The OSB ITLS Task Force did not study in any detail the professional liability, admissions, and ethical requirements for lawyers outside the United States; they therefore remain largely unknown and could be substantially different.

Additionally, Oregon is unique among jurisdictions even in the United States in its requirement of professional liability coverage for all Oregon lawyers in private practice with their primary office in Oregon. Nevertheless, RPC 5.5(c) already allows lawyers from other U.S. jurisdictions to provide limited legal services on a temporary basis in Oregon without having malpractice coverage.

The OSB ITLS Task Force also noted that Oregon RPC 8.5(a) provides that any lawyer—whether licensed in Oregon or not—is subject to Oregon’s rules of professional conduct and disciplinary authority if that lawyer provides or offers to provide legal services in Oregon. Moreover, any adverse effect of any differences in admissions, ethics, and professional liability insurance, most likely would be limited to the parties (both Oregon and foreign) involved in the transactions and issues could be resolved in the jurisdiction of the foreign lawyer.

In the end, without a good argument for the necessity of the barrier imposed on foreign lawyers providing legal services on a temporary basis in Oregon, and given the difficulty in setting fair and comparatively consistent competence, ethics, and liability standards that would apply to all lawyers licensed outside Oregon who engage in temporary practice here, the OSB ITLS Task Force concluded that the only practical requirements that would not stand as an unnecessary barrier to trade would be that the foreign lawyer be admitted in the lawyer’s home jurisdiction and not be disbarred or suspended from practice in any jurisdiction. The marketplace will sort out competence, just as it does with domestic lawyers.

In order to ensure that it had identified all of the potential impacts and concerns that Oregon lawyers may have with the proposed rule, the OSB ITLS Task Force published its proposed recommendation in the OSB Bulletin and invited member comment. See Hirschbiel, *What’s GATS Got to Do With It? International Trade in Legal Services*, OSB Bulletin (May 2014) <http://www.osbar.org/publications/bulletin/14may/barcounsel.html>. In response, the OSB ITLS Task Force received two comments, one expressing approval of the OSB ITLS Task Force recommendations and the other expressing disapproval. The article was also provided to the Professional Liability Fund Chief Executive Officer, who indicated that he saw no issues of concern for the Fund.

Attachments: Proposed Amendment to RPC 5.5

PROPOSED AMENDMENT TO RPC 5.5(C)

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another ~~United States~~ jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or
 - (5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.
- (d) A lawyer admitted in another ~~United States~~ jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and

(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer

(i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or

(ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
Memo Date: August 21, 2014
From: Danielle Edwards, Director of Member Services
Re: Committee Appointment

Action Recommended

Consider an appointment to the Uniform Criminal Jury Instructions Committee as requested by the committee officers and staff liaison.

Background

Uniform Criminal Jury Instructions Committee

Due to the resignation of one committee member the officers and staff liaison recommend the appointment of **Paul L. Smith** (001870). He has practiced at DOJ since 2002 and indicated this committee has his first choice for appointment through the volunteer preference survey.

Recommendation: Paul L. Smith, member, term expires 12/31/2016

OSB Board of Governors

Action Plan 2014

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.”¹ 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.² 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 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.

In order to advance the mission and achieve its goals, the BOG must ensure 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 understanding of and respect for the discipline system.

Strategy 1	Conduct a comprehensive review of disciplinary procedures and practices focusing on fairness and efficiency.
Strategy 2	Improve member and public 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.

¹ 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."

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

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	Participate meaningfully in judicial selection processes.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

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

Strategy 1	Review OSB programs for adherence to mission, value to members and efficiency.
Strategy 2	Upgrade organizational software to meet changing member demands for online services.
Strategy 3	Develop and enhance programs that support career opportunities and professional development of new lawyers.
Strategy 4	Coordinate and collaborate with law schools to develop effective models for 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 civic education programs and activities that promote understanding of and respect for the rule of law and the legal profession.
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; increase participation by the OSB's diverse membership at all levels of the organization and assist bar members in serving a diverse community.

Strategy	Implement the OSB Diversity Action Plan.
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FUNCTION #6 – ACCESS TO JUSTICE

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

Strategy 1	Identify new and additional 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.

Text of Ballot Measure 89¹

Ballot title

The certified ballot title reads as follows:

“ **Amends Constitution: State/political subdivision shall not deny or abridge equality of rights on account of sex**

Result of "Yes" Vote: "Yes" vote amends state constitution, prohibits state and any political subdivision from denying or abridging equality of rights under the law on account of sex.

Result of "No" Vote: "No" vote retains current prohibition on laws granting/denying privileges or immunities on account of sex, unless justified by specific biological differences between men/women.

Summary: Under Article I, section 20, of the Oregon Constitution, laws granting privileges or immunities must apply equally to all persons. The Oregon Supreme Court has held that that provision prohibits laws treating people differently based on sex unless justified by specific biological differences. No current provision in the constitution expressly states that prohibition. Measure amends Article I by creating new section 46, which provides that equality of rights under the law shall not be denied or abridged by the state or any political subdivision on account of sex. Measure authorizes legislature to enforce that provision by appropriate legislation. Measure provides that nothing in section 46 "shall diminish a right otherwise available to persons under section 20 of this Article or any other provision of this Constitution."^[2] ”

If approved, the initiative will amend [Article I](#) of the [Oregon Constitution](#) by adding a new section to it. The section would read as follows:^[3]

SECTION 46. (1) Equality of rights under the law shall not be denied or abridged by the State of Oregon or by any political subdivision in this state on account of sex.

(2) The Legislative Assembly shall have the power to enforce, by appropriate legislation, the provisions of this section.

(3) Nothing in this section shall diminish a right otherwise available to persons under section 20 of this Article or any other provision of this Constitution.^[2]

¹ From Ballotpedia.org

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2013
Memo Date: August 25, 2014
From: Kay Pulju
Re: CLE Seminars

Action Recommended

Set policy direction for CLE Seminars as detailed below.

Background

At its July 25 meeting the BOG requested a staff recommendation on policy changes to improve the financial position of the OSB CLE Seminars Department, as well as a list of all CLE-related policy issues previously discussed in the program review process.

Recommendations

1. Require all bar sections, committees and the ONLD to work with the OSB CLE Seminars Department. For programs that offer fewer than three MCLE credits only registration services would be required, with event services optional; programs that offer three or more MCLE credits would need to be co-sponsored.

The estimated budget impact of this change is \$120,000 annually, a combination of new revenue to the CLE Seminars Department and decreased expenses in other areas of the bar. It would also offer other benefits: coordinated scheduling, increased marketing opportunities, improved customer service for program registrants, consistent MCLE reporting and more effective use of the bar's conference center.

The new requirements would be implemented in stages, with registration services on board in 2016 followed by co-sponsorship requirements in 2017. This will allow time for the board and staff to discuss the policy changes with stakeholders, explaining the financial background, benefits to both the OSB and member groups, and gathering feedback and suggestions on service enhancements and implementation details. A staged implementation also allows time for staff to build capacity to take on additional co-sponsored programs. New software, processes and procedures will be introduced in 2016, which will build the department's capacity to take on new co-sponsored programs in 2017.

Before the communications phase begins, the board should consider whether any other section-related policy matters should be broached at the same time, e.g., independent section websites and development of online directories.

2. Provide a budget offset to CLE Seminars for the cost of complimentary registrations.

Current board policy grants free registration for OSB CLE Seminars programs to judges and their attorney staff, 50-year members, and active pro bono members. The retail value of these

complementary registrations has averaged \$29,000 annually over the last three years. If the board wishes to retain the complimentary registration policy for broader policy reasons, an offset would provide a more accurate reflection of the department's financial performance.

3. Reinstate MCLE sponsor accreditation fees for local bar programs.

By board policy, local bar associations are not required to pay an accreditation fee, and at least one specialty bar has requested a future waiver of accreditation fees. In 2013 the value of fee waivers to local bars was approximately \$6,720 (a total of 168 programs at an average cost of \$40 each). Eliminating the waiver would impact the MCLE program budget only, but would put local bars on an equal footing with other providers, including specialty bars, bar sections and committees and OSB CLE Seminars. Staff recommends that the board develop an accreditation fee policy that applies equally to all applicants.

4. Monitor MCLE developments.

At least two other states are considering amending their MCLE rules to require some level of participation in a seminar to claim MCLE credit. The OSB should monitor progress in those states before considering any similar changes to Oregon's MCLE rules. Also, the installation of new association management software should give opportunities to streamline the MCLE reporting process, including self-reported credits, providing a better picture of the impact of product-sharing on CLE Seminars revenue.

OSB Policies that negatively affect profitability of the OSB CLE Seminars Department

MCLE-related:

- Relatively simple and inexpensive accreditation process encourages national providers
- No restrictions on who can claim credit so hard and electronic media products are easily shared and self reported
- Self-reported credits are not tracked
- No requirements for Oregon-specific law (other than child abuse and elder abuse reporting)
- No requirements for interactive/participatory programs (majority of states require)
- Accreditation fees are waived for all local and county bars (not OSB, bar groups or specialty bars)

Leadership and program support for "free" CLE:

- Free CLE at HOD meeting and other events
- Free CLE to advance priority issues, e.g., Law Practice Transitions
- Free CLE/MCLE credit as volunteer recruitment, e.g. Disciplinary Board conference and NLMP
- Complimentary registration (OSB CLE only) for judges and their attorney staff, 50-year members and Active Pro Bono members.

Internal Competition

- Multiple affiliate groups encouraged to provide CLE, including Sections, ONLD and PLF
- No requirement to cosponsor with CLE Seminars
- No requirement to use registration or event services
- No charge for use of conference facilities, including room sets and a/v support
- No charge for email marketing assistance
- Staff expected to assist groups with “independent” CLEs

August 20, 2014

Sylvia Stevens
Executive Director
Oregon State Bar
16037 S.W. Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97821

Dear Ms. Stevens:

It is with sincere pleasure and strong commitment that I inform you I wish to be considered for the office of President-Elect of the Oregon State Bar. I look with pride on my membership in the Bar. I believe living by the Bar's mission and rules represents a level of professionalism and integrity that exists in few other human endeavors.

I seek to be President of the Bar to provide an opportunity for me to champion the values I believe to be important to the Bar and each of its members.

If elected, during the year of my presidency, I will work diligently to help the Bar, through the Board of Governors, achieve its goal of true diversity and inclusion in Bar membership and activities.

From my time spent serving on the BOG, I understand that it is important the Bar remain on firm financial footing. I will be conscientious in working with the BOG and finance committee in making sure any new or ongoing capital or program expenditures are prudent and consistent with the mission of the Bar.

The Bar has opened a dialogue with the three in-state law schools, and I believe it is extremely crucial to continue and strengthen that dialogue. The method, and at what expense, the law schools educate students in the future will, in large part, dictate what the Bar will look like in the future. The Bar should certainly have a voice in this discussion.

The Bar discipline process needs to be fair and timely to both Bar members and the clients we represent. When the Bar discipline review process has been completed, the BOG must then explain clearly to members any changes to the

process and the reasons for the changes. Going forward, the BOG should periodically review and monitor the process to assure that it is working as intended.

Providing competent legal representation for all of Oregon's citizens needs to continue to be a primary objective of the Bar. It is the BOG's responsibility to provide both financial and vocal leadership to achieve this objective.

As President, it would be my personal mission to find ways to make the Oregon State Bar, Board of Governors, and Bar staff more relevant and meaningful to all members of the Bar.

Throughout the years, my practice and volunteer work have provided me with the skills and knowledge necessary to serve as President. I offer the following as a sample for your review:

I have practiced law state wide with lawyers who are members of large firms and who are sole practioners. I have been the managing partner of a firm that has grown from two lawyers to a firm that is now the largest law firm in Southern Oregon. I have served on the executive committee and been chair of the Workers' Compensation section of the Bar. I was also privileged to serve on, as well as chair, the State Professional Responsibility Board. I have also been a speaker at Bar Section meetings and local bar association meetings. Through the years, I have served on various other Bar and Section committees.

In my personal life, I have served as a board member of Sacred Heart School in Medford and served as a board member of the Medford/Jackson County Chamber of Commerce. For a period of nine years, I was a member of the Board of Directors of Asante Health System, a \$700 million a year, three hospital health system, and was chair for the last three years. As a board member, I helped put together budgets, oversaw investments, and dealt with and lobbied government at the local, state, and federal level. As chair, along with the CEO, I was required to act as the public face of the organization. Presently, I serve on the Rogue Valley Manor Board of Directors. The Rogue Valley Manor is a nonprofit CCRC. The Manor is home to 966 residents, from across the United States. The campus is 688 acres and includes three residential towers and health care facilities, 315 cottages, as well as two golf courses, both of which are also open to the public.

I have been fortunate to have a successful law practice and rewarding career. As my practice winds down, serving on the Board of Governors, and possibly as President of the Bar, is of the utmost importance to me. I view serving as President of the Oregon State Bar as a real honor and one of great responsibility. If I am chosen to serve as President, I promise I will devote the time, energy, and effort necessary to live up to the honor and responsibility.

Sincerely,



R. Ray Heysell

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SENT VIA E-MAIL ONLY: SSTEVEN@OSBAR.ORG

August 29, 2014

Sylvia Stevens
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
Tigard, OR 97821

RE: Tim Williams for OSB President 2016

Dear Sylvia:

At long last, I am pleased to officially announce my candidacy for the 2016 Oregon State Bar Presidency. This decision has not been taken lightly, and has been mulled over for many months. Prior Bar presidents have been consulted, as have judges, Justices, Bar staff and other stalwart attorneys across Oregon. The support has been unanimous.

Background.

Like any good story, it is often best to start at the beginning. As is laid out below, I had a childhood that could only be described as "rough." My life is an open book, so should you want any further information, I'd be happy to supply it, as what follows is merely a brief synopsis of my humble beginnings.

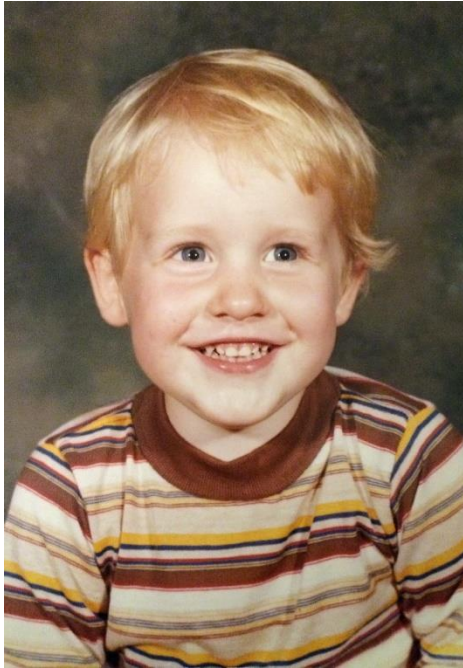
I was born in Grants Pass, Oregon in 1977. My father and mother divorced when I was less than two years old, where after my mother moved away. Indeed, I saw her only three times after that point through early adulthood. Thus, I really have little memory of her growing up.

My father later remarried, and his new wife adopted me when I was two. Early childhood was relatively ok, though we were extremely poor and moved from house to house, school to school quite frequently. Their marriage was quite tumultuous, with varying amounts of spousal abuse occurring on a regular basis. They ultimately split up for more than a year, then divorced when I was nine years old. I stayed half of each summer and every other weekend with my adoptive mother. Unfortunately, she quickly became addicted to drugs, which meant I had to essentially raise and care for my four younger half siblings when I was at her house. She ultimately remarried, though her new husband was less than ideal (molesting my sisters), and they later divorced. Needless to say, my stepmother paid very little attention to what I was doing in school, sports, or elsewhere. However, though we may have been neglected, at least she was not abusive to us kids.

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Offices Located in: Bend, Eugene, Grants Pass, Medford, Portland and Roseburg

My father ultimately remarried around the time I was 10 years of age. However, this marriage was the worst and, unfortunately, most memorable for me. His new wife was quite verbally abusive to my father's kids. I bore the brunt of the abuse. While I was



repeatedly earning a 4.0 GPA, National Honor Society, and was one of Oregon's top high school athletes, I was met with very little support at home. Indeed, when I revealed that, at the time, I wanted to become either a doctor or chemical engineer, I was met with the response, "Well, don't set your goals too high, because, like your father, all you are going to do is fail. You should be happy with a normal job here in Grants Pass." Or, "You think you are so smart. Well you are not. You are just like your father. I'm tired of you looking down your nose at me." Needless to say, this constant negativity had quite an impact on a kid who was doing his best to excel on all levels. It hit hard, as my self-confidence crumbled. I became shy and reclusive around others – a fault I wouldn't wish on anybody. Ultimately, around the time of my father's third divorce, I decided that I needed to shed that baggage, become more outgoing, and strive to remove myself from

my hometown as quickly as possible. My vehicle to do so was college. I swore I would never, ever treat my kids the same way.

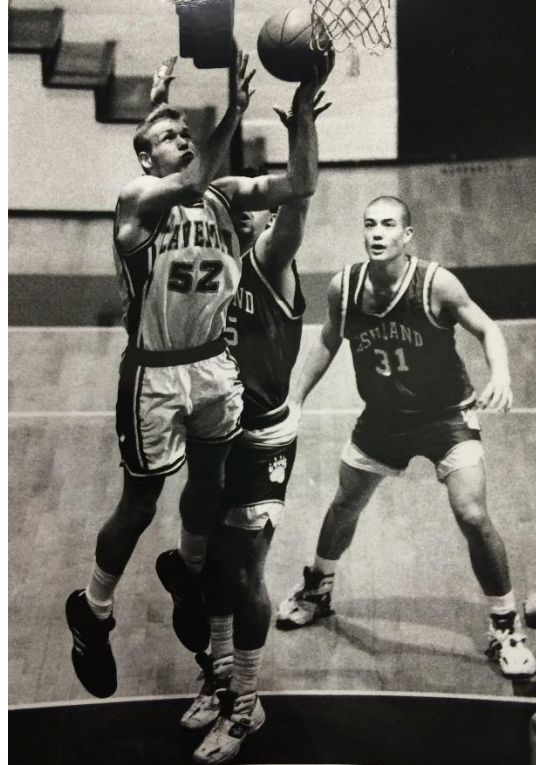
I ended up living with my father, alone, from age 16 through 18. After I left for college, he attempted to commit suicide several times. Ultimately, he was institutionalized for a short while, where it was discovered that she suffered from manic depression, and apparently had so for years, undiagnosed, and untreated. It explained so much. However, he refused to believe he was mentally ill, and would not stay on his medications, causing additional suicide attempts and issues with the law. Ultimately, I decided to give up my scholarship to attend Linfield College to transfer to Southern Oregon University to be closer to my father, give him the support he needed (my siblings had simply written him off through the divorces and his subsequent behavior which they could not understand), and take care of him when he needed it. All the while, I played two sports for the college (football and basketball), and worked the night shift on weekends at a local plywood mill. Ultimately, thankfully, my father leveled out around my fourth and final year of college.

Now, of course, there were bright spots in my childhood as well. I had wonderful grandparents who attempted to rescue my from my home situation as often as my stepmother would allow. My grandpa Lou was central to my ultimate success, offering support – both emotionally and financially when he could swing it – so that I could continue to participate in school and sports. For example, I often had to hot glue and duct tape my

shoes together each morning before getting on the bus – these were the same shoes I had to use for basketball practice, and they would always fall apart half way through practice. Most of my teammates didn't understand my situation, and I got grief for being the poor kid. Indeed, my nickname in middle school was "floppy." Why? Because when my shoes fell apart during practice or games, the sole would flop against the ground when I ran.

In any event, my grandfather – a rancher – didn't just give me the money to buy a new pair of shoes. Rather, he strove to teach me the value of hard work. I worked hard on his small ranch to earn the shoes – cutting and hauling hay, taking care of the cattle, moving irrigation pipe, etc. I never minded doing so as a kid, and am so thankful for these important life lessons as an adult. He taught me the value of morals and honesty. The value of applying yourself to all that you do. The value of doing things right the first time. These are all life lessons that I think about and apply to my life on a daily basis.

Ultimately, my grandfather passed away from cancer in 2003, just two days before I took the Bar exam. While devastated, I nonetheless took and passed the Bar. While you may or may not be religious, I swear, I could almost feel his hand on my shoulder during the exam, guiding me through. Indeed, when stressed or confronted with a tough situation, I often ask myself what my grandfather's best advice would be, and generally follow it. He was my father figure, and I am grateful for all that he did. Without him, I would most certainly not be the same person I am today.



The rest of the story is pretty well known. I graduated from Southern Oregon University in 1999 with a Bachelor of Science degree in Criminology (*Cum Laude*), and I married my wife, Pam, in 2000. We have two girls – Emerson (7) and Elliott (4) – both of whom will surely elate you with their performance in a few months! I live in Bend, and am a big fan of the outdoors, including biking, snowboarding, golfing, etc. Interestingly, and what you may not know, is that I also own a CrossFit gym in Bend.

Professionally, I am a partner in a personal injury firm, Dwyer Williams Potter Attorneys, LLP, with six offices across the state, where I serve as the primary litigation attorney. I've been quite happy and successful in my practice. However, as my grandfather taught me, it is important to give back for all the blessings in your life, which precisely what brought me to the OSB BOG.

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Qualifications.

Frankly, I'm not really sure how detailed the Committee would like me to be. Perhaps it is best to start with my professional background, and go from there.

Professional Background

I am a partner in a six-office personal injury law firm, with our primary office located in beautiful Bend, Oregon. We also have staffed offices in Eugene and Medford. Our Portland, Roseburg and Grants Pass locations are drop-in only. My senior partner, and also my father-in-law, Roy Dwyer, has been an Oregon lawyer since 1962. Amazingly, at 81 years of age, he still practices with me full time. Next to my grandfather, Roy has been the closest thing I have as a father figure in my life.

My duties at the office include managing and handling nearly all of the firm's litigation files. Essentially, case files come to me to file suit and handle through settlement, arbitration or trial. I have an associate I manage, and my other partner, Rich Potter, handles a small portion of litigation files from our Eugene office.

While I am technically an employee of the firm, as I currently own no stock in the corporation, Roy and I have entered into a buyout agreement whereby I take ownership of all stock on January 1, 2017, contingent on a buyout arrangement beginning six months thereafter. Needless to say, I am very excited to go from law clerk to humble employee to primary litigation attorney to partner to owner, all in the span of 15 years.

Additional information regarding our firm, should you be so inclined, can be found here: <http://www.roydwyer.com/oregon-personal-injury-attorneys>.

Oregon State Bar Activities

I have been heavily involved in the Oregon State Bar throughout my legal career. As you may or may not know, these activities include the following:

- OSB Leadership College Fellow (2007)
- Uniform Civil Jury Instruction Committee (2007 – 2009)
 - Chair of Torts UCJI Subcommittee (2008 – 2009)
- Litigation Executive Committee (2007 – 2012)
 - Chair (2012)
 - Nominating Committee (2010 – present)
- OSB House of Delegates (2008 – present)
- Owen M. Panner Professionalism Award Committee (2010 – present)
- Annual Institute and Retreat Planning Committee (2012)
- Co-Author of *Misuse of Legal Procedure*, Chapter 25 of the OSB CLE handbook, Torts, 2006 ed., 2012 ed.
- CLE Presenter at the OSB Fundamentals of Civil Procedure seminar, speaking on “How to Try a Case on a Shoestring Budget.” (October 17, 2013)

Toll Free: 1-800-285-8678

Offices Located in: Bend, Eugene, Grants Pass, Medford, Portland and Roseburg

While the list may not appear long, rest assured that the work put into most of these activities has been great, and gladly undertaken. It is through these activities that I became inspired to run for the BOG in the first place.

Oregon Trial Lawyers Association

In addition to serving the OSB, I have also been quite involved with OTLA for many years. Of course, while dedicated to both organizations, I do my best not to play favorites or participate in one at the expense of the other. Thankfully, this has been easy to do to date, as each organization usually supports the same legislative efforts. In any event, a summary of my OTLA activities follows:

- Oregon Trial Lawyers Association (2001 – present)
- Board of Governors (2005 – present)
 - Development Committee (2005 – 2007)
 - Chair of Development Committee (2013 – 2014)
 - Co-chair of the Client Outreach Subcommittee (2008)
 - Membership Committee (2007 – 2013)
 - Chair of the Membership Committee (2007 – 2008, 2011 – 2012)
 - Education Committee (2014 – present)
- CLE panel Presenter on Trial Experts (August 14, 2014)
- CLE Presenter on Cross-Examination by Pozner and Dodd (May 23, 2012)
- CLE Presenter on Referring Clients, Creating Referral Sources (May 22, 2012)
- CLE Presenter on Deposition Preparation (May 9, 2008)
- OTLA Trail Lawyer author (2008, 2009, 2011, 2012, 2014)
- Against One Sided Measures Committee (2008)
- Student Liaison for the University of Oregon School of Law (2001 – 2003)

I would note that, while I have held my OSB BOG and OTLA BOG participation on a level field thus far, if elected to OSB leadership, the Bar will take precedence. This means no more missed meetings because I have to attend an OTLA meeting to keep quorum (such as happened at our last BOG meeting). I have already advised OTLA leadership of this, and they are on board.

As a corollary, I note that I have been hounded (no, seriously, absolutely hounded) the last couple of years to enter the OTLA leadership track. I have fought off these advances explaining that I wanted to keep myself open for a potential OSB President run, and also that I didn't want to unduly take time away from my OSB BOG activities to attend to OTLA Executive Committee business. Thus, in choosing to run for the OSB BOG, I supposed that the playing field is no longer level, as I have chosen the OSB over the OTLA in terms of weighting my volunteer time. However, and again, OTLA is fully aware, and is supportive of this endeavor.

I would note that, as a result of my longstanding OTLA efforts, I have made great inroads to several key legislators in Salem. In addition, and not to toot my own horn, but my reputation as a lawyer is sterling, and as a result, I have great many friends on the other side of the fence as well.

American Association for Justice (formerly American Trial Lawyers Association)

In addition to my participation at the state level, I am also actively involved with the primary plaintiff trial lawyer association on the national level, AAJ. Briefly, my efforts include:

- American Association for Justice / ATLA (2002 – present)
- Board of Governors (2012 – present)
 - Membership Oversight Committee (2012 – present)
 - Audit Committee (2012 – present)
 - Audit Committee Chair (2014 – present)
 - Trial Lawyers Care Committee (2014 – present)
- Leader’s Forum (2012 – present)
- Leadership Academy Fellow (2013)
- CLE presenter at national convention on the iPad and the paperless office (July 21, 2013)

My AAJ participation has given me great insight, and contacts, on the national level, both in terms of nationally renowned lawyers, as well as folks working on Capitol Hill. In addition, I have been able to participate in a number of interesting projects, not the least of which includes the ongoing proposed revisions to the Federal Rules of Civil Procedure. Indeed, I’ve received national acclaim within the organization for my membership recruitment efforts.

My AAJ participation has also given me some insight in activities that overlap with the OSB BOG’s intentions. For example, the Trial Lawyers Care committee has been put into place to highlight all the good that trial lawyers do for their communities. Such activities include the End Distracted Driving (“EndDD”) program that is increasingly popular nationwide. The TLC’s efforts are so involved, yet simple, that I joined it this year in large part to gather ideas we at the OSB can incorporate into our own similar endeavors. If you are interested to see what this group is doing on this front, here is their website: <http://www.triallawyerscare.org>.

Other Notable Accomplishments

In addition to the above, I have achieve other accomplishments that are almost too numerous to count. Perhaps my proudest moment as a lawyer – at least in terms of accomplishments – was being sworn in at the United States Supreme Court on June 1, 2010, where after I was able to speak with both Justice Sotomayor as well as Justice Alito!

As you can see, I was absolutely beaming with pride (to the extent I can beam, anyways), and next to only a handful of others, will surely remain one of my most favorite memories.



In addition, the items below give a pretty complete depiction of my other activities not already mentioned above:

- United States Supreme Court (2010 – present)
 - Historical Society of the United States Supreme Court (2010 – present)
- United States District Court for the District of Oregon (2004 – present)
 - Historical Society of the United States District Court for the District of Oregon (2004 – present)
- American Bar Foundation Fellow (2014 – present)
- The Pound Civil Justice Institute (2011 – present)
- American Bar Association (2003 – present)
- Trial Lawyers for Public Justice (2003 – present)
- National Crime Victim Bar Association (2013 – present)
- Washington State Trial Lawyers Association / WSAJ (2003 – present)
- Deschutes County Bar Association (2003 – present)
- J.R. Campbell Inns of Court (2003 – present)
 - President (2009 – 2010)
- Oregon Law Institute – CLE presenter “Top Ten Traps to Avoid at Trial” (October 30, 2009)
- Rotary International – Rotary Club of Bend (2004 – present)
 - Program Committee (2007 – 2008)
- Ronald McDonald House Charities of Central Oregon Board of Directors (2008 – 2014) (termed off of the Board in March of this year)
- Toastmasters International (2004 – 2007)
 - Communicators Plus Club President (2005 – 2006)

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Needless to say, I've been quite busy over the course of the last 11+ years. That being said, you may note that I have scaled back on many of my time commitments in preparation for what will hopefully be a successful bid for the OSB presidency. I plan to scale back further should I get the nod.

In addition, I've won a fair amount of awards recently, or have otherwise earned a distinction of one sort or another. Some include:

- Martindale Hubbell "AV Preeminent" rating
- Oregon SuperLawyers – Rising Star (2010, 2011, 2012, 2013, 2014)
- American Institute of Personal Injury Attorneys Client Satisfaction Award – 10 Best (2014)
- The National Trial Lawyers – Top 40 under 40 (2014)
- The National Trial Lawyers – Top 100 Trial Lawyers (2013)
- The National Academy of Personal Injury Attorneys – Top 10 Attorney Award (2013)
- The American Society of Legal Advocates – Top 40 under 40 in Oregon (2013)
- Multi-Million Dollar Advocates Forum (2011 – present)
- Million Dollar Advocates Forum (2011 – present)

I've won other awards as well, though honestly don't keep track of them as closely as most.

Reason for Seeking the Position

First you should know that the reason I seek this position is most definitely NOT to pad my resume. As I am soon to become owner of my firm, I have nothing to gain in shining up my resume! Rather, this is a goal I've had that just happened to become reachable sooner than I had ever expected.

Getting that out of the way, one of the reasons that I'm seeking the position is simply to give back to the organization that has done so much for me in my first decade-plus of practice. The OSB has given me visibility and mentorship beyond reproach. The staff is great, the leadership has been great, and the committees on which I've served are great. It is a way I can simply pay it forward to my fellow attorneys.

Additionally, and certainly less concerning, is the fact that some in the profession would like to see a trial lawyer – specifically, a plaintiff's trial lawyer – again become president. To some, it is simply a way of "evening things out." Moreover, many have been excited to see that a young lawyer is willing and able to serve, particularly one from outside of the Portland Metro area. Thus, I suppose, a portion of me is happy to appease the lawyers I have talked to with these particular preferences.

Finally, I want to do this for my family. I want to show my girls that geography, background and age have absolutely nothing to do with success. I want them to see that

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one can become successful – important – and still remain a loving and dedicated father. In no small part, I want to instill in them a sense of confidence by way of example, much the same way that my grandfather did so for me. My girls have greatness in their future, the road to which I must help pave.

Additionally, and will likely come as no surprise, I want to attain this position in memory of my grandfather – one of the hardest working and honest men I’ve ever met.

My Vision of the Future of the OSB.

Clearly, I don’t want to try to fix something that isn’t broken. Personally, I think that the OSB does a pretty darned good job at remaining robust and relevant to its attorneys’ practices. My intent certainly isn’t to turn the Bar upside down. However, I also realize that nothing is perfect, and offer the following merely as suggestion as to where we might look to tweak things.

I believe that one of the primary undertakings by the BOG in the future is to better engage our young members. As we know, the bulk of the baby boomer generation is growing ever near retirement. Without young lawyers replacing their ranks – both in volunteerism with the Bar as well as working in the marketplace – we will see a precipitous drop off in membership numbers, and hence membership fees, moving into the future. While I realize this is a topic that has been focused on in years past, and thus, it is obvious that I am not entirely prescient, it is nonetheless central to the health of the OSB moving into the future. My fear is that we are someday forced to evolve into a regulatory-only Bar – like that of California – as opposed to the robust Bar we are today.

In addition to encouraging participation of young lawyers, it is imperative that we continue to encourage minority lawyers to stay and practice within Oregon. Currently, there are seemingly relatively few minority lawyers in our ranks. Fostering more minority lawyering, as well as parity between minorities and the majority, will only lead to a more congealed, complete Bar, particularly when the demographics of Oregon is changing so much faster than the demographics of the Bar.

Additionally, we have made great strides in creating a workable and understandable Strategic Plan – frankly, one of the best I’ve seen of any organization in which I’ve participated. To see the Plan come together was nothing less than impressive. Personally, I want to continue to grind forward on the implementation of that Plan and carry out the legacy of our current BOG.

I would also like to see further effort to refine and, if needs be, alter our CLE programming in order to cover a wider majority of our members and, ideally, make it more profitable. I’ve worked closely with Karen Lee in the past, and know that she and her staff give these CLEs their all. However, as noted recently the CLE department has so much competition that, in some respects, it is becoming difficult to justify running the program as is. I would

like to continue to work on this aspect of Bar services to solve any problems, perceived or otherwise, and keep the CLE department moving forward.

I would also like to visit the idea as to whether or not the current HOD format is sustainable – an issue that's been on my mind for several years. With the repeated failures to meet quorum, and in particular, the ability to manipulate quorum, I have concern that, like the town hall format before it, the HOD may have outlived its usefulness. If nothing else, it is certainly worth an in-depth discussion as to what, if any, changes need be made, or whether the HOD should be replaced by a different format altogether.

Of course, it goes without saying that, like many others, I am eagerly awaiting word back on the ABA evaluation of our disciplinary system. I anticipate that at least some changes will be recommended, and am interested in evaluating any such changes to determine whether or not they should be implemented. Whether or not any changes are ultimately made, it should be helpful to get an objective set of eyes on our current system.

Also, I think it important that the OSB continue to evolve with technology, and feel that we have done a pretty good job thus far. For example, our streaming CLEs are smart and easy to do. I'd like to look at further evolving the Bar in conjunction with technology – at least so long as such evolution is helpful. For example, one suggestion I heard just today is an electronic Bar card. Some feel that the current paper cards are too thin to keep in their wallets without damaging (for example, that's the reason mine lives in my desk). It is an interesting idea, would be relatively cheap to implement, and I assume could even be made to show membership status in real time (active, suspended, etc.) if we wanted it to.

I could go on, but those above are many that top the list. Without discussion, other examples include some sort of OSB-backed long term dedicated funding for Legal Aid, actual implementation of Centralized Legal Notice, and perhaps a similar Uniform Corporate Service function through, perhaps, the Secretary of State (I've actually suggested the latter in an earlier CLN meeting). However, and of course, such tasks can only be had with the larger picture in mind, and on the political front, we are lucky to have Susan Grabe at the helm.

The Intangibles.

While my attendance at the social functions have been few and far between thus far – primarily due to my geographic restrictions – I plan to attend a vast majority as president elect and ultimately president of the OSB. This year and last, I selected my four social functions, and never put the rest on my calendar. Thus, I have only shown at those I RSVP'd for. However, as noted above, the OSB will take precedence over all else in terms of scheduling. I realize that it doesn't look great that I've had to split time between my volunteerism activities thus far, but if elected, there will no longer be parity amongst the organizations, as the OSB will take the helm. Rest assured that this issue will be dealt with to everyone's satisfaction.

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So, what is it exactly that I bring to the table as compared to others? In addition to the above, I would point out that because I come from a small community, I have the ability to relate to many attorneys outside of the Portland metro area. In addition, I have several strong ties to the Oregon legislature on both sides of the aisle. For example, I just had lunch last week with Tina Kotek. The week prior? Dinner with Tobias Read and Jennifer Williamson. Moreover, I've had dinners with Justice Baldwin and Justice Kistler in the last month. The point isn't to namedrop, but rather, to point out that I am well at home with these folks, and quite enjoy talking with them.

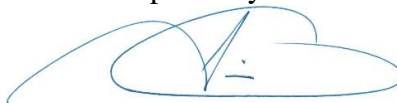
Additionally, back to politics, my cousin, Ron Maurer, Jr., served in the Oregon House of Representatives from 2007 – 2011. He is a Republican (whereas I am not), and is well respected by those still in the legislature. He is often my "in" with those that don't necessarily agree with my line of work. Additionally, Ron now serves as the Director of the Congressional Liaison Service for the Department of Veterans Affairs in Washington, D.C., which also gives me an "in" with veterans. And remember my grandfather from the story above? Well, he was Ron's uncle. We are two cut from the same cloth.

Frankly, I would be remiss if I didn't bring up my age. I realize that it is unusual to have a potential Bar president serve while still in their 30's (still barely hanging on to that decade, in my case!), but I think my relative youth works to my advantage. If the BOG wishes to better resonate with youthful lawyers – either to create greater volunteerism, better chance of practicing in Oregon, or simply to speak to aspiring law students on the issues near and dear to our hearts – I believe that I have the tools to creatively and effectively do so.

Many young lawyers I speak with tell me that they don't fully understand what the OSB really does for them, apart from licensing their practice of law in the State of Oregon. Through conversation, it seems that there is simply a disconnect that is felt between the BOG and many of these young lawyers. They don't necessarily feel that their interests are taken to heart at the Board level, and don't feel that they necessarily relate to many of the past presidents. I'd gladly offer my services, my tenacity, and my overwhelming drive to succeed to bridge that gap.

I truly appreciate the opportunity to be considered for the OSB's highest office. Rest assured, should I be lucky enough to obtain the BOG's approval, you will not be disappointed.

Respectfully Submitted,



Tim Williams

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Oregon State Bar
Meeting of the Board of Governors
June 27, 2014
Open Session Minutes

The meeting was called to order by President Tom Kranovich at 2:18 p.m. on June 27, 2014. The meeting adjourned at 5:40 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 and Elisabeth Zinser. Not present were Charles Wilhoite and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Kay Pulju, Mariann Hyland, Dawn Evans, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair; Ira Zarov, PLF CEO, and Tim Martinez, PLF Board of Directors; and Mark A. Ronning, Chair of Military and Veterans Law Section. Also present were members Daniel Crow and Bonnie Richardson, RPC 8.4 Drafting committee member.

1. Call to Order/Adoption of the Agenda

Motion: Ms. Mitchel-Markley moved, Mr. Prestwich seconded, and the board voted unanimously to accept the agenda as presented.

2. Report of Officers & Executive Staff

A. Report of the President

Mr. Kranovich reported on several activities not included on his written report, including his meeting with the ABA Disciplinary System Review Team and the revelation that they perform an average of six reviews per year so our request for a review was not unique. At the recent OCLEAB meeting, representatives of the Oregon law schools discussed the possibility of restructuring the third year so graduates would be members of the bar and ready to begin the practice of law. Sylvia and Tom just completed a 2-1/2 day tour of central and eastern Oregon local bar associations. Members in attendance expressed appreciation for the visits and for the many services the bar provides.

B. Report of the President-elect

In addition to his written report, Mr. Spier mentioned that he too experienced gratitude from members for the services of the bar. Mr. Spier invited comments on his suggestions for the retreat.

C. Report of the Executive Director

Ms. Stevens reported that Kateri Walsh, Director of Media Relations, will be on sabbatical and her responsibilities will be covered by other employees. The process of selecting a software vendor continues, with a recent on-site visit from the consultant. Ms. Stevens provided clarification on who was included in the interviews with the ABA Consultation team Mr. Mansfield asked how the bar could provide guidance to practitioners regarding marijuana laws. Ms. Hirschbiel reported that the Legal Ethics Committee had been looking into the issues and

will likely ask DCO and the SPRB to consider a policy against prosecution if a lawyer assists a client with conduct that is legal in Oregon but not under federal law.

Motion: Mr. Mansfield moved, Mr. Ehlers seconded, and the board unanimously agreed to ask the Legal Ethics Committee issue an ethics opinion or a rule regarding marijuana laws.

D. Director of Regulatory Services

Ms. Evans reported that the July SPRB meeting will include a retreat to discuss ways to streamline the disciplinary process, such as allowing the DCO staff to have more autonomy in determining what charges to pursue. Ms. Evans has been working on completing investigations that have been in the office for too long.

E. Director of Diversity & Inclusion

Ms. Hyland reported that OLIO planning is well under-way and encouraged BOG members to attend at least part of the event. She presented a short video of a law student explaining the value of OLIO that will be used to recruit first-year law students. The Diversity Story Wall will be revealed on November 7 after the House of Delegates meeting.

F. MBA Liaison Reports

Mr. Ehlers attended the May 7, 2014 MBA board meeting and reported that the MBA is updating its mission statement regarding access to courts. He convinced the board to include persons who lack legal status in their list of groups facing barriers.

G. Oregon New Lawyers Division Report

As written. Mr. Eder presented the Oregon New Lawyers Division request for approval to submit a letter of support to the Legal Services Corporation for the Legal Aid Services of Oregon (LASO) grant application). **[Exhibit A]**

Motion: Mr. Kehoe moved, Mr. Ehlers seconded, and the board voted unanimously to authorize the ONLD to send the letter.

3. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update on the PLF's positive financial status **[Exhibit B]**, and reported on three new hires, including an additional law practice management attorney. There is a higher demand for the expertise of their law practice management lawyers. Alan Beck, claims attorney, is retiring after 23 years, during which he processed \$38 million in claims. The PLF will not be seeking an increase in the assessment for next year.

Mr. Martinez reported on the status of the CEO hiring process. A committee of six PLF board members narrowed the pool of twenty-two applicants and granted interviews to eleven. Four applicants were given second interviews which narrowed the pool to two. The committee will meet to review the two remaining candidates. Tentatively there will be a special PLF board meeting next week to announce the new CEO.

4. OSB Committees, Sections and Councils

A. Public Service Advisory Committee

Ms. Pulju presented the committee's recommendation for the board to approve a new "Disability Benefits and injured Workers" panel for the Modest Means Program (MMP). She explained that PSAC considered a variety of approaches and the recommendation is a compromised worked out by a focus group.

Ms. Pulju also asked the board to consider the recommendation of the committee to approve related and housekeeping revisions to the Modest Means Program Policies and Procedures. **[Exhibit C]**

Motion: Mr. Kehoe moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the committee's recommendation to create these Modest Means panels for a pilot period of one year and to approve the revisions as recommended by the committee.

B. Military and Veterans Law Section

Mr. Spier presented the section's request to authorize President Kranovich to sign a letter to the Department of Defense with recommendations for the pending review of the Uniform Code of Military Justice substantially in the form drafted by the Military Law & Veterans Section. **[Exhibit D]**

Motion: Mr. Spier moved, Ms. Mitchel-Markley seconded, and the board voted to approve the section's request have Mr. Kranovich send the letter.

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

A. Board Development Committee

Ms. Mitchel-Markley updated the board on the committee's actions and asked for approval of the Local Professional Responsibility Committees appointments. **[Exhibit E]**

Motion: The board approved the committee motion on a unanimous vote.

Ms. Mitchel-Markley asked for approval of the House of Delegates appointments. **[Exhibit E]**

Motion: The board approved the committee motion on a unanimous vote.

Ms. Mitchel-Markley asked for approval of the Oregon Law Commission appointment. **[Exhibit E]**

Motion: The board approved the committee motion on a unanimous vote.

B. Budget and Finance Committee

Mr. Emerick informed the board on bar-related financial matters and asked the board to accept the audit report of the OSB financial statements for the two-year period ending December 31, 2013. **[Exhibit F]**

Motion: The board approved the committee motion on a unanimous vote.

C. Public Affairs Committee

Mr. Prestwich asked the board to adopt proposed changes to the following practice standards: Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases; and Specific Standards of Representation in Juvenile Dependency Cases. **[Exhibit G]**

Motion: The board approved the committee motion on a unanimous vote.

Mr. Prestwich asked the board to accept the task force reports requested by the Senate Judiciary Committee in 2013(SB 798 – Alternate Jurors in Criminal Cases, SB 799 – Motions for Change of Attorney, and SB 812 – Motions for Change of Judge), and submit them to the Committee during fall Legislative Days. **[Exhibit H]**

Motion: The board approved the committee motion on a unanimous vote.

Mr. Prestwich asked the board to approve the following OSB legislative priorities for 2015: adequate funding for court services, technology, and facilities; increased funding, including the use of the cy pres doctrine, for low income civil legal services; increased funding, for public defense services; and support for the Oregon State Bar’s 2015 Law Improvement Package of legislation. **[Exhibit I]**

Motion: The board approved the committee motion on a unanimous vote.

Mr. Prestwich asked the board to continue the current practice regarding political activities to maintain a presence in Salem.

Motion: The board approved the committee motion on a unanimous vote.

D. RPC 8.4 Drafting Committee

Ms. Richardson informed the board of the drafting process that led to a consensus. Mr. Kranovich asked the board to decide whether to forward the proposed Oregon RPC 8.4 amendment to the House of Delegates with a recommendation to adopt the amendment. **[Exhibit J]**

Motion: Ms. Zinser moved, Ms. Matsumonji seconded, and the board voted unanimously to forward the proposed amendment to the HOD with a recommendation to adopt.

E. Executive Director Evaluation Special Committee

Mr. Kehoe asked the board to give direction regarding the desired process for selecting a new Executive Director. After discussion, the Committee was asked to develop a process for the BOG’s consideration that would include timelines, standards and recommendations for the recruitment strategy.

F. Governance and Strategic Planning Committee

Mr. Spier asked the board to approve the proposed amendment to ORS 9.210. **[Exhibit K]**

Motion: The board voted unanimously to accept the committee motion.

6. Other Action Items

Ms. Edwards asked the board to approve the appointments to various bar committees and boards. **[Exhibit L]**

Motion: Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to approve the various appointments.

Mr. Kranovich withdrew from the agenda a proposal for acknowledging the Lincoln High School for winning the 2014 National We the People Competition, after being reminded by Ms. Pulju that he had already done so on his Facebook page.

Ms. Stevens reminded the BOG that the Chief Justice had asked for BOG input on a possible change to RFA 13.20(1)(b) which requires a law student to complete at least four semesters of full-time law study or the equivalent to become a certified law student. Some BOG members had responded to the initial inquiry, indicating support for a more relaxed requirement that would allow students to be certified sooner. The BOG was generally supportive of the idea that eligibility should be based on courses taken rather than credit hours. Ms. Stevens will relay the BOG's views to the Chief Justice.

Ms. Stevens presented the request of Andrew Schpak for the board to be a sponsor of the ABA YLD 2014 Fall Conference that will be held in Portland in October. **[Exhibit M]**

Motion: Mr. Ehlers moved, Mr. Chaney seconded, and the board voted unanimously to be a Silver sponsor and donate \$5,000.

7. Consent Agenda

Motion: Mr. Spier moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes, bylaw amendments **[Exhibit N]** and revised formal ethics opinions **[Exhibit O]**.

8. Closed Sessions – see CLOSED Minutes

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

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

None.

**Oregon State Bar
Board of Governors Meeting
June 27, 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. Pending or Threatened Non-Disciplinary Litigation

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

B. Other Matters

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
Memo Date: June 26, 2014
From: Ben Eder, Oregon New Lawyers Division Chair
Re: Letter of support for LASO grant application

Issue

The Oregon New Lawyers Division requests approval from the BOG to submit a letter of support for the Legal Aid Services of Oregon (LASO) grant application.

Discussion

LASO receives financial support from the Legal Services Corporation (LSC), a federal agency tasked with funding and regulating legal services programs nationwide. This past spring, Congress appropriated an additional \$2 million dollars to LSC to help fund "Innovative Pro Bono Initiatives." LSC has created a nationwide competitive grant process for LSC programs to apply for a piece of this funding. Not all programs that apply will receive funds.

LASO is in the process of applying for funding through the LSC grant with the goal of creating a new statewide pro bono program manager position in Oregon. Currently, the Portland Office of LASO is the only office with dedicated pro bono staff. A Statewide Pro Bono Manager would be able to work with non-Metro legal aid offices to leverage services to low-income clients by creating and maintaining pro bono opportunities. This Statewide Pro Bono Manager would work with legal aid offices to recruit local private attorneys to do pro bono work, as well as work with Portland metro attorneys, to connect them to rural clients. The Statewide Pro Bono Manager would export best practices being used in the Portland Regional Office as well as create new and innovative opportunities for both urban and rural attorneys to serve clients statewide.

The ONLD voted unanimously to request BOG approval to support LASO with their grant application. The enclosed letter is offered for your review and consideration.



Oregon
New Lawyers
Division

June 26, 2014

Officers

Ben Eder
Chairperson
Karen E. Clevering
Chair-Elect
David N. Eder
Past Chair
Kaori Tanabe
Secretary
Colin G. Andries
Treasurer

Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

RE: Letter in support of Legal Aid Services of Oregon

Members

Krista N. Evans
Jason E. Hirshon
Cassie K. Jones
Anthony D. Kuchulis
Collin C. McKean
Jennifer Nicholls

To Whom it May Concern:

Subcommittees

Continuing Legal Education

Andrew T. Gust, *Co-Chair*
Joel D. Sturm, *Co-Chair*

Law Related Education

Melissa Healy, *Chair*

Law School Outreach

Chelsea Glynn, *Co-Chair*
Joe Kraus, *Co-Chair*

Member Services & Satisfaction

Ryan M. Vanden Brink, *Chair*

Practical Skills

Andrew T. Weiner, *Chair*

Pro Bono

Colin J. Lebens, *Co-Chair*
Raife R. Neuman, *Co-Chair*

Liaisons

Richard G. Spier
Board of Governors

Danielle Edwards
OSB Staff

Michelle Lane
OSB Staff

The mission of the Oregon New Lawyers Division (ONLD) is to assist new lawyers with the transition to practicing law in Oregon, either from law school or from a practice in another jurisdiction; conduct programs of value to new lawyers and law students; promote public awareness and access to justice; and promote professionalism among new lawyers. The ONLD is the only bar division representing over 4,000 lawyers, approximately 35% of the Bar. The ONLD was created in recognition of the special interests of new lawyers that are often different from those of more experienced attorneys. New lawyers are more likely to be concerned with issues of professional advancement, balancing family and career and substantive legal education.

The ONLD's commitment to access to justice and promoting professionalism includes a dedication to encouraging our members to engage in pro bono activities. The ONLD has a Pro Bono Committee that works on initiatives that enhance the culture of pro bono in our state. For example, we help coordinate a large Pro Bono Fair each year as part of National Celebrate Pro Bono Week. The ONLD also coordinates a very successful program called the Practical Skills through Public Service Program, that connects unemployed new lawyers with nonprofit and government agencies for short term full time pro bono placements. The ONLD recognizes that pro bono service helps fill the gap in legal services for the poor, while at the same time providing an opportunity for new lawyers to gain valuable legal experience.

The ONLD is very interested in expanding opportunities for new lawyers to get involved in pro bono services. To that end, we enthusiastically support

Legal Aid Services of Oregon in their application to the LSC Pro Bono Innovations Fund. The majority of pro bono opportunities in Oregon are located in the Portland metro area. While many ONLD members practice there, we are invested in creating opportunities for lawyers in all parts of the state. Creating a Statewide Pro Bono Coordinator position would be a vital step toward making this happen.

The ONLD has connections with attorneys statewide and is in a unique position to help LASO with pro bono attorney recruitment (particularly within the new attorney demographic). Recruitment efforts only make sense if there are opportunities to feed new volunteers into. The Statewide Pro Bono Coordinator would be in the position of placing new pro bono recruits in meaningful pro bono activities statewide. By engaging attorneys early in their career the ONLD and LASO can build pro bono advocates and supporters for life. The ONLD looks forward to the opportunity to support LASO in this endeavor, and we unreservedly back LASO in their proposal for LSC Pro Bono Innovations Funding.

Sincerely,



Ben Eder, Chairperson
Oregon New Lawyers Division

Processed on 6/9/2014

**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2014**

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
4/30/2014**

<u>ASSETS</u>			
	<u>THIS YEAR</u>	<u>LAST YEAR</u>	
Cash	\$2,060,405.41	\$1,324,493.54	
Investments at Fair Value	52,210,174.85	49,291,732.52	
Assessment Installment Receivable	6,058,529.08	6,105,044.88	
Due from Reinsurers	51,421.37	66,973.96	
Other Current Assets	78,279.11	76,607.82	
Net Fixed Assets	861,880.81	931,770.53	
Claim Receivables	35,426.75	58,890.72	
Other Long Term Assets	<u>9,825.00</u>	<u>9,825.00</u>	
TOTAL ASSETS	<u>\$61,365,942.38</u>	<u>\$57,865,338.97</u>	
 <u>LIABILITIES AND FUND POSITION</u>			
	<u>THIS YEAR</u>	<u>LAST YEAR</u>	
Liabilities:			
Accounts Payable and Other Current Liabilities	\$150,991.40	\$89,996.85	
Due to Reinsurers	\$966,220.95	\$941,779.88	
Liability for Compensated Absences	370,817.99	445,620.51	
Liability for Indemnity	11,341,313.23	13,693,964.59	
Liability for Claim Expense	14,720,589.62	13,196,655.36	
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)	2,300,000.00	2,400,000.00	
Excess Ceding Commision Allocated for Rest of Year	538,236.90	493,269.71	
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,517,621.78</u>	<u>16,788,036.67</u>	
Total Liabilities	<u>\$50,805,791.87</u>	<u>\$52,149,323.57</u>	
 Change in Net Position:			
Retained Earnings (Deficit) Beginning of the Year	\$9,270,287.61	\$4,047,255.11	
Year to Date Net Income (Loss)	<u>1,289,862.90</u>	<u>1,668,760.29</u>	
Net Position	<u>\$10,560,150.51</u>	<u>\$5,716,015.40</u>	
 TOTAL LIABILITIES AND FUND POSITION	 <u>\$61,365,942.38</u>	 <u>\$57,865,338.97</u>	

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
4 Months Ended 4/30/2014**

	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>
<u>REVENUE</u>					
Assessments	\$8,148,014.56	\$8,374,333.32	\$226,318.76	\$8,264,342.33	\$25,123,000.00
Installment Service Charge	110,796.33	130,000.00	19,203.67	129,676.00	390,000.00
Other Income	30,100.00	0.00	(30,100.00)	20,801.00	0.00
Investment Return	<u>1,058,838.40</u>	<u>897,421.32</u>	<u>(161,417.08)</u>	<u>2,036,445.05</u>	<u>2,692,264.00</u>
TOTAL REVENUE	<u>\$9,347,749.29</u>	<u>\$9,401,754.64</u>	<u>\$54,005.35</u>	<u>\$10,451,264.38</u>	<u>\$28,205,264.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$5,964,000.00			\$6,680,000.00	
Coverage Opinions	25,767.21			51,063.24	
General Expense	7,922.08			73,477.33	
Less Recoveries & Contributions	(68.71)			(2,951.28)	
Budget for Claims Expense		<u>\$6,890,880.00</u>			<u>\$20,672,640.00</u>
Total Provision For Claims	<u>\$5,997,620.58</u>	<u>\$6,890,880.00</u>	<u>\$893,259.42</u>	<u>\$6,801,589.29</u>	<u>\$20,672,640.00</u>
Expense from Operations:					
Administrative Department	\$776,008.46	\$827,457.40	\$51,448.94	\$695,744.96	\$2,482,372.00
Accounting Department	207,872.66	212,553.96	4,681.30	261,578.68	637,662.00
Loss Prevention Department	569,620.18	693,674.68	124,054.50	592,701.81	2,081,023.00
Claims Department	860,264.82	888,155.88	27,891.06	841,634.34	2,664,467.00
Allocated to Excess Program	<u>(373,596.32)</u>	<u>(373,596.32)</u>	<u>0.00</u>	<u>(368,368.00)</u>	<u>(1,120,789.00)</u>
Total Expense from Operations	<u>\$2,040,169.80</u>	<u>\$2,248,245.60</u>	<u>\$208,075.80</u>	<u>\$2,023,291.79</u>	<u>\$6,744,735.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$104,900.32	\$104,900.32	\$0.00	\$314,701.00
Depreciation and Amortization	\$54,238.08	\$56,600.00	\$2,361.92	\$56,763.80	\$169,800.00
Allocated Depreciation	<u>(8,122.00)</u>	<u>(8,122.00)</u>	<u>0.00</u>	<u>(10,018.68)</u>	<u>(24,366.00)</u>
TOTAL EXPENSE	<u>\$8,083,906.46</u>	<u>\$9,292,503.92</u>	<u>\$1,208,597.46</u>	<u>\$8,871,626.20</u>	<u>\$27,877,510.00</u>
NET POSITION - INCOME (LOSS)	<u>\$1,263,842.83</u>	<u>\$108,584.04</u>	<u>(\$1,155,258.79)</u>	<u>\$1,579,638.18</u>	<u>\$325,754.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2014**

EXPENSE:	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
Salaries	\$339,099.89	\$1,368,044.42	\$1,444,463.32	\$76,418.90	\$1,378,683.88	\$4,333,390.00
Benefits and Payroll Taxes	131,150.61	505,001.95	537,842.08	32,840.13	482,039.02	1,613,526.00
Investment Services	0.00	6,753.75	9,333.32	2,579.57	6,876.75	28,000.00
Legal Services	0.00	0.00	4,333.32	4,333.32	2,589.50	13,000.00
Financial Audit Services	13,000.00	13,000.00	7,933.32	(5,066.68)	15,000.00	23,800.00
Actuarial Services	0.00	11,340.00	7,333.32	(4,006.68)	6,448.75	22,000.00
Information Services	2,221.00	11,656.67	32,533.36	20,876.69	32,197.66	97,600.00
Document Scanning Services	0.00	0.00	21,666.68	21,666.68	1,229.61	65,000.00
Other Professional Services	12,572.57	31,884.62	23,410.00	(8,474.62)	18,105.20	70,230.00
Staff Travel	223.29	3,093.93	5,016.68	1,922.75	1,306.52	15,050.00
Board Travel	2,119.59	4,370.38	12,999.96	8,629.58	2,060.17	39,000.00
NABRICO	0.00	0.00	3,533.32	3,533.32	100.00	10,600.00
Training	3,029.50	9,927.36	7,333.32	(2,594.04)	10,495.04	22,000.00
Rent	42,777.25	170,160.74	176,959.68	6,798.94	167,646.08	530,879.00
Printing and Supplies	10,607.63	27,820.86	20,333.36	(7,487.50)	15,849.65	61,000.00
Postage and Delivery	1,894.00	8,029.14	11,583.36	3,554.22	13,485.11	34,750.00
Equipment Rent & Maintenance	736.86	14,666.38	13,500.00	(1,166.38)	16,618.41	40,500.00
Telephone	3,917.32	14,863.35	19,320.00	4,456.65	15,829.40	57,960.00
L P Programs (less Salary & Benefits)	31,492.73	101,583.12	148,265.00	46,681.88	99,412.07	444,794.00
Defense Panel Training	0.00	0.00	500.04	500.04	49.90	1,500.00
Bar Books Grant	16,666.67	66,666.68	66,666.68	0.00	66,666.68	200,000.00
Insurance	0.00	8,221.00	13,048.32	4,827.32	8,432.00	39,145.00
Library	2,948.55	7,834.52	11,000.00	3,165.48	10,107.18	33,000.00
Subscriptions, Memberships & Other	1,350.10	20,437.56	14,933.32	(5,504.24)	20,431.21	44,800.00
Allocated to Excess Program	(93,399.08)	(373,596.32)	(373,596.32)	0.00	(368,368.00)	(1,120,789.00)
TOTAL EXPENSE	\$522,408.48	\$2,031,760.11	\$2,240,245.44	\$208,485.33	\$2,023,291.79	\$6,720,735.00

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
4 Months Ended 4/30/2014**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$269,118.45	\$253,333.32	(\$15,785.13)	\$246,634.86	\$760,000.00
Prior Year Adj. (Net of Reins.)	3,446.70	500.00	(2,946.70)	3,371.55	1,500.00
Installment Service Charge	39,808.00	14,000.00	(25,808.00)	41,433.00	42,000.00
Investment Return	<u>135,357.42</u>	<u>67,547.68</u>	<u>(67,809.74)</u>	<u>209,282.61</u>	<u>202,643.00</u>
TOTAL REVENUE	<u>\$447,730.57</u>	<u>\$335,381.00</u>	<u>(\$112,349.57)</u>	<u>\$500,722.02</u>	<u>\$1,006,143.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$413,588.50	\$416,233.68	\$2,645.18	\$401,581.23	\$1,248,701.00
Allocated Depreciation	<u>\$8,122.00</u>	<u>\$8,122.00</u>	<u>\$0.00</u>	<u>\$10,018.68</u>	<u>\$24,366.00</u>
NET POSITION - INCOME (LOSS)	<u>\$26,020.07</u>	<u>(\$88,974.68)</u>	<u>(\$114,994.75)</u>	<u>\$89,122.11</u>	<u>(\$266,924.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2014**

	<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>
<u>EXPENSE:</u>						
Salaries	\$58,191.10	\$232,764.40	\$232,764.32	(\$0.08)	\$223,217.92	\$698,293.00
Benefits and Payroll Taxes	21,551.82	86,209.56	85,667.36	(542.20)	83,589.68	257,002.00
Investment Services	0.00	746.25	833.32	87.07	623.25	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,533.84	90,135.36	90,135.32	(0.04)	92,958.00	270,406.00
Reinsurance Placement & Travel	919.93	1,432.93	1,666.68	233.75	0.00	5,000.00
Training	0.00	0.00	166.68	166.68	0.00	500.00
Printing and Mailing	0.00	0.00	1,833.32	1,833.32	92.38	5,500.00
Program Promotion	500.00	2,300.00	2,500.00	200.00	1,100.00	7,500.00
Other Professional Services	0.00	0.00	666.68	666.68	0.00	2,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
 TOTAL EXPENSE	 <u>\$103,696.69</u>	 <u>\$413,588.50</u>	 <u>\$416,233.68</u>	 <u>\$2,645.18</u>	 <u>\$401,581.23</u>	 <u>\$1,248,701.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2014**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$13,367.38	\$50,551.95	\$25,820.80	\$90,622.76
Intermediate Term Bond Funds	8,204.44	75,279.68	23,781.28	73,383.74
Domestic Common Stock Funds	4,226.00	118,321.97	0.00	38,480.25
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	38,384.18	0.00	9,468.82
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>97,934.18</u>	<u>0.00</u>	<u>38,894.23</u>
Total Dividends and Interest	<u>\$25,797.82</u>	<u>\$380,471.96</u>	<u>\$49,602.08</u>	<u>\$250,849.80</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$19,262.41	\$44,056.43	\$33,985.92	\$23,727.79
Intermediate Term Bond Funds	41,930.03	154,584.37	73,840.27	73,916.27
Domestic Common Stock Funds	(18,893.99)	62,407.50	115,066.02	899,057.03
International Equity Fund	45,358.03	198,008.05	404,472.85	654,780.05
Real Estate	0.00	58,342.79	0.00	64,304.55
Hedge Fund of Funds	0.00	0.00	35,781.33	226,364.91
Real Return Strategy	<u>89,324.01</u>	<u>296,324.72</u>	<u>69,498.16</u>	<u>52,727.26</u>
Total Gain (Loss) in Fair Value	<u>\$176,980.49</u>	<u>\$813,723.86</u>	<u>\$732,644.55</u>	<u>\$1,994,877.86</u>
TOTAL RETURN	<u>\$202,778.31</u>	<u>\$1,194,195.82</u>	<u>\$782,246.63</u>	<u>\$2,245,727.66</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$1,929.68	\$37,523.84	\$4,518.75	\$25,872.67
Gain (Loss) in Fair Value	<u>13,238.14</u>	<u>97,833.58</u>	<u>66,743.92</u>	<u>183,409.94</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$15,167.82</u>	<u>\$135,357.42</u>	<u>\$71,262.67</u>	<u>\$209,282.61</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
4/30/2014**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,125,134.34	\$521,287.63
Assessment Installment Receivable	631,391.20	570,653.50
Due from Reinsurers	51,421.37	66,973.96
Investments at Fair Value	<u>2,451,732.64</u>	<u>3,150,558.97</u>
TOTAL ASSETS	<u>\$4,259,679.55</u>	<u>\$4,309,474.06</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$40.60	\$89.04
Due to Primary Fund	\$20,589.56	(\$6,265.38)
Due to Reinsurers	966,220.95	941,779.88
Ceding Commision Allocated for Remainder of Year	<u>538,236.90</u>	<u>493,269.71</u>
Total Liabilities	<u>\$1,525,088.01</u>	<u>\$1,428,873.25</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of Year	\$2,708,571.47	\$2,791,478.70
Year to Date Net Income (Loss)	<u>26,020.07</u>	<u>89,122.11</u>
Total Fund Equity	<u>\$2,734,591.54</u>	<u>\$2,880,600.81</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$4,259,679.55</u>	<u>\$4,309,474.06</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
4/30/2014**

<u>ASSETS</u>		<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash		\$935,271.07	\$803,205.91
Investments at Fair Value		49,758,442.21	46,141,173.55
Assessment Installment Receivable		5,427,137.88	5,534,391.38
Due From Excess Fund		20,589.56	(6,265.38)
Other Current Assets		57,689.55	82,873.20
Net Fixed Assets		861,880.81	931,770.53
Claim Receivables		35,426.75	58,890.72
Other Long Term Assets		<u>9,825.00</u>	<u>9,825.00</u>
TOTAL ASSETS		<u>\$57,106,262.83</u>	<u>\$53,555,864.91</u>
<u>LIABILITIES AND FUND EQUITY</u>		<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:			
Accounts Payable and Other Current Liabilities		\$130,361.24	\$96,173.19
Liability for Compensated Absences		370,817.99	445,620.51
Liability for Indemnity		11,341,313.23	13,693,964.59
Liability for Claim Expense		14,720,589.62	13,196,655.36
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 (ULAE)		2,300,000.00	2,400,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year		<u>16,517,621.78</u>	<u>16,788,036.67</u>
Total Liabilities		<u>\$49,280,703.86</u>	<u>\$50,720,450.32</u>
Fund Equity:			
Retained Earnings (Deficit) Beginning of the Year		\$6,561,716.14	\$1,255,776.41
Year to Date Net Income (Loss)		<u>1,263,842.83</u>	<u>1,579,638.18</u>
Total Fund Equity		<u>\$7,825,558.97</u>	<u>\$2,835,414.59</u>
TOTAL LIABILITIES AND FUND EQUITY		<u>\$57,106,262.83</u>	<u>\$53,555,864.91</u>

I. Program

A. Overview

The Modest Means Program (MMP) is designed to make legal services available to lower income people who are unable to afford regular attorney fees.

B. Operation

The Referral & Information Services (RIS) ~~Administrator~~ Manager shall develop and revise referral procedures and shall be responsible for the operation of the program. Procedures and rules shall be consistent with the program goals and the following guidelines:

1. RIS Staff ("Staff") may not comment on the qualifications of a participating MMP Panelist Attorney ("Panelist") and may not guarantee the quality or value of legal services.
2. Staff shall not make referrals on the basis of race, sex, age, religion, sexual orientation, or national origin.
3. No more than three referrals may be made to an applicant for the same legal problem.
4. Staff may provide legal information and referrals to social service agencies for callers for whom a legal referral would not be appropriate, and may develop agency resource lists.
5. Callers complaining about possible ethical violations by Panelists shall be referred to the Oregon State Bar Client Assistance Office.

C. Client Eligibility and Attorney Fees

1. To be eligible, applicant income must be less than or equal to at least one current eligibility tier of the MMP ("Tier"). Tiers are based upon set percentages of the current Federal Poverty Guidelines, with allowable adjustments based on guidelines of the Legal Services Corporation.
2. Attorneys' fee levels ("Levels") shall be set to correspond with the Tiers, after giving due consideration to the most recent edition of the Oregon State Bar Economic Survey and common billing practices for each area of law addressed by the MMP. In consultation with the Public Service Advisory Committee, Staff shall periodically adjust the Tiers and Levels. Tier and Level adjustments may be reviewed by the Board of Governors, who shall determine whether the adjustments were reasonable. The client fee for an initial consultation shall not exceed \$35. MMP attorneys are entitled to request a reduced initial retainer deposit ("Reduced Retainer"). "Reduced Retainer" shall mean an amount that is less than the amount of an initial retainer deposit requested for non-MMP cases of similar complexity and duration.
3. Panelists with separate eligibility and attorney fee guidelines may be adopted periodically on a trial basis. Please contact RIS staff for more information.

II. Panelists

A. Eligibility

Attorneys satisfying the following requirements shall be eligible for participation in the program: The attorney must:

1. be in private practice; and
2. be an active member of the Oregon State Bar who is in good standing; and
3. maintain malpractice coverage with the Professional Liability Fund; and
4. have no Disciplinary Proceedings pending.

“Disciplinary Proceedings” shall include those authorized to be filed pursuant to Rule 2.6 of the Rules of Procedure.

B. Registration

1. Qualifying attorneys shall be accepted as Panelists upon submission of the signed registration form which includes an agreement to abide by MMP Policies and Procedures.
2. Applications for special subject matter panels shall be reviewed by Staff in accordance with eligibility guidelines set by the Board of Governors. Challenges to a Staff decision on eligibility shall be reviewed by the Public Service Advisory Committee [\(PSAC\)](#), whose decision is final.

C. Enforcement

1. Panelists against whom Disciplinary Proceedings have been approved for filing shall be immediately removed from MMP until those charges have been resolved. A disciplinary matter shall not be considered resolved until all matters relating to the Disciplinary Proceedings, including appeals, have been concluded and the matter is no longer pending in any form.
2. [A Panelist whose status changes from “active member of the Oregon State Bar who is in good standing” shall be automatically removed from the MMP. A Panelist may be removed from the program or any MMP panel if the Panelist fails to continue to maintain eligibility or otherwise violates the Rules for Panelists. Upon written request, the PSAC will review a decision to remove a panelist at its next regularly scheduled meeting. Such written request must be submitted to the PSAC within 30 calendar days of the date notice of the decision is given to the removed panelist. The PSAC’s decision regarding removal is final.](#)

D. Rules For Panelists

1. [Each panelist shall continuously](#) be an active member of the Oregon State Bar who is in good standing with malpractice coverage from the Professional Liability Fund and have no pending Disciplinary Proceedings;
2. [Panelists agree to charge potential clients who live in Oregon and are referred by the MMP no more than \\$35 for an initial 30-minute consultation, except that no consultation fee may be charged where: \(a\) such charge would conflict with a statute or rule regarding attorneys’ fees in a particular type of case \(e.g., workers’ compensation cases\), or \(b\) the panelist customarily offers or advertises a free consultation to the public for a particular type of case;](#)
3. [If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply;](#)
4. [Panelists will participate only on those panels and subpanels within the panelist’s competence and where the LRS has approved the panelist to participate on one or more special subject matter panels, as applicable;](#)
5. [Panelists will use a written fee agreement for any services provided beyond the initial consultation;](#)
6. [Panelists will communicate regularly with MMP staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason;](#)

7. Panelists will keep clients reasonably informed about the status of their matters and respond promptly to reasonable requests for information. Panelists will return calls and emails promptly and will provide clients with copies of important papers and letters;

8. Panelists agree to ~~Submit~~ submit any fee disputes with clients referred by MMP to the Oregon State Bar Fee Arbitration Program.

Military Justice Review Group
Office of the General Counsel
Room 3B747
1600 Defense Pentagon
Washington, DC 20301-1600

June 30, 2014

Dear Chief Judge Efron:

As the Military Justice Review Group (MJRG) conducts its "Comprehensive Review of the Uniform Code of Military Justice," per Secretary Hagel's 18 October 2013 direction, Deputy General Counsel Koffsky has requested the input of the Oregon State Bar (OSB) concerning the administration of military justice.

The mission of the OSB 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. The OSB was established in 1935 by the Oregon Legislative Assembly to license and discipline lawyers, regulate the practice of law and provide a variety of services to bar members and the public. The bar is a public corporation and an instrumentality of the Oregon Judicial Department.

In furtherance of our mission, we are pleased to address two concerns that we believe should be considered in any comprehensive report on the administration of Military Justice in the U.S. Military.

1. Post-service consequences of military justice and other disciplinary actions.
2. Inherent conflicts of interest in criminal defense representation in courts-martial.

Post-service consequences of military disciplinary actions

We believe that statutory language should be considered to require military decision makers to consider post-service consequences of military disciplinary actions.

Oregon is proud to contribute citizens of our state to facilitate the important federal Constitutional requirement to provide for the common defense. It is essentially important to all Oregonians that our citizens are provided adequate due process in any military disciplinary proceeding and that adequate resources are provided to care for veterans for as long as they and their loved ones experience the consequences of their service.

But due process only addresses the proceeding itself, and post-service care address problems which have already occurred. We have been unable to locate anything in the Uniform Code of Military Justice, other statutes, Rules for Court-Martial, or in any Service Regulations which directs military authorities to ensure that post-service consequences of military disciplinary decisions are considered.

At court-martial, for example, the sum total of the guidance that military panel members receive about post-service consequences of punitive discharges is this:

The stigma of a punitive discharge is commonly recognized by our society. A punitive discharge will place limitations on employment opportunities and will deny the accused other advantages which are enjoyed by one whose discharge characterization indicates that (he) (she) has served honorably. A punitive discharge will affect an accused's future with regard to (his) (her) legal rights, economic opportunities, and social acceptability... This court may adjudge either a dishonorable discharge or a bad-conduct discharge. Such a discharge deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Army establishment. Department of the Army Pamphlet 27-9, para 2-5-22.

Nothing is provided to military panel members which orients them to the consequences of their decisions to larger society as well as to the individual Accused. The interests of the several States, which are left completely responsible for veterans who receive punitive discharges, are not addressed at all.

Similarly, we are unable to locate any guidance concerning Administrative Separations which would assist military decision makers in understanding and incorporating into their decision process the profound post-service consequences of negative characterizations of service.

The applicable Department of Defense Instruction, DODI 1332.14, Enclosure 4, paragraph 1.b., merely directs military decisions makers as follows:

- (4) The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:
 - (a) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the Service member's continued retention on military discipline, good order, and morale.
 - (b) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.
 - (c) The likelihood that the Service member will be a disruptive or undesirable influence in present or future duty assignments.
 - (d) The ability of the Service member to perform duties effectively in the present and in the future, including potential for advancement or leadership.
 - (e) The Service member's rehabilitative potential.
 - (f) The Service member's entire military record.

With respect to characterization of service, the DODI merely states, at Enclosure 4, para 3.b(1)

(a) Characterization at separation shall be based upon the quality of the Service member's service, including the reason for separation ... and the time-honored customs and traditions of military service.

(b) ...[C]onduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline [and] conduct in the civilian community.

(c) The reasons for separation...

(d) [T]he Service member's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

Guidance on characterization appears to completely disregard the balance of the young Service Members' lives, years when the military has no further use for these former Service Members.

It is our contention that even badly-behaving former Service Members may mature to be productive and law-abiding citizens of the several States; and it is our further contention that the Services should be directed to consider the larger and long-term good of society alongside short-term military efficacy. Because the Services must always maintain an overwhelming focus on fighting and winning our Nation's wars, we believe this issue merits evaluation for statutory repair.

Inherent conflicts of interest in criminal defense representation in courts-martial

The Oregon State Bar, under the ultimate authority of the Oregon Supreme Court, regulates the practice of law in Oregon for the protection of the public. In its regulatory role, the OSB is responsible for the admission, discipline and reinstatement of lawyers who practice in Oregon, and has tremendous knowledge and experience with attorneys' professional responsibilities, including compliance with their ethical obligations.

Instead of creating and administering a military bar association to license and regulate the practice of law in the military, the DoD has chosen to require military lawyers to have current membership in the bar of one of the several States or the District of Columbia. In other words, the DoD asks the Oregon State Bar to give its *imprimatur* to lawyers practicing in military service but licensed in Oregon, especially as there is no further licensing requirement for military service.

As such, the OSB has an interest in ensuring that Oregon-licensed lawyers are practicing in a manner that does not place them at risk of inadvertently violating our rules of practice. Specifically, Oregon RPC 1.8(k) provides that "[w]hile lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them." What constitutes a "firm" is open to some interpretation, especially in the context of military practice; however, at no time in Oregon have counsel working for the same supervisor been allowed to represent adverse litigants.

As for the applicability of our rules, RPC 8.5(a) provides,

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

The Oregon Rules of Professional Conduct require that attorneys must avoid conflicts of interest in the representation of their clients. We are concerned that it appears to be an actual conflict of interest for attorneys in the same legal organization, whether public or private, to simultaneously represent parties with adverse interests. We understand that the military services have criminal defense organizations within their Judge Advocate General's Corps. The judge, the prosecution, and the defense in courts-martial all report to the same ultimate supervisor, the Judge Advocate General of that service.

In formulating our recommendations for the MJRG, we have considered the Group's ability to propose incremental or evolutionary reforms to Secretary Hagel. Our review of the provision of criminal defense services over the history of our Nation shows a steady progression of increasing independence in the provision of criminal defense representation to Service Members. The creation of the Army's Trial Defense Service in the 1980s was a watershed moment in the evolution of due process in military jurisprudence. However, the Services do not appear to have seen any need for further evolution of the defense function in the intervening 34 years. We would like to propose to the MJRG that it consider the obvious conflict of interest the current system embodies.

While we acknowledge that it is better for an Accused Service Member to have an ostensibly independent TDS attorney than a Prosecutor also serving the Defense Counsel function, we are hard-pressed to see what military exigencies compel the DoD to retain the respective Service Trial Defense organizations solely in Service Channels. Instead, we have considered the current arrangements as step on the way to a fully independent Joint Criminal Defense Organization, either within the DoD (if military exigencies demand that compromise) or independent of the entire military chain of command (if possible). The OSB is certainly in no position to presume expertise over those military exigencies, but we are pleased to raise the issue for the MJRG's consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Kranovich", with a stylized flourish at the end.

Tom Kranovich, President

June 25, 2014

Dear Members of the Board of Governors:

I am writing to you on behalf of the Executive Committee of the Workers' Compensation Section of the Oregon State Bar. We have reviewed your proposal for a compromise of the 12% referral fee imposed by the Lawyer Referral Service, and wish to express our disappointment that the BOG has declined to exempt the Workers' Compensation Section from this requirement. For the following reasons, we respectfully request that you reconsider.

For a variety of reasons, including the downturn of the economy and changes to the legal framework and burden of proof, workers' compensation has seen a serious decrease in the number of attorneys willing to represent injured workers. Workers' compensation law is a very technical and specialized area of practice, with significant fee limitations. Cases often remain in litigation for many years before reaching a resolution. As I am sure you are aware, out-of-compensation attorney fees in a workers' compensation settlement are limited by statute to 25% of the first \$17,500, and 10% of any additional amount thereafter. Six-figure settlements are rare, but assuming a settlement in the amount of \$100,000, the total attorney fee would be \$12,625. If that attorney is required to pay a 12% referral fee to the OSB, the total attorney fee would be \$11,110. Thus, the attorney would earn an 11.11% fee on a \$100,000 settlement. Please compare this amount to that earned by attorneys who litigate in other practice areas. Please also consider that there are many issues litigated in a workers' compensation case, such as rate and entitlement to temporary disability and extent of permanent disability, that yield important benefits for injured workers, and small attorney fees. For example, in a case involving owed temporary disability benefits at the hearing level, an attorney's fee is limited to 25% of the amounts owed up to a maximum fee of \$1,500. If the Lawyer Referral Service enforces the referral fee requirement, there is even less incentive for an attorney to represent an injured worker on these kinds of issues.

The section has grave concerns that the referral fee will result in an increased reduction in the number of attorneys willing to participate in the program, which will in turn cause an even greater decrease in the number of available attorneys, especially in the more rural areas of Oregon where there are already very few attorneys available. Our section has been working for some time to increase interest in the practice of workers' compensation law, with special focus on representation for injured workers, as the reduction in access to justice remains a serious concern. Enforcing a referral fee will certainly stall our efforts.

We urge you to reconsider your proposal, and ask that the Workers' Compensation Section be treated the same as other disability law practices. Please be aware that this proposal is made not only with the support of those attorneys who currently represent injured workers, but also those who represent employers and insurers, as well as many Administrative Law Judges. The need for attorneys willing to represent injured workers is high, and the consequences of the referral fee will no doubt interfere with the ability of injured workers to obtain legal representation in Oregon.

Thank you for your consideration.

Sincerely,

Signed Electronically

Jacqueline M. Jacobson
Administrative Law Judge
Chair of the Executive Committee of the
Workers' Compensation Section of the Oregon State Bar

Members of the Workers' Compensation Section Executive Committee:

Ronald L. Bohy	ALJ Jenny Ogawa
Katherine M. Caldwell	M. Kathryn Olney
Bin Chen	John M. Oswald
Norman D. Cole	Carol A. Parks
James L. Edmunson	Steven M. Schoenfeld
Christine Coffelt Frost	Keith Semple
Tom Harrell	Dennis R. VavRosky
Allison B. Lesh	ALJ Geoffrey G. Wren

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
Memo Date: June 26, 2014
From: Caitlin Mitchel-Markley, Board Development Committee Chair
Re: Appointments to the HOD, LPRC, and Oregon Law Commission

Action Recommended

Approve the Board Development Committee recommendations for appointments to the House of Delegates, Local Professional Responsibility Committees, and the Oregon Law Commission. All recommendations were approved unanimously by the committee unless otherwise noted.

House of Delegates

Region 1 Recommendation: Courtney Quale, term expires 4/17/2017

Region 2 Recommendation: Brandon Braun, term expires 4/20/2015

Region 2 Recommendation: Erin Zemper, term expires 4/20/2015

Region 3 Recommendation: Steve Roe, public member, term expires 4/17/2017

Region 4 Recommendation: Eddie D. Medina, term expires 4/19/2016

Region 4 Recommendation: Chelsea Glynn, term expires 4/17/2017

Region 4 Recommendation: J. Russell Rain, term expires 4/17/2017

Region 4 Recommendation: James Underwood, term expires 4/17/2017

Region 5 Recommendation: Brian T. Sniffen, term expires 4/19/2016

Region 5 Recommendation: Gary U. Scharff expires 4/19/2016

Region 5 Recommendation: Mai T. Nako, term expires 4/17/2017

Region 6 Recommendation: David Phelps, public member, term expires 4/17/2017

Out of State Region Recommendation: Britannia Hobbs, term expires 4/17/2017

Out of State Region Recommendation: Manvir Sekhon, term expires 4/19/2016

Local Professional Responsibility Committees

All member and chair terms expire December 31, 2014.

Hunter Emerick abstained from the vote on member appointments.

Region 1

Lonn T.W. Johnston

Douglas R. Olsen (Chair)

Mark G Reinecke

Paige L. Sully

Bradley V. Timmons

Peter A. Werner

Region 2

Martin M. Fisher
Vaden B. Francisco Jr (Chair)
Robert Kaiser
Danielle J. O'Brien

Region 3

Joel C. Benton
Bruce R. Coalwell (Chair)
Susan Bradley Krant
Tara Kaylene Millan

Region 4

Steven C. Burke
Jessica L. Cousineau
James F. Marron
Cynthia L. Phillips (Chair)
Diane C. Rivera
Walter Weiss Jr

Region 5

Richard S. Bailey
Heather Bowman (Chair)
Mary Ellen Page Farr
Jerilyn Ann Krier
Philip A. Lewis
Morgan W. Long
Eva M. Marcotrigiano
Marisa Moneyhun
Jessica A. Morgan
Kimberlee C. Morrow
Channa C. Newell
Andrew Schlesinger
Brenda Terreault

Region 6

David J. Amesbury
David L. Carlson (Chair)
Deanna P. Laidler
Charles D. Lucas
Franklin Jason Seibert

Region 7

Karen J. Park (Chair)

Oregon Law Commission

Scott Shorr, term expires June 30, 2018

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
Memo Date: June 18, 2014
From: Rod Wegener, CFO
Re: Audit Report of the OSB Financial Statements for the two-year period ending December 31, 2013

Action Recommended

Acknowledge receipt of the audit report of the bar's combined 2012 and 2013 financial statements from Moss Adams LLP.

Background

The audit report and a 5-page document entitled "Communication with Those Charged with Governance and Internal Control Related Matters" (with bar staff's one-page response) will be distributed to the board under separate cover prior to the board meeting. The report will include an unqualified opinion for the bar and report no "deficiencies in internal control that we (the auditors) consider to be material weaknesses."

The report is the combination and summary of all bar-related financial operations – results of operational departments, the building fund (Fanno Creek Place), Client Security Fund, Diversity & Inclusion, Legal Services, sections, and the investment portfolio activity. Since the report is a summary of two years and includes all financial activity, the outcome is revenue of almost \$40 million and a "Change in Net Position," i.e. a net expense (loss) of \$802,571.

The net expense is a startling amount, but the "Management's Discussion and Analysis" (MD&A) on page 4-5 explains the reason.

First, due to the large volume and amount of Client Security Fund claims, the CSF program operated at a combined net expense of \$556,332 in 2012 and 2013 (the MD&A refers to only assessments collected and claims paid). This is 69% of the net expense total.

Second, the largest expense of bar operations after personnel is depreciation. Depreciation is a non-cash expense and totaled \$1,470,360 (\$1,011,003 is applicable to the building) for the two years. This expense will continue to remain large and likely will lead to the bar's audit report reflecting a negative "Change in Net Position" for the next few years.

Nancy Young, the lead auditor for Moss Adams, will be present by phone at the Budget & Finance Committee meeting. Her presence intends to satisfy Statement on Auditing Standards (SAS) 114 which requires the auditor to meet with "those charged with governance" and report any significant findings from the audit. Also, SAS 115 requires the auditor to report any internal control matters if any are identified in the audit.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Travis Prestwich, Public Affairs Committee Chair
Re: Best Practices for Indigent Defense and Juvenile Dependency Providers

Issue

Whether to adopt proposed changes to the following standards to provide guidance to criminal and juvenile practitioners:

- 1) Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases, and
- 2) Specific Standards of Representation in Juvenile Dependency Cases.

Options

Adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency Cases and update the current foreword: a statement of intent that these guidelines are not intended to establish a legal standard of care.

Adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency Cases to provide guidance to practitioner.

Decline to adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency 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.

In 1996, the Oregon State Bar Board of Governors first approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. Adoption of the performance standards by the Bar was a key recommendation of the first task force.

These standards include a forward and five sections:

- 1) General Standards,
- 2) Specific Standards for Representation in Criminal and Juvenile Delinquency Cases,
- 3) Specific Standards for Representation in Juvenile Dependency Cases,
- 4) Specific Standards for Representation in Civil Commitment Proceedings, and

5) Maximum Caseload Standards for Defense Counsel.

In 2006, the Board revised the 1996 standards. In 2012, two separate task forces were created to revise sections 2 and 3. The first task force addressed criminal and delinquency cases and the second addressed juvenile dependency cases. The remaining standards were not addressed as they have been updated since 2006.

The standards have become a critical component of training and education efforts for lawyers practicing in these areas. Keeping them 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 practitioners. At the request of the Public Affairs Committee a forward has been included with the standards similar to what is contained in the 2006 version and quoted below:

"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 as well in the foreword to the standards for post-conviction relief practitioners, which the BOG adopted in 2009.

Proposed Revised Standards

Attached are the 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." In addition, the juvenile workgroup has updated the "Specific Standards for Representation in Juvenile and Dependency Cases." These changes to sections 2 and 3 will make the "general standards" in Section 1 unnecessary.

Specific Standards for Representation in Criminal and Juvenile Delinquency Cases

The criminal and juvenile delinquency cases 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. In addition, 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 task force 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.

Specific Standards of Representation in Juvenile Dependency Cases

The task force created to address Juvenile Dependency standards included members from academia as well as from both private practice and public defender offices. Task force members were Julie McFarlane, Supervising Attorney, Youth, Rights & Justice; Shannon Storey, Office of Public Defense Services; Joseph Hagedorn, Metro Public Defender; Leslie Harris, University of Oregon Law School; Tahra Sinks, private practice in Salem; LeAnn Easton, Dorsay & Easton LLP; and Joanne Southey, Department of Justice Civil Enforcement Division.

It became very clear to members of the task force throughout this process that customs and practices in juvenile dependency cases vary widely from county to county in Oregon. While some of these differences may be more stylistic than substantive, some may have a significant impact on the rights of children and parents. One of the goals in writing the action and commentary sections of the standards was identify for attorneys best practices that may differ from the custom in their jurisdiction.

The goal of this task force was to create a revised set of standards that was both easy for the practitioner to read and understand and also provide relevant detail and explanations as necessary. As with the criminal standards, this task force sought to include, in addition to the rules and implementation sections, commentary to both explain the rationale behind the individual standards and to provide relevant real world examples when possible.

These revisions, if approved by the BOG, will serve as useful tools 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 and juvenile dependency lawyers representing both juveniles and parents.

In conclusion, the revised standards may serve to increase Oregon Lawyers' expertise while not increasing exposure to malpractice claims.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Travis Prestwich, Public Affairs Committee Chair
Re: Judiciary Committee Task Force Reports (SB 798, SB 799, and SB 812)

Issue

Consider whether to adopt the task force reports requested by the Senate Judiciary Committee Task Forces in 2013,

- SB 798 – Alternate Jurors in Criminal Cases,
- SB 799 – Motions for Change of Attorney, and
- SB 812 – Motions for Change of Judge,

and submit them to the Committee during fall Legislative Days.

Options

Adopt the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge) and submit them to the Senate Judiciary Committee.

Adopt the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge) with changes and submit them to the Senate Judiciary Committee.

Decline to accept the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge).

Discussion

At the end of the 2013 Legislative Session, Senator Floyd Prozanski requested that the Oregon State Bar create task forces to address three legislative concepts. All three bills, SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge), received hearings during the session, however none of them received sufficient support to pass both chambers.

In response, the bar created and staffed three task forces, bringing together bill sponsors and interested stakeholders to review the proposed concepts, work towards developing compromise language, and provide a report and recommendations to the Senate Judiciary Committee for the Fall Legislative Days.

SB 798 - Alternate Jurors in Criminal Cases

During the 2013 legislative session, the legislature considered SB 798. The bill would have modified ORS Chapter 136 to expand the permissible use of alternate jurors in criminal cases. The task force included judges, representatives for both prosecutors and criminal defense attorneys, and representatives of the Oregon State Bar.

Under current law, the court is generally required to dismiss all alternate jurors when the case is submitted to the jury, meaning that if a juror becomes incapacitated during deliberations, there will no longer be an alternate available. In such a situation, the court will generally be forced to declare a mistrial and the case will have to be retried.

After discussion, the task force agreed that allowing alternate jurors to be used after deliberations have begun is a positive change. The proposal has the potential to make the courts more efficient by eliminating the need for some cases to be retried and with the concession that parties must agree to the alternates.

This proposed change was in part modeled after recent changes to the Oregon Rules of Civil Procedure. Those changes went into effect on January 1, 2014 and allow the use of alternate jurors after deliberations begin in civil cases. Because the ORCP does not apply to criminal cases, separate legislation is required in order to make analogous changes.

SB 799 – Motions for Change of Attorney

During the 2013 legislative session, the legislature considered SB 799. The bill would have modified ORS 9.380, which addresses changes in representation during judicial proceedings. The task force included judges, both criminal and civil litigators, family law practitioners, and representatives of the Oregon Judicial Department, the Professional Liability Fund, and the Oregon State Bar.

ORS 9.380(1) allows for two different procedures for attorney withdrawal and substitution in an action or proceeding. An attorney may withdraw or the attorney-client relationship terminated if the attorney consents prior to a judgment or final determination or at any time by order of court for good and sufficient cause. For the second option, either the client or the attorney must make a request to the court.

The task force recommends two parallel processes to address the concerns raised by SB 799. It should be noted that the task force would like to work with legislative counsel to determine whether the statutory language should be removed completely or whether the language should direct the reader to the Uniform Trial Court Rules (UTCRC).

First, draft legislation should be submitted to either repeal ORS 9.380 and 9.390 in their entirety or to replace them with a very brief statute that simply refers the reader to the UTCR.

Secondly, the bar would be willing to work with the UTCR Committee to draft new language to be added to the Uniform Trial Court Rules.

SB 812 – Motions for Change of Judge

During the 2013 legislative session, the legislature considered SB 812. The bill would have modified the process to disqualify a judge due to a party's belief that they cannot have a fair or impartial trial or hearing before the judge in question (ORS 14.260). Currently, parties are permitted to make two motions supported by affidavit to disqualify a judge. The proposed language in SB 812 would limit a party to only making one motion to disqualify if the case was in a judicial district with three or fewer circuit court judges.

The task force included judges, both criminal and civil litigators, family law practitioners, and representatives of the Oregon Judicial Department, the Professional Liability Fund, and the Oregon State Bar.

The original bill was introduced to address concerns of judges in rural counties and applied only to smaller judicial districts. There appeared to be concern that in some districts the ability to make motions was being used aggressively and was not only driving up costs to bring in judges from other counties but also allowed "judge shopping."

Three concerns were raised by the task force members:

- After a review of neighboring states, it appears that Oregon is the only state that allows two affidavits.
- Several members of the task force voiced concerns that having different laws apply to different districts based on the size of the district does not meet fairness and equity standards and that any solution should be statewide and not apply only to rural judicial districts.
- Many members of the task force thought that the current system worked well and that the problem appeared to be localized rather than a statewide problem.

The task force members did appear to have some interest in Arizona's rule addressing "Notice of Change in Judge," however the task force was ultimately unable to develop any final recommendations regarding whether a bill should be drafted for the 2015 session, and if so, what the content of that bill would be.

Proposed Oregon State Bar Legislative Priorities for 2015

1. Support Court Funding. Support for adequate funding for Oregon's court.

- **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizens and business groups that was formed in 2012 to support court funding.
- **eCourt Implementation.** Support the Oregon Judicial Department's effort to fully implement eCourt.
- **Court Facilities.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.

2. Support legal services for low income Oregonians.

- **Civil Legal Services.**
 - Our highest priority is to increase the current level of funding for low income legal services.
- **Indigent Defense.**
 - **Public Defense Services.** Constitutionally and statutorily required representation of financial qualified individuals in Oregon's criminal and juvenile justice systems:
 - Ensure funding sufficient to maintain the current service level.
 - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
 - Support reduced caseloads for attorneys representing parents and children.

3. Support OSB 2015 Law Improvement Package.

- The bar's 2015 package of law improvement proposals has 22 proposals from 17 bar groups.

OCDLA

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Oregon Criminal Defense Lawyers Association

Strength in numbers. Fairness in justice.

June 25, 2014

Tom Kranovich
President
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Dear Mr. Kranovich:

I am writing on behalf of the Oregon Criminal Defense Lawyers Association Board of Directors and our 1,300 members, to request the support of the Oregon State Bar in the ongoing endeavor to secure adequate public defense funding from the legislature. As you have done in the past, we are asking that you make funding for attorneys, investigators and support staff who provide services to adult and juvenile indigent clients, one of the Bar's top three lobbying priorities in 2015.

Defense providers have long suffered pay disparity with their prosecution counterparts. Notwithstanding efforts by the 2013 Legislative Assembly, the disparity continues to grow. It is not surprising that there is a growing unwillingness by providers to continue subsidizing the public defense system. Public defense is a draw for many, but the basic needs of life, family and school debt are draining the ranks of defense providers. The current situation seriously threatens the state's constitutional mandate to provide an effective and efficient public defense system. We are asking that you again make a serious commitment of support in helping us convince the legislature that they must place a higher economic value on the service of the defense community.

If you have questions, please feel free to call me or our Executive Director, John Potter, 541-686-8716.

Thank you for your time and attention to this matter.

Sincerely,

Eve Oldenkamp
OCDLA President
office: 541-882-1426, cell: 541-331-3851

RECEIVED

JUN 30 2014

Oregon State Bar
Executive Director



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Helen M. Hirschbiel, General Counsel
Re: RPC 8.4 Drafting Committee Report

Issue

The Board of Governors must decide whether to forward the proposed Oregon RPC 8.4 amendment to the House of Delegates with a recommendation to adopt the amendment.

Options

1. Accept the proposed rule and forward to the HOD with a recommendation to pass.
2. Accept the proposed rule and forward to the HOD with a recommendation not to pass.
3. Accept the proposed rule and forward to the HOD with no recommendation.
4. Circulate the proposal for member comment.

Background

In November 2013, the OSB House of Delegates approved an amendment to Oregon RPC 8.4 that would have prohibited a lawyer, in the course of representing a client, from knowingly manifesting bias or prejudice on a variety of bases. The HOD amendment was presented to the Supreme Court in accordance with ORS 9.490, but the Court deferred action on the proposal and asked the bar to consider changes that would address the Court's concerns that the RPC 8.4 amendment as drafted may impermissibly restrict the speech of OSB members.

Because of the strong HOD support for an anti-bias rule, the OSB Board of Governors decided to convene a special committee (the RPC 8.4 Drafting Committee) to develop a revised proposal that would satisfy the Court's concerns.

The attached report and proposed rule are the results of the Committee's efforts.

Oregon State Bar

**Report of the
Oregon State Bar Board of Governors
RPC 8.4 Drafting Committee
June 2014**

In November 2013, the OSB House of Delegates approved an amendment to Oregon RPC 8.4 that would have prohibited a lawyer, in the course of representing a client, from knowingly manifesting bias or prejudice on a variety of bases. The HOD proposal reads as follows:

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

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

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

The HOD proposal was presented to the Supreme Court in accordance with ORS 9.490, but the Court deferred action on the proposal and asked the bar to consider changes that would address the Court's concerns.

Based on comments from members of the Court at the December 3, 2013 public meeting, as well as a letter from the Court's staff attorney, it was clear that the Court believed the RPC 8.4 amendment as drafted would impermissibly restrict the speech of OSB members. Specifically, the Court was concerned that the rule is violated by any manifestation of bias, even the mere expression of opinion, without a requirement that there be an adverse impact therefrom.

Because of the strong HOD support for an anti-bias rule, the OSB Board of Governors decided to convene a special committee (the RPC 8.4 Drafting Committee) to develop a revised proposal that would satisfy the Court's concerns.

The RPC Drafting Committee was comprised of nine individuals: two who had personally appeared and presented written objections to the HOD proposal at the Supreme Court public meeting in December 2013; three representatives of the Legal Ethics Committee who had participated in the development of the HOD proposal; two representatives of specialty bars who had also been involved in the development of the HOD proposal, and; two recommendations from the Court as having some expertise in Oregon free speech jurisprudence. In addition, Theresa Kohlhoff and Caitlin Mitchel-Markley were appointed as non-voting representatives for the Board.

In its appointment letter, the Committee was asked to leave to the BOG and HOD the policy question of whether the bar should have any rule on the issue, and to only recommend language that will not impermissibly restrict lawyer speech, while at the same time establishing a standard for appropriate professional conduct.

The Committee met four times during the spring of 2014. The agendas, minutes, and materials considered during the meetings, were all posted on the OSB website. As instructed, the Committee focused its efforts on developing a rule that would both address conduct the HOD proposal was trying to reach and pass constitutional muster by focusing on harmful effects, rather than expression. During the first two meetings, the Committee struggled with articulating harmful effects within the construct of the HOD proposal. Unable to make any headway using this approach, the Committee abandoned the prohibition against “manifesting bias or prejudice” and instead returned to the original purpose behind the development of the rule, which was to prohibit harassment, intimidation and discrimination.

Thereafter, the Committee considered what class or classes of individuals to protect. The Committee discussed at length whether to keep the original list contained in the HOD proposal, whether to limit the list to immutable characteristics, or whether to omit select classes of individuals. In particular, the question of whether to include socio-economic status, gender identity and gender expression generated considerable controversy. The list included in the HOD proposal had derived from a suggestion made to the Legal Ethics Committee in April 2013 that the list mirror those classes of individuals that are protected under Oregon law. With this in mind the Committee decided to omit socio-economic status and retain the remaining classes listed in the HOD proposal.

The Committee also discussed whether to apply the rule only to the lawyer “in the course of representing a client” or whether to expand its application to a lawyer representing himself or herself. In deference to the HOD rule, the Committee decided that the proposed rule should apply only to a lawyer acting “in the course of representing a client.”

Finally, the Committee discussed whether to retain the exception for legitimate advocacy, contained in the HOD-approved Rule 8.4(c). While some members of the Committee doubted the need for it, everyone agreed that there was no harm in retaining the exception for legitimate advocacy. On the other hand, the Committee also unanimously agreed that the second clause of the paragraph in HOD rule 8.4(c) should be omitted. It provides that a lawyer shall not be prohibited from “declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16.” Three reasons came out. First, there is already a rule governing withdrawal, which would apply regardless of the inclusion of RPC 8.4(c). Second, the second clause makes little sense in light of the changes to the substance of Rule 8.4(a)(7). Third, the clause may conflict with lawyers’ obligations under the public accommodation laws.

The Committee unanimously recommended that the attached proposal be presented to the Board of Governors for its consideration.

Submitted by: David Elkanich, chair, Kristin Asai, Thomas Christ, Kelly Ford, Keith Garza, Michael Levelle, Kathleen Rastetter, Bonnie Richardson, and the Honorable David Schumann.

RULE 8.4 MISCONDUCT

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

* * * * *

(7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

PROPOSED Amendment to ORS 9.210

9.210 Board of bar examiners; rules for admission; fees of applicants; confidentiality and nature of proceedings. (1) The board of governors shall nominate for appointment by the Supreme Court a board of bar examiners to examine applicants, investigate their character and fitness and other qualifications, and certify to the Supreme Court for admission those applicants who fulfill the requirements prescribed by law and the rules of the Supreme Court. The composition of the board of bar examiners shall be as provided in the rules described in subsection (2) of this section.

(2) The board of governors shall formulate rules for carrying out the functions of the board of bar examiners and governing the qualifications, requirements and procedures for admission to the bar by examination and otherwise, and when such rules are adopted by the Supreme Court, shall have the power to enforce them. The board of governors may adopt regulations to implement the rules.

(3) With the approval of the Supreme Court, the board of governors shall fix and collect fees to be paid by applicants for admission.

(4) Applications for admission and any other materials pertaining to individual applicants are confidential and may be disclosed only as provided in the rules described in Subsection (2) of this section. The bar's consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
Memo Date: June 16, 2014
From: Danielle Edwards, Director of Member Services
Re: Committee Appointments

Action Recommended

Consider an appointment to the Legal Ethics Committee as requested by the committee officers and staff liaison.

Background

Legal Ethics Committee

Due to the resignation of one committee member the officers and staff liaison recommend the appointment of **Laurie Hager** (012715). She has practiced as Sussman Shank for more than a decade and handles a variety of business litigation matters. She indicated LEC was his first choice preference for appointment on the volunteer survey.

Recommendation: Laurie Hager, member, term expires 12/31/2016

Sponsorship and Exhibitor Opportunities

Sponsorship Descriptions	Gold- Premier \$20,000	Gold \$10,000	Silver \$5,000	Bronze \$2,500	Supporter \$1,000	Exhibitor \$2,500
Fall Conference, October 9-11, 2014—Portland, OR (Special pricing if sponsor agrees to 2+ conferences.)						
Name recognition in printed promotional pieces if confirmed by June 1, 2013	X	X				
A company brochure and/or promotional item included in registration packets	X	X	X			
Name Recognition and hyperlink to organization placed on the conference website	X	X	X	X		
Name recognition and hyperlink to organization placed on promotional and registrant emails	X	X	X	X		
Complimentary conference registrations	4	4	2	1		
Complimentary tickets to the Thursday Council Dinner	4	4				
Complimentary tickets to the Friday Night Gala	4	4				
Event Sponsorship	Council Dinner and Gala	Council Dinner and Gala	Welcome Reception	Choice of one on-site meeting event (luncheon, breakfast)		
Name recognition in onsite guide and event signage in Registration Area	X	X	X	X	X	
Table display for company brochure and other promotional items in Registration Area	X	X	X			X
Ribbon identifying Gold Sponsors	X	X				
Spring Conference, May 12-14, 2015—Tampa Bay, Florida (Special pricing if sponsor agrees to 2+ conferences.)						
Name recognition in printed promotional pieces if confirmed by June 1, 2013	X	X				
A company brochure and/or promotional item included in registration packets	X	X	X			
Name Recognition and hyperlink to organization placed on the conference website	X	X	X	X		
Name recognition and hyperlink to organization placed on promotional and registrant emails	X	X	X	X		
Complimentary conference registrations	4	4	2	1		
Complimentary tickets to the Thursday Council Dinner	4	4				
Complimentary tickets to the Friday Night Gala	4	4				
Event Sponsorship	Council Dinner and Gala	Council Dinner and Gala	Welcome Reception	Choice of one on-site meeting event (luncheon, breakfast)		
Name recognition in onsite guide and event signage in Registration Area	X	X	X	X	X	
Table display for company brochure and other promotional items in Registration Area	X	X	X			X
Ribbon identifying Gold Sponsors	X	X				

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
From: Amber Hollister, Deputy General Counsel
Re: Amend Bylaw Section 24.6 on SLAC Records Retention

Issue

The current bylaws require that the bar maintain closed State Lawyers Assistance Committee (SLAC) files permanently. OSB Bylaw Section 24.6. I recommend that we amend the bylaws to provide that closed files will be maintained for a ten year period.

Options

1. Amend OSB Bylaw Section 24.6 to provide that closed SLAC files will be maintained for ten years.
2. Take no action.

Discussion

Currently, OSB Bylaws provide that SLAC records must be “maintained permanently in locked storage at the Bar’s offices. After discussing this matter with bar staff and SLAC Chair Kim Lusk, I recommend that we amend the bylaw to provide that closed files will be maintained for ten years:

Section 24.6 State Lawyers Assistance Committee Records

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee’s possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar’s Bylaws. Closed files will be maintained for ten years permanently in locked storage at the Bar’s offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

This proposed amendment balances the burden of maintaining highly confidential case materials (*i.e.* medical records, substance abuse evaluations, mental health records), with the need to have background information available to SLAC designees if a referred lawyer whose case is closed is re-referred to SLAC. From a practical perspective, if a lawyer is outside of SLAC's jurisdiction for a period of ten years, it is unlikely that the old file materials will be particularly useful to SLAC. Any medical records related to a case that was closed more than ten years prior would need to be updated. SLAC's authority is limited to monitoring a lawyer for a current impairment.

Further, it is highly unlikely that SLAC records would ever be discoverable by a third party. SLAC records are confidential and are not discoverable in any civil or disciplinary proceeding without the written consent of the referred lawyer, and are exempt from disclosure under the public records law. ORS 9.568.

Amending the SLAC records retention schedule for closed files to ten years would be consistent with the schedule for disciplinary complaints that are referred to Disciplinary Counsel by the Client Assistance Office but are dismissed before formal charges are filed.¹

¹SLAC may disclose records relating to a lawyer's noncooperation with SLAC or information obtained by the bar from any other source. ORS 9.568(4). If SLAC refers a lawyer to Disciplinary Counsel for noncooperation, any records forwarded to Disciplinary Counsel related to the noncooperation would be kept in accordance with discipline's retention schedule. If a lawyer is ultimately disciplined for noncooperation with SLAC, the current retention schedule provides the disciplinary file is permanently maintained.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
From: Amber Hollister, Deputy General Counsel
Re: Amend Bylaw Section 8.101(b) on Public Records Fee Schedule

Issue

The current bylaws require that the Board adopt the Bar's public records request fee schedule. OSB Bylaw Section 8.101(b). I recommend that we amend the bylaws to provide that the executive director may establish a fee schedule consistent with the bylaws.

Options

1. Amend OSB Bylaw Section 8.101(b) to provide that the executive director will establish a fee schedule for public records requests.
2. Take no action.

Discussion

OSB Bylaw Subsection 8.101 provides that the Board must approve the Bar's public records fee schedule. The costs associated with responding to public records requests frequently change. Because there is sufficient guidance provided by OSB Bylaw Section 8.1 regarding setting the fee schedule, the Board should delegate its authority to set the fee schedule to the executive director, as follows:

Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies

(a) The executive director will assign appropriate staff to respond to requests for public records. The executive director will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.

(b) The executive director will establish ~~propose and the board will adopt~~ a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

(c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-02, 2005-03, 2005-07, 2005-51, 2005-58, 2005-79, 2005-100, 2005-112, 2005-115

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

The Oregon Supreme Court has adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. 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 second batch of opinions that require amendments.

This second batch of amended opinions consists of purely housekeeping amendments. The amendments include swapping out the relevant prior rule with the amended rule and providing additional explanation of the new rule to the extent necessary. The committee also made some changes to the organization of the opinions for clarity. The committee made no changes to the original substantive positions taken in any of the attached opinions.

Staff recommends adopting the proposed amended opinions.

Attachments: OSB Formal Ethics Op Nos: 2005-02, 2005-03, 2005-07, 2005-51, 2005-58, 2005-79, 2005-100, 2005-112, 2005-115

FORMAL OPINION NO. 2005-100

Information About Legal Services: Initiating Contact with Lawyer Referral Service Clients

Facts:

Lawyer *A* receives the name and address of Client *A* from the Oregon State Bar Lawyer Referral Service. Client *A* fails to contact Lawyer *A* and Lawyer *A* would like to initiate contact with Client *A*.

Lawyer *B* is initially consulted by Client *B*. When Client *B* fails to contact Lawyer *B* again after the initial consultation, Lawyer *B* would like to contact Client *B*.

Questions:

1. May Lawyer *A* initiate contact with Client *A*?
2. May Lawyer *B* initiate contact with Client *B*?

Conclusions:

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

Discussion:

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Oregon RPC 7.3 provides, in pertinent part:

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

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

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

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

Because Lawyer A has no family, close personal, or prior professional relationship with Client A, Oregon RPC 7.3(a) prohibits Lawyer A from initiating personal or telephone contact with potential Client A. Lawyer A may, however, communicate with Client A in writing. As long as the requirements of Oregon RPC 7.1 and 7.3 are complied with, including the requirement that written communications be labeled “Advertising Material” pursuant to Oregon RPC 7.3(c), Lawyer A’s contact would be ethical.

The difference between Lawyer A’s situation and Lawyer B’s situation is that Client B has met with Lawyer B. This constitutes a *prior professional relationship* within the meaning of Oregon RPC 7.3(a)(2). In-person or telephone contact, as well as written contact, is permissible under Oregon RPC 7.3(a) unless one of the exceptions set forth in Oregon RPC 7.3(b) applies.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related sources, see THE ETHICAL OREGON LAWYER §§2.5–2.14, 2.23–2.26, 2.28, 2.31 (Oregon CLE 2006); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-100

Information About Legal Services: Initiating Contact with Lawyer Referral Service Clients

Facts:

Lawyer A receives the name and address of Client A from the Oregon State Bar Lawyer Referral Service. Client A fails to contact Lawyer A and Lawyer A would like to initiate contact with Client A.

Lawyer B is initially consulted by Client B. When Client B fails to contact Lawyer B again after the initial consultation, Lawyer B would like to contact Client B.

Questions:

1. May Lawyer A initiate contact with Client A?
2. May Lawyer B initiate contact with Client B?

Conclusions:

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

Discussion:

Oregon RPC 7.1 provides, in pertinent part:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.~~(b) — An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.~~

~~— (c) — An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.~~

Oregon RPC 7.3 provides, in pertinent part:

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

- _____ (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

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

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

——(2) the ~~prospective client~~target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

——(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a ~~prospective client~~anyone known to be in need of legal services in a particular matter shall include the words “~~Advertisement~~Advertising Material” ~~in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).~~

Because Lawyer A has no family, close personal, or prior professional relationship with Client A, Oregon RPC 7.3(a) prohibits Lawyer A from initiating personal or telephone contact with potential Client A. Lawyer A may, however, communicate with Client A in writing. ~~On the facts as presented, any communication by Lawyer A to potential Client A would not constitute an unsolicited communication, so would not trigger the requirements of Oregon RPC 7.1(b) Cf. OSB Formal Ethics Op No 2005-127.~~ As long as the other requirements of Oregon RPC 7.1⁺ and

⁺ ~~Oregon RPC 7.1 provides, in pertinent part:~~

~~——(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer’s firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:~~

~~——(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;~~

~~——(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer’s firm can achieve;~~

~~——(3) except upon request of a client or potential client, compares the quality of the lawyer’s or the lawyer’s firm’s services with the quality of the services of other lawyers or law firms;~~

~~——(4) states or implies that the lawyer or the lawyer’s firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;~~

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

7.3 are complied with, including the requirement that written communications be labeled “~~Advertisement~~Advertising Material” pursuant to Oregon RPC 7.3(c), Lawyer A’s contact would be ethical.

~~— (6) — contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;~~

~~— (7) — states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer’s firm if they are not;~~

~~— (8) — states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer’s firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;~~

~~— (9) — states or implies that one or more current or former clients of the lawyer or the lawyer’s firm have made statements about the lawyer or the lawyer’s firm, unless the making of such statements can be factually substantiated;~~

~~— (10) — contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;~~

~~— (11) — is false or misleading in any manner not otherwise described above; or~~

~~— (12) — violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.~~

~~.....~~

~~— (d) — A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer’s firm only to the extent permitted by Rule 7.2.~~

~~— (e) — A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.~~

The difference between Lawyer *A*'s situation and Lawyer *B*'s situation is that Client *B* has met with Lawyer *B*. This constitutes a *prior professional relationship* within the meaning of Oregon RPC 7.3(a)(2). In-person or telephone contact, as well as written contact, is permissible under Oregon RPC 7.3(a) unless one of the exceptions set forth in Oregon RPC 7.3(b) applies.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related sources, see THE ETHICAL OREGON LAWYER §§2.5–2.14, 2.23–2.26, 2.28, 2.31 (Oregon CLE 2006³); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-112

Information About Legal Services: Distribution of Brochure by Welcoming Program and Participation in Health Club Services Program

Facts:

Law Firm is marketing its services in part through distribution of its brochure by a welcoming program and in part through participation in a health club services program.

The welcoming program distributes materials from businesses to executives and professionals who are new to the community. The materials distributed include information about the community, a business card folder containing cards of sponsors, and a bound book containing profiles and illustrations of civic, professional, and business leaders in the community. Although Law Firm would be designated as a sponsor of the welcoming program, Law Firm would not have its business card included in the business card folder for distribution with those of other sponsors. Instead, Law Firm's participation would be limited to a one-page profile in the bound book, which includes profiles of health care professionals, banks, real estate companies, restaurants, hotels, and the like. Law Firm would be the only lawyer-participant in the program and would pay a fee to participate. The welcoming program is not operated primarily for the purpose of procuring legal work or other financial benefits for Law Firm.

As part of its membership services, a health club provides its members certain benefits from lawyers such as free initial consultations, free consultations regarding wills, and discounted fees on certain types of legal work. The health club views these services not only as beneficial to its existing members but also as an inducement to secure future members. Law Firm's participation in the health club's services program would be through being included on a list of merchants and professionals providing similar introductory discounts or through the use of a coupon entitling the recipient to one of the above-mentioned services at no cost. The health club would receive no financial reward for providing Law Firm's name to its members.

Question:

1. May Law Firm participate in the welcoming program?
2. May Law Firm participate as a member of the health club services program through which legal services are advertised?

Conclusion:

1. Yes.
2. Yes, qualified

Discussion:

1. Welcoming Program

Oregon RPC 7.2(a) provides that “[s]ubject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.” Here, the materials provided under the welcoming program are printed, and therefore allowed under Oregon RPC 7.2(a).

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

So long as the Law Firm profile included in the welcoming program is truthful and not misleading, Law Firm's participation in the welcoming program would not violate RPC 7.1.

Oregon RPC 7.3 applies where the lawyer seeks to solicit professional employment. Here, as the welcoming program is not operated for the purposes of procuring legal work or other financial benefits, the requirements of RPC 7.3 are not applicable.

Assuming that the welcoming program's role is merely publicizing the availability of the legal services, as opposed to recommending the Law Firm, Oregon RPC 7.2(b) would also permit such activity.

2. Health Club Services

The Health Club Services actively recommends Law Firm for its services. Oregon RPC 7.2 governs lawyer recommendations, and provides, in pertinent part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

- (1) pay the reasonable costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
- (3) pay for a law practice in accordance with Rule 1.17.

Under the health club services program, there is no fee or other compensation paid by Law Firm to the club for the advertising service. However, by the use of Law Firm's name, by the existence of Law Firm's prestige and goodwill in the community, by the fact of Law Firm's

participation in the plan, and by Law Firm's offer of discounted legal services to club members, Law Firm is effectively providing the health club with a potentially valuable endorsement and with an exclusive benefit that the club may pass on to its members. The health club is placed in the position of being a third-party beneficiary when new members are persuaded to join due to the benefits offered by the availability of promotional discounts. A quantification of the value of the benefit to the club and a comparison of advertising costs to that benefit as measured against a standard of reasonableness should be analyzed. The value bestowed on the club by Law Firm must not exceed the reasonable cost of the advertising. If the value does not exceed the reasonable cost of the advertising, Oregon RPC 7.2 is not violated.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.8, 2.11, 2.13, 2.15–2.17, 2.27–2.28 (Oregon CLE 2003); and ABA Model Rules 7.1–7.2, 8.4(c). *See also* Washington Formal Ethics Op 141.

FORMAL OPINION NO. 2005-115

Unauthorized Practice of Law: Third-Party Influence

Facts:

Corporation, which is not authorized to practice law in Oregon, markets estate planning services in Oregon through sales representatives. When a customer purchases Corporation's services, Corporation agrees to evaluate the estate planning needs of the customer, select appropriate planning methods, draft the documents, and forward them to the customer's sales representative.

In the sales documents, customers authorize Corporation to obtain local counsel for the express and limited purposes of reviewing the documents to determine whether they comply with Oregon law and to assist in executing the documents. Corporation pays the lawyer for this work.

Question:

May an Oregon lawyer accept representation of Corporation's customers in these circumstances?

Conclusion:

No.

Discussion:

Oregon RPC 5.5(a) provides:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

See also Oregon RPC 8.4(a)(1), which makes it professional misconduct for a lawyer to violate the Rules of Professional Conduct "through the acts of another."

When Corporation not only provides forms but also personally consults with Customers, explains the documents, makes recommendations, and renders advice, the services performed by Corporation constitute the unauthorized practice of law. *Oregon State Bar v. Miller & Co.*, 235 Or 341, 343–344, 385 P2d 181 (1963). *See also Oregon State Bar v. Gilchrist*, 272 Or 552, 563–564, 538 P2d 913 (1975); *Oregon State Bar v. Taub*, 190 Or App 280, 78 P3d 114 (2003); *State Bar v. Security Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962).

Lawyer may not represent Corporation's customers because to do so would be aiding a nonlawyer in the unauthorized practice of law in violation of Oregon RPC 5.5(a). Such conduct is not cured by a disclaimer and suggestion to seek separate counsel. *In re Phillips*, 338 Or 125, 107 P3d 615 (2005); *Oregon State Bar v. Miller*, *supra*, 235 Or at 344. See also OSB Formal Ethics [Op Nos 2005-101](#), [2005-87](#), [2005-20](#).¹

The proposed arrangement also violates ~~Oregon RPC 7.2(c)(3),² [AHD1] which prohibits a lawyer from accepting referrals from an organization that places any "condition or restriction on the~~

¹ A lawyer who purports to advise the customer about the documents will have at least a waivable conflict under Oregon RPC 1.7(a)(2) and possibly a nonwaivable conflict under Oregon RPC 1.7(b)(3).

² ~~Oregon RPC 7.2(c) provides:~~

- ~~— (c) — A lawyer or a law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~
- ~~— (1) — the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;~~
- ~~— (2) — the recipient of legal services, and not the plan, service or organization, is recognized as the client;~~
- ~~— (3) — no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization;~~
- ~~— (4) — such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

~~exercise of any participating lawyer's professional judgment on behalf of a client." Similarly, Oregon RPC 5.4(c) as Corporation expressly limits Lawyer's professional judgment in representing customers to whether documents comply with Oregon law.³ ~~would also be violated.~~~~

Approved by Board of Governors, August 2005.

³ Oregon RPC 5.4(c) provides:

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.27–2.28, 12.11 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §4 (2003); and ABA Model Rules 5.4(c), 5.5(a), 7.3, 8.4(a). *See also* Washington Formal Ethics Op Nos 18, 80, 84; Washington Informal Ethics Op Nos 899, 1471, 1505, 1568, 1747, 1879 (unpublished).

FORMAL OPINION NO. 2005-2
Information About Legal Services:
Cross-Referrals, Office Sharing with Nonlawyer

Facts:

Lawyer *A* proposes to enter into an agreement with Trust Company pursuant to which Lawyer *A* will endeavor to send Lawyer *A*'s clients to Trust Company when they need services of the type provided by Trust Company, in exchange for an agreement by Trust Company to recommend the use of Lawyer *A*'s services to its customers and to employ Lawyer *A* whenever practicable.

Lawyer *B* proposes to share office space with a CPA, but they propose no sharing or cross-referrals of clients, and they propose to keep their practices separate and independent.

Questions:

1. Is Lawyer *A*'s arrangement ethical?
2. Is Lawyer *B*'s arrangement ethical?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 7.2 provides in part:

- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
 - (3) pay for a law practice in accordance with Rule 1.17.

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Several other sections are also potentially applicable. Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to "violate the Rules of Professional Conduct, knowingly

assist or induce another to do so, or do so through the acts of another.” In other words, a lawyer cannot do indirectly what the lawyer cannot do directly.

That rule must be read in concert with Oregon RPC 7.3:

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

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

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

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (3) the solicitation involves coercion, duress or harassment.

....

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

The quid pro quo nature of Lawyer A’s above-described arrangement would clearly violate these provisions. On the other hand, a mere office-sharing arrangement as proposed by Lawyer B would not.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 2.27–2.28 (Oregon CLE 2006); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rule 5.4.

FORMAL OPINION NO. 2005-2
Information About Legal Services:
Cross-Referrals, Office Sharing with Nonlawyer

Facts:

Lawyer *A* proposes to enter into an agreement with Trust Company pursuant to which Lawyer *A* will endeavor to send Lawyer *A*'s clients to Trust Company when they need services of the type provided by Trust Company, in exchange for an agreement by Trust Company to recommend the use of Lawyer *A*'s services to its customers and to employ Lawyer *A* whenever practicable.

Lawyer *B* proposes to share office space with a CPA, but they propose no sharing or cross-referrals of clients, and they propose to keep their practices separate and independent.

Questions:

1. Is Lawyer *A*'s arrangement ethical?
2. Is Lawyer *B*'s arrangement ethical?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 7.2 provides in part:

~~(a) — . . . A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

~~— (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.~~

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

~~_____ (e) _____ A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~_____ (1) _____ the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and~~

~~_____ (2) _____ the recipient of legal services, and not the plan, service or organization, is recognized as the client; and~~

~~_____ (3) _____ no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and~~

~~_____ (4) _____ such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Several other sections are also potentially applicable. Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to “violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.” In other words, a lawyer cannot do indirectly what the lawyer cannot do directly.

That rule must be read in concert with Oregon RPC 7.3:

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

_____ (1) is a lawyer; or

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

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

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

_____ (2) the ~~prospective client~~target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

_____ (3) the solicitation involves coercion, duress or harassment.

....

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~Accord Oregon RPC 7.1(d) ("A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.")~~.

The quid pro quo nature of Lawyer A's above-described arrangement would clearly violate these provisions. On the other hand, a mere office-sharing arrangement as proposed by Lawyer B would not.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 2.27–2.28 (Oregon CLE 2003~~6~~); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rule 5.4. ~~See also Washington Formal Ethics Op No 30 (reaching same conclusion regarding sharing office space with nonlawyer).~~

FORMAL OPINION NO. 2005-3
Information About Legal Services:
Disseminating Information Through the Media
or Through Speeches

Facts:

Lawyer is asked to do the following:

- (1) Write a column on legal matters for a local newspaper;
- (2) Answer legal questions sent in by readers of the newspaper;
- (3) Engage in the same types of conduct in a radio or television format; and
- (4) Speak to community groups, church groups, and the like on legal matters.

Question:

Is the above-described conduct consistent with rules of professional conduct on providing information on legal services?¹

Conclusion:

Yes, qualified.

Discussion:

There is no suggestion in the foregoing facts that Lawyer or others acting on Lawyer's behalf intend to make any false or misleading communications about Lawyer or Lawyer's services within the meaning of Oregon RPC 7.1.² *See also* Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation").

There also is no suggestion that Lawyer is paying for the privilege of being permitted to engage in the foregoing activities or that Lawyer's legal services are being improperly advertised. *Cf.* Oregon RPC 7.2(b), 7.3(c).³

¹ This opinion assumes that no lawyer-client relationship is created by these activities. *Cf. In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

² Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

³ Oregon RPC 7.2(b) provides:

A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

Approved by Board of Governors, August 2005.

-
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
 - (3) pay for a law practice in accordance with Rule 1.17.

Oregon RPC 7.3(c) provides, in part:

Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, . . .

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13–2.15, 2.26 (Oregon CLE 2006); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-3
Information About Legal Services:
Disseminating Information Through the Media
or Through Speeches

Facts:

Lawyer is asked to do the following:

- (1) Write a column on legal matters for a local newspaper;
- (2) Answer legal questions sent in by readers of the newspaper;
- (3) Engage in the same types of conduct in a radio or television format; and
- (4) Speak to community groups, church groups, and the like on legal matters.

Question:

Is the above-described conduct consistent with rules of professional conduct on providing information on legal services?¹

Conclusion:

Yes, qualified.

Discussion:

There is no suggestion in the foregoing facts that Lawyer or others acting on Lawyer's behalf intend to make any false or misleading communications about Lawyer or Lawyer's services within the meaning of Oregon RPC 7.1(a)(1).² See also Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation").

There also is no suggestion that Lawyer is paying for the privilege of being permitted to engage in the foregoing activities or that Lawyer's legal services are being improperly advertised. Cf. Oregon RPC 7.1(b), 7.2(ab), 7.3(c).³

¹ This opinion assumes that no lawyer-client relationship is created by these activities. Cf. *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

² Oregon RPC 7.1(a)(1) provides:

~~(1) — A lawyer shall not make or cause to be made any a false or misleading communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication . . . services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication statement considered as a whole not materially misleading.~~

³ Oregon RPC 7.21(b) provides, in part:

Approved by Board of Governors, August 2005.

~~An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.~~

~~A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may~~

- ~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~
- ~~(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and~~
- ~~(3) pay for a law practice in accordance with Rule 1.17.~~

~~Oregon RPC 7.2(a) provides, in part:~~

~~A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment. . . .~~

Oregon RPC 7.3(c) provides, in part:

Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone ~~a prospective client~~ known to be in need of legal services in a particular matter shall include the words "Advertising Material" ~~in noticeable and clearly readable fashion on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication.~~ . . .

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13–2.15, 2.26 (Oregon CLE 2003~~6~~); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.3. ~~Cf. Washington Formal Ethics Op No 141 (lawyer's appearance on TV).~~

FORMAL OPINION NO. 2005-51
Conflicts of Interest, Current Clients:
Lawyer Membership in Trade Association
Represented by Lawyer

Facts:

Lawyer represents Trade Association. Trade Association asks Lawyer to become an associate member.

Question:

May Lawyer become an associate member?

Conclusion:

Yes, qualified.

Discussion:

Absent some reason to believe that Lawyer's joining Trade Association would violate any of the following rules, there is no reason why Lawyer may not join.

Lawyer should consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as an associate member. Oregon RPC 1.7(a)(2) 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. . . .

If Lawyer's personal interest is materially limited, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b).

Lawyer should also consider whether joining Trade Association would potentially allow Trade Association to direct or regulate his or professional judgment. Oregon RPC 5.4(c) provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

If Lawyer believes that his or her associate membership with Trade Association would direct or regulate his or her professional judgment, he or she should decline the membership.

Lawyer should also consider whether his or her associate membership confers a benefit upon Trade Organization in exchange for recommending Lawyer's services. Oregon RPC 7.2(b) provides

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

If Lawyer's associate membership confers a benefit upon Trade Organization through his or her goodwill in exchange for recommending Lawyer's services, Lawyer would violate Oregon RPC 7.2(b).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§5.4–5.5, 5.11, 9.9–9.10 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§14 comment f, 121 comment d, 131, 135 (2003); and ABA Model Rules 5.4(c), 7.2(a).

FORMAL OPINION NO. 2005-51
Conflicts of Interest, Current Clients:
Lawyer Membership in Trade Association
Represented by Lawyer

Facts:

Lawyer represents Trade Association. Trade Association asks Lawyer to become an associate member.

Question:

May Lawyer become an associate member?

Conclusion:

Yes, qualified.

Discussion:

~~Oregon RPC 7.2(a) provides:~~

~~— A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

~~Oregon RPC 5.4(c) provides:~~

~~— A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.~~

Absent some reason to believe that Lawyer's joining Trade Association would violate any of the following rules, there is no reason why Lawyer may not join.

Lawyer should consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as an associate member. Oregon RPC 1.7(a)(2) ~~is also relevant~~ 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. . . .

If Lawyer's personal interest is materially limited, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b).

~~Once a member of Trade Association, Lawyer must consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as a member. Oregon RPC 1.7(a)(2). If so, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b). Absent some reason to believe that Lawyer's joining Trade Association would violate any of the foregoing rules, there is no reason why Lawyer may not join.~~

Lawyer should also consider whether joining Trade Association would potentially allow Trade Association to direct or regulate his or professional judgment. Oregon RPC 5.4(c) provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

If Lawyer believes that his or her associate membership with Trade Association would direct or regulate his or her professional judgment, he or she should decline the membership.

Lawyer should also consider whether his or her associate membership confers a benefit upon Trade Organization in exchange for recommending Lawyer's services. Oregon RPC 7.2(b) provides

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

If Lawyer's associate membership confers a benefit upon Trade Organization through his or her goodwill in exchange for recommending Lawyer's services, Lawyer would violate Oregon RPC 7.2(b).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§5.4–5.5, 5.11, 9.9–9.10 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§14 comment f, 121 comment d, 131, 135 (2003); and ABA Model Rules 5.4(c), 7.2(a).

FORMAL OPINION NO. 2005-58
Information About Legal Services:
Publicizing Lawyer's Relationship to Independent Business

Facts:

Lawyer is a member of Bank's board of directors. Bank's public relations firm wishes to publicize Bank by including photographs of board members in Bank's newspaper advertisements.

Question:

May Lawyer permit the use of Lawyer's photograph for this purpose?

Conclusion:

Yes.

Discussion:

Absent some reason to believe that the photographs would be used in a misleading or improper manner,¹ there is no reason Lawyer cannot permit his or her photograph to be used in Bank's advertisements. Cf. OSB Formal Ethics [Op No 2005-3](#).

Approved by Board of Governors, August 2005.

¹

Oregon RPC 7.1(a) provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §2.15 (Oregon CLE 2003); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.2.

FORMAL OPINION NO. 2005-58

Information About Legal Services: Publicizing Lawyer's Relationship to Independent Business

Facts:

Lawyer is a member of Bank's board of directors. Bank's public relations firm wishes to publicize Bank by including photographs of board members in Bank's newspaper advertisements.

Question:

May Lawyer permit the use of Lawyer's photograph for this purpose?

Conclusion:

Yes, ~~qualified~~.

Discussion:

Absent some reason to believe that the photographs would be used in a misleading or improper manner,¹ there is no reason Lawyer cannot permit his or her photograph to be used in Bank's advertisements. Cf. OSB Formal Ethics [Op No 2005-3](#).

¹ Oregon RPC 7.1(a) provides:

~~A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. — A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:~~

~~— (1) — contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;~~

~~— (2) — is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;~~

~~— (3) — except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;~~

~~— (4) — states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is~~

Approved by Board of Governors, August 2005.

~~presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;~~

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

~~—(6)—contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;~~

~~—(7)—states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not. . . .~~

~~Oregon RPC 8.4(a)(3) prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to violate the rules “through the acts of another.”~~

~~Oregon RPC 7.2(a) provides:~~

~~A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §2.15 (Oregon CLE 2003); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.2.

FORMAL OPINION NO. 2005-7

**Lawyer as State Legislator:
Lobbying on a Client's Behalf**

Facts:

Lawyer, who is also a member of the state legislature, is asked by Client to seek legislation that would benefit Client. Client offers to pay Lawyer a fee for this work.

Question:

May Lawyer ethically perform the work requested for the fee offered?

Conclusion:

No.

Discussion:

The proposed conduct would constitute bribe-giving (ORS 162.015) and bribe-receiving (ORS 162.025), both of which are felonies. Pursuant to Oregon RPC 1.2(c) and 8.4(a)(1)–(2), Lawyer could not knowingly commit or assist in such illegal conduct.¹ *See also* Oregon RPC 8.4(a)(5) (lawyer may not “state or imply an ability to influence improperly a government agency or official . . .”).

¹ Oregon RPC 1.2(c) provides, in pertinent part, that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, . . .”

Oregon RPC 8.4(a) provides, in pertinent part, that it is professional misconduct for a lawyer to:

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

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

. . . .

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

In addition, Oregon RPC 1.11(d)(2) provides, in pertinent part:

[A] lawyer currently serving as a public officer or employee . . . shall not:

- (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
- (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.
- (iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

Oregon RPC 1.11(c) provides, in pertinent part:

[T]he term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Although ORS 244.120(1)(b) permits a legislator to disclose certain conflicts of interest and participate in the legislative process notwithstanding the conflict, nothing in ORS chapter 244 or in Oregon RPC 1.11 permits bribe-giving or bribe-taking. *Cf.* ORS 244.040.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *In re McMahon*, 266 Or 376, 513 P2d 796 (1973) (deputy district attorney violated ethics rules by accepting gifts from bail bondsmen when it was obvious that offer was to influence his action as public official); THE ETHICAL OREGON LAWYER §§12.17, 14.4 (Oregon CLE 2006); and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §133 (2003).

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Lobbying on a Client's Behalf**

Facts:

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Question:

May Lawyer ethically perform the work requested for the fee offered?

Conclusion:

No.

Discussion:

The proposed conduct would constitute bribe-giving (ORS 162.015) and bribe-receiving (ORS 162.025), both of which are felonies. Pursuant to Oregon RPC 1.2(c) and 8.4(a)(1)–(2), Lawyer could not knowingly commit or assist in such illegal conduct.¹ *See also* Oregon RPC 7.18.4(a)(5) (lawyer may not “[state] or impl[y] an ability to influence improperly a government agency or official . . .”).

¹ Oregon RPC 1.2(c) provides, in pertinent part, that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. . . .”

Oregon RPC 8.4(a) provides, in pertinent part, that it is professional misconduct for a lawyer to:

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

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

. . . .

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

In addition, Oregon RPC 1.11(d)(2) provides, in pertinent part:

[A] lawyer currently serving as a public officer or employee ~~... shall not~~ ~~shall~~
~~not~~:

- (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
- (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.
- (iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

Oregon RPC 1.11(c) provides, in pertinent part:

[T]he term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Although ORS 244.120(1)(b) permits a legislator to disclose certain conflicts of interest and participate in the legislative process notwithstanding the conflict, nothing in ORS chapter 244 or in Oregon RPC 1.11 permits bribe-giving or bribe-taking. *Cf.* ORS 244.040.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *In re McMahon*, 266 Or 376, 513 P2d 796 (1973) (deputy district attorney violated ethics rules by accepting gifts from bail bondsmen when it was obvious that offer was to influence his action as public official); THE ETHICAL OREGON LAWYER §§12.17, 14.4 (Oregon CLE 2003~~3~~⁶); and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §133 (2003).

FORMAL OPINION NO. 2005-79
Information About Legal Services:
Providing Legal Services to Church Members
or on Behalf of Church-Related Causes

Facts:

Lawyer is asked to enter into a prepaid legal services plan to be organized by Church, which Church would make available to its members. The plan will be in full compliance with the applicable statutes set forth in ORS 750.505–750.715.

Lawyer is also asked by Church to undertake various representations on behalf of non-Church members in support of issues of interest to Church (e.g., helping to assure that adequate housing and medical services are made available to elderly people). In performing the latter work, Lawyer may be asked to contact potential clients in person or by telephone.

Questions:

1. May Lawyer enter into a prepaid legal services plan paid for and organized by Church, where lawyer would represent members of Church?
2. May lawyer contact non-Church members as potential clients at the request of Church?

Conclusions:

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

Discussion:

1. Prepaid Legal Services Plan

Oregon RPC 7.2 provides, in relevant part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(2) pay the usual charges of a legal service plan * * * *

In addition, Oregon RPC 7.3(d) provides:

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Lawyer should be mindful of other potential ethical issues that may arise from representing clients through a prepaid legal services plan. Oregon RPC 1.8(f) provides

- (f) 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.

Oregon RPC 5.4(c) further notes that Lawyer's professional judgment should not be directed or regulated by Church in his or her representation of clients. It provides

- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as the requirements of Oregon RPC 1.8(f) and 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

Lawyer should also be careful not to assist a nonlawyer with the unlawful practice of law. Oregon RPC 5.5(a) provides:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

ORS 9.160 provides that "a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar."

2. Contact of non-members of Church

Under Oregon RPC 7.3(a), in-person or live telephone solicitation of potential clients is generally prohibited. Oregon RPC 7.3(a) states

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

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

However, Oregon RPC 7.3(d) provides an exception to Oregon RPC 7.3(a). Oregon RPC 7.3(d) states

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

The language of Oregon RPC 7.3(d) generally appears to permit personal contacts in the types of representations at issue. The ability to engage in personal contact is limited, however, by Oregon RPC 7.3(b):

- (b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
 - (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (3) the solicitation involves coercion, duress or harassment.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.25–2.26, 2.28, 3.36 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §134 (2003); and ABA Model Rules 1.8(f), 5.4(c), 7.2, 7.3(b) and (d). *See also* Washington Informal Ethics Op Nos 1447, 1508 (unpublished).

FORMAL OPINION NO. 2005-79
Information About Legal Services:
Providing Legal Services to Church Members
or on Behalf of Church-Related Causes

Facts:

Lawyer is asked to enter into a prepaid legal services plan to be organized by Church, which Church would make available to its members. The plan will be in full compliance with the applicable statutes set forth in ORS 750.505–750.715.

Lawyer is also asked by Church to undertake various representations on behalf of non-Church members in support of issues of interest to Church (e.g., helping to assure that adequate housing and medical services are made available to elderly people). In performing the latter work, Lawyer may be asked to contact potential clients in person or by telephone.

Questions:

1. —May Lawyer ~~proceed as proposed?~~ ~~enter into a prepaid legal services plan paid for~~ and organized by Church, where lawyer would represent members of Church?
2. May lawyer contact non-Church members as potential clients at the request of Church?

Conclusions:

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

Discussion:

1. Prepaid Legal Services Plan

Oregon RPC 7.2 provides, in relevant part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(2) pay the usual charges of a legal service plan * * * *

In addition, Under Oregon RPC 7.3(d), provides: ~~a lawyer may participate in a prepaid legal services plan operated by the Church for the benefit of Church's members.~~

Oregon RPC 7.3(d)2 provides:

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~—— (a) —— A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (e) or Rule 1.17.~~

~~—— (b) —— A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.~~

~~—— (c) —— A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~—— (1) —— the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and~~

~~—— (2) —— the recipient of legal services, and not the plan, service or organization, is recognized as the client; and~~

~~—— (3) —— no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and~~

~~—— (4) —— such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

~~—— Absent a violation of this rule, Lawyer may participate in a prepaid legal services plan for the benefit of Church's members.~~

~~——~~ ○ Lawyer should be mindful of other potential ethical issues that may arise from representing clients through a prepaid legal services plan. Oregon RPC 1.8(f) provides

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~~——~~ (f) 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.

~~_____~~Oregon RPC 5.4(c) further notes that Lawyer's professional judgment should not be directed or regulated by Church in his or her representation of clients. It provides

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- ~~_____~~(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as the requirements of Oregon RPC 1.8(f) and 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

Lawyer should also be careful not to assist a nonlawyer with the unlawful practice of law. Oregon RPC 5.5(a) provides:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

ORS 9.160 provides that "a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar."

2. Contact of non-members of Church

~~_____~~^{~~+~~}~~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.

Under Oregon RPC 7.3(a), in-person or live telephone solicitation of potential clients is generally prohibited. Oregon RPC 7.3(a) states

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

(1) is a lawyer; or

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

~~With respect to in-person or telephone solicitation of non-Church members (i.e., persons not within the prepaid legal services plan) However, Oregon RPC 7.3(d) provides an exception to Oregon RPC 7.3(a). Oregon RPC 7.3(d) states, in pertinent part:~~

~~(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

~~(d) — [A] lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

The language of Oregon RPC 7.3(d) generally appears to permit personal contacts in the types of representations at issue. The ability to engage in personal contact is limited, however, by Oregon RPC 7.3(b):

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

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

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

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

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

~~———— (2) ——— the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~———— (3) ——— the solicitation involves coercion, duress or harassment.~~

Approved by Board of Governors, August 2005.

~~————~~ COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.25–2.26, 2.28, 3.36 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §134 (2003); and ABA Model Rules 1.8(f), 5.4(c), 7.2, 7.3(b) and (d). *See also* Washington Informal Ethics Op Nos 1447, 1508 (unpublished).

Oregon State Bar
Special Open Session of the Board of Governors
July 25, 2014
Minutes

The meeting was called to order by President Tom Kranovich at 12:08 p.m. on July 25, 2014. The meeting adjourned at 2:00 p.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Hunter Emerick, Matt Kehoe, Theresa Kohlhoff, John Mansfield, Caitlin Mitchel-Markley, Travis Prestwich, Richard Spier, Simon Whang, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Karen Lee, Dawn Evans, Kay Pulju, Dani Edwards, Catherine Petrecca and Camille Greene.

1. Call to Order

Mr. Kranovich asked whether there were any changes to the agenda.

Ms. Zinser requested addition of the request from Oregon Women Lawyers (OWLs) to sponsor its 25th Anniversary celebration.

Motion: Ms. Zinser moved, Mr. Prestwich seconded, and the board voted to amend the agenda to add the OWLs agenda item.

Motion: Ms. Mitchel-Markley moved, Mr. Kehoe seconded, and the board voted unanimously to approve the agenda as amended.

2. Six Month Financial Review

Mr. Wegener presented the mid-year financial review of the Oregon State Bar. He emphasized the bar's strong cash position and greater-than-expected net revenues.
[Exhibit A]

3. CLE Seminars Program Review

Ms. Pulju presented a business plan for CLE Seminars that she believes can decrease or eliminate the program's budget deficits in 3-5 years **[Exhibit B]**. She pointed out that the 2013 deficit was the program's largest, and is attributed to the Indirect Cost Allocation (ICA), which is 22% of the bar's total. She also explained that elimination of the CLE Seminars program would not eliminate the \$200,000 in overhead costs; it would be allocated to other departments. However, support for section programs would go away and result in actual monetary losses, as the demand for the services would not go away and would have to be fulfilled by other staff. The centerpiece of the plan is to have all sections work with the bar to produce programs, even if only for the registration aspect, as is the model in many states including those in the northwest. **[Exhibit C]** Ms. Pulju assured the board that the plan contemplates assuring the continued quality of the program while focusing on the most efficient and popular delivery models and reducing the number of expensive programs. Ms. Lee explained the need to continue with some live seminars and focus on more delivery formats for members to choose. Mr. Whang opined that CLE Seminars is a valuable member

service that also benefits the public, citing a recent foreclosure program. Mr. Emerick agreed but would like the bar to accomplish the goal on a break- even basis . Ms. Pulju expressed her confidence that the suggested policy changes, particularly requiring some "live" attendance (including web streaming), would make it easier to reach the break-even goal in the next three years. Ms. Zinser stressed the need for effective communication when rolling out the policy changes to the membership. Mr. Kranovich agreed and expressed his support for requiring all sections and the ONLD to use OSB CLE Seminars' services. At the conclusion of the discussion, the BOG agreed to review the proposed business plan again in September, and asked staff to also show how eliminating complimentary registrations will impact the plan.

Motion: Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to withdraw its previously approved motion to conduct a membership survey.

4. Executive Director Selection Process

Mr. Kehoe updated the board on the progress of the Executive Director Evaluation Committee's development of the selection process for hiring a new executive director. Ms. Billman presented the outline of the activities that will take place during the hiring process as part of the development of a policy for hiring a new executive director. The details of the various steps will be worked out in coming meetings.

5. Appointment of *Ad Hoc* Awards Committee

Mr. Kranovich asked for volunteers for an *Ad Hoc* Awards Committee to assist in the selection of honorees. Mr. Kehoe, Mr. Whang, Mr. Williams, Ms. Mitchel-Markley, Mr. Spier, Mr. Chaney and Mr. Mansfield volunteered.

6. Support the ABA "Citizenship in the 21st Century" Initiative

Ms. Stevens presented the ABA's request for a BOG letter of support for the national dialogue program proposal being submitted to the National Endowment for the Humanities by the ABA in partnership with the American Library Association.

Motion: Mr. Prestwich moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to send a letter of support signed by Mr. Kranovich to the ABA Division for Public Education.

7. Support the Oregon Women Lawyers (OWLs) 25th Anniversary

Mr. Kranovich presented the OWL's request for BOG support with a donation for \$250.
[Exhibit D]

Motion: Mr. Mansfield moved, Mr. Emerick seconded, and the board voted unanimously to support OWLs with a \$250 donation.



FINANCIAL STATEMENTS SUMMARY

Mid Year 2014

Net Operating Revenue	\$ 806,873
REVENUE	
All Revenue	\$2,000 more than Mid Year 2013; \$102,000 more excl. Reserve
Membership Fees	0.3 % decrease from 2013; excluding Late Fees, up 0.4%
Admissions	1.9% increase in applications
Lawyer Referral	New Funding model - \$247,000 59% increase
CLE Seminars	1.3% less than 2013 – but Net Expense \$56,400 lower
EXPENDITURES	
Salaries & Benefits	47.7% of budget
All expenses	46.9% of budget
Client Security Fund	Claims paid - \$14,944 2013 - \$453,814
FANNO CREEK PLACE	
Net Cash Flow	\$5,100 better than budget

Mid Year 2014

SHORT-TERM CASH	
Mid Year 2014	\$1.140 million more; \$817,000 more after Unclaimed Funds
RESERVE INVESTMENT PORTFOLIO	
Mid Year 2013	\$4.459 million
Mid Year 2014	\$5.100 million
Gain	\$641,000, or 14%
Needs vs. Haves	\$1.419 excess of All Reserves

PROJECTED END OF 2014	
Operating Revenue	\$312,000
Membership Fees	.5% increase
All Expenses	Under budget

WHAT 2014 RESULTS MEAN FOR 2015
<ul style="list-style-type: none">• Active Membership Fee• Client Security Fund Assessment• Impact of AMS software purchase<ul style="list-style-type: none">• CLE Seminars• Revenue from Admissions, Lawyer Referral<ul style="list-style-type: none">• PERS rate• Program changes

OSB CLE Seminars — Business Plan Outline

Executive Summary

The OSB CLE Seminars Department has been unable to achieve its goal of a break-even budget for several years. In 2013 the department's net expense was its largest ever, approximately \$230,000. This report lays out a 3-5 year plan to decrease or eliminate that deficit. In year one (2014) the focus is on market research and testing, along with new product development. For 2015 new products will be introduced and measured while policy changes will be explored and developed with sections and other bar groups. In 2016, based on those discussions, any policy changes directed by the BOG will be implemented. Also in 2016, new registration software will be installed and adapted to the new membership database, allowing greater flexibility with registration services along with cost savings.

Throughout this three-year period bar staff will increase its ability to provide efficient online services, including marketing, distribution and e-commerce functions. If CLE Seminars is still unable to meet its budget targets, the next phase beginning in 2017 will be to transition away from content development in favor of a producer/distributor model, focusing on the OSB's core infrastructure strengths: an established conference center; membership data and access; e-commerce, web and other technology platforms; and partnerships with content developers, including section, local and specialty bars.

Program Overview

The CLE Seminars Department advances the bar's mission of improving the quality of legal services by providing high-quality seminars and seminar products that are cost-effective, relevant and widely accessible. As a provider, the OSB operates in a highly competitive market that includes a large number of CLE providers, multiple options for accessing CLE seminars and a diverse customer base encompassing multiple generations, practice types and geographic locations. To meet these challenges and provide a meaningful educational experience for bar members, the department provides a wide range of CLE topics in a variety of formats that acknowledge diverse learning styles and changing technologies for delivery of CLE content.

In 2013 CLE Seminars produced 53 live CLE events, of which more than 75% were available as live webcasts, allowing real-time participation from remote locations. In addition to the live seminars and webcasts, programs were available on CD/DVD and online on-demand. CLE Seminars also partnered with a half dozen CLE educational partners to offer additional programming to OSB members.

CLE Seminars has always been among the bar's most highly valued programs, with strong performance ratings in all past bar-wide member surveys. Evaluations by seminar participants are also very positive, including outstanding reviews for program quality (87% "excellent" or "very good" in 2013) and for customer service (89% "excellent" or "very good").

Nearly 400 volunteers participate each year as speakers and program planners, including attorneys and other professionals; the department is committed to promoting diversity of all types in its programs. The department also supports other OSB priorities and initiatives, including "pro bono" registration services

for special bar events. In addition, each year approximately 20 OSB sections either cosponsor seminars or enter into contracts with CLE staff for registration and/or on-site event services. Sections that cosponsor or contract for event/registration services also rate the department highly.

While not every CLE event breaks even or generates revenue, seminars with net revenue support seminars that do not break even but still provide valuable CLE content for the membership. For example, the four-year average revenue for the Oregon Tax Institute was \$9889 per year. This contribution to overall department revenue supported seminars in topics such as veterans' law, constitutional law and disability law. These practice areas have a limited target market (compared to business law or litigation) but provide practitioners in these areas with vital Oregon-specific CLE.

Even when not cosponsoring with sections CLE Seminars Department staff provide CLE advice and recommendations to all sections. Although a section may be using limited services such as registration, there are usually questions about marketing, A/V and other bar services. There is an expectation that the bar will provide sections with whatever information is needed to successfully produce a CLE seminar.

Current Business Environment

The traditional CLE market has changed dramatically over the past 10 years, mostly due to increased competition [*see Exhibit 1*]. From the mid-90s to the early 2000s, the department's market share was calculated on a random sample basis and averaged 30%. Beginning in 2004, the department's market share was calculated as a percentage of total CLE credits reported by OSB members filing MCLE compliance reports. From 2004 to 2013 average market share was 17.16%. The increased competition can be divided into two distinct categories: internal and external.

Internal competition includes the PLF, ONLD, sections and other OSB programs. These providers generally regard CLE more as a member service than a revenue source, and as a result often charge low or no fees [*see Exhibit 2*] to participants. They also all receive some level of support from the OSB. The PLF, which focuses on law practice management through its loss prevention program, charges only for live programs with webcasting (\$15 regardless of program length); the OSB does not charge PLF for conference facilities. The ONLD's CLEs target new lawyers and are supported by staff in Member Services and Accounting. About half of section CLEs contract for some level of support from CLE Seminars; the rest are supported to varying degrees by other bar staff. Some bar programs produce training and recruitment CLEs for volunteers or to promote program priorities. Finally, local bars are not internal competitors but do receive OSB support through waiver of MCLE accreditation fees.

External competition includes traditional providers (ABA, OLI, OCDLA, etc.) and a growing number of online providers, mostly national companies. These providers produce content with broad market appeal, allowing them to set a low per-unit cost while making profits based on sales volume. Oregon is an attractive market for these providers because, unlike most states, our MCLE rules do not require that any credits be earned through participatory/interactive programs.

Other factors influencing the CLE market include: 1) shifting demographics, with four generations of members who have different learning styles, 2) law practice economics, with most lawyers and law firms

seeking to lower expenses, and 3) a trend toward shorter, more convenient delivery models that reduce travel and time away from work.

In 2013 program revenue totaled \$984,855 and expenses totaled \$832,258 for an initial program balance of \$152,598. After allocating the program's share of ICA (HR, IT, Accounting, Reception, OSB Center, etc.) it had a net expense of \$229,589. The net expense for 2012 was \$95,206 and for 2011 it was \$153,140. Although revenue has been declining for some years, in general expenses have decreased proportionately [*see Exhibit 3*]. Expense reductions have included: an overall FTE decrease with cross-training of remaining staff; providing written course materials only by pre-order for a fee; reducing brochure production and mailings; and hosting the majority of live events at the OSB Center, with refreshments purchased at Costco.

Live seminar revenue is projected to continue decreasing as more members turn to the convenience of online delivery. Correspondingly, online seminar revenue has steadily increased as more members attend seminars "live" via webcast or obtain credit through on-demand seminar products. The department is offering an increasing number of studio-only (no live audience) seminar webcasts, which are relatively inexpensive to produce while boosting on-demand sales revenue. To date the department has continued to produce a large number of live events, which are still favored by a segment of the market and provide valuable networking opportunities.

Some of these market forces are having a similar impact on CLE departments in other state bars. Many are experiencing similar declines in revenue despite having more advantageous MCLE rules and stricter controls on internal competition. At least two states expect to adopt participatory requirements for MCLE in the near future; staff will monitor these developments.

Business Development Timeline

2014: Marketing and New Product/Resource Development

Two major program developments have already been implemented this year. First, the independent CLE Seminars website was migrated to the main OSB site to create a stronger, more integrated web presence. Second, event registration is now handled by a contract vendor, InReach. This move consolidated registration services, addressed issues with the bar's proprietary event software, allowed a .25 FTE reduction in CLE Seminars and reduced the Accounting Department's workload. The new system, however, could not replicate the functions of the CLEasy-Pass annual discount program so it has been discontinued. The budget impact of this is as yet unknown; should it prove to be a negative, a new annual pass can be introduced in the future.

Goal #1: Position OSB CLE as a quality, convenient source of legal education options for lawyers of all practice types from all parts of the state.

- Refocus on OSB brand, including visuals, for website and all collateral materials

- Better use of existing OSB marketing channels: website integration; new section in Bulletin; Bar News “this month in CLE” feature; cross-promote in BarBooks; member dashboard promotional space; analysis of email campaign effectiveness
- Pricing, promotions and special offers: Calendar-based system to test discounts/incentives (especially impact of CLEasy Pass elimination) and pricing options. Examples: Summer Overstock Sale, Pay equity CLE (promote in BOG Update); slight pricing increases for targeted programs; promotion/addition of CLE materials library in November; last chance discounts/close-out discounts

Goal # 2: Increase targeted marketing to member groups, building on success of reciprocity bundles.

- MCLE reporters: Package deals, specialty credits; emphasize convenience, reporting
- New lawyers: Networking opportunities of live programs
- Rural/out-of-state: Participate live through webcasting

Goal #3: Develop new products/services and new revenue sources

- Section registration services, webcasting services and mp3 royalty option
- Online discussion groups to supplement on-demand products
- InReach advertising (test case for OSB site advertising)
- Sponsorships (live events)

2015: Expand New Products/Develop and Communicate Policy Changes

The focus for staff in 2015 will be to increase use of CLE Seminars services by member groups and affiliates. Based on 2013 figures, had all sections and the ONLD paid for basic registrations services for their independent programs, CLE Seminars would have earned an additional \$45,000 in revenue. At the same time, we would have avoided \$40,000-\$60,000 in costs from other departments to support those CLEs. (The enhancement to revenue would be even greater if sections and other groups co-sponsored their programs with the CLE Seminars Department.) If bar groups cannot be encouraged successfully to do so, the BOG may wish to consider whether, as a policy matter, to require bar groups to use CLE services, and also may wish to consider other policy changes, including MCLE requirements.

Goal #1: Increase use of CLE Seminars services by bar affiliated groups.

- BOG contacts and staff liaisons will meet with every section executive committee to discuss CLE budget background, invite feedback, discuss package options [[see Exhibit 4](#)]

- Sell the benefits of using CLE services: Online registration 24/7, including day of event; credit cards and electronic checks accepted and processed; inclusion on the OSB CLE calendar; MCLE attendance reporting

Goal #2: Review policies that put OSB CLE at a competitive disadvantage or otherwise conflict with the BOG's goals for the continuing legal education program.

- Limits on comp registrations; meeting room and equipment charges
- Require bar groups to work with CLE Seminars department at some level
- Modify MCLE rules: participatory requirement, purchase requirement

2016: Implement Policy Changes/New Software Installation

Goal #1: Bring event registration services in house with new software package

- Direct cost savings of \$1.99 per registrant (current vendor contract price) plus reduced staff time in both CLE and Accounting to reconcile accounts
- Members complete MCLE self-reports online for database upload, saving time for members and bar staff while allowing better market analysis, e.g., incidences of product sharing

Goal #2: Implement any BOG-approved policy changes.

2017: Program Review

If, after all of the marketing and policy initiatives discussed above, the department is unable to meet its budget goals, the BOG should consider a new model: CLE Online Marketplace.

Under this model the department would transition out of event planning and program sponsorship in favor of an electronic production/distribution role. Programs that have proven profitable or for which there are current contracts would continue for a year or two, but all unprofitable programs would be eliminated, and staff would no longer work with sections on planning and marketing live programs or coordinating event logistics. Instead, the department would manage the bar's conference center, including a full range of A/V, webcasting and recording services, and would maintain the online CLE Marketplace as a one-stop source for CLE from any provider interested in working with the OSB.

Under this model the department would no longer compete with other Oregon-based providers, internal or external. Instead it would focus on helping those providers increase their market reach through electronic delivery on a profit-sharing plan. This model takes advantage of OSB's special business strengths: access to the membership database, including section rosters and MCLE reporting software; a robust and well-established web presence; and e-commerce capabilities difficult for smaller or independent providers to replicate.

The disadvantages would be a likely gap in programming since few local providers currently offer online distance learning, and those that do are all based in Portland. Also, other providers may be less likely to cover areas of law in which a small number of lawyers practice. In addition, a smaller number of live programs will further reduce opportunities for lawyers to network and interact with their colleagues, including judges and speaker experts. There is also a strong likelihood that sections and the ONLD would still expect to receive some level of program planning services from the OSB staff, and a protocol for responding to such requests would have to be developed.

CLE Seminars Plan

Exhibits

Increased Competition

CLE Market Share Analysis—01/01/13–12/31/13

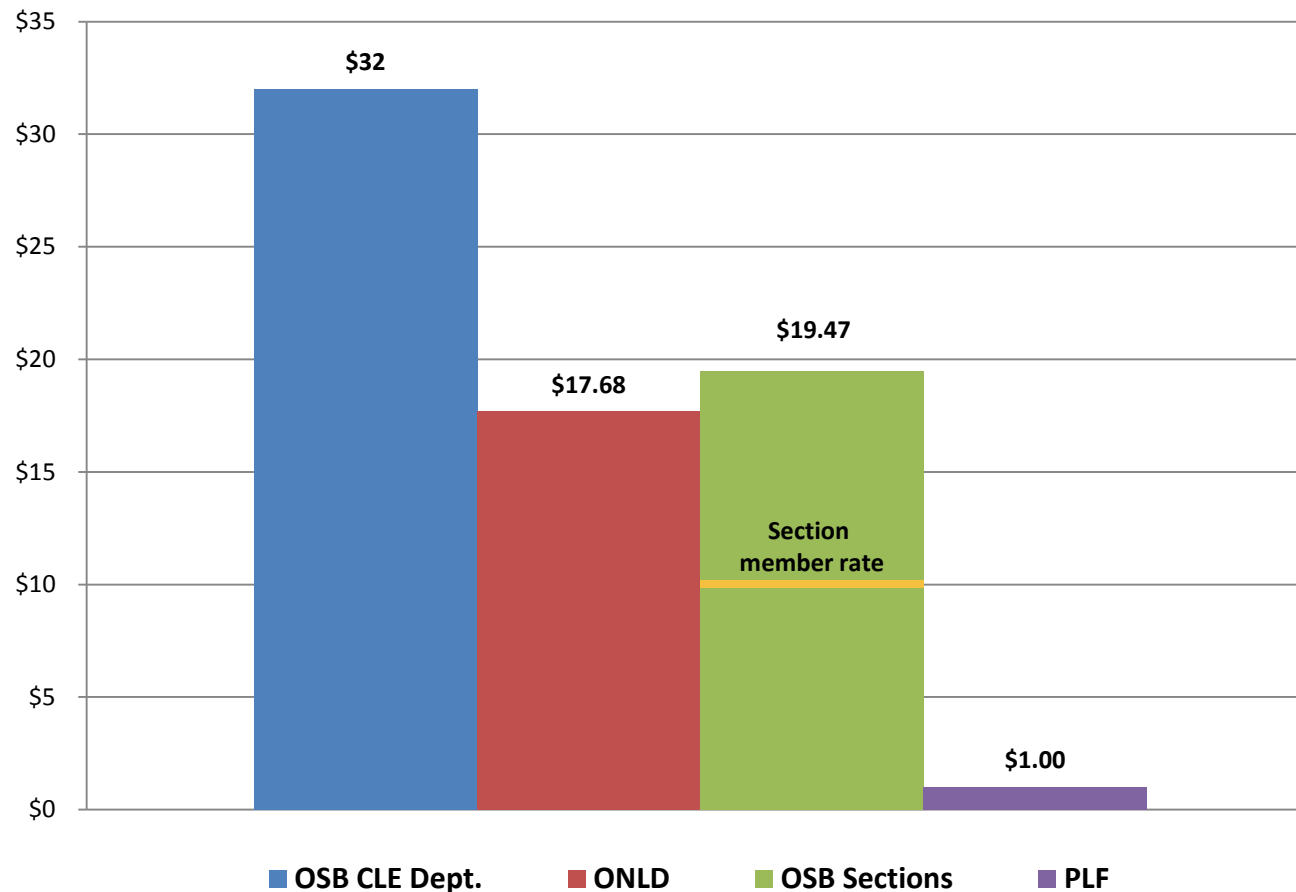
Sponsor Name	Credit Hours	% of Total Sponsor Credits	Registration Count
Oregon State Bar	22,261.75	12.60	4,235
Oregon Criminal Defense Lawyers Association	14,785.50	8.37	1,483
Oregon Law Institute	9,893.75	5.60	2,079
Professional Liability Fund	8,558.00	4.84	1,840
Oregon Trial Lawyers Association	6,436.75	3.64	1,650
Oregon District Attorneys Association	5,778.00	3.27	564
OSB Family Law Section	4,342.75	2.46	337
Judicial Education Committee	4,096.50	2.32	453
Multnomah Bar Association	3,830.00	2.17	2,463
American Bar Association	3,109.25	1.76	701
The Seminar Group	3,039.25	1.72	368
New Lawyer Mentoring Program	2,538.00	1.44	423
Lawline.com	2,106.50	1.19	1,363
OSB Real Estate & Land Use	1,997.75	1.13	342
OSB Workers Compensation Section	1,897.50	1.07	278
Oregon Department of Justice	1,888.50	1.07	1,065
Oregon Association of Defense Counsel	1,876.50	1.06	298
Practicing Law Institute	1,780.50	1.01	447
West Legal Ed Center	1,339.75	0.76	1,037
Federal Bar Association: Oregon	1,280.25	0.72	197
Law Seminars International	1,240.25	0.70	172

Top Registration Counts

Internal OSB Programs

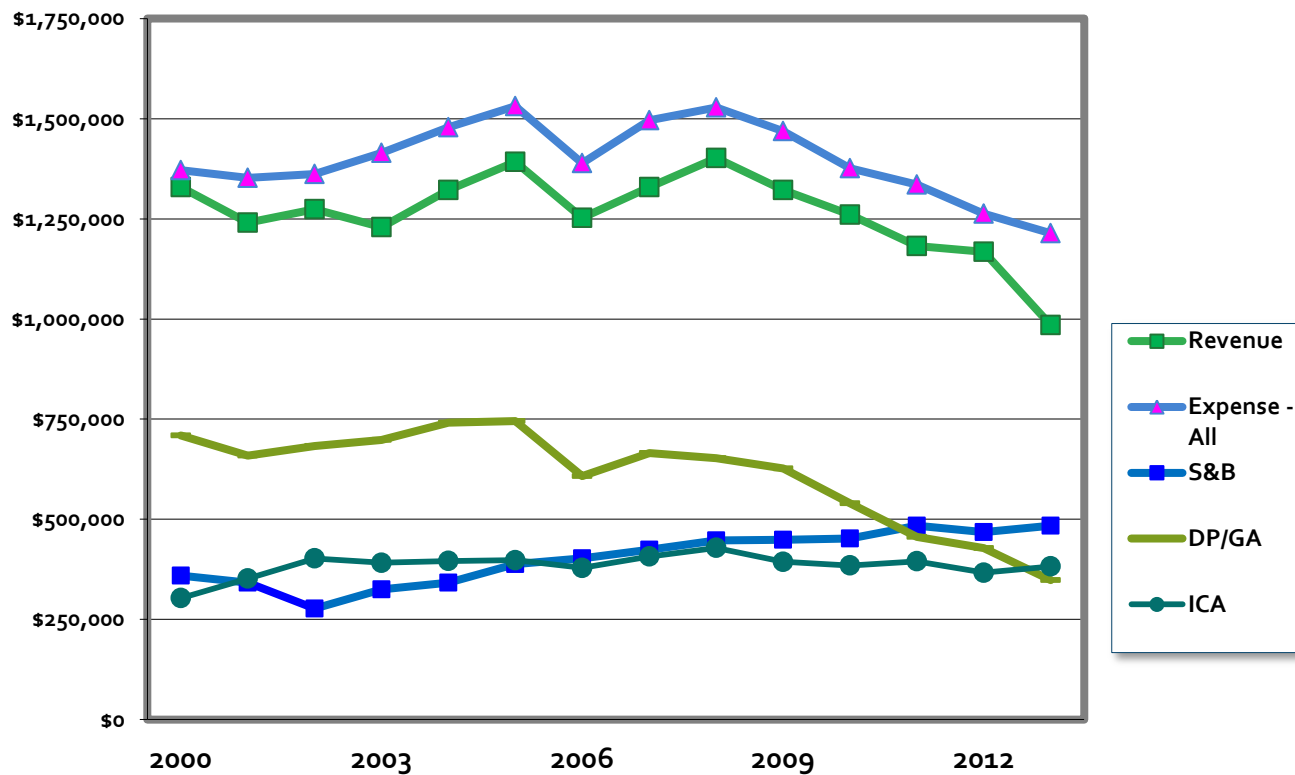
Internal Competition

Average Cost Per Credit Hour (2013)



Financial History

CLE Seminars - 21st Century Financial History



Section CLE Services

Registration Services

The following registration services are available to sections at a cost of \$10 per registrant (\$350 minimum) unless otherwise stated:

- Access to 24/7 online event registration using all major credit cards and checks. (All registrations are subject to applicable bank and transaction fees.)
- Processing cancellations and refunds.
- Sending event confirmations to registrants.
- Providing event and registration information via the OSB CLE Service Center during regular business hours.
- Providing an attendee list for check-in at event.
- Printing speaker name tents, name badges and providing badge holders (*name badge ribbons are available at 45 cents each; requires three-week advance order*).
- Sending attendance information to MCLE for posting to members' compliance reports

- Providing MCLE recordkeeping and event evaluation forms for attendees.
- When electronic course materials are available, send registrants a link to electronic course materials prepared by the OSB Creative Services Department 48 to 72 hours in advance of the seminar date.

Additional related services at no extra charge:

- Up to two hours of Creative Service staff consultation for marketing materials and electronic services
- Up to three emails announcing the event to the sponsoring section and two additional sections
- Web posting (up to three months) of electronic course materials (1 gigabyte or less)

Section CLE Services

Event Services

The following services are available to sections at an hourly rate of \$35 per hour per OSB CLE staff member (two-hour minimum and additional charges, such as travel expenses, may apply):

- Subject to staff availability, on-site registration assistance by CLE Seminars staff (two-hour minimum)
- Assist the section with selecting and reserving an event facility; recommend room arrangements
- Obtain, review, and forward the facility contract to the OSB Executive Director for approval
- Review registration information before CLE event notices are distributed
- Assist the section with making catering selections and finalizing the Banquet Event Order (BEO) with the facility
- Assist the section with audio visual equipment selection

Section CLE Services

Product Sales Services

ONLINE VIDEO STREAMING

- Section to pay for professional video recording and provide a copy to OSB CLE Seminars (copy will be returned)
- Section can offer either the entire program or Individual program sessions for sale
- Section to provide electronic course materials
- Section to provide copy of the brochure for catalog information
- Sales price cannot be less than \$35 per credit hour
- Section will receive 15% of the sales price
- Product will remain in the online catalog for the MCLE accreditation period unless the section requests otherwise

ONLINE MP3 FILES

- Bar staff will audio record the program, not to exceed two hours in length
- Section to provide electronic course materials
- Section to provide copy of the brochure for catalog information

- Sales price cannot be less than \$35 per credit hour
- Section will receive 15% of the sales price
- Product will remain in the online catalog for the MCLE accreditation period unless the section requests otherwise

CDs or DVDs

- Section to pay for audio or video recording and a provide a copy to OSB CLE Seminars for duplication
- Section to pay for all associated fees (e.g., accounting set up, credit card merchant fee, media duplication, etc.)
- Section to provide course materials either electronically or a file for hard copy printing
- Section to provide a copy of the brochure for catalog information
- Sales prices cannot be less than \$35 per credit hour
- Section will receive 30% of the sales price
- Product will remain in the catalog for the MCLE accreditation period unless the section requests otherwise

State (# sections)	CLE Policies
Alaska (28)	Sections must co-sponsor all programs with the Bar; section pays all expense and retains all net revenue. Short lunch programs may be held at the bar office; sections are not charged to use the facility.
Arizona (28)	Currently sections can do programs independently but the board is considering requiring sections to work with the bar CLE department. If they co-sponsor now, the bar gets 50% of the annual net revenue. Sections are charged \$450 to use the bar facility if the program isn't co-sponsored.
California (16)	Sections must co-sponsor with the bar. Sections pay all expenses but retain all revenue.
Idaho (21)	All CLE is done through the Idaho Bar Foundation. Sections do their own CLE, pay all expenses and retain all revenue. Staff keeps records of time spent assisting with programs and sections are charged for all of it.
Nevada (23)	Sections must work with the bar on CLE programs. The section pays an administrative fee plus a percentage of gross revenue for "standard" services. There is a lower administrative fee for "minimal" services which consists of the bar handling attendance, production of written materials and the MCLE application.
Utah (34)	Sections must co-sponsor with the bar; net revenues are split 50/50.
Washington (28)	Sections can do independent mini-CLEs of less than two hours and there is no charge for bar support. The bar takes care of the MCLE application, electronic registration, promotion of the program through email, preparation of sign-in sheets, and reporting of attendance after the program. If the section holds the program in the WSBA facility, there is a \$20/attendee fee (\$35 for a webcast). The facility charge includes coffee, tea and water. Sections can use the facility no more than 4x/year.

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Southern Oregon Firms and Solos:

I am on the board of Directors of Oregon Women Lawyers and currently president of the Rogue Women Lawyers, an affiliate organization. ✓

As you may know, 2014 marks OWLS' 25th Anniversary. We will be celebrating on Friday, September 26, 2014, at our Fall CLE and 25th Anniversary Reception. I am writing on behalf of OWLS Board of Directors to invite you to the event and to see if you or your firm would consider joining other firms throughout the state in sponsoring the event. All sponsorships are \$250. ✓

The success of OWLS' Fall CLE depends on sponsorships from firms, organizations and individuals in Oregon's legal community. We hope this price point encourages smaller firms and solo practitioners, as well as medium and large firms, to show their support of OWLS' mission: to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession.

We are really excited about this year's CLE program: "Talking About My Generation: Bridging the Age Gap at Work."

The modern workplace is facing an unprecedented challenge as five generations now work side by side. In an interactive program, key-note speakers Linda Williams Favero, M.S. and Professor Renee G. Heath, Ph. D. will share strategies for overcoming challenges presented by different generational perspectives of professionals in the workplace. The program will close with a panel of four Oregon lawyers, who span generations, joining our speakers for a practical conversation about how we can use our greater understanding of each other to improve inter-generational collaboration.

More details of the CLE and sponsorship recognition are attached for your review. I very much appreciate your consideration and hope to see you September 26, 2014.

Thank you for considering this request. Please feel free to contact me with additional questions, if any, or review the materials I have attached. Southern Oregon benefits from networking and interactions with the entire state, and sponsorship is a wonderful way to make your firm, locale, and specific areas of practice known to the larger Oregon legal community. I hope you can spread the word about the CLE to your colleagues as well.

Regards,

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 krant@abklegal.com



SPONSORSHIP OPPORTUNITY

Oregon Women Lawyers

25th Anniversary Reception
& Fall Conference

OWLS APPRECIATES OUR 2014

FALL CONFERENCE AND

25th ANNIVERSARY SPONSORS

Sponsors will be acknowledged for their
support on or in:

OWLS' website with embedded link

OWLS' quarterly newsletter,
the *AdvanceSheet*

OWLS' electronic newsletter

OWLS' members-only Listserve, reaching
1100 legal professionals

In conference program materials

All sponsorships are \$250

Panelists



Ellen
Rosenblum



Judge
Darleen
Ortega



Anne
Talcott



Jacqueline
Alarcón

Oregon
Attorney
General

Oregon
Court
of
Appeals

Schwabe
Williamson
& Wyatt

Yates
Matthews
& Eaton

Early
Baby
Boomer

Later
Baby
Boomer

Gen X

Gen Y



OWLS 25th Anniversary Reception

Following the Fall Conference
September 26 at 5:00 pm

With a welcome by OWLS member
Congresswoman Suzanne Bonamici

Join OWLS after the fall
conference to celebrate 25 years
of promoting women and
minorities in Oregon's legal
community.



www.oregonwomenlawyers.org

Talking About My Generation

Bridging the age gap at work

September 26, 2014 | 1:00-5:00 pm

Embassy Suites, 319 SW Pine Street

Portland

Oregon Women Lawyers

2014 Fall Conference &

25th Anniversary Reception



Renee Heath, PhD

Featuring
Renee Heath, PhD
and
Linda Favero, MS



Linda Favero, MS

Five generations now work side by side, each shaped
by different social, economic, and cultural events,
with different expectations of work.

Join OWLS for our Fall CLE where featured guests will
address the stereotypes and conflicts surrounding the
generations. They will also explore the impact of
changing structures and technologies in the workplace
and on women lawyers' attempts to balance work and
life.

During an interactive session, they will provide
attendees with new frames for thinking about
intergenerational conflict.

During the third hour, four Oregon lawyers
representing the generations will join the speakers for
a practical conversation about how we can use our
greater understanding of each other to improve
intergenerational collaboration in our profession.

Oregon State Bar
Meeting of the Board of Governors
April 25, 2014
Open Session Minutes

The meeting was called to order by President Tom Kranovich at 12:40 p.m. on April 25, 2014. The meeting adjourned at 5:30 p.m. Members present from the Board of Governors were James Chaney, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Joshua Ross, Richard Spier, Timothy L. Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Susan Grabe, Mariann Hyland, Judith Baker, Dawn Evans, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair; Ira Zarov, PLF CEO, Bruce Schaffer, PLF Director of Claims, Betty Lou Morrow, PLF CFO, and Cindy Hill, PLF Executive Assistant; Tim Martinez, Guy Greco, John A. Berge, Dennis Black, Theresa Statler, and Valerie Saiki, PLF Board of Directors; Mark Wada, Sandra Hansberger and David Thornburg, Campaign for Equal Justice; Michael Mason, Legal Aid; Norman Williams, Oregon Law Foundation; Dean Curtis Bridgeman, Willamette University College of Law, Dean Robert Klonoff, Lewis & Clark Law School, and Dean Michael Moffitt, University of Oregon School of Law. Honored guest, Chief Justice Thomas Balmer, was in attendance for the second half of the meeting.

1. Call to Order/Adoption of the Agenda

Motion: Mr. Kehoe moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to accept the agenda as presented.

2. Report of Officers & Executive Staff

A. Report of the President

Mr. Kranovich reported on several activities not included on his written report, including his participation in ABA Lobby Day and at the swearing-in of Judge Chris Garrett to the Oregon Court of Appeals.

B. Report of the President-elect

As written.

C. Report of the Executive Director

Ms. Stevens introduced Dawn Evans, new Director of Regulatory Services and Disciplinary Counsel. She announced that Amber Bevacqua-Lynott has been appointed to a new position in the discipline department: Chief Assistant Disciplinary Counsel & Deputy Director of Regulatory Services. She reminded the BOG that the ABA will be conducting its evaluation of the OSB disciplinary system during the week of June 9. . Finally, Ms. Stevens announced that she will be retiring effective January 1, 2016.

D. Director of Regulatory Services

As written. Ms. Evans updated the board on her activities during her first week at the Oregon State Bar.

E. Director of Diversity & Inclusion

Ms. Hyland reported that the annual OLIO Spring Social at Willamette was a success. The Diversity & Inclusion department has noticed a drop in student applications to participate in their program.

F. MBA Liaison Reports

Ms. Kohlhoff attended the March 5, 2014 MBA board meeting and Mr. Spier attended the April 2, 2014 MBA meeting. Mr. Spier reported that the MBA is discussing the future viability of the group health insurance. Ms. Kohlhoff reported that the MBA is always interested in what is happening at the bar.

G. Oregon New Lawyers Division Report

Mr. Eder briefly reported on a variety of ONLD projects and events described in his written report.

3. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update on the PLF's financial status **[Exhibit A]** and Ms. Morrow reported that the annual audit went well. The PLF does not anticipate seeking an increase in the assessment for 2015. The long-term goal is to lower the assessment. Mr. Greco outlined the profile for the open CEO position and the hiring process. September 1 is the target date for the new CEO to begin. **[Exhibit B]**

4. CEJ and OLF Presentations

Appearances were made by Mark Wada and Sandra Hansberger (CEJ), David Thornburg (Oregon Law Center), Michael Mason (President, Legal Aid Services of Oregon Board of Directors), and Norman Williams (Oregon Law Foundation). Mr. Wada congratulated the bar on its long history of supporting funding for Legal Aid. CEJ is a support arm for Oregon's legal aid programs. The Task Force on Legal Aid Funding was formed this year to take a comprehensive look at legal aid funding and how other states were funding their legal aid programs. Their goal is to double their funding. Mr. Williams explained how IOLTA funds are dispersed in the form of grants to direct service providers and to programs educating the public on the rule of law and diversity. IOLTA income has declined precipitously since 2008. Mr. Mason thanked Ms. Grabe for her lobbying work in Salem on behalf of legal aid and Kateri Walsh for her PR efforts.

5. Law School Deans Presentations

Mr. Kranovich introduced honored guest, Chief Justice Thomas Balmer.

Mr. Kranovich expressed the board's concern about the changes taking place in the profession and the impact the changes have had and will continue to have on the career prospects for Oregon's law school graduates, the pressure for law schools to modify their curriculums to produce "practice ready" graduates, and the reality that solutions to the current employment drought are not so simple.

Dean Curtis Bridgeman, Willamette University College of Law, talked about how Willamette emphasizes the importance of students getting practical experience while they are in law

school. Their academic programming is creative with adjusted rules to encourage participation in externships. Full-time externship programs are encouraged and enrollment has tripled over the past year. They have boosted their mentoring program for 2L and 3L students. They teach their students to understand clients and be business-minded. Dean Bridgeman asked the board to continue its outreach to young lawyers and law students. He also invited the board to let him know how he can help the board.

Dean Robert Klonoff, Lewis & Clark Law School, addressed the current crisis in legal education. There have been massive cuts in big law firm jobs, associate programs and new hires. The government jobs have been cut back and replaced by volunteers. Outsourcing of jobs and internet services are replacing jobs in the U.S. The high cost of tuition is adding to the crisis by causing enormous debt loads. In the past four years they have seen applications drop by 50%. They have nine practice areas that they teach through clinics. They have over 200 externships per year all over the world. These programs and the bar's mentoring have helped the law students upon graduation. To help reduce their budget they cut costs through the use of adjunct professors, reducing staff through attrition and reducing class size. He suggested that the bar could establish scholarships and encourage big firms, agencies and the courts to hire Oregon law school graduates.

Dean Michael Moffitt, University of Oregon School of Law, stated that all three Oregon law schools face the same difficulties, admit similar students, and are up against the same job market. The fundamental changes in the profession are causing them to look at their current funding models. The incoming students' skill sets and aptitudes are very different from years past, requiring additional training. It is troubling that fewer students of diversity are applying, nationwide. Skills classes are required at law schools by the ABA. The average student graduating from U of O has over four skills classes in their second and third year. Dean Moffitt had five requests for the board: help the law schools make relevant connections in the legal community; balance the desire for experiential learning against affordability; help make practical experiences available earlier in the educational process; continue UBE discussions; and help make access to education available to a broader population.

Chief Justice Balmer made two observations: we need to make more radical changes than have been discussed, such as less-expensive night school, two-year law schools, and a broader range of legal education; and the great irony is law schools are giving good students scholarships so they graduate with no debt and have an easier time finding a job, yet the other students who struggle to quickly find a good job will graduate with a high debt burden. He indicated a willingness to consider a student appearance rule that would allow students to get real courtroom experience earlier in their legal education. Mr. Kranovich asked the three deans to send rule proposals to the board for consideration.

6. OSB Committees, Sections and Councils

A. Client Security Fund

Ms. Stevens withdrew the request for the board to consider the Client Security Fund Committee's recommendation that Claim No. 2013-48 BERTONI (Monroy) be approved in the amount of \$5,000. Ms Stevens will be present the request at a future board meeting.

CSF Committee Response to BOG Workgroup Recommendations

Mr. Emerick asked the board to consider the recommendations of the BOG CSF Workgroup to increase the reserve to \$1 million and revise the CSF ~~operating policy~~rules to enhance the integrity and sustainability of the Fund.

[Exhibit C]

Motion: Mr. Hunter moved, Mr. Ross seconded, and the board voted unanimously to approve the rule changes as recommended by the work group.

B. MCLE Committee

Ms. Hirschbiel presented the committee's proposed amendment to 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. **[Exhibit D]**

Motion: Mr. Heysell moved, Mr. Mansfield seconded, and the board voted to approve MCLE Rule 5.2(d) changes as requested.

Ms. Hirschbiel presented the committee's proposed amendments to MCLE Regulation 7.200(a) regarding late fees. **[Exhibit E]**

Motion: Mr. Mansfield moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve MCLE 7.200(a) regulation changes as requested.

C. Legal Ethics Committee

Ms. Hirschbiel asked the board to decide whether to adopt the proposed amendments to the formal ethics opinions. **[Exhibit F]**

Motion: Ms. Mitchel-Markley moved, Mr. Spier seconded, and the board voted unanimously to approve the various proposed amendments as requested.

D. Legal Services Program Committee

Ms. Baker asked the board to approve disbursing the annual unclaimed client funds for 2014 as outlined in the chart titled 2014 Distribution. This includes approving the current reserve policy. Ms. Baker asked the board to approve disbursing the unclaimed client funds from the Strawn v Farmers class action as outlined in the chart titled 2014 Distribution. **[Exhibit G]**

Motion: Ms. Mitchel-Markley moved, Mr. Williams seconded, and the board voted unanimously to approve the disbursement of funds as outlined.

E. Unlawful Practice of Law Committee

Ms. Hirschbiel asked the board to 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. **[Exhibit H]**

Motion: Mr. Spier moved, Mr. Heysell seconded, and the board voted unanimously to approve the advisory opinion as requested.

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

A. Board Development Committee

Ms. Mitchel-Markley updated the board on the committee's actions and discussed the HOD election results, public member recruitment and the BOG outreach packet. She encouraged the board to take a packet and fill out their quarterly activity report.

B. Budget and Finance Committee

Mr. Wegener updated the board on bar-related financial matters and reported that he had selected a consultant to assist with the selection of a database vendor. **[Exhibit I]**

C. Governance and Strategic Planning Committee

Mr. Spier presented the committee motion to amend the standard section bylaws to clarify acceptable spouse and guest reimbursements. **[Exhibit J]**

Motion: The board voted to approve the committee motion to adopt the policy language as presented. Ms. Kohlhoff was opposed.

Mr. Spier presented the committee motion to amend the Diversity Action Plan by adding a new Strategy 9 for Goal 7 which addresses accessibility. **[Exhibit K]**

Motion: The board approved the committee motion on a unanimous vote.

Mr. Spier presented the committee motion to amend the Diversity & Inclusion Department's diversity definition to include evolving language and distinctions used to describe the concepts of sex, gender, gender identity and expression. **[Exhibit L]**

Motion: The board approved the committee motion on a unanimous vote.

D. Public Affairs Committee

Mr. Emerick asked the board to approve the committee's Law Improvement Legislation Package Recommendations. **[Exhibit M]**

Motion: The board approved the committee motion on a unanimous vote.

E. Appointments to CLNS Committee

Mr. Kranovich informed the board of the members of the newly formed committee. Mr. Ehlers and Mr. Prestwich will co-chair the committee composed of board members Jenifer Billman, Theresa Kohlhoff, Tim Williams and Josh Ross. The committee will be charged with finding a notice system everyone can agree upon, who will run it, and who will build the political coalition necessary to make it work.

F. Indigent Defense Practitioners

Mr. Emerick asked the board to adopt proposed changes to the Standards for Representation in Adult Criminal and Juvenile Delinquency Cases to provide guidance to practitioners. **[Exhibit N]**

Motion: The board voted unanimously to adopt the proposed changes as recommended by the Public Affairs Committee.

8. Other Action Items

Ms. Edwards asked the board to approve the appointments to various bar committees and boards. **[Exhibit O]**

Motion: Ms. Mitchel-Markley moved, Mr. Ehlers seconded, and the board voted unanimously to approve the various appointments.

9. Consent Agenda

Motion: Ms. Mitchel-Markley moved, Mr. Mansfield seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

10. Closed Sessions – see CLOSED Minutes

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

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

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

None.

SWIDER | HAVER

ATTORNEYS AT LAW

1420 American Bank Building
621 S.W. Morrison Street
Portland, Oregon 97205-3897

Robert A. Swider
Telephone (503) 226-8122
Direct Line (503) 241-9577
robert@swiderhaver.com

July 3, 2014

Oregon State Bar
Board of Governors
P.O. Box 231935
Tigard, OR 97281

Attn: Sylvia Stevens

RECEIVED

JUL 07 2014

Oregon State Bar
Executive Director

Re: Changing the Name of the Computer and Internet Law Section

Dear Board of Governors:


I am the chair of the Executive Committee of the Computer and Internet Law Section. I am writing to request your approval to change the name of the section to the Technology Law Section. The Executive Committee discussed this name change during the last several monthly meetings and unanimously approved a motion to change the name at our June 5, 2014 meeting.

The name change request is the result of a realization that computers have become ubiquitous and that many of us are connected to the Internet through our cell phones and other electronic devices most of the time. This prompted us to discuss our mission, the attendant legal issues and how our program offerings have and will continue to expand to encompass broader technology issues in addition to the issues reflected by our present name.

We request your approval of the name change and look forward to the renamed Section being able to better serve the membership of the OSB.

Very truly yours,

Swider Haver



by Robert Swider

CLAIM year	CLAIM No.	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2009	39	Pottle, John	Ryan, T. Michael	\$ 500.00	\$ 200.00	Franco	CSF Approved 07.20.2013
2012	54	Lupton, Lela Mae	Gruetter, Bryan W	\$ 22,500.00	\$ 22,500.00	Miller	re-opened 4/29/14
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	45	Canenguez, Jorge Adalberto	McBride, Jason	\$ 3,500.00	\$ 2,000.00	Atwood	CSF Approved 11.16.2013
2013	48	Monroy, Anna	Bertoni, Gary	\$ 5,000.00	\$ 5,000.00	Bennett	CSF approved 3/8 & 7/12. To BOG 9/5
2013	49	Babb, Avon Lee	Goff, Daniel	\$ 3,000.00	\$ -	Davis	CSF Denied 07.12.2014
2014	1	Snellings, Calvin James	McCarthy, Steven M.	\$ 7,000.00	\$ 7,000.00	Butterfield	CSF approved 7/12. To BOG 9/5
2014	2	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Dougherty	
2014	5	Mundon, Carolyn	Allen, Sara	\$ 2,500.00	\$ -	Dougherty	CSF w/drawn 07.12.2014
2014	7	Wong, Martha and Bernath, Daniel A.	Foster, Rosemary	\$ 20,000.00	\$ 20,000.00	Reinecke	
2014	11	Briggs, Lagale for Clayton Briggs	Connall, Des & Shannon	\$ 10,000.00	\$ -	Naucler	BOG Review 09.05.2014
2014	12	Austin, Evan Roy	Landers, Mary	\$ 11,000.00	\$ 11,000.00	Keeler	
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	
2014	16	Dickinson, Bruce	Stevens, Randolph J.	\$ 1,500.00	\$ 1,500.00	Timmons	
2014	17	Henbest, Debra Lynn	Bosse, Eric M.	\$ 3,000.00	\$ 3,000.00	Atwood	
2014	18	Crocker, Suzanne	McCarthy, Steven M.	\$ 1,500.00	\$ 1,500.00	Butterfield	
2014	19	Asgari, Ali Reza	McLean, Clifford Michael	\$ 600.00	\$ 600.00	Bennett	
2014	20	Pettingill, Lori Lynn	Wood, Alan K.	\$ 4,000.00	\$ 4,000.00	Naucler	
2014	21	Behn, Jennifer	Keeler, J. Andrew	\$ 4,600.00	\$ 4,600.00	Bennett	
2014	22	Escobar, Wilder	Wood, Alan K.	\$ 575.00	\$ 575.00	Naucler	
2014	23	Perez-Paredes, Javier	McBride, Jason	\$ 2,500.00	\$ 2,500.00	Atwood	
2014	24	Valdez-Flores, Maria	McBride, Jason	\$ 5,000.00	\$ 5,000.00	Atwood	
2014	25	Hassel, Stacey Lee	Wood, Alan K.	\$ 1,000.00	\$ 1,000.00	Naucler	
2014	26	Waller, Tiffany M	Wood, Alan K.	\$ 525.00	\$ 525.00	Naucler	
2014	27	Gowan, Valerie	Schannauer, Peter M	\$ 1,240.00	\$ 1,240.00	Davis	
2014	28	Marquardt, Christina Louise	Segarra, Francisco	\$ 1,449.14	\$ 1,449.14	Dougherty	
					\$ 156,409.00		
		Funds available for claims and indirect costs allocation as of July 2014		Total in CSF Account	\$ 655,548.00		
				Fund Excess	\$ 499,139.00		

OREGON STATE BAR
Client Security - 113
For the Seven Months Ending July 31, 2014

Description	July 2014	YTD 2014	Budget 2014	% of Budget	July Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$274	\$1,246	\$3,300	37.8%	\$161	\$1,510	-17.5%
Judgments	50	650	1,000	65.0%	50	17,331	-96.2%
Membership Fees	1,305	658,094	684,400	96.2%	990	654,480	0.6%
TOTAL REVENUE	1,629	659,990	688,700	95.8%	1,201	673,320	-2.0%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	3,304	17,917	30,800	58.2%	2,201	16,507	8.5%
Employee Taxes & Benefits - Reg	1,264	6,860	11,700	58.6%	918	6,075	12.9%
TOTAL SALARIES & BENEFITS	4,568	24,777	42,500	58.3%	3,118	22,582	9.7%
DIRECT PROGRAM							
Claims	3,100	18,044	250,000	7.2%	50,302	504,116	-96.4%
Collection Fees	541	865	2,000	43.2%	1,258	8,546	-89.9%
Committees			250				
Travel & Expense	400	1,123	1,400	80.2%		1,189	-5.6%
TOTAL DIRECT PROGRAM EXPENSE	4,041	20,031	253,650	7.9%	51,560	513,851	-96.1%
GENERAL & ADMINISTRATIVE							
Office Supplies			150				
Photocopying		34	150	22.8%			
Postage	62	184	500	36.8%	20	250	-26.5%
Professional Dues		200	200	100.0%		300	-33.3%
Telephone		41	150	27.1%		26	55.0%
Training & Education			600			425	-100.0%
Staff Travel & Expense	478	478	874	54.7%		60	696.2%
TOTAL G & A	540	937	2,624	35.7%	20	1,062	-11.8%
TOTAL EXPENSE	9,149	45,744	298,774	15.3%	54,698	537,494	-91.5%
NET REVENUE (EXPENSE)	(7,520)	614,246	389,926		(53,496)	135,826	352.2%
Indirect Cost Allocation	1,357	9,499	16,279		1,219	8,533	11.3%
NET REV (EXP) AFTER ICA	(8,877)	604,747	373,647		(54,715)	127,293	375.1%
	=====		=====		=====	=====	=====
Fund Balance beginning of year		50,801					
Ending Fund Balance		655,548					
		=====					
Staff - FTE count		.00	.00			.35	

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 5, 2014
From: Sylvia E. Stevens, Executive Director
Re: Client Security Fund Awards Less than \$5,000

The Client Security Fund made the following award at its July 23, 2014 meeting:

No. 2014-08 Schannauer (Neel)	\$800.00
-------------------------------	----------

Claimant deposited \$800.00 in October 2012 toward Schannauer's fee to defend a custody modification initiated by Claimant's former spouse that was scheduled for hearing the next month. There was no written fee agreement.

Despite assurances to Claimant that he was prepared for the hearing, there is no evidence that Schannauer did any work after accepting the retainer. At the hearing Schannauer offered to evidence, declined to cross-examine witnesses, and didn't call any witnesses of his own. Not surprisingly, the court ruled in favor of Claimant's former spouse. When the judgment was drafted, Claimant asked Schannauer to seek some changes, but he failed to do so, informing the other attorney that the judgment form was acceptable. Schannauer also failed to account to the Claimant for the fees she had deposited with him.

While there was insufficient evidence for the CSF to determine whether Schannauer ever deposited Claimant's funds into his trust account (as was required in the absence of a written agreement that the deposit was "earned on receipt"), the Committee was unanimous in its conclusion that Schannauer did not provide services of any value to Claimant in exchange for the payment.

BARRAN LIEBMAN^{LLP}

A T T O R N E Y S

Sylvia-

Andrew and I wanted to send
our sincere thanks for the OSB's
support of the ABA YLD 2014 Fall
Conference being held in Portland.
We are thrilled to have such an
awesome OSB sponsorship!

Best -

Traci & Andrew



DEPARTMENT OF DEFENSE
OFFICE OF THE GENERAL COUNSEL

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

July 28, 2014

Tom Kranovich
President, Oregon State Bar
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, Oregon 97281-1935

RECEIVED

AUG 04 2014

Oregon State Bar
Executive Director

Dear Mr. Kranovich:

Thank you very much for your letter of June 30, 2014, which I was very pleased to receive. I appreciate you taking the time to offer suggestions on improving the military justice system. I will be happy to forward your letter to the Chairman of the Military Justice Review Group for consideration. Thank you again for your response.

Sincerely,

Paul S. Koffsky
Deputy General Counsel
(Personnel and Health Policy)



Board of Governors

President

Tom Kranovich, Lake Oswego

Vice Presidents

Patrick J. Ehlers, Portland
Matthew H. Kehoe, Hillsboro

President-elect

Richard G. Spier, Portland

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Region 4

Matthew H. Kehoe, Hillsboro
Caitlin Mitchel-Markley, Hillsboro

Region 5

Patrick J. Ehlers, Portland
Theresa M. Kohlhoff, Portland
Johnathan E. Mansfield, Portland
Joshua L. Ross, Portland
Richard G. Spier, Portland
Simon Whang, Portland

Region 6

Hunter B. Emerick, Salem
Travis S. Prestwich, Salem

Region 7

Tom Kranovich, Lake Oswego

Public Members

Jenifer Billman, Salem
Audrey T. Matsumonji, Gresham
Charles A. Wilhoite, Portland
Elisabeth Zinser, Ashland

Executive Director

Sylvia Stevens, Tigard

July 29, 2014

Dr. Mabel McKinney-Browning, Director
ABA Division for Public Education
321 N. Clark Street
Chicago, IL 60610

Dear Dr. McKinney-Browning,

At its meeting on July 25, 2014, the Oregon State Bar Board of Governors voted unanimously to support *Citizenship in the 21st Century*, the national dialogue program proposal being submitted to the National Endowment for the Humanities by the American Bar Association in partnership with the American Library Association.

Discussions of national identity, citizenship, and what it means to be "American" are timely and increasingly important in today's world. The OSB is delighted to be included in this project, and look forward to participating in the planning and hosting of a local program as part of the *Citizenship in the 21st Century* initiative.

To request additional information and to report on developments, please contact OSB Executive Director Sylvia Stevens at sstevens@osbar.org.

Sincerely,



Tom Kranovich, President

-----Original Message-----

From: Robert D. Lowry [<mailto:rdlowry@lowry-law.com>]

Sent: Saturday, July 12, 2014 6:44 PM

To: Paul Nickell

Subject: Letter to Or St Bar re Strongest Objection to suspension of Paige Alina De Muniz

Dear Editor:

I feel obliged as a member of the Oregon State Bar approaching 'Old Guard' status after 30+ years of active membership to object in the strongest terms about the reported suspension of Paige Alina DeMuniz (as reported OSB Bulletin July 2014).

Aside from how the 'facts' might be interpreted, it is well apparent that she was a true victim of her father's popularity as (a now former) Chief Justice of the Oregon Supreme Court.

This is SO parallel to the similar singled-out treatment of so many others public figured similarly situated, not the least being the City of Aspen's abuse of John Denver. There, while the city prosecutor vilified him notwithstanding a favorable verdict against their targeted action, others in the City were erecting a Monument to him.

While I may not expect a similar 'monument' to be erected to Justice De Muniz's daughter, I at least expect her to be treated objectively, which I just do not believe she was.

Please, OSB, show us the parallel precedent where there is no question that the publicly -flailing punishment fit the 'crime.'

ROBERT D LOWRY

OSB 802975

Law Office of Robert D. Lowry

O: 541/687-7592

M: 541/ 954-4451

July 30, 2014

Linda Tomassi, Executive Director
Oregon Women Lawyers
PO Box 40393
Portland, OR 97240

Re: OWLs 25th Anniversary Reception

Dear Linda:

It is with great pleasure that I present, on behalf of the OSB Board of Governors, a \$250 contribution to the OWLs 25th Anniversary reception. I look forward to seeing you there.

Sincerely,



Sylvia E. Stevens
Executive Director
Ext. 359, Fax: (503) 598-6959
Email: ssstevens@osbar.org



EDUCATION LIFE | NYT NOW

The Lawyer's Apprentice

How to Learn the Law Without Law School

By SEAN PATRICK FARRELL JULY 30, 2014

When Chris Tittle meets new people and the topic turns to his work, he sometimes fishes in his pockets and produces a business card that reads “Abraham Lincoln.” Below the 16th president’s name in smaller type the card reads, “Just kidding, but I hope to follow in some of his footsteps.”

Mr. Tittle, who sports the kind of full beard more often associated with folk-rock bands than future junior partners, is working toward becoming a lawyer under an obscure California rule that allows people to “read law” much as Lincoln did, studying at the elbow of a seasoned lawyer.

“There is very little that would entice me to go \$100,000 or more into debt for a credential,” said Mr. Tittle, who is in his first year of a four-year program of practical study.

California is one of a handful of states that allow apprenticeships like Mr. Tittle’s in lieu of a law degree as a prerequisite to taking the bar and practicing as a licensed lawyer. In Virginia, Vermont, Washington and California, aspiring lawyers can study for the bar without ever setting foot into or paying a law school. New York, Maine and Wyoming require a combination of law school and apprenticeship.

The programs remain underpopulated. Of the 83,986 people who took state or multistate bar exams last year, according to the National Conference of Bar Examiners, only 60 were law office readers (so-called

for the practice of reading legal texts as preparation). But at a time when many in legal education — including the president, a former law professor — are questioning the value of three years of law study and the staggering debt that saddles many graduates, proponents see apprenticeships as an alternative that makes legal education available and affordable to a more diverse population and could be a boon to underserved communities.

“Attorneys have carved out a place that is high income and inaccessible,” says Janelle Orsi, co-founder of the Sustainable Economies Law Center, a nonprofit in Oakland, Calif., that focuses on legal aspects of the “sharing economy.”

To Ms. Orsi, a graduate of the highly ranked Boalt Hall School of Law at the University of California, Berkeley, apprenticeships are a way to reorder the economics of law school and law work. Without loans to pay back, she argues, lawyers won’t have to chase big paychecks or prestige with corporate clients and could instead work in nonprofit, environmental and community law.

“Attorneys trained in this way will be able to be average people,” Ms. Orsi said, “not just because they don’t have debt, but because law school tells us that we’re really special.”

Ms. Orsi and two other lawyers are mentors to four apprentices, who are chronicling their experiences on a blog curated by the center (likelincn.org). Mr. Tittle is director of organizational resilience at the center, where he spends six hours a week in his supervising lawyer’s office “helping her do client work or small research assignments, or it might turn into a mini-lecture on that particular kind of law that she’s working in.” Fridays often find him and the other apprentices in the county law library, studying.

Ms. Orsi and the cohort of “apprenti,” as they jokingly refer to themselves, hope their experience will serve as a model for other nonprofit organizations to cultivate their own lawyers. “The mission is not to create more lawyers,” said Ms. Orsi. “It’s to serve the community.”

This is not entirely untrod ground. The United Farm Workers, the

California-based agricultural union founded by Cesar Chavez and Dolores Huerta, has been training lawyers through apprenticeships for decades, said Mary L. Mecartney, the managing attorney for the union's legal department, who studied for and passed the bar in 1993 through apprenticeship. She's helping to train two new apprentices, both the children of farm workers.

Before the prevalence of law schools in the 1870s, apprenticeships were the primary way to become a lawyer. "Stop and think of some of the great lawyers in American history," said Daniel R. Coquillette, a law professor at Boston College who teaches and writes in the areas of legal history and professional responsibility. "John Adams, Chief Justice Marshall, Abraham Lincoln, Thomas Jefferson. They didn't go to law school at all."

The earliest law schools, Mr. Coquillette said, worked in tandem with apprenticeships, a practice he noted is returning as many law schools move toward externships for third-year students.

But there are obstacles. None of the states help prospective law readers locate a supervising lawyer, and finding one willing to take on the responsibility of educating a new lawyer can be difficult. Bar passage rates for law office students are also dismal. Last year only 17 passed — or 28 percent, compared with 73 percent for students who attended schools approved by the American Bar Association.

"The A.B.A. takes the position that the most appropriate process for becoming a lawyer should include obtaining a J.D. degree from a law school approved by the A.B.A. and passing a bar examination," said Barry A. Currier, managing director of accreditation and legal education for the group.

Robert E. Glenn, president of the Virginia Board of Bar Examiners, was less circumspect. "It's a cruel hoax," he said of apprenticeships. "It's such a waste of time for someone to spend three years in this program but not have anything at the end."

One former apprentice, speaking on the condition of anonymity,

dropped out after her third year of study. The stumbling block, she said, was the first-year exam, the so-called baby bar required of all those in California who study outside of law schools accredited by the A.B.A or state's Committee of Bar Examiners.

"It was the writing," she said. After two attempts and stumped by legalese, she decided law might not be her path. "I'm over it now, but it was disappointing that I couldn't pass it," she said. Still, she doesn't regret her apprenticeship — the lessons, she says, have been useful in her current work in state government.

Isabell Wong Flores knows well the feeling of bar exam defeat. After completing her law office study, it took five attempts over two and a half years before she passed the bar exam. "There were times when I wanted to give up so much," said Ms. Flores, now a Sacramento criminal defense lawyer who draws on her perseverance in her side work as a motivational speaker. The exam is torturous, she said, but "you have to find ways to conquer it." Ms. Flores bought study tapes and enrolled in bar prep courses at local law schools before passing in 2007 — seven years after starting down this road. "I wanted to give myself an education," she said. "It took a little longer than I thought it would."

The lack of a J.D. can also be cause for concern to clients.

"I do have some clients who look up on my wall and say, 'Where did you go to law school?' and aren't too happy with the answer," said Ivan Fehrenbach, who recently passed the Virginia bar after three years of reading law. Unburdened by school loan debt, he said, he has been able to become "a country lawyer," taking on work like speeding tickets, divorce and wills.

For most, the lack of class rankings put clerkships with judges and plum gigs at big firms out of reach. There are exceptions: Jeffrey L. Smoot, a law reader, was recently made partner at one of Seattle's oldest firms, Oles Morrison Rinker & Baker. "It's a validation of the program," he said.

Washington's program for apprentices — called law clerks there — stands out for the extent of support from the state bar association. A

volunteer board sets study standards and assigns a liaison to each lawyer-apprentice duo to monitor their progress. Students must also be employed by the office in which they study. Of law clerks who took the Washington bar last year, 67 percent passed.

Talia Clever, who coordinates the program for the state bar, says she routinely fields calls from people who want to know how hard it is to become a lawyer without law school. Her answer: very. “It’s a lot of work. It’s four years and you don’t get summers off. You’re on the line working with a lawyer every day.”

For some, that’s the appeal. Instead of spending years in lecture halls, time is spent in courtrooms or with clients — experience most traditional law school students might only get during a semester of clinical practice. For paralegals, the method makes it possible to hold down a job or keep paying off a mortgage while earning an advanced credential. “I didn’t just want to up and quit my job and go to law school and become a student again,” said Megumi C. Hackett, a paralegal in Vancouver, Wash., who is studying under the tutelage of Jon J. McMullen, a criminal defense lawyer.

“It has been a hell of a lot of work,” said Mr. McMullen of his new role as teacher. “I’ve had to reacquaint myself with stuff I wish to God I didn’t have to think about again.” Rules vary from state to state, but supervising lawyers are expected to instruct their students in all areas of law covered by their state’s bar exam, and administer and grade tests.

“It does take a lot of time and effort,” said D.R. Dansby, the Virginia lawyer supervising Mr. Fehrenbach. Mr. Dansby, who read law in the late 1970s, has mentored three lawyers through the state’s program, each passing the bar on the first attempt.

Most supervisors just want to give back. “It’s worth it,” Mr. Dansby said. “We have plenty of lawyers, but not enough good ones.” But make no mistake, he stressed, these programs are not for everyone. He has turned away nearly two dozen people who he didn’t think had the motivation to take on a readership. An added deterrent is that Virginia strictly forbids

employing, and paying, apprentices.

Robert Galbraith took a leave from the University at Buffalo Law School with hopes of completing his education by clerking while working full time for a local nonprofit. He knocked on a dozen doors, all with the same answer: no. “It’s tough to find people who even know it exists,” said Mr. Galbraith, referring to the New York rule that permits law-office study after the successful completion of one year of law school. Mr. Galbraith headed back to law school part time but didn’t finish in the five years mandated by the New York Bar Examiners. He now works for a watchdog group, the Public Accountability Initiative. “It’s very stimulating and engaging work,” he said, “but if an opportunity arises to clerk at a law office in order to take the bar, I would consider it.”

Ms. Orsi and the apprentices in her office are trying to spread the word, giving talks at law schools and seeking endorsement from professional groups like the San Francisco chapter of the National Lawyers Guild. Perhaps most important, they are building an informal list of California lawyers willing to take on apprentices or mentor in specific areas of law.

Looking to the future, Ms. Orsi hopes that her current students will take on apprentices of their own someday, and that law office study will gain recognition as a viable alternative.

“I hope,” she said, “people will have a more creative outlook toward legal education.”

Correction: August 3, 2014

An article on Page 22 this weekend about law apprenticeships misspells the given name of a founder of the United Farm Workers union, which has trained lawyers through apprenticeships. She is Dolores Huerta, not Delores.

Correction: August 10, 2014

An article last Sunday about law apprenticeships referred incompletely

to exemptions from California's first-year law exam. Students at schools accredited by the Committee of Bar Examiners, not just by the American Bar Association, can bypass the exam.

Sean Patrick Farrell is a senior video journalist at The Times.

A version of this article appears in print on August 3, 2014, on page ED22 of Education Life with the headline: The Lincoln Lawyers.

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THE STATE OF LAW SCHOOL ADMISSIONS: WHERE ARE WE IN 2014?

by Daniel O. Bernstine

The state of law school admissions is

- a. Complicated
- b. Unpredictable
- c. Maybe improving
- d. All of the above

At the Law School Admission Council (LSAC), we collect and analyze an enormous amount of data about potential law school applicants. I am often called upon to prognosticate about the future of legal education based on that data; this article is a case in point. However—spoiler alert—the only reliable predictor at LSAC is the Law School Admission Test (LSAT) itself. Although I am certain that the decline in LSATs administered, as well as the decline in law school applicants, applications, and enrollment, will bottom out, and may be doing so already, I would be doing a disservice to the law schools, their employees, and their applicants if I were to presume that our data could be interpreted in any way other than as a small part of the sea change that is taking place in the U.S. economy and in U.S. higher education. Nevertheless, in this article I will share with you some of the facts that may help you draw your own conclusions about the state of law school admissions.

HISTORIC LOWS?

In the fall of 2013, just under 40,000 new first-year students enrolled in one of the 201 ABA-approved, LSAC-member law schools, a 10.8% drop from the number of first-year enrollees in fall 2012. The 2013 enrollees were chosen from 59,400 applicants—

a 12.3% drop in applicants from the 67,700 who applied in 2012. (See Table 1.) These numbers, along with a 38.5% drop in LSAT takers from the peak in 2009 through February 2014 (see Table 2 on page 14), have caused a feeding frenzy in the media and blogs, and, more important, serious and painful discussions about the future of legal education among deans, admission directors, faculty, potential applicants and their parents, graduates, and employers.

But it helps to put these numbers in perspective: for over two decades, from 1975 to 2000, first-year law school enrollment hovered at around 39,000–44,000. The increase that began in 2001 and peaked at 52,500 in 2010 was unusual, both in size and in rate. The sharp decline that began in 2011 was also atypical, with 2013 first-year enrollment dropping back down to 1977 levels.¹ It is worth noting that the number of law schools in the United States expanded during that time, with at least one new law school being approved by the ABA each year. There were 161 ABA-approved, LSAC-member law schools in 1975; there were 178 in 1995; and there are 201 today.

THE PIPELINE

A Look at the Pipeline over Time

Figure 1 (on page 15) shows many more LSATs administered in a given year than first-year law school students. Although the peaks and valleys of applicant numbers appear to track closely with the rise and fall of LSATs administered, it should be remembered that potential applicants take the LSAT

Table 1: LSAC End-of-Year Summary, 2004–2013 (ABA-approved law school applicants, applications, admitted applicants, and enrollment)

	Fall 2004	Fall 2005	Fall 2006	Fall 2007	Fall 2008	Fall 2009	Fall 2010	Fall 2011	Fall 2012	Fall 2013
ABA Applicants										
Preliminary End-of-Year	98,700	93,500	87,300	82,800	82,000	85,600	87,500	78,800	67,700	59,400
% change from prior year	0.4%	-5.2%	-6.7%	-5.1%	-1.0%	4.4%	2.3%	-10.0%	-13.7%	-12.3%
Final End-of-Year	100,600	95,800	88,700	84,000	83,400	86,600	87,900	78,500	67,900	59,400
% change from prior year	1.1%	-4.8%	-7.4%	-5.2%	-0.8%	3.8%	1.5%	-10.7%	-13.5%	-12.4%
Admitted Applicants										
End-of-Year	55,900	56,100	56,000	55,500	55,500	58,400	60,400	55,800	50,600	45,700
% change from prior year	-1.6%	0.3%	-0.2%	-0.9%	0.0%	5.1%	3.5%	-7.7%	-9.2%	-9.8%
ABA First Year Enrollment										
End-of-Application-Year	48,200	48,100	48,900	49,100	49,400	51,600	52,500	48,700	44,500	39,700
% change from prior year	-1.3%	-0.2%	1.7%	0.3%	0.7%	4.5%	1.6%	-7.2%	-8.7%	-10.8%
ABA Applications										
Preliminary End-of-Year	552,400	543,000	527,900	514,800	530,600	564,000	602,200	536,500	469,500	385,400
% change from prior year	5.7%	-1.7%	-2.8%	-2.5%	3.1%	6.5%	6.8%	-10.9%	-12.5%	-17.9%

Note: Volumes are rounded to the nearest hundred.

one or more times in a given year, and they then *may* choose to apply to law schools between the fall of that year and the spring of the following year, and *may* enter law school the following fall. On the other hand, many LSAT takers don't apply to law schools at all after taking the LSAT, or may postpone applying for years, and some applicants defer their attendance as well. Still, without an adequate number of test takers and applicants in the pipeline, selectivity in the admission process is bound to suffer.

While some law schools are currently downsizing due to a significant reduction in the applications they are receiving (see Table 3 on page 15 for reduction by number of schools; see Figure 2 on page 16 for reduction by geographic region), some of the adjustments in class size and/or admissions standards at some law schools are a result of the intense competition for the applicants with the best credentials.

A Look at the Fall 2014 Pipeline

As of June 6, 2014, there were 343,469 fall 2014 applications to ABA-approved law schools, submitted by

51,570 applicants. Applicants are down 7.8% and applications are down 8.8% from the same time in 2013. Last year at this time, roughly 94% of the final count was in. It is too early to predict what the final count will be for fall 2014 applicants, but it is clear that the downturn in applicants and applications is not over. (See Figure 3 on page 16.)

ECONOMIC REALITIES

According to the Bureau of Labor Statistics, there have been 11 recessions in the United States since the postwar period of 1948.² In the past, law school was the path of choice for many bright college graduates, particularly those with liberal arts degrees. Faced with a contracting job market, they opted to wait out a recession by pursuing graduate education, with the assumption that a high-paying job would be waiting when they graduated and that any debt they amassed would be easily paid off once they nailed that six-figure salary. Whether those presumptions were ever realistic, in the current climate they are often backfiring. Many of the high-paying jobs have disappeared, with exceptionally fierce competition

Table 2: LSATs Administered, 1987–1988 to 2013–2014 (counts and percentage change by administration and year)

Year	June	% Chg	October	% Chg	December	% Chg	February	% Chg	Total	% Chg
1987-88	18,902		36,804		33,874		26,408		115,988	
1988-89	23,064	22.0%	40,577	10.3%	42,564	25.7%	30,883	16.9%	137,088	18.2%
1989-90	22,088	-4.2%	43,274	6.6%	44,044	3.5%	29,459	-4.6%	138,865	1.3%
1990-91	25,677	16.2%	49,957	15.4%	42,685	-3.1%	34,366	16.7%	152,685	10.0%
1991-92	24,211	-5.7%	50,077	0.2%	43,588	2.1%	27,691	-19.4%	145,567	-4.7%
1992-93	24,778	2.3%	46,491	-7.2%	41,533	-4.7%	27,252	-1.6%	140,054	-3.8%
1993-94	23,061	-6.9%	46,359	-0.3%	38,982	-6.1%	23,626	-13.3%	132,028	-5.7%
1994-95	21,880	-5.1%	42,927	-7.4%	39,670	1.8%	24,076	1.9%	128,553	-2.6%
1995-96	20,336	-7.1%	38,406	-10.5%	36,368	-8.3%	19,646	-18.4%	114,756	-10.7%
1996-97	19,055	-6.3%	36,020	-6.2%	30,953	-14.9%	19,287	-1.8%	105,315	-8.2%
1997-98	20,010	5.0%	34,399	-4.5%	29,879	-3.5%	19,703	2.2%	103,991	-1.3%
1998-99	18,933	-5.4%	33,558	-2.4%	32,116	7.5%	19,629	-0.4%	104,236	0.2%
1999-00	20,448	8.0%	36,540	8.9%	30,731	-4.3%	19,434	-1.0%	107,153	2.8%
2000-01	20,151	-1.5%	37,847	3.6%	30,111	-2.0%	20,921	7.7%	109,030	1.8%
2001-02	23,908	18.6%	46,745	23.5%	38,045	26.3%	25,553	22.1%	134,251	23.1%
2002-03	27,808	16.3%	52,604	12.5%	41,887	10.1%	25,715	0.6%	148,014	10.3%
2003-04	27,471	-1.2%	53,701	2.1%	41,215	-1.6%	25,230	-1.9%	147,617	-0.3%
2004-05	28,600	4.1%	50,386	-6.2%	41,985	1.9%	24,287	-3.7%	145,258	-1.6%
2005-06	25,984	-9.1%	49,197	-2.4%	40,023	-4.7%	22,240	-8.4%	137,444	-5.4%
2006-07	24,879	-4.3%	48,171	-2.1%	41,033	2.5%	25,965	16.7%	140,048	1.9%
2007-08	25,103	0.9%	49,785	3.4%	42,250	3.0%	25,193	-3.0%	142,331	1.6%
2008-09	28,939	15.3%	50,721	1.9%	43,646	3.3%	28,092	11.5%	151,398	6.4%
2009-10	32,595	12.6%	60,746	19.8%	50,444	15.6%	27,729	-1.3%	171,514	13.3%
2010-11	32,973	1.2%	54,345	-10.5%	42,096	-16.5%	25,636	-7.5%	155,050	-9.6%
2011-12	26,812	-18.7%	45,169	-16.9%	35,825	-14.9%	22,152	-13.6%	129,958	-16.2%
2012-13	25,223	-5.9%	37,780	-16.4%	30,226	-15.6%	19,286	-12.9%	112,515	-13.4%
2013-14	23,997	-4.9%	33,673	-10.9%	28,363	-6.2%	19,499	1.1%	105,532	-6.2%

for those that remain. Borrowers are learning the hard way that law school loans on top of college loans can create life-altering debt burdens when the jobs don't materialize. Unfortunately, this pattern is a familiar one in nearly all sectors of higher education.

The National Association for Law Placement (NALP) annually measures the employment rate of law graduates nine months after graduation. The employment rate for the class of 2012, measured in February 2013, fell to 84.7%, more than seven percentage points below a 24-year high of 91.9% in 2007. According to NALP, "[s]ince 1985 there have only been two classes with an overall employment rate below 84.7%, and both of those occurred in the aftermath of the 1990–1991 recession: 83.5% for 1992 and

83.4% for 1993. The employment rate for the Class of 1994 was 84.7%, the same as for the Class of 2012."³

COSTS, BENEFITS, AND CONSUMER INFORMATION

Weighing the Costs and Benefits of a Legal Education

Law school tuition (along with all tuition) has risen steeply since the 1970s. During the period 1992–2002, when the cost of living rose 28%, the tuition for public law schools (for in-state residents) rose 134%; private law school tuition rose 76%. In 2002, public law school tuition averaged \$9,252 for residents and \$18,131 for nonresidents; private law school tuition

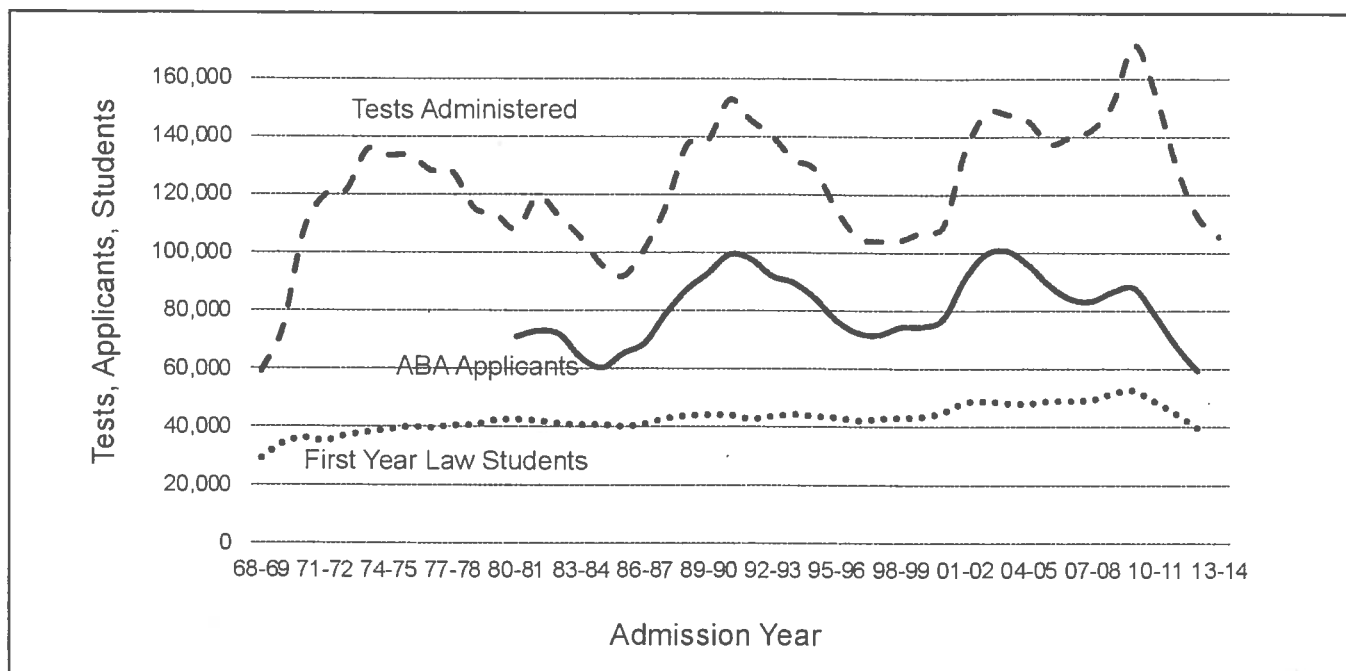


Figure 1: LSATs administered, ABA-approved law school applicants, and first-year law students, 1968–1969 to 2013–2014

Notes: Due to changes in data collection methods, ABA applicant data beginning in 1999–2000 are not directly comparable to prior applicant data. LSAC began tracking ABA applicant data for the 1980–1981 admission cycle.

Table 3: Increase/Decrease in Applications at ABA-Approved Law Schools from Fall 2013 to Fall 2014 (data as of May 9, 2014)

% Increase/Decrease from Prior Year	Number of Schools
Increase of 100% or more	0
Increase of 50% to 99%	3
Increase of 40% to 49%	0
Increase of 30% to 39%	1
Increase of 20% to 29%	5
Increase of 10% to 19%	9
Increase of 1% to 9%	19
No change	0
Decrease of 1% to 9%	41
Decrease of 10% to 19%	62
Decrease of 20% to 29%	45
Decrease of 30% or greater	16

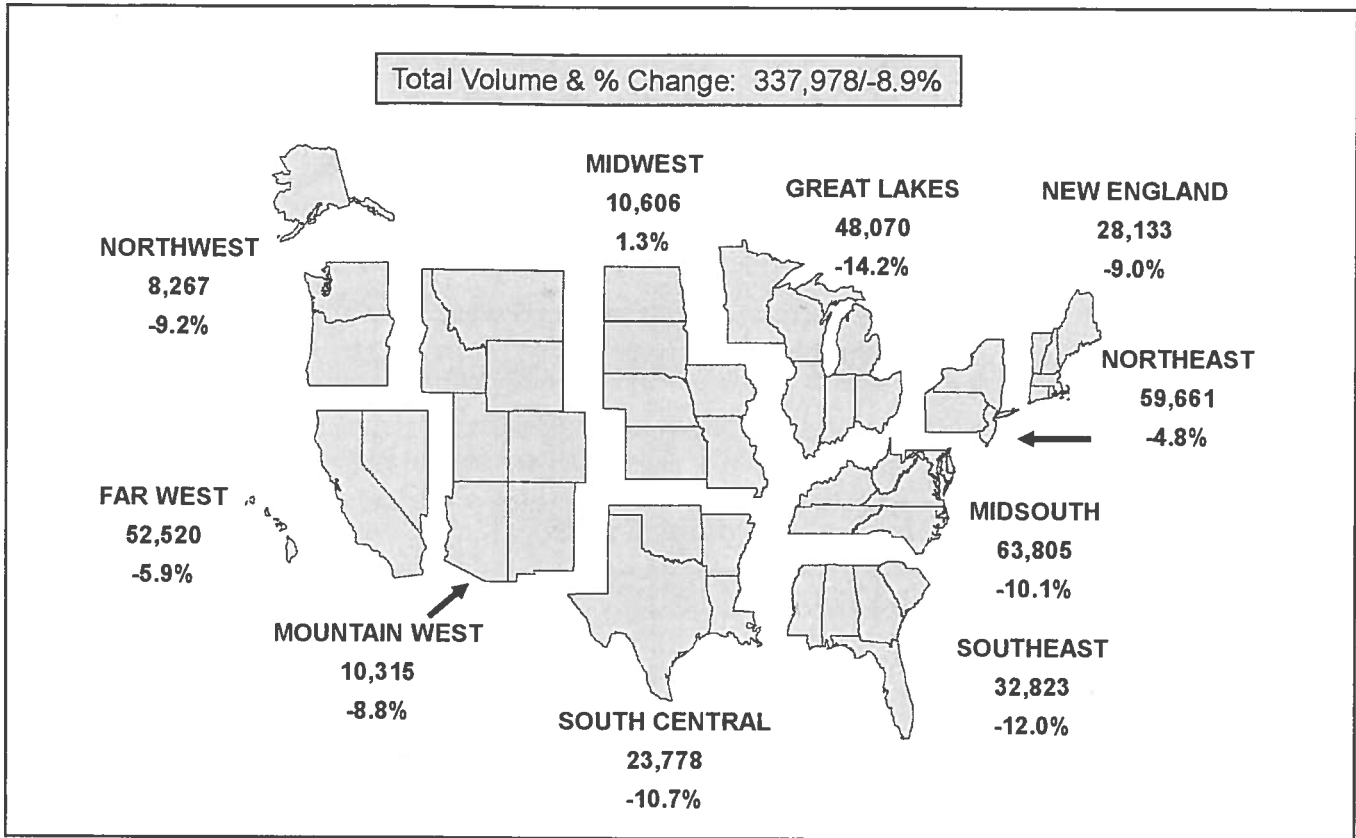


Figure 2: ABA-approved law school applications by geographic region, including percentage change from fall 2013 to fall 2014 (data as of May 9, 2014)

Note: Counts based on region of each law school.

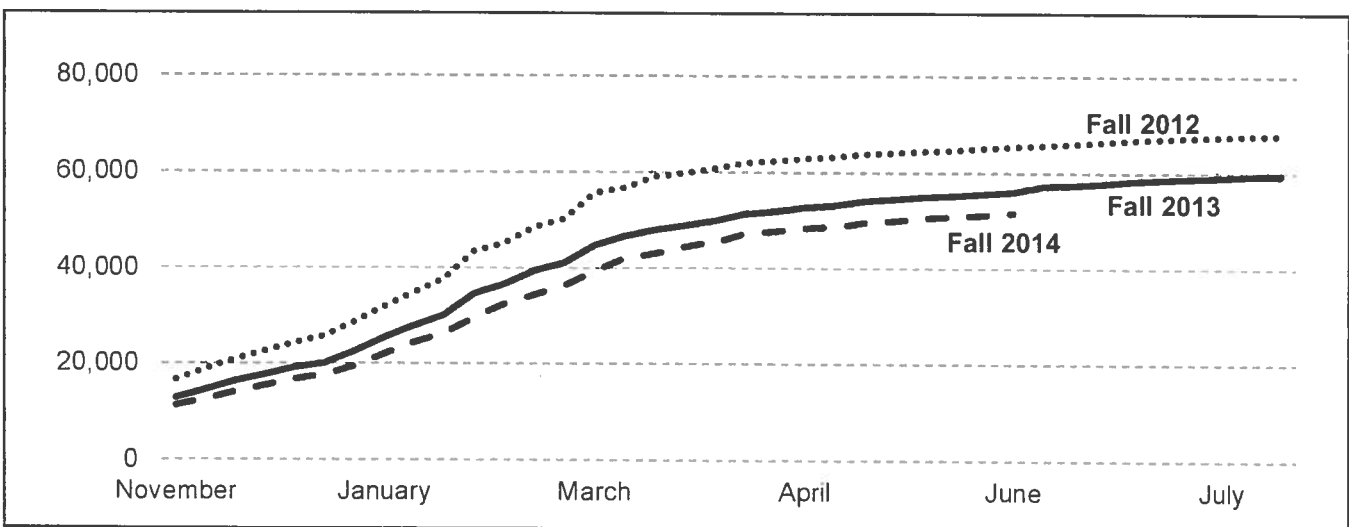


Figure 3: Fall ABA-approved law school applicants by week, 2012–2014 (data as of June 6, 2014)

was, on average, \$24,920.⁴ The average cost of public law school tuition *today* is approximately \$23,000 for residents and more than \$36,000 for nonresidents; private law school tuition averages \$40,000.⁵

During the 1990s, the average amount students borrowed more than doubled, exceeding \$80,000 by 2002. In 2012, the average debt for law graduates at private schools was nearly \$125,000, and the average debt for graduates of public law schools was roughly \$75,700.⁶

Currently, fewer than 15% of J.D. graduates are being hired by large law firms for six-figure salaries right out of law school. The median salary for new lawyers from the class of 2012 was \$61,245 (a slight rise from the previous year).⁷

On the other hand, Michael Simkovic and Frank McIntyre's 2013 study on the economic value of a law degree compared with a bachelor's degree alone found that "[f]or most law school graduates, the net present value of a law degree typically exceeds its cost by hundreds of thousands of dollars." The authors tracked lifetime earnings of a large sample of law degree holders and found that a law degree means an average of \$53,300 more in yearly salary compared with the earnings of those who have only a bachelor's degree; the median salary is 62% higher; and the hourly wage is 51% more. Simkovic and McIntyre estimate the mean pretax lifetime value of a law degree at approximately \$1,000,000.⁸

Two Recent Developments Improve Access to Consumer Information

Law school applicants can't afford *not* to consider the true costs and benefits of obtaining a legal education. Fortunately, recent developments have improved the timely availability of consumer information pertaining to legal education. In August 2012, the ABA revised its Standard 509, which addresses consumer information.⁹ According to the ABA's website,

New Standard 509(d) requires law schools to post their employment outcomes in the form approved by the Section's Council. The new employment outcomes disclosure requirements that call for posting three years of data will be phased in. As of October 5, 2012, all schools were required to have posted their class of 2011 employment outcomes. Going forward, the required date for posting employment data is March 31 of each year for the graduating class of the prior year. For the March 31, 2013, posting, data for the 2012 and 2011 classes are required. Thereafter, schools are required to publish three years of data.¹⁰

With increased transparency came confirmation that some law schools have been creating programs to employ some of their own graduates. Most law schools are not in a position to provide the funds needed for these types of jobs, and they are far from an ideal solution, but they do, in fact, provide meaningful work experience for a small number of graduates. These jobs may make these law schools look better in outcomes comparisons, but they also make the résumés of the graduates look better to potential employers.

Working with LSAC, the ABA took an additional step to ensure the accuracy of consumer information about the credentials of matriculants. In 2012, for the first time, the ABA Section of Legal Education and Admissions to the Bar and LSAC jointly participated in the Law School Data Certification Program. Law schools annually report data about their matriculants to the ABA, which then sends the lists to LSAC for certification of 25th, 50th, and 75th percentile UGPA (undergraduate grade-point average) and LSAT scores. This is an optional program for ABA-approved law schools, but nearly all are participating.

FACTORS AFFECTING EMPLOYMENT PROSPECTS

A Shortage of Jobs, an Oversupply of Lawyers

Changes in the number of law jobs in the United States correlate to changes in the GDP (gross domestic product). Lawyers are involved in mergers and acquisitions, real estate transactions, and labor contracts—in general, many of the areas of the economy that suffered in the recession and have been slow to recover. Globalization, the decline of the middle class, outsourcing, and other current economic realities have all affected the job market for law graduates in recent years, as they have affected many other areas of the economy.

Two additional factors contribute to the oversupply of lawyers, according to Pepperdine University law professor Robert Anderson. First, lawyers may be waiting longer to retire because their retirement funds were decimated by the financial crisis. Second, many millions of Baby Boomer lawyers are still working their way through to retirement.¹¹

According to the Bureau of Labor Statistics, employment of lawyers is expected to increase about 10% between 2012 and 2022.¹² At that rate, the market will be slow to absorb the backlog of law graduates.

Areas of Demand

Although many of the jobs that have disappeared are the highest-paying “Big Law” jobs, there are many underserved populations and areas of the country that would benefit from more lawyers. These are not generally the types of jobs that will allow easy repayment of tens of thousands of dollars of debt, but some do provide opportunities for loan forgiveness, among other incentives.

According to an April 2013 article in the *New York Times*, “Rural Americans are increasingly without lawyers even as law school graduates are

increasingly without jobs.” The article goes on to say that “the American Bar Association called on federal, state, and local governments to stem the decline in rural areas,” and some have passed laws offering subsidies for lawyers who will practice in these areas.¹³ Employment for law graduates in the government has also grown in the last few years.¹⁴

THE GOOD NEWS

As the economy improves, there are signs that the job market may be improving as well. According to NALP:

... analyses of the jobs data for the Class of 2012 reveal that just over half (50.7%) of employed graduates obtained a job in private practice, up from 49.5% for the Class of 2011 and close to the 50.9% figure recorded for the Class of 2010. However, that figure for the Class of 2010 marked a full 5 percentage point decline from 2009. For most of the 39 years for which NALP has collected employment information, the percentage of jobs in law firms has been in the 55–58% range and has been below 50% only once before 2011; that was in 1975. The combination of a larger number of jobs overall and a higher percentage of jobs in law firms means that the number of law firm jobs is up by almost 8%, and is the largest number since 2009.

Additionally, jobs in the largest firms, those with more than 500 lawyers, have rebounded substantially from their low point in 2011, and accounted for 19.1% of jobs taken in law firms, compared with only 16.2% in 2011. The number of jobs taken in these firms—over 3,600—is up by 27% over 2011 levels, representing a recovery almost to 2010 levels but to nowhere near the 2009 figure of more than 5,100 jobs. At the other end of the spectrum, jobs in the smallest firms of 2–10 lawyers, while remaining almost flat as a percentage

of jobs, grew in raw numbers to almost 8,200, from less than 7,600 in 2011.¹⁵

d. ALL OF THE ABOVE

Unfettered growth of the legal profession may be a thing of the past, but there are some who argue that this may be better for legal education and the legal profession in the long run. Those who are considering law school now must do so with their eyes wide open. Law school is no longer a reasonably safe haven in which to ride out economic downturns. Applicants with a strong commitment and strong credentials should at least be able to gain admission to their chosen schools, even if it may take longer to find the right job after graduation. We will all have to stay tuned to see how individual law schools cope with the uncertainties that are facing so many business sectors in the shifting global economy. ■

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Pedigree Still Matters to Prospective Law Students

Karen Sloan, The National Law Journal

July 30, 2014

A [survey](#) of prelaw students found that nearly 40 percent would choose a top-tier law school at full cost rather than a less prestigious institution offering a scholarship.

Although both factors loomed large in the poll of more than 600 prospective law students by test-prep company Kaplan Inc., 39 percent would go for prestige over a midtier law school offering a half-tuition scholarship or a lower-tier school on a full ride.

“Prelaw students see rankings as part of the overall financial equation when investing in a law degree, as it can impact their earnings and career potential,” said Jeff Thomas, executive director of Kaplan’s prelaw programs. “Statistics show that, generally, the higher a school is ranked, the higher a graduate’s starting salary and career opportunities are.”

Students passing up financial aid for a seat in a higher-ranking school, therefore, are making an economic calculation that it will pay off, he said.

The largest contingent of those polled—46 percent—would attend a school ranked in the middle of the pack if scholarships covered half their tuition. Only 16 percent would attend a lower-tier school that offered a full-tuition scholarship.

“We continue to tell prelaw students that rank and cost are but two of several important factors they should consider when deciding where to apply and enroll,” Thomas said. “Applicants should seek out programs that are the best overall fit for their academic, professional, financial and lifestyle goals and needs.”

Contact Karen Sloan at ksloan@alm.com. For more of The National Law Journal's law school coverage, visit: <https://www.facebook.com/NLJLawSchools>

Groundbreaking Rule 1A:8 Recognizes Military Spouse Sacrifices

by Elizabeth Jamison

Ten moves to different states or other countries. Three or more bar exams passed. Annual dues and CLE requirements in multiple jurisdictions. Balancing deployments and the instability of the military lifestyle with parenting and a legal career. These are the common issues discussed on the message boards at the Military Spouse JD Network (MSJDN), an organization seeking to change the laws in all fifty states to accommodate military spouse licensing hurdles. On May 16, the Supreme Court of Virginia did just that when it issued an order adopting Rule 1A:8, which is aimed at easing the burden on military spouse attorneys seeking to practice law while accompanying their service member spouse to military installations in Virginia.

Lawyer and military spouse Elizabeth Boone moved more than ten times to follow her husband, a submariner in the U.S. Navy. She also spent her law school years geographically separated from her husband, and worked hard to become licensed in multiple jurisdictions. Boone clerked for Judge Diane Kroupa at the U.S. Tax Court in Washington, DC, while her husband was stationed in Norfolk, again enduring separation to advance their careers. But over time, the constant moves of the military lifestyle made licensing requirements seem insurmountable. She devoted herself to her family and volunteered as a support and liaison for the families in her husband's command.

Lisa Villacis, a recent law school graduate, worked hard to gain admission to practice in Alabama in 2012. But soon afterward, her husband was relocated to the Pentagon and the family moved to Virginia where all of the time, money, and energy she invested toward a license became irrelevant.

The unemployment rate for military spouses is three times that of their civilian counterparts. High unemployment and underemployment of military spouses impacts the entire family and are

primarily the result of the frequent transfers. Because of the recognized impact on retention and readiness of the force, military spouse licensing and employment are a current priority for the Department of Defense (DOD). Rule 1A:8 supports this goal and allows military families to remain together while both spouses pursue meaningful careers.

Boone, whose husband was recently ordered to Virginia, is thrilled with the passage of the new rule because it allows her job search to include employers in the community where she lives, a luxury that she has rarely enjoyed. Likewise, Villacis is appreciative of Virginia's leadership, saying, "It really shows their support for the challenges facing military spouse attorneys." She hopes other states will follow Virginia's lead by opening doors for military spouse employment.

Rule 1A:8, the "Military Spouse Provisional Admission Rule," grants admission on motion to military spouse attorneys who meet the rule's criteria, including previous admission and practice in another jurisdiction. It allows a military spouse attorney to practice law in Virginia for the duration of the service member spouse's military assignment here, as long as he or she is associated with an attorney licensed in Virginia. Rule 1A:8 went into effect on July 1, 2014.

Virginia is the seventh state to adopt such a licensing rule proposed by the Military Spouse JD Network to recognize the unique challenges faced by military spouses in the practice of law. Other states to pass comparable rules include Idaho, Arizona, Texas, North Carolina, Illinois, and South Dakota. Similar rules are under consideration in Alabama, Alaska, California, Delaware, Florida, Georgia, New Jersey, New York, Ohio, Maryland, South Carolina, and Washington.

While many professions allow employees to provide input concerning job location, military members are under orders to go wherever is in the national interest for the duration of their



Above: Elizabeth Boone and her husband, Commander Michael Boone.
Right: Lisa Villacis and her husband, Major Mark Villacis.



commitment. Although some families decide not to move with the service member, the resulting separations only compound the hardship on families already subject to lengthy separations due to training and overseas deployments. Forty-one percent of MSJDN members have taken two or more bar exams and four out of five members report that their spouse's military service has negatively affected their legal career. Half have lived apart from their spouse in order to maintain a legal career. The DOD has conducted studies indicating there are significant force benefits to keeping families together, which is important for national security.

"We're so proud of this outcome in a pivotal military state like Virginia. The impact of this rule will be profound," said Military Spouse JD Network President Rachel Winkler, who oversees the organization's efforts to propose military spouse licensing accommodations. "Now continuing a legal career while following a service member will be viable for the many military spouses facing moves to over twenty-five military installations in Virginia."

Bar exams are hardly the only challenges that military spouse attorneys face. Constant moves test their job-seeking skills. A patchwork of prior positions and gaps in employment limits their possibilities for firm promotion. Their knowledge that another move is around the corner inhibits long-term client building. Deployments make them temporarily single parents in need of childcare in areas where they have few contacts. Eliminating the need for an additional bar exam will relieve a significant portion of these stresses

for military spouse attorneys in Virginia and expedite their job search efforts, allowing them to contribute to supporting their families.

MSJDN member Samantha Musso and her team worked on the effort to bring the rule to fruition, gathering assistance from the Virginia legal community and ushering the proposed rule through the approval process. Their hard work, along with the support of Virginia attorneys and legal professionals, led to the implementation of the new rule.

Rule 1A:8 demonstrates Virginia's support for military families while still maintaining the high standards required of the legal profession. Accommodating the unique needs of military spouse attorneys comes at little cost but makes a significant difference to military families. While the number of military spouse attorneys in the state may not be large, this new rule sends a message of support to the entire Virginia military community.



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