

**Oregon State Bar**  
**Meeting of the Board of Governors**  
 February 13, 2015  
 Salem Conference Center, Salem, OR  
**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00am on February 13, 2015.  
 Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, February 13, 2015, 9:00am**

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

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

- |    |   |        |         |
|----|---|--------|---------|
| A. | President’s Report [Mr. Spier]                        | Inform | Exhibit |
| B. | President-elect’s Report [Mr. Heysell]                | Inform |         |
| 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 | Handout |
| F. | MBA Liaison Report [Mr. Spier & Mr. Whang]            | Inform |         |
| G. | Oregon New Lawyers Division Report [Ms. Clevering]    | Inform | Exhibit |

**3. Professional Liability Fund [Ms. Bernick]**

- |    |  |        |         |
|----|--|--------|---------|
| A. | November 30, 2014 PLF Financial Statements           | Inform | Exhibit |
| B. | 2014 Claims Attorney and Defense Counsel Evaluations | Inform | Exhibit |

**4. OSB Committees, Sections and Councils**

- |    |   |        |         |
|----|---|--------|---------|
| A. | Client Security Fund Committee [Ms. Stevens]                          |        |         |
| 1) | Request for Review GOFF (Mantell)2013-24                              | Action | Exhibit |
| B. | Workers Compensation Section [Ms. Olney]                              |        |         |
| 1) | Lawyer Referral Service Fee   | Inform | Exhibit |
| C. | Elder Law Section [Ms. Stevens]                                       |        |         |
| 1) | Charitable Contribution: Probate Mediation Training                   | Action | Exhibit |
| D. | Legal Ethics Committee [Ms. Hirschbiel]                               |        |         |
| 1) | Consider Adoption of Proposed Amendments<br>to Formal Ethics Opinions | Action | Exhibit |

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

- |    |   |        |         |
|----|---|--------|---------|
| A. | Board Development Committee [Mr. Whang]                       |        |         |
| 1) | Appointments to Commission on Judicial Fitness and Disability | Action | Exhibit |
| B. | Budget & Finance Committee [Ms. Kohlhoff]                     |        |         |
| 1) | Committee Update  | Inform |         |

- C. Governance & Strategic Planning [Mr. Heysell]
    - 1) Amendments to LRAP Policies and Guidelines Action Exhibit
    - 2) Sections Website Policies Action Exhibit
  - D. Public Affairs Committee [Mr. Prestwich]
    - 1) Legislative Update Inform
  - E. Executive Director Selection Special Committee [Mr. Heysell]
    - 1) Recruitment/Selection Procedures Inform
  - F. Legal Technicians Task Force [Ms. Stevens]
    - 1) Report and Recommendations Action Exhibit
- 6. Other Items**
- A. Appointments to Various Bar Committees and Boards [Ms. Edwards] Action Exhibit
- 7. Consent Agenda**
- A. Approve Minutes of Prior BOG Meetings
    - 1) Regular Session November 15, 2014 Action Exhibit
    - 2) Special Session December 3, 2014 Action Exhibit
    - 3) Special Session December 23, 2014 Action Exhibit
    - 4) Special Session January 9, 2015 Action Exhibit
    - 5) Special Session January 27, 2015 Action Exhibit
- 8. Default Agenda**
- A. CSF Claims Financial Report and Awards Made Exhibit
  - B. President's Letter of Support to President Obama 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

## **PRESIDENT'S REPORT**

**Richard G. Spier**

**Board of Governors Meeting  
Salem, Oregon  
February 13, 2015**

### **Access to Justice/Enhanced Utilization of Unemployed and Underemployed Lawyers**

(Oral report and discussion)

#### **Activities as President-Elect**

Nov. 18, 2014	Meet with Will Glasson, University of Oregon School of Law, Portland
Nov. 26, 2014	Meet with Sylvia Stevens at OSB Center re BOG contact assignments
Dec. 9, 2014	Meet with Dean Jennifer Johnson, Lewis & Clark Law School
Dec. 10, 2014	Innovations Workshop, Portland
Dec. 11, 2014	Meet with Chief Justice, at OSB Center
Dec. 12, 2014	Meet with Board of Bar Examiners at OSB Center

#### **Activities as President**

Jan. 7, 2015	Law firm presentation (Brownstein Rask)
Jan. 7, 2015	Meet with Board of Bar Examiners representatives re legislation, at OSB Center
Jan. 7, 2015	Orientation session for Ramón Pagán at OSB Center
Jan. 7, 2015	MBA Board meeting, Portland

Jan. 9, 2015	Board of Governors and Committees, at Bar Center
Jan. 9, 2015	BOG/MBA Bar leadership reception, Benson Hotel, Portland
Jan. 10, 2015	Oregon New Lawyers Division Retreat and Executive Committee meeting, Silver Falls State Park
Jan. 14, 2015	Meet with Sylvia Stevens at OSB Center re access to justice/unemployed and underemployed lawyers
Jan. 14, 2015	Board of Directors, Campaign for Equal Justice, Portland
Jan. 14, 2015	Speak at retirement event for Doug Bray, Multnomah County Circuit Court Administrator, Portland
Jan. 15, 2015	Law firm presentation (Klarquist)
Jan. 15, 2015	Meet with Supreme Court Justice Martha Walters at OSB Center re access to justice/unemployed and underemployed lawyers
Jan. 19, 2015	MLK Breakfast, at Portland Convention Center
Jan. 29, 2015	Marion County Bar Association Dinner, Salem
Feb. 4, 2015	Uniform Bar Exam study committee
Feb. 4, 2015	Speak at investiture of Judge Meagan Flynn, Oregon Court of Appeals, Salem
Feb. 5 –7, 2015	National Conference of Bar Presidents, at ABA Mid-Year Meeting, Houston, Texas
Feb. 10, 2015	Law firm presentation (Tonkon Torp)
Feb. 11, 2015	Law firm presentation (Lane Powell)
Feb. 12, 2015	Meet with Dean Curtis Bridgeman, Willamette College of Law, Salem
Feb. 12-13, 2015	Appellate judge luncheon, local bar and legislator reception, Board of Governors and Committees, Salem

(Report prepared January 29, 2015, with activities listed as scheduled thereafter.)

**The Bridge to Practice**  
**Leading the Way in Legal Education, Service Delivery, and Technology**

December 10, 2014  
Mark O. Hatfield U.S. Courthouse, 16<sup>th</sup> Floor Courtroom  
Portland, OR

Agenda

- 9am           **Welcome**  
Hon. Ann Aiken, Chief U.S. District Judge, District of Oregon  
Chief Justice Thomas Balmer, Oregon Supreme Court
- 9:30am       **Understanding the disconnections in the Oregon legal market: What the data tell us**  
Hon. Ann Aiken, Chief U.S. District Judge, District of Oregon
- 10:30am      *Break*
- 10:45am      **The economics of the legal profession, legal education, and implications for Oregon: What can the bar do?**  
Dan Katz, Associate Professor of Law & Director, Reinvent Law Laboratory, Michigan State University
- 11:45am      *Lunch served by Por Que No (16<sup>th</sup> floor conference room)*
- 1:00pm       **How can legal stakeholders in Oregon organize to respond to changes in the profession?**  
Paul Lippe, CEO, Legal OnRamp
- 2:00pm       *Break*
- 2:15pm       **Lawyers in Motion: The Power of Process Improvement (2 Examples)**  
Michael Callier and Jay Hall, Davis Wright Law Firm
- 3:15pm       *Break*
- 3:30pm       **Creating a 21st century legal profession ecosystem in Oregon**  
Mark Sherman, Assistant Director for Probation and Pretrial Services Education, Education Division, Federal Judicial Center
- 4:30pm       **Next Steps**
- 5:00pm       *Adjourn*

# OREGON STATE BAR

## Board of Governors Agenda

**Meeting Date:** February 13, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Operations and Activities Report

### OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> <li>▪ <b>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</b></li> </ul>	<p><i>IT</i></p> <ul style="list-style-type: none"> <li>▪ The bar is negotiating the contract with our preferred AMS vendor. Bar staff have worked with Vicki Ballou of Tonkon Torp who has provided valuable expertise and edits to the vendor’s Master License Agreement and related documents. The finalizing of the agreements has been slowed due to schedule conflicts of all parties.</li> </ul> <p><i>Accounting</i></p> <ul style="list-style-type: none"> <li>▪ The deadline for member and section fee payments (without penalty) was Monday February 2. Payments came in more slowly than in prior years, followed by a rush in the ten days prior to February 2. It also appears more members are making payments online with a credit card.</li> <li>▪ As of mid-January, it appeared that more members are resigning than in previous years. More data will be available shortly on this. As indicated previously, the net gain of active members in the Oregon State Bar in 2014 was only 63 – the lowest number of net active members since 1981.</li> <li>▪ The final 2014 financial report will come to the board about mid-February. The bar keeps open its year-end records until the end of January so all appropriate revenue and expenses can be accrued.</li> </ul> <p><i>Facilities</i></p> <ul style="list-style-type: none"> <li>▪ The bar submitted an application for a “Custom Energy Assessment Request” with the Energy Trust of Oregon. The application will provide an assessment on the possibility and reasonableness of solar panels on the bar building, and initially provide an assessment of current energy usage.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</b></li> </ul>	<p><i>Communications</i></p> <ul style="list-style-type: none"> <li>▪ The December <i>Bulletin</i> featured an article on indigenous rights, and the January cover story presented Rich Spier as the 2015 OSB President.</li> <li>▪ The BOG Update and Bar News e-newsletters continue to be well-received.</li> <li>▪ Staff coordinated outreach for reporting of demographic data from the membership along with the communications on annual regulatory compliance items.</li> </ul> <p><i>Creative Services</i></p> <ul style="list-style-type: none"> <li>▪ Staff continued working with CLE seminars on increased outreach, with new website and Bulletin ads as well as a new discount package offer.</li> </ul>

	<ul style="list-style-type: none"><li>▪ Staff worked with Referral &amp; Information Services to pilot new ad campaigns on Craig’s List and through Google Ad Words.</li><li>▪ Video production is on the increase, with the return of Legal Links and introduction of a series of short video clips to promote the public web pages.</li></ul> <p><i>Events</i></p> <ul style="list-style-type: none"><li>▪ The 2014 Awards Luncheon was a smashing success, with higher than average attendance.</li><li>▪ Planning is underway for the annual 50-year member Luncheon, to be held March 20 at the Tualatin Country Club.</li></ul> <p><i>Referral &amp; Information Services (RIS)</i></p> <ul style="list-style-type: none"><li>▪ RIS received 70,582 calls in 2014 and made 41,835 referrals.</li><li>▪ LRS concluded the 2014 calendar year earning \$526,690 in percentage fee revenue and \$123,403 in registration revenue, for a total of \$650,093. This revenue far exceeded budget projections, resulting in net revenue for the first time in the program’s history and its best financial year <i>ever</i>. Total revenue since percentage fee implementation is \$1,223,929, which represents \$7,997,008 in business generated for LRS panelists.</li><li>▪ RIS continues to monitor a one-year pilot program for several new Modest Means Program panels. At the end of the program year (September 1) RIS will report results to the BOG.</li><li>▪ In December RIS staff launched two Google Ad Words marketing campaigns. The first campaign, “OSB Website,” focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, “RIS,” focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. These campaigns have resulted in a combined 1,211 clicks and 372,724 impressions as of January 15, 2015. This year RIS staff will likely expand the “RIS” campaign into additional areas of law after further analysis of the campaigns’ effectiveness.</li><li>▪ Staff recruitment and training has been successful for RIS. All open positions have been filled. New RIS Manager Eric McClendon has been in place for ten months.</li></ul>
<ul style="list-style-type: none"><li>▪ <b>CLE Seminars (Karen Lee)</b></li></ul>	<ul style="list-style-type: none"><li>▪ November 30 was the end of the bar’s CLE subscription plan, the CLEasy Pass, former known as the Season Ticket. A new discount plan (offered on a trial basis through the end of the year) offers a 20% discount on all department sponsored and cosponsored seminars and CLE products for one year.</li><li>▪ Held a “pop up” webcast replay for a child abuse reporting seminar on November 25 . Marketed the program approximately one week in advance and offered an early registration discount. Had 90 members register.</li><li>▪ After the passage of Measure 91 (legalizing recreational marijuana) the department sponsored a half-day live seminar and webcast on December 19. It was an unusually quick planning and production process (three weeks). There were 87 at the the live seminar and 77 on the live webcast. The main speakers plan to work with OSB CLE Seminars to provide legislative and OLCC updates in 2015.</li></ul>

	<ul style="list-style-type: none"> <li>▪ The department is sponsoring a live seminar and webcast about the new elder abuse reporting requirement on Tuesday, January 27. This is another “pop up” seminar with a very short marketing timeline (a little more than a week before the seminar date) and an early registration discount. As of mid-afternoon on January 26, there were 32 registered for the live seminar and 128 for the webcast.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Diversity &amp; Inclusion (Mariann Hyland)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Launched new LSAT Scholarship Program for six scholarship recipients.</li> <li>▪ Rolled out new Fellowship Programs – Rural Opportunity Fellowship and Access to Justice Fellowship.</li> <li>▪ We are working to generate interest of rural public employers to be included in the student catalog for consideration by the student Rural Opportunity Fellow.</li> <li>▪ Awarded three Bar Exam Grants for the February 2015 bar exam cycle.</li> <li>▪ Held OLIO Employment Retreat at the OSB Center on January 24. Participants included 59 law students, 30 attorney volunteers, 3 judge volunteers, 23 employers, and 5 specialty bars. Our largest Employment Retreat to date.</li> <li>▪ Received positive press and PR regarding the Diversity Story Wall:</li> </ul> <p><u>The Oregonian</u>                  Story Wall - <a href="http://www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_leaders_debut.html">http://www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_leaders_debut.html</a></p> <p>Racial Bias Report - <a href="http://www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_diversity_rac.html#incart_river">http://www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_diversity_rac.html#incart_river</a></p> <p>Pioneers - <a href="http://www.oregonlive.com/portland/index.ssf/2015/01/pioneers_of_diversity_in_orego.html#0">http://www.oregonlive.com/portland/index.ssf/2015/01/pioneers_of_diversity_in_orego.html#0</a></p> <p><u>The Skanner</u>                  Story Wall - <a href="http://www.theskanner.com/news/northwest/22120-oregon-bar-celebrates-progress-in-diversity">http://www.theskanner.com/news/northwest/22120-oregon-bar-celebrates-progress-in-diversity</a></p> <p><u>PQ Monthly</u>                  Story Wall - <a href="http://www.pqmonthly.com/oregon-state-bar-unveils-diversity-inclusion-story-wall/21088">http://www.pqmonthly.com/oregon-state-bar-unveils-diversity-inclusion-story-wall/21088</a></p> <p>In addition, we created a video of the Story Wall Unveiling Ceremony, which you can view here: <a href="https://www.youtube.com/watch?v=97hoq0lic5w">https://www.youtube.com/watch?v=97hoq0lic5w</a></p>
<ul style="list-style-type: none"> <li>▪ <b>General Counsel (includes CAO and MCLE) (Helen Hierschbiel)</b></li> </ul>	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> <li>▪ CLE season continued through the end of 2014. General Counsel and Deputy General Counsel gave eleven CLE presentations since the November 2014 BOG meeting.</li> <li>▪ Deputy General Counsel provided the second of three planned ADA trainings for staff, in accordance with the Bar Accessibility Review Team’s goals.</li> <li>▪ We finalized General Counsel’s Office program evaluation for 2014 and developed program measures for 2015.</li> </ul>



	<ul style="list-style-type: none"> <li>▪ We have been working with the IT Department, CFO, and outside counsel on a contract for new association management software.</li> </ul> <p><i>MCLE</i></p> <ul style="list-style-type: none"> <li>▪ The MCLE Committee will meet on Friday, March 20, at noon. In 2015, the Committee will continue its discussion of 1) granting CLE credit for pro bono activities and 2) a sponsor accreditation fee policy that applies more equitably to all applicants.</li> <li>▪ In 2014, the MCLE Department processed 8,544 accreditation applications, including 1,195 applications for other types of CLE activities (teaching, legal research, etc.). So far in 2015, we have processed 791 accreditation applications, including 116 requests for other types of CLE activities.</li> <li>▪ Compliance reports were sent to 5,037 members on October 15. As of January 29, there were 969 members who had not yet submitted their compliance reports that were due February 2.</li> </ul> <p><i>CAO</i></p> <ul style="list-style-type: none"> <li>▪ CAO attorneys presented at Ethics School and the PLF’s New Admittee’s CLE.</li> <li>▪ The CAO manager met with DHS field supervisors re: common lawyer issues.</li> <li>▪ CAO attorneys met with PLF staff to exchange information and ideas for collaborating.</li> <li>▪ The CAO manager co-presented with Dawn Evans about the OSB disciplinary system to Oregon Public Defense Services lawyers.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Human Resources (Christine Kennedy)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Hired two part-time Referral and Information Services Assistant replacements -one of the previous employees was promoted and the other returned to school.</li> <li>▪ Hired a Discipline Legal Secretary replacement – the previous employee was promoted.</li> <li>▪ Hired a part-time Accounting Specialist-A/P – the previous employee left to return to school.</li> <li>▪ Hired a limited duration Legal Opportunities Coordinator.</li> <li>▪ Working with the Multnomah Bar Association on next year’s health insurance.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Publications (Linda Kruschke)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since my last report:                         <ul style="list-style-type: none"> <li>✓ Fifteen new or revised <i>Uniform Criminal Jury Instructions</i>, plus the 2014 supplement PDF.</li> <li>✓ Forty-nine new, reviewed, or revised <i>Uniform Civil Jury Instructions</i>, plus the 2014 supplement PDF.</li> <li>✓ Ten more chapters of <i>Oregon Real Estate Deskbook</i>.</li> </ul> </li> <li>▪ The <i>Oregon Attorney Fee Codebook</i> and <i>Oregon Attorney Fee Compilation</i> were printed at the very end of December and twenty-five copies were shipped the last week in December. Total revenue to date is \$7,936.</li> <li>▪ <i>Uniform Civil and Criminal Jury Instructions</i> are ready to go to the printer. We have been taking pre-orders since early December.</li> </ul>

	<ul style="list-style-type: none"> <li>✓ <i>Civil</i>: YTD revenue=\$23,146; 2015 budget=\$39,450</li> <li>✓ <i>Criminal</i>: YTD revenue=\$8,506; 2015 budget=\$18,750</li> <li>▪ Under our Lexis licensing agreement, we earned royalties of over \$800 for October and November, which was significantly more than the prior two quarters with December still to be reported. We still have not received our first royalty check under our Westlaw licensing agreement.</li> <li>▪ Three members of the staff attended the ACLEA mid-year meeting in San Diego at the end of January.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Services Program (Judith Baker) (includes LRAP, Pro Bono and an OLF report)</b></li> </ul>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> <li>▪ Staff is preparing for the statewide assessment of the legal aid providers. The assessment is conducted in 2015 for services provided in 2014.</li> <li>▪ Staff is working with the Public Affairs Department on the bar’s legislative agenda to fund legal aid. This includes providing information and attending editorial board meetings.</li> <li>▪ There is a hearing scheduled for February 13 to determine if the bar can take custody of the Ben Franklin Litigation Fund with those funds going to the Legal Services Program to fund legal aid.</li> <li>▪ The Pro Bono Committee is exploring the idea of developing a Pro Bono Section.</li> <li>▪ The LRAP received an increase in revenue and is preparing an outreach campaign to reach potential loan recipients.</li> </ul> <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> <li>▪ The OLF continues to work with banks to achieve the highest possible interest rate on IOTLA accounts. The OLF is also strategizing how best to partner with credit unions now that they have the insurance structure to hold IOLTA accounts.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Media Relations (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ We have been focused on media outreach in support of <i>Cy Pres</i>. We’ve had editorial board visits with the Oregonian, Statesman Journal, Register Guard and Bend Bulletin. Travis and Judith have joined me for most, and we’ve had local bar member participation in Eugene and Bend. The visits have gone very well, and we’ve left with some confidence of editorial support for <i>Cy Pres</i> in most settings, with the possible exception of the Oregonian. The Bend Bulletin has already endorsed <i>Cy Pres</i>, although with the caveat that it should not apply to cases already pending in the system. The Bend Bulletin also followed up with a second editorial two days later commending the OLF and the banking industry for their Leadership Banks partnership, which we have also been pushing on the visits.</li> <li>▪ Mariann and her staff continue to get great mileage out of the Oregonian coverage of the issue of diversity in the bar. Their follow-through in capitalizing on that coverage has been excellent.</li> <li>▪ Several media outlets have requested the ABA discipline report. Thus far, there has been no coverage. The Oregonian, in particular, commented that it didn’t seem to point out anything glaring and will wait to see any substantive changes that may come out of the process.</li> <li>▪ We continue to manage media coverage of about 8 to 10 active discipline</li> </ul>

	cases.
<ul style="list-style-type: none"> <li>▪ <b>Member Services (Dani Edwards)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Recruiting for the OSB and ABA House of Delegates election is underway; the deadline for candidates to file is March 20. More than 50 OSB HOD seats are open for election this year with vacancies in each bar region. Candidate forms and more information is available at <a href="https://www.osbar.org/leadership/hod">https://www.osbar.org/leadership/hod</a>.</li> <li>▪ More than 300 members began new terms volunteering on one of the OSB’s 19 committees and 42 section executive committees. The online leadership resource materials were distributed to all incoming officers and web conference trainings were held for new section treasurers.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>New Lawyer Mentoring (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ We’ve completed another cycle of the program, with many New Lawyers completing their program before a 12/31/14 deadline. We do have several still outstanding but hope to solve their compliance issues prior to any suspensions.</li> <li>▪ One concern has been the time it takes to match new lawyers once they are enrolled. Cathy Petrecca’s addition to the staff, with a dedicated role in addressing that problem, has made a significant impact in our match time. This should help get new lawyers connected quickly with their mentors. However, we do continue to need more mentors to enroll. Currently we have a particular need for business law practitioners in the Portland Metro area.</li> <li>▪ CLE coming up in late Spring. Stay tuned for details.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Public Affairs (Susan Grabe)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Report will be presented at BOG meeting.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Regulatory Services (Dawn Evans)</b></li> </ul>	<p><i>Admissions</i></p> <ul style="list-style-type: none"> <li>▪ 288 applications have been received for the February 2015 bar examination, the largest pool of applicants for a February examination since 2011; it is anticipated that approximately 250 will take the exam on February 24-25.</li> </ul> <p><i>Discipline</i></p> <ul style="list-style-type: none"> <li>▪ 2014 showed a slight decrease in the number of complaints filed (336) compared to 2013 (341), involving slightly more (352) lawyers than 2013 (349).</li> <li>▪ As of January 1, 36% of the matters in investigation are less than three months old, 25% are six months old, and 39% are more than six months old. The staff continues to focus on disposing of the oldest cases in investigation and on filing formal charges on those matters approved by the SPRB. The lawyers have been working in 2-person teams for several months, with one lawyer focused on investigation and the other on trial work, as a way of working more efficiently and collaboratively.</li> <li>▪ A two-hour training session for the four new SPRB members was held on Friday, January 16 to educate them about the attorney discipline system, provide specific information about the SPRB’s role, and introduce them to the types of materials they would receive. BOG liaison John Mansfield also attended.</li> </ul>

Date	Event
11/18	Meet with Rich Spier & Will Glasson (UofO Career Center)
11/19	ED’s Breakfast
11/24	Discipline System Review Committee Initial Meeting
11/26	CEJ Board
12/2	Lewis & Clark Legal Clinic Reception
12/3	BOG Conference Call
12/4	OSB Awards Luncheon
12/5	PLF Annual Dinner
12/8-1/1	Vacation!!!
1/7	Breakfast @ Brownstein Rask
1/9	BOG Committee Meeting & Employee Appreciation Lunch
1/9	BOG/MBA Leadership Social
1/10	CSF Meeting
1/12-13	Jury Duty Multnomah County
1/14	CEJ Board
1/14	Doug Bray Retirement Reception
1/15	Lunch @ Klarquist Sparkman
1/19	The Skanner MLK Breakfast
1/21	ED’s Breakfast
1/23	OGALLA/NLG Happy Hour
1/26	Discipline System Review Committee Meeting
1/27	BOG Conference Call
1/29	Markewitz Herbold Open House
2/3-5	National Association of Bar Executives-Houston
2/4	NOBC President’s Award Presentation to Dawn Evans
2/6-7	National Conference of Bar Presidents-Houston
2/10	Lunch@Tonkon Torp
2/11	Lunch@Lane Powell
2/12	Lunch w/Supreme Court & Court of Appeals
2/12	BOG Committees & Legislative Reception
2/13	BOG Meeting - Salem

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**Memo Date:** January 27, 2015  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

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

- Issued an order in *In re Eric Einhorn*, accepting this Hood River lawyer's stipulation to a 1-year suspension; and
- Issued an order transferring Ontario lawyer *Susan R. Gerber* to involuntary inactive status pursuant to BR 3.2; and
- Issued two orders in *In re Matthew R. Aylworth*, accepting this Eugene lawyer's stipulations to two reprimands; and
- Issued an order in *In re Steven M. Cyr*, suspending this Beaverton lawyer following his conviction of willfully making and subscribing a false tax return; and
- Accepted the Form B resignation from DeLand, Florida, lawyer *Steven M. McCarthy*; and
- Accepted the Form B resignation from Salem lawyer *Debbe J. von Blumenstein*; and
- Issued an order immediately suspending Portland lawyer *Jeffrey Dickey* during the pendency of disciplinary proceedings.

#### b. Disciplinary Board

Disciplinary Board trial panels have not issued any opinions since the BOG last met in November 2014.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulations for discipline in: *In re Donald R. Slayton* of Eugene (120-day suspension, all stayed, 2-year probation), *In re Jeffrey G. Robertson* of Portland (120-day suspension), *In re James L. McGehee*

of Stayton (reprimand), *In re Melissa N. Kenney* of Tigard (30-day suspension), *In re Sara Lynn Allen* of Lake Oswego (6-month suspension, all stayed, 3-year probation), *In re John J. Kolego* of Eugene (90-day suspension), *In re Foster A. Glass* of Bend (30-day suspension), *In re Daniel H. Koenig* of Creswell (reprimand), *In re Scott P. Bowman* of Gladstone (180-day suspension, all but 30 days stayed, 2-year probation), and *In re Robert Rosenthal* of Lake Oswego (reprimand).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Larry Wright* of Keizer and *In re J. Andrew Keeler* of Lake Oswego.

## **2. Decisions Pending.**

The following matters are pending before the Supreme Court:

*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; under advisement

*In re James C. Jagger* –90-day suspension; accused appealed; oral argument  
January 13, 2015

*In re Robert Rosenthal* – BR 3.4 petition pending

*In re Neil T. Jorgenson* – reciprocal discipline matter pending

*In re Clifford I. Levenson* – reciprocal discipline matter pending

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

*In re Robert H. Sheasby* – January 16, 2015 (sanctions memo filed)

*In re Joseph Raymond Sanchez* – January 22, 2015

## **3. Trials.**

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

*In re Rick Sanai* – February 2-4, 2015

*In re Susan E. Snell* – March 13 and 20, 2015

*In re Steven M. Cyr* – May 4-7, 2015

**4. Diversions.**

The SPRB approved the following diversion agreements since September 2014:

*In re Thomas A. Hill* – effective December 1, 2014

**5. Admonitions.**

The SPRB issued 11 letters of admonition in October, November, December, and January. The outcome in these matters is as follows:

- 5 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 6 lawyers have time in which to accept or reject their admonitions.

**6. New Matters.**

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

<b>MONTH</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
January	29/29	19/20	46/49	21/21	29/31
February	24/25	35/36	27/27	23/23	24/25
March	26/26	21/25	38/39	30/30	41/45
April	30/30	40/42	35/38	42/43	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	19/21
September	33/36	29/29	22/22	26/27	24/24
October	27/33	22/23	23/23	26/26	25/25
November	21/21	27/27	18/18	25/26	19/19
December	24/24	39/40	26/26	19/19	21/23
<b>TOTALS</b>	<b>409/428</b>	<b>444/459</b>	<b>350/359</b>	<b>341/349</b>	<b>336/352</b>

\* = includes IOLTA compliance matters

As of January 1, 2015, there were 154 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 36% are less than three months old, 25% are three to six months old, and 39% are more than six months old. Twenty of these matters were on the

SPRB agenda in January. Staff continues its focus on disposing of oldest cases, with keeping abreast of new matters. The lawyers have recently been organized into two-person teams of intake lawyer and trial lawyer, in an effort to enhance decision-making in each case in recommending outcomes to the SPRB.

**7. Reinstatements.**

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

**8. SPRB New Member Orientation.**

Four new members of the SPRB began service in January – attorneys Richard A. Weill (Troutdale), Elaine D. Smith-Koop (Salem), and Ankur Hasmukh Doshi (Portland), and public member Dr. Randall Green (Salem). On Friday, January 16, 2015, Chair Whitney Boise led a two-hour training that included presentations by Boise and staff members Dawn Evans, Amber Bevacqua-Lynott, and Lynn Haynes. BOG liaison John Mansfield also attended. The goal was to educate about Oregon’s attorney discipline process, provide specific information about the role of the SPRB, and introduce the members to the format and content of materials they would encounter.

**9. Staff Outreach.**

Mary Cooper and Martha Hicks will coach the Lake Oswego mock trial team as it participates in regional competition on February 28.

Dawn Evans and Amber Bevacqua-Lynott will give a presentation at the Deschutes County Bar Association in Bend on Tuesday, February 17th.

DME/rh



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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**Memo Date:** January 29, 2015  
**From:** Karen Clevering, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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To begin the year the ONLD Executive Committee met in Silver Falls for our annual retreat and January Executive Committee meeting. In addition to the ongoing ONLD events, this year we plan to expand our outreach by including local bar leaders, law school student leaders, and OLIO participants to socials and CLE programs as we meet around the state. Two new liaisons were selected during the retreat, Mae Lee Browning (Portland) will serve as the ACDI Committee liaison and Jennifer Nicholls (Medford) will serve as the LRAP Committee liaison.

Also new this year, during each meeting the executive committee will discuss a current issue or trend effecting the legal profession. The focus in January was how to show law students the job opportunities in rural areas. From this discussion, our Law School Outreach Subcommittee plans to facilitate a panel presentation at each law school with rural area practitioners to describe the benefits of practicing in smaller cities. We are also exploring avenues to make rural area contract work opportunities more accessible to those in the metro area.

Practical Skills through Public Service program continues to accept resumes of new lawyers looking for volunteer opportunities to gain practical work experience. This year's subcommittee chair, Ralph Gzik, is focusing on expanded the participating organizations which will allow more new lawyers to be placed through the program each year.

We look forward to our February meeting in Salem which will be held in conjunction with a social for law students and local practitioners and feature BINGO game for attendees to get to know one another. Thank you to local BOG members, Vanessa and Travis who plan to join us at the event.

Thank you also to Josh, the ONLD's 2015 BOG liaison, and Rich for participating in our retreat last month.

## 2015 ONLD Master Calendar

Last updated January 22, 2015

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Location</b>
February 5-8	All Day	ABA Midyear Meeting	Houston, TX
February 12-13	9:00 a.m.	BOG Board Meeting	OSB, Tigard
February 20	All Day	Litigation Practical Skills CLE Program	OSB, Tigard
February 24-25	All Day	Bar Exam	Holiday Inn, Portland
<b>February 27</b>	<b>TBD</b>	<b>Social</b>	<b>The Ram, Salem</b>
<b>February 28</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Salem Conference Center, Salem</b>
March 20	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>March 20</b>	<b>TBD</b>	<b>Dinner with the BOG &amp; Exec Meeting</b>	<b>OSB, Tigard</b>
<b>April 17</b>	<b>TBD</b>	<b>CLE program &amp; Social</b>	<b>TBD, Eugene</b>
<b>April 18</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Gleaves Swearingen et al., Eugene</b>
April 24	9:00 a.m.	BOG Board Meeting	OSB, Tigard
May 15	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
May 14-16	All Day	ABA Spring Meeting	Tampa Bay, FL
<b>June 12</b>	<b>TBD</b>	<b>CLE program &amp; Social</b>	<b>TBD, Bend</b>
<b>June 13</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>TBD, Bend</b>
June 25-27	9:00 a.m.	BOG Board Meeting	Ashland Hills, Ashland
July 24	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
July 28-29	All Day	Bar Exam	Red Lion, Portland
July 30-Aug. 2	All Day	ABA Annual Meeting	Chicago, IL
<b>August 15</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
September 11	9:00 a.m.	BOG Board Meeting	OSB, Tigard
<b>September 18</b>	<b>TBD</b>	<b>CLE program &amp; Social</b>	<b>TBD, Newport</b>
<b>September 19</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>TBD, Newport</b>
October 9	9:00 a.m.	BOG Committee Meetings	OSB, Tigard
<b>October 10</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>OSB, Tigard</b>
October 15-17	All Day	ABA Fall Meeting	Little Rock, AR
*October 29	2:00 p.m.	Pro Bono CLEs and Fair	WTC, Portland
November 6	10:00 a.m.	HOD Annual Meeting	OSB, Tigard
<b>November 13</b>	<b>5:30 p.m.</b>	<b>Annual Meeting</b>	<b>Hotel Monaco, Portland</b>
November 19-20	9:00 a.m.	BOG Board Meeting/Retreat	SurfSand, Cannon Beach

\* indicates an update since the last version

**Bold** indicates required attendance

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
11/30/2014**

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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  
11/30/2014**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$1,404,335.90	\$729,891.95
Investments at Fair Value	48,246,606.68	41,828,998.80
Assessment Installment Receivable	7,463.00	(1.00)
Due from Reinsurers	46,774.68	474,190.24
Other Current Assets	193,831.67	117,950.87
Net Fixed Assets	852,359.73	869,807.47
Claim Receivables	73,208.17	36,464.00
Other Long Term Assets	<u>7,250.00</u>	<u>10,142.22</u>
<b>TOTAL ASSETS</b>	<b><u>\$50,831,829.83</u></b>	<b><u>\$44,067,444.55</u></b>

**LIABILITIES AND FUND POSITION**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$154,391.08	\$138,100.60
Due to Reinsurers	\$23,389.63	\$10,706.07
Deposits - Assessments	915,762.00	648,719.00
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	14,151,680.63	13,268,984.18
Liability for Claim Expense	15,762,825.26	13,727,984.22
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	67,524.71	62,056.86
Assessment and Installment Service Charge Allocated for Rest of Year	<u>1,834,851.97</u>	<u>2,117,836.65</u>
<b>Total Liabilities</b>	<b><u>\$39,481,243.27</u></b>	<b><u>\$36,920,008.09</u></b>
<b>Change in Net Position:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$9,270,287.61	\$4,047,255.11
Year to Date Net Income (Loss)	<u>2,080,298.95</u>	<u>3,100,181.35</u>
<b>Net Position</b>	<b><u>\$11,350,586.56</u></b>	<b><u>\$7,147,436.46</u></b>
<b>TOTAL LIABILITIES AND FUND POSITION</b>	<b><u>\$50,831,829.83</u></b>	<b><u>\$44,067,444.55</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
11 Months Ended 11/30/2014**

	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>
<b><u>REVENUE</u></b>					
Assessments	\$22,855,433.03	\$23,029,416.63	\$173,983.60	\$22,938,027.52	\$25,123,000.00
Installment Service Charge	305,990.67	357,500.00	51,509.33	358,505.58	390,000.00
Other Income	52,734.83	0.00	(52,734.83)	47,448.28	0.00
Investment Return	<u>2,748,808.29</u>	<u>2,467,908.63</u>	<u>(280,899.66)</u>	<u>3,889,667.79</u>	<u>2,692,264.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$25,962,966.82</u></b>	<b><u>\$25,854,825.26</u></b>	<b><u>(\$108,141.56)</u></b>	<b><u>\$27,233,649.17</u></b>	<b><u>\$28,205,264.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$17,724,000.00			\$17,249,500.00	
Actuarial Adjustment to Reserves	71,374.66			664,997.05	
Coverage Opinions	54,388.74			131,159.21	
General Expense	43,911.89			81,692.09	
Less Recoveries & Contributions	(19,533.60)			16,962.32	
Budget for Claims Expense		<u>\$18,949,920.00</u>			<u>\$20,672,640.00</u>
<b>Total Provision For Claims</b>	<b><u>\$17,874,141.69</u></b>	<b><u>\$18,949,920.00</u></b>	<b><u>\$1,075,778.31</u></b>	<b><u>\$18,144,310.67</u></b>	<b><u>\$20,672,640.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$2,258,949.61	\$2,275,507.85	\$16,558.24	\$2,038,718.62	\$2,482,372.00
Accounting Department	544,583.58	584,523.39	39,939.81	745,623.36	637,662.00
Loss Prevention Department	1,736,518.79	1,907,605.37	171,086.58	1,664,918.38	2,081,023.00
Claims Department	2,215,549.16	2,442,428.67	226,879.51	2,329,166.95	2,664,467.00
Allocated to Excess Program	<u>(1,027,389.88)</u>	<u>(1,027,389.88)</u>	<u>0.00</u>	<u>(1,013,012.00)</u>	<u>(1,120,789.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$5,728,211.26</u></b>	<b><u>\$6,182,675.40</u></b>	<b><u>\$454,464.14</u></b>	<b><u>\$5,765,415.31</u></b>	<b><u>\$6,744,735.00</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$288,475.88	\$288,475.88	\$0.00	\$314,701.00
Depreciation and Amortization	\$151,103.18	\$155,650.00	\$4,546.82	\$152,808.94	\$169,800.00
Allocated Depreciation	<u>(22,335.50)</u>	<u>(22,335.50)</u>	<u>0.00</u>	<u>(27,551.37)</u>	<u>(24,366.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$23,731,120.63</u></b>	<b><u>\$25,554,385.78</u></b>	<b><u>\$1,823,265.15</u></b>	<b><u>\$24,034,983.55</u></b>	<b><u>\$27,877,510.00</u></b>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$2,231,846.19</u></b>	<b><u>\$298,606.11</u></b>	<b><u>(\$1,933,240.08)</u></b>	<b><u>\$3,198,665.62</u></b>	<b><u>\$325,754.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
11 Months Ended 11/30/2014**

<b>EXPENSE:</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE ACTUAL</b>	<b>YEAR TO DATE BUDGET</b>	<b>VARIANCE</b>	<b>YEAR TO DATE LAST YEAR</b>	<b>ANNUAL BUDGET</b>
Salaries	\$324,155.15	\$3,658,749.31	\$3,972,274.13	\$313,524.82	\$3,809,328.24	\$4,333,390.00
Benefits and Payroll Taxes	116,339.72	1,357,359.39	1,479,065.72	121,706.33	1,344,144.57	1,613,526.00
Investment Services	0.00	20,978.25	25,666.63	4,688.38	20,898.75	28,000.00
Legal Services	0.00	8,177.10	11,916.63	3,739.53	11,434.00	13,000.00
Financial Audit Services	0.00	22,800.00	21,816.63	(983.37)	22,600.00	23,800.00
Actuarial Services	0.00	24,208.75	20,166.63	(4,042.12)	19,731.25	22,000.00
Information Services	11,414.85	78,111.64	89,466.74	11,355.10	133,848.79	97,600.00
Document Scanning Services	11,026.56	43,437.49	59,583.37	16,145.88	43,880.68	65,000.00
Other Professional Services	13,857.93	101,827.33	64,377.50	(37,449.83)	52,294.11	70,230.00
Staff Travel	3,277.60	19,879.37	13,795.87	(6,083.50)	15,429.06	15,050.00
Board Travel	3,885.93	29,870.62	35,749.89	5,879.27	25,316.61	39,000.00
NABRICO	0.00	7,680.21	9,716.63	2,036.42	10,958.51	10,600.00
Training	1,499.55	21,312.87	20,166.63	(1,146.24)	18,603.80	22,000.00
Rent	42,777.25	469,601.49	486,639.12	17,037.63	478,992.43	530,879.00
Printing and Supplies	9,581.67	72,510.52	55,916.74	(16,593.78)	51,511.30	61,000.00
Postage and Delivery	7,062.77	25,264.28	31,854.24	6,589.96	26,757.90	34,750.00
Equipment Rent & Maintenance	3,156.00	44,588.35	37,125.00	(7,463.35)	39,433.32	40,500.00
Telephone	4,115.09	44,036.60	53,130.00	9,093.40	43,794.68	57,960.00
L P Programs (less Salary & Benefits)	91,134.49	395,286.15	407,728.75	12,442.60	317,528.46	444,794.00
Defense Panel Training	339.77	1,915.35	1,375.11	(540.24)	9,969.91	1,500.00
Bar Books Grant	16,666.67	183,333.37	183,333.37	0.00	183,333.37	200,000.00
Insurance	3,157.50	35,186.99	35,882.88	695.89	38,878.00	39,145.00
Library	2,543.40	28,435.29	30,250.00	1,814.71	27,210.49	33,000.00
Subscriptions, Memberships & Other	5,367.09	49,655.37	41,066.63	(8,588.74)	32,549.08	44,800.00
Allocated to Excess Program	<u>(93,399.08)</u>	<u>(1,027,389.88)</u>	<u>(1,027,389.88)</u>	<u>0.00</u>	<u>(1,013,012.00)</u>	<u>(1,120,789.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$577,959.91</u></b>	<b><u>\$5,716,816.21</u></b>	<b><u>\$6,160,674.96</u></b>	<b><u>\$443,858.75</u></b>	<b><u>\$5,765,415.31</u></b>	<b><u>\$6,720,735.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
11 Months Ended 11/30/2014**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$742,771.76	\$696,666.63	(\$46,105.13)	\$682,625.51	\$760,000.00
Prior Year Adj. (Net of Reins.)	3,446.70	1,375.00	(2,071.70)	3,371.55	1,500.00
Installment Service Charge	39,808.00	38,500.00	(1,308.00)	41,433.00	42,000.00
Investment Return	<u>231,819.36</u>	<u>185,756.12</u>	<u>(46,063.24)</u>	<u>313,501.31</u>	<u>202,643.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$1,017,845.82</u></b>	<b><u>\$922,297.75</u></b>	<b><u>(\$95,548.07)</u></b>	<b><u>\$1,040,931.37</u></b>	<b><u>\$1,006,143.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$1,147,057.56	\$1,144,642.62	(\$2,414.94)	\$1,111,864.27	\$1,248,701.00
Allocated Depreciation	<u>\$22,335.50</u>	<u>\$22,335.50</u>	<u>\$0.00</u>	<u>\$27,551.37</u>	<u>\$24,366.00</u>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>(\$151,547.24)</u></b>	<b><u>(\$244,680.37)</u></b>	<b><u>(\$93,133.13)</u></b>	<b><u>(\$98,484.27)</u></b>	<b><u>(\$266,924.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
11 Months Ended 11/30/2014**

	<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>
<b><u>EXPENSE:</u></b>						
Salaries	\$57,700.64	\$637,109.75	\$640,101.88	\$2,992.13	\$616,236.44	\$698,293.00
Benefits and Payroll Taxes	21,514.04	236,841.79	235,585.24	(1,256.55)	230,064.99	257,002.00
Investment Services	0.00	1,521.75	2,291.63	769.88	1,601.25	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,533.84	247,872.24	247,872.13	(0.11)	255,634.50	270,406.00
Reinsurance Placement & Travel	31.44	18,080.37	4,583.37	(13,497.00)	369.49	5,000.00
Training	0.00	0.00	458.37	458.37	0.00	500.00
Printing and Mailing	1,242.74	1,565.60	5,041.63	3,476.03	4,035.46	5,500.00
Program Promotion	0.00	4,050.00	6,875.00	2,825.00	3,922.14	7,500.00
Other Professional Services	0.00	16.06	1,833.37	1,817.31	0.00	2,000.00
Software Development	0.00	0.00	0.00	0.00	0.00	0.00
<b>TOTAL EXPENSE</b>	<b><u>\$103,022.70</u></b>	<b><u>\$1,147,057.56</u></b>	<b><u>\$1,144,642.62</u></b>	<b><u>(\$2,414.94)</u></b>	<b><u>\$1,111,864.27</u></b>	<b><u>\$1,248,701.00</u></b>



**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
11 Months Ended 11/30/2014**

	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>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$4,705.74	\$95,770.43	\$492.22	\$130,649.59
Intermediate Term Bond Funds	8,171.67	235,422.44	8,100.72	179,479.03
Domestic Common Stock Funds	(84,169.60)	119,467.10	0.00	240,474.52
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	118,785.54	0.00	137,305.09
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	(50,400.11)	169,255.24	0.00	113,683.36
<b>Total Dividends and Interest</b>	<b>(<u>\$121,692.30</u>)</b>	<b><u>\$738,700.75</u></b>	<b><u>\$8,592.94</u></b>	<b><u>\$801,591.59</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	(\$968.99)	\$41,460.35	\$1,961.12	(\$130,976.54)
Intermediate Term Bond Funds	74,796.83	309,371.93	(24,263.09)	(263,347.75)
Domestic Common Stock Funds	329,838.95	993,035.74	228,335.16	1,936,050.76
International Equity Fund	155,895.16	273,991.96	148,135.03	1,570,853.09
Real Estate	0.00	235,859.13	0.00	266,869.89
Hedge Fund of Funds	0.00	0.00	0.00	296,132.24
Real Return Strategy	10,713.56	388,207.79	(58,576.20)	(274,004.18)
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$570,275.51</u></b>	<b><u>\$2,241,926.90</u></b>	<b><u>\$295,592.02</u></b>	<b><u>\$3,401,577.51</u></b>
<b>TOTAL RETURN</b>	<b><u>\$448,583.21</u></b>	<b><u>\$2,980,627.65</u></b>	<b><u>\$304,184.96</u></b>	<b><u>\$4,203,169.10</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$640.01	\$64,798.22	\$446.83	\$60,825.13
Gain (Loss) in Fair Value	21,654.43	167,021.14	15,370.79	252,676.18
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$22,294.44</u></b>	<b><u>\$231,819.36</u></b>	<b><u>\$15,817.62</u></b>	<b><u>\$313,501.31</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
11/30/2014**

**ASSETS**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$118,125.73	\$107,049.56
Assessment Installment Receivable	7,463.00	(1.00)
Due from Reinsurers	46,774.68	474,190.24
Investments at Fair Value	<u>2,492,072.07</u>	<u>2,191,278.38</u>
<b>TOTAL ASSETS</b>	<b><u>\$2,664,435.48</u></b>	<b><u>\$2,772,517.18</u></b>

**LIABILITIES AND FUND EQUITY**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable & Refunds Payable	\$3,813.60	(\$1.33)
Due to Primary Fund	\$12,699.90	\$6,761.15
Due to Reinsurers	23,389.63	10,706.07
Ceding Commission Allocated for Remainder of Year	<u>67,524.71</u>	<u>62,056.86</u>
<b>Total Liabilities</b>	<b><u>\$107,427.84</u></b>	<b><u>\$79,522.75</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of Year	\$2,708,571.47	\$2,791,478.70
Year to Date Net Income (Loss)	<u>(151,547.24)</u>	<u>(98,484.27)</u>
<b>Total Fund Equity</b>	<b><u>\$2,557,024.23</u></b>	<b><u>\$2,692,994.43</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$2,664,452.07</u></b>	<b><u>\$2,772,517.18</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Balance Sheet  
11/30/2014**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$1,286,210.17	\$622,842.39
Investments at Fair Value	45,754,534.61	39,637,720.42
Due From Excess Fund	12,699.90	6,761.15
Other Current Assets	181,131.77	111,189.72
Net Fixed Assets	852,359.73	869,807.47
Claim Receivables	73,208.17	36,464.00
Other Long Term Assets	<u>7,250.00</u>	<u>10,142.22</u>
<b>TOTAL ASSETS</b>	<b><u>\$48,167,394.35</u></b>	<b><u>\$41,294,927.37</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$137,877.58	\$131,340.78
Deposits - Assessments	915,762.00	648,719.00
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	14,151,680.63	13,268,984.18
Liability for Claim Expense	15,762,825.26	13,727,984.22
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 Instalment Service Charge Allocated for Remainder of Year	<u>1,834,851.97</u>	<u>2,117,836.65</u>
<b>Total Liabilities</b>	<b><u>\$39,373,815.43</u></b>	<b><u>\$36,840,485.34</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$6,561,716.14	\$1,255,776.41
Year to Date Net Income (Loss)	<u>2,231,846.19</u>	<u>3,198,665.62</u>
<b>Total Fund Equity</b>	<b><u>\$8,793,562.33</u></b>	<b><u>\$4,454,442.03</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$48,167,377.76</u></b>	<b><u>\$41,294,927.37</u></b>



# Professional Liability Fund

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

## MEMORANDUM

**DATE:** January 14, 2015  
**TO:** OSB Board of Governors  
**FROM:** Carol J. Bernick  
**RE:** 2014 Claims Attorney and Defense Counsel Evaluations

Since the early 1990's, we have sent our Covered Parties evaluation forms at the closure of their claim files for them to complete and return to us. Since we are a mandatory program for the Covered Parties and they have no choice but to buy their professional liability coverage with the PLF, we felt it was important to give them an opportunity to express how their claims have been handled. For your information, I have enclosed a copy of the evaluation form that is sent to each Covered Party upon closure of the file.

We have always received high marks from our Covered Parties. We question them in three major categories about how the claim was handled: 1) overall handling; 2) handling by PLF Claims Attorney; and 3) representation by defense or repair counsel.

We closed 947 claims during 2014. We received 370 (39.1%) evaluations from the Covered Parties. The results of the 2014 evaluations are as follows:

### PLF OVERALL

Total Response	Very Satisfied	%	Satisfied	%	Not Satisfied	%
370	332	89.73%	34	9.19%	4	1.08%

### PLF CLAIMS ATTORNEY

Total Response	Very Satisfied	%	Satisfied	%	Not Satisfied	%
367	340	92.64%	25	6.81%	2	0.55%

MEMORANDUM

January 14, 2015

Page 2

DEFENSE OR REPAIR COUNSEL

<b>Total Response</b>	<b>Very Satisfied</b>	<b>%</b>	<b>Satisfied</b>	<b>%</b>	<b>Not Satisfied</b>	<b>%</b>
221	198	89.6%	21	9.50%	2	0.90%

We are pleased with both the level of response (39.1%) and the degree of satisfaction expressed by our Covered Parties. The evaluations reflected 98.92% of our Covered Parties were very satisfied / satisfied with the overall handling and performance of their PLF Claims Attorneys, and 99.45% were very satisfied / satisfied with the performance of their defense or repair counsel. It is hard to imagine how we could obtain more favorable responses.

CJB/ms  
Enclosure

c: Bruce Lee Schafer, Esq. (w/encl.)



# Professional Liability Fund

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

## CONFIDENTIAL EVALUATION FORM (January 6, 2015)

Our claims experience indicates that many of our covered parties have ideas, feedback, and information which assist us in preventing future losses. We request your cooperation in answering the following questions. If the space provided is inadequate for your comments, please feel free to attach additional pages. All information will remain confidential.

**Covered Party:**

**Bar No.:**

**Claimant:**

**PLF File No:**

**PLF Claims Staff Attorney:**

**Assigned Defense Counsel:**

### I. PLF CLAIMS STAFF:

I. (a) How satisfied were you overall with the handling and disposition of the above referenced matter?

Very Satisfied                       Satisfied                       Not Satisfied

I. (b) How satisfied were you overall with the services provided by the PLF staff attorney?

Very Satisfied                       Satisfied                       Not Satisfied

I. (c) Were you kept fully informed by the PLF staff attorney?                      Yes                       No

I. (d) If this matter was settled, did you find the settlement reasonable?                      Yes                       No

I. (e) Other comments or suggestions:

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### II. DEFENSE OR REPAIR COUNSEL:

(complete only if outside defense or repair counsel was assigned to this matter)

II. (a) How satisfied were you overall with the services of the assigned defense or repair counsel?

Very Satisfied                       Satisfied                       Not Satisfied

II. (b) Were you kept fully informed at all stages?                      Yes                       No

II. (c) Did you find the fees charged reasonable?                      Yes                       No

**III. LOSS PREVENTION / GENERAL:**

III. (a) What do you feel prompted this legal malpractice claim/repair?

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III. (b) What advice would you pass on to others who face similar situations?

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III. (c) Using the benefit of hindsight, what would you have done differently?

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I would like free and confidential office systems assistance. Please have a PLF Practice Management Advisor contact me. If you would like to call for an appointment, call 503-639-6911 or 1-800-452-1639.

The Oregon Attorney Assistance Program provides free and confidential assistance with alcohol & chemical dependency, career satisfaction, stress management, procrastination, and gambling addiction. If you would like more information, contact Mike Long (503) 226-1057, ext. 11; Shari R. Gregory (503) 226-1057, ext. 14; Doug Querin (503) 226-1057, ext. 12; or Kyra Hazilla (503) 226-1057, ext. 13.

Number of lawyers in your firm at the time the alleged error occurred: \_\_\_\_\_

Areas of law in which you practiced at the time the alleged error occurred (by percentage):

Business	_____	%	Real Estate	_____	%
Criminal	_____	%	Workers Comp.	_____	%
Domestic Relations	_____	%	Other (specify):		
Estate & Probate	_____	%		_____	%
PI Plaintiff	_____	%		_____	%
			TOTAL:	_____	%

Estimated number of hours you spent on this claim: \_\_\_\_\_

Thank you for providing us with this feedback. **PLEASE RETURN WITHIN 10 DAYS TO:**

**Professional Liability Fund (Attn.: Nancy)  
PO Box 231600  
Tigard, OR 97281-1600**

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim 2013-24 GOFF (Mantell) Request for Review

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### Action Requested

Consider, based on the Claimant's request for review, whether he should receive an award from the Client Security Fund.

### Discussion

Elliott Mantell submitted a claim for \$47,609, comprised of \$37,500 for fees paid together with accrued interest at 9%.<sup>1</sup> The CSF Committee considered the claim at its meeting in November 2013 and voted unanimously to deny it on the grounds that there was insufficient evidence of dishonesty, the lawyer provided more than minimal services, and there was no independent determination that Mantell was entitled to a refund.

Upon being informed of the Committee's decision, Goff asked that the BOG review the Committee's decision. Because he claimed to have additional information that the Committee had not seen and wanted to make an oral presentation, it made sense to allow the Committee to confirm or alter its decision based on the new material rather than submit the request for review to the BOG. As it turned out, however, although the Committee waited throughout 2014, Mantell was unable to make any of the Committee's meetings and also did not provide any additional material for the committee to consider. The Committee discussed Mantell's claim again at some length in November, reaching the same conclusion as it had initially. At its January 2015 meeting, the Committee decided that Mantell's request for review should be submitted to the BOG.

Mantell hired Eugene attorney Daniel Goff on April 7, 2007 in connection with several pending matters, including defense against a claim for outstanding fees and a possible legal malpractice action against his prior attorney. Goff agreed to handle Mantell's legal matters for a flat fee of \$50,000. On May 14, Goff sent Mantell a proposed fee agreement requiring payment of the \$50,000 fee in advance, plus an advance of \$5,000 toward costs. Mantell rejected the agreement and over the next few weeks there was an exchange of correspondence about the terms and scope of the representation. Mantell's principal objection was with the "earned upon receipt" language, preferring that Goff earn fees incrementally as work was completed. No fee agreement was ever signed.

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<sup>1</sup> CSF Rule 2.9 provides that awards shall not include interest on a judgment or any amount in excess of funds actually misappropriated by the lawyer.



Despite the absence of a fee agreement, between April 7 and June 7, 2007 Mantell deposited \$42,500 with Goff, which Goff deposited into his trust account. Between April 10 and July 6, 2007 Goff withdrew most of the funds. Mantell terminated Goff's representation on July 6, complaining that Goff wasn't providing timely representation.

Mantell requested an accounting and a refund of the fees he'd paid. On July 24, Goff provided an accounting for costs of \$3,294.65 and enclosed a check for \$1,705.35, representing the balance of the \$5,000 cost advance. Goff refused to refund any of the \$37,500 allocated to his fees, claiming to have worked more hours than he had been paid for. On July 12 and July 26, Goff withdrew the last of Mantell's fund, totaling \$2,673, from his trust account.

In April 2008, Mantell filed a complaint with the Bar. In December 2008 he filed a civil suit against Goff seeking return of the fees he'd paid. In a mediated settlement in which he admitted no liability, Goff agreed to confess judgment for \$37,500 and Mantell agreed not to file the judgment so long as Goff made \$500 monthly payments. Goff made three of the monthly payments, before filing a no-asset Chapter 7 bankruptcy petition in August 2010.

Four disciplinary matters, including Mantell's complaint, were consolidated and tried over five days in late 2010. The trial panel issued an opinion on March 28, 2011 finding that Goff had violated several rules and recommending an 18-month suspension. The opinion was affirmed by the Supreme Court on June 2012. Goff filed a Form B resignation on December 13, 2012.

Among the charges relating to Goff's representation of Mantell were allegations that Goff had charged and collected an excessive fee, and the bar sought restitution for Mantell. Witnesses before the trial panel included Mantell, the adverse attorney during the time Goff represented Mantell, and one of the attorneys who took over Mantell's legal matters after Goff was discharged. Goff was examined and cross-examined at length.

Goff submitted a recap of the time he spent on Mantell's case showing 183.2 hours between April 7 and July 7 (plus another 3.5 between July 8 and July 18, after he had been discharged). Most entries cover periods of 7-10 days and the first five reflect 20, 25, 25, 30 and 33 hours worked, respectively. Because there were no daily contemporaneous records of the time Goff spent, the bar argued the recap had no probative value. At the same time, the record contains numerous exhibits reflecting frequent communications between Goff and Mantell about a myriad of issues during the three months of the representation.

The trial panel found that Goff "was not a credible witness on his own behalf." It also found that Mantell was a difficult, argumentative, demanding and time-consuming client. The excessive fee charge and request for restitution were dismissed with the following explanation:

Whether or not [Goff] performed all of the work he claims cannot be established; but the work he undertook to perform was substantial, time lines were short, and Mr. Mantell was a difficult client who interrupted [Goff] on a nearly daily basis.

The trial panel also found that the bar had not proven by clear and convincing evidence that Goff hadn't earned the fees he withdrew from his trust account. The Supreme Court affirmed the trial panel opinion in its entirety, including the denial of restitution for Mantell.

### **Committee Decision**

For a claim of unearned fees, CSF Rule 2.2 requires proof of dishonesty as well as evidence that the lawyer provided no or only minimal services to the client:

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

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

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

The CSF Committee concluded there was insufficient evidence of dishonesty on Goff's part. It appears he began work immediately on Mantell's matter, so there was no "false promise to provide legal services." Additionally, the record shows that Goff deposited all funds received from Mantell into his trust account. While there was no clear agreement as to the nature of the fee, the Committee was unable to conclude that Goff withdrew funds he had not earned. Goff appears to have treated the fee as earned on receipt, despite the absence of the client's signed agreement; at the same time, he claims to have been working assiduously on the client's matter, thus earning fees as he went along. If, as Mantell claims, the fee was supposed to be hourly, Goff has also provided evidence, which the trial panel found sufficiently compelling, that he had spent many hours on Mantell's matter.

As for the second requirement, the Committee found no basis to conclude that Goff's services were only "minimal or insignificant." Rather, the Committee believed this is essentially a fee dispute, and there is no independent evidence of the amount of refund to which Mantell was entitled.<sup>2</sup> The Committee was strongly influenced by the decision of the trial panel, affirmed by the Supreme Court, that it was impossible to determine the amount of work performed by Goff and the refusal to order restitution in any amount. The Committee gave no

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<sup>2</sup> In his deposition, Goff apparently admitted that he should not have withdrawn the last \$3,673 from trust, as he had been discharged and knew that Mantell was disputing Goff's right to the fees. However, he never returned the funds to trust, claiming to be waiting for the trial panel to tell him what to do.

weight to the fact that Goff stipulated to a judgment in favor of Mantell for the entire amount of the fees paid.

### **Request for Review**

Mantell has not provided any new information in conjunction with his request for review, referring only to the volume of material accumulated by DCO in its prosecution of Goff. He also argues that weight should be given to the faith that Disciplinary Counsel's Office had in his view of Goff's work. In a series of emails, Mantell expressed his objection to the Committee's conclusion thusly:

"Mr. Goff did virtually no work. If he billed for more than 7- 8 hours of work it was fraudulent. He lied at the hearing....

Other attorneys who have looked over his billing statement which was 1 single sheet of paper listing 186 hours of work noted to me that it was fraudulent and absurd. They said that if he did do the hours he stated I would have had to be his only client the first 5 weeks he billed for. Also of note it was not an hourly agreement but a fixed fee agreement. The boxes of documents he said he reviewed were clearly never opened....

I hope the Board and committee understood that I had to hire another lawyer Robert Snee and pay him about \$10,000 in my civil suit to get Goff's confession of judgment [sic] as well as hire Margaret Lieberhan [sic] and Matthew McKean and one other attorney at the cost of approximately \$25,000 (note this is from memory at this time) to finish up the work that I had contracted Goff to do....

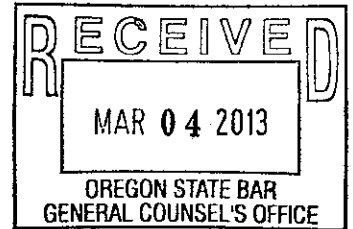
Additionally I am now speaking to another attorney on these issues who was of the opinion that perhaps my case came at a difficult time for the CSF in light of the Gruetter and McBride pay outs."

While this was not a close case for the CSF Committee and it was dubious about the quantum of work performed by Goff, the Committee was not persuaded that Goff was dishonest or provided only minimal services. As indicated, the Committee concluded this was a fee dispute/debt collection for which Mantell unfortunately has no remedy due to Goff's bankruptcy.

Attachments:     Mantell Application for Reimbursement  
                          Committee Report  
                          Goff Billing Statement  
                          Trial Panel Opinion

**Client Security Fund  
Application for Reimbursement**

Case # 2013-24



**Return completed form to:**

Oregon State Bar  
Client Security Fund  
PO Box 231935  
Tigard, OR 97281-1935

**PAYMENTS FROM THE CLIENT SECURITY FUND ARE ENTIRELY WITHIN THE DISCRETION OF THE OREGON STATE BAR. SUBMISSION OF THIS CLAIM DOES NOT GUARANTEE PAYMENT. THE OREGON STATE BAR IS NOT RESPONSIBLE FOR THE ACTS OF INDIVIDUAL LAWYERS.**

*Please note that this form and all documents and other information submitted in support of your claim are public records.*

**1) Full names of all persons filing this claim (first, middle, last):**

Elliott J. Mantell  
Street Address: 1250 Sunningdale Road  
Lake Oswego, Or. 97034

Phone (Work): 503-232-4099  
(Home): 503-819-7952

**2) What is the name, address, telephone number, and firm name (if any) of the lawyer whose conduct is alleged to have caused your loss?**

Lawyer's Name Daniel Goff                      Lawyer's Telephone Number 541-345-7211

Lawyer's Firm Name  
Goff & Smith

Lawyer's Address 310 11<sup>th</sup> Avenue Eugene, Or. 97401

**3) What is the amount of your loss?                      \$ 47,609.00**

Describe in detail how you calculated that amount (*if the loss was property, include appraisal, receipts, or other evidence of value*):

<b>Amount paid to Mr. Goff</b>	<b>\$37,500.00</b>
<b>Interest at 9% / year 7/7/07 – 7/5/08</b>	<b>\$ 3,375.00</b>
<b>Interest at 9% / year 7/6/08 -7/5/09</b>	<b>\$ 3,678.75</b>
<b>Interest at 9% / year 7/6/09 – 7/5/10</b>	<b>\$ 4,009.83</b>
<b>Interest at 9% / year 7/6/10 – 8/12/10</b>	<b>\$ 545.42</b>
<b>(Mr. Goff then filed for bankruptcy)</b>	

**Interest only payments made by Mr. Goff as per a mediated settlement agreement and confession of judgment for \$37,500 plus interest at 9% (until he defaulted by filing bankruptcy and stopping payments.)  
(3 payments of \$500 each) - \$ 1,500**

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**Total owed and outstanding \$ 47, 609.**

**4) Please describe what the lawyer did that was dishonest and how it caused your loss.**

**Use a separate sheet if necessary. Your claim will not be accepted if this question is not answered.**

**Mr. Goff agreed to represent me in a few cases for a fixed fee of \$50,000 plus expenses. He demanded that the funds be paid right away. \$42,500 was paid to Mr. Goff (\$37, 500 towards the \$50,000 fixed fee and \$5,000 towards expenses) were paid to Mr. Goff from April 2007 – June 2007.**

**Mr. Goff did essentially no work and nothing of value on any of my cases. This was a fixed fee case and not on an hourly basis. Since Mr. Goff did not do any work of value for our fixed fee agreement I had to hire other counsel to finish the cases that he was supposed to do and spent over \$23,000 on other counsel as well as over \$10,000 to obtain a judgment against Mr. Goff.**

**In July 2007 when it was apparent that Mr. Goff would continue to do no work to advance my cases and it looked apparent that he would miss a deadline. I asked him to let me know what he had accomplished and**

**that I would be looking for new counsel. Mr. Goff took this to mean that he was dismissed and an opportunity to keep the entire retainer I had paid and use it towards his fixed fee even though he had not earned it. Mr. Goff told the court that he was dismissed and then proceeded to keep transferring funds from his trust account to his personal account even though he was well aware of the fee dispute we had. He also refused to give me an accounting.**

**In August Mr. Goff stated that I was not entitled to an accounting of his work and that we had a fixed fee and contingent fee agreement. The trial panel concluded on Page 27 of the Opinion of The Trial Panel “In an August 15, 2007 letter to Mr. Mantell, the Accused represented that he and Mr. Mantell had agreed to a mixed fixed and contingent fee, that the fees Mantell paid the Accused were immediately earned and not refundable,; and that Mantell was not entitled to receive any accounting from the Accused. These representations by the Accused were false and material and the Accused knew they were false and material at the time he made them.”**

**The trial panel concluded that Mr. Goff violated RPC 1.15-1(e) “ ... No later than May 23, 2007, the Accused knew that there was a dispute over the terms of his fee agreement with Mantell. After that date, he nonetheless withdrew a total of \$24,000 from his trust account to pay his own fees.”**

**RPC1.15-1(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.**

**The trial panel also agreed that the Mr. Goff violated RPC 1.15-1(d) by refusing to provide an accounting and advising that I was not entitled to one.**

**RPC 1.15-1 (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the**

**client or third person, shall promptly render a full accounting regarding such property.**

**The Trial panel also agreed that Mr. Goff violated RPC 8.1(a)(2)**

**(b) When did you discover the loss?**

**In July 2007 when Mr. Goff refused to refund his unearned money as this was a fixed fee agreement. This was temporarily settled in April 2010 when Mr. Goff agreed to our mediated settlement and payments were being made. It was again realized in July 2010 when Mr. Goff stopped making payments and then filed for corporate and personal bankruptcies. The loss was not fully realized until the end of 2012 after Mr. Goff received a discharge in his personal and corporate bankruptcies and after the Oregon supreme court decision on his suspension from the practice of law.**

**6) (a) Was the lawyer named in Question 2 hired to represent you? Yes**

**(b) If Yes, give the approximate date you hired the lawyer: April 7, 2007**

**(c) If No, describe your relationship to the lawyer: N/A**

**7) (a) What did you hire the lawyer to do?**

**Mr. Goff was hired to represent me in a few cases and a business associate of mine in one case for a fixed fee. He did virtually no work and nothing to advance these cases and it was of no value and I had to hire new counsel to do the work that Mr. Goff was supposed to do.**

**(b) What was your agreement for payment of fees to the lawyer?**

**Mr. Goff was hired on a fixed fee agreement of \$50,000 plus expenses to represent as stated in #7.**

**(c) How much has been paid so far? \$37,500 plus additional towards expenses.**

**(d) Did anyone else pay the lawyer to represent you? No**

**If yes, give the name, address and telephone number of that person and explain the circumstances:**

**(e) What services did the lawyer actually perform? Virtually none and none of any value.**

**(f) Did you hire another lawyer to finish any of the work?  Yes**

**If yes, please provide the name and telephone number of the lawyer**

- 1. Margaret Lieberman 503-641-7990 From August 31, 2007 – June 25, 2008 I paid Counselor Lieberhan over \$11, 119.95**
- 2. Nachtingal, Eisenstein & Assoc. 503-640-6612 I paid this firm over \$12, 500 to finish up the work that Mr. Goff did not complete**
- 3. Jay Chock of Dunn Carney 503-224-6440**
- 4. Additionally I hired Mr. Snee at a cost of approximately \$10,000 to obtain the settlement agreement and confession of judgment from Mr. Goff**

**8) Was there at any time a family, personal, business or other relationship between you and the lawyer? No**

**9) (a) Has demand for repayment been made of the lawyer? Yes**

**(b) Amount demanded:**

**\$ 47, 609**

**Date(s) when demand was made:**

**Initial demand was made for principle of \$37,500 in July 2007.**

**In 2008 my attorney Mr. Robert Snee, filed a lawsuit against Mr. Goff to recover the fees that I had paid and demand was again made at that time. Through a mediated settlement Mr. Goff agreed to a repayment plan and to a confession of judgment for \$37,500, plus interest at 9% from July 2007, in the event that he defaulted on the repayment plan.**

**Mr. Goff acted on the mediated settlement payment plan and made his first of three payments of \$500 each (\$1,500 total payments were made). Mr. Goff then defaulted on our settlement agreement when he stopped making payments and then filed for bankruptcy protection. The confession of judgment drawn up by Mr. Goff's attorney Robert Smith stated that \$37,500 plus interest at 9% per annum from July 6, 2007 became due and payable once he defaulted on the payment plan. The \$1,500 in payments that Mr. Goff made was to be towards interest**



owed. I was precluded from acting directly on Mr. Goff's confession of judgment due to his filing for bankruptcy protection.

Therefore, at the time Mr. Goff he filed for bankruptcy in August 2010, [less credit for the three payments he made (\$1,500)] he owed \$47,609, which was submitted to the bankruptcy court as my claim for damages owed.

**(d) Who made the demand?** I made the initial demand in July 2007, then my attorney Robert Snee through civil lawsuit filed in 2008. I then made additional demands through bankruptcy court after Mr. Goff defaulted on our settlement agreement and filed for bankruptcy.

**(e) Demand was**  **written.** *(If it was written, attach a copy of the demand to this application.)*

Through initially by emails from me, then the lawsuit filed by Mr. Snee and then through bankruptcy claims that I filed.

**10) (a) Has the lawyer (or any other person) ever admitted that he/she owes you money or agreed to reimburse you?**  Yes

**(b) If Yes, please explain:**

Mr. Goff agreed to a mediated settlement with confession of judgment and commenced his first 3 payments in compliance with that agreement.

The trial panel recognized that agreement on page 28 paragraph #3. Stating "...In 2008 Mr. Mantell brought a civil action against the Accused for recovery of the amount of \$37,500 paid to the Accused for attorney fees in the above matter. In a mediated settlement of this action, and without admitting any liability, the Accused agreed to give Mr. Mantell a Confession of Judgment in that same amount. To date the Accused has repaid Mr. Mantell \$1,500 of the \$37,500."

**11) (a) Describe what you have done to recover your loss:**

**(b) Have you sued the lawyer?** Yes and filed claims in Mr. Goff's two bankruptcy petitions

**(c) Have you obtained a judgment?** Yes

**(d) If yes, in what amount? \$37,500 plus interest at 9% from July 2007 until Aug 2010 when the accused filed for bankruptcy.**

**(e) Have you made any other claim against the lawyer or the lawyer's assets**

*(such as insurance claims, arbitration claims, etc.)?* No He has filed for bankruptcy.

**(f) Have you made attempts to locate assets and/or recover on a judgment?** Yes by filing claims in his two bankruptcy petitions.

**(g) If yes to any of the above, attach copies of all related documents. If no, please explain:**

**I filed claims in bankruptcy court against Daniel Goff and against Daniel Goff P.C. I have been informed by the bankruptcy court that those have been discharged as no asset bankruptcies. I have been unable to collect anything since he stopped after making the first 3 payments totaling \$1,500.**

**12)(a) Have you been reimbursed for any part of your claim? Yes**

**(b) If Yes, who paid you and how much did you receive?**

**I received the first 3 payments of \$500 each from Mr. Goff in April, May and June 2010 totaling \$1500. Those were labeled as interest only payments.**

**13)(a) Is there any insurance, indemnity or bond which might cover your loss?**

**None that I am aware of.**

**b) If Yes, what is the name and address of the insurance company?**

**Unknown**

**14) (a) This loss has been reported to (check all that apply):**

District Attorney, Yes

Police, Yes

Oregon State Bar Professional Liability Fund, Yes

Oregon State Bar Disciplinary Counsel Yes

**(b) Explain action taken, and attach a copy of your complaint, if available:**

**See Oregon State Bar Complaints and trial panel's ruling and supreme court ruling**

**15) (a) Please identify any other person who may have information about this claim:**

Stacy Hankins Oregon State Bar Disciplinary Council 503-620-0222 ext. 347

16037 SW Upper Boones Ferry Road  
Tigard, Or. 97281

Attorney Robert Snee 503-294-0411

P.O. Box 16866

Portland Or. 97292

**Investigator Representatives of the Oregon State Bar**

**Other Complainants that Ms. Hankins cited in the Bar Disciplinary Hearing that she prosecuted against Mr. Goff.**

**They were: Taunya Fambrough-Anderson Case No. 08-143**

**Fred Whitsel Case No. 09-53**

**Imre Juhasz Case No. 10-14**

**(b) Nature of the information these persons can provide:**

**Ms. Hankins can discuss the details of my case against Mr. Goff as well as other cases against Mr. Goff that she prosecuted, and that the conclusion to suspend Mr. Goff from the practice of law for 18 months. As well as additional cases that Ms. Hankins prosecuted on Mr. Goff at the same time including Case Nos. 08-143, 09-12, 09-53 & 10-14**

**Investigators at OS Bar should be able to go over Mr. Goff's complaint file with you, which had over 6,000 pages of documents when I filed my complaint.**

**Mr. Snee can provide information on the mediated settlement agreement with payment plan with Mr. Goff, and his confession of judgment. He can also tell you about the payments that Mr. Goff made and his failure to fulfill the agreement.**

**16) Agreement and Understanding**

**The claimant agrees** that, in exchange for any payment made by the Client Security Fund (CSF), the claimant will:

**(a) Transfer** to the CSF any rights the claimant may have against the lawyer or any other person or entity who may be liable, up to the full amount of the CSF's payment;

**(b) Authorize** the CSF to pursue any claims against the lawyer and any other person or entity who may be liable, either in the name of the CSF or in the name of the claimant, as the CSF deems appropriate;

**(c) Cooperate** with the CSF in its efforts to recover its payments;

**(d) Notify** the CSF if the claimant receives any payment from the lawyer or from any other person or entity with regard to the loss for which this claim is made;

**(e) Reimburse** the CSF if the claimant recovers any portion of the loss from the lawyer or any other person or entity.

**17) Claimant's Authorization**

**Release of Files:** I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.

**Payment to Third Party:** (This section must be completed if you answered yes to Question 7(d) or if you wish to have payment delivered to someone else for any reason.) I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name      Elliott Mantell\_ ,  
Address: 1250 Sunningdale Road Lake Oswego, Or. 97034  
Signature:

**18) Claimant's Signature and Verification**

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of OREGON )

)ss

County of WALUWAMAS )

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement;  
and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

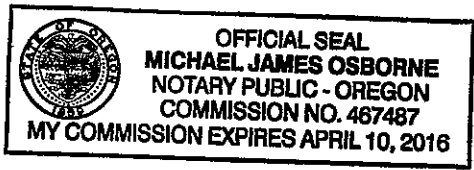
[Handwritten Signature]  
Claimant's Signature

Signed and sworn (or affirmed) before me this 23<sup>RD</sup> day of FEBRUARY 2013.

Notary's Signature [Handwritten Signature]

Notary Public for OREGON

My Commission Expires APRIL 10, 2016



**You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.**

(1) I authorize

\_\_\_\_\_ (*print name of attorney*)

to act as my attorney in presenting my claim.

\_\_\_\_\_  
*Claimant's Signature*

(2) I have agreed to act as the claimant's attorney: (*check one below*)

Without charge

Under the attached fee agreement

\_\_\_\_\_  
*Attorney's Signature Attorney's Bar # Attorney's Phone*

\_\_\_\_\_  
*Attorney's Address*

IN THE SUPREME COURT OF THE STATE OF OREGON

In Re:

Complaint as to the Conduct of:

DANIEL W. GOFF, OSB #721018,  
Accused.

Oregon State Bar  
08143, 0912, 0953, 1014

S059467

**RECEIVED**

JUN 26 2012

DISCIPLINARY  
COUNSEL

**ORDER MODIFYING CASE DISPOSITION**

The court on its own motion modifies the disposition in this case to provide that the accused is suspended from the practice of law for 18 months, commencing 60 days from June 14, 2012, the date of the decision of the court.

6/26/2012  
4:48:21

*Robert D. Durham*  
ROBERT D. DURHAM  
PRESIDING JUSTICE SUPREME COURT

c: Robert J Smith  
Stacy J Hankin

kac

**ORDER MODIFYING CASE DISPOSITION**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

June 15, 2012

State Court Administrator  
Appellate Courts Records Section  
1163 State Street NE  
Salem, OR 97301-2563

Re: *In re Conduct of Daniel W. Goff, SC S059467*

Dear State Court Administrator:

Yesterday, the court issued its decision in the above-referenced matter. The Bar asks the court to correct that part of the decision dealing with when Mr. Goff's suspension commences so that the suspension commences 60 days from the date of the decision rather than "60 days from the effective date of this decision."

For the last several years, all of the court's opinions suspending or disbaring lawyers were effective 60 days from the date of the decision.

Under the current language in the opinion, the effective date would not occur until the date of entry of the appellate judgment and the suspension would not commence until 60 days later. ORAP 14.05(2). Tying the suspension dated to a point after entry of the appellate judgment creates uncertainty for the parties as to when a suspension will begin and unnecessarily delays implementation of the court's decision.

Thank you for your attention to this matter.

Very truly yours,

Stacy J. Hankin  
Assistant Disciplinary Counsel  
Extension 347

SJH:  
cc: Robert J. Smith (Counsel for Accused)



Filed: June 14, 2012

IN THE SUPREME COURT OF THE STATE OF OREGON

**RECEIVED**

In Re.  
Complaint as to the Conduct of:

JUN 14 2012

DISCIPLINARY  
COUNSEL

DANIEL W. GOFF,

Accused.

(OSB 08143, 0912, 0953, 1014; SC S059467)

En Banc

On review from a decision of a trial panel of the Disciplinary Board.

Argued and submitted January 13, 2012.

Robert J. Smith, Robert J. Smith, P.C., Eugene, argued the cause and filed the briefs for the accused.

Stacy J. Hankin, Assistant Disciplinary Counsel, Oregon State Bar, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The accused is suspended from the practice of law for 18 months, commencing 60 days from the effective date of this decision.

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Oregon State Bar

No costs allowed.

Costs allowed, payable by: The Accused

Costs allowed, to abide the outcome on remand, payable by:

1 PER CURIAM

2 The Oregon State Bar charged Daniel W. Goff, the accused, with numerous  
3 violations of the Rules of Professional Conduct and the Disciplinary Rules of the Code of  
4 Professional Responsibility, based on his representation of clients in four separate  
5 matters. After a five-day hearing, the trial panel found that the accused had committed  
6 15 violations, as follows: *former* DR 9-101(A) (failure to maintain client funds in trust);  
7 *former* DR 9-101(C)(3) and RPC 1.15-1(d) (failure to maintain trust-account records and  
8 failure to provide an accounting of client funds) (three counts); *former* DR 6-101(B)  
9 (neglect of a legal matter) (two counts); *former* DR 1-102(A)(3) and RPC 8.4(a)(3)  
10 (conduct involving misrepresentation or dishonesty) (three counts); RPC 1.4(a) (failure to  
11 keep client reasonably informed) (two counts); RPC 1.15-1(e) (mishandling disputed  
12 funds); RPC 8.1(a)(1) (false statements of material fact in connection with a Bar  
13 disciplinary matter); RPC 8.1(a)(2) (failure to respond to the Bar) (two counts). The trial  
14 panel concluded that the appropriate sanction was an 18-month suspension from the  
15 practice of law. The accused sought review pursuant to ORS 9.536(1) and Bar Rules of  
16 Procedure 10.1 and 10.3.

17 On review, the accused urges this court to reject the trial panel's findings in  
18 full. The Bar, in response, defends the trial panel decision on all 15 rule violations, and  
19 also urges this court to find three additional violations that the trial panel did not find:  
20 RPC 1.5(a) (collecting an excessive fee) (two counts) and RPC 1.15-1(c) (withdrawal of  
21 unearned fees). Based on the two excessive fee charges, the Bar requests that we order  
22 the accused to pay restitution as well as suspend him from the practice of law for at least

March 28, 2011

Dr. Elliott J. Mantell  
2927 NE Everett Street  
Portland, OR 97232

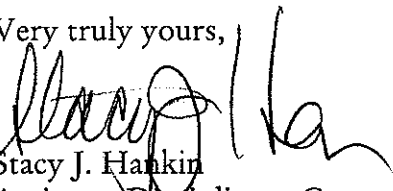
Re: Case Nos. 08-143, 09-12, 09-53 & 10-14 — Daniel W. Goff

Dear Dr. Mantell:

Please find enclosed a copy of the decision of the Trial Panel in the above-entitled matter. Pursuant to BR 10.1, the Bar or the Accused may seek review of the matter by the Supreme Court; otherwise, the decision of the Trial Panel is final on the 61st day following the notice of receipt. You will be notified if this matter is appealed, otherwise, the decision of the Trial Panel will be final on May 23, 2011.

Thank you for bringing your concerns to our attention and for your contribution to the regulation of our profession.

Very truly yours,

  
Stacy J. Hankin  
Assistant Disciplinary Counsel  
Extension 347

SJH:abe  
Enclosure  
111-09

IN THE SUPREME COURT OF THE STATE OF OREGON

In re: Complaint as to the Conduct of DANIEL W. GOFF, Accused.	Case Nos. 08-43, 09-12, 09-53 & 10-14  <b>OPINION OF THE TRIAL PANEL</b>
--	--

Counsel for the Oregon State Bar:

Stacey J. Hankins

Counsel for the Accused:

Robert J. Smith

Disciplinary Board:

Jack A. Gardner, Chair; Mary Lois Wagner;  
Audun (Dunny) Sorensen, Public Member

This matter came before a Trial Panel of the Disciplinary Board of the Oregon State Bar on October 5, 14, November 10, 16, and December 10, 2010 at the offices of Gardner, Honsowetz, Potter, Budge & Ford in Eugene, Oregon. The Trial Panel heard witnesses, considered evidence, and considered the written argument of Counsel, all concerning the Accused's conduct with respect to four separate clients, each of which shall be addressed separately.

Before detailing the specific facts of each case, however, the Trial Panel makes findings concerning the Accused which are generally applicable to each case, and, as necessary, will be further explained in the context of the individual cases.

With respect to the Accused, the Trial Panel finds:

The Accused was at all relevant times an attorney at law and a member of the Oregon State Bar, admitted in 1972 by the Supreme Court of the State of Oregon to practice law in this state.

At all times relevant to the matters considered here, the Accused maintained a staffed office in Eugene, Lane County, Oregon. Beginning from about the mid 1990's, the Accused resided in Salem, Oregon and also practiced from an office in his home there. Beginning in 2006 and continuing through December 2009, the Accused shared office space with another attorney in Salem for the limited purpose of meeting with clients. He did not maintain any staff there other than a shared receptionist. Beginning about 2003, the Accused came to his Eugene office about only once or twice a month. His Eugene office was staffed on a full time basis and listed on his letterhead. Files were maintained in several different places and sometimes lost or misplaced as a result.

The Accused was the person most often responsible for handling and recording financial and banking matters in his practice.

The Accused was diagnosed with colon cancer in early 2008. He was treated for colon cancer, including chemotherapy, throughout 2008 and early 2009. During that period of time, the Accused continued his law practice. He was fatigued and ill through this time period, but his memory was not significantly impacted by his illness and the treatment for it.

The Accused was previously disciplined by stipulation on April 28, 2000 for his conduct in two separate matters, Case No. 97-125 and Case No. 99-135. In each of the two matters, the Accused admitted violation of DR 6-101(B) (Neglect of a Matter) and accepted a sanction of public reprimand.

The Accused made numerous inconsistent and contradictory statements to the Bar in response to inquiries from disciplinary counsel and throughout his hearing before the trial panel. The Panel finds that the Accused was not a credible witness in his own behalf.

**In the Matter of Taunya Fambrough-Anderson (Case No. 08-143)**

In its Second Amended Formal Complaint, the Bar charges the Accused with violations of the Oregon Code of Professional Responsibility and the Oregon Code of Professional Conduct. The Accused's representation of Ms. Fambrough-Anderson in this matter began in 1995, when the former Code was in place, and continued into 2007, when the new Rules were in place. The charges are:

1. Violation of former Oregon Code of Professional Responsibility DR 6-101(B), which provides that "A lawyer shall not neglect a legal matter entrusted to the lawyer." Specifically, the Bar describes a course of conduct that the Accused had with Ms. Fambrough-Anderson and with Meoli, the Trustee in Ms. Fambrough-Anderson's bankruptcy proceeding and, in that capacity, the nominal plaintiff in her state court litigation. The Bar alleges that the Accused generally failed to keep both Ms. Fambrough-Anderson and Meoli advised of the proceedings; and, with regard to the Trustee, that the Accused failed to timely execute a retainer agreement to Meoli; to inform and to advise Meoli of a second personal injury complaint filed in this matter; to advise Meoli when that case was dismissed on a motion for summary judgment; and to advise Meoli when that case was appealed and ultimately dismissed.. The Accused denies these allegations.

2. Violation of DR 1 -102(A)(3) and of of RPC 8.4(A)(3), each of which provides that it "is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation ." Specifically, the Bar describes a course of conduct in the Accused's handling of \$10,000 paid in settlement of one of Ms. Fambrough-Anderson's professional malpractice actions, known hereafter as "the Trujillo settlement". The Trujillo

settlement is alleged to have been deposited into the Accused's trust account subject to the Accused's agreement in settling the Trujillo case to hold it there pursuant to specific conditions, and the allegations of dishonesty in handling those funds, and as are more specifically described in Complaints 3, 4, and 5, which follow.

The Accused neither admits nor denies that the \$10,000 was deposited into his trust account; denies those allegations describing his agreement to hold the funds there; and denies any dishonesty in his dealings with those funds.

3. Violation of DR 9-101(A) and of of RPC 1.15-1(a), each of which provides that "all funds of clients paid to a lawyer or law firm, including advances for costs and expenses . . . shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated."

Specifically, the Bar charges that, sometime after August 19, 1997 the Accused withdrew the Trujillo settlement funds from his trust account and converted those funds to his own use. The Accused denies those allegations.

4. Violation of DR 9-101(C)(3) and of RPC 1.15-1(D), each of which requires that a lawyer shall maintain "complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them. Every lawyer engaged in the private practice of law shall maintain and preserve for a period of at least five years after final disposition of the underlying matter, the records of the accounts..."

Specifically, the Bar charges that the Accused failed to maintain complete records of the Trujillo settlement funds and failed to appropriately account to Meoli and to Fambrough-

Anderson regarding those funds, in spite of their repeated requests that he do so. The Accused denies those allegations.

5. Violation of DR 9-101(C)(4) which requires that, when a lawyer holds client funds in his trust account, the lawyer shall promptly “pay or deliver to a client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive.”

Specifically, the Bar charges that the Accused failed to deliver the settlement funds to Meoli or to Fambrough-Anderson. The Accused denies those allegations.

6. Violation of DR 1-102(A)(3) which provides that it “is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation .”

The Bar charges that the Accused knowingly failed to notify Meoli when he withdrew the Trujillo settlement funds from his trust account. The Bar further charges that, when the second personal injury action was dismissed at the trial court level, the Accused knowingly failed to notify Meoli. The Accused denies those allegations.

7. Violation of RPC 8.1(a)(1) which provides that a lawyer, in connection with a disciplinary matter shall not “knowingly make a false statement of material fact.”

The Bar charges that, in response to inquiries which were part of its investigation of the Fambrough-Anderson matter, the Accused, in a series of letters to the Bar, knowingly made false and material representations. The Accused denies those allegations.

8. Violation of RPC 8.1 (a)(2) which provides that a lawyer, in connection with a disciplinary matter, shall not . . . “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority”.



The Bar charges that, in response to inquiries which were part of its investigation of the Fambrough-Anderson matter, the Accused failed to produce financial records and stated that they were lost. The Accused denies those allegations.

9. Violation of RPC 8.4(a)(3) which provides that it “is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation .”

The Bar charges that the Accused violated this rule by making the false and material statements alleged in charges 7 and 8. The Accused denies those allegations.

The Accused makes the following justification and affirmative defenses to these charges:

1. That he entered into a written fee agreement with Ms. Fambrough-Anderson that provided that the Trujillo settlement funds were fixed fees, immediately earned;
2. That such fee agreement precluded any claim to them by the Bankruptcy Court;  
and
3. That, by entering into such fee agreement, Ms. Fambrough-Anderson waived any right to the fees in dispute.

The Accused also alleges:

4. Quantum Meruit, that is, that he earned the fees; and
5. Laches, that is that Ms. Fambrough-Anderson delayed her complaints about the Accused for such a lengthy period of time that the Accused no longer has the records necessary to defend himself.

## **FINDINGS OF THE TRIAL PANEL**

The Trial Panel finds by clear and convincing evidence:

Taunya Fambrough-Anderson was injured on March 29, 1990 when a piece of exercise equipment fell on her at a gym. She hired attorney Daniel Simcoe (Simcoe) and the firm of Trujillo and Peick (Trujillo) to represent her in a personal injury claim against the gym's owner. The action was filed in March, 1992. In late 1992, both Simcoe and Trujillo withdrew from representation of Ms. Fambrough-Anderson. In December 1992, the defendant filed a motion for summary judgment, alleging that he was not the owner of the gym.

By January, 1993, Ms. Fambrough-Anderson had moved to Michigan. Due to financial problems resulting in large part from medical bills, she filed for bankruptcy in Michigan. Her personal injury action in Oregon was listed in the bankruptcy petition as having no value and her debts were discharged in bankruptcy on May 3, 1993.

On June 2, 1993, Fambrough-Anderson's personal injury action was dismissed on defendant's motion for summary judgment. Ms. Fambrough-Anderson then consulted with attorney Larry Gildea, who believed she had a professional malpractice claim against her former attorneys based on their having sued the wrong party. Mr. Gildea had Fambrough-Anderson enter into a contingency fee agreement for representation in a malpractice action on July 13, 1993 and referred her to the Accused, with whom Gildea had discussed the case. The Accused undertook to represent her under the same fee agreement. The Accused filed a professional malpractice action on Ms. Fambrough-Anderson's behalf against Simcoe and Trujillo on May 11, 1995.

In August, 1995, Attorney John Barker, who represented Trujillo, notified the Accused by telephone and by letter that he intended to raise the issue of estoppel, based on her Michigan bankruptcy, as a defense against Ms. Fambrough-Anderson's claim. The Accused contacted Jack Lintner (Lintner), who had represented Ms. Fambrough-Anderson in the bankruptcy by phone, and learned that she had indeed listed the personal injury action, but had not listed the malpractice action in her bankruptcy petition. He requested a copy of the bankruptcy file from Lintner. On October 2, 1995, Barker filed a response in the malpractice action, listing estoppel as an affirmative defense. On behalf of Defendant Simcoe, attorney William Deatherage filed a similar affirmative defense.

In the summer of 1996, both Simcoe and Trujillo filed motions for summary judgment on the estoppel defense. On August 19, 1996, the trial court ordered Ms. Fambrough-Anderson to furnish proof by August 30, 1996 that she had reopened her bankruptcy.

In July 1996, Fambrough-Anderson agreed to accept \$10,000 in settlement of her claim against Trujillo. In connection with that agreement and in anticipation of the bankruptcy being reopened, Trujillo's attorney Barker required that the \$10,000 be held in the Accused's trust account until it was determined that a Trustee in Bankruptcy would not pursue claims against Ms. Fambrough-Anderson for those funds. Barker sent the Accused a Covenant Not to Sue containing these terms on August 8, 1996.

Sometime in August 1996 the Accused entered into a modified fee agreement with Ms. Anderson and, on August 2, 1996 contacted Michigan attorney Lintner requesting that the bankruptcy be reopened.

The language of three separate documents created at the time bear setting out here.

**The modified fee agreement with Ms. Fambrough-Anderson**, states that “the reason for the modification is that Client intends to reopen her Chapter 7 Bankruptcy in Michigan”. The fee agreement further provides that “Attorney is still entitled to his 1/3 contingent fee. Attorney is further entitled to an additional fixed and non-refundable fee of \$6,666.67. This fixed fee is immediately earned and no portion of it will be refunded to Client. Attorney further agrees not to seek costs from Client and agrees to represent Client in any appeal from this or any related matter without additional fees or costs from Client.”

Both Ms. Fambrough-Anderson and the Accused testified that they understood that “this or any related matter” was intended to include both the pending malpractice action and any possible new personal injury claim arising out of the March 1992 gym accident.

**The Covenant Not to Sue** prepared by Attorney Barker and sent to the Accused on August 8, 1996 (but not signed by the Accused and Ms. Fambrough-Anderson until December 15, 1996) includes the following provision:

“Plaintiff may seek to reopen the bankruptcy. Because of uncertainties concerning plaintiff’s bankruptcy and the effect of plaintiff reopening it bankruptcy (sic), counsel for plaintiff and plaintiff agree that the proceeds of this settlement will remain in the client trust account of the law firm of Daniel W. Goff, P.C., until it has been finally determined that they can be paid to plaintiff free of any claim of lien or entitlement by the bankruptcy trustee or any other person or entity, including medical care providers.”

On August 23, 1996, bankruptcy attorney Lintner e-mailed the Accused a draft of a **Motion to Reopen Estate** for review and approval. The identical motion was filed in the

Michigan bankruptcy court on August 29, 1996 and contained this language:

“7. That the Debtor’s attorney in the State of Oregon is Daniel Goff of Eugene, Oregon and the Debtor originally brought the legal negligence action against more than one of her former attorneys and all but one attorney has settled for a gross amount of \$10,000.00.

“8. That Attorney Goff will hold this \$10,000.00 in trust until he receives authority from the Trustee to make disbursements.

“9. That Attorney Goff believes that the Debtor has good claim against the one attorney and would expect a total verdict/settlement to be in excess of \$100,000.”

On September 11, 1996, the trial court granted Defendant Simcoe’s motion for summary judgment on the basis of the Accused’s failure to furnish proof by August 31 that the bankruptcy had been reopened; on September 24, 1996, the trial court entered a judgment dismissing Ms. Fambrough-Anderson’s claim against Simcoe and awarding costs to Simcoe. On October 25, 1996, the Accused filed a Notice of Appeal from that judgment. However, by December 17, the Judgment of Dismissal was set aside and the Accused moved to dismiss the appeal.

On December 15, 1996, Fambrough-Anderson and the Accused signed the Covenant Not to Sue and stipulation for dismissal of the claim against Trujillo. The funds, in a check made payable to the Accused’s trust account, were received in January, 1997. The Accused did not submit the stipulation for dismissal of the Trujillo claim to the trial court until sometime after August 1997.

On February 3, 1997, the Michigan Bankruptcy Court ordered that the Fambrough-Anderson bankruptcy be re-opened and appointed Marcia Meoli as the Trustee in Bankruptcy. The first conversation between the Accused and Meoli was by telephone on June 11, 1997. Following that discussion, on July 24, 1997, the Accused

wrote to Meoli advising her of the \$10,000 settlement received from Trujillo. He also stated that he intended to deduct \$3,333 from that amount for his fees and to use the balance of \$6,667 for costs.

In anticipation of substituting the Trustee as Plaintiff in the malpractice claim remaining against Simcoe, the Accused also enclosed a Contingent Fee Retainer Agreement for Meoli's signature. That agreement states that "Plaintiff [Fambrough-Anderson] has deposited the amount of \$6,666.67 to be held in trust by Attorney to secure and pay costs." Meoli responded with an Addendum to that Agreement requiring that the entire agreement be approved by the Bankruptcy Court and that the Trustee have no obligation to pay costs or any bill except through recovery on the claim or by specific agreement of the Trustee in advance. Meoli returned the signed fee agreement to the Accused, subject to his signing the Addendum on August 19, 1997. The Accused did not return the signed Addendum to Meoli until two years later, on August 3, 1999.

Defendant Simcoe offered \$10,000 to settle the malpractice claim against him. In May, 1998, the Accused gave notice to the trial Court that the case was settled; in September, 1998, Simcoe's attorney also gave notice to the trial Court was settled and that he was waiting for paperwork.

Simcoe's attorney, Mr. Deatherage, had convinced the Accused that there was a statutory provision that would waive the two year period of limitations and allow the personal injury claim to be filed against the proper defendant. In reliance on this theory, the Accused advised Meoli on August 12, 1999 to accept the \$10,000 settlement because he believed the personal injury claim was still viable. Meoli agreed and the

case was settled between the parties. (The Stipulation settling the case was not submitted to the Court, and a judgment entered dismissing the case, until November, 2000.)

On October 1, 1999 the Accused sent the Trustee the \$10,000 settlement check with a request for distribution as follows:

Attorney Fees:	\$3,333.33
Costs Advanced:	
Expert Witness Fee	990.00
Postage	21.00
Photocopies	67.40
Depositions	439.75
Filing Fees	118.00 <sup>1</sup>
Service Fee	98.00 <sup>2</sup>
Distribution to Ms. Fambrough-Anderson	4,932.52

The expert witness fee of \$990 was for payment to a Dr. Kurlychek for his evaluation of Ms. Fambrough-Anderson. These charges had not been paid as of the disciplinary hearing. And, the representations of the Accused in his final written argument notwithstanding, the record contains no evidence that they were paid any time thereafter.

On January 31, 2000, Goff filed the second personal injury claim, with Meoli as Plaintiff.

From December 13, 2000 through February 19, 2002, and from February 21, 2002 through May 8, 2002, the Accused had no contact with Meoli nor with Fambrough-Anderson, in spite of numerous requests from each of them for information. During this time period, several important events occurred in the personal injury case.

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<sup>1</sup> The original filing fees for the malpractice action against Trujillo and Simcoe.

<sup>2</sup> The original service fees for the malpractice action against Trujillo and Simcoe.

On February 8, 2001, Defendant's Motion for Summary Judgment in the personal injury case was granted on statute of limitations grounds and Defendant was awarded costs. The Accused did not notify Meoli of this dismissal until more than a year later.

On March 6, 2001, the Accused filed a Notice of Appeal from the summary judgment ruling with the Oregon Court of Appeals. The Accused did not notify Meoli of this appeal until more than a year later.

On June 18, 2001, the Court of Appeals issued a notice of dismissal because the order appealed from was not a final order. The dismissal was held in abeyance for 30 days in order to give the trial court time to enter a final judgment. The Accused did not promptly notify Meoli or Fambrough-Anderson of the dismissal.

Thereafter, between August 13, 2001 and November 3, 2003, the Accused filed Amended Notices of Appeal, followed by dismissals, no fewer than three times. On October 15, 2003, the Court of Appeals issued a Notice of Intent to Dismiss for appellant's failure to file the brief on time and the Accused had to request an extension of time. Ultimately, on June 1, 2005, the Court of Appeals affirmed the ruling of the trial court on the merits and awarded Respondent his costs on appeal.

The Accused filed a petition with the Oregon Supreme Court for review, which was denied on September 27, 2005. The Accused notified Ms. Fambrough-Anderson of that result on October 3, 2005.

In response, Ms. Fambrough-Anderson wrote on November 8, 2005 to the Accused asking for an explanation of what had happened, what recourse she had, and for an accounting of the \$20,000 that had been paid in settlement of the malpractice claims.



The Accused responded on December 22, 2005 that she had no further recourse, and that he had been ill and would respond to her other questions later. He never did so.

On September 29, 2005, counsel for the Respondent on appeal requested that the Accused pay the outstanding judgments for trial and appeal costs. The Accused forwarded the letter to Meoli, who, on October 7, 2005, informed the Accused that she was abandoning the asset and that he would need to take care of the costs. This debt was partially satisfied by Respondent's taking the \$500 undertaking paid to the trial court when the appeal was filed. Despite his prior agreement to use the Trujillo settlement funds to pay all costs, the remaining balance owed on cost bills remains an outstanding judgment against Meoli. The Accused, in his final written argument, asserts that the balance has been paid. However, the record contains no evidence in support of that assertion.

At no time did Meoli request an accounting of the \$6,667 remaining from the Trujillo settlement and which the Accused had agreed to hold in trust for costs.

After payment of creditors, on September 7, 2007 the Trustee sent Ms. Fambrough-Anderson a check for \$3,476.74. This amount constitutes the only recovery Fambrough-Anderson received from either the personal injury claims or the malpractice claims. Shortly thereafter, Ms. Fambrough-Anderson contacted the Oregon State Bar.

The Oregon State Bar initiated an investigation into Ms. Fambrough-Anderson's complaint with a letter requesting information from the Accused dated September 26, 2007. By that date, the Accused had no trust records for any of the monies received or disbursed by him in connection with his representation of Ms. Fambrough-Anderson or of

Ms. Meoli.

On November 19, 2007. in response to a letter of investigation from disciplinary counsel at the Bar, the Accused represented:

1. That he had not represented Ms. Fambrough-Anderson since August of 1997 and therefore had only limited records available concerning her matter;

2. That Ms. Fambrough-Anderson had first filed for bankruptcy in Michigan during the Accused's course of representation of her, and without notifying him that she was doing so;

3. That the Accused had the balance of the Trujillo settlement (\$6,667) remaining after payment of his attorney fees to pay existing costs, including expert witness fees, and that those costs exceeded her share of the settlement proceeds;

4. That Ms. Fambrough-Anderson agreed at the time she entered into the August, 1996 fee agreement that the balance of the Trujillo settlement could be used to pay existing costs;

5. That, upon settlement of the Simcoe claim, the amount of \$1734.15 was used to pay unpaid costs;

6. That, after his representation of Ms. Fambrough-Anderson ended, the Accused made every effort to keep her informed.

These statements were false.

On June 23, 2008, through his attorney, Robert J. Smith, the Accused made the following representations in response to a letter of investigation from disciplinary counsel at the Bar:

1. That the \$6,667 remaining from the Trujillo settlement was, pursuant to his agreement with Ms. Fambrough-Anderson, applied toward attorney fees and costs for the personal injury litigation that followed the settlement of the Simcoe lawsuit;

2. That, pursuant to the fee agreement entered into by Ms. Fambrough-Anderson and the Accused, the \$6,667 remaining from the Trujillo settlement was to be a fixed partial attorney fee, to be reduced by any necessary costs that would be paid by Mr. Goff.

These statements were false.

On September 11, 2008, in response to a letter of investigation from disciplinary counsel at the Bar, the Accused made the following representation through his attorney, Robert Smith:

“While Mr. Goff’s reference that the funds were being held in trust may be confusing but (sic) it was not intended to mean that they were being held in his lawyer’s trust account.”

This statement is false.

With respect to the justification and affirmative defenses claimed by the Accused, the Trial Panel finds:

1. That the Accused entered into a written fee agreement with Ms. Fambrough-Anderson that provided that the Trujillo settlement funds were fixed fees, immediately earned;

2. That the written fee agreement with Ms. Fambrough-Anderson may or may not have precluded any claim to them by the Bankruptcy Court. However, the written fee agreement entered into between the Accused and Meoli committed the

Accused to holding \$6,667 of those fees in trust to be used for costs and expenses pending his representation of Meoli.

3. That, by entering into the fee agreement, Ms. Fambrough-Anderson waived any right to the Trujillo settlement fees.

4. The Accused entered into contingent fee agreements in these matters, not hourly rate fee agreements. In addition, a not insignificant portion of the extra attorney time and costs incurred resulted from the Accused's neglect of the matters he undertook and were not costs or time reasonably necessary to be charged to the client.

5. Ms. Fambrough-Anderson did delay her complaints about the Accused for a lengthy period of time, but not for so long that the Accused was excused from his obligation to keep client files and records.

### CONCLUSIONS

1. Violation of former Oregon Code of Professional Responsibility DR 6-101(B), which provides that "A lawyer shall not neglect a legal matter entrusted to the lawyer." The trial panel finds a violation.

The numerous delays set out in the findings will not be recited again here; nonetheless, the more egregious delays include but are not limited to: failure to timely reopen the bankruptcy case; failure to return her fee agreement to Meoli for a period of two years; failure advise Meoli of the Simcoe settlement agreement for a period of over a year after the agreement was made; and failure, two years after having filed a notice of appeal, to have a brief ready to file on the appointed date. All of these delays resulted in additional costs and attorney time, let alone significant delay in Ms. Fambrough-

Anderson receiving the small amount finally distributed to her.

2. Violation of DR 1 -102(A)(3) and of of RPC 8.4(A)(3), each of which provides that it “is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation .” The trial panel finds a violation.

This charge addresses the Accused’s conduct with respect to the \$10,000 Trujillo settlement. The Accused entered into a series of agreements where he agreed or represented:

-that the \$10,000 would be held in his trust account until it was finally determined that the funds could be paid to Ms. Fambrough-Anderson free of any claim by the Trustee or any other person (Covenant Not to Sue);

- that he would “hold this \$10,000.00 in trust until he receives authority from the Trustee to make disbursements” (Motion to Reopen Bankruptcy);

-that Ms. Fambrough-Anderson had designated the funds be held in trust by Attorney to secure and pay costs (Contingent Fee Retainer Agreement entered into with Meoli); and

- that “Attorney is still entitled to his 1/3 contingent fee. Attorney is further entitled to an additional fixed and non-refundable fee of \$6,666.67. This fixed fee is immediately earned and no portion of it will be refunded to Client.” (Amended Fee Agreement with Ms. Fambrough-Anderson).

The Accused never informed attorney Barker, attorney Lintner, nor his client, Ms. Meoli, of his fee agreement with Ms. Fambrough-Anderson. His later claim to the Bar

that by “in trust” he never meant “in his client trust account” is disingenuous at best and at worst indicates an attempt to deceive Meoli, Barker and Lintner. This excuse also makes clear that, in spite of his promises and professional conduct rules to the contrary, these funds were not held in the client trust account as agreed and as required.

3. Violation of DR 9-101(A) and of RPC 1.15-1(a), each of which provides that “all funds of clients paid to a lawyer or law firm, including advances for costs and expenses . . . shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated.” The Trial Panel finds a violation.

There is no clear evidence as to when the Accused withdrew the Trujillo settlement funds from his client trust account. Nonetheless, his later statements, both in his testimony at the disciplinary hearing and in his September 11, 2008 letter to disciplinary counsel, make it clear that the Trujillo funds did not remain in his trust account to be used for costs and expenses, as agreed with Meoli and as represented to Lintner.

4. Violation of DR 9-101(C)(3) and of RPC 1.15-1(D), each of which requires that a lawyer shall maintain “complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer’s client regarding them. Every lawyer engaged in the private practice of law shall maintain and preserve for a period of at least five years after final disposition of the underlying matter, the records of the accounts...”

The Trial Panel finds a violation. Although the claim against Trujillo was resolved in 1997, the Accused thereafter agreed with Meoli that these funds would be

held in trust for costs and expenses in the continuing litigation against Simcoe, and in a potential second personal injury action. DR 9-101(A) and of of RPC 1.15-1(a) each provide that “all funds of clients paid to a lawyer or law firm, including advances for costs and expenses . . . shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated.” The Simcoe matter was not finally resolved until November 14, 2000, and the personal injury claim was not resolved until September 27, 2005. The Accused was obligated to maintain his trust account records until at least September 26, 2010, well after he was unable to produce them for the Bar.

In addition, the Accused was obliged to account for these funds to his client, Meoli. The fact that she did not request an accounting is immaterial. A lawyer is required to account to a client even if the client does not request an accounting. *In re Gildea*, 324 Or 281, 290 (1997).

5. Violation of DR 9-101(C)(4) which requires that, when a lawyer holds client funds in his trust account, the lawyer shall promptly “pay or deliver to a client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive.”

The Trial Panel finds no violation. There was no instance in which either Ms. Fambrough-Anderson or Ms. Meoli was entitled to receive funds and the Accused failed to pay those funds.

6. Violation of DR 1-102(A)(3) which provides that it “is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation .” The Trial Panel finds a violation.

The Accused’s failures to disclose to Meoli that he did not hold the \$6,667 in trust and that he had reached an agreement with Fambrough-Anderson that those funds were immediately earned by him as fees prior to the reopening of the bankruptcy were material omissions. Similarly, his failure to disclose promptly to her that the personal injury claim had been dismissed and an appeal filed was a material omission.

7. Violation of RPC 8.1(a)(1) which provides that a lawyer, in connection with a disciplinary matter shall not “knowingly make a false statement of material fact.”

The Trial Panel finds a violation. The representations made by the Accused in his letters in response to inquiries from disciplinary counsel, and found to be false by the Trial Panel, are set out in the findings.

8. Violation of RPC 8.1 (a)(2) which provides that a lawyer, in connection with a disciplinary matter, shall not . . . “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority”.

The Trial Panel finds no violation. In light of the general disorder evident in the Accused’s office practices, the Trial Panel finds the Accused’s claim that he could not find financial records to be credible.

9. Violation of RPC 8.4(a)(3) which provides that it “is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation .”



Taking into consideration its conclusion with respect to Claim 7, the Trial Panel finds a violation.

**IN THE MATTER OF ELLIOT MANTELL (CASE NO. 09-12)**

In its Second Amended Formal Complaint, the Bar charges the Accused with violation of the following disciplinary rules:

1. Violation of RPC 1.5(a), which provides that a lawyer “shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.”

Specifically, the Bar charges that the Accused entered into an agreement with Mr. Mantell for a clearly excessive fee (\$50,000) and collected a clearly excessive fee (\$42,500). The Accused denies that his fees were excessive and claims that he earned the fees agreed to and collected.

2. Violation of the Oregon Rules of Professional Conduct RPC 1.15 -1(c), which requires that a lawyer “shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as ‘earned on receipt,’ ‘nonrefundable’ or similar terms and complies with Rule 1.5(c)(3).” RPC 1.5.(3) requires that a fee shall not be so denominated “unless it is pursuant to a written agreement signed by the client.”

Specifically, the Bar alleges that the Accused deposited Mr. Mantell’s retainer of \$42,500 into his trust account and withdrew the same amount from his trust account over a period of about the next six weeks, without having earned them. This was pursuant to an oral fee agreement which the parties were unable to reduce to writing. The Accused admits withdrawing the funds, but claims that he had earned them as he withdrew them.

3. Violation of RPC 1.15-1(d) which requires a lawyer holding a client's funds in trust, upon request from a client, to "promptly render a full accounting regarding such property."

Specifically, the Bar alleges that when Mr. Mantell requested an accounting of his trust funds, the Accused refused to provide it. The Accused denies this allegation.

4. Violation of RPC 1.15-1(e) which requires that "when in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved."

The Bar alleges, that after Mr. Mantell terminated the Accused's services and demanded an accounting, the Accused continued to pay himself from the funds held in trust even though he knew that Mantell disputed his right to do so.

The Accused admits the withdrawals from his trust account, but denies that he knew there was a dispute about his fees.

5. Violation of RPC 8.4(a)(3) which states that it is professional misconduct for a to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law."

This charge incorporates the allegations, admissions, denials, and defenses set out in paragraphs 1 through 4 above.

6. Violation of RPC 8.4(a)(3) which states that it is professional misconduct for a to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law."

The Bar alleges that in response to a request for accounting from Mr. Mantell, the Accused first represented falsely that he had not been paid for all of his work and, in a second letter, represented falsely that the parties had a mixed fixed and contingent fee agreement, no part of which was refundable, and that Mr. Mantell was not entitled to an accounting.

The Accused admits making the representations, but denies that they were false.

7. Violation of RPC 3.4(b) which provides that a lawyer shall not falsify evidence.

The Bar alleges that, in connection with Bar disciplinary proceedings, the Accused fabricated a time sheet purporting to describe the time he had worked on the Mantell case. The Accused denies fabricating the time sheet.

8. Violation of RPC 8.1(a)(1) which provides that a lawyer, “in connection with a disciplinary matter shall not knowingly make a false statement of material fact.”

The Bar alleges that, in a letter to the Bar dated October 25, 2008, and in connection with a disciplinary matter, the Accused knowingly misrepresented the amount of time that he had spent working on the Mantell matter. The Accused admits the representations, but denies that they were false.

9. Violation of RPC 8.1 (a)(2), which provides that a lawyer, in connection with a disciplinary matter shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.”

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Specifically, the Bar charges that, in response to its letter of November 18, 2008 requesting information, the Accused failed to respond or to provide that information. The Accused does not respond to this allegation in his Answer.

10. Violation of RPC 8.4(a)(3) which states that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

This charge incorporates the allegations, admissions, denials, and defenses set out in paragraphs 7, 8, and 9 above.

As affirmative defense to all of the above charges, the Accused alleges that Mantell intentionally changed the terms of the oral fee agreement in order to avoid a written agreement; that Mantell has a history of refusing to honor fee agreements with attorneys, that Mantell attempted to act on behalf of the Accused; and that the Accused more than earned his fees in the Mantell matter.

#### **Findings of the Trial Panel**

On April 7, 2007, the Accused undertook to represent Elliott Mantell and his business partner regarding disputes they were having with a commercial tenant and to review the performance of Mantell’s prior attorneys to determine whether a malpractice action against them was viable. The Accused and Mantell orally agreed that the Accused would handle all of the legal matters for a flat fee of \$50,000.

At the time of that meeting, Mr. Mantell paid \$10,000 to the Accused. Between April 20, 2007 and June 7, 2007, Mantell paid an additional \$32,500 towards his fees. The Accused deposited all of these funds into his lawyer trust account.

On May 14, 2007, the Accused sent Mr. Mantell a proposed written fee agreement providing that the Accused would handle Mr. Mantell's legal matters for a flat fee of \$50,000, paid in advance and deemed fully earned upon receipt, and a deposit of \$5,000 towards costs. On May 23, 2007, Mr. Mantell responded to the Accused, disputing the terms of the fee agreement. Thereafter, the Accused and Mr. Mantell could not at anytime agree, either orally or in writing, on the terms of a flat or any other fee agreement. The areas of dispute between the parties were (1) the scope of services to be provided; and (2) whether the Accused could consider the funds "earned upon receipt" or whether he would have to wait until various portions of his services were completed to withdraw funds.

On April 11, 2007, the Accused withdrew \$7,000 from his lawyer trust account for payment of attorney fees billed at an hourly rate of \$250 and allegedly incurred by Mr. Mantell between April 7 and April 11, 2007. Between April 23, 2007 and May 15, 2007, the Accused withdrew an addition \$9,000 from his lawyer trust account for payment of attorney fees allegedly incurred in the Mantell matters. Between May 24, 2007, the day after receiving the fax from Mr. Mantell disputing the terms of the fee agreement, and July 6, 2007, the day that Mantell terminated the Accused's representation of him and requested an accounting, the Accused withdrew an additional \$21,327 for his fees. The Accused did not notify Mr. Mantell that he was withdrawing funds from the trust account.

On July 6, 2007, Mr. Mantell terminated the Accused's representation and asked the Accused for an accounting and refund of the fees paid. On that same date, the Accused responded to Mr. Mantell's letter and told Mr. Mantell that he would prepare an

accounting and return any fees not yet earned. However, at no time thereafter did the Accused provide Mr. Mantell with the requested accounting, nor did he return any fees to Mr. Mantell.

On July 12, 2007, the Accused withdrew an additional \$2,000 from the Mantell trust account, and on July 26, 2007, withdrew an additional \$673 from the trust account, all for payment of attorney fees in the Mantell matters. The Accused knew when he made these withdrawals that Mr. Mantell disputed the Accused's entitlement to those funds.

In an August 15, 2007 letter to Mr. Mantell, the Accused represented that he and Mr. Mantell had agreed to a mixed fixed and contingent fee; that the fees Mantell paid the Accused were immediately earned and not refundable; and that Mantell was not entitled to receive any accounting from the Accused. These representations by the Accused were false and material and the Accused knew they were false and material at the time he made them.

In April, 2008, Mr. Mantell filed a complaint with the Bar regarding the Accused's conduct. In response to Mr. Mantell's complaint, the Accused submitted a time sheet that purported to describe the hours he spent on the Mantell legal matters. The Trial Panel cannot find by clear and convincing evidence that the Accused fabricated this time sheet nor that the time sheet did not accurately reflect the hours the Accused spent on the Mantell legal matters.

On October 25, 2008 in connection with the Bar's investigation into his conduct, the Accused made representations as to the total number of hours he had worked on the Mantell legal matter, described with particularity the nature of the work he allegedly

performed, and claimed that Mr. Mantell had not paid the Accused for all of the hours worked.

The evidence simply does not support a conclusion one way or the other as to whether the Accused performed the work he claims. Thus, the Trial Panel cannot find that the Accused's representations about his work were false and material, nor that the Accused intended to make false representations.

On November 18 2008, Disciplinary Counsel's Office requested that the Accused respond to some specific questions on or before December 2, 2008. The Accused obtained an extension of time to January 5, 2009. Thereafter, the Accused failed to respond to the November 18, 2008 letter.

In 2008 Mr. Mantell bought a civil action against the Accused for recovery of the amount of \$37,500 paid to the Accused for attorney fees in the above matter. In a mediated settlement of this action, and without admitting any liability, the Accused agreed to give Mr. Mantell a Confession of Judgment in that same amount. To date, the Accused has repaid Mr. Mantell \$1,500 of the \$37,500.

With respect to the Accused's justifications and affirmative defenses, the Trial Panel finds that Elliot Mantell was a particularly difficult, argumentative, demanding and time-consuming client. There were warning signs that he would be difficult to please from the first meeting. A friend of the Accused's, who accompanied him to the meeting and took notes of the conversation described Mantell as "rather excitable". Mantell's prior attorneys on the same matters had already run up \$200,000 in fees on an hourly basis. Mantell was engaged in a fee dispute with his former attorneys over a balance

owed to them of \$100,000 and wanted to sue them for malpractice. The fee dispute was one of the matters in which the Accused agreed on April 7, 2008 to represent Mr. Mantell, as was evaluation of a potential malpractice claim against the former lawyers.

It is also true that Mr. Mantell requested that the Accused's secretary email him the Accused's fee agreement in Word Perfect format. Mr. Mantell then worked from that document to draft his own version of the fee agreement; there is no evidence he was attempting to "act on behalf of the Accused", as claimed. Nor is there evidence that Mr. Mantell was attempting to avoid a written fee agreement.

### **Conclusions**

1. Violation of RPC 1.5(a). The Trial Panel finds that this allegation was not proved by clear and convincing evidence. Whether or not the Accused performed all of the work he claims cannot be established; but the work he undertook to perform was substantial, time lines were short, and, Mr. Mantell was a difficult client who interrupted the Accused on a nearly daily basis.

2. Violation of the Oregon Rules of Professional Conduct RPC 1.15 -1(c). The Bar's allegation here is that the Accused did not earn the moneys he withdrew from his trust account. That charge is not proved by clear and convincing evidence.



3. Violation of RPC 1.15-1(d). The Trial Panel finds that the Accused violated this rule when he refused to provide Mantell with an accounting, advising him that he was not entitled to one.

4. Violation of RPC 1.15-1(e). The Trial Panel finds a violation. No later than May 23, 2007, the Accused knew that there was a dispute over the terms of his fee agreement with Mantell. After that date, he nonetheless withdrew a total of \$24,000 from his trust account to pay his own fees.

5 and 6. Violations of RPC 8.4(a)(3). The Trial Panel finds violations of this rule, first taking into consideration its conclusion on charges 3 and 4; and then on the basis of the Accused's representation to Mr. Mantell that he was not entitled to an accounting of the Accused's time.

7. Violation of RPC 3.4(b). The Bar has not proved this allegation by clear and convincing evidence.

8. Violation of RPC 8.1(a)(1). The Bar has not proved this allegation by clear and convincing evidence.

9. Violation of RPC 8.1 (a)(2). The Trial Panel finds a violation of this rule.

10. Violation of RPC 8.4(a)(3). Taking into consideration its conclusions on charges 7 and 8, the Trial panel finds that the Bar has not proved this allegation by clear and convincing evidence.

**IN THE MATTER OF W. FRED WHITSEL (CASE NO. 09-53)**

In its Second Amended Formal Complaint, the Bar charges the Accused with violation of the following disciplinary rules:

1. Violation of former Oregon Code of Professional Responsibility DR 2-106(A) and of The Oregon Rules of Professional Conduct RPC 1.5(a), both of which provide that “a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.” The Accused’s representation of Mr. Whitsel on this matter began in 2003, when the former Code was in place, and continued into 2008, when the new Rules were in place.

Specifically, the Accused initially charged Mr. Whitsel a flat fee of \$7,500 to handle his dissolution of marriage. When Mr. Whitsel terminated The Accused’s services in 2008, the Accused refused to refund Mr. Whitsel’s \$7,500. The Accused denies that the fees were excessive and claims that there were no unearned fees to refund to Mr. Whitsel.

2. Violations of former Oregon Code of Professional Responsibility DR 6-101(B) and of the Oregon Rules of Professional Conduct RPC 1.3, both of which require that a “lawyer shall not neglect a legal matter entrusted to the lawyer.”

Specifically, the Bar charges that the Accused failed to assure that a dissolution judgment was entered and allowed the dissolution to be dismissed by the Court; and that subsequently, when the client discovered that he was not divorced, failed to follow through with obtaining a dissolution judgment over a period of about 18 months. The Accused denies these allegations. He blames the dismissal of the original dissolution

judgment on the malfeasance of an employee and blames the failure to complete paperwork for the second dissolution proceedings on Mrs. Whitsel's failure to come into the office and sign documents.

3. Violation of RPC 1.5(a) of the Oregon Rules of Professional Conduct, which requires that a "lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

The specific violations alleged are that the Accused failed to notify Whitsel that his first Petition for Dissolution of Marriage had been dismissed and failed to keep him informed of progress in subsequent attempts to obtain the dissolution. The Accused denies these allegations.

4. Violation of RPC 8.1 (a)(2) which requires that, in connection with a disciplinary proceeding, a lawyer shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority...".

Specifically, the Bar charges that, in response to its letter of November 12, 2008 requesting information, the Accused failed to respond or to provide that information. The Accused denies this allegation and claims that the Bar failed to respond to his related correspondence of January 5 and January 12, 2009.

#### **Findings of the Trial Panel**

W. Fred Whitsel was a client who retained the Accused from time to time for business matters. In about March, 2003, Mr. Whitsel retained the Accused to represent him in his dissolution of marriage. The Accused undertook to represent Mr. Whitsel for a flat fee of \$7,500. He filed a Petition for Dissolution of Marriage on Mr. Whitsel's

behalf in Lane County Circuit Court on March 17, 2003.

Mr. Whitsel and his then wife, Kimberly Whitsel, were in substantial, but not complete, agreement about the terms of their dissolution. The Whitsels had a “long term marriage”, both in terms of years and in terms of intermingling of their financial lives. Mr. Whitsel was a partner with other members of his family in a lumber mill which had substantial value and produced substantial income for him. The parties had four children, all of whom were grown.

Kimberly Whitsel was advised of her right to separate counsel and declined to retain her own attorney.

On April 8, 2003, the parties entered into a written Marital Settlement Agreement addressing all issues in their dissolution and which was intended to be incorporated into the parties’ judgment of dissolution of marriage. The Marital Settlement Agreement provided that Mr. Whitsel would pay his former wife substantial spousal support.

Within 60 to 90 days after the Marital Settlement Agreement was signed, Mr. Whitsel had a telephone conference with the Accused during which the Accused told him that his dissolution judgment had been signed by a judge and that the divorce would be final after 60 or 90 days. In reliance on the Accused’s representations, Mr. Whitsel began paying spousal support to Kimberly Whitsel pursuant to the terms of the Marital Settlement Agreement.

At the time of this telephone conversation, no judgment of dissolution had been filed with the Court. On August 11, 2003, the Lane County Circuit Court issued to the Accused a “Notice of Intent to Dismiss/ No Default or Appearance” in the Whitsel matter.

This notice provided that the dissolution would be dismissed after 28 days if no further action were taken by the Petitioner. A copy of the Notice was provided to the Accused by the Court.

On October 22, 2003, on the Court's initiative, a Judgment of Dismissal was filed in the Whitsel matter. A copy of the Notice was provided to the Accused by the Court.

The Accused did not inform Mr. Whitsel that no judgment of dissolution had been signed nor that the dissolution case had been dismissed by the Court.

The Accused testified that a dissolution judgment had been prepared in 2003, but that a clerical employee had failed to file the judgment and, to cover her tracks, had prepared a fake, hand-conformed dissolution judgment for the file. No copy of the allegedly faked judgment was provided to Mr. Whitsel in 2003 nor to the Trial Panel as evidence at hearing. The Trial Panel also takes notice of Lane County Supplemental Local Rule requiring that all attorneys maintaining their principle offices in the Eugene/Springfield area submit *ex parte* matters in person at the Court session scheduled for that purpose.

The Trial Panel finds that, in 2003, the Accused never prepared a General Judgment of Dissolution of Marriage in the Whitsel matter; never submitted a dissolution judgment to the Court; and never took steps to ensure that the Whitsel dissolution would be completed.

Three years later, in the fall of 2006, Mr. Whitsel discovered that the dissolution had been dismissed and that he and Kimberly Whitsel were still married. He promptly contacted the Accused, who promised to take care of the situation. On September 1,

2007, Mr. Whitsel and Kimberly Whitsel signed a second Marital Settlement Agreement prepared by the Accused.

Between the fall of 2006 and March, 2008, Mr. Whitsel called the Accused repeatedly to learn the status of his case. His sister, who was helping Mr. Whitsel with tax matters, also called the Accused repeatedly. The Accused responded only that he was trying to get the new dissolution to be “retroactive” to 2003 and working on the perceived tax (spousal support) problem.

The tax problem resulted from audits of Mr. Whitsel’s 2004 and 2005 State and Federal income tax returns. When Mr. Whitsel was unable to prove that he was divorced during those two years, both taxing entities disallowed his spousal support deductions and demanded that he pay taxes on the amounts deducted as alimony.

In final argument, the Accused asserts that the spousal support paid by Mr. Whitsel was deductible under the terms of the Marital Settlement Agreement signed in 2003, even though a judgment had not been entered. It is correct that a cash payment made pursuant to the terms of a “written separation agreement” can be considered “alimony” under 26 USC 71. However the record contains absolutely no indication that the Accused was aware of this provision during his representation of Mr. Whitsel, let alone that he discussed this information with his client.

The Accused’s plan for addressing the tax issue was to try and make the new dissolution judgment retroactive to 2003. However, this plan was abandoned and Mr. Whitsel, unaware of the federal tax law, was ultimately required to pay back taxes and penalties on the amounts deducted as spousal support.

After September 1, 2007, the Accused failed to take any action to pursue Whitsel's dissolution of marriage. In particular, he failed to file a Petition for Dissolution with the Court, failed to obtain a Waiver of Appearance and Consent to Entry of Judgment by Default from Kimberly Whitsel, and failed to ensure that the Court signed and entered a judgment.

There is some evidence that although Kimberly Whitsel came to the office of the Accused to sign a second Marital Settlement Agreement, she refused to come into the office again to sign an Acceptance of Service and Consent to Entry of Default. No evidence was offered to explain why, in light of her refusal to come the office of the Accused, the Accused did not undertake to prepare and file a Petition and have it served on Mrs. Whitsel.

In March, 2008, no dissolution judgment had yet been sought or obtained for Mr. Whitsel by the Accused and Mr. Whitsel terminated the Accused's services. The Whitsels then obtained their dissolution of marriage *pro se*.

From 2003 to the fall of 2006, Mr. Whitsel paid spousal support to the woman he believed was his former wife in reliance on his belief that he was required to do so by a dissolution judgment. He claimed those spousal support payments as deductions on his State and Federal income tax returns, causing him problems when his State and Federal tax returns for those years were audited.

In April, 2008, Mr. Whitsel filed a complaint with the Oregon State Bar regarding the Accused's conduct. On November 12, 2008, Disciplinary Counsel's Office requested the Accused's response to some specific questions on or before November 26, 2008. The

Accused obtained an extension of time until January 5, 2009. Thereafter, the Accused produced no documents or information in response to the Bar's November 12, 2008 request. No evidence was offered in support of the Accused's affirmative defense he sent the Bar correspondence in 2009 to which the Bar failed to respond.

### Conclusions

1. Violation of former Oregon Code of Professional Responsibility DR 2-106(A) and of The Oregon Rules of Professional Conduct RPC 1.5(a).

Although in 2003, the parties had reached substantial agreement about settlement of their dissolution, they were not in complete agreement. Because of the long term nature of the marriage, the matter had the potential to consume a substantial amount of time before full agreement was reached between the parties. A flat fee of \$7,500 was not a clearly excessive fee under these circumstances and charging that fee does not violate of DR 2-106(A).

2. Violations of former Oregon Code of Professional Responsibility DR 6-101(B) and of the Oregon Rules of Professional Conduct RPC 1.3, both of which require that a "lawyer shall not neglect a legal matter entrusted to the lawyer."

The Accused failed to complete the matter for which he was retained in 2003. His attribution of fault to his employee is without merit and the trial panel finds that he is in violation of DR 6-101(b).

The Accused again failed to complete the matter for which he had been retained in 2006. His attribution of fault to the opposing party's failure to cooperate is without merit and the trial panel finds that he is in violation of RPC 1.3.



3. Violation of RPC 1.5(a) of the Oregon Rules of Professional Conduct, which requires that a “lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

RPC 1.5(a) was not in effect in 2003. Nonetheless, the Trial Panel finds that the Accused failed to keep Mr. Whitsel advised of the status of his dissolution, including the fact that the Court had dismissed the dissolution petition. Beginning in 2006, the Accused failed to keep Mr. Whitsel advised of the status of his case, in violation of RPC 1.5(a).

4. Violation of RPC 8.1 (a)(2) which requires that, in connection with a disciplinary proceeding, a lawyer shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority...”.

The Accused failed to respond to the Bar’s November 12, 2008 request for information and is violation of RPC 8.1(a)(2).

**IN THE MATTER OF IMRE JUHASZ (CASE NO. 10-14)**

In Cause of Complaint 10 of its Second Amended Formal Complaint, the Bar charged the Accused with violation of RPC 1.4(a) of the Oregon Rules of Professional Conduct, which requires that a “lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” The specific violation alleged is that, after an initial meeting with the client, the Accused’s failed to provide his client with his opinion on the two questions of concern to the client.

The Accused denies that allegation and that he violated the RPC. In addition, he

alleges that, during the period of time he represented Mr. Juhasz, the Accused suffered from colon cancer and underwent intensive chemotherapy, all of which compromised his memory and ability to work.

### **Findings of the Trial Panel**

Imre Juhasz was convicted of a crime in December, 2007. Mr. Juhasz met with and retained the Accused on January 28, 2008. Mr. Imre, who was also represented by court appointed counsel, asked that the Accused give him a second opinion as to whether there were grounds for a new trial and whether an appeal of his conviction would be meritorious.

At that meeting, Mr. Juhasz and the Accused agreed that Mr. Imre would pay a retainer of \$1000 and the Accused would charge him \$250 an hour for his services. Mr. Juhasz paid the retainer that same day.

The Accused was aware that time limits were in place for Mr. Juhasz to ask for a new trial and to decide whether he should pursue his appeal. By February 1, 2008, the Accused had reviewed the matter and concluded that no grounds existed for a new trial and that any appeal was without merit.

At hearing, the Accused presented inconsistent testimony about when he communicated his conclusions to Mr. Juhasz, saying first March 9, 2009, then March 20, 2009 and then sometime earlier than those dates. He further claimed that Mr. Juhasz had failed to pay him for all of the services provided and that the retainer had been exhausted by February 1, 2008.

Mr. Juhasz testified that he never heard from the Accused after January 28, 2008 until Mr. Juhasz wrote and asked for his retainer to be refunded. The documentary evidence included a letter from the Accused dated March 9, 2009, in which the Accused told Mr. Juhasz he had used up the retainer and there was no refund; and a letter dated March 20, 2009, in which the Accused provided his opinion on the legal issues. The time sheet provided by the Accused showed no additional work on the matter after February 1, 2008 and no evidence of correspondence to Mr. Juhasz. No other relevant documents, including billing documents or a request for additional retainer, were in evidence.

### **Conclusions**

The Panel finds that the Accused did communicate his findings to his client, but not before March 20, 2009, one year and two months after the services were requested and paid for. The Accused therefore failed to keep Mr. Juhasz reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Accused presented no evidence that his cancer interfered with his representation of Mr. Juhasz. On the contrary, he testified that he had performed the work for which he was retained and communicated his conclusions to his client at some point in time. The Accused's illness is not a factor in this matter.

### **SANCTIONS**

In considering the appropriate sanction in this proceeding, the trial panel refers to the American Bar Association Standards for Imposing Lawyer Sanctions and Oregon case law. The ABA Standards require the panel to consider four factors: (1) the duty violated;

(2) the Accused's mental state; (3) the actual or potential injury caused by the Accused's conduct; and (4) the existence of aggravating and mitigating circumstances.

**Duties Violated.**

**Duties to Clients.** The most important duties a lawyer has are those owed to clients. *American Bar Association Standards*, p. 6.

The Accused violated the duty of loyalty to his clients when he failed to preserve and account for their monies held in his trust accounts.

He violated this duty to Meoli when he failed to hold the Trujillo settlement funds in his trust account for costs and expenses as agreed; when he represented to her that he held the funds "in trust" when, by use of that term, he did not mean in his client trust account; and when he failed to provide her with an accounting of his use of those funds.

He violated this duty to Ms. Fambrough-Anderson and Ms. Meoli when he failed to pay all of the costs and expenses incurred in pursuing her case, even though he had undertaken to do so. *Standards 4.1 and 4.6.*

He violated this duty to Mr. Mantell when he removed all of Mantell's retainer from the client trust account when he knew there was a dispute about the terms of the fee agreement and when he refused to make any accounting of the trust funds.

He also violated this duty by failing to maintain records of this trust account activities in the Mantell and Fambrough-Anderson/ Meoli matters.

He violated his obligation of diligence to Meoli, Fambrough-Anderson, Whitsels and Juhasz when he failed to act on their matters with reasonable diligence and promptness. *Standard 4.*

**Duties to the Public and the Profession.**

The Accused violated his duty of integrity to the Public and to the Profession when he misrepresented his intentions with respect to the Trujillo settlement money to attorney Barker, to attorney Lintner, and to Trustee Meoli.

He also violated this duty when he made misrepresentations to the Bar in the course of disciplinary proceedings.

**Intent.**

The Accused acted intentionally when he continued to draw fees from his trust account in the Mantell matter when he knew that his client disputed his right to do so.

The Accused acted intentionally when he represented to Trustee Meoli and to Attorney Lintner (and allowed Attorney Lintner to then represent to the Bankruptcy Court) that he would hold the Trujillo funds “in trust” when the Accused knew that he was not using that term in its commonly accepted meaning, that is, in his client trust account.

The Accused acted knowingly when he failed to keep Meoli, Ms. Fambrough-Anderson, and Mr. Juhasz informed of the status of their matters and when he failed to diligently pursue their matters.

The Accused acted knowingly when he failed to diligently pursue Mr. Whitsel’s dissolution matter.

**Injury.**

The Accused, by his actions, caused injury to his clients and to at least one third party.

The Accused caused injury to Ms. Fambrough-Anderson by neglecting her case, sometimes over periods of more than two years at a time, with the result that she did not receive payment for her damages until twelve years after the Accused began representation of her.

The Accused caused injury to Ms. Fambrough-Anderson and to Trustee Meoli by failing to keep them informed about the case for extended periods of time, so that each of them was required to make numerous requests of the Accused for information.

The Accused caused injury to Trustee Meoli by failing to pay the judgments entered against for costs and prevailing party fees, with the result that there is still a judgment outstanding against her.

The Accused caused injury to Mr. Whitsel by neglecting his dissolution, with the result that Mr. Whitsel remained married for three years without knowing it, and, once he learned there had been no dissolution judgment, for another year and a half.. In addition, Mr. Whitsel incurred State and Federal income tax problems because he had been paying spousal support and deducting it on his tax returns in the mistaken belief that he was required to do so under a judgment of dissolution.

The Accused caused injury to Mr. Juhasz by taking payment of \$1,500 from him and then failing to provide him with the services requested in a manner timely enough to be of value to his client.

The Accused caused injury to Dr. Kurlychek, an expert witness in the Fambrough-Anderson matter, by failing to pay him the \$990.00 dollars owed for the evaluation of Ms. Fambrough-Anderson.

**Aggravating Circumstances.** The Trial Panel finds the following aggravating circumstances:

1. Prior Disciplinary Offenses involving one of the same issues, that is, neglect of a client matter.
2. A Pattern of Misconduct, that is, neglect of client matters and trust account violations.
3. Multiple Offenses.
4. Obstruction of Disciplinary Proceedings.
5. Refusal to Acknowledge the Wrongful Nature of his Conduct.
6. Substantial Experience in the Practice of Law.

**Mitigating Circumstances.** The Trial Panel finds the following mitigating circumstances:

1. In 2008 and early 2009, the Accused's illness and difficult course of medical treatment.
2. The Accused has entered into an arrangement with Mr. Mantell and has made some payments towards settlement of Mr. Mantell's claims against him.

The aggravating circumstances outweigh the mitigating circumstances.

### **CONCLUSION AND DISPOSITION**

Having found that the Accused violated the Oregon Code of Professional Responsibility and the Oregon Code of Professional Conduct in the particulars discussed above, and taking into consideration the duties violated, the injuries to persons, the mental

state of the Accused, and the aggravating and mitigating factors discussed above, the Trial Panel concludes that the Accused be suspended from the practice of law for a period of eighteen months.

Dated this 23<sup>rd</sup> day of March, 2011.

Jack A. Gardner  
Jack A. Gardner

Mary Lois Wagner  
Mary Lois Wagner

Audun (Dunny) Sorensen  
Audun (Dunny) Sorensen



LAW OFFICE  
ROBERT J. SMITH, P.C.  
310 EAST ELEVENTH AVENUE  
EUGENE, OREGON 97401 (541) 345-7211

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

**ELLIOTT MANTELL,**  
Plaintiff,  
  
vs.  
  
**DANIEL W. GOFF, P.C., and DANIEL  
W. GOFF,**  
Defendants.

Case No. 08-12-18241  
CONFESSION OF JUDGMENT

DANIEL W. GOFF, P.C. and Daniel W. Goff, Defendants confess judgment in favor of Elliott Mantell for the sum of \$37,500.00 plus interest thereon at the rate of 9% per annum from July 6, 2007. Defendants Daniel W. Goff, P.C. and Daniel W. Goff acknowledge that the sums due and owing to Plaintiff are owed out of Defendants' business purposes. Plaintiff has filed an action in Multnomah County against Defendants for the recovery of the sum of \$37,500.00 paid to Defendants for attorney fees in various litigation matters that Plaintiff was involved in. Plaintiff claimed that all of the moneys were due and owing to him and should be returned. Defendants filed an answer therein denying that they owed any sums to Plaintiff as a result of those payments and alleging that the \$37,500.00 paid in fees had been fully earned. This matter was the subject of a mediation and settlement conference. As a result thereof the parties agreed that Defendant shall confess judgment in the sum of \$37,500.00 plus interest thereon at the rate of 9% per annum from July 6, 2007 in favor of Plaintiff.

1. Defendants hereby authorize the entry of judgment for the above sum;

CONFESSION OF JUDGMENT



COVENANT NOT TO FILE OR EXECUTE

THIS COVENANT is made on the \_\_\_\_ day of April, 2010 by and between Plaintiff Elliott Mantell, (hereafter "Plaintiff") and Defendants Daniel W. Goff, P.C. and Daniel W. Goff, (hereinafter "Defendant").

WHEREAS a claim has been filed by Plaintiff against Defendant in the Multnomah County Circuit Court, entitled:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH  
ELLIOTT MANTELL, )  
 )  
Plaintiff, ) Case No.: 0812-18241  
vs. )  
 )  
DANIEL W. GOFF, P.C., and ) COMPLAINT  
DANIEL W. GOFF , )  
 )  
Defendants. )  
 )

WHEREAS, the parties mediated this above matter with Craig Murphy acting as mediator, and desire to settle all claims presently arising in the above captioned matter, and

WHEREAS the parties agree to dismiss the pending action, without prejudice, and

WHEREAS a Confession of Judgment has been or will be executed in favor of Plaintiff by Defendant, said Confession of Judgment entitled:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

ELLIOTT MANTELL,	)	
	)	No.
Plaintiff,	)	
	)	
v.	)	CONFESSION OF JUDGMENT
	)	
DANIEL W. GOFF, P.C., and	)	
DANIEL W. GOFF ,	)	
	)	
Defendant.	)	

NOW, THEREFORE, for the performance and consideration specified solely in the terms set forth below, Plaintiff and Defendant hereby covenant and agree as follows:

1. Plaintiff will not file and enter said Confession of Judgment and will not execute upon said Confession Judgment. The Confession will be held by and in the offices of Craig C. Murphy.

2. Defendants Daniel W. Goff, P.C. and Daniel W. Goff MUST PERFORM THE FOLLOWING:

a) Payment of the sum of five hundred dollars (\$500.00) must be deposited to Plaintiff's bank account at Wells Fargo Bank, Routing # 123006800, account # 0311696090 on or before 5:00 p.m. on April 15, 2010.

b) Thereafter payments of five hundred dollars (\$500.00) must be deposited to Plaintiff's bank account at Wells Fargo Bank, Routing # 123006800, account # 0311696090

on or before 5:00 p.m. May 15, 2010 through and including December 15, 2010 on or before the 15<sup>th</sup> of every month.

c) Defendant shall make a final payment to Plaintiff of eighteen thousand seven hundred fifty dollars (\$18,750.00) to be on deposited to Plaintiff's bank account at Wells Fargo Bank, Routing # 123006800, account # 0311696090 on or before 5:00 p.m. on January 15, 2010.

d) All payments due pursuant to the Covenant Not to File and Execute are due on or before the specified due dates. If the due date falls on a weekend or a recognized holiday, the due date will be viewed as the next business day.

3. The above provisions embody the sole consideration for which Plaintiff covenants and agrees not to file and execute upon the Stipulated Judgment against Defendant. If any payment is not received by Plaintiff on or before its due date, this Covenant Not to File or Execute shall be null and void, and without further notice or demand upon Defendant, Plaintiff may provide proof of Defendant's default to Craig C. Murphy, obtain the Confession of Judgment from Craig C. Murphy, file the Confession of Judgment with the court, and pursue all claims arising as a result of the Confession of Judgment.

Any payment received from Defendant shall first be credited against any accrued and unpaid interest due under the Confession of Judgment. Specifically, the entire unpaid principal balance of said Confession of Judgment then remaining unpaid, plus interest



**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

September 25, 2007

Elliott Mantell  
 1250 Sunnynydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$285.00
Current Expenses	\$0.00
Previous Balance	\$0.00
Payments and Credits	(\$285.00)
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$0.00</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
8/31/2007	CC Pull OJIN reports on circuit court and appeal cases	0.20	20.00
9/6/2007	CC Pull OJIN report for circuit court and court of appeals status	0.20	20.00
9/10/2007	CC Draft Notice of Representation	0.30	30.00
	ML Draft instructions to assistant to do notice of representation; Review and revise Notice of Representation	0.20	50.00
9/11/2007	CC Ready Notice of Representation for filing and service	0.20	20.00
	CC Telephone call with court transcriber; memo to attorney	0.10	10.00
	ML Review new Court of Appeals case on issue preclusion relevant to this appeal	0.50	125.00
9/12/2007	CC Telephone call to client re: transcript; memo to attorney	0.10	10.00

	<u>Hours</u>	<u>Amount</u>
Professional services, current month	1.80	\$285.00
9/25/2007 Payment from account		(\$285.00)

**PLEASE PAY THIS AMOUNT**

\$0.00

INITIAL RETAINER OF \$5000 WILL BE PAID WITH ATTORNEY FEE AGREEMENT. ADDITIONAL RETAINERS ARE DUE AS FOLLOWS:

- \$3000 OCT. 15, 2007
- \$2000 NOV. 15, 2007
- \$2000 DEC. 15, 2007
- \$2000 JAN. 15, 2008
- \$2000 FEB. 15 2008
- \$2000 MAR. 15, 2008
- \$2000 APRIL 15, 2008

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	0.70	250.00
Christie Cauley	1.10	100.00



**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

October 22, 2007

Elliott Mantell  
 1250 Sunninydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$2,459.00
Current Expenses	\$0.00
Previous Balance	\$0.00
Payments and Credits	(\$2,459.00)
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$0.00</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
9/25/2007	ML Review letter from Leo; Draft letter to Leo re: supersedeas bond	0.40	100.00
	ML Telephone call with client re: all of issues in case	0.90	225.00
9/26/2007	CC Telephone call with court transcriber; memo to attorney	0.10	8.50
9/27/2007	ML Review OJIN record re: current status of case; Leave long voice mail for Court of Appeals clerk in charge of transcripts to attempt to correct OJIN record on status of case	0.30	75.00
	ML Telephone call with Gracie at Court of Appeals re: status of case and OJIN record	0.20	50.00
10/4/2007	ML Review letter from Leo and pleadings relevant to bond included with letter; Review several e-mails from client with a number of attached pleadings; Draft very long e-mail to client regarding bond issues and interfacing appeal with	3.50	875.00

		<u>Hours</u>	<u>Amount</u>
	other lower court case; Review draft motion to abate; Draft e-mail to client on motion to abate		
10/5/2007	ML Review two e-mails from client with questions on appeal issues; Draft long e-mail to client	0.50	125.00
	ML Review e-mail from Chock	0.30	75.00
	ML Telephone call with client re: issues in related case and motion to abate	0.30	75.00
	ML Telephone call [2 additional] with client	0.50	125.00
	ML Draft and fax letter to Leo re: extension of time for motion for summary judgment; Fax copy of letter to Chock	0.50	125.00
10/8/2007	ML Review long e-mail from client with comments on transcript and issues in case; Draft response e-mail to client; Review second e-mail from client and draft response to second e-mail	0.40	100.00
	ML Review e-mail from Chock; Draft reply e-mail to Chock and client	0.30	75.00
10/11/2007	ML Review letter from Leo; Draft e-mail to client re: letter from Leo and requirement that he file motion for extension in related case	0.30	75.00
	CC Cover letter to client enclosing letter from Roger Leo	0.10	8.50
	ML Review long e-mail from client re: stay issues and preservation of appeal; Draft long reply e-mail to client	0.60	150.00
10/16/2007	ML Telephone call with Chock re: issues on appeal	0.50	125.00
10/17/2007	CC Letter to court clerk enclosing check for costs judgment issued by court	0.20	17.00
10/18/2007	ML Review e-mail from client; Draft e-mail to client	0.20	50.00
	Professional services, current month	<hr/> 10.10	<hr/> \$2,459.00
10/22/2007	Payment from account		(\$2,459.00)

Amount

**PLEASE PAY THIS AMOUNT**

\$0.00

INITIAL RETAINER OF \$5000 WILL BE PAID WITH ATTORNEY FEE AGREEMENT. ADDITIONAL RETAINERS ARE DUE AS FOLLOWS:

- \$3000 OCT. 15, 2007
- \$2000 NOV. 15, 2007
- \$2000 DEC. 15, 2007
- \$2000 JAN. 15, 2008
- \$2000 FEB. 15 2008
- \$2000 MAR. 15, 2008
- \$2000 APRIL 15, 2008

YOUR OCTOBER 15 PAYMENT IS NOW PAST DUE. PLEASE SEND YOUR PAYMENT OR CALL OUR OFFICE.

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	9.70	250.00
Christie Cauley	0.40	85.00

**Jensen & Leiberan**  
4915 SW Griffith Drive, Suite 100  
Beaverton, OR 97005  
(503) 641-7990

November 21, 2007

Elliott Mantell  
1250 Sunninydale Road  
Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$5,060.00
Current Expenses	\$0.82
Previous Balance	\$0.00
Payments and Credits	(\$5,060.82)
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$0.00</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
10/22/2007	ML Review e-mail from client	0.10	25.00
10/31/2007	ML Review series of e-mails from client and between client and other attorney; Draft e-mails to client	0.40	100.00
11/5/2007	CC Letter to opposing attorney; draft MOET - File Opening Brief; ready for filing and service	0.60	60.00
11/6/2007	ML Telephone call with client re: issues on appeal	0.30	75.00
11/15/2007	ML Review transcript	4.10	1,025.00
11/16/2007	ML Review transcript	2.50	625.00
11/20/2007	ML Review pleadings and transcript	6.50	1,625.00
11/21/2007	ML Review transcript; Draft notes on transcript; Draft e-mail to client on missing portions of transcript	6.10	1,525.00

	<u>Hours</u>	<u>Amount</u>
Professional services, current month	20.60	\$5,060.00
11/21/2007 ML Postage		0.82
Expenses, current month		\$0.82
Total fees and costs now owing		\$5,060.82
11/21/2007 Payment from account		(\$5,060.82)
		<u>\$0.00</u>

INITIAL RETAINER OF \$5000 WILL BE PAID WITH ATTORNEY FEE AGREEMENT. ADDITIONAL RETAINERS ARE DUE AS FOLLOWS:

\$2000 NOV. 30, 2007  
 \$2000 DEC. 30, 2007  
 \$2000 JAN. 30, 2008  
 \$2000 FEB. 30, 2008  
 \$2000 MAR. 30, 2008  
 \$2000 APRIL 30, 2008

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	20.00	250.00
Christie Cauley	0.60	100.00

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	<u>Amount</u>
CLIENT TRUST ACCOUNT: Prior Balance	\$2,256.00
11/7/2007 Payment to account. Check No. Visa	\$2,000.00
11/16/2007 Payment to account. Check No. Visa	\$1,000.00
11/21/2007 Payment from account	(\$5,060.82)
	<hr/>
CLIENT TRUST ACCOUNT: New Balance	\$195.18

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**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

December 21, 2007

Elliott Mantell  
 1250 Sunnynydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$2,240.00
Current Expenses	\$5.23
Previous Balance	\$0.00
Payments and Credits	(\$195.18)
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$2,050.05</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
11/26/2007	ML Review all exhibits; Review pleadings in this case and in the waste case; Review all e-mails sent by client on issues in case; Legal research; Draft letter to client evaluating appeal	4.50	1,125.00
	CC Review instructions from attorney; review trial court pleadings; email to client re: February 23 Order	0.30	30.00
11/27/2007	ML Finish drafting opinion letter to client; Revise and finalize letter	1.10	275.00
	CC Edit and finalize letter to client	0.20	20.00
11/29/2007	ML Telephone call with client re: evaluation of case	0.40	100.00
	ML Review e-mail from client and attached Plaintiff's Motion to Abate; Draft e-mail to client re: stay for mediation and comments on motion to abate	0.50	125.00

		<u>Hours</u>	<u>Amount</u>
12/4/2007	ML Telephone call with client re: evaluation of appeal and possibility of mediation	0.80	200.00
12/6/2007	ML Telephone call with Willmott; Telephone call with client re: permission to speak to Willmott about issues in case; Review e-mail from client; Draft e-mail to Willmott re: issues on appeal	0.40	100.00
12/7/2007	ML Review several e-mails regarding material that client sent directly to opposing counsel; Draft response e-mail	0.30	75.00
12/14/2007	ML Telephone call with client re: settlement	0.20	50.00
12/17/2007	ML Telephone call with client re: settlement and motion for extension of time on appeal	0.20	50.00
	CC Letter to opposing attorney re: extension; draft second MOET	0.40	40.00
	ML Draft instructions to assistant to file motion for extension to complete settlement; Review and revise motion for extension	0.20	50.00
	Professional services, current month	9.50	\$2,240.00
12/20/2007	ML Faxes		4.00
	ML Postage		1.23
	Expenses, current month		\$5.23
	Total fees and costs now owing		\$2,245.23
12/21/2007	Payment from account		(\$195.18)
	<b>PLEASE PAY THIS AMOUNT</b>		<b>\$2,050.05</b>

INITIAL RETAINER OF \$5000 WILL BE PAID WITH ATTORNEY FEE AGREEMENT. ADDITIONAL RETAINERS ARE DUE AS FOLLOWS:



\$2000 NOV. 30, 2007  
\$2000 DEC. 30, 2007  
\$2000 JAN. 30, 2008  
\$2000 FEB. 30, 2008  
\$2000 MAR. 30, 2008  
\$2000 APRIL 30, 2008

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	8.60	250.00
Christie Cauley	0.90	100.00

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	<u>Amount</u>
CLIENT TRUST ACCOUNT: Prior Balance	\$195.18
12/21/2007 Payment from account	(\$195.18)
	<hr/>
CLIENT TRUST ACCOUNT: New Balance	\$0.00
	<hr/> <hr/>

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**Jensen & Leiberan**  
4915 SW Griffith Drive, Suite 100  
Beaverton, OR 97005  
(503) 641-7990

January 25, 2008

Elliott Mantell  
1250 Sunninydale Road  
Lake Oswego OR 97034

BILLING SUMMARY	
Current Fees	\$0.00
Current Expenses	\$0.41
Previous Balance	\$2,050.05
Payments and Credits	\$0.00
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$2,074.05</b>

	<u>Amount</u>
1/24/2008 ML Postage	0.41
Expenses, current month	\$0.41
Interest on overdue balance	\$23.59
Total fees and costs now owing	\$24.00
Previous balance	\$2,050.05
<b>PLEASE PAY THIS AMOUNT</b>	<b>\$2,074.05</b>

YOU ARE PAST DUE ON BOTH AGREED RETAINERS AND OUTSTANDING BALANCE. DUE TO POSSIBLE SETTLEMENT WE ARE WILLING TO ALTER RETAINER SCHEDULE, HOWEVER YOU

MUST PAY \$3,000 IMMEDIATELY TO BRING ACCOUNT CURRENT AND HAVE SOME RETAINER IN TRUST.

FAILURE TO DO THIS MAY RESULT IN WITHDRAW OF THIS FIRM FROM YOUR CASE.

\$2000 NOV. 30, 2007  
\$2000 DEC. 30, 2007  
\$2000 JAN. 30, 2008  
\$2000 FEB. 30, 2008  
\$2000 MAR. 30, 2008  
\$2000 APRIL 30, 2008

**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

February 25, 2008

Elliott Mantell  
 1250 Sunninydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$25.00
Current Expenses	\$0.00
Previous Balance	\$2,074.05
Payments and Credits	\$0.00
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$2,119.95</b>

**Professional Services**

	<u>Hours</u>	<u>Amount</u>
2/18/2008 ML    Review e-mail from client re: settlement and extension of appeal; Draft reply e-mail	0.10	25.00
Professional services, current month	0.10	\$25.00
Interest on overdue balance		\$20.90
Total fees and costs now owing		\$45.90
Previous balance		\$2,074.05
<b>PLEASE PAY THIS AMOUNT</b>		<b>\$2,119.95</b>

YOU ARE PAST DUE ON BOTH AGREED RETAINERS AND OUTSTANDING BALANCE. DUE TO POSSIBLE SETTLEMENT WE ARE WILLING TO ALTER RETAINER SCHEDULE, HOWEVER YOU MUST PAY \$3,000 IMMEDIATELY TO BRING ACCOUNT CURRENT AND HAVE SOME RETAINER IN TRUST.

FAILURE TO DO THIS MAY RESULT IN WITHDRAW OF THIS FIRM FROM YOUR CASE.

- \$2000 NOV. 30, 2007
- \$2000 DEC. 30, 2007
- \$2000 JAN. 30, 2008
- \$2000 FEB. 30, 2008
- \$2000 MAR. 30, 2008
- \$2000 APRIL 30, 2008

THE CREDIT CARD YOU PROVIDED IS BEING DECLINED PLEASE MAKE A PAYMENT AS SOON AS POSSIBLE OR CALL THE OFFICE WITH A NEW CREDIT CARD NUMBER.

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	0.10	250.00

**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

March 25, 2008

Elliott Mantell  
 1250 Sunninydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$725.00
Current Expenses	\$0.41
Previous Balance	\$2,119.95
Payments and Credits	(\$2,119.95)
Amount to Replenish Trust	\$1,500.00
<b>Amount Due</b>	<b>\$2,225.41</b>

**Professional Services**

	<u>Hours</u>	<u>Amount</u>
2/26/2008 ML Telephone call with client re: status of settlement; Draft and fax letter to opposing attorney re: does he object to extension of time; Draft motion for extension of time	0.60	150.00
3/10/2008 ML Review order from Court of Appeals granting extension and stating no more extensions; Draft letter to Mantell re: no more extensions and must complete settlement	0.40	100.00
3/18/2008 ML Prepare for conference with client; Conference with client	1.90	475.00
Professional services, current month	<u>2.90</u>	<u>\$725.00</u>
3/25/2008 ML Postage		0.41
Expenses, current month		<u>\$0.41</u>
Total fees and costs now owing		<u>\$725.41</u>

	<u>Amount</u>
Previous balance	\$2,119.95
3/11/2008 Payment - thank you. Check No. Visa	(\$2,119.95)
Client trust replenishment required	\$1,500.00
	<hr/>
<b>PLEASE PAY THIS AMOUNT</b>	<b>\$2,225.41</b>
	<hr/> <hr/>

DUE TO POSSIBLE SETTLEMENT WE HAVE ALTERED AGREED RETAINER SCHEDULE, HOWEVER YOU MUST PAY \$1,500 IMMEDIATELY TO BRING ACCOUNT CURRENT AND HAVE SOME RETAINER IN TRUST.

FAILURE TO DO THIS MAY RESULT IN WITHDRAW OF THIS FIRM FROM YOUR CASE.

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<b>Professional Summary</b>		
<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	2.90	250.00



**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

April 25, 2008

Elliott Mantell  
 1250 Sunninydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$220.00
Current Expenses	\$0.41
Previous Balance	\$725.41
Payments and Credits	\$0.00
Amount to Replenish Trust	\$546.79
<b>Amount Due</b>	<b>\$1,500.00</b>

**Professional Services**

	<u>Hours</u>	<u>Amount</u>
4/2/2008 ML Brief review of settlement agreement sent by opposing attorney; Instruct assistant to follow up on who represents client on this agreement and to draft confirmation letter to client; Review and revise letter to client	0.50	125.00
CC Telephone call with Matt McKean; letter to client for attorney's signature	0.20	20.00
4/3/2008 ML Telephone call with client	0.30	75.00
Professional services, current month	1.00	\$220.00
4/25/2008 ML Postage		0.41
Expenses, current month		\$0.41
Interest on overdue balance		\$7.39

	<u>Amount</u>
Total fees and costs now owing	\$227.80
Previous balance	\$725.41
Client trust replenishment required	\$546.79

**PLEASE PAY THIS AMOUNT**

**\$1,500.00**

**IN OUR PRIOR BILL WE STATED THAT YOU NEEDED TO PAY \$1,500 IMMEDIATELY TO BRING ACCOUNT CURRENT AND HAVE SOME RETAINER IN TRUST. YOU HAVE FAILED TO MAKE ANY PAYMENT. IF YOU DO NOT PAY THE FULL \$1,500 ON OR PRIOR TO MAY 7 THIS FIRM WILL FILE A MOTION TO WITHDRAW AS YOUR ATTORNEY.**

---

**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	0.80	250.00
Christie Cauley	0.20	100.00

**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

May 23, 2008

Elliott Mantell  
 1250 Sunnynydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$465.00
Current Expenses	\$1.65
Previous Balance	\$953.21
Payments and Credits	(\$1,000.00)
Amount to Replenish Trust	\$546.79
<b>Amount Due</b>	<b>\$966.65</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
5/1/2008	ML Telephone call with client	0.30	75.00
	ML Review e-mail from client	0.20	50.00
	ML Review additional e-mail from client	0.20	50.00
5/2/2008	ML Review e-mail from client; Draft e-mail to client	0.30	75.00
	CC Draft MOET; revise MOET per attorney instructions; ready for filing and service	0.40	40.00
5/6/2008	ML Review letter from Leo; Instruct assistant to send letter to client by e-mail; Review e-mail from client; Draft e-mail to client	0.20	50.00
5/14/2008	ML Review order from Court of Appeals granting extension of time; Draft e-mail to client	0.20	50.00

	<u>Hours</u>	<u>Amount</u>
5/23/2008 ML Draft, mail and e-mail letter to client re: I will withdraw on May 28 if case not settled	0.30	75.00
Professional services, current month	2.10	\$465.00
5/23/2008 ML Copies		0.40
ML Postage		1.25
Expenses, current month		\$1.65
Total fees and costs now owing		\$466.65
Previous balance		\$953.21
5/5/2008 Payment from account		(\$953.21)
5/23/2008 Payment from account		(\$46.79)
Client trust replenishment required		\$546.79
<b>PLEASE PAY THIS AMOUNT</b>		<b>\$966.65</b>

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**Professional Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	1.70	250.00
Christie Cauley	0.40	100.00

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	<u>Amount</u>
CLIENT TRUST ACCOUNT: Prior Balance	\$0.00
5/5/2008 Payment to account. Check No. Visa	\$1,000.00
5/5/2008 Payment from account	(\$953.21)
5/23/2008 Payment from account	(\$46.79)
	<hr/>
CLIENT TRUST ACCOUNT: New Balance	\$0.00
	<hr/> <hr/>

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**Jensen & Leiberan**  
 4915 SW Griffith Drive, Suite 100  
 Beaverton, OR 97005  
 (503) 641-7990

June 25, 2008

Elliott Mantell  
 1250 Sunninydale Road  
 Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$220.00
Current Expenses	\$7.75
Previous Balance	\$419.86
Payments and Credits	\$0.00
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$652.17</b>

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
5/27/2008 ML	Review e-mail from client; Draft Response e-mail to client; Draft instructions to assistant to draft motion to withdraw as his attorney and motion for extension of time	0.40	100.00
5/29/2008 CC	Review instructions from attorney; draft motion to withdraw, MOET, and declaration under oath; revise per attorney instruction; finalize pleadings; email to Roger Leo re: MOET; ready pleadings for filing and service	1.20	120.00
	Professional services, current month	<u>1.60</u>	<u>\$220.00</u>
6/25/2008 CC	Postage		2.35
CC	Copies		5.40
	Expenses, current month		<u>\$7.75</u>
	Interest on overdue balance		\$4.56

Elliott Mantell

Page 2

Total fees and costs now owing

Amount

\$232.31

Previous balance

\$419.86

**PLEASE PAY THIS AMOUNT**

\$652.17

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<u>Name</u>	<u>Professional Summary</u>	
	<u>Hours</u>	<u>Rate</u>
Margaret Leek Leiberan	0.40	250.00
Christie Cauley	1.20	100.00

**Jensen & Leiberan**  
4915 SW Griffith Drive, Suite 100  
Beaverton, OR 97005  
(503) 641-7990

July 25, 2008

Elliott Mantell  
1250 Sunninydale Road  
Lake Oswego OR 97034

<b>BILLING SUMMARY</b>	
Current Fees	\$0.00
Current Expenses	\$0.00
Previous Balance	\$652.17
Payments and Credits	\$0.00
Amount to Replenish Trust	\$0.00
<b>Amount Due</b>	<b>\$658.56</b>

	<u>Amount</u>
Interest on overdue balance	\$6.39
Total fees and costs now owing	\$6.39
Previous balance	\$652.17
<b>PLEASE PAY THIS AMOUNT</b>	<b>\$658.56</b>



**NACHTIGAL, EISENSTEIN & ASSOCIATES**

*Attorneys at Law*

**101 S.W. Washington Street**

**Hillsboro, Oregon 97123**

**(503)-640-6612**

**93-1177387**

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**Account**

Elliot J. Mantell  
2927 NE Everett Street  
Portland OR 97232

Account No. 8662.16  
Through 12-08-08  
Printed 12-09-08  
Managed by: MCM,ML,PP

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RE: Mentell v. Common Ground Wellness Center

**Late Charge on Past Due Balance:**

**370.54**

**SERVICES PROVIDED**

10-24-07	Open file.	
10-24-07	Prepare and send fee agreement to Client.	No Charge
10-24-07	Phone call with client regarding case and request to amend complaint	
11-02-07	Organize pleadings and notes faxed from client - dictate instructions to staff	
11-02-07	Review judgment and findings of fact for case no. 0601-00532	
11-02-07	Phone call with client regarding case background	
11-06-07	Phone call from client regarding case and motion to abate	
11-09-07	Email exchange client regarding Motion for Summary judgment	
11-13-07	Review case history on OJIN	
11-13-07	Review pleadings faxed regarding waste case and motion for summary judgment	
11-13-07	Research on Waste issues	
11-13-07	Phone call to Matt Wilmont regarding case	
11-13-07	Phone call with client regarding history of case and reply to motion for summary judgment	
11-14-07	Draft notice of representation and dictate instructions to staff	
11-15-07	Phone message from client regarding faxed receipts and transcript of post trial hearing	
11-15-07	Review receipts for fan and other maintenance issues	
11-15-07	Review letters and inspection report regarding maintenance issues	
11-15-07	Review oregon case law on waste	
11-15-07	Phone call with client regarding motion	
11-15-07	Review motion to abate	
11-16-07	Phone call to messenger service with instructions for Multnomah County filing on Tues. Draft cover letters to messenger service and Multnomah County Court; prepare court confirmation card.	
11-16-07	Phone call with client regarding response to MSJ	
11-16-07	Review email from client regarding response to MSJ	
11-16-07	Draft motion in opposition to summary judgment	
11-16-07	Draft Affidavit in support of motion against MSJ	
11-16-07	Review Transcript of Dr Harris	
11-16-07	Review of Trial transcript 13	
11-16-07	Review Building inspector reports and other emails from client	
11-16-07	Outline memo on summary judgment	
11-17-07	Draft Memorandum in opposition to summary judgment - dictate instructions to staff	
11-17-07	Edit Plaintiff's affidavit in opposition to motion for summary judgment per client's changes - dictate instructions to staff	
11-17-07	Review email and faxes from client	
11-19-07	Revisions to, and finalize, Plaintiff's Motion in Opposition to Summary Judgment, Affidavit, Memorandum in Support of Motion in Opposition to Summary Judgment. Notarize Affidavit.	

*Payments in Transit and Not Received Prior to the Last Day of the Preceding Month may not yet be Credited to Your Account.*

*A rebilling charge of eighteen percent (18%) but not less than five dollars (\$5.00) is charged on all amounts outstanding over thirty (30) days.*

*We accept VISA and MasterCard*

- Finalize letters to messenger service and Multnomah County Circuit Court; prepare and send certified true copies to opposing counsel/
- 11-19-07 Prepare two more rounds of revisions to Affidavit. Copy documents for Client.
- 11-19-07 Email with client and sent affidavit for his review
- 11-19-07 Edit memo on summary judgment and dictate instructions to staff
- 11-19-07 Email draft of Memo to client for review
- 11-19-07 Edit affidavit per new comments from client
- 11-19-07 Phone call with client regarding edits of documents and that he will come in today to sign
- 11-19-07 Met with client for review of documents regarding MSJ
- 11-20-07 Review email and edit memo per client's wishes
- 11-20-07 Phone call with J Chock regarding filing of documents and motion to compel
- 11-26-07 Email exchange with Jay Chock regarding motion to reset hearing
- 11-26-07 Review various email from client and others
- 11-28-07 Review Roger Leo's reply memo on motion for summary judgment
- 11-30-07 Email exchange with client regarding case and hearing for MSJ
- 11-30-07 Phone call with Matt Wilmont regarding hearing and motion to compel
- 11-30-07 Phone call with client regarding hearing and request for production
- 12-01-07 Review Defendant's discovery motions
- 12-01-07 Review Defendant's motion for protective order
- 12-01-07 Review Defendant's motion for protective order
- 12-03-07 Review email regarding protective order from Roger Leo
- 12-03-07 Review draft protective order from Matt Wilmont
- 12-03-07 Phone call regarding hearing with Matt Wilmont
- 12-04-07 Prepare fax cover sheet, fax documents to Client.
- 12-04-07 Research case law regarding failure to object to RFP
- 12-04-07 Phone call with client regarding discovery to provide to other side and hearing on friday
- 12-04-07 Fax defendant's reply to Memo on MSJ to client
- 12-04-07 Phone call to Jay Chock regarding hearing
- 12-04-07 West law research 25.00
- 12-05-07 Organize pleadings and correspondence into indexes.
- 12-05-07 Fax cover letter to Robert Snee - fax copy of correspondence from R. Leo with Defendant's Reply Memorandum on Motion for Summary Judgment
- 12-05-07 Email exchange with client regarding response to RFP
- 12-05-07 Email exchange regarding new evidence
- 12-05-07 Phone call with Bob Snee regarding affidavit he is putting together
- 12-05-07 Phone call to Matt Wilmont regarding reply to motion to compel
- 12-05-07 Outline Plaintiff's response to Defendant's discovery motions
- 12-06-07 Prepare instructions to messenger service; prepare court confirmation card and letter to court; prepare certified true copies of Plaintiff's Response to Defendant's Discovery Motions and Plaintiff's Response to Defendant's First Request for Production to opposing counsel; prepare fax cover to opposing counsel. Mail copies of all to opposing counsel and Client.
- 12-06-07 Phone call with Matt Wilmont regarding Leo's motion and exhibits
- 12-06-07 Email exchange with client regarding hearing and draft document
- 12-06-07 Phone call with Matt Wilmont regarding hearing and draft documents
- 12-06-07 Draft response to defendant's discovery motions
- 12-06-07 Review faxed documents from Matt Wilmont
- 12-06-07 Draft response to Defendant's RFP
- 12-06-07 Phone call with client regarding documents for Friday's hearing
- 12-06-07 Review Super Sedeas Deposit motion from client
- 12-06-07 Prep for hearing
- 12-06-07 Email from Leo regarding ex parte contact from client
- 12-06-07 Phone call to client regarding ex parte contact with Leo
- 12-07-07 Review chapter 13 of trial transcript
- 12-07-07 Meet with Client and Matt Wilmont to prep for hearing

***Payments in Transit and Not Received Prior to the Last Day of the Preceding Month may not yet be Credited to Your Account.***  
***A rebilling charge of eighteen percent (18%) but not less than five dollars (\$5.00) is charged on all amounts outstanding over thirty (30) days.***

***We accept VISA and MasterCard***

12-07-07 Hearing regarding MSJ, Motion to compel, and motion to abate in Portland  
 12-07-07 Travel to and from Portland for hearing  
 12-07-07 Meet with client, Jay Chock, and Matt Wilmont regarding settlement  
 12-07-07 Review emails from Jay Chock and Roger Leo regarding next court date  
 12-10-07 Fax Plaintiff's Response to Defendant's Discovery Motions to Mr. Chock.  
 12-10-07 Review email from Roger Leo  
 12-10-07 Review email from Jay Chock  
 12-10-07 Review email from client  
 12-10-07 Email exchange with client regarding motion to compel and discovery  
 12-10-07 Phone call with Jay Chock regarding affidavit  
 12-10-07 Fax Plaintiff's motion on Def discovery motions to Jay Chock  
 12-11-07 Finalize letter to Roger Leo; prepare cover sheets for 3 sets of discovery documents. Copies of letter to Client and Matt Wilmont.  
 12-11-07 Email exchange with client regarding discovery  
 12-11-07 Review Discovery material that client had faxed to Roger Leo  
 12-11-07 Phone call with Matt Wilmont regarding settlement offer  
 12-11-07 Email with client regarding discovery issues  
 12-11-07 Phone call with Matt Wilmont regarding settlement offer  
 12-11-07 Phone call with client regarding settlement offer  
 12-11-07 Review discovery material provided by client  
 12-11-07 Review email from Roger Leo regarding settlement and discovery issues  
 12-11-07 Draft letter to Roger Leo regarding discovery  
 12-11-07 Bates stamp discovery and prep to send to other side - dictate instructions to staff  
 12-11-07 Phone call with client regarding settlement offer and email  
 12-11-07 Phone call with Matt Wilmont regarding settlement offer  
 12-11-07 Draft letter to client and dictate instructions to staff  
 12-12-07 Draft letter to Client; revisions to Client letter, finalize and send.  
 12-12-07 Review email from Wilmont, client, and Leo regarding settlement talks  
 12-12-07 Email to Matt Wilmont regarding discovery  
 12-12-07 Email to client regarding photos and other discovery  
 12-12-07 Phone call with Jay Chock regarding settlement talks and reset of hearing  
 12-12-07 Phone call with client regarding reset of hearing, MSJ, and motion to compel  
 12-12-07 Conference call with Jay Chock, client, and Matt Wilmont regarding settlement offer  
 12-12-07 Review settlement offer from Roger Leo  
 12-12-07 Conference call with Jay Chock, client, and Matt Wilmont regarding settlement offer  
 12-13-07 Review Leo email regarding stipulated protective order  
 12-13-07 Review new settlement offer from client  
 12-13-07 Email to client regarding discovery and settlement  
 12-14-07 Phone call with client regarding hearing today  
 12-14-07 Phone call with Jay Chock regarding possible settlement today  
 12-14-07 Hearing to put settlement on the record with Judge Baldwin  
 12-14-07 Prep for motion hearing  
 12-17-07 Review email from Jay Chock regarding settlement  
 12-17-07 Phone call with client regarding settlement and option agreement  
 12-18-07 Email to Roger Leo regarding option to buy agreement  
 12-19-07 Email with Roger Leo regarding option agreement  
 01-08-08 Email to Roger Leo regarding documents  
 02-20-08 Phone call to Matt Wilmont regarding case  
 02-22-08 Phone call from Roger Leo regarding settlement  
 02-22-08 Phone call to client regarding Leo call and settlement and regarding billing  
 02-28-08 Phone call with Matt Wilmont regarding drafting of settlement  
 02-28-08 Phone call to Roger Leo regarding my not representing Elliot as a witness in any other proceeding  
 03-31-08 Phone call with client regarding settlement and who will draft option agreement  
 04-02-08 Copy and send to Client: 4/1/08 letter from Roger Leo including all attachments.

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 amounts outstanding over thirty (30) days.*

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# 8662-All

04-02-08 Phone call with Christy, assistant to Margaret Leiberan regarding my representation of Elliot  
 04-02-08 Review draft settlement documents sent over by Roger Leo  
 04-04-08 Phone call with Roger Leo regarding proposed settlement  
 04-08-08 Phone call with client regarding documents from Leo  
 04-14-08 Phone call from Roger Leo regarding settlement  
 04-14-08 Email from and to Roger Leo regarding settlement and drafting first right of refusal  
 04-18-08 Send Client copy of 4/16/08 letter from Roger Leo.  
 04-22-08 Phone call with Matt Wilmont regarding who is speaking for client on the stipulated agreement  
 04-22-08 Phone call with Roger Leo regarding settlement and first right of refusal agreement  
 04-30-08 Review email from Roger Leo regarding settlement agreement  
 05-06-08 Review email from client regarding scope of my representation  
 05-06-08 Review Leo letter regarding settlement and amount of time it is taking  
 05-06-08 Review draft settlement from Matt Wilmont  
 05-07-08 Email to client regarding new PPL matters and billing issues  
 05-08-08 Review email and draft first right of refusal sent over by Roger Leo  
 05-08-08 Phone call from client regarding changes to Right of First Refusal  
 05-20-08 Email from and to client regarding First Right of Refusal document  
 05-20-08 Prepare letter to Client and fax cover sheet, copy enclosures to letter; fax and mail all to Client.  
 05-21-08 Review changes made by client and discuss with him.  
 05-21-08 Convert document of changed 1st right of refusal to not showing track changes and email to Roger Leo to review  
 05-27-08 Phone call from client regarding case and was document sent to Leo  
 05-30-08 Review letter regarding changes to settlement from Roger Leo - dictate instructions to staff  
 06-02-08 Phone call from Roger Leo regarding settlement  
 06-03-08 Phone call with client regarding 1st right of refusal agreement  
 06-04-08 Review Respondent's Responses and declaration regarding appeals pleadings  
 06-05-08 Phone call with client regarding settlement agreement  
 06-09-08 Forward letter and pleadings from opposing counsel to Client.  
 06-09-08 Phone call with client regarding any response from Leo, and other LLC matters  
 06-10-08 Review email from Roger Leo and draft reply to counter offer. Sent to client for review  
 06-10-08 Review changes and comments on Leo email from client and revise and send email to Leo  
 06-11-08 Review several emails from Leo and Wilmont regarding case. Email to client regarding agreement on 1st Right of Refusal  
 06-11-08 Phone call with Matt Wilmont regarding settlement  
 06-11-08 Review more emails to and from client regarding settlement  
 06-11-08 Email from and to client regarding adding a last minute provision to the 1st right of refusal  
 06-11-08 Review and respond to emails from Matt Wilmont and Roger Leo regarding settlement and timeline for documents  
 06-11-08 Draft first right of refusal document  
 06-12-08 Edit Right of First Refusal per client's wishes.  
 06-12-08 Draft email to client answering questions about agreement  
 06-13-08 Review email from Roger Leo regarding settlement  
 06-23-08 Review email from Roger Leo regarding changes to 1st right of refusal and fwd to client  
 06-23-08 Edit First Right of Refusal per client  
 06-25-08 Phone call from Roger Leo regarding changes to FRR  
 06-25-08 Review emails from Matt Wilmont and Roger Leo concerning settlement  
 06-27-08 Review email from Roger Leo and Matt Wilmont regarding documents. Draft email and include copy of First Right of Refusal  
 06-30-08 Phone call from Matt Wilmont regarding settlement  
 06-30-08 Email to client regarding that I sent document to Wilmont for client to sign with the other documents  
 07-01-08 Email from and to client regarding settlement and asking about possible option on property  
 07-02-08 Phone call with client regarding the presentation of an option agreement to buy house and rental of the garage  
 07-07-08 Phone call with Matt Wilmont regarding changes to first right of refusal and settlement issues

No Charge

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# 8662-All

07-07-08	Review email from Matt Wilmont regarding changes to documents and property description	
07-07-08	Edit First Right of Refusal document per client's changes - draft email and send to Matt Wilmont to have client sign with the settlement document	
07-14-08	Review emails between Leo and Wilmont regarding new issues and possible need to appear before Judge Baldwin	
07-16-08	Review email from Roger Leo regarding revised agreement	
07-16-08	Phone call with Matt Wilmont regarding revising documents	
07-17-08	Phone call with client regarding first right of refusal changes	
07-17-08	Revise First Right of Refusal document to conform with Roger Leo's objections	
07-21-08	Review letter from Leo regarding settlement and going back in front of Judge Baldwin	No Charge
07-22-08	Forward letter from Leo to Client.	
07-23-08	Phone call to Matt Wilmont regarding revising documents and contacting Roger Leo	
07-28-08	Review email traffic regarding changes to settlement and other issues	
07-30-08	Phone call to Roger Leo regarding signed documents	
07-31-08	Review emails from Roger Leo and Matt Wilmont regarding settlement	
08-01-08	Phone call from client regarding option to buy	
08-01-08	Phone call to Roger Leo regarding possible option to buy	
08-01-08	Email to client regarding option	
08-01-08	Phone call to client to send me email with offer that he wants to present	
08-04-08	Review email from client regarding option offer	
08-04-08	Email to Roger Leo with option offer	
08-04-08	Review email from Roger Leo regarding settlement issues	
08-08-08	Phone call from client regarding option offer	
08-11-08	Phone call to Roger Leo regarding option	
08-11-08	Email to client regarding that option offer was declined	
08-13-08	Review letter from Roger Leo regarding settlement	
08-19-08	Review emails from Matt Wilmont and Roger Leo	
08-19-08	Email to Matt Wilmont for signed copies of documents for file	
08-26-08	Review letter from Roger Leo	
09-05-08	Review letter from Roger Leo	No Charge
09-09-08	Forward copy of letter from opposing counsel to Client.	
09-10-08	Review letter from Matt Wilmont regarding final documents in the settlement and recording of 1st right of refusal with the county	
09-17-08	Email from and to client regarding recording 1st right of refusal	
09-22-08	Review emails from client and Roger Leo	
10-07-08	Review Stipulated judgment of dismissal, Satisfaction of judgment, and order of dismissal and appellate judgment	
10-13-08	Prepare draft of cover letter and copy Roger Leo's September 30, 2008 enclosures to client.	
10-13-08	Review email from Roger Leo and fwd to client	
10-20-08	Review email from Matt Wilmont and Roger Leo regarding when final documents will be sent	
10-30-08	Review letter and stipulated judgment of dismissal and other documents from Roger Leo.	
10-30-08	Review email traffic from Roger Leo and Matt Wilmont regarding stipulated judgment. Draft followup email to all parties regarding judgment.	
10-31-08	Email from Matt Wilmont regarding changes to settlement documents	
11-03-08	Review email from Roger Leo regarding settlement and the status of my representation of my client	
11-03-08	Email to client regarding my representation of him	
11-05-08	Review letter and judgment of dismissal	
11-07-08	Prepare cover letter to Attorney Wilmont with Stipulated Judgment of Dismissal signed by MCM. Copy to client.	
11-20-08	Emails from and to client regarding continuation of my representation	
12-02-08	Review notice of entry of judgment and draft closing letter to client	
	<b>Total Services:</b>	<b>\$16,922.00</b>

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# 8662-All

**ADJUSTMENTS and CREDITS**

		-13.13	
10-31-07	Prepaid Legal Discount	-1,299.38	
11-30-07	Prepaid Legal Discount	-2,815.01	
12-31-07	Prepaid Legal Discount	-2,828.14	
01-31-08	Prepaid Legal Discount	-2,880.64	
02-29-08	Prepaid Legal Discount	-2,893.77	
03-31-08	Prepaid Legal Discount	-3,011.90	
04-30-08	Prepaid Legal Discount	-3,151.90	
05-30-08	Prepaid Legal Discount	-3,567.53	
06-30-08	Prepaid Legal Discount	-3,773.16	
07-31-08	Prepaid Legal Discount	-3,913.16	
08-31-08	Prepaid Legal Discount	-3,952.54	
09-30-08	Prepaid Legal Discount	-4,035.67	
10-31-08	Prepaid Legal Discount	-4,088.17	
11-30-08	Prepaid Legal Discount		
	<b>Total Adjustments:</b>		<b>\$-4,088.17</b>

**COSTS INCURRED**

		\$25.00	
11-13-07	Westlaw research	\$25.00	
11-17-07	Westlaw research	\$28.00	
11-29-07	Ace Messenger - Check No. 4480	\$32.00	
12-13-07	Ace Messenger - Check No. 4529	\$36.49	
01-02-08	62 miles - Check No. 4583	\$171.60	
	Photocopies 858 @ \$ 0.20		
	<b>Total Costs:</b>		<b>\$318.09</b>

**PAYMENTS RECEIVED**

		\$99.37	
10-31-07	Receipt no 26637	\$3,400.63	
11-30-07	Receipt no 26698	\$1,500.00	
03-31-08	From trust account.	\$2,000.00	
05-30-08	Receipt no 139215	\$2,500.00	
06-30-08	Receipt no 139285		
	<b>Total Payments:</b>		<b>\$9,500.00</b>

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STATEMENT SUMMARY		
<b>Previous Balance</b>		<b>0.00</b>
New Services Provided	16,922.00	
New Advanced Costs	318.09	
Late Charges Assessed	<u>370.54</u>	
	17,610.63	<b>17,610.63</b>
<b>Total New Charges</b>		
Credits and Adjustments	-4,088.17	
Payments Received	<u>-9,500.00</u>	
	-13,588.17	<b>-13,588.17</b>
<b>Total Credits</b>		
	<b>AMOUNT DUE</b>	<b>\$4,022.46</b>

(To ensure proper credit, please include Account No. on remittance)

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**CLIENT SECURITY FUND  
INVESTIGATION REPORT**

DATE: November 13, 2013

RE: CFS Claim No. 2013-24

Attorney: Dan Goff, OSB No. 721018  
(Form B Resignation from OSB, December 13, 2012)

Claimant: Elliott Mantell

INVESTIGATOR: Bill Davis

---

**INVESTIGATOR'S RECOMMENDATION**

Elliott Mantell has submitted a claim for \$47,609. This claim seeks return of \$37,500 Mantell paid to Dan Goff in fees between April and June 2007, plus 9% interest from July 2007 to August 12, 2010.

It is recommended this claim be denied.

**STATEMENT OF CLAIM**

Claimant retained Dan Goff on April 7, 2007, to represent him on several pending matters. Claimant was in the aftermath of a recent week-long commercial real estate trial involving claimant and one of his tenants. There were several other pending and potential litigation matters for which claimant also wanted Goff to provide representation. Claimant had incurred over \$200,000 in fees with his prior attorney up through the recently completed trial, and was resisting demands from that counsel for payment. One of the matters claimant wanted evaluated was the evaluation of the potential for a legal malpractice action against the prior attorney.

Claimant and Goff orally agreed that Goff would handle three of the matters as well as one for claimant's business partner for a flat fee of \$50,000. Between April 7, 2007, and June 7, 2007, claimant paid Goff \$42,500 which Goff deposited into his lawyer trust account.

On May 14, 2007, Goff sent claimant a proposed written fee agreement providing that Goff would handle the four legal matters for a flat fee of \$50,000, paid in advance and earned upon receipt, and a deposit of \$5,000 towards costs. On May 23, 2007, claimant responded, disagreeing with several terms in the proposed agreement. Over the next few weeks



several other letters and emails were exchanged between them about the terms and scope of the representation. Mantell's primary concern was the "earned upon receipt" language, wanting the flat fee to be earned incrementally as Goff completed various aspects of the representation. No signed agreement was ever jointly agreed upon.

Between April 10, 2007, and July 6, 2007, Goff had withdrawn the vast majority of the funds paid by Mantell.

Claimant terminated Goff's representation on July 6, 2007, stating he was not providing timely representation.

Claimant requested an accounting and a refund of all fees paid. In a July 24, 2007, letter to Mantell, Goff did provide an accounting of \$3,294.65 in costs and included a check for \$1,705.65 in reimbursement for \$5,000 which he said had been submitted to cover costs. Goff refused to refund the remaining \$37,500, stating, "I have actually labored more hours than you have paid me for." On July 12, 2007, Goff withdrew another \$2,000 from his trust account of the money Mantell had paid, even though this was after he had been terminated and after Mantell had written him asking for return of all moneys paid to him.

In April 2008 Mantell filed a complaint with the Oregon State Bar. In December 2008 Mantell filed a complaint against Goff seeking return of his fee payments. This litigation was resolved in May 2010 through mediation, with Goff agreeing to confess judgment in the amount of \$37,500 but to have the judgment not filed as long as Goff paid Mantell \$500 a month. Goff paid \$500 a month for three months and then filed for bankruptcy in August 2010.

There were several other Bar complaints against Goff from other clients. Four of the complaints were consolidated into a Disciplinary Board trial held over five days in late 2010. The transcript of the trial runs over 1,000 pages. The remaining portions of the Bar file exceed 1,500 pages. After that trial, the Trial Panel issued an opinion on March 28, 2011, finding Goff had violated the Oregon Code of Professional Responsibility in a number of particulars and recommended an 18-month suspension. The opinion was affirmed by the Oregon Supreme Court in June 2012. On December 13, 2012, Goff submitted his Form B resignation.

The Bar prosecuted ten ethical violations against Goff stemming from his representation of Mantell. Among the violations were contentions Goff had charged Mantell an excessive fee and had collected an excessive fee. The Bar sought an order requiring Goff to pay restitution to Mantell of the fees.

The alleged violations involving Mantell were thoroughly litigated in the Bar trial. Mantell testified at length (the transcript of his testimony is 83 pages). The attorney who represented the primary party adverse to Mantell during Goff's representation testified. One of the several attorneys who took over Mantell's various legal matters after Goff was discharged also testified. The direct and cross-examination of Goff on the Mantell matter was extensive. The

trial record contains numerous exhibits reflecting frequent communications between Goff and Mantell during the three months of representation involving the myriad of issues for Mantell's representation. Goff testified he obtained six bankers boxes of documents from Mantell's prior attorney which he reviewed as well as performed a significant amount of other work.

Included in the evidence submitted by Goff were compilations of the time he expended on behalf of Mantell during the three months of representation. Because these were not daily, contemporaneous records of daily time, the position of the Bar prosecution was the records had no probative value.

From a review of the trial transcript and record, it is apparent the question of whether Mantell was entitled to restitution of the fees paid to Goff was fully litigated in the Bar's prosecution of Goff.

In its findings, the Trial Panel found that Mantell was a particularly difficult, argumentative, demanding, and time consuming client. The panel stated, "The evidence simply does not support a conclusion one way or another as to whether the Accused performed the work he claims."

The Trial Panel dismissed the charge Goff entered into an agreement for an excessive fee and collected an excessive fee holding:

Whether or not the Accused performed all of the work he claims cannot be established; but the work he undertook to perform was substantial, time lines were short, and, Mr. Mantell was a difficult client who interrupted the Accused on a nearly daily basis.

The Trial Panel found the Bar had not proven that Goff did not earn the money he withdrew from his trust account.

Goff appealed the Trial Panel's findings to the Oregon Supreme Court. The Bar cross-appealed, asking the court to find that Goff had charged Mantell an excessive fee and withdrawn unearned fees. The Bar sought an order not only suspending Goff for 18 months but also ordering him to pay restitution.

In *In re Goff*, 352 Or 104 (2012), the Supreme Court affirmed the Trial Panel's opinion in its entirety. With respect to the Bar's request for the Trial Panel's opinion on the charge of excessive fee and collecting an unearned fee, the Supreme Court held:

On *de novo* review, we . . . agree with the trial panel that the Bar has not presented clear and convincing evidence of the three additional violations charged by the Bar, two of which (collection of excessive fee) were the basis on which the Bar sought

restitution. Accordingly, we therefore also decline to order the accused to pay restitution.

352 Or at 105-106.

### **FINDINGS AND CONCLUSIONS**

Mantell's claim should be denied because of the application of Client Security Fund Rules 2.2.3, 2.8, and 2.11. Additionally, the Oregon Supreme Court, on *de novo* review of the Oregon State Bar Disciplinary Trial Panel, has ruled Goff should not provide restitution to Mantell for the fees Mantell paid Goff. *In re Goff*, 352 Or 104 (2012).

#### **Rule 2.2.3**

Goff's actions of removing Mantell's funds from his trust account while there was a dispute over the terms of the retainer agreement and refusing to provide an accounting was found by the Trial Panel to constitute dishonest conduct. Such a finding is insufficient, by itself, to qualify Mantell for reimbursement of his attorney fee payments. Qualification for fee reimbursement is governed by Rule 2.2.3, which states:

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.

Mantell's claim does not fit any of the three criteria for reimbursement. The Trial Panel specifically held "the work [Goff] performed was substantial" so criteria (i) and (ii) cannot be met. There has been no determination of a court, fee arbitration panel, or accounting that establishes Mantell is owed a refund of a legal fee, so criterion (iii) is not met. Indeed, there has been a finding by an Oregon State Bar Trial Panel, affirmed on *de novo* review by the Oregon Supreme Court, that the allegation Goff collected an excessive fee was not proven and Goff should not be ordered to pay restitution to Mantell.

Because Mantell's claim does not satisfy the criteria of Rule 2.2.3, it should be denied.

## **Rule 2.8**

Rule 2.8 sets forth the time parameters for submitting a claim for reimbursement to the Client Security Fund. This rule states:

A loss of money or other property of a lawyer's client is eligible for reimbursement if:

\* \* \*

2.8 The claim was filed with the Bar within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss.

Subparagraph (a) is not applicable because Goff has not been convicted of any crime. Subparagraph (b) is not applicable because the claim is in excess of \$5,000. Subparagraph (c) requires the claim to be brought within two years of the date of the judgment. Goff stipulated to a judgment of \$37,500 in favor of Mantell in May 2010. It was originally not filed with the court pursuant to a covenant not to file as long as Goff made \$500 monthly payments. Goff made three monthly payments and then filed for bankruptcy in August 2010. The fact the judgment was not ever filed is irrelevant; it was "obtained" in May 2010.

With respect to subparagraph (d), Mantell obviously knew of the loss as of December 2008 when he filed a lawsuit against Goff seeking recovery of the money he had paid Goff for fees. Mantell was represented by legal counsel at the time and according to Goff was well aware of the potential for seeking reimbursement through the Client Security Fund. Goff testified in the Bar trial that in the May 2010 negotiations to settle Mantell's civil case, Mantell wanted to include in the stipulated judgment a recitation that Goff had wrongfully withheld Mantell's money and had failed to return unearned legal fees. Goff testified Mantell told him he wanted the language included for use in a later claim against the Client Security Fund, but Goff refused to agree to have that admission in the stipulated judgment. Given this testimony, Mantell was aware by May 2010 that he could submit a claim to the Client Security Fund.

Mantell filed his complaint with the Client Security Fund on March 4, 2013. This was over two years after the latest of the triggering events set out in Rule 2.8. As a result, Mantell's claim is time barred.

## **Rule 2.11**

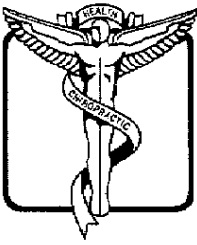
This rule provides the committee with discretion to ignore the failure of a claim to qualify under the other rules. It states:

2.11 In cases of extreme hardship or special and unusual circumstances, the Committee, in its sole discretion, may recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.

This is not a case of extreme hardship or special and unusual circumstances. Mr. Mandell is not unsophisticated: he is a chiropractor with over 30 years experience, a commercial property owner with substantial experience in legal matters. His correspondence with Goff and his testimony at Goff's trial reflect a man of broad intellect very capable of looking out for his own interests.

Mantell has already had the Oregon State Bar invest substantial time and effort to try to obtain restitution for him through the disciplinary process. The contentions that Goff charged an excessive fee and/or refused to return an unearned fee were thoroughly litigated in an extensive Bar trial. The Trial Panel, while holding Goff had committed five ethical violations with respect to his representation of Mantell, held the charges of excessive and unearned fees were not proven. On *de novo* review, the Oregon Supreme Court affirmed that ruling. Given the full hearing his claim has already received, this case is not even remotely close to one where "extreme hardship or special and unusual circumstances" exist to justify payment of a claim that does not otherwise meet the Client Security Fund rules for reimbursement.

It is recommended that Mantell's claim be denied.



**Common Ground Chiropractic**  
**Elliott J. Mantell, D.C., P.C.**  
**Doctor of Chiropractic**

Phone: (503) 232-4099

Fax: (503) 234-0370

Admin. E-mail: admin@commongroundpdx.com

Doctor's E-mail: commonchiro@yahoo.com

www.commongroundhealingcenter.com

## FAX COVER SHEET

Company: <i>OS Bar</i>	From: <i>Elliott Mantell</i>
Attention: <i>Sylvia Stevens</i>	Date: <i>12/16/13</i>
Fax Number: <i>503 684 1366</i>	Re: <i>Dr Gott</i>

- Urgent
- Please Review
- Please Process for Payment
- For Your Information

Total Pages (including cover): 2

Comments:

*Attached is Mr Gott's "timesheet"  
for 186 hours  
Would you believe that?*

*[Signature]*

The Health Insurance Portability & Accountability Act of 1996 (HIPAA) is a federal program that requires that all medical records and other individually identifiable health information used or disclosed by us in any form, whether electronically, or paper, or orally, will be kept properly confidential. This fax contains confidential and privileged information and is intended for the addressee only. If the receiver of this information is not the intended recipient, modification or dissemination of this information is strictly prohibited.

If you have received this communication in error, please call us immediately. Thank you!!

DATE	INITIALS	CLIENT	MATTER	RATE	CODE	TIME	MONEY
4/7/07 4/14/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	30	2
4/15/07 4/21/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	25	4
4/22/07 4/29/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	25	6
4/29/07 5/6/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	30	1
5/6/07 5/12/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	33	7
5/13/07 5/19/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	3	5
5/20/07 5/26/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	5	2
5/29/07 6/5/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	6	8
6/5/07 6/10/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	4	6
6/10/07 6/16/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	3	2
6/17/07 6/23/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	5	4
6/24/07 6/29/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	6	1
7/1/07 7/7/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	3	4
7/18/07 7/14/07	DWG	MANTELL	VARIOUS - LITIG.	30	FF	3	5

FOAM SPINNING

STANDARD ACCOUNTING SYSTEMS

PART OF A  
EBC SYSTEM  
SYSTEM

EXHIBIT 212  
9 OF 15

**352 Or. 104  
280 P.3d 984**

**In re Complaint as to the CONDUCT OF Daniel W. GOFF, Accused.  
(OSB 08143, 0912, 0953, 1014; SC S059467).**

**Supreme Court of Oregon,  
En Banc.**

**Argued and Submitted Jan. 13, 2012.**

**Decided June 14, 2012.**

On review from a decision of a trial panel of the Disciplinary Board.

Robert J. Smith, Robert J. Smith, P.C., Eugene, argued the cause and filed the briefs for the accused.

Stacy J. Hankins, Assistant Disciplinary Counsel, Oregon State Bar, argued the cause and filed the brief for the Oregon State Bar.

**PER CURIAM.**

[352 Or. 105]The Oregon State Bar charged Daniel W. Goff, the accused, with numerous violations of the Rules of Professional Conduct and the Disciplinary Rules of the Code of Professional Responsibility, based on his representation of clients in four separate matters. After a five-day hearing, the trial panel found that the accused had committed 15 violations, as follows: *former* DR 9–101(A) (failure to maintain client funds in trust); *former* DR 9–101(C)(3) and RPC 1.15–1(d) (failure to maintain trust-account records and failure to provide an accounting of client funds) (three counts); *former* DR 6–101(B) (neglect of a legal matter) (two counts); *former* DR 1–102(A)(3) and RPC 8.4(a)(3) (conduct involving misrepresentation or dishonesty) (three counts); RPC 1.4(a) (failure to keep client reasonably informed) (two counts); RPC 1.15–1(e) (mishandling disputed funds); RPC 8.1(a)(1) (false statements of material fact in connection with a Bar disciplinary matter); RPC 8.1(a)(2) (failure to respond to the Bar) (two counts). The trial panel concluded that the appropriate sanction was an 18–month suspension from the

practice of law. The accused sought review pursuant to ORS 9.536(1) and Bar Rules of Procedure 10.1 and 10.3.

On review, the accused urges this court to reject the trial panel's findings in full. The Bar, in response, defends the trial panel decision on all 15 rule violations, and also urges this court to find three additional violations that the trial panel did not find: RPC 1.5(a) (collecting an excessive fee) (two counts) and RPC 1.15–1(c) (withdrawal of unearned fees). Based on the two excessive fee charges, the Bar requests that we order the accused to pay restitution as well as suspend him from the practice of law for at least 18 months.

On *de novo* review, we conclude that the record establishes by clear and convincing evidence that the accused committed the 15 rule violations found by the trial panel. We also agree with the trial panel that the Bar has not presented clear and convincing evidence of the three additional violations charged by the Bar, two of which (collection of excessive fee) were the basis on which the Bar sought restitution. Accordingly, we therefore also decline to order the accused to [352 Or. 106]pay restitution. We further conclude that an 18–month suspension is the appropriate sanction. An explanation of the extensive facts related to the four matters underlying this proceeding and of the appropriateness of the sanction would not benefit the bench, bar, or public.

The accused is suspended from the practice of law for 18 months, commencing 60 days from the effective date of this decision.



# Oregon State Bar Workers' Compensation Section

January 29, 2015

Dear Board of Governors:

The Oregon State Bar Workers' Compensation Section would like to thank you for taking time to consider our ongoing concerns with regard to the fees associated with the lawyer referral service (LRS). Our members include workers' compensation claimant's attorneys, defense attorneys, and administrative law judges. Members from each of these groups have expressed their concerns about the current LRS fee system and their support for this proposal.

As many of you know, when the LRS fee splitting provisions were put into place, the Workers' Compensation and Disability sections raised concerns that the obligation to split fees with LRS in these areas of practice would cause a decrease in the number of attorneys on their respective LRS panels, and thereby limit access to justice for Oregonians in need of an attorney.

Worker's Compensation and Disability practices are similar in that fees are contingent in nature and profits are marginal in many cases. Attorneys taking these cases run a significant risk of barely recouping their time or not getting paid at all. This requires attorneys to handle a greater volume of cases for their business model to be viable. Anecdotally, we know that the LRS is the last call for many folks who have already contacted all the attorneys they could find in the phone book or on the internet. Accordingly, the referrals from LRS tend to be more difficult cases, which are more risky for the attorneys handling them.

According to Kay Pulju, OSB Communications and Public Services Director, 796 LRS referrals went to 90 different Workers' Compensation panelists in 2011. In 2014, 996 referrals went to only 41 panelists. These numbers demonstrate that the WC section's concerns were well founded. The public need for workers' compensation attorneys is increasing significantly, as demonstrated by the increase in calls, while the number of attorneys participating in the LRS has decreased by over 50%.

The BOG took appropriate action to protect the integrity of the LRS system by exempting Social Security and veterans' disability cases from the LRS fee splitting requirements. We continue to believe that a complete exemption would be the BOG's best approach to addressing the attrition on the workers' compensation panel. However, we understand that the BOG remains unwilling to consider giving the workers' compensation panel a complete exemption.

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We understand that workers' compensation panelists have been offered the opportunity to have their referrals apply through the modest means program. However, the requirements of this program create a lot of additional work for attorneys in a low margin/high volume practice. In addition to accounting and recordkeeping requirements, our members are concerned about the fact that workers' compensation claims often involve multiple small fees, on multiple small disputes, over the course of multiple years, and the fact that the attorney is often required to advance costs that cannot be recovered and ultimately come out of the attorney's fee.

To address these concerns, we propose the following revisions to the LRS fee splitting system:

- No fee split on attorney fees under \$5,000
- No fee split on attorney fees earned after 2 years from the date of the initial referral
- Dollar for dollar reduction in the fee split for all unreimbursed litigation costs advanced by the attorney
- Reduction of the LRS portion from 12% to 10%.

We believe that these changes will enable more of our members to serve on the LRS panel and that increasing the pool of panelists will provide greater access to legal services for some of the most vulnerable citizens in our state.

Respectfully,



Keith D. Semple

Chair, OSB Worker's Compensation Section

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.

Board of Governors

June 25, 2014

Page 2 of 2

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

**SCHMIDT & YEE, PC**

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**Website:** [www.schmidtandyee.com](http://www.schmidtandyee.com)

**RECEIVED**

January 19, 2015

**JAN 23 2015**

Oregon State Bar  
Executive Director

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

Dear Ms. Stevens:

The Executive Committee of the Elder Law Section has approved a \$100 contribution to the City of Beaverton Dispute Resolution Center in order to sponsor a Probate Mediation Training on May 14 and 15, 2015, subject to Bar approval. We see probate mediation training to be germane to our area of law and increasing the pool of probate mediators to be worthwhile. Attached for further information is the request for The Dispute Resolution Center. Pursuant to OSB Bylaw 15.401, we request your approval for this donation.

Very truly yours,

SCHMIDT & YEE, PC



By  
MICHAEL A. SCHMIDT

MAS:mu

Encl.

cc: Erin Evers



To: Elder Law Section, Oregon State Bar

From: Laura Swartz, City of Beaverton Dispute Resolution Center

Re: Request for Sponsorship for Probate Mediation Training

Date: January 15, 2015

The City of Beaverton Dispute Resolution Center and Clackamas County Resolution Services are planning a Probate Mediation Training for May 14 & 15, 2015 for approximately 80 participants. This will be a tri-county training for participants in Clackamas, Multnomah and Washington Counties. We anticipate offering both general and ethics CLE credits.

We are asking for financial support of \$100 which will help pay the honorarium fee for role play coaches and trainers. Additionally, we would appreciate if you advertise our program to your members. In return, we will list you as a sponsor on the program and training materials.

We have attached a draft agenda of the training. This training will be modelled after the Multnomah County Probate Mediation Trainings in 2009 and 2010. While we have not yet confirmed all of the speakers, Judge Katherine Tennyson, Josh Kadish, Meg Nightingale and Steve Owen, have agreed to participate.

Thank you for your consideration. For more information, please contact Laura Swartz at [lswartz@BeavertonOregon.gov](mailto:lswartz@BeavertonOregon.gov) or 503-526-2244.

*get bar approval*

## DRAFT AGENDA – Tri-County Probate Mediation Training

### DAY 1 – Thursday, May 14, 2015

Time	Topic	Speaker(s)
8:00 – 8:30 a.m.	Registration	
8:45 – 9:15 a.m.	Welcome/ Introduction	
9:15 – 10:15 a.m.	<b>Understanding Diminished Capacity</b>	TBD
10:15 – 10:30 a.m.	Break	
10:30 – 12:00 p.m.	<b>Working with People with Disabilities in Mediation</b>	Meg Nightingale
12:00 – 1:00 p.m.	Lunch	
1:00 – 2:30 p.m.	<b>Family Dynamics</b>	TBD
2:30 – 2:45 p.m.	Break	
2:45 – 4:15 p.m.	<b>Issues in Guardianships/ Conservatorships</b>	Steve Owen

### Day 2 – Friday, May 15, 2015

Time	Topic	Speaker(s)
8:30 – 9:30 a.m.	Ethics Issues	TBD
9:30 – 10:30 a.m.	<b>Panel Perspectives from the Bench</b>	Judges TBD
10:30 – 10:45 a.m.	Break	
10:45 – 12:30 p.m.	<b>Roleplays of Guardianship/ Conservatorship Disputes</b>	Steve Owen
12:30 – 1:30 p.m.	Lunch	
1:30 – 2:30 p.m.	<b>Issues in Probate (Will Contests, Administration Disputes, Trust Disputes, etc.)</b>	Josh Kadish
2:30 – 2:45 p.m.	Break	
2:45 – 4:30 p.m.	<b>Roleplays of Probate Disputes</b>	Josh Kadish and Roleplay Coaches
4:30 – 5:00 p.m.	Debrief; Certificates; Adjourn	

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**From:** Legal Ethics Committee  
**Re:** Updating OSB Formal Ethics Opinions 2005-12, 2005-35, 2005-65, 2005-102, 2005-103, 2005-127  
Withdrawal of OSB Formal Ethics Op No 2005-49

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### Issue

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

### Options

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

### Discussion

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 third batch of opinions that require amendments.

This third 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.

The one caveat is OSB Formal Ethics Op No 2005-49, which the committee is recommending be withdrawn entirely because it is overly broad and an inaccurate statement of the law. The statutes cited impose only registration requirements, not requirements for how a lawyer may hold out his business to the general public. A law firm's corporate name must contain the words "professional corporation" or the abbreviation "P.C." or "Prof. Corp." ORS 58.115. The name of law firm that is a limited liability partnership must contain the word "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. That said, depending on the circumstances, it would not necessarily be misleading for a lawyer to refer to his law firm without referring to the corporate status, which is what the opinion currently says.



Staff recommends adopting the proposed amended opinions and withdrawing OSB Formal Ethics Op No 2005-49.

Attachments: OSB Formal Ethics Op Nos: 2005-12, 2005-35, 2005-65, 2005-102, 2005-103, 2005-127, and 2005-49.

**FORMAL OPINION NO. 2005-102**

**Conflicts of Interest Between Lawyer and Client, Public  
Officials, Conduct Prejudicial to Administration of Justice:  
Lawyer–Municipal Judge Representing  
Clients Before City Council or Court**

**Facts:**

Lawyer, who is engaged in private practice, is also a part-time municipal court judge. Lawyer has been asked to represent Client *A* before the town council in the town in which Lawyer is a part-time municipal court judge.

Lawyer is also asked to defend Client *B* in a murder case brought in circuit court. Lawyer anticipates that in defending Client *B*, Lawyer will have to cross-examine police officers who appear before Lawyer as witnesses when Lawyer acts as a municipal court judge.

**Questions:**

1. May Lawyer represent Client *A*?
2. May Lawyer represent Client *B*?

**Conclusions:**

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

**Discussion:**

Oregon RPC 8.4(a)(4) prohibits Lawyer from engaging in “conduct that is prejudicial to the administration of justice.” Oregon RPC 8.4(a)(5) prohibits Lawyer from stating or implying “an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law.” *Cf.* OSB Formal Ethics Op Nos 2005-14, 2005-7. The mere fact that Lawyer would represent these two defendants does not indicate that a violation of any of these rules will occur.<sup>1</sup>

Oregon RPC 1.7 provides:

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

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<sup>1</sup> With respect to these facts, Oregon RPC 1.12(a) does not appear to prohibit these representations. Oregon RPC 1.12(a) provides:

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

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

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

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

No conflict would exist under Oregon RPC 1.7(a) in Lawyer's representation of Client A and Client B because, in each of these instances, Lawyer would have only one client in a matter. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986).

Under the facts given, there also appears to be no reason to believe that a self-interest conflict would exist under Oregon RPC 1.7(b), which would require the informed consent of Client A or Client B in accordance with Oregon RPC 1.7(b). OSB Formal Ethics Op No 2005-39. There may be circumstances, however, in which there is a significant risk that Lawyer's representation of private clients would be materially limited by Lawyer's personal interests in the role of municipal court judge, in which case Lawyer would need to comply with Oregon RPC 1.7(a)(2) and (b).

Oregon RPC 1.11(d) is also relevant and provides, in pertinent part:

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
  - (1) is subject to Rules 1.7 and 1.9; and
  - (2) 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.
    - ....
    - (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.
    - ....

On the present facts, there is no reason to believe that a violation of this rule would occur.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.40, 8.3, 8.14, 10.6, 12.17, 14.30, 14.39, 20.1–20.15 (Oregon CLE 2006); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§113, 122, 125 (2003); and ABA Model Rules 1.0(b), (e), 1.7, 1.11(d), 1.12, 8.4(d).

**FORMAL OPINION NO. 2005-102**

**Conflicts of Interest Between Lawyer and Client, Public  
Officials, Conduct Prejudicial to Administration of Justice:  
Lawyer–Municipal Judge Representing  
Clients Before City Council or Court**

**Facts:**

Lawyer, who is engaged in private practice, is also a part-time municipal court judge. Lawyer has been asked to represent Client *A* before the town council in the town in which Lawyer is a part-time municipal court judge.

Lawyer is also asked to defend Client *B* in a murder case brought in circuit court. Lawyer anticipates that in defending Client *B*, Lawyer will have to cross-examine police officers who appear before Lawyer as witnesses when Lawyer acts as a municipal court judge.

**Questions:**

1. May Lawyer represent Client *A*?
2. May Lawyer represent Client *B*?

**Conclusions:**

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

**Discussion:**

Oregon RPC 8.4(a)(4) prohibits Lawyer from engaging in “conduct that is prejudicial to the administration of justice.” Oregon RPC ~~7.8.41~~(a)(5) prohibits Lawyer from stating or implying “an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law.” *Cf.* OSB Formal Ethics Op Nos 2005-14, 2005-7. The mere fact that Lawyer would represent these two defendants does not indicate that a violation of any of these rules will occur.<sup>1</sup>

Oregon RPC 1.7 provides:

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

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<sup>1</sup> With respect to these facts, Oregon RPC 1.12(a) does not appear to prohibit these representations. Oregon RPC 1.12(a) provides:

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

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

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

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

No conflict would exist under Oregon RPC 1.7(a) in Lawyer's representation of Client A and Client B because, in each of these instances, Lawyer would have only one client in a matter. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986).

Under the facts given, there also appears to be no reason to believe that a self-interest conflict would exist under Oregon RPC 1.7(b), which would require the informed consent of Client A or Client B in accordance with Oregon RPC 1.7(b). OSB Formal Ethics Op No 2005-39. There may be circumstances, however, in which there is a significant risk that Lawyer's representation of private clients would be materially limited by Lawyer's personal interests in the role of municipal court judge, in which case Lawyer would need to comply with Oregon RPC 1.7(a)(2) and (b).

Oregon RPC 1.11(d) is also relevant and provides, in pertinent part:

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
  - (1) is subject to Rules 1.7 and 1.9; and
  - (2) 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.
    - ....
    - (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.
    - ....

On the present facts, there is no reason to believe that a violation of this rule would occur.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.40, 8.3, 8.14, 10.6, 12.17, 14.30, 14.39, 20.1–20.15 (Oregon CLE 2003~~6~~); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§113, 122, 125 (2003); and ABA Model Rules 1.0(b), (e), 1.7, 1.11(d), 1.12, 8.4(d).

**FORMAL OPINION NO. 2005-103**  
**Information About Legal Services:**  
**Multistate Law Firm, Advertising Availability**  
**of Out-of-State Lawyer**

**Facts:**

Multistate Firm includes lawyers resident in Oregon who are members of the Oregon State Bar and lawyers resident in other states who are members of their state bars but not of the Oregon State Bar.

**Question:**

May Multistate Firm advertise the availability of non-Oregon State Bar members to their Oregon clients?

**Conclusion:**

Yes, qualified.

**Discussion:**

Multistate law firms are clearly permitted. *See, e.g.,* Oregon RPC 7.5(b).<sup>1</sup> The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

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<sup>1</sup> Oregon RPC 7.5(b) provides:

A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.



that lawyer from engaging in activities permitted by Oregon RPC 5.5(c) and (d).<sup>2</sup> See ABA Formal Ethics Op No 316 (1967); *Appell v. Reiner*, 43 NJ 313, 204 A2d 146 (1964).

A firm may not state or imply, however, that an out-of-state lawyer is, in fact, a member of the Oregon State Bar unless this is true. Compare Oregon RPC 7.1, which 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.

See also Oregon RPC 5.5(b),<sup>3</sup> 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

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<sup>2</sup> Oregon RPC 5.5(c) and (d) provide:

(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.

<sup>3</sup> Oregon RPC 5.5(b) provides:

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

**Approved by Board of Governors, August 2005.**

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- (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.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.7, 2.21 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §3 (2003); and ABA Model Rules 7.1, 7.5(b), 8.4(c).

**FORMAL OPINION NO. 2005-103**  
**Information About Legal Services:**  
**Multistate Law Firm, Advertising Availability**  
**of Out-of-State Lawyer**

**Facts:**

Multistate Firm includes lawyers resident in Oregon who are members of the Oregon State Bar and lawyers resident in other states who are members of their state bars but not of the Oregon State Bar.

**Question:**

May Multistate Firm advertise the availability of non-Oregon State Bar members to their Oregon clients?

**Conclusion:**

Yes, qualified.

**Discussion:**

Multistate law firms are clearly permitted. *See, e.g.*, Oregon RPC 7.5(bf).<sup>1</sup> The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

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<sup>1</sup> Oregon RPC 7.5(bf) provides:

A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

~~Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.~~

that lawyer from engaging in activities permitted by Oregon RPC 5.5(c) and (d).<sup>2</sup> See ABA Formal Ethics Op No 316 (1967); *Appell v. Reiner*, 43 NJ 313, 204 A2d 146 (1964).

A firm may not state or imply, however, that an out-of-state lawyer is, in fact, a member of the Oregon State Bar unless this is true. Compare Oregon RPC 7.1, which 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.

~~-(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:~~

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<sup>2</sup> Oregon RPC 5.5(c) and (d) provide:

(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.

~~-(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;~~

~~...~~

~~-(11) is false and 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.~~

*See also* Oregon RPC 5.5(b),<sup>3</sup> 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

**Approved by Board of Governors, August 2005.**

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<sup>3</sup> Oregon RPC 5.5(b) provides:

- (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.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.7, 2.21 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §3 (2003); and ABA Model Rules 7.1, 7.5(b), 8.4(c).

**FORMAL OPINION NO. 2005-12**  
**Firm Names:**  
**Office Sharing with Separate Practices**

**Facts:**

Lawyers *A*, *B*, and *C* share office space. Beyond this, however, *A*, *B*, and *C* all maintain separate practices.

**Question:**

May Lawyers *A*, *B*, and *C* hold themselves out, whether through the use of a common letterhead or otherwise, as “associates,” as “of counsel” with each other, or as lawyers practicing under the name “*A, B & C, Lawyers*”?

**Conclusion:**

No.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

Oregon RPC 7.5(d) provides, “[l]awyers may state or imply that they practice in a partnership or other organization only when that is a fact.” Similarly, Oregon RPC 7.1(a) 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.

Use of the term *associates* or *of counsel* by lawyers who are not truly associated or of counsel with each other in private practice, but who merely share office space and other services, is misleading within the meaning of these rules because it “impl[ies] that they practice in a partnership or other organization” when in fact they do not. Oregon RPC 7.5(d); *Cf. In re Sussman and Tanner*, 241 Or 246, 405 P2d 355 (1965). Similarly, use of the name “*A, B & C, Lawyers*” is misleading if no law firm exists in which all three lawyers are a part because that is what the name suggests. *Cf. In re Bach*, 273 Or 24, 539 P2d 1075 (1975).

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 12.19 (Oregon CLE 2003); and OSB Formal Ethics [Op Nos 2005-50](#) (when lawyers who share office space may represent adverse parties), [2005-65](#) (permits listing nonlawyer employees on lawyer's letterhead, with designation of positions held, as long as practice is neither false nor misleading), [2005-109](#) (associated firms may identify themselves as "Associated Offices" when their relationship is ongoing). *See also* Barbara Fishleder, *Office Sharing: Can You Comply with the Code of Professional Responsibility and Still Get Sued for Legal Malpractice*, 52 OSB BULLETIN 23 (June 1992).



**FORMAL OPINION NO. 2005-12**  
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**Office Sharing with Separate Practices**

**Facts:**

Lawyers A, B, and C share office space. Beyond this, however, A, B, and C all maintain separate practices.

**Question:**

May Lawyers A, B, and C hold themselves out, whether through the use of a common letterhead or otherwise, as “associates,” as “of counsel” with each other, or as lawyers practicing under the name “A, B & C, Lawyers”?

**Conclusion:**

No.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

~~A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable disciplinary rules.~~

Oregon RPC 7.5(d)(1) provides, “[l]awyers may state or imply that they practice in a partnership or other organization only when that is a fact.”

~~in pertinent part, that a lawyer in private practice~~

~~shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm.~~

Similarly, Oregon RPC 7.1(a) 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.

~~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.~~

Use of the term *associates* or *of counsel* by lawyers who are not truly associated or of counsel with each other in private practice, but who merely share office space and other services, is misleading within the meaning of these rules because it “impl[ies] that they practice in a partnership or other organization” when in fact they do not. Oregon RPC 7.5(d); Cf. *In re Sussman and Tanner*, 241 Or 246, 405 P2d 355 (1965). Similarly, use of the name “A, B & C, Lawyers” is misleading if no law firm exists in which all three lawyers are a part because that is what the name suggests. Cf. *In re Bach*, 273 Or 24, 539 P2d 1075 (1975).

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

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 12.19 (Oregon CLE 2003); and OSB Formal Ethics [Op Nos 2005-50](#) (when lawyers who share office space may represent adverse parties), [2005-65](#) (permits listing nonlawyer employees on lawyer’s letterhead, with designation of positions held, as long as practice is neither false nor misleading), [2005-109](#) (associated firms may identify themselves as “Associated Offices” when their relationship is ongoing). *See also* Barbara

Fishleder, *Office Sharing: Can You Comply with the Code of Professional Responsibility and Still Get Sued for Legal Malpractice*, 52 OSB BULLETIN 23 (June 1992).

**FORMAL OPINION NO. 2005-127**

**Information About Legal Services:  
Writing to Accident Victims**

**Facts:**

Law Firm, which restricts its practice to personal injury and product liability cases, proposes to prepare a letter or pamphlet that would invite the reader to call and schedule a consultation to discuss possible claims relating to recent personal injuries. The letter or pamphlet would be mailed to the home address of persons injured in accidents reported in local newspapers.

**Question:**

Is it permissible for Law Firm to prepare and distribute a letter or pamphlet in the manner described above?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.3 provides:

(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 of the 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).

(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.

ORS 9.510 provides:

No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

Oregon RPC 7.3(a) does not prohibit the proposed mailing because the rule does not apply to written letters or pamphlets. In most instances, the mere fact that someone has been in an accident would not cause the law firm to run afoul of Oregon RPC 7.3(b). The law firm should, however, carefully review the available information about a proposed recipient in order to assess the potential applicability of Oregon RPC 7.3(b) before sending the letter or pamphlet. *Cf.* Oregon RPC 1.0(h); *In re Johnson*, 300 Or 52, 707 P2d 573 (1985) (for conflict-of-interest purposes, lawyers are deemed to know what reasonable inquiry under circumstances would disclose). As is clear from the language of Oregon RPC 7.3(c), the “Advertising Material” requirement applies when a letter or pamphlet is sent to potential clients known to need legal services in a particular matter. Thus, the “Advertising Material” requirement applies in this case. By contrast, it does not apply when sending newsletters and other general information pieces, even though sent to targeted recipients.

If ORS 9.510 were deemed to include written as well as in-person contacts, the statute would be unconstitutional. Targeted mailings that are truthful and not misleading constitute commercial speech that is protected by the First Amendment to the United States Constitution. *Shapiro v. Kentucky Bar Ass’n*, 486 US 466, 108 S Ct 1916, 100 L Ed2d 475 (1988). The application of ORS 9.510 must therefore be limited by excluding written communications therefrom. *Cf. City of Portland v. Welch*, 229 Or 308, 316, 364 P2d 1009, 367 P2d 403 (1961).

All communications about Law Firm's services are subject to Oregon RPC 7.1:

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.

*See also* Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation"). If the letters with pamphlets comply with limitations in these sections, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6–2.15 (Oregon CLE 2006); and ABA Model Rules 7.1–7.3.

**FORMAL OPINION NO. 2005-127**

**Information About Legal Services:  
Writing to Accident Victims**

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Law Firm, which restricts its practice to personal injury and product liability cases, proposes to prepare a letter or pamphlet that would invite the reader to call and schedule a consultation to discuss possible claims relating to recent personal injuries. The letter or pamphlet would be mailed to the home address of persons injured in accidents reported in local newspapers.

**Question:**

Is it permissible for Law Firm to prepare and distribute a letter or pamphlet in the manner described above?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.3 provides:

- (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 “Advertising Materialement” ~~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, unless the recipient of the communication is a person specified in paragraph (a).

(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.

ORS 9.510 provides:

No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

Oregon RPC 7.3(a) does not prohibit the proposed mailing because the rule does not apply to written ~~communications~~ letters or pamphlets. In most instances, the mere fact that someone has been in an accident would not cause the law firm to run afoul of Oregon RPC 7.3(b). The law firm should, however, carefully review the available information about a proposed recipient in order to assess the potential applicability of Oregon RPC 7.3(b) before sending the letter or pamphlet. *Cf.* Oregon RPC 1.0(h); *In re Johnson*, 300 Or 52, 707 P2d 573 (1985) (for conflict-of-interest purposes, lawyers are deemed to know what reasonable inquiry under circumstances would disclose). As is clear from the language of Oregon RPC 7.3(c), the “Advertising Materialement” requirement applies when a letter or pamphlet is sent to potential clients known to need legal services in a particular matter. Thus, the “Advertising Materialement” requirement applies in this case. By contrast, it does not apply when sending newsletters and other general information pieces, even though sent to targeted recipients.

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**All communications about Law Firm's services are subject to Oregon RPC 7.1:**

(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;

—— (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.

(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.

~~—— (e) —— 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.~~

~~—— (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.~~

*See also Oregon RPC 8.4(ae)(3)* (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation”). If the letters with pamphlets comply with limitations in these sections, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6–2.15 (Oregon CLE 2003~~6~~); and ABA Model Rules 7.1–7.3.

## FORMAL OPINION NO. 2005-35

### Information About Legal Services: Greeting Cards and Open House

#### Facts:

Lawyer *A* would like to send greeting cards or letters to Lawyer *A*'s current and former clients, thanking them for employing Lawyer *A*.

Lawyer *B* would like to send greeting cards or letters to people who have referred clients to Lawyer *B*, in which Lawyer *B* would thank them for doing so.

Lawyer *C* would like to hold an open house, and invite both current and former clients and nonclients.

#### Questions:

1. Is the proposed conduct of Lawyer *A* ethical?
2. Is the proposed conduct of Lawyer *B* ethical?
3. Is the proposed conduct of Lawyer *C* ethical?

#### Conclusions:

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

#### Discussion:

The proposed conduct of Lawyer *A* and Lawyer *B* is constitutionally protected. *See, e.g., Shapero v. Kentucky Bar Ass'n*, 486 US 466, 108 S Ct 1916, 100 L Ed 2d 475 (1988). Thus, no rule of professional conduct could prohibit this conduct unless the conduct was ancillary to some independent act of wrongdoing, such as improper in-person solicitation or making misrepresentations about a lawyer's services. *Cf. OSB Formal Ethics Op Nos 2005-3, 2005-2.* Given the nature of the proposed communications, we also do not believe that Lawyer *A* or Lawyer *B* must take any special steps to identify the thank-you notes as advertisements or to treat the notes as unsolicited communications about the lawyers' services within the meaning of Oregon RPC 7.2(a), (c) or 7.3(c).<sup>1</sup>

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<sup>1</sup> Oregon RPC 7.2(a) and (c) provide:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

The question relating to Lawyer C is arguably somewhat more difficult because the open house could give rise to situations involving improper in-person solicitation within the meaning of Oregon RPC 7.3(a).<sup>2</sup> The fact that improper in-person solicitation could theoretically occur is not sufficient by itself, however, to prohibit Lawyer C from sending the invitations or holding the party. *Cf. In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer must act intentionally to violate former DR 2-104(a)).

**Approved by Board of Governors, August 2005.**

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(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Oregon RPC 7.3(c) provides:

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, unless the recipient of the communication is a person specified in paragraph (a).

<sup>2</sup> Oregon RPC 7.3(a) provides:

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.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.14, 2.23–2.29 (Oregon CLE 2006); and ABA Model Rule 7.1–7.3. *See also* OSB Formal Ethics Op Nos 2005-70, 2005-79, 2005-100, 2005-106, 2005-127.

**FORMAL OPINION NO. 2005-35**

**Information About Legal Services:  
Greeting Cards and Open House**

**Facts:**

Lawyer *A* would like to send greeting cards or letters to Lawyer *A*'s current and former clients, thanking them for employing Lawyer *A*.

Lawyer *B* would like to send greeting cards or letters to people who have referred clients to Lawyer *B*, in which Lawyer *B* would thank them for doing so.

Lawyer *C* would like to hold an open house, and invite both current and former clients and nonclients.

**Questions:**

1. Is the proposed conduct of Lawyer *A* ethical?
2. Is the proposed conduct of Lawyer *B* ethical?
3. Is the proposed conduct of Lawyer *C* ethical?

**Conclusions:**

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

**Discussion:**

The proposed conduct of Lawyer *A* and Lawyer *B* is constitutionally protected. *See, e.g., Shapero v. Kentucky Bar Ass'n*, 486 US 466, 108 S Ct 1916, 100 L Ed 2d 475 (1988). Thus, no rule of professional conduct could prohibit this conduct unless the conduct was ancillary to some independent act of wrongdoing, such as improper in-person solicitation or making misrepresentations about a lawyer's services. *Cf. OSB Formal Ethics Op Nos 2005-3, 2005-2.* Given the nature of the proposed communications, we also do not believe that Lawyer *A* or Lawyer *B* must take any special steps to identify the thank-you notes as advertisements or to treat

the notes as unsolicited communications about the lawyers' services within the meaning of Oregon RPC 7.21(ba)-(c) or 7.3(c).<sup>1</sup>

The question relating to Lawyer C is arguably somewhat more difficult because the open house could give rise to situations involving improper in-person solicitation within the meaning of Oregon RPC 7.3(a).<sup>2</sup> The fact that improper in-person solicitation could theoretically occur is not sufficient by itself, however, to prohibit Lawyer C from sending the invitations or holding the party. *Cf. In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer must act intentionally to violate former DR 2-104(a)).

### Approved by Board of Governors, August 2005.

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<sup>1</sup> Oregon RPC 7.22(ba) and (c) provide:

~~\_\_\_\_ (ba) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. 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) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content. 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(c) provides:

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 of the 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).

<sup>2</sup> Oregon RPC 7.3(a) provides:

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.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.14, 2.23–2.29 (Oregon CLE 2003~~6~~); and ABA Model Rule 7.1–7.3. *See also* OSB Formal Ethics Op Nos 2005-70, 2005-79, 2005-100, 2005-106, 2005-127.

## FORMAL OPINION NO. 2005-49

### Disclosure of Entity Status

#### Facts:

Lawyer *A* has formed a professional corporation under ORS chapter 58 for the private practice of law. Lawyer *B* has formed a limited liability partnership with other lawyers under ORS chapter 67 for the private practice of law.

#### Questions:

1. Must Lawyer *A* refer to professional corporation status in the name of the firm?
2. Must Lawyer *B* refer to limited liability partnership status in the name of the firm?

#### Conclusions:

1. Yes.
2. Yes.

#### Discussion:

Oregon RPC 7.1(a) provides, in pertinent part:

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; [or]

...

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

In light of Oregon RPC 7.1(a)(12) and probably also in light of RPC 7.1(a)(1), Lawyer *A* is ethically required to refer to the professional corporation status because it is required under

ORS chapter 58. *See* ORS 58.115 (corporate name). Likewise, ORS chapter 67 requires Lawyer *B* to include reference to its limited liability partnership status. *See* ORS 67.625 (limited liability partnership name).

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §2.1 et seq. (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§9, 52 comment d, 58 comment c (2003); and ABA Model Rules 7.1, 7.5, 8.4(c). For a discussion of the considerations in naming an LLP, see Jennifer J. Johnson, *The Oregon Limited Liability Partnership Act*, 32 WILLAMETTE L REV 147 (1996).



**FORMAL OPINION NO. 2005-65**  
**Listing of Nonlawyer Personnel on Firm Letterhead**

**Facts:**

Lawyer proposes to list nonlawyer personnel, together with the positions that those people hold, on Lawyer's letterhead (e.g., June Doe, Office Manager; John Doe, Legal Assistant).

**Question:**

May Lawyer do so?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

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.

As long as the proposed listings do not involve false or misleading communications, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.19–2.20 (Oregon CLE 2003); ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT 81:3001–81:3014 (2002); and ABA Model Rules 7.1, 7.5(a).

**FORMAL OPINION NO. 2005-65**

**Listing of Nonlawyer Personnel on Firm Letterhead**

**Facts:**

Lawyer proposes to list nonlawyer personnel, together with the positions that those people hold, on Lawyer's letterhead (e.g., June Doe, Office Manager; John Doe, Legal Assistant).

**Question:**

May Lawyer do so?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.5(a) provides:

~~A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.~~

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 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 laws. . . .~~

~~See also Oregon RPC 8.4(a)(3), which prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”~~ As long as the proposed listings do not involve false or misleading communications, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.19–2.20 (Oregon CLE 2003); ABA/BNA LAWYERS’ MANUAL ON PROFESSIONAL CONDUCT 81:3001–81:3014 (2002); and ABA Model Rules 7.1, 7.5(a).

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# OREGON STATE BAR

## Board of Governors

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**Meeting Date:** February 13, 2015  
**Memo Date:** January 28, 2015  
**From:** Simon Whang, Board Development Committee Chair  
**Re:** Commission on Judicial Fitness and Disability Board Appointment

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### **Action Recommended**

Approve the committee's recommendation to reappoint Judy Snyder to the Commission on Judicial Fitness and Disability board.

### **Background**

The Commission on Judicial Fitness and Disability reviews complaints about Oregon state judges and justices of the peace and investigates when the alleged conduct might violate the state's Code of Judicial Conduct or Article VII (amended), Section 8 of the state constitution. The Commission also investigates complaints referred by the Chief Justice that a judge has a disability which significantly interferes with the judge's job performance.

As provided in ORS 1.410 the OSB Board of Governors appoints three members to the Commission board for four-year terms. The Commission board also includes three public members appointed by the Governor and confirmed by the Senate and three judges appointed by the Supreme Court.

During the January meeting, the Board Development Committee evaluated a request from Susan Isaacs, Executive Director of the Commission, to reappoint Judy Snyder to a second term. After reviewing a list of other volunteer candidates and a lengthy discussion regarding the committee's interest in ensuring a diverse board, the committee unanimously voted to recommend the reappointment of Judy Snyder to the Commission.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2015  
**Memo Date:** January 20, 2015  
**From:** Governance and Strategic Planning Committee  
**Re:** Changes to the LRAP Policies and Guidelines

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### **Action Recommended**

The Governance and Strategic Planning Subcommittee recommends that the Board of Governors increase the maximum loan available for participants in the OSB Loan Repayment Assistance Program from \$5,000 to \$7,500, increase in the salary cap from \$60,000 to \$65,000 for public service lawyers applying for the Program, and make changes to the Policies and Guidelines recommended by the OSB General Counsel's office.

### **Background**

The Loan Repayment Assistance Program (LRAP) is now in its eighth year of providing forgivable loans to lawyers pursuing careers in public service law. Through this program, lawyers working in public service may receive loans for up to \$5,000 per year for three years to aid them in repaying their educational debt. Each loan is forgiven at the end of the year, provided that the lawyer remains in public service. The LRAP Advisory Committee seeks to increase the maximum loan per year to \$7,500. The Advisory Committee believes that this flexibility will allow it to meet the needs of those who have proved to be most dedicated to public service. Existing federal programs allow law school graduates from 2009 and after to make income based repayments of their student debt, and allow for forgiveness for those who remain in public service for at least one decade. Public service attorneys who began their careers prior to 2009, however, remain responsible for 100% of their debt. Giving the LRAP Advisory Committee the flexibility to provide larger loans to more senior public service attorneys will aid those attorneys who have demonstrated a life-long commitment to their work with low-income Oregonians.

The Advisory Committee seeks an increase in the salary cap for the same reason: moving the cap from \$60,000 to \$65,000 will allow the Advisory Committee the flexibility to provide forgivable loans to more senior public service attorneys, who have demonstrated their commitment to public service by remaining in public service for up to 20 years and still are repaying student debt on salaries barely above the median income in the country.

Finally, OSB Deputy General Counsel recommended changes to the Policies and Guidelines to ensure compliance with the Oregon Public Records Act and to properly reflect the intention of the Bar for applicants.

Proposed changes to the Policies and Guidelines are attached hereto.

*Loan Repayment  
Assistance Program*

**Policies and Guidelines**

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

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*Revised ~~January 11, 201~~October 20, 2014*

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

### **Statement of Purpose**

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

### **Oregon Public Records Act Notice**

The Oregon State Bar is subject to the Oregon Public Records Act, ORS Chapter 192. The bar has an obligation to disclose its records when requested, unless an exemption applies. The bar agrees the personal financial information you provide in response to the LRAP Application is submitted in confidence and will only be disclosed under the Act if required by law.

## **Section 1 – Administrative Partners**

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

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

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

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

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

- OSB President and Chair of the OSB New Lawyers Division, or designees, will serve for a term of one year.
- Other Advisory Committee members will serve for a term of three years and may be reappointed for one additional term.
- Advisory Committee members will elect a Chair and such other officers as they determine are necessary from among Advisory Committee members. Officers shall serve a one-year term, subject to renewal.

- One-third of the initial appointments will be for one year, one-third for two years, and one-third for three years. The OSB Board of Governors will determine which of the initial positions is for which length.
- The OSB will designate a staff person to support the Advisory Committee's work.
- Current applicants for or recipients of LRAP loans may not serve on the Advisory Committee.

**(iii) Advisory Committee Duties**

- Select participants for the loan repayment assistance program (LRAP or the Program), and report the selections to the OSB.
- Report annually to the OSB -Governance and Strategic Planning Committee on the Program's status.
- Amend and set policy guidelines as needed for the Program.
- Raise funds to achieve programmatic objectives.
- Adopt procedures to avoid conflicts of interest.
- Make clear program rules to avoid grievances.

**(B) Oregon State Bar**

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

**Section 2 – Requirements for Program Participation**

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

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

**(B) Qualifying Employment**

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.



- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment; hours worked per week less than 35 will be considered part-time.
- Part-time employees are eligible to apply for the Program;- however **participation repayment assistance** may be prorated at the discretion of the Advisory Committee, based on FTE.

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

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.
- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.
- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

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

Applicants with salaries greater than \$~~60,000~~ 65,000 at the time of ~~initial~~ application will be ineligible for Program participation.

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

**(E) Eligible Loans**

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

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

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

**(A) Nature of Benefit**

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

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

- LRAP loans will not exceed \$~~5,000~~ 7,500 per year per Program participant for a maximum of three consecutive years. LRAP loans cannot exceed the annual student loan -payments of the participant.

- The Advisory Committee reserves discretion to adjust the amount of the LRAP loan and/or length of participation based on changes in the availability of program funding.
- LRAP loans will be disbursed in two equal payments per year. .

**(ii) Interest on LRAP Loans**

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

**(iii) Federal Income Tax Liability**

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

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

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

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

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

- The repayment period will be equal to the number of months during which the Program participant participated in the Program (including up to three months of approved leave), or 12 months, whichever is longer.
- The collection method for LRAP loans not repaid on schedule will be left to the discretion of the Oregon State Bar.
- Participants shall notify the Program within 30 days of leaving qualifying employment.

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

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

**(iii) Exception to Repayment Requirement**

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

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

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. ~~This extra time~~The leave time exceeding three months is added to the end of the year in which the leave is taken and thereafter, the starting date of the new year is reset based upon the new ending date of the year in which the extended leave is taken until the three year LRAP Loan period concludes.

**Section 4 – Program Procedures**

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

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

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

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

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
  - Demonstrated commitment to public service;
  - Financial need;
  - Educational debt, monthly payment to income ratio, and/or forgiveness of debt;
  - Extraordinary personal expenses;
  - Type and location of work;
  - Assistance from other loan repayment assistance programs;
- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants for a period of six months in the event and may automatically reconsider the applicant pool if an individual selected to receive an LRAP loan ~~selected individual~~ does not participate in the Program.

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

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

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

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

**(i) Annual Certifications Required**

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

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

The annual certifications submitted by Program participants will include:

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

**(iii) Employer Certification - Contents**

The annual certifications submitted by employers will include:

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

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

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant's financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

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

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

**(vi) Voluntary Withdrawal from Program**

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

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

- Grievance procedure applies only to Program participants, not applicants.
- Program participants have 30 days to contest a determination in writing.
- The Advisory Committee has 60 days to ~~respond~~**issue a decision.**
- ~~The Advisory Committee's decision is final. A Program participant may appeal the Advisory Committee's decision by making a request in writing to Board of Governors within 30 days of the Advisory Committee's decision. The decision of the Board is final. subject to BOG review.~~

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**From:** Ray Heysell, Chair, Governance & Strategic Planning Committee  
**Re:** Section Web Policies

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### Issue

Consider the recommendations of the Governance & Strategic Planning Committee regarding changes to section web site and financial policies.

### Discussion

At its meeting in November, the GSP Committee considered several issues relating to section websites and fund balances. The committee voted unanimously to recommend the following new policies regarding section web sites:

1. All section web sites shall be hosted by the OSB on our site by July 2016 unless staff determines that a later date is desirable.

Currently, nearly half of the bar's 37 sections with web sites have their sites hosted independently of the bar. Section web site design does not follow a standard template, and the section's identity as part of the OSB is not always clear. Under this recommendation, independent section sites would be hosted by the OSB and all sections would use a common template developed by the bar to conform to and emphasize OSB branding.

2. Section membership directories shall be available only to section members and will be linked to the OSB database.

With the implementation of new management software, we plan to provide sections with searchable membership directories. Some sections (most notably the Sole & Small Firm and Workers' Compensation sections) have expressed interest having their membership directories available to the public as [a](#) means of matching potential clients with lawyers. Keeping section directories for the use of section members only will avoid internal competition with the Lawyer Referral Service, not only to avoid negatively impacting LRS revenue, but also to assure the quality control, screening and resource help for potential clients that LRS provides.

3. BOG liaisons will work with sections that have overly large fund balances, encouraging them to find ways to use the dues that their members are paying rather than accumulating them for unspecified purposes.

A handful of sections maintain significant fund balances, often more than 2 or 3 times their annual expenditures. Yet they continue to collect annual dues from members. Accumulating

large fund balances is not the purpose of sections; rather they are intended to provide networking and educational opportunities for their members. Those sections should be encouraged (perhaps ultimately mandated) to spend down excessively high balances by establishing scholarships, bringing in national speakers, or in other ways that will benefit the section membership. The downside of this effort is that reduction of large section balances will reduce the interest the bar earns on invested reserves, although the impact will be relatively small.

# LEGAL TECHNICIANS TASK FORCE

## FINAL REPORT TO THE BOARD OF GOVERNORS

February 13, 2015

### *Introduction*

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In mid-2013, the Board of Governors through the Bar's President, Michael Haglund, established this Task Force to consider the possibility of the Bar's promoting the concept of licensing Legal Technicians<sup>1</sup> as one component of the BOG's overall strategy for increasing access to justice. Regardless of its ultimate recommendation, the Task Force was also directed to outline the preliminary considerations and outline an approach for developing such a licensure program.

The Task Force was comprised of eighteen members, drawn from a variety of sources, including representatives from Legal Aid organizations, young lawyers, the judiciary, the Professional Liability Fund, the Board of Bar Examiners, paralegal organizations and paralegal educators, and people with a history of working with and for self-represented litigants. In addition, other interested individuals, representing various constituencies, attended some or all of the Task Force's meetings.

The Task Force was chaired by Theresa Wright. Members of the Task Force were Gerald Brask, Shari Bynum, Hon. Suzanne Bradley Chanti, Michele Grable, Guy B. Greco, Professor Leslie Harris, William J. Howe III, Bradley D. Maier, John J. Marandas, Sean Mazorol, Hon. Maureen H. McKnight, Mitzi M. Naucner, Linda Odermott, and Hon. Jill A. Tanner. Joshua Ross was the BOG liaison; staff support was provided by OSB Executive Director Sylvia Stevens and Executive Assistant Camille Greene.

### *Executive Summary*

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At its December 2014 meeting, the Task Force agreed to submit a proposal to the BOG suggesting that it consider the general concept of a limited license for legal technicians as one component of the BOG's overall strategy for increasing access to justice. A large majority of, but not all Task Force members, concur with this recommendation.

**The Task Force recognizes that the licensed legal technician concept is but one potential**

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<sup>1</sup> The Task Force found this title to be less cumbersome than WSBA's "Limited License Legal Technician" and would also distinguish the Oregon concept from WSBA's LLLT program.



tool to address the “justice gap” and should not be viewed as the sole solution or in isolation. During its information-gathering meetings the Task Force acknowledged the funding cuts have eliminated much of the courthouse facilitator assistance and that inadequate funding for Legal Aid is a constant limitation on the availability of legal services for low-income Oregonians.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

### *Methodology*

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Beginning July 27, 2013, 2013, and through the end of the year, the Task Force met six times, approximately once per month for two to three hours each meeting.

Task Force members reviewed significant written material before the first meeting and additional materials at subsequent meetings. These materials included: Paralegal Regulation by State; *The Last Days of the American Lawyer* by Thomas D. Morgan; numerous articles from the states of California, New York and Washington, and the country of Canada; OSB 1992 Legal Technicians Task Force Report; Washington Supreme Court Rule APR 28 regarding the Limited License Legal Technician Board; Washington State Bar Association *Changing Profession – Challenges and Opportunities*; National Center for State Courts’ *Roadmap for Action – Lessons From the Implementation of Recent Civil Rules Projects*; Oregon State Family Law Advisory Committee’s *Oregon Family Courts – What’s new What’s to Come*; OSB Referral Information Services statistics; a WSBA Webinar that included Regulation of the April 28 LLLT Board, WSBA *Pathway to LLT Admission, and Program and Licensing Process*; *Protecting the Profession or the Public?* by D. Rhode & L. Ricca; and *The Incidental Lawyer* by Jordan Furlong.

The Task Force spent a fair amount of time reviewing and discussing the 1992 Legal Technicians Task Force report and the fact that no action ensued, and how this result could be different given the changes in the legal profession during the interim. Most notably, the Task Force was cognizant of the fact that there are more people unable to afford or unwilling to pay lawyers now than when the last report was issued, and no adequate solution has been found.

In addition, during the first two meetings, members discussed a variety of matters, including pros and cons of moving forward, access to justice, reasons for creating (or not creating) a Limited License, and other related matters. The October meeting was dedicated to a presentation from Paula Littlewood, Executive Director of the Washington Bar Association, about Washington’s efforts to create a Limited License Legal Technicians program. (See Appendix A.) During the final meeting, the Task Force received reports from various subcommittees (see below), and determined the actions to recommend to the Board.

## *The Washington State Bar Association Program*

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The Washington State Bar Association (WSBA) spent approximately two years developing its Licensed Legal Technician program, and it is comprehensive and well thought-out. As noted above, the Task Force believes that, should the Board of Governors choose to proceed with the idea of Licensed Legal Technicians, it should review, consider and learn from Washington's program, including the successes and challenges in its implementation. This includes educational requirements, extensive practical work experience under a licensed lawyer, and a licensure examination. Additionally, the WSBA program has provisions for continuing education, rules of professional conduct, mandatory malpractice insurance, and a disciplinary scheme. Their first WSBA LLLTs will be limited to practicing in the area of family law, and licensing of the first group is imminent.

A more detailed summary is contained in Appendix A.

## *Issues and Considerations Identified*

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The Task Force discussed the positives, negatives, and other factors in considering whether Oregon should implement a Licensed Legal Technician program.

### *Major Factors*

The major factors the Task Force identified were:

- the vast need for legal assistance in the low- to moderate- income populations;
- the concern that the Legislature might proceed with proposed legislation if the Bar does not act itself with a preferred program; and
- the need to balance increased access to justice and protection of the public.

That said, the primary concern of the Task Force was the issue of access to justice. The Task Force also understood that regardless of programs implemented by the Bar or other entities, there will never be 100% of clients who want or need representation.

The Task Force discussed reasons that people do not hire lawyers to represent them in their cases.

- While based primarily on anecdotal information, the consensus was that most people who do not hire lawyers for full representation cannot afford to do so.

This is the client base the Task Force hopes to reach with its proposal.

- There are others who may be adverse to hiring lawyers for a variety of reasons, although they are financially able to do so. These include those mistrustful of lawyers and those who believe they know enough about the court and legal system that they are able to represent themselves adequately.

The Task Force acknowledged that the legal profession and the provision of legal service has been changing and continues to do so:

- Consumers have much more access to legal information and “assistance” over the internet, and from other resources;
- Courts are moving toward having self-help forms available for litigants to complete on their own;<sup>2</sup>
- There have long been unlicensed “paralegals” in various communities providing various quality of assistance, sometimes to the significant detriment of the public;<sup>3</sup> and
- The proliferation of self-help books has also impacted the public’s use of lawyers for what they may view as the simpler legal procedures required by their situation.

The Task Force was also cognizant of the number of new lawyers who are having a difficult time finding employment. Of particular note is that the most recent statistics show:

- Currently, approximately 86% of all family law litigants in Oregon are self-represented<sup>4</sup>. At least in terms of family law cases, the percentage of unrepresented litigants has not decreased over the years, indicating that new lawyers have not found a method to represent this population; and
- In 23% of civil cases (excluding cases such as landlord/tenant in which most tenants represent themselves) in Multnomah County one or both of the parties are self-represented.

The Task next identified the arguments in favor of and against the licensing of legal technicians:

#### *Pros*

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<sup>2</sup> In fact, Restraining Orders through the Family Abuse Prevention Act are available on a state-wide basis for litigants utilizing a “TurboTax” type of system.

<sup>3</sup> This is an unlawful practice of law issue which the Bar has been working to remedy for years.

<sup>4</sup> In 1992, when the prior Legal Technicians Task Force report was issued, the figure was 38%.

- It would be a step forward to providing access to justice for poor to moderate income Oregonians, although there may be less radical alternatives; and
- At least with respect to the family law arena, the risk of “cutting into” the work of unemployed lawyers appears to be negligible given the volume of potential clients in the low- to moderate-income community.

### *Cons*

- Only one state (Washington) has developed and implemented a Licensed Legal Technician program; while others are exploring the idea, if Oregon were to go forward we would be clearly in the forefront;
- The WSBA program was created under a mandate of the Washington Supreme Court and continues to be controversial among the membership of WSBA; the BOG should expect that a similar program would be controversial in Oregon and further study should include input from the OSB membership;
- The licensing of legal technicians might have some impact on new lawyers’ ability to obtain employment or develop solo careers; and
- The imposition of the WSBA-style requirements on Licensed Technicians might not allow them to provide services to the target population at a cost lower than typical lawyer fees.

### *Other Considerations*

The Task Force believes that if a licensing scheme is established, in addition to pre-licensure educational and experiential qualifications, Legal Technicians should have to meet certain post-licensure requirements including having malpractice coverage, complying with a code of ethics, and have continuing legal education.

Discussed but not decided was:

- **What entity (the OSB, the Supreme Court or other?) should oversee the program?**
- How the program would be implemented initially;
- How the initial implementation would be financed;
- Whether to recommend that Licensed Legal Technicians should have to contribute to some sort of client protection fund;

- Whether Legal Technicians would have to maintain client trust accounts;
- What entity should provide malpractice insurance;
- The actual scope of activities Legal Technicians could perform; for example, should Legal Technicians be allowed to draft or choose forms for clients, and what, if any, role, should Legal Technicians be allowed to have in the courtroom?
- How Legal Technicians with licenses from other states should be treated;
- How Oregon should handle Legal Technicians that have their primary office outside of the state of Oregon; and
- Clarification as to the different responsibilities Legal Technicians would have depending on whether they are under the direction and supervision of an attorney or not, or whether that supervision was relevant at all.

The Task Force also recognizes that in order for the Bar or other entity could proceed with a licensing program, the Bar Act would need to be amended to allow this category of legal practitioner, with possible limitations being statutorily defined. Supreme Court acceptance of the concept would also be critical

### *Subcommittee Recommendations*

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After its general discussion, Task Force members agreed that there were certain areas of law more conducive to non-attorney representation than others, discussed possible legislative amendments needed, and issues such as Continuing Legal Education and malpractice coverage. As a result, the Task Force formed Subcommittees to give close consideration to specific issues presented by the Subcommittee assignments. Each of these Subcommittees presented a written report to the Task Force. These written reports are attached to this report as exhibits, and summarized below.

Three Subcommittees focused on implementation issues and three focused on substantive issues.

#### *Implementing Legislation*

See Appendix B for proposed legislation.

#### *Client Protection/Ethics/Malpractice*

See Appendix C for commentary regarding these matters.

## *Education and Licensing*

See Appendix D for the full Subcommittee report.

The Education and Experience Requirements Subcommittee reviewed assorted resources regarding the WSBA requirements for its LLLTs; a number of documents related to different voluntary and mandatory paralegal regulation plans from states around the country (New York and North Carolina, for example); the education, experience and continuing education requirements from the three main national, paralegal certification programs (NFPA's, NALA's, and NALS); SB 1068 - the 1992 proposed Oregon legislation on this same topic; the 1992 final report from the OSB Task Force on this same issue, the Portland Community College Class Curriculum for the paralegal program, as well as other related documents.

The subcommittee found that although the Washington LLLT Program was well thought out, there were a number of items that needed revision for a Legal Technician plan to work in Oregon. After many discussions about the need for a definition of the education and experience requirements that a paralegal should possess, the group turned to the standards to create a new profession in form of a legal technician, as well as the need for a disciplinary body to oversee both paralegals and legal technicians. The Subcommittee considered the innovative idea of using the drafted education and experience requirements (crafted and edited by the subcommittee for the legal technician) as a jumping off point for a second prong of the proposed legislation – a Voluntary Oregon Registered Paralegal (VORP) program to be overseen by the OSB which would define education and experience requirements for those paralegals wishing to participate. This idea could be presented in concert with the concept of the Legal Technician (as the first prong in a two-prong proposal); or as a separate and independent, voluntary, paralegal-regulation model, which would bring paralegals under the disciplinary purview of the Oregon State Bar. This would assist in addressing the education and experience standards that a potential client contacting a self-identified paralegal possess, give disciplinary discretion to the OSB for ethical misconduct such as UPL performed by a VORP, and assist in public protection by creating a registry of paralegals who possess these minimum standards.

## *Family Law*

See Appendix E for the full Subcommittee report.

The Family Law Subcommittee created a list of probable tasks LLLT's certified in family law could perform, to include:

- providing approved forms (such as those on the OJD web site), assisting the "client" in choosing which forms to utilize, and assisting in completing these forms, in a ministerial capacity and without giving legal advice about the case;

- providing generalized explanations of the law without applying it specifically to the client's case or fact pattern;
- explaining legal options without offering legal opinions;
- reviewing approved documents completed by litigants to determine if they are completely and correctly completed;
- reviewing and interpreting necessary background documents (for example, review discovery and client's materials) and offering limited explanations insofar as necessary to complete approved forms;
- providing or suggesting published information to clients pertaining to legal procedures, client's legal rights and obligations and materials of assistance with children's issues (for example, *Isa Ricci's Mom's House, Dad's House*);
- explaining court procedures without applying it specifically to the client's case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County);
- filing legal documents at the client's request; and

The subcommittee also discussed whether LLLTs should be permitted to work with both parties to divorce, subject to ethics rules applicable to LLLTs.

#### *Landlord/Tenant and Small Claims*

See Appendix F for the full Subcommittee report.

The use of LLLTs is recommended in landlord tenant cases and small claims cases. Both kinds of cases are largely populated by self-represented litigants and there are lots of forms available for litigants.

- There are more than twice as many of these cases than there are family law cases, by 2011 numbers about 48,000 family law cases compared to about 97,000 FED and small claims cases.
- There is demand for affordable help in the fields of landlord-tenant and small claims cases and this would be a good entry point for certified LLLTs.

#### *Estate Planning*

See Appendix G for the full Subcommittee report.

The Estate Planning Subcommittee concluded that estate planning is not a suitable area of practice for LLLTs. The primary arguments against LLLTs being involved in estate planning are:

- There is no shortage of low cost attorneys (including many newer attorneys) in Oregon who handle wills and estate planning matters at very reduced and usually fixed rates;
- There is no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford a lawyer. People who die intestate or rely on forms they find online would continue to do so. LLLTs add no value in this area; and
- There is no such thing as a “simple will.” Ala carte services and use of online and template forms without analysis and plans already do more harm than good.

### *Conclusion*

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The Task Force recommends that the Board of Governors consider the possibility of the Bar’s creating a Limited License Legal Technician (LLLT) model as one component of the BOG’s overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.

It should be noted that this recommendation is not unanimous one the Task Force, and that there are many members of the Task Force not in support of any sort of Licensed Legal Technician program. All were in agreement, however that, at a minimum, the Bar might want to explore creating a voluntary paralegal registry, so that members of the public who wish to can learn more about the qualifications of the paralegal from whom they are seeking legal services.



# Washington state moves around UPL, using legal technicians to help close the justice gap

POSTED JAN 01, 2015 05:50 AM CST

BY ROBERT AMBROGI



*Photo of Michelle Cummings by Tim Matsui*

Michelle Cummings looks forward to this spring, when she expects to take on her first law client. By then, the Auburn, Washington, resident will have completed her studies and taken the state licensing examination. Provided she passes, she will begin practicing right away.

Cummings' story could be that of any number of new lawyers looking forward to finishing law school and taking the first fledgling steps of their careers. But Cummings is not attending law school—at least not as lawyers know it—and she has no plans to become a lawyer.

Rather, Cummings is on a historic path to become one of Washington's (and the nation's) first limited license legal technicians. These nonlawyers will be licensed by the state to provide legal advice and

assistance to clients in certain areas of law without the supervision of a lawyer.

The first practice area in which LLLTs will be licensed is domestic relations. Cummings and 14 others have taken the required courses and will sit for a licensing examination in March. The state will begin licensing those who pass in the spring.

Cummings' focus will be family law. For now, she plans to work at the Fiori Law Office, a two-lawyer Auburn firm. Someday she may start a practice of her own.

"I like the idea of being part of a firm," Cummings says. "If Loretta were to retire, then I have the option of hanging my own shingle. I like that idea, knowing that I'm building an opportunity where I wouldn't have to find a new job."

A paralegal since 1998, Cummings is also excited about having clients of her own. "Paralegals tend to multitask. I'll get to finally sit down at my desk, focus on the client and do the job they are paying me to do."

## **NOSING IN**

Within a profession that so guardedly polices its practice, many may see Cummings and her classmates as representing the proverbial camel's nose under the tent. So far, Washington stands alone in formally licensing nonlawyers to provide legal services. But California is actively considering nonlawyer licensing, and several other states are beginning to explore it. New York has sidestepped licensing and is already allowing nonlawyers to provide legal assistance in limited circumstances while also looking to expand their use.

In its January 2014 final report, the ABA Task Force on the Future of Legal Education called on states to license "persons other than holders of a JD to deliver limited legal services." Now this issue of allowing nonlawyers to provide legal services is among the topics being taken up by ABA President William C. Hubbard's Commission on the Future of Legal Services.

"I fully anticipate that it will be one of the concepts that will be addressed by the commission," Hubbard says, noting that his appointees to the 28-member commission include both Barbara A. Madsen, chief justice of the Washington Supreme Court, which promulgated the LLLT rule, and Paula Littlewood, executive director of the Washington State Bar Association, which administers the LLLT program.

"The states are the laboratories of invention," Hubbard adds. "This is a good example of that. I think there is growing acceptance by regulators and private practitioners of law that we need to do things differently."

Proponents maintain there is simply no other way to address the justice gap in the United States. They cite multiple state and federal studies showing that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford.

If lawyers cannot fill the gap, the proponents say, we must find some other way.

"Even with whatever success we've had with public funding of legal services and pro bono work by lawyers, there is still a gaping hole in our system of providing legal services to the poor and people

of limited means," says New York Court of Appeals Chief Judge Jonathan Lippman, who has emerged as a leading advocate of allowing nonlawyers to provide limited services.

"We need to think out of the box and look at every possible avenue for filling this justice gap," Lippman says. "You can get nonlawyers who are experts in a particular area of legal assistance and who can be more effective in that area than a generalist lawyer."

Lippman says his interest in using nonlawyers was sparked by Gillian K. Hadfield, a professor of law and economics at the University of Southern California and another leading advocate for using nonlawyers to bridge the justice gap. After hearing her speak at a Harvard Law School forum, he invited her to New York to testify before his Task Force to Expand Access to Civil Legal Services.

"There is an urgent need for the judiciary to change the landscape of options available to those with legal needs," Hadfield said in her Oct. 1, 2012, testimony, "to exercise your ultimate authority to decide who can provide legal assistance by expanding that list beyond expensive JD-trained and bar-licensed attorneys.

"Of course we want some services delivered only by expensive JD-trained and bar-licensed attorneys—we only want surgery performed by surgeons too," Hadfield continued. "But where are our nurse practitioners? Our legal systems desperately need the equivalent of nurse practitioners and other non-MD health care providers. We need non-JD legal providers who can perform simpler legal work at much lower cost and thereby fill an enormous part of the gaping legal need in this state."

In May 2013, Lippman appointed a committee with the specific charge of studying this issue, the Committee on Non-Lawyers and the Justice Gap. He asked the committee to focus on the use of nonlawyers in housing, elder law and consumer credit cases—areas where as many as 90 percent of litigants in the New York courts are without lawyers.



*Photo of Jonathan Lipman by Len Irish*

## **NEW YORK'S NAVIGATORS**

The recommendations of this committee resulted in Lippman's launch in February 2014 of a pilot program in which nonlawyers, called navigators, provide free assistance to unrepresented litigants in housing cases in Brooklyn and consumer debt cases in the Bronx and Brooklyn. Navigators provide a range of assistance, from general information given at help desks to one-on-one help completing legal forms and assisting in settlement negotiations.

Navigators may also accompany unrepresented litigants into the courtroom. While they are not allowed to act as advocates in court, they are able to answer questions from the judge and to provide the litigants "moral support."

In Albany, Lippman created a second project that uses nonlawyers to advise elderly and homebound residents about their eligibility for benefits and other services.

"Perhaps we need to take a leaf from the medical profession, which has long recognized that people with health problems can be helped by a range of assistance providers with far less training than licensed physicians," Lippman said in announcing the initiatives during his 2014 state of the judiciary address. "We all accept that. Why not the same in the law?"

New York's navigators are generally college and law students. They must commit to volunteer for a minimum of 30 hours within three months of their training. A 2½-hour seminar and accompanying manual train them in the basics of housing and consumer-debt cases, as well as interviewing and communication skills. They receive no formal licensing.

Some receive a stipend for their work, such as Sagar Sharma, a prelaw senior at the City College of New York. He came into the program through a summer internship sponsored by Skadden, Arps, Slate, Meagher & Flom. Sharma's full-time work in the housing court last summer earned him an award for outstanding volunteer service.

By contrast, the Washington program under which Cummings hopes to be licensed looks surprisingly similar to state schemas for lawyer licensing and oversight.

It is regulated by the state supreme court and administered by the court-appointed Limited License Legal Technician Board. Like lawyers, LLLTs will be subject to strict education requirements, must pass a qualifying examination, will be subject to disciplinary procedures and ethical rules, and must be covered by malpractice insurance.

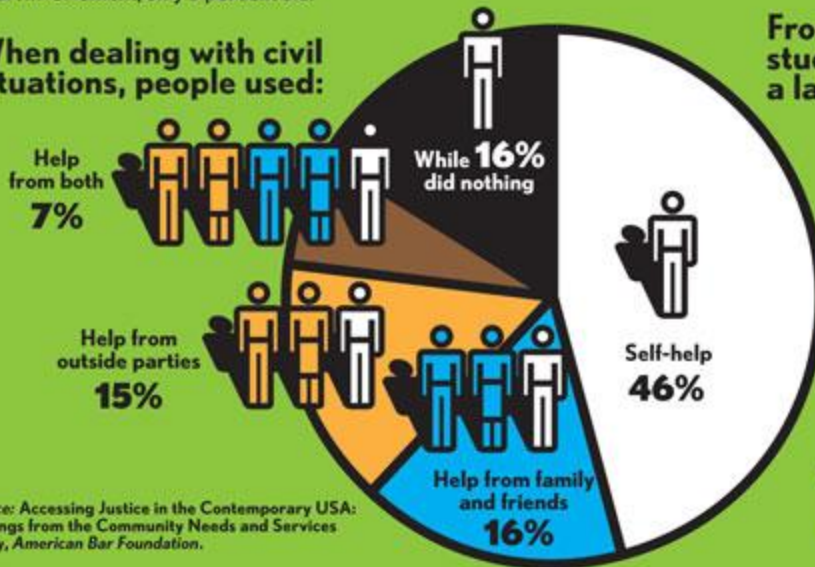
The Washington Supreme Court created the LLLT program on June 15, 2012, with its promulgation of Admission to Practice Rule 28. In an opinion that accompanied the rule, the court explained that it acted in response to "a ballooning population of unrepresented litigants."

"The authorization for limited license legal technicians to engage in certain limited legal and law-related activities holds promise to help reduce the level of unmet need for low- and moderate-income people who have relatively uncomplicated family-related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome," the court said.

## (Not) Accessing Justice

A 2014 survey in a large Midwestern city found 66 percent of respondents reported experiencing at least one situation fitting one of 12 categories of civil justice situations. Almost half relied on themselves alone to deal with the situation, while less than a quarter (22 percent) handled the matter with the help of someone outside their social network. In an in-depth examination of situations involving courts or tribunals, about two-fifths of the respondents sought an attorney's assistance. When there was no court involvement, only 5 percent did.

### When dealing with civil situations, people used:



### From the in-depth study, those who sought a lawyer's help:



Source: Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study, American Bar Foundation.

Graphic by Jeff Dionise

## BORN FROM CONCERNS

Ironically the rule had its genesis in concerns about unauthorized law practice in the state. Acting on the belief that the UPL problem was driven, at least in part, by the lack of a definition of authorized law practice, the state bar formed a committee in 1998 to come up with one. In 2001, the supreme court adopted the committee's recommended definition as General Rule 24.

The court, however, was concerned that simply defining law practice would not be enough to protect the public from unauthorized practice, recalls Stephen R. Crossland, a Cashmere, Washington, sole practitioner who served on the UPL committee. For this reason, the court simultaneously promulgated General Rule 25, creating a Practice of Law Board to "make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services." The court named Crossland chair.

As the POLB went to work studying the expanded use of nonlawyers, another committee was also at work in Washington studying the extent to which the state was meeting the civil legal needs of its residents. In a 2003 report, the committee concluded that low-income people in Washington face 88 percent of their legal problems without help from an attorney. Existing legal services programs, the

study said, "are unable to address more than a very small portion of existing demand, never mind expanded demand."

These findings dovetailed with the work of the board and helped spur it to propose a rule authorizing legal technicians, Crossland says. "We called it a legal technician rule, but I think a better way to categorize it is as another category of authorized legal service providers."

In 2006 the POLB submitted the draft rule to the board of governors of the Washington State Bar Association. The response was, perhaps, predictable: The board voted to oppose it. Still, board members left the door open for the POLB to revise the rule and return for reconsideration.

The POLB refined the rule and drafted regulations to govern its implementation. In January 2008, it submitted its revised proposal to the supreme court for approval. The state bar's board of governors asked the court to hold off on action so as to give them time to solicit feedback from members and formulate a position. Late in 2008, the board of governors again voted to oppose the rule.

For four years, the rule sat at the supreme court. In 2009 the court published the rule for public comment. It twice placed the rule on its agenda for a vote, in 2010 and 2011, but each time it tabled the vote to a later date.

Then in February 2012, the POLB submitted further revisions to the court. The revisions were an attempt to address some of the concerns of the state bar, which remained opposed to the proposed rule. This version also changed the name from "legal technician" to "limited license legal technician." In June 2012, the supreme court finally voted to approve the rule, effective Sept. 1, 2012.

"The licensing of limited license legal technicians will not close the justice gap identified in the 2003 civil legal needs study," the court says in its order. "Nor will it solve the access-to-justice crisis for moderate-income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law-related services to members of the public in need of individualized legal assistance with noncomplex legal problems."



*Photo of Gillian Hadfield by Jonah Light*

## **INDEPENDENCE WAY**

In Washington legal circles they are now known as "triple-LTs." They will be free to set their own fees and work independently of lawyers, even opening their own offices. The laws of attorney-client privilege and of a lawyer's fiduciary responsibility to the client will apply just as they would to an attorney.

LLTs will be authorized to help clients prepare and review legal documents and forms; advise them on other documents they may need; explain legal procedures and proceedings, including procedures for service of process and filing of legal documents; and gather relevant facts and explain their significance. They may also perform legal research, but only if the work is approved by a Washington lawyer.

LLTs may not accompany clients into court or engage in negotiations on a client's behalf. The LLLT board is considering whether to propose an amendment to the rule that would allow LLLTs to engage in these activities.

To become an LLLT, an applicant must have at least an associate's degree and complete 45 credit hours of core curriculum currently being taught at community colleges in the state. The core curriculum is specified by court rule and covers topics such as civil procedure, contracts, legal

research and writing, professional responsibility, and law office procedures and technology.

In addition, applicants must complete courses specific to the practice area in which they seek to be licensed. For family law, the only approved practice area so far, the 15-hour curriculum was developed jointly by the state's three ABA-approved law schools—at Gonzaga University, Seattle University and the University of Washington. Applicants also must have 3,000 hours of substantive law-related work experience supervised by a licensed lawyer.

To help get the program started, the LLLT board decided to offer a waiver of the core education requirements until Dec. 31, 2016. To qualify for the waiver, applicants must have passed a certified paralegal examination and have completed 10 years of experience working as a paralegal under a lawyer's supervision. (The candidate must apply within five years of completing those 10 years of work experience.)

Once licensed, LLLTs will be subject to a regulatory framework similar to that for lawyers. They will be required to pay an annual license fee, fulfill annual continuing education requirements, set up IOLTA accounts for handling their clients' funds, and maintain professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 annual aggregate.

## **IN CALIFORNIA, CRITICAL NEEDS**

Down the Pacific coast, State Bar of California officials have been paying close attention to Washington's program. In March 2013, the bar appointed a Limited License Working Group to look at whether California should adopt a similar legal technician program. After a series of public hearings, the working group came out in July 2013 in favor of the concept and urged the bar to conduct an expanded study.

Craig Holden, now California state bar president, chaired that working group and believes the need for alternative licensing models is unavoidable given the crisis in the delivery of legal services.

"The fact is that the justice gap has grown exponentially in the last several years," says Holden, a Los Angeles-based partner at Lewis Brisbois Bisgaard & Smith. "Since the 2008 recession, more than 6 million Californians have fallen below the poverty line."

Compounding the problem, he says, is that funding for legal services has dropped precipitously due to historically low interest rates causing dramatic reductions in IOLTA programs, a principal source of legal services funds.

"As a service profession, we must recognize that when you have 90 percent of people in critical areas of need not using lawyers because they can't afford them, then by any definition that's a crisis," he says.

California should authorize limited licenses similar to the Washington model in areas of significant need, such as family law, immigration and landlord-tenant law, Holden believes, with the licenses subject to strict requirements for education, experience and examination.

"This is not designed to take food off lawyers' plates," Holden says. "It is designed to home in on that large body of consumers who cannot hire a lawyer and who lawyers are not serving in any event."

Joseph L. Dunn, former state bar executive director, agrees. He sides with those who argue the economics of law practice make it impossible for lawyers to charge prices most consumers can



afford. "This is not just a problem for the poor—it's gone beyond the poor to the middle class."

In November 2013 the California bar appointed a Civil Justice Strategies Task Force with a broad mandate to develop a plan for addressing the state's justice gap. The limited license is among the topics it is considering.

Even if the task force comes out in favor of a limited license, it could be years before a proposed rule would be presented to the state supreme court, Holden notes. How it would be received there is anyone's guess.

## **OTHER STATES**

The idea of authorizing nonlawyers to provide limited legal services has percolated for years. In the early 1990s, both California and Oregon appointed task forces to consider limited licensing. Washington already has a form of limited practice, the "limited practice officer," approved in 2009 to help prepare documents for real estate and personal transactions. California, too, permits "legal document assistants" to provide aid to consumers.

But as other states confront their own justice gaps, Washington's first-in-the-nation limited-license rule seems to have captured their attention and spurred new interest in nonlawyers as a partial solution.

"We have received a flurry of interest from other states that are looking at this," says Paula Littlewood, the Washington bar's executive director. "People say to me: 'It scares me to death, but I know it is coming.' "

Crossland, who chairs the LLLT program, says, "I've had conversations with Colorado, New Mexico and California, and I've also spoken to New York, Ohio, Oregon and North Carolina."

## **CONCERN FOR CONSUMERS**

In both Washington and California, opposition to limited licensing has focused on the potential harm to consumers. Even with advanced training, opponents say, legal technicians differ little from paralegals and lack the competency to handle complex legal matters without an attorney's supervision.

Typical of this view was the testimony presented by Seattle family lawyer Ruth Laura Edlund, a partner at Wechsler Becker and the former chair of the WSBA's Family Law Section, at a Feb. 23, 2012, town hall forum sponsored by the bar to air views on the limited license proposal.

"This rule is in my view a feel-good rule that would make us feel that we're doing something good, but all we're providing is access to injustice, because the class of individuals described is not going to have the competency to actually do for the poor what needs to be done," Edlund said. "Just because you're poor doesn't mean your legal problems are simple."

Opponents in California raised similar concerns. In a Feb. 1, 2013, letter to the California bar, solo Stephen E. Ensberg of West Covina questioned the competency of paralegals to provide unsupervised legal services. He said that clients frequently come to him to fix work done by independent paralegals and document preparers who have no attorney supervision.

"The state bar proposal now under consideration would simply give the veneer of legality to these unauthorized, ill-trained practitioners who do more damage than good," Ensberg wrote. "And they are not cheap, in any event. The proposal for licensed nonlawyers simply exposes the public to more harm than is already the current situation."

Another common concern is that limited licensing will have limited impact. While it is complicated and potentially costly for a state to set up and administer a limited licensing scheme, there is no guarantee that LLLTs will make any measurable gain in closing the justice gap, or even that they will charge affordable fees for their services, some say.

"Anyone who hangs out a shingle is operating in a business model that is enormously expensive," says Hadfield, the USC law and economics professor. The same factors that keep lawyers' hourly rates high—payroll, overhead, insurance, marketing and the like—will prevent LLLTs who hang out a shingle from charging affordable rates, she argues.

But Littlewood believes LLLTs will be able to keep their hourly rates low. The cost of entry to become one is much lower than to become a lawyer, she notes, so LLLTs are not burdened with debt starting out. Additionally, market forces will keep LLLT rates low, she argues. "If they charge near what a lawyer charges, the consumer will go to a lawyer."

Hadfield believes licensing nonlawyers alone will have only minimal impact in addressing the need for legal services. To make LLLT practice economical requires economies of scale, she argues, and that can be achieved only if private companies are allowed to provide legal services.

"Suppose LegalZoom or Rocket Lawyer could hire LLLTs and have them answering phone calls, engaging in online chats—maybe even manning retail outlets—and giving assistance actually filling out the forms and navigating the procedures, all based on protocols developed by lawyers and by the company," says Hadfield, who sits on LegalZoom's Legal Advisory Council. "That's the way you significantly reduce the gap. Then the LLLT can be hired at lower cost."

Hadfield further believes state regulation, not bar licensing, is the better way to expand legal services while still protecting consumers. "I don't think the bar and state supreme courts are set up to do the kind of regulation you want." She envisions a regulatory agency such as those that oversee many medical professions. The agency would license and oversee not only the nonlawyer professionals, but also legal services companies such as LegalZoom and Rocket Lawyer.

## **EMBRACING OPPORTUNITY**

Back in Washington, Cummings and her classmates became the first class to complete the family law courses on Dec. 3, 2014. The licensing examination is scheduled for March.

Cummings credits her employer, Loretta M. Fiori-Thomas, for encouraging her to become an LLLT.

"I know there are some attorneys who aren't thrilled about this idea, but I appreciate that my boss is embracing it," Cummings says. "She is giving me the opportunity to better myself and the opportunity to help people. That's a gift.

"I look at this primarily as an opportunity to help people," she adds. "That's really what it's all about."

Meanwhile, in California, the fate of the LLLT remains uncertain. But former state bar executive

director Dunn maintains that something must be done to address the unmet need for legal services.

"The profession has been struggling for years with different answers," Dunn says. "The question going forward is whether we want to embrace LLLTs or not.

"The unmet need is not shrinking, it's growing. We as a profession have to deal with this."

*This article originally appeared in the January 2015 issue of the ABA Journal with this headline: "Authorized Practice: Washington state moves around UPL, using legal technicians to help close the justice gap."*

## Sidebar

### **Among recent initiatives across the states:**

- The Connecticut Bar Association's Task Force on the Future of Legal Education and Standards of Admission issued a June 2014 report recommending the state modify its practice rules "so that nonlawyers be permitted to offer some basic legal services to the public."
- The Oregon State Bar convened a Task Force on Limited License Legal Technicians in 2013. A final report and recommendation was expected before the end of last year.
- The Committee on Professional Responsibility of the New York City Bar Association issued a June 2013 report applauding the use of nonlawyer advocates such as courtroom aides and legal technicians.
- The Vermont Bar Association considered the topic of limited legal licensure at its 2013 midyear meeting and created a paralegals section of the bar that will continue to study the issue.
- The Massachusetts Bar Association voted in March 2014 to endorse the recommendations of the ABA Task Force on the Future of Legal Education, including the licensing of people other than those with law degrees.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**Memo Date:** January 28, 2015  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Volunteer Appointments

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### Action Recommended

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

### Background

#### Client Security Fund Committee

Due to the resignation of one committee member the staff liaison recommends the appointment of **David J. Malcolm** (990789). Mr. Malcolm selected CSF as his first preference for committee appointment through the volunteer opportunities survey last year.

**Recommendation:** David J. Malcolm, member, term expires 12/31/2016

#### Legal Heritage Interest Group

An existing member needs to be appointed to serve as secretary for the remainder of the year. **Mary Anne Anderson** (903593) volunteered and the group members support her willingness to serve. Ms. Anderson has served on the LHIG since 2011.

**Recommendations:** Mary Anne Anderson, secretary, term expires 12/31/2015

#### Legal Services Program Committee

Due to a lack of interest from public member candidates at the end of last year, one non-lawyer seat on the LSP Committee went unfilled. Past BOG member, **Jenifer Billman**, has expressed an interest and agreed to serve on the committee if appointed.

**Recommendation:** Jenifer Billman, public member, term expires 12/31/2017

#### Loan Repayment Assistance Program Committee

The policies and guidelines of the loan repayment assistance program outline the committee's composition which includes one representative from the civil area of public service law. **Lori Alton** from the Oregon Law Center is interested in serving since the previous representative is no longer eligible for this position. Ms. Alton is familiar with the OLC and LASO personnel policies, salary scales, and other information relevant to committee business. The executive directors from OLC and LASO support her participation as does the OSB staff liaison.

**Recommendation:** Lori Alton, member, term expires 12/31/2017

#### Minimum Continuing Legal Education Committee

Due to the resignation of one member the committee officers and staff liaison recommend the appointment of **Linda Gouge** (920672). Ms. Gouge offers geographic diversity to the committee and expressed a willingness to serve through the volunteer opportunities survey last year.

**Recommendation:** Linda Gouge, member, term expires 12/31/2016

**Procedure & Practice Committee**

Last November the BOG appointed Neil Jackson to serve as chair of the Procedure & Practice Committee. Mr. Jackson declined the appointment due to a conflict with another volunteer position. **Steven C. Berman** (951769) is recommended by the staff liaison to fill the chair position based on his prior service as secretary of the committee and his willingness to serve if appointed.

**Recommendation:** Steven C. Berman, chair, term expires 12/31/2015

**State Lawyers Assistance Committee**

Due to a resignation the committee needs one new member appointed. The committee recommends **Sharon D. Maynard** (925843) who attended in the January meeting and is willing to serve. Ms. Maynard has experience working with individuals dealing with mental health and cognitive impairment issues.

**Recommendation:** Sharon D. Maynard, member, term expires 12/31/2018

**Disciplinary Board**

One additional member is needed for the region 5 board. Staff recommends the appointment of **Samuel C. Kauffman** (943527). Mr. Kauffman has extensive experience as a criminal defense attorney from a variety of law firm sizes and has agreed to serve if appointed.

**Recommendation:** Samuel C. Kauffman, member, term expires 12/31/2017

**House of Delegates**

Three new members are needed to fill vacant seats on the HOD in regions 5, 6, and Out of State. **Amber L. Labrecque** (094593) is an associate at a small firm in Portland and expressed an interest in the HOD through the volunteer opportunities survey. **Karen E. Clevering** (082885) practices in Salem at the DOJ and is currently serving as chair of the ONLD. **Brandon G. Braun** (133097) was appointed to the HOD last year in region 2 before moving to Spokane, WA which required his removal as a delegate. He is again interested in serving on the HOD as an out of state member.

**Recommendation:** Amber Labrecque, region 5 delegate, term expires 4/17/2017

**Recommendation:** Karen E. Clevering, region 6 delegate, term expires 4/17/2017

**Recommendation:** Brandon G. Braun, out of state region delegate, term expires 4/19/2016

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 15, 2014  
**Open Session Minutes**

The meeting was called to order by President Tom Kranovich at 1:00 p.m. on November 15, 2014. The meeting adjourned at 3:50 p.m. Members present from the Board of Governors were Jenifer Billman, James Chaney, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Travis Prestwich, Joshua Ross, Richard Spier, Simon Whang, Timothy Williams and Elisabeth Zinser. Not present were Matthew Kehoe, Caitlin Mitchel-Markley and Charles Wilhoite. Also present were 2015 board members Guy Greco, Vanessa Nordyke, Per Ramfjord, Kathleen Rastetter and Kerry Sharp. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Kay Pulju, Susan Grabe, Dawn Evans, Judith Baker, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Carol Bernick, PLF CEO, Guy Greco and Tim Martinez, PLF Board of Directors; Ben Eder, ONLD Chair, and Karen Clevering, ONLD Chair-elect; and Steve Powers, Deputy General Counsel for the Office of Governor Kitzhaber.

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

**Motion:** Ms. Kohlhoff moved, Mr. Spier 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 the success of the south coast local bar tour as well as the meeting with the Siletz and Grand Ronde Tribal Councils.

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

In writing.

**C. Report of the Executive Director**

In writing.

**D. Director of Regulatory Services**

In addition to her written report, Ms. Evans reported on her new hire, Angela Bennett.

**E. Director of Diversity & Inclusion**

In Ms. Hyland's absence, Mr. Kranovich reported on the success of the BOWLIO event which had over 200 participants. Ms. Stevens reported on the unveiling of the Diversity Story Wall on the first floor of the Bar Center on November 7, 2014 after the HOD meeting. The event was well-attended and the Story Wall is a meaningful addition to the Bar.

**F. MBA Liaison Reports**

Mr. Ross reported on the November 5, 2014 MBA board meeting. Some of the MBA board commented that HOD meetings are too long and not particularly meaningful.

## G. Oregon New Lawyers Division Report

In addition to Mr. Eder's written report, Ms. Clevering explained the structure and function of the ONLD for the incoming BOG members. The ONLD performs special projects throughout the year. This year it offered a loan-repayment program emphasizing repayment options available through the government as well as the Oregon State Bar. Next year she would like to see the ONLD concentrate on the need for rural attorneys and work with the New Lawyer Mentoring Program.

### 3. Professional Liability Fund [Ms. Bernick]

Ms. Bernick submitted a general update on the PLF's claims status. She also reported on the success of the PLF's "Learning the Ropes" program. The OAAP has just started a support group for lawyers going through the disciplinary process.

Ms. Bernick presented the PLF Board of Directors' requests that the Board of Governors approve the proposed 2015 PLF Claims Made Plan, Excess Plan, and Pro Bono Plan. There are no changes to any of the coverage plans for 2015. **[Exhibit A]**

**Motion:** Ms. Zinser moved, Mr. Spier seconded, and the board voted to approve the proposed 2015 PLF Claims Made Plan, Excess Plan, and Pro Bono Plan as requested. Mr. Chaney abstained.

Ms. Bernick asked that the Board of Governors approve the rates for 2015 Excess Coverage. There were no revisions to the rates from 2014. **[Exhibit B]**

**Motion:** Ms. Matsumonji moved, Mr. Mansfield seconded, and the board voted to approve the rates for 2015 Excess Coverage as requested. Mr. Chaney and Mr. Emerick abstained.

### 4. OSB Committees, Sections and Councils

#### A. MCLE Committee

Ms. Hirschbiel presented the MCLE Committee's recommendations for amending MCLE Regulations 3.300(c), 3.300(d) and 6.100 regarding application and carryover of child abuse and elder abuse reporting credits. **[Exhibit C]**

**Motion:** Mr. Emerick moved, Mr. Ehlers seconded, and the board voted unanimously to approve the amendments to the MCLE regulation as presented.

#### B. State Lawyers Assistance Committee

Ms. Hirschbiel presented the Committee's request that OSB Bylaw Subsection 24.300 be amended to delete the requirement for a specific number of committee members and allow the BOG the same flexibility it has with regard to other committees. SLAC is requesting the addition of three member seats to the committee. Ms. Hirschbiel also recommended a housekeeping change to move the language regarding the PLF's authority over the PLF Personal and Practice Management Assistance Committee (PLF-PPMAC) from Subsection 24.301 to Subsection 24.201, which outlines the authority for attorney assistance programs.

**[Exhibit D]**

**Motion:** Mr. Emerick moved, Ms. Matsumonji seconded, and the board voted to approve the committee's recommendations as presented by Ms. Hirschbiel.

**Motion:** Mr. Spier moved, Mr. Mansfield seconded, and the board voted to waive the one-meeting notice requirement to implement the bylaw change.

**C. Client Security Fund Committee**

Ms. Stevens presented the claimant's request for BOG review of the CSF Committee's denial of CSF claim FOSTER(Wong/Bernath)2014-07. **[Exhibit E]**

**Motion:** Mr. Emerick moved, Mr. Prestwich seconded, and the board voted to uphold the committee's denial of the claim.

Ms. Stevens asked the board to consider the recommendation of the Client Security Fund Committee that the BOG make awards in the following matters **[Exhibit F]:**

- a. No. 2012-54 GRUETTER (Lupton) \$21,500.00
- b. No. 2014-12 LANDERS (Austin) \$7,400.00

**Motion:** Ms. Matsumonji moved, Mr. Whang seconded, and the board voted to approve payment of claim 2012-54 GRUETTER (Lupton) in the amount of \$21,500.00.

**Motion:** Mr. Mansfield moved, Mr. Prestwich seconded, and the board voted to approve payment of claim 2014-12 LANDERS (Austin) in the amount of \$7,400.00.

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

**A. Board Development Committee**

Ms. Matsumonji reported that the committee recommends approval of the first two of the PLF Board's three nominees: Mr. Langfitt and Ms. Easley. Mr. Martinez recommended that the board make an effort to include members from eastern Oregon on the PLF board; there followed a brief discussion of the challenge of balancing the desire to have geographic diversity with the need for practice area expertise. **[Exhibit G]**

**Motion:** The board approved the committee motion. Mr. Chaney abstained, having disclosed a conflict of interest based on his ongoing representation of malpractice claimants.

Ms. Matsumonji gave an update on the committee's outreach to large firms to recruit volunteers and thanked Ms. Mitchel-Markley for her efforts. She asked the board members to return their BOG evaluations to the bar staff.

Ms. Matsumonji asked the board to approve the appointments to various bar committees, councils, and boards. The committee put many hours into the selection of these appointments. **[Exhibit H]**

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

**B. Budget and Finance Committee**

Mr. Emerick asked the board to approve the committee's recommended 2015 Budget which included no fee increase for 2015. **[Exhibit I]**

**Motion:** The board approved the committee motion. Ms. Kohlhoff voted no, all others voted yes.

**C. Governance and Strategic Planning Committee**

Mr. Powers conveyed the Governor's appreciation for the BOG's assistance with appellate appointments. However, the Governor doesn't believe that the Bar's preference polls for circuit court appointments provide meaningful information, such as what the local community needs in the way of specific judicial qualities. Mr. Ross asked the board to consider the Committee's recommendation to reverse the Board's February 2013 decision to conduct a circuit court preference poll for every vacancy and do them only when requested by the Governor or when



the BOG determines it would be helpful. Mr. Ross pointed out that there is a low participation rate in the preference polls, which makes their value even less. **[Exhibit J]**

Ms. Kohlhoff asked what would replace the polls if they were eliminated in most cases. Mr. Ross suggested the BOG inquire as to how it can work with the Governor's office in the appointment process. Mr. Prestwich suggested that the polls give bar members a voice in the appointment process, whether or not the current administration finds the polls useful. Mr. Heysell reminded the board that the appointment process belongs to the Governor, not the members.

**Motion:** The board approved the committee motion (9 - 5). Mr. Whang, Mr. Mansfield, Mr. Heysell, Mr. Spier, Mr. Chaney, Ms. Billman, Mr. Ross, Mr. Williams and Ms. Zinser voted yes. Mr. Prestwich, Ms. Kohlhoff, Mr. Emerick, Ms. Matsumonji and Mr. Ehlers voted no.

Mr. Spier asked the board to consider the Committee's recommendation regarding diverse communities outreach ideas. Mr. Kranovich volunteered to lead the effort.

**Motion:** The board unanimously approved the committee motion.

**D.** Public Affairs Committee

Mr. Prestwich updated the board on the latest legislative activity, the status of the bar's list of law improvement proposals, and the mid-term election.

Ms. Grabe reported that the Citizens Campaign for Court Funding held a successful breakfast in October; Chief Justice Balmer was pleased with the attendance and the apparent continuing support for the group.

Mr. Prestwich presented the committee's recommendation to approve a Resolution in Support of Courthouse Funding. **[Exhibit K]**

**Motion:** The board voted unanimously to approve the committee's recommendation.

Mr. Prestwich reported that the CLNS committee voted to be consolidated into the Public Affairs Committee and that the CLNS Committee charge be transferred to the Public Affairs Committee. The Public Affairs Committee supports the change. Mr. Spier will take the change into consideration as he makes committee appointments for 2015.

**E.** Executive Director Selection Special Committee

Mr. Spier discussed the new Executive Director recruitment/selection procedures. **[Exhibit L]**

Mr. Spier asked the board to consider the Committee's recommendation regarding the new executive director's job description. **[Exhibit M]**

**Motion:** The board approved the committee motion. Ms. Matsumonji was opposed.

Mr. Spier explained his preliminary thinking regarding the composition of the Executive Director Evaluation Special Committee, based on his discussions with other BOG members and staff. In addition to BOG members, he believes the process will benefit from representation by one or two former OSB presidents and one or two director-level OSB employees. HR Director Christine Kennedy will provide staff support.

**F.** International Trade in Legal Services Task Force

No report.

**G. Legal Technicians Task Force**

Ms. Stevens presented the task force chair's draft report to the board for information only. After the committee has approved the report, it will be presented to the board for further consideration. **[Exhibit N]**

**6. Other Action Items**

Ms. Stevens presented the results of the 2014 HOD Annual Meeting. **[Exhibit O]**

Mr. Kranovich asked the board to approve the nomination of Mr. Ray Heysell for 2015 President-elect.

**Motion:** The board voted unanimously to approve the nomination of Mr. Heysell.

Ms. Stevens asked the board if it wanted to take action on the ABA Request for Input re: Future of Legal Services. Mr. Kranovich asked board members to submit feedback to Ms. Stevens by the end of November if they had any ideas for the ABA Commission. **[Exhibit P]**

**7. Consent Agenda**

Mr. Wegener asked the board to acknowledge receipt of the revised 2-page "Report of Independent Auditors" letter from Moss Adams, LLP.

**Motion:** Mr. Prestwich moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes and acknowledgement of the revised audit letter. **[Exhibits Q & R]**

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

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

**Motion:** Mr. Ehlers moved, Mr. Whang seconded, and the board voted unanimously to affirm the actions on the closed agenda.

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

Mr. Chaney called for affirmation of the senior class of board members: Ms. Billman, Mr. Ehlers, Mr. Emerick, Mr. Kehoe and Mr. Kranovich.

**Oregon State Bar  
Board of Governors Meeting  
November 15, 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.

Ms. Hirschbiel asked the board to decide whether to initiate custodianship proceedings over Don Willner's former law practice. **[Exhibit S]**

**Motion:** Mr. Ehlers moved, Ms. Kohlhoff seconded, and the board voted unanimously to initiate custodianship proceedings as requested by Ms. Hirschbiel.

B. Other Matters

None.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 13-15, 2014  
**Memo Date:** October 20, 2014  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2015 PLF Claims Made Primary Plan, Excess Plan, and Pro Bono Plan

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### Action Recommended

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2015 PLF Claims Made Plan, Excess Plan, and Pro Bono Plan. There are no changes to any of the coverage plans for 2015.

### Background

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

Even though there were no changes to any of the coverage plans for 2015, the BOG is required to approve them prior to their effective date of January 1, 2015. (OSB Bylaws Section 23.3)

### Attachments

1. PLF Primary Coverage Plan
2. PLF Excess Plan
3. PLF Pro Bono Plan

**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**  
**2015 CLAIMS MADE PLAN**

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**January 1, 2015**

# 2015 CLAIMS MADE PLAN

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**2015 CLAIMS MADE PLAN**

**NOTICE**

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

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

**INTERPRETATION OF THIS PLAN**

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

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

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

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

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

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

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



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

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

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

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

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## SECTION I — DEFINITIONS

Throughout this Plan, when appearing in capital letters:

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

### *COMMENTS*

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

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

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

3. "CLAIMS EXPENSE" means:

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

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

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

- 4.** "CLAIMS EXPENSE ALLOWANCE" means the separate allowance for aggregate CLAIMS EXPENSE for all CLAIMS as provided for in SECTION VI.1.b of this Plan.
- 5.** "COVERAGE PERIOD" means the coverage period shown in the Declarations under the heading "COVERAGE PERIOD."
- 6.** "COVERED ACTIVITY" means conduct qualifying as such under SECTION III — WHAT IS A COVERED ACTIVITY.
- 7.** "COVERED PARTY" means any person or organization qualifying as such under SECTION II — WHO IS A COVERED PARTY.
- 8.** "DAMAGES" means money to be paid as compensation for harm or loss. It does not refer to fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, accountings, or damages and relief otherwise excluded by this Plan.
- 9.** "EXCESS CLAIMS EXPENSE" means any CLAIMS EXPENSE in excess of the CLAIMS EXPENSE ALLOWANCE. EXCESS CLAIMS EXPENSE is included in the Limits of Coverage at SECTION VI.1.a and reduces amounts available to pay DAMAGES under this Plan.
- 10.** "INVESTMENT ADVICE" refers to any of the following activities:
  - a.** Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
  - b.** Managing any investment;
  - c.** Buying or selling any investment for another;
  - d.** (1) Acting as a broker for a borrower or lender, or  
  
(2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;
  - e.** Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
  - f.** Giving advice of any nature when the compensation for such advice is in whole or in part

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

**g.** Inducing someone to make a particular investment.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### COMMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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## **SECTION II — WHO IS A COVERED PARTY**

**1.** The following are COVERED PARTIES:

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

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### SECTION III — WHAT IS A COVERED ACTIVITY

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

#### [YOUR CONDUCT]

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

#### [CONDUCT OF OTHERS]

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

(3) Occurred after any Retroactive Date shown in the Declarations.

b. The act, error, or omission, if committed by YOU, would constitute the rendering of professional services in YOUR capacity as an attorney in private practice.

c. The act, error, or omission was not committed by an attorney who at the time of the act, error, or omission:

(1) Maintained his or her principal office outside the State of Oregon; or

(2) Maintained his or her principal office within the State of Oregon and either:

(a) Claimed exemption from participation in the Professional Liability Fund,  
or

(b) Was not an active member of the Oregon State Bar.

[YOUR CONDUCT IN A SPECIAL CAPACITY]

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

#### COMMENTS

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

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

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

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

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

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

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

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

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



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

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

## SECTION IV — GRANT OF COVERAGE

### 1. Indemnity.

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

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

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

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

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

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

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

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

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

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

## 2. Defense.

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

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

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

### COMMENTS

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

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

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

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

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

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

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

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

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## SECTION V — EXCLUSIONS FROM COVERAGE

### [WRONGFUL CONDUCT EXCLUSIONS]

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

### COMMENTS

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

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

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

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

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

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

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

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

#### COMMENTS

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

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

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

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

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

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

#### [BUSINESS ACTIVITY EXCLUSIONS]

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

#### COMMENTS

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

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

- a. In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;
- b. In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or
- c. That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

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

## COMMENTS

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

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

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

## COMMENTS

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

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

## COMMENTS

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

*business transaction.*

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

**RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

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

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

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

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

**RULE 1.0(g)**

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

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

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

*disciplinary rules.*

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

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

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

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

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

#### COMMENTS

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

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



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

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

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

#### [PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

**10.** This Plan does not apply to any CLAIM:

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

#### COMMENTS

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

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

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

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

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

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

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

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

*COMMENT*

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

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

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

[GOVERNMENT ACTIVITY EXCLUSION]

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

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

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

*COMMENTS*

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

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

[HOUSE COUNSEL EXCLUSION]

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

*COMMENTS*

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

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

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

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

*COMMENTS*

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

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

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

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

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

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

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

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

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

COMMENTS

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

[PATENT EXCLUSION]

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

**19.** *Reserved.*

[CONTRACTUAL OBLIGATION EXCLUSION]

**20.** This Plan does not apply to any CLAIM:

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

COMMENTS

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

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

*Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or*

representation will not be covered under the Plan.

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

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

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

[BANKRUPTCY TRUSTEE EXCLUSION]

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

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

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

**COMMENTS**

*There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not*

*limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.*

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

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## SECTION VI — LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE

### 1. Limits for This Plan

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

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

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

### 2. Limits Involving Same or Related Claims Under Multiple Plans

If this Plan and one or more other Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES are separate is determined as of the time of the COVERED ACTIVITIES that are alleged in the CLAIMS. No LAW ENTITY, or group of LAW ENTITIES practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE

under this provision. The CLAIMS EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY requesting it.

#### COMMENTS

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

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

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

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

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

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



## SECTION VII — NOTICE OF CLAIMS

1. The COVERED PARTY must, as a condition precedent to the right of protection afforded by this coverage, give the PLF, at the address shown in the Declarations, as soon as practicable, written notice of any CLAIM made against the COVERED PARTY. In the event a SUIT is brought against the COVERED PARTY, the COVERED PARTY must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.
2. If the COVERED PARTY becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM for which coverage may be provided under this Plan, the COVERED PARTY must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:
  - a. The specific act, error, or omission;
  - b. DAMAGES and any other injury that has resulted or may result; and
  - c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a CLAIM or potential CLAIM which otherwise would require notice from the COVERED PARTY under subsection 1. or 2. above, the COVERED PARTY'S obligations under those subsections will be considered satisfied for that CLAIM or potential CLAIM.

### COMMENTS

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

## SECTION VIII — COVERAGE DETERMINATIONS

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

Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.

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

#### COMMENTS

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

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

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

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

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

carrier as to the investigation, defense, and settlement of all CLAIMS;

**g.** Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;

**h.** Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.

**2.** To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

**3.** The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.

**4.** In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:

- a.** Agrees to the PLF's proposal, or
- b.** Objects to the PLF's proposal.

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

#### COMMENTS

*Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.*

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

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## **SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES**

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

### **COMMENTS**

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

*Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Plan, but Attorney B has coverage for her liability under her Plan. The PLF pays the CLAIM under Attorney B's Plan. Section X.2 of Attorney A's Plan makes clear the PLF has the right to sue Attorney A for the damages the PLF*

*paid under Attorney B's Plan.*

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

---

## **SECTION XI — SUPPLEMENTAL ASSESSMENTS**

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

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

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

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

### *COMMENTS*

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

---

## **SECTION XIII — WAIVER AND ESTOPPEL**

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

---

## **SECTION XIV — AUTOMATIC EXTENDED CLAIMS REPORTING PERIOD**

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

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

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

#### COMMENTS

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

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

*Example No. 1: Attorney A obtains regular PLF coverage in 2010 with a CLAIMS EXPENSE ALLOWANCE of \$50,000 and Limits of Coverage of \$300,000. One CLAIM is asserted in 2010 for which a total of \$200,000 is paid in indemnity and expense (including the entire \$50,000 CLAIMS EXPENSE ALLOWANCE). The remaining Limits of Coverage under the 2010 Plan are \$150,000. Attorney A leaves the private practice of law on December 31, 2010 and obtains extended reporting coverage at no charge. The 2010 Plan will apply to all CLAIMS made in 2011 or later years, and only \$150,000 in Limits of Coverage (the balance left under Attorney A's 2010 Plan) is available for all*

*CLAIMS made in 2011 or later years. There is no remaining CLAIMS EXPENSE ALLOWANCE for any new CLAIMS.*

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

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#### **SECTION XV — ASSIGNMENT**

The interest hereunder of any COVERED PARTY is not assignable.

DRAFT

EXHIBIT A -- FORM ORPC 1

Dear [ Client ]:

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

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

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

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

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

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

Very truly yours,

**[Attorney Name and Signature]**

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

---

**[Client's Signature]**

**[Date]**

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



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

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

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

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

*Rule 1.8 Conflict of Interest: Current Clients: Specific Rules*

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

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

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

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

*ORPC 1.0 Terminology*

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

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

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

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

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

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

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

DRAFT  
2015

PLF Claims Made Excess Plan

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# OREGON STATE BAR PROFESSIONAL LIABILITY FUND

## CLAIMS MADE EXCESS PLAN

*Effective January 1, 2015*

**THIS IS A CLAIMS MADE EXCESS PLAN – PLEASE READ CAREFULLY**

### NOTICE

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

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

### INTERPRETATION OF THIS EXCESS PLAN

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

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

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

### COMMENTS

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

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

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

**Interpretation of the Excess Plan.** *This Excess Plan is to be interpreted throughout in a manner consistent with the interpretation of the PLF CLAIMS MADE PLAN.*

Accordingly, Comments to language in the PLF PLAN apply to similar language in this Excess Plan.

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

---

## SECTION I – DEFINITIONS

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

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

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

**a.** The words “THE FIRM” refer to the law entities designated in Sections 1 and 11 of the Declarations.

**b.** “COVERED PARTY” means any person or organization qualifying as such under Section II – WHO IS A COVERED PARTY.

**c.** “COVERED ACTIVITY” means conduct qualifying as such under Section III -- WHAT IS A COVERED ACTIVITY.

**d.** “PLAN YEAR” means the period January 1 through December 31 of the calendar year for which this Excess Plan was issued.

**e.** The words "PLF CLAIMS MADE PLAN" or "PLF PLAN" refer to the PLF Claims Made Plan issued by the PLF as primary coverage for the PLAN YEAR.

**f.** The words "APPLICABLE UNDERLYING LIMIT" mean the aggregate total of (1) the amount of the coverage afforded by the applicable PLF PLANS issued to all persons qualifying as COVERED PARTIES under the terms of this Excess Plan, plus (2) the amount of any other coverage available to any COVERED PARTY with respect to the CLAIM for which coverage is sought.

**g.** "FIRM ATTORNEY" means an attorney listed in Section 10 of the Declarations.

**h.** "FORMER ATTORNEY" means an attorney listed in Section 12 of the Declarations.

**i.** "NON-OREGON ATTORNEY" means an attorney listed in Section 14 or 15 of the Declarations.

**j.** "EXCLUDED ATTORNEY" means an attorney listed in Section 16 of the Declarations.

**k.** "EXCLUDED FIRM" means a LAW ENTITY listed in Section 17 of the Declarations.

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## SECTION II – WHO IS A COVERED PARTY

The following are COVERED PARTIES:

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

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

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

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

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

COMMENTS

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

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

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

---

## SECTION III – WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES:

### [COVERED PARTY'S CONDUCT]

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

### [CONDUCT OF OTHERS]

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

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

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

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



## [COVERED PARTY'S CONDUCT IN A SPECIAL CAPACITY]

**3.** Any act, error, or omission by an attorney COVERED PARTY in his or her capacity as a personal representative, administrator, conservator, executor, guardian, special representative pursuant to ORS 128.179 or similar statute, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above; the CLAIM is brought by or for the benefit of a beneficiary of the special capacity relationship and arises out of a breach of that relationship; and such activity occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations.

### COMMENTS

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

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

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

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## SECTION IV – GRANT OF COVERAGE

### 1. Indemnity.

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

**b.** This Excess Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD, except as provided in this Subsection. A CLAIM will be deemed to have been first made at the time it would be deemed first made under the terms of the PLF PLAN. Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time they are deemed first made under the terms of the applicable PLF PLAN; provided, however, that a CLAIM that is asserted against a COVERED PARTY during the COVERAGE PERIOD will not relate back to a previous SAME OR RELATED CLAIM if prior to the COVERAGE PERIOD (1) none of the SAME OR RELATED CLAIMS were made against any COVERED PARTY in this Excess Plan and (2) no COVERED

PARTY had knowledge of any facts reasonably indicating that any CLAIM could or would be made in the future against any COVERED PARTY.

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

(1) During the COVERAGE PERIOD, or

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

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

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

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

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

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

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

#### COMMENTS

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

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

Example: Firm G does not maintain excess coverage. Firm G and one of its members, Attorney A, are sued by Claimant in Year 1. The claim is covered under Attorney A's Year 1 primary PLF PLAN. Claimant amends the complaint in Year 2, and for the first time asserts the same claim also against Firm H and one of its members, Attorney B. Neither Firm H nor Attorney B had previously been aware of the potential claim, and no notice of a potential claim against Attorney B or Firm H had previously been given to the PLF or any other carrier. Firm H carried its Year 1 excess coverage with Carrier X and carries its Year 2 excess coverage with the PLF. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in Year 1 and did not purchase tail coverage from Carrier X. Under the terms of Subsection b.1, in these limited circumstances, Firm H's Year 2 Excess Plan would become excess to the Year 1 PLF CLAIMS MADE PLAN issued by the PLF as primary coverage to Attorney B.

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

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

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

Example: Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Subsection c(2) will not be applied to deny coverage for the CLAIM as to Attorneys A and B and THE FIRM.

*However, there will be no coverage for Attorney C because the CLAIM falls outside the coverage grant under the terms of Subsection c(2)(b) and because Attorney C made a material misrepresentation to the PLF in the application.*

## **2. Defense**

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

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

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

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## **SECTION V – EXCLUSIONS FROM COVERAGE**

### *COMMENTS*

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

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### **[WRONGFUL CONDUCT EXCLUSIONS]**

- 1.** This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
- 2.** This Excess Plan does not apply to any COVERED PARTY for any CLAIM based upon or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by that COVERED PARTY or at the direction of that COVERED PARTY, or in which that COVERED PARTY acquiesces or remains passive after having personal knowledge thereof.
- 3.** This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought by the Oregon State Bar or any similar entity.
- 4.** This Excess Plan does not apply to:
  - a.** The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or
  - b.** Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or

case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

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

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

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

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

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

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

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

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

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

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

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

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

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

confidences and secrets. This alternative letter must be delivered to the PLF within ten (10) calendar days of execution of the disclosure letter.

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

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

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

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

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

COMMENTS

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

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

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

[GOVERNMENT ACTIVITY EXCUSION]

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

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

[HOUSE COUNSEL EXCLUSION]

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

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

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

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

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

[PATENT EXCLUSION]

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

**19.** Reserved.

[CONTRACTUAL OBLIGATION EXCLUSION]

**20.** This Plan does not apply to any CLAIM:

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

[BANKRUPTCY TRUSTEE EXCLUSION]

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

[OFFICE SHARING EXCLUSION]

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

[EXCLUDED ATTORNEY EXCLUSION]

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

- a.** Arising from or relating to any act, error, or omission of any EXCLUDED ATTORNEY in any capacity or context, whether or not the COVERED PARTY personally participated in any such act, error, or omission or is vicariously liable, or
- b.** Alleging liability for the failure of a COVERED PARTY or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any EXCLUDED ATTORNEY.

[EXCLUDED FIRM EXCLUSION]

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

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

**(1)** An EXCLUDED FIRM, or

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

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

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

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

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

COMMENTS

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



*compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.*

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

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## SECTION VI – LIMITS OF COVERAGE AND DEDUCTIBLE

### 1. Limits of Coverage

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

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

### 2. Deductible

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

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

#### COMMENTS

*The making of the SAME OR RELATED CLAIMS against one or more lawyers in THE FIRM will not "stack" or create multiple Limits of Coverage. This is true even if the CLAIMS are made in different Plan Years. In that event, the applicable limit will be available limits from the Excess Plan in effect in the Plan Year in which the SAME OR*

*RELATED CLAIMS are deemed first made. In no event will more than one Limit of Liability be available for all such CLAIMS.*

*Under the PLF CLAIMS MADE PLAN, the SAME OR RELATED CLAIMS will result in only one Limit of Coverage being available, even if CLAIMS are made against COVERED PARTIES in different LAW ENTITIES. The Excess Plan works differently. The limits of Excess Plans issued to different firms may, where appropriate, “stack”; Excess Plans issued to any one firm do not. If SAME OR RELATED CLAIMS are made against COVERED PARTIES under Excess Plans issued by the PLF to two or more Law Firms, the available Limit of Coverage for THE FIRM under this Excess Plan will not be affected by the Limits of Coverage in other Excess Plans. THE FIRM, however, cannot “stack” limits of multiple Excess Plans issued to it for the SAME OR RELATED CLAIMS.*

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## SECTION VII – NOTICE OF CLAIMS

- 1.** THE FIRM must, as a condition precedent to the right of protection afforded any COVERED PARTY by this coverage, give the PLF, at the address shown in the Declarations, written notice of any CLAIM that is reasonably likely to involve any of the coverages of this Excess Plan. In the event a SUIT is brought against any COVERED PARTY, which is reasonably likely to involve any of the coverages of this Excess Plan, THE FIRM must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.
- 2.** If during the COVERAGE PERIOD, any COVERED PARTY becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM for which coverage may be provided under this Excess Plan, THE FIRM must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:
  - a.** The specific act, error, or omission;
  - b.** The injury or damage that has resulted or may result; and
  - c.** The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.
- 3.** If the PLF opens a suspense or claim file involving a CLAIM or potential CLAIM which otherwise would require notice from the COVERED PARTY under Subsection 1. or 2. above, the COVERED PARTY'S obligations under those subsections will be considered satisfied for that CLAIM or potential CLAIM.

### COMMENTS

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

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## SECTION VIII – COVERAGE DETERMINATIONS

- 1.** This Excess Plan is governed by the laws of the State of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Excess Plan. Any dispute as to the applicability, interpretation, or enforceability of this Excess Plan, or any other issue pertaining to the provision of benefits under this Excess Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.
- 2.** The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
- 3.** In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Excess Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.
- 4.** The bankruptcy or insolvency of a COVERED PARTY will not relieve the PLF of its obligations under this Excess Plan.

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

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

### COMMENTS

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

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

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## SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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

- b.** The COVERED PARTY under this Excess Plan is alleged to be liable for all or part of the damages paid by the PLF;
- c.** As between the COVERED PARTY and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY for contribution, indemnity, or otherwise, for all or part of the damages paid; and
- d.** Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Excess Plan.
- 3.** In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate up to the full amount the PLF has paid. However, this section shall not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery which would entitle the COVERED PARTY to indemnity under this Excess Plan if the PLF's action were successful.

#### COMMENTS

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

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

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

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

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## SECTION XI – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each PLAN YEAR is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a

supplemental assessment is necessary to pay for CLAIMS, CLAIMS EXPENSE, or other expenses arising from or incurred during either this PLAN YEAR or a previous PLAN YEAR, THE FIRM agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. THE FIRM further agrees that liability for such supplemental assessments shall be joint and several among THE FIRM and the partners, shareholders, and professional corporations listed as FIRM ATTORNEYS in the Declarations.

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

#### COMMENTS

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

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

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

#### COMMENTS

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

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## SECTION XIII – WAIVER AND ESTOPPEL

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

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## SECTION XIV – EXTENDED REPORTING COVERAGE

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

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

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

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

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

#### COMMENTS

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

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

*Example: Same facts as prior example, except the claim which is made against THE FIRM in March of Year 3 is based upon an alleged error of a firm member occurring in January of Year 2. Because the alleged error occurred after the end of the COVERAGE PERIOD for the Year 1 Excess Plan, the claim does not fall within the terms of the*

*extended reporting coverage and so there is no coverage for the claim under THE FIRM'S Year 1 Excess Plan.*

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## SECTION XV – ASSIGNMENT

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

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## SECTION XVI – OTHER CONDITIONS

### 1. Application

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

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

### 2. Cancellation

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

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

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

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

a. Material misrepresentation by any COVERED PARTY;

b. Substantial breaches of contractual duties, conditions, or warranties by any COVERED PARTY; or

c. Revocation, suspension, or surrender of any COVERED PARTY'S license or right to practice law.

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

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

### **3. Termination**

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

DRAFT



EXHIBIT A -- FORM ORPC 1

Dear [ **Client** ]:

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

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

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

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

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

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

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

Very truly yours,

**[Attorney Name and Signature]**

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

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**[Client's Signature]**

**[Date]**

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

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

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

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

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

### *Rule 1.8 Conflict of Interest: Current Clients: Specific Rules*

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

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

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

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

### *ORPC 1.0 Terminology*

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

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

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

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

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

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

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

## CYBER LIABILITY AND BREACH RESPONSE ENDORSEMENT

### NOTICE

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

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

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

THIS IS A CLAIMS MADE AND REPORTED ENDORSEMENT.

### SCHEDULE

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

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

Item 3. **Limits of Liability:**

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

<b>1-10 attorneys</b>	USD 100,000
<b>11+ attorneys:</b>	USD 250,000

But sublimited to:

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

Agreement I.B.1 (legal and forensic)

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

**Item 4. Retentions:**

- A. Coverage Agreements I.A. (Information Security & Privacy Liability), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations): USD 0

- B. Coverage Agreement I.B. (Privacy Breach Response Services):

Each Incident, event or related incidents or events giving rise to an obligation to provide **Privacy Breach Response Services**:

- 1. Costs for services provided under Coverage Agreements I.B.1. (legal and forensic services) and I.B.2. (notification costs) combined: USD 0
- 2. Services provided under I.B.3. (Call Center Services) and I.B.4. (Credit Monitoring Program): Breaches involving an obligation to notify fewer than 100 individuals

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

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

**I. COVERAGE AGREEMENTS**

**A. Information Security & Privacy Liability**

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

**Damages and Claims Expenses**, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in

writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for:

1. (a) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**; or

(b) theft or loss of **Third Party Corporate Information**;

that is in the care, custody or control of **The Firm**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** or **Third Party Corporate Information** **The Firm** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;

2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;

(a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;

(b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or

(c) the participation by **The Firm's Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;

3. **The Firm's** failure to timely disclose an incident described in Coverage Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to **The Firm's** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**;

4. failure by a **Covered Party** to comply with that part of a **Privacy Policy** that specifically:

(a) prohibits or restricts **The Firm's** disclosure, sharing or selling of a person's **Personally Identifiable Non-Public Information**;

(b) requires **The Firm** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or

(c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**, and a **Covered Party** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

## B. **Privacy Breach Response Services**

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

**Privacy Breach Response Services** means the following:

1. Costs incurred:
  - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require a **Covered Party** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
  - (b) for fees charged by an attorney to determine the applicability of and actions necessary by a **Covered Party** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;

provided amounts covered by (a) and (b) in this paragraph combined shall not exceed the amount set forth in Item 3.B. of the Schedule in the aggregate for the **Coverage Period**.

2. Costs incurred to provide notification to:
  - (a) individuals who are required to be notified by a **Covered Party** under the applicable **Breach Notice Law**; and
  - (b) in the PLF's discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.
3. The offering of **Call Center Services** to **Notified Individuals**.
4. The offering of the **Credit Monitoring Product** to **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. **The Firm** will be provided with access to educational and loss control information provided by or on behalf of the PLF at no charge.

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

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

C. **Regulatory Defense and Penalties**

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

**Claims Expenses and Penalties** in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement, resulting from a violation of a **Privacy Law** and caused by an incident described in Coverage Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**.

**D. Website Media Content Liability**

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

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

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

**E. Crisis Management and Public Relations**

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

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

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

1. costs incurred by a public relations or crisis management consultant;



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

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

## II. DEFENSE AND SETTLEMENT OF CLAIMS

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

or the applicable Limit of Liability, whichever is less, and the PLF shall have the right to withdraw from the further defense thereof by tendering control of said defense to a

**Covered Party.** The portion of any proposed settlement or compromise that requires a **Covered Party** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Coverage Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

### III. TERRITORY

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

### IV. EXCLUSIONS

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

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

1. any **Claim** covered under Coverage Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
2. the providing of **Privacy Breach Response Services** covered under Coverage Agreement I.B.,

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

H. For, arising out of or resulting from:

1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** or other personal information by, on behalf of, or with the consent or cooperation of **The Firm**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of a **Covered Party**; or
2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of a **Covered Party**;

I. For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the **Endorsement Retroactive Date**:

1. if any **Covered Party** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**; or
2. in respect of which any **Covered Party** has given notice of a circumstance, which might lead to a **Claim** or **Loss**, to the insurer of any other coverage in force prior to the **Endorsement Retroactive Date**;

J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Endorsement Retroactive Date**;

K. For, arising out of or resulting from any of the following:

1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment

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

3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;

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

- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of **The Firm's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;
- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by a **Covered Party**, or by others if the **Covered Party** colluded or participated in any such conduct or activity; provided this Endorsement shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Covered Party**, or written admission by the **Covered Party**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time **The Firm** shall reimburse the PLF for all **Claims Expenses** incurred defending the **Claim** and the PLF shall have no further liability for **Claims Expenses**;

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

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

2. publications, by or on behalf of, or with the permission or direction of any **Covered Party**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
3. advertising by or on behalf of any **Covered Party**;

provided however this exclusion does not apply to the publication, distribution or display of **The Firm's Privacy Policy**;

T. With respect to Coverage Agreement I.D., any **Claim** or **Loss**:

1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by a **Covered Party** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;
3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;
4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;

U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

V. For, arising out of or resulting from a Claim covered by the PLF Claims Made Excess Plan or any other professional liability Coverage available to any **Covered Party**, including any self insured retention or deductible portion thereof;

W. For, arising out of or resulting from any theft, loss or disclosure of **Third Party Corporate Information** by a **Related Party**;

X. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:

1. asbestos, or any materials containing asbestos in whatever form or quantity;

2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

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

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

## v. DEFINITIONS

As used in this Endorsement:

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

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

- C. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Coverage Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will

answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

D. **Claim** means:

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

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

E. **Claims Expenses** means:

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

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

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

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

1. operated by and either owned by or leased to **The Firm**; or



2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to **The Firm** or for processing, maintaining, hosting or storing **The Firm's** electronic data, pursuant to written contract with **The Firm** for such services.
- H. **Coverage Period** means the Coverage period as set forth in Item 2. of the Schedule.
- I. Reserved.
- J. **Covered Media Activities** means the display of **Media Material** on **The Firm's** web site.
- K. **Covered Party** has the same meaning as set forth in Section II – WHO IS A COVERED PARTY in the PLF Claims Made Excess Plan.
- L. **Credit Monitoring Product** means a credit monitoring product that provides daily credit monitoring from the following credit bureaus: Experian, TransUnion and Equifax.

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

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

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

- M. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by **The Firm** in its ordinary course of business.
- N. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:
1. future profits, restitution, disgorgement of unjust enrichment or profits by a **Covered Party**, or the costs of complying with orders granting injunctive or equitable relief;
  2. return or offset of fees, charges, or commissions charged by or owed to a **Covered Party** for goods or services already provided or contracted to be provided;
  3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;

4. punitive or exemplary damages;
  5. discounts, coupons, prizes, awards or other incentives offered to a **Covered Party's** customers or clients;
  6. liquidated damages to the extent that such damages exceed the amount for which a **Covered Party** would have been liable in the absence of such liquidated damages agreement;
  7. fines, costs or other amounts a **Covered Party** is responsible to pay under a **Merchant Services Agreement**; or
  8. any amounts for which a **Covered Party** is not liable, or for which there is no legal recourse against a **Covered Party**.
- O. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- P. **Endorsement Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3. of the Schedule.
- Q. **Endorsement Retroactive Date** means the date specified in Section 7 of the Declarations Sheet attached to this Endorsement.
- R. **The Firm** means the entities as defined in Section I – Definitions of the applicable Claims Made Excess Plan and Declarations Sheet to which this Endorsement is attached.
- S. **Loss** means **Damages, Claims Expenses, Penalties, Public Relations and Crisis Management Expenses** and **Privacy Breach Response Services**.
- T. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- U. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- V. **Merchant Services Agreement** means any agreement between a **Covered Party** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling a **Covered Party** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- W. Reserved.
- X. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Coverage Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- Y. **Optional Extension Period** means the period of time after the end of the **Coverage Period** for reporting **Claims** as provided in Clause VIII., Optional Extension Period, of this Endorsement.

Z. **Penalties** means:

1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; and
2. amounts which a **Covered Party** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund"); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Coverage Agreements A.1., A.2. or A.3.;

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

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

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

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

BB. Reserved.

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

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

- EE. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- FF. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- GG. Reserved.
- HH. **Retention** means the applicable retention for each Coverage Agreement as specified in Item 4. of the Schedule.
- II. Reserved.
- JJ. **Security Breach** means:
1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Covered Party**;
  2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**; or
  3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,
- whether any of the foregoing is a specifically targeted attack or a generally distributed attack.
- A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.
- KK. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by a **Covered Party**; and (2) does not include computer systems of a third party on which a **Covered Party** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.
- LL. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not covered under this Endorsement which is not available to the general public and is provided to a **Covered Party** subject to a mutually executed written confidentiality agreement or which **The Firm** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.
- MM. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- NN. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by **The Firm** and is without knowledge of, consent, or acquiescence of any **Covered Party**.

## VI. LIMIT OF LIABILITY AND COVERAGE

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

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

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

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

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

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

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

## VII. RETENTION

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

## VIII. OPTIONAL EXTENSION PERIOD

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

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

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

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

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

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

#### X. MERGERS AND ACQUISITIONS

If during the **Coverage Period** **The Firm** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Endorsement shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Endorsement for any other **Claim** or **Loss**.

#### XI. THE FIRM AS AGENT

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

#### XII. AUTHORIZATION

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

#### XIII. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES

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

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

- A. The Services provided under the Endorsement have been developed to expedite the investigation and notification process and help ensure that your response to a covered Incident will comply with legal requirements and will be performed economically and efficiently. It is therefore important that in the event of an Incident, you follow the program's requirements stated below, as well as any further procedures described in the *Information Packet* provided with this Endorsement, and that you communicate with us so that we can assist you with handling the Incident and with the Services. You must also assist us and cooperate with us and any third parties involved in providing the Services. In addition to the requirements stated below, such assistance and cooperation

shall include, without limitation, responding to requests and inquiries in a timely manner and entering into third party contracts required for provision of the Services.

- B. If the costs of a computer security expert are covered under Coverage Agreement I.B.1, you must select such expert, in consultation with us, from the program's list of approved computer security experts included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The computer security expert will require access to information, files and systems and you must comply with the expert's requests and cooperate with the expert's investigation. Reports or findings of the expert will be made available to you, us and any attorney that is retained to provide advice to you with regard to the Incident.
- C. If the costs of an attorney are covered under Coverage Agreement I.B.1., such attorney shall be selected by you from the program's list of approved legal counsel included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The attorney will represent you in determining the applicability of, and the actions necessary to comply with, **Breach Notice Laws** in connection with the Incident.
- D. If notification to individuals in connection with an Incident is covered under Coverage Agreement I.B.2., such notice will be accomplished through a mailing, email, or other method if allowed by statute and if it is more economical to do so (though we will not provide notice by publication unless you and we agree or it is specifically required by law), and will be performed by a service provider selected by us from the program's list of approved breach notification service providers included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The selected breach notification service provider will work with you to provide the required notifications.

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

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



DRAFT



Excess Coverage

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**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**  
**2015 PRO BONO PROGRAM**  
**CLAIMS MADE MASTER PLAN**

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**January 1, 2015**

**2015 PRO BONO CLAIMS MADE PLAN**

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**2015 PRO BONO PROGRAM  
CLAIMS MADE MASTER PLAN**

**NOTICE**

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

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

**INTERPRETATION OF THIS MASTER PLAN**

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

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

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

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

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**SECTION I — DEFINITIONS**

Throughout this Master Plan, when appearing in capital letters:

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

*COMMENTS*

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

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

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

**3.** "CLAIMS EXPENSE" means:

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

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

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

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

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

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

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

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

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

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

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

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

#### COMMENTS

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

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

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

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



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

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

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

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

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

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

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## SECTION II — WHO IS A COVERED PARTY

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

### COMMENTS

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

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

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### **SECTION III — WHAT IS A COVERED ACTIVITY**

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

#### **[VOLUNTEER ATTORNEY'S CONDUCT]**

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

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

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

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

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

#### **[CONDUCT OF OTHERS]**

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

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

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

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

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

[VOLUNTEER ATTORNEY'S CONDUCT IN A SPECIAL CAPACITY]

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

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

COMMENTS

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

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

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

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

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

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

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

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

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

## SECTION IV – GRANT OF COVERAGE

### 1. Indemnity.

- a. The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Master Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 - Defense.
- b. This Master Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.
  - (1) The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:
    - (a) When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated, or
    - (b) When notice of a CLAIM is received by any COVERED PARTY or by the PLF; or
    - (c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or
    - (d) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a

## CLAIM.

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

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

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

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

## 2. Defense.

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

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

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

## COMMENTS

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

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

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

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

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

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

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

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

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

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## SECTION V – EXCLUSIONS FROM COVERAGE

### [WRONGFUL CONDUCT EXCLUSIONS]

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

### COMMENTS

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

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

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

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

3. This Master Plan does not apply to any CLAIM based on or arising out of a proceeding brought against a COVERED PARTY by the Oregon State Bar or any similar entity.
4. This Master Plan does not apply to:
  - a. That part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or
  - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

#### COMMENTS

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

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



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

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

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

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

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[BUSINESS ACTIVITY EXCLUSIONS]

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

COMMENTS

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

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

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

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

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

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

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

#### COMMENTS

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

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7. This Master Plan does not apply to any CLAIM made by:
- a. A COVERED PARTY'S present, former, or prospective partner, employer, or employee; or
  - b. A present, former, or prospective officer, director, or employee of a professional corporation in which YOU were a shareholder, unless such CLAIM arises out of a COVERED PARTY'S conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

#### COMMENTS

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

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8. This Master Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) in which a COVERED PARTY participates with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Master Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:
- a. A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution, or
  - b. If delivery of a copy of the disclosure form to the PLF within 10 calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client

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

#### COMMENTS

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

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

#### **RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

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

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

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

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

#### **RULE 1.0(g)**

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

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

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

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

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

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

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

#### COMMENTS

*In prior years, the PLF suffered extreme losses as a result of COVERED PARTIES engaging in INVESTMENT ADVICE activity. It was never intended that the PLF cover such activities. An*

*INVESTMENT ADVICE* exclusion was added to the Claims Made Plan in 1984. Nevertheless, losses continued in situations where the COVERED PARTY had rendered both INVESTMENT ADVICE and legal advice. In addition, some CLAIMS resulted where the attorney provided INVESTMENT ADVICE in the guise of legal advice.

Exclusion 9, first introduced to the Claims Made Plan in 1987, represented a totally new approach to this problem. Instead of excluding all INVESTMENT ADVICE, the PLF has clearly delineated specific activities which will not be covered whether or not legal as well as INVESTMENT ADVICE is involved. These specific activities are defined in Section I under the definition of INVESTMENT ADVICE. The PLF's choice of delineated activities was guided by specific cases that exposed the PLF in situations never intended to be covered. The PLF is cognizant that COVERED PARTIES doing structured settlements and COVERED PARTIES in business practice and tax practice legitimately engage in the rendering of general INVESTMENT ADVICE as a part of their practices. In delineating the activities to be excluded, the PLF has attempted to retain coverage for these legitimate practices. For example, the last sentence of the exclusion permits coverage for certain activities normally undertaken by conservators and personal representatives (i.e., COVERED ACTIVITIES described in Section III.3) when acting in that capacity even though the same activities would not be covered if performed in any other capacity. See the definition of INVESTMENT ADVICE in Section I.

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

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

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[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

**10.** This Master Plan does not apply to any CLAIM:

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

*COMMENTS*

*This Master Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Master Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection c, in addition, excludes*

*CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.*

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

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

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

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

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

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

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

#### COMMENTS

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

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

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

[GOVERNMENT ACTIVITY EXCLUSION]

**14.** This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct:

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

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

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

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[HOUSE COUNSEL EXCLUSION]

**15.** This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct as an employee in an employer-employee relationship.

COMMENTS

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

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[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

**a.** Bodily injury, sickness, disease, or death of any person;

**b.** Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or

- c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

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

#### COMMENTS

*The CLAIMS excluded are not typical errors-and-omissions torts and were, therefore, considered inappropriate for coverage under the Master Plan. YOU are encouraged to seek coverage for these CLAIMS through commercial insurance markets.*

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

*Subsection b of this exclusion is intended to encompass a broad definition of property. For these purposes, property includes real, personal and intangible property (e.g. electronic data, financial instruments, money etc.) held by an attorney. However, Subsection b is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event a CLAIM resulting from the loss or damage would not be excluded by Exclusion 16.*

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

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

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

**Child Abuse Reporting Statute.** *This exclusion would ordinarily exclude coverage for the type of damages that might be alleged against an attorney for failure to comply with ORS 419B.010, the child abuse reporting statute. (It is presently uncertain whether civil liability can arise under the statute.) If*



*there is otherwise coverage under this Master Plan for a CLAIM arising under ORS 419B.010, the PLF will not apply Exclusion 16 to the CLAIM.*

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

*COMMENTS*

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

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[PATENT EXCLUSION]

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

**19.** *Reserved.*

[CONTRACTUAL OBLIGATION EXCLUSION]

**20.** This Master Plan does not apply to any CLAIM:

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

*COMMENTS*

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

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

*Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.*

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

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

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

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[BANKRUPTCY TRUSTEE EXCLUSION]

- 21.** This Master Plan does not apply to any CLAIM arising out of YOUR activity (or the activity of someone for whose conduct you are legally liable) as a bankruptcy trustee.
- 22.** This Master Plan does not apply to any CLAIM against a COVERED PARTY arising from or

related to work or services beyond the scope of activities assigned to the COVERED PARTY by the PRO BONO PROGRAM.

#### COMMENTS

*Activities by a volunteer lawyer which are outside of the scope of activities assigned to the lawyer by the pro bono program for which the lawyer has volunteered do not constitute a COVERED ACTIVITY under this Master Plan and will also be excluded by this exclusion. The term “PRO BONO PROGRAM” as used in this exclusion is defined at SECTION I – DEFINITIONS.*

*The various exclusions which follow in this subsection were adopted from the PLF’s standard Coverage Plan. Many of the exclusions are, by their nature, unlikely to apply to a volunteer attorney working for a pro bono program. The fact that a type of activity is mentioned in these exclusions does not imply that such activity will be a COVERED ACTIVITY under this Master Plan.*

#### [CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

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

#### COMMENTS

*There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.*

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

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### SECTION VI – LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE

#### 1. Limits for This Master Plan

**a. Coverage Limits.** The PLF’s maximum liability under this Master Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the

COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF's Limit of Coverage.

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

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

## **2. Limits Involving Same or Related Claims Under Multiple PLF Plans**

If this Master Plan and one or more other Master Plans or Claims Made Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, PRO BONO PROGRAMS, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES or PRO BONO PROGRAMS, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES or PRO BONO PROGRAMS requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES or PRO BONO PROGRAMS are separate is determined as of the time of the COVERED ACTIVITIES that are alleged in the CLAIMS. No LAW ENTITY, PRO BONO PROGRAM, or group of LAW ENTITIES or PRO BONO PROGRAMS practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE under this provision. The CLAIMS EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY or PRO BONO PROGRAM requesting it.

### *COMMENTS*

*The PLF Claims Made Plan is intended to provide a basic "floor" level of coverage for all Oregon attorneys engaged in the private practice of law whose principal offices are in Oregon. Likewise, the Pro Bono Master Plan is intended to provide basic limited coverage. Because of this, there is a general prohibition against the stacking of either Limits of Coverage or CLAIMS EXPENSE ALLOWANCES. Except for the provision involving CLAIMS EXPENSE ALLOWANCES under Subsection 2, only one Limit of Coverage and CLAIMS EXPENSE ALLOWANCE will ever be paid under any one Claims Made Plan or Pro Bono Master Plan issued to a COVERED PARTY in any one MASTER PLAN YEAR, regardless of the circumstances. Limits of Coverage or CLAIMS EXPENSE ALLOWANCES in multiple individual Claims Made Plans and Pro Bono Master Plans do not stack for any CLAIMS that are "related." As the definition of SAME OR RELATED CLAIMS and its Comments and Examples demonstrate, the term "related" has a broad meaning when determining the number of Limits of Coverage and CLAIMS EXPENSE ALLOWANCES potentially*

available. This broad definition is designed to ensure the long-term economic viability of the PLF by protecting it from multiple limits exposures, ensuring fairness for all Oregon attorneys who are paying annual assessments, and keeping the overall coverage affordable.

The Limits of Coverage apply to claims against more than one COVERED PARTY so that naming more than one VOLUNTEER ATTORNEY, the PRO BONO PROGRAM, or other COVERED PARTIES as defendants does not increase the amount available.

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

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

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

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

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## SECTION VII - NOTICE OF CLAIMS

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

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

- a. The specific act, error, or omission;

- b. DAMAGES and any other injury that has resulted or may result; and
  - c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a CLAIM or potential CLAIM which otherwise would require notice from the COVERED PARTY under subsection 1. or 2. above, the COVERED PARTY'S obligations under those subsections will be considered satisfied for that CLAIM or potential CLAIM.

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## SECTION VIII – COVERAGE DETERMINATIONS

1. This Master Plan is governed by the laws of the state of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Master Plan. Any disputes as to the applicability, interpretation, or enforceability of this Master Plan, or any other issue pertaining to the provision of benefits under this Master Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the state of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Master Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.
4. The bankruptcy or insolvency of a COVERED PARTY does not relieve the PLF of its obligations under this Master Plan.

### COMMENTS

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

*Until the dispute over coverage is concluded, the PLF is not obligated to pay any amounts in dispute. The PLF recognizes there may occasionally be exceptional circumstances making a coverage determination impracticable prior to a payment by the PLF of a portion or all of the PLF's Limit of Coverage toward resolution of a CLAIM. For example, a claimant may make a settlement demand having a deadline for acceptance that would expire before coverage could be determined, or a court*

*might determine on the facts before it that a binding determination on the relevant coverage issue should not be made while the CLAIM is pending. In some of these exceptional circumstances, the PLF may at its option pay a portion or all of the Limit of Coverage before the dispute concerning the question of whether this Master Plan is applicable to the CLAIM is decided. If the PLF pays a portion or all of the Limit of Coverage and the court subsequently determines that this Master Plan is not applicable to the CLAIM, then the COVERED PARTY or others on whose behalf the payment was made must reimburse the PLF, in order to prevent unjust enrichment and protect the solvency and financial integrity of the PLF. For a COVERED PARTY'S duties in this situation, see Section IX.3.*

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## **SECTION IX - ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY**

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

- a.** Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
- b.** Attend and testify when requested by the PLF;
- c.** Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
- d.** Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
- e.** Submit to arbitration of any CLAIM when requested by the PLF;
- f.** Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
- g.** Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
- h.** Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.

**2.** To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

**3.** The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.

4. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Master Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:

- a. Agrees to the PLF's proposal, or
- b. Objects to the PLF's proposal.

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

#### COMMENTS

*Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.*

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

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### SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Master Plan will be brought against the PLF unless the COVERED PARTY has fully complied with all terms of this Master Plan.
2. The PLF may bring legal action in connection with this Master Plan against a COVERED PARTY if:
  - a. The PLF pays a CLAIM under another Master Plan issued by the PLF;
  - b. A COVERED PARTY under this Master Plan is alleged to be liable for all or part of the damages paid by the PLF;
  - c. As between the COVERED PARTY under this Master Plan and the person or entity on



whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY under this Master Plan for contribution, indemnity, or otherwise, for all or part of the damages paid; and

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

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

#### COMMENTS

*Under certain circumstances, a CLAIM against a COVERED PARTY may not be covered because of an exclusion or other applicable provision. However, in some cases the PLF may be required to pay the CLAIM nonetheless because of the PLF's obligation to another COVERED PARTY under the terms of his or her Claims Made Plan or Pro Bono Master Plan.*

*Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Master Plan, but Attorney B has coverage for her liability under her Master Plan. The PLF pays the CLAIM under Attorney B's Master Plan. Section X.2 of Attorney A's Master Plan makes clear the PLF has the right to sue Attorney A for the damages the PLF paid under Attorney B's Master Plan.*

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

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#### **SECTION XI - RELATION OF PRO BONO MASTER PLAN COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE**

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

**2.** This Master Plan shall not apply to any CLAIM which is covered by any PLF Claims Made Plan which has been issued to any COVERED PARTY, regardless of whether or not the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage available to defend against or satisfy such CLAIM are sufficient to pay any liability or CLAIM or whether or not the underlying limits or terms of such PLF Claims Made Plan are different from this Master Plan.

*COMMENTS*

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

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**SECTION XII – WAIVER AND ESTOPPEL**

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

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**SECTION XIII — ASSIGNMENT**

The interest hereunder of any COVERED PARTY is not assignable.

**SECTION XIV – TERMINATION**

This Master Plan will terminate immediately and automatically in the event YOU are no longer certified as an OSB Pro Bono Program by the Oregon State Bar.

EXHIBIT A -- FORM ORPC 1

Dear [ Client ]:

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

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

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

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

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

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

Very truly yours,

**[Attorney Name and Signature]**

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

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**[Client's Signature]**

**[Date]**

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

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

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

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

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

*Rule 1.8 Conflict of Interest: Current Clients: Specific Rules*

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

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

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

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

*ORPC 1.0 Terminology*

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

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

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

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

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

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

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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 13-15, 2014  
**Memo Date:** October 20, 2014  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2015 Excess Rates

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### Action Recommended

The PLF Board of Directors (BOD) requests that the Board of Governors approve the rates for 2015 Excess Coverage. The rates are included in the accompanying materials. There were no revisions to the rates from 2014.

### Background

In addition to its primary coverage, the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers.

There are four classes of Excess Program rates. Class 1 rates are the standard rates for covered party firms for which there are no underwriting issues. Class 2 rates are charged for covered parties that practice in higher risk areas such as securities and real estate or firms that have a history of claims that meet certain criteria. Out-of-State Class 1 and 2 represent the same division as in-state classes but are for out-of-state firms.<sup>1</sup>

Attachment – 2015 Rates

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<sup>1</sup> The PLF Primary program does not insure out-of-state attorneys. Firms that have out-of-state offices that meet certain criteria can purchase coverage for attorneys in those offices through the Excess Program. The cost of that coverage is calculated by adding the cost of the primary program assessment and the excess rates. There is a \$5,000 deductible with out-of-state excess coverage as well.



# Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300  
Tigard, Oregon 97224

PO Box 231600 | Tigard, Oregon 97281

## 2015 Excess Rates

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

Board of Directors  
and Officers

GUY B. GRECO  
CHAIR  
Newport

VALERIE D. SAIKI  
SECRETARY-TREASURER  
(PUBLIC MEMBER)  
Salem

VALERIE D. FISHER  
Portland

ROBERT D. NEWELL  
Portland

JULIA I. MANELA  
Eugene

TIM MARTINEZ  
(PUBLIC MEMBER)  
Salem

TERESA A. STATLER  
Portland

DENNIS H. BLACK  
Medford

### ----- CLASS 1 -----

Coverage Level	2014 Rates	2015 Rates	Change	With Endorsement 2015 Rates	Change
\$700,000	\$1,241	\$1,241	0.00%	\$1,276	0.00%
\$1,700,000	\$2,172	\$2,172	0.00%	\$2,207	0.00%
\$2,700,000	\$2,963	\$2,963	0.00%	\$2,998	0.00%
\$3,700,000	\$3,336	\$3,336	0.00%	\$3,371	0.00%
\$4,700,000	\$3,569	\$3,569	0.00%	\$3,604	0.00%
\$9,700,000	\$5,962	\$5,692	0.00%	\$5,727	0.00%

### ----- CLASS 2 -----

Coverage Level	2014 Rates	2015 Rates	Change	With Endorsement 2015 Rates	Change
\$700,000	\$2,111	\$2,111	0.00%	\$2,146	0.00%
\$1,700,000	\$3,595	\$3,595	0.00%	\$3,630	0.00%
\$2,700,000	\$4,856	\$4,856	0.00%	\$4,891	0.00%
\$3,700,000	\$5,450	\$5,450	0.00%	\$5,485	0.00%
\$4,700,000	\$5,821	\$5,821	0.00%	\$5,856	0.00%
\$9,700,000	\$9,205	\$9,205	0.00%	\$9,240	0.00%

### ----- OUT OF STATE CLASS 1 -----

Coverage Level	2014 Rates	2015 Rates	Change	With Endorsement 2015 Rates	Change
\$700,000	\$4,741	\$4,741	0.00%	\$4,776	0.00%
\$1,700,000	\$5,672	\$5,672	0.00%	\$5,707	0.00%
\$2,700,000	\$6,463	\$6,463	0.00%	\$6,498	0.00%
\$3,700,000	\$6,836	\$6,836	0.00%	\$6,871	0.00%
\$4,700,000	\$7,069	\$7,069	0.00%	\$7,104	0.00%
\$9,700,000	\$9,192	\$9,192	0.00%	\$9,227	0.00%

### ----- OUT OF STATE CLASS 2 -----

Coverage Level	2014 Rates	2015 Rates	Change	With Endorsement 2015 Rates	Change
\$700,000	\$5,611	\$5,611	0.00%	\$5,646	0.00%
\$1,700,000	\$7,095	\$7,095	0.00%	\$7,130	0.00%
\$2,700,000	\$8,356	\$8,356	0.00%	\$8,391	0.00%
\$3,700,000	\$8,950	\$8,950	0.00%	\$8,985	0.00%
\$4,700,000	\$9,321	\$9,321	0.00%	\$9,356	0.00%
\$9,700,000	\$12,705	\$12,705	0.00%	\$12,740	0.00%

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 13, 2014  
**From:** MCLE Committee  
**Re:** Request for amendments to MCLE Regulations 3.300 and 6.100

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### Action Recommended

The MCLE Committee recommends amending MCLE Regulations 3.300(c), 3.300(d) and 6.100 regarding application and carryover of excess child abuse reporting and elder abuse reporting credits.

### Background

Earlier this year, the Oregon Supreme Court and Board of Governors approved the following amendments to Rule 3.2(b) and Regulation 3.300(d) regarding the new elder abuse reporting credit requirement. These amendments are effective January 1, 2015.

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

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

Upon further study of the MCLE Rules and Regulations, the MCLE Committee recommends amending Regulations 3.300(c), 3.300(d) and 6.100 as proposed below in order to clarify the application and carryover of child abuse and elder abuse reporting credits.

**Regulation 3.300(c)** ~~No more than two child abuse credits can be applied to the ethics requirement, and then only for a single two-hour program.~~ For members in a three-year reporting period, one child abuse or elder abuse reporting credit earned in a non-required reporting period may be applied to the ethics credit requirement. Additional child-abuse and elder abuse reporting credits ~~will can~~ be applied to the general or practical skills requirement. For members in a shorter reporting period, child abuse and elder abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits



earned in a non-required reporting period will be credited as general credits.

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

**Regulation 6.100 Carry Over Credit.** No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse and elder abuse reporting education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse or elder abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**Memo Date:** November 4, 2014  
**From:** Helen M. Hirschbiel, General Counsel  
**Re:** Amend Bylaw Subsections 24.201, 24.300, and 24.301 on SLAC and PLF-PPMAC

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### Issue

OSB Bylaw Subsection 24.300 restricts the number of members the Board of Governors can appoint to the State Lawyers Assistance Committee (SLAC) and outlines the term length for members and officers. SLAC is requesting the addition of three member seats to the committee.

Additionally, a portion of the language provided in Subsection 24.301 speaks to the PLF's authority over the PLF Personal and Practice Management Assistance Committee (PLF-PPMAC), rather than the composition, and should be relocated to Subsection 24.201 which outlines the authority for attorney assistance programs.

### Options

1. Determine if OSB Bylaw Subsection 24.300 should be revised to allow the BOG the same flexibility with member appointments for SLAC as it has for other bar committees.
2. Decide if the language from Subsection 24.301 regarding the PLF's authority over the PLF-PPMAC should be relocated to 24.201.
3. Decide whether the one meeting notice requirement for bylaw revisions should be waived.

### Discussion

#### Revision of Bylaw Subsection 24.300

Currently OSB Bylaw Subsection 24.300 provides the BOG authority to appoint up to 12 members to SLAC and outlines the term length for members and officers. In order to accommodate the SLAC caseload the committee requests an increase from 12 to 15 members. SLAC routinely has nearly 30 ongoing cases requiring some of its members to assume a heavier burden by handling more than two open cases at any given period.

Article 14 of the bylaws gives the BOG authority to make appointments to all bar committees as it deems appropriate. Subsection 24.300 is the only bylaw providing composition requirements for a bar committee. Staff recommends this the language of this subsection be changed to allow the BOG the same flexibility with regard to SLAC appointments that it has for all other bar committees.

#### Section 24.3 Composition

##### Subsection 24.300 State Lawyers Assistance Committee

~~SLAC will be comprised of not more than 12 members, including two public members, appointed by the Board of Governors. Terms will be for four years or as otherwise deemed necessary by the Board to maintain staggered terms and to fill vacancies. The lawyer members of SLAC will be active members of the Bar reflecting as closely as possible the geographic distribution of bar members. The Board of Governors will designate one of the lawyer members as chair and one to serve as secretary, each to serve a term of two years. The underlying terms of either secretary or chair will be extended for one additional year so as to coincide with the underlying terms of office, if~~

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~~necessary. Rules for the provision of assistance by SLAC will be as set forth in this bylaw. The board may appoint members and public members as it deems appropriate.~~

### **Revision of Bylaw Subsection 24.201 and 24.301**

During a review of the bylaws relating to SLAC composition, staff realized a portion of the language found in Subsection 24.301 relates to the PLF's authority over PLF-PPMAC's provisions for attorney assistance rather than the composition of the PLF-PPMAC. As a housekeeping issue, staff recommends the BOG move the second sentence of the bylaw to a more appropriate location in Subsection 24.201 which relates to the authority for attorney assistance programs.

#### **Section 24.3 Composition**

**Subsection 24.301** Professional Liability Fund Personal and Practice Management Assistance Committee

~~The PLF-PPMAC consists of the members of the PLF's Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.~~

#### **Section 24.2 Authority**

**Subsection 24.201** Professional Liability Fund Personal and Practice Management Assistance Committee

The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC ") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF's Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

### **Meeting Notice Requirement**

If the BOG approves the bylaw revisions recommended above, waiving the one meeting notice requirement will immediately remove the 12 member limit on SLAC and allow three additional appointment to be made with terms beginning January 1, 2015. The Board Development Committee will make recommendations to the BOG for these new members in accordance with the usual appointments process used for all bar committees.

If the meeting notice requirement is not waived the three new member appointments will be delayed until the BOG meets in February 2015.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2014-07 FOSTER (Wong/Bernath) Request for BOG Review

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### Action Recommended

Consider the request of claimant Martha Wong for BOG review of the CSF Committee's denial of her claim for reimbursement.

### Background

Martha Wong submitted a claim for reimbursement with the Client Security Fund, seeking \$20,000 from attorney Rosemary Foster.<sup>1</sup> Wong' husband, Daniel Bernath, is a California-licensed lawyer whose practice in Oregon at relevant times was limited to Social Security disability cases.<sup>2</sup> Since 2005, Wong and Bernath have operated under the assumed business name "Northwest Disability Advocates" (NDA).

Sometime in 2010, both Wong and Bernath became temporarily ineligible to provide services to clients. (Bernath claims to have retired in 2010; also, the SSA changed its rules regarding representation by non-lawyers such as Wong.)

In January 28, 2011, Wong and Bernath entered into an Agreement with Rosemary Foster. Their CSF application alleges that Wong and Bernath engaged Foster to "act as [their] legal representative, lawyer before the Social Security Administration" and "[a]s our attorney" regarding the structure of the Agreement.

The Agreement itself characterizes Foster as a "Consultant Independent Contractor," a "Hearing judge advocate independent contractor," and a "Holding attorney." Under the agreement, Wong and Bernath's clients would be "turned over" to Foster as a "certified person for direct payments" until Wong was able to be certified by SSA for that purpose. All payments from the SSA were to go into Wong and Bernath's bank account. Foster was to be paid \$1000/month for her services.

Foster represented NDA clients until June 2011, at which time she terminated her relationship with Wong and Bernath and opened her own firm. Several of NDA clients followed Foster to her new firm. Wong claims that Foster "embezzled" NDA's money by stopping the SSA payments from going into the NDA account and instead diverting the payments to Foster's own account.

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<sup>1</sup> The claim form lists both Ms. Wong and her husband, Daniel Bernath, as claimants, but Mr. Bernath didn't sign the application nor did he sign the request for review.

<sup>2</sup> Bernath applied for but was denied admission to the OSB in 1998. Wong is not believed to be a lawyer in any jurisdiction.

The CSF claim does not explain how Wong and Bernath calculated their \$20,000 loss. Wong and Bernath sued Foster in Washington County in October 2011 and obtained a default judgment for \$271,000. They claim that the judgment was for conversion, but the complaint does not contain a claim for conversion. Subsequently, on Foster's motion and after a hearing, the judgment was reduced to \$10,745 in a Corrected General Judgment issued in February 2013. The Corrected Judgment sheds no light on the basis for the reduction or the calculation of the reduced amount. Michael Stone, the lawyer who represented Foster in challenging the judgment, was unable to provide much help. He reports that the judge chastised Foster for ignoring the lawsuit, but made no specific findings of dishonesty or anything else. Stone's feeling is that the judge wanted to punish Foster for allowing the entry of default and then taking up the court's time trying to get it set aside.

When the Application for Reimbursement was first received, Ms. Wong was asked to provide further information about the relationship between the parties. In her response, Wong reiterated her contention that Foster provided legal advice about the formation and operation of Wong's business.<sup>3</sup> She also argued that the civil judgment is *res judicata* and that the CSF cannot make an independent determination.

After carefully considering all the evidence available, the CSF Committee was not persuaded that the claimed loss arose from an attorney-client relationship between Foster and the claimants. Even assuming Foster provided legal advice about the structure of their arrangement, the Committee concluded that the claimed loss was not of funds received by Foster from her representation of them as clients.

Perhaps more importantly, the Committee found insufficient evidence of dishonesty. Rather, the Committee concluded that the dispute was of the type that often arises when a lawyer leaves a firm and there is disagreement about how fees earned and received afterwards should be divided between the lawyer and her old firm. Finally, the Committee disagreed with Wong's contention that the CSF is bound by the trial court judgment. Both the statute and rules governing the CSF are clear that awards from the Fund are discretionary and no claimant has an absolute right to an award.

Attachments: Application for Reimbursement  
Committee Investigator's Report  
Wong's Request for BOG Review

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<sup>3</sup> Wong refers to her "Disability Law Office" business; it is not clear whether that is the same as NDA. There is no official filing for Disability Law Office; the business name Northwest Disability Advocates was registered by Wong on June 7, 2011 and cancelled on December 6, 2011.

**Martha Wong**

mail to: 10335 sw Hoodview Drive, Tigard Oregon 97224

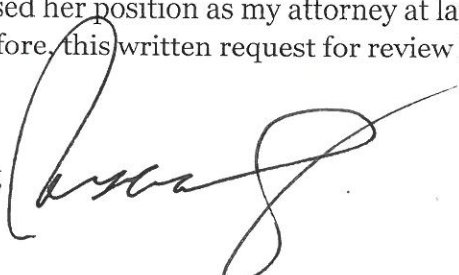
9.17.2014

APPEAL OF DECISION OF CLIENT SECURITY FUND

CLAIM NUMBER 2014-07

1. Rosemary Foster was my attorney at law giving me business advise and my fiduciary.
2. She used her position as my attorney at law to steal my property.
3. Therefore, this written request for review is made this day 9.17.2014.

Martha Wong



Sylvia Stevens  
Executive Director  
Oregon State Bar  
P O Box 231935  
Tigard OR 97281-1935

**RECEIVED**

SEP 19 2014

Oregon State Bar  
Executive Director

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Awards

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### Action Recommended

Consider the recommendation of the Client Security Fund Committee that the BOG make awards in the following matters:

No. 2012-54 GRUETTER (Lupton)	\$21,500.00
No. 2014-12 LANDERS (Austin)	\$7,400.00
<b>TOTAL</b>	<b>\$28,900.00</b>

### Discussion

#### **No. 2012-54 GRUETTER (Lupton) \$21,500**

This claim was submitted by Lance Lupton, as attorney-in-fact for his 90+-year-old mother Lela. Lela had previously submitted an application for reimbursement on her own, but it was denied on the basis that the committee found insufficient evidence of dishonesty. Lance resubmitted the claim in April 2014 with additional information.

In September 2008, Lela hired Bryan Gruetter to take over a civil suit that had been initiated on Lela's behalf by the firm of Bryant, Emerson & Fitch. Lela delivered \$15,000 to Gruetter, presumably as a deposit against his hourly fees; however, Lela had no written fee agreement and there is nothing in Gruetter's file to indicate how he planned to charge for his services.

In December 2008, Gruetter received an additional \$3500 on Lela's behalf from the trust account of Bryant, Emerson & Fitch. In April 2010, Lela gave Gruetter \$6,000 in cash, the receipt for which says "legal fees." In all, then, Gruetter received \$24,500.

The civil suit was the consolidation of three small claims actions originally filed by Lela. In the case, Lela sought \$55,000 from her daughter-in law-Natalia Belenciuc-Lupton for alleged damage to property and unauthorized use of Lela's credit card. At the time, Natalia and Lela's son Lance were going through a messy divorce and custody battle. Natalia was unrepresented in the civil suit, although she had counsel for the divorce.

In October 2008 Gruetter took a default against Natalia and prepared a default judgment. Natalia apparently had the default set aside and a settlement conference was

scheduled for June 2009. OJIN records indicate the settlement conference took place, but the case did not settle. In April 2010, Gruetter prepared a 26-item Request for Admissions.

In February 2012, Lela wrote to Gruetter terminating the representation, demanding the file and return of her money.<sup>1</sup> She retained Andrew Mathers, who was able to retrieve her file from Gruetter but no money was returned to Lela.

On his mother's behalf, Lance alleges that Gruetter did virtually no work on Lela's legal matter other than request set-overs. He also claims that the \$6,000 Lela gave Gruetter in April 2010 was the result of Gruetter picking Lela up at her home, taking her to lunch and then to the ATM to get cash. Lance says that DOJ has informed him Lela was a victim of elder abuse.

According to OJIN, there were numerous set-overs during the pendency of Lela's case, but the principal reason appears to be to defer the trial until the divorce issues were resolved. Mathers reports that the work Gruetter did was of poor quality. Eventually, Mathers took the matter to arbitration but no award was rendered to either party.

After considerable discussion, the CSF Committee concluded that the services Gruetter performed for Lela were *de minimis* and of essentially no value other than to keep the matter alive. The Committee was quite troubled by the idea that Gruetter took his elderly client to lunch as a ruse to get her to give him more money when he had never provided an accounting of how he used the \$18,500 he had received previously. (Even at \$350/hour, he would have to have performed more than 50 hours of work, which clearly didn't happen here.) Nevertheless, the Committee concluded that Gruetter should be credited with a modest amount for his efforts and recommends an award of \$21,500. As with the other Gruetter claims, the Committee recommends that no judgment be required in this case; Gruetter resigned Form B in mid-2013 and was sentenced to 5+ years in federal prison in March 2014.

**No. 2014-12 LANDERS (Austin) \$7,400**

In approximately September 2011, at the recommendation of his prior counsel, Claimant retained Mary Landers to represent him in a contentious custody dispute. Claimant alleges he paid Landers \$11,000 in several installments in September and October, although he could produce receipts for only \$9,000. Landers agreed to represent him at a "reduced rate" of \$195/hour.

Landers provided some services for Claimant early on, including filing a response to wife's petition for custody, and a motion for a temporary status quo order. She also attended one hearing and reviewed the form of pleadings drafted by opposing counsel.

Landers became increasingly difficult for Claimant to contact and was rarely in her office; she missed hearings and failed to notify Claimant of them. By March 2012, Landers had

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<sup>1</sup> The bar became custodian of Gruetter's practice in early February 2012.



essentially abandoned the matter, withdrawing from the case without court consent and moving out of town.

In response to the investigator's inquiries, Landers claimed she spent considerable time on Claimant's matter; she says he was very needy and in her office frequently. Although she claims to be owed additional fees, despite promises to provide information verifying her time on the case, Landers has not done so.

After discussion, the Committee voted to recommend an award of \$7,400, giving Landers credit for some work. The Committee also recommends waiving the requirement for a judgment, as Landers is suspended (for unrelated disciplinary matters) but suffers from health issues and from all reports has no assets to satisfy a civil judgment.

Attachments: Applications for Reimbursement  
Investigator's Reports

DRAFT

October 16, 2014

To: BOG Appointments Committee  
From: Carol Bernick, PLF Chief Executive Officer  
Re: 2015 Board Appointments

---

The Board of Directors of the Professional Liability Fund met on October 10, 2014 to consider potential applicants for the 2015-2019 Board terms. The BOD is required to send a list of nominees equal to or greater than the number of available positions to the OSB BOG.

Article 3.4 provides that:

By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. **These may include, but are not limited to, consideration of gender, minority status, ability, experience, type of law practice, and region.**

This year, 27 attorneys expressed interest in serving on the PLF Board. (Attorneys express their interest in two ways; either through the OSB Volunteer Preference Form or through direct communication with the PLF in response to articles or notices in *In Brief* or the *OSB Bulletin*.)

This year, there are two attorney board positions to fill. The current Board Chair (Guy Greco) and Board member (Valerie Fisher) have terms that expire on December 31, 2014. Their departure leaves the Board with:

- One member from Eugene;
- One member from Medford;
- Two public members from Salem; and
- Three members from Portland

In terms of firm size, the Board (minus the two departing directors and not counting the public members) has:

- One member from a large firm;
- Three members from smaller firms; and
- One retired lawyer.

The substantive expertise includes commercial litigation, creditors rights, immigration and personal injury.

The BOD chose three candidates from a list of five candidates presented by our nominations committee. Those three candidates are presented in order of preference (resumes attached).

**Frank Langfitt:** OSB #731770  
Portland  
Medium Firm – Ater Wynne

Mr. Langfitt is a partner at the firm of Ater Wynne. He is a well known litigator with experience in commercial litigation, business torts, insurance coverage issues and environmental law. His resume indicates that he also has expertise in D&O coverage as well as risk issues related to e-business, an area of growing concern in the practice of law.

Mr. Langfitt is respected in the legal community for his judgment and legal expertise and has been Statewide Chair of the Campaign for Equal Justice, a member of the Volunteer Lawyers Project, and has also been involved in civic organizations.

**Saville Easley:** OSB #920547  
Portland  
Medium Firm – Gevurtz Menashe

Ms. Easley is a family law attorney and a partner at Gevurtz Menashe. The BOD has not had a family law expert since Laura Rackner left the board in 2013. Family law is a high frequency claim area and substantive expertise in that area is useful.

Ms. Easley is well respected in the family law area. She has been involved in a number of OSB and MBA committees and other law related groups, including OWLs and OTLA. She served three years on the OSB CLE committee which would also bring valuable knowledge to the PMA efforts of the PLF.

**Robert Raschio:** OSB #013864  
Canyon City  
Small Firm - Law office of Robert Raschio, PC

Mr. Raschio is primarily a criminal law attorney. He does private defense and also has an indigent defense contract. In addition, Mr. Raschio handles some general practice matters.

Ira Zarov (former PLF CEO) spoke with Mr. Raschio. Mr. Zarov reports that Mr. Raschio was knowledgeable about the PLF, respected its purpose and had a good overall perspective. His references were very positive as well. He was previously with Morris, Smith, Starns, Raschio & Sullivan in The Dalles and at Mallon Lamborn & Raschio in Burns before opening his own firm in January 2014. His web page is attached.

Although criminal law is not a high frequency area, the PLF has had criminal law attorneys on the board for the majority of the last 15 years. They have uniformly been valuable contributors and criminal law practitioners are an important segment of the bar. Mr. Raschio has good contacts in his practice area and is a two-time President of the Oregon Criminal Defense Association. He also represents a younger demographic which the Board would like to encourage.

The BOD discussed whether having two directors appointed from Portland would undermine our goal of geographic diversity. If the BOD's first two choices are appointed by the BOG, the BOD would have five of nine members from Portland, one of whom is Ira Zarov who was appointed for only a year due to the departure of John Berge to become a member of the PLF staff. There are approximately 7500 covered parties, 5,000 of whom are in the tri-county area. We would also have two members from medium sized firms, something we don't have now.

Attachments (resumes)

Search 

Sul

Client Log In (<http://client.aterwynne.com>)

(/)

WHAT WE DO

WHO WE ARE

RESOURCES

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## ATTORNEYS

**FRANK V. LANGFITT**

Partner

Frank Langfitt focuses his practice in a variety of litigation and client consultation areas, including business and commercial disputes, business torts, insurance coverage issues, corporate governance, directors and officers cases and environmental cases. Frank also provides consultation relating to various insurance coverage issues including coverage for intellectual property, directors and officers, casualty, environmental and health insurance. He has provided advice and spoken on risk issues, including those relating to e-business.

Frank has tried many tort and business cases in federal and state courts, representing both plaintiffs and defendants.

Recent matters have included business relationship disputes, including supplier relations in the high techelectronics area; distributor, contract and real estate disputes; and a wide variety of insurance coverage consultation and litigation, including issues relating to environmental claims, punitive damages, contract-tort coverage distinctions, intellectual property, directors and officers, business disputes and health insurance.

Frank has served as Ater Wynne's Administrative Partner, on the firm's Management Committee and as Litigation Department Chair. He is listed in *Best Lawyers in America* for his expertise in Commercial Litigation and Product Liability Litigation, he has been recognized as an *Oregon Super Lawyer* and been listed as a "Litigation Star" in *Benchmark Litigation*.

**Professional Experience**

- Ater Wynne LLP, Portland, Oregon, Partner, 1982 to present; Associate, 1979 to 1981
- Sole practitioner, Portland, Oregon, 1978 to 1979
- Fellows, McCarthy, Zikes, Kayser & Langfitt, Partner, 1977; Associate, 1973 to 1976

**Education**

- University of Oregon, J.D., 1973
- Stanford University, B.A., 1969

**Admitted to Practice**

- Oregon
- District of Columbia Court of Appeals
- Ninth Circuit Court of Appeals

Download profile  
 (/uploads/team/profiles/1410475589.pdf)  
[fvl@aterwynne.com](mailto:fvl@aterwynne.com)  
 (mailto:fvl@aterwynne.com)  
 503-226-8475

**PRACTICE AREAS**

D&O Insurance Coverage (/page/d-o-insurance-coverage)

Directors & Officers Liability  
 (/page/directors-officers-liability)

**OUR TEAM**

"Ater Wynne thrives when the people, community and world around us thrive.

We are **ACTIVELY ENGAGED** in the communities in which we live and work, focusing our most significant contributions and volunteer efforts on

programs for **CHILDREN**, the  
**ARTS, ENTREPRENEURS**  
and the **ENVIRONMENT.**

– Brenda L. Meltebeke, Firm Chair

- U.S. District Court, Oregon

**Professional Activities**

- American Bar Association, Litigation, Alternative Dispute Resolution, and Insurance Litigation Sections
- Oregon State Bar, Litigation Section
- Multnomah Bar Association, Alternative Dispute Resolution Committee, 1994 to 1997
- Oregon Association of Defense Counsel
- Federal Bar Association of Oregon, Board Member, 2008 to 2013

**Community Activities**

- Northwest Business Committee for the Arts, Board Member, 1997 to 2000
- Boys and Girls Aid Society Board of Directors; President, 1996 to 1997
- Volunteer Lawyers Project North/Northeast Legal Clinic
- Campaign for Equal Justice, Board Member, 1997 to present; Large Firm Committee Chair, 1996 and 1997; Board Chair, 2010 to 2012
- Literary Arts, Board Member, 2008 to present

**Representative Matters**

- Favorable judgment obtained for client involved in dispute between conflicting shareholders over control of corporation.
- Successful settlement reached for corporate client facing indemnification claims from former officer/director.
- Successful settlement on behalf of shareholder in lawsuit concerning shareholder oppression.
- Eleven-day federal jury trial to verdict involving fraud and warranty claims relating to computer-controlled tool systems sold internationally. Settled on appeal.
- Successful resolution of federal insurance coverage case for client who was subject to punitive damages judgment from earlier case.
- Eleven-week trial concluding in favorable settlement to clients of environmental insurance coverage action.
- Defense of class action (estimated 400 members) toxic tort, nuisance and trespass claims. Successfully opposed class certification; subsequent favorable settlement of eight related lawsuits filed on behalf of approximately 40 plaintiffs.
- Successful trial to verdict for client facing business tort claims, including conversion, in international shipments, and preservation of award on appeal
- Successful resolution of insurance coverage case for client facing class action claims for product liability and unfair business practices.

**JOIN OUR MAILING LIST**

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Your Email  GO

[privacy policy \(/page/privacy-policy\)](#)

**PORTLAND OFFICE**

Lovejoy Building  
1331 NW Lovejoy St, Ste. 900  
Portland, OR 97209-3280

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Two Union Square  
601 Union St., Ste. 1501  
Seattle, WA 98101-3981

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F 206.467.8406

Directions (<https://maps.google.com/maps?q=601+Union+St,+Ste.+1501,+Seattle,+WA+98101>)

# Saville W. Easley

Shareholder

## Practice Areas

Alternate Dispute, Appeals, Child Support, Contempt, Custody/Parenting Time, Divorce, Domestic Partnerships, Domestic Violence, Grandparent Rights, Guardianship of Minors, High Asset Divorce, Military Divorces, Modification, Paternity, Step-parent/Co-parent, Unbundled Legal Services

## Professional Activities

- \* Member, Multnomah Bar Association, 1992-Present
- \* Member, 'Multnomah County Bar Association, Professionalism Committee', 2013-2015
- \* Master, Gus J. Solomon, American Inns of Court, 2013 to Present
- \* Member, Oregon Women Lawyers
- \* Member, Oregon Trial Lawyers Association (OTLA)
- \* Judicial Selection Committee, Committee member, Multnomah County Bar Association, 2009-2011
- \* Local Professional Responsibility Committee (Multnomah County), Oregon State Bar, 2006-2011
- \* Continuing Legal Education Committee, Oregon State Bar, 2006 to 2009
- \* Campaign for Equal Justice Committee, July 2008-2010
- \* Oregon Lawyers Against Hunger, 2005-2010
- \* Multnomah Bar Association Mentor Program, 2006, 2008, 2010
- \* Multnomah Lawyer Committee, 1992-1995
- \* Multnomah Bar Association, Committee to Advance Equality, 1996-1998
- \* Oregon State Bar, Secretary & Executive Committee Member, Consumer Law Section, 1995-1998

## Education

- \* Bachelor of Arts Degree, Education, University of Alaska, Anchorage , 1986
- \* Juris Doctorate, University of Oregon, 1991

## Civic Activities

- \* Portland Art Museum, Member
- \* Oregon Humane Society, Member
- \* Project HOPE, Member

## Professional Honors

- \* Listed in Super Lawyers Magazine 2014, 2013, 2012, 2011, 2010, 2009

## Publications

## Law Office of Robert Raschio, PC

206 S. Humbolt St. Canyon City, Oregon 97820  
(O) (541) 575-5750/(F) 541-575-5752  
office@rrlaw.biz

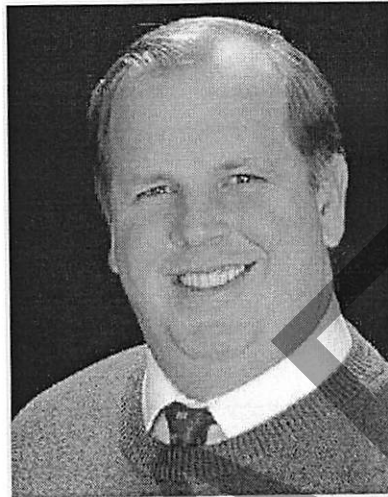
HOME

FIRM

PRACTICE AREAS

CONTACT

### Attorneys



#### Robert S. Raschio

Two-time President of the Oregon Criminal Defense Lawyers Association, editor of the OCDLA Trial Notebook (a widely used publication by lawyer throughout Oregon) Robert Raschio is a well regarded defender of the rights of the accused throughout Oregon. Born and raised in Oregon, having graduated from Portland State University and the University of Oregon Law School, he knows this state well.



# Law Office of Robert Raschio, PC

206 S. Humbolt St. Canyon City, Oregon 97820  
(O) (541) 575-5750/(F) 541-575-5752  
office@rrlaw.biz

HOME FIRM PRACTICE AREAS CONTACT

## Practice Areas

Our passion is your rights.

---

### Criminal Law

The Constitution protects you from the power of the state. This firm will protect your rights. You have many rights that you should protect when being questioned by law enforcement and when being prosecuted in a court, we can help you protect those rights. Our firm will vigorously represent you no matter the charge. Driving Under the Influence of Intoxicants, allegations of a inappropriate sexual conduct, assaults, homicide, and any other type of criminal allegation, we do not judge you, we protect you.

---

### Family Law

This firm will represent individuals in family law matters. If you are preparing to leave your spouse, challenge custody of your child or need to modify your existing decree, please call 541-575-5750.

---

### Juvenile Law

If your kids have been taken from you, you need to call an attorney immediately. There are many initial steps that must be taken to get your kids returned.

If your child has been accused of activity that would constitute a crime, you should call us immediately. There are long term implications of an allegation against a child that can impact their entire life. Call for a free consultation.

---

### Notary Public

We offer State of Oregon notary services.

---

### Other Legal Matters

Our firm has a background in many areas of the law that we can provide you advise on. If we cannot, we know who can. Call us with your questions and if we cannot help you, we will assist you in finding the attorney who can.

SCHEDULE A CONSULTATION

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# Law Office of Robert Raschio, PC

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HOME FIRM PRACTICE AREAS CONTACT

## Our Team

Experience Counts. Commitment Counts. The Law Office of Robert Raschio, PC has both. Lead by Robert S. Raschio, two time President of the Oregon Criminal Defense Lawyers Association, editor of the Trial Notebook and noted committed defender of the rights of the accused, we will fight for you.

MORE

## Services

We are a full service law firm. Our primary practice is defending the accused against state. When you are approached by a state official and being asked questions, you should exercise your right to remain silent and call us for advise. If you or a family member have been arrested please call immediately. The sooner you are represented the sooner your rights are being protected against the power of the state!

MORE

## Contact Us

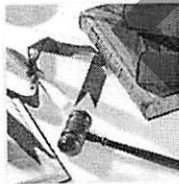
FOR A FREE CONSULTATION

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office@rrlaw.biz

## News & Publications



1-2-2014

Open! After over seven years at Morris, Smith, Starns, Raschio, & Sullivan, PC in The Dalles, four years at Mallon, Lamborn & Raschio, PC in Burns, and a year at the Law Office of Markku Sario in Canyon City, Robert Raschio has opened his own firm in Canyon City, Oregon. The firm will offer a full range of legal services but will focus primarily on representation of the accused, both indigent and privately retained. If you are being questioned by the law enforcement, if you or a loved one have been arrested, if you have a court date coming up, call, we can help.

READ MORE...



10-25-2013

The Oregon Public Defense Commission has honored Robert Raschio with a contract to provide indigent defense services to the 24th Judicial District of the State of Oregon. "It is an absolute privilege to be awarded this contract in recognition of the good work on the behalf of so many. My firm will defend the rights of the accused from the power of the state." Mr. Raschio declared.

READ MORE...

## Areas of Practice

*Criminal Law*

*Family Law*

*Juvenile Law*

*Notary Public*

*Other Legal Issues*

# OREGON STATE BAR

## Board of Governors Agenda

**Meeting Date:** November 15, 2014  
**Memo Date:** October 31, 2014  
**From:** Caitlin Mitchel-Markley, Board Development Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (1 of 2)

### Action Recommended

On October 3 the Board Development Committee selected the following members for appointment:

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

Chair: Cynthia Starke  
 Secretary: Jackie Alarcon  
 Members with terms expiring 12/31/2017:  
 Sherisa Davis-Larry  
 Connie McKelvey  
 David O'Brien  
 Jonathan Patterson

#### **Client Security Fund Committee**

Chair: Lisa Miller  
 Secretary: Ronald Atwood  
 Members with terms expiring 12/31/2017:  
 Ronald Atwood  
 Karen Park  
 Stephen Rahe  
 Stephanie Thompson

#### **Legal Ethics Committee**

Chair: Robert G. Burt  
 Secretary: Kristin Asai  
 Members with terms expiring 12/31/2017:  
 Summer Baranko  
 David Elkanich  
 Samantha Hazel  
 Alex Wylie

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

Chair: Rachel Lynn Hull  
 Members with terms expiring 12/31/2017:  
 Michael T. Harvey  
 Elizabeth Jessop  
 Katerina Kogan  
 Robert Raschio  
 Heidi Strauch  
 Kirk Wintermute

#### **MCLE Committee**

Chair: Christy King  
 Secretary: Allison Banwarth  
 Members with terms expiring 12/31/2016:  
 John Mellgren  
 Members with terms expiring 12/31/2017:  
 Adam Adkin  
 William Gibson  
 Katherine Zerkel  
 Karen Elliott (public)

#### **Pro Bono Committee**

Chair: Meagan E. Robbins  
 Secretary: Christo de Villiers  
 Members with terms expiring 12/31/2017:  
 R. Brent Berselli  
 Sarah Rose Dandurand  
 Sara L. Mader  
 Alison G.M. Martin  
 Gerard P. Rowe  
 Peter S. Willcox-Jones  
 Maya Crawford (Advisory)

#### **Public Service Advisory Committee**

Chair: Jennifer A. Costa  
 Secretary: Debra Cohen  
 Members with terms expiring 12/31/2017:  
 Steven Bennett  
 Sybil Hebb  
 Vittal Patel  
 Shayna Rogers

---

**Quality of Life Committee**

Chair: Amy Saeger Miller  
Secretary: Ruben Medina  
Members with terms expiring 12/31/2017:  
Lori DeDobbelare  
Eva Marcotrigiano  
Michael B. Reid  
Mindy S. Stannard  
Erin O. Sweeney  
Jeremy G. Tolchin  
Michael John Turner

**State Lawyers Assistance Committee**

Chair: Kevin Lucey  
Secretary: Vaden Francisco  
Members with terms expiring 12/31/2017:  
Michael Seidel  
Bryan Welch

**Uniform Civil Jury Instructions Committee**

Chair: John Devlin  
Secretary: Katharine von Ter Stegge  
Members with terms expiring 12/31/2017:  
Hon. Cheryl Albrecht  
Charley Bevens Gee  
Steven Boyd Seal

**Disciplinary Board**

State Chair and Chair-Elect terms expire 12/31/2015.  
State Chair: Nancy M. Cooper  
State Chair-Elect: Robb Miller

Unless designated otherwise, regional chair positions have terms expiring 12/31/2015 and members have terms expiring 12/31/2017.

**Region 1**

Chair: Carl W. Hopp Jr.  
Members:  
Paul Heatherman  
John Laherty  
Ron Roome  
Steven Bjerke (public)

**Region 2**

Chair: Robert A. Miller  
Members:  
Chas Horner  
Debra Velure  
Meg Kieran

**Region 3**

Chair: John E. Davis  
Members:  
Thomas Pyle (public)  
Josh Soper

**Region 4**

Chair: Kathy Proctor  
Members:  
Bill Blair  
Loni Bramson (public)  
Joe Fabiano (public)

**Region 5**

Chair: Ronald Atwood

Jet Harris  
Kimberly Sewell

**Uniform Criminal Jury Instructions Committee**

Chair: Jaime Contreras  
Secretary: Andrew Robinson  
Members with terms expiring 12/31/2017:  
David Amesbury  
Erin Biencourt  
John Hummel  
D. Aaron Jeffers  
Holly Winter

**Unlawful Practice of Law Committee**

Chair: Katharine von Ter Stegge  
Chair-Elect: David Doughman  
Secretary: Erin Fitzgerald  
Members with terms expiring 12/31/2018:  
John Beckfield  
Jay Bodzin  
Saville Easley  
Monica Goracke  
Martie McQuain

**Members:**

Duane Bosworth  
Lisa Caldwell  
Frank J. Weiss  
Jon Levine (public)  
Rita Cagliostro (public)

**Region 6**

Chair: James C. Edmonds  
Members:  
Paul Gehlar (public)

**Region 7**

Chair: Kelly Harpster  
Members:  
S. Michael Rose

---

**State Professional Responsibility Board**

Chair: Whitney Boise, term expires 12/31/2015

Members:

Richard Weil, region 5, term expires 12/31/2015

Elaine D. Smith-Koop, region 6, terms expires 12/31/2018

Ankur Hasmukh Doshi, region 7, terms expires 12/31/2018

Randy Green, public member, terms expires 12/31/2018

**Local Professional Responsibility Committee**

All terms expire 12/31/2015.

**Region 1**

Chair: John Hummel

Members:

Dennis Karnopp

Theodore William Reuter

**Region 2**

Chair: Cynthia Botsios

Danforth

Members:

Marilyn A. Heiken

Susan Ezzy Jordan

**Region 3**

Chair: Bruce Coalwell

Members:

Susan Krant

**Region 4**

Chair: Jessica L. Cousineau

Members:

Scott Lee Sharp

**Region 5**

Chair: Saville W. Easley

Members:

Robert P. Schulhof Jr.

Ryan M. Tarter

**Region 6**

Chair: John Beckfield

Members:

Kara H. Daley

**Region 7**

Chair: Karen J. Park

Members:

Michael John Turner

DRAFT

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**Memo Date:** November 15, 2014  
**From:** Audrey Matsumonji, Board Development Committee Vice-Chair  
**Re:** Appointments to various bar committees, councils, and boards (2 of 2)

---

### Action Recommended

On November 14 the Board Development Committee selected the following members for appointment:

#### **Bar/Press/Broadcaster's Council**

Secretary: Steven Krasik  
Members with terms expiring 12/31/2017:  
Rod Underhill  
Hon. Nan Waller  
Dennis Karnopp  
Erik Hasselman

#### **Judicial Administration Committee**

Chair: Danielle Hunsaker  
Secretary: Bernadette Bignon  
Members with terms expiring 12/31/2017:  
Carl Burnham Jr.  
P. K. Runkles-Pearson  
Jessica Fleming  
Sean Mazorol

#### **Legal Services Committee**

Chair: Kristin Bremer  
Secretary: Kamala Shugar  
Members with terms expiring 12/31/2017:  
Sarah Kobak  
Hon. Tim Gerking

#### **Loan Repayment Assistance Program Committee**

Members with terms expiring 12/31/2017:  
Courtney Quale

#### **New Lawyer Mentoring Program Committee**

Chair: Sarah Petersen  
Members with terms expiring 12/31/2017:  
Lisa Norris-Lampe  
Valerie Colas  
Maria Zlateva  
Patricia Asrani Arjun  
Robert O'Halloran Jr.  
Scott Eads  
David E. Smith

#### **Procedure & Practice Committee**

Chair: Neil Jackson  
Secretary: Chin See Ming  
Members with terms expiring 12/31/2017:  
Kristian Rogendorf  
Greg Lockwood  
Susan Pitchford  
Rachele Selvig  
William Boaz  
Ryan Kaiser

#### **State Lawyers Assistance Committee**

Additional members with terms expiring 12/31/2018:  
Cynthia Botsios Danforth  
Hon. William Horner  
Sara L. Butcher  
*Pending BOG approval to modify OSB Bylaw 24.300 to allow additional member appointments.*

#### **Uniform Civil Jury Instructions Committee**

Additional members with terms expiring 12/31/2015:  
Melissa Tahir

#### **Unlawful Practice of Law Committee**

Members with terms expiring 12/31/2017:  
Ella Wolf  
Members with terms expiring 12/31/2018:  
Daniel Chandler

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**Disciplinary Board**

**Region 4**

Additional member:

Marcia Buckley, term expiring 12/31/2017

**Local Professional Responsibility Committee**

**Region 7**

Chair: Michael John Turner, term expiring 12/31/2015

**Modifications from the October 31, 2014, memo:**

**Local Professional Responsibility Committee, Region 7**

Karen Park removed from chair appointment recommendation

**State Lawyers Assistance Committee**

Member terms for Michael Seidel and Bryan Welch expire 12/31/2018.

**Unlawful Practice of Law Committee**

Saville Easley removed from member appointment recommendations

DRAFT

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 14-15, 2014  
**Memo Date:** November 5, 2014  
**From:** Rod Wegener, CFO  
**Re:** 2015 OSB Budget Report

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### Action Recommended

Review and approval of the 2015 OSB Budget.

### Background

A print copy of the 2015 OSB Budget Report was mailed to all members of the Board of Governors and the new 2015 members. The report also is available at this link. The report is 75 pages of the narrative and line item budget of all bar programs and departments following a summary of the budget. The report contains changes made after the Budget & Finance Committee reviewed the budget at its October 3 meeting.

Highlights of the 2015 budget are:

- A net operating revenue of \$92,270, a decline from the 2014 net operating revenue of \$448,893;
- No change in the active or inactive membership fee,
- As recommended by the Committee, the allocation of an additional \$5.00 from the active Member Fee for additional funding for LRAP
- Total revenue for 2015 is \$53,771 less than the 2014 budget, due in part to only \$1,300 more allocated to general membership fee revenue (after the additional allocation of \$76,800 to LRAP);
- Expenditures are \$302,852 (2.4%) more than 2014;
- No reserve funds are transferred to revenue for operational needs;



Oregon State Bar



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# 2015 Budget

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Report to the  
Board of Governors

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November 14-15, 2014



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# OREGON STATE BAR

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## 2015 BUDGET



November 15, 2014

## Report to the Board of Governors

### **Report Overview**

This 2015 Budget Report is for the review and approval by the Board of Governors. The report will be reviewed one more time by the Budget & Finance Committee prior to the board meeting on November 15.

The “Overview of the 2015 Budget” on the next pages addresses the budget as a whole and includes salient points about key programs or activities. More detail on each program/department is found on the page across from each respective line item budget.

The first version of the report was reviewed by the Budget & Finance Committee on October 3 and included a small Net Operating Revenue (NOR) of \$3,117. The Committee recommended the allocation of an additional \$5.00 of the active Member Fee to the LRAP. With other known changes, the revised NOR was projected to become a Net Expense of approximately \$100,000. The Committee recommended the Net Expense be covered by Reserve funds. Upon subsequent

### **This report projects:**

- a Net Revenue of \$92,270
- no Member Fee increase
- \$10.00 of the Member Fee allocated to LRAP
- No funds transferred from Reserves

changes to the budget, no reserves were allocated to the budget when the revisions resulted in a NOR of \$92,270.

### **Update on the 2014 Budget**

The 2013 year-end Net Operating Revenue was \$649,598. The 2014 budget includes a NOR of \$448,893. Based on mid-year data, the projected 2014 end-of-the-year NOR will be \$312,000. Thus 2015 begins following two very fiscally positive years.

# Overview of the 2015 Budget

## 1. Revenue

### ■ Membership Fees

**No increase in the active Membership Fee is included in the 2015 budget.** This will be the tenth consecutive year that the general membership fee is \$447.00.



The 2015 budget includes a 1.14% increase in membership fee revenue.

Although the chart indicates a jump in growth from 2014, the final rate increase in 2014 will be higher than the chart indicates.

The overall dollar amount increase in 2015 is budgeted at \$81,000. However, \$76,800 of that increase will be allocated to LRAP (if the action approved) leaving a net \$1,300 available for general operations.

### ■ Admissions

Admissions revenue will decline in 2015, but not as much as originally projected.

### ■ CLE Seminars

CLE Seminars revenue is \$294,000 less than the 2014 budget. However, the revenue in the 2014 budget will not be attained and the amount budgeted for 2015 is a more realistic amount based on changes in the program including the absence of a “season ticket-like” plan. The changes implemented in the program will take 2-3 years to come to fruition.

### ■ Legal Publications

Sales of Legal Publications books will not reach its 2014 budget due to the delay of the major rewrite of the *Oregon Real Estate Desk Book*. However, with this book coming to market in 2015 there will be a noticeable jump over 2014’s book sales.

### ■ Lawyer Referral

Revenue from the new Lawyer Referral funding model continues to exceed projections. The increase in this revenue source is budgeted for a \$125,900 increase in 2015. This is an \$80,000 increase from the October 3 report due to the very positive results for this revenue in 2014.

#### **REVENUE SUMMARY**

**All Revenue will be lower in 2015 from 2014 by \$53,771.**

## 2. Expenditures

### Salaries, Taxes & Benefits

The bar's Executive Director and PLF CEO recommend a 3% salary pool for the 2015 budget. This is based on the excellent financial results of both organizations in 2013 and 2014.

- SALARY POOL - Previous salary pool increases have been: 2014 – 2%; 2013 – 2%; 2012 – 2%; 2011 – 3%.

*The chart indicates the impact of including a salary increase in the 2015 budget.*

*This Budget report includes a 3% salary pool.*

Estimated Impact of Salary Pool on 2015 Budget		
Pool Per Cent Change	S&B Dollar Amount	Revised Net Revenue (Expense)
No change	\$ 6,600	\$299,000
2%	\$144,900	\$160,700
3%	<b>\$213,400</b>	<b>\$92,270</b>

- PERS - The employer's rate for PERS changes July 1, 2015 and the rates the bar will pay are noted below. The rates for the two plans go in opposite directions in mid 2015.

The rate for Tier 1&2 staff decreased by .53% from the October 3 report upon confirmation of the rate by PERS. Over time the bar will see a decreasing cost in the overall cost of PERS as more Tier 1&2 employees leave the bar and are replaced with those in the lower rated OPSRP.

PERS Rates and Participation	Rates for the Two-Years Beginning July 1		% Salaries Participating
	2013-2015	2015-2017	
Tier 1&2	10.96%	13.28%	49.2%
OPSRP	8.14%	7.31%	42.4%
Non-Participating or Vacant	N/A	N/A	8.4%

- OTHER TAXES & BENEFITS - The 2014 benefits costs will be below budget as the medical insurance increase at April 1 was much smaller than budgeted.

#### **TAXES & BENEFITS SUMMARY**

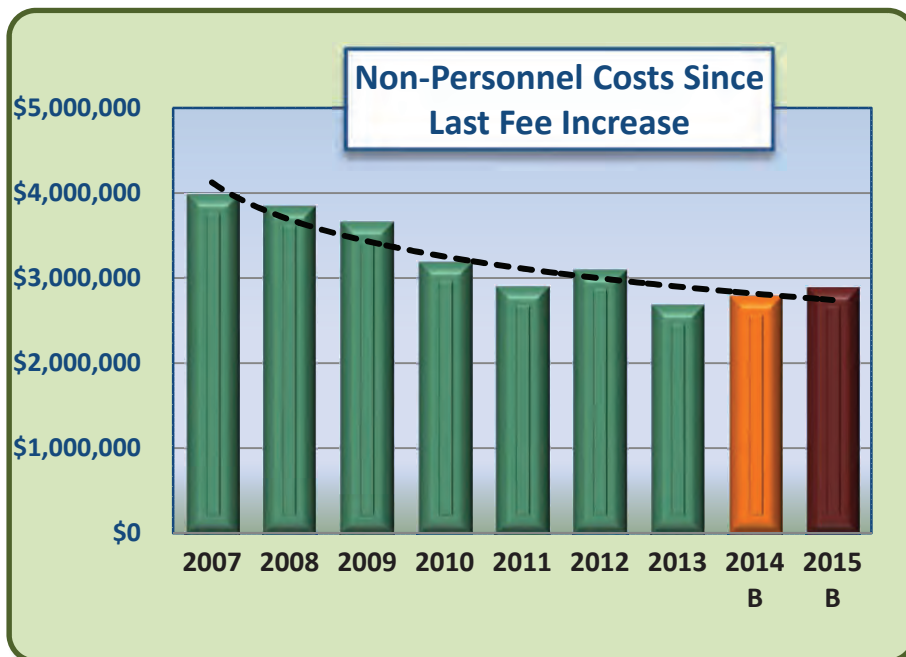
*Taxes & Benefits in 2014 will be below budget due to lower medical rates and the number of vacancies during the year. With 2014 medical rates continuing through part of 2015 and the PERS rates creating a lower cost than projected, the overall cost of Taxes & Benefits in 2015 is projected to be similar to the 2014 budget.*

### Direct Program & Administrative Expenses

Direct Program and Administrative costs are up 3.4% from the 2014 budget. That could increase further if there is a change in revenue – for example, CLE Seminars generating more or less registration revenue, or Legal Publications printing and selling more or less books than projected.

The departments creating the greatest increases in Direct Program or Administrative expenses are:

Department	Amount	Reason
Governance	\$20,440	Increased BOG meeting related expenses, sponsorships
LRAP	\$21,400	More loans granted with increased revenue (this could increase more if the new allocation approved)
Lawyer Referral	\$11,648	expanded marketing
ICA	\$26,702	Increases in credit card fees, bad debt allowance, and IT costs



Actual Non-Personnel costs decreased 33% from 2007 to

**EXPENDITURES SUMMARY**

- *Even though non-personnel costs are expected to increase in 2015, they are still lower by \$1.1 million, or 27% from the last fee increase*
- *The 2015 non-personnel expense budgets will be \$94,829 (3.4%) more than the 2014 budget.*
- *All 2015 expenses (including personnel costs) increase \$302,852 (2.8%) from the 2014 budget.*



### 3. Changes to the 2015 Budget AFTER the October 3 Budget & Finance Committee Meeting

The report reviewed by the Budget & Finance Committee on October 3 included a Net Operating Revenue of \$3,117. With the additional allocation of revenue to LRAP recommended by the Committee and subsequent changes in other revenue and expense accounts, here is a summary of the changes to the budget from the October 3 report.

Account	Amount	Description
<b>Revenue</b>		
Allocation for LRAP from \$5.00 to \$10.00	\$0	Although this allocation does not reduce the overall member fee collected, it transfers the \$76,800 generated from the additional \$5.00 from general bar operations to LRAP revenue.
CLE Seminars	\$5,500	Former Season Ticket user sales are increased after further analysis.
Lawyer Referral <i>(see chart on page across from detailed budget)</i>	\$80,000	The revenue budget for percentage fees was \$405,900, and after nine months 2014 is \$395,336. Maintaining the same monthly average for the rest of the year, this revenue will be \$527,000 in 2014. Since there is limited trend data on this revenue, an \$80,000 increase to \$485,900 in 2015 is a reasonable budget target.
LRAP	\$2,800	Additional revenue generated from member fee allocation to \$10.00 from \$5.00; including interest earned on fund balance
<b>Total Revenue Changes</b>	<b>\$88,300</b>	
<b>Expense Reductions</b>		
PERS Rate	\$7,600	Based on clarification from the state, the rate for Tier 1/Tier 2 participants will be 13.28%, not 13.81% as included in the previous budget draft.
Admissions	\$14,491	Reduction in BBX grading expenses and staff travel.
Postage	\$2,400	Reduction after review of budget as more current data is available.
Indirect Cost Allocation	\$4,962	Increase in the allocation to restricted funds.
<b>Total Expense Reductions</b>	<b>\$29,453</b>	
<b>Expense Increases</b>		
Governance	\$5,000	Adding the \$5,000 sponsorship for the National Black Lawyers Student Association for its conference in Portland as approved by the BOG, October 3.
Governance	\$5,900	The annual premium for Directors & Officers insurance was overlooked in the previous budget draft.
Member Services	\$2,000	New line item for welcome to OSB membership pins.
Lawyer Referral	\$9,000	Increase the Marketing line item to more aggressively market the lawyer referral service; increases the budget from \$8,000 to \$17,000.
Accounting	\$6,700	Revise estimate for credit card fees (\$6,500) and payroll processing (\$200)
<b>Total Expense Increases</b>	<b>\$28,600</b>	
<b>Total Changes from Oct 3 Budget Report</b>	<b>\$89,153</b>	

## 4. Restricted Fund Programs

For information about the following programs and their budgets, see their respective pages in this report:

- Client Security Fund
- Diversity & Inclusion
- Legal Services
- Fanno Creek Place

The second page of the three-page Forecast (Exhibit B) is the five year projections for Fanno Creek Place. The net cash flow is \$20,600 more in 2015 due to additional expenses explained in the FCP narrative.

## 5. Impact of Association Management Software Purchase



The cost of the new AMS software is unknown presently. Based on preliminary cost estimates from four vendors, included in the 2015 budget is a capital expenditure of \$500,000 and a expenditure of \$120,000 in 2016. Also beginning in 2016, \$100,000 is included annually for license fees and maintenance costs of the system. The actual purchase and annual cost will be known in the next two months.

The capital expenditure for the AMS is funded by the \$500,000 Capital Reserve which the bar has maintained for several years per bylaw 7.302 (b). The annual costs are included in the operating budget.

The bar is fortunate to have reserve funds in excess of the restricted and board designated funds, reserves, and contingencies. Fiscal year 2014 began with an excess in those reserves of \$2.132 million. The forecast included as Exhibit B indicates that due to these excess reserve funds and member fee increases anticipated in 2016 and one probably 3 to 5 years later, the bar is able to replenish the Capital Reserve at \$500,000. This forecast assumes that the investment portfolio that maintains the reserve dollars grows at a minimal rate.

## 6. A Look at 2016 and the Next Five Years

The five-year forecast includes a \$75.00 member fee increase in 2016 to assure the funds available exceed the reserve requirement for at least three years.

Other conditions included in the forecast:

- Membership fee growth is minimal – only 1/2 of 1% or 1% projected each of the next five years.
- The only non-dues revenue experiencing growth is lawyer referral percentage funding.
- The PLF board committed the \$200,000 grant for BarBooks for three years from 2014 to 2016; thus no amount is included beginning in 2017.
- A \$30.00 member fee increase is projected for 2019 solely to assure the bar remains above its reserve requirements.



- e. Salaries and benefits increase consistently.
- f. Non-personnel costs have dropped year-over-year and seem to have reached their low threshold, so little change in Direct Program costs indicates little to no programming changes.
- g. Funding for the new Association Management Software is included. The AMS project will temporarily deplete the Capital Reserve and can be replenished with a minimal gain in the investment portfolio or strong year-end net operating revenues.
- h. The bar's investment portfolio grows at a minimal rate (3.5%) over five years.
- i. The bar center maintains a very low tenant vacancy rate.

## **7. Recommendations of the Board of Governors**

Unless there are additional adjustments to this budget report by the Budget & Finance Committee, this is the final budget for 2015. Two items specifically to act upon are:

- 1) increase the member fee allocation for LRAP from \$5.00 to \$10.00 (see the LRAP narrative for more information);
- 2) the 2015 salary pool of 3%.

## OREGON STATE BAR 2015 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$716,643	\$284,400	\$248,180	\$32,790	\$565,370	\$127,621	\$23,652
Bulletin	\$670,282	\$172,000	\$337,240	\$4,347	\$513,587	\$121,649	\$35,046
CLE Seminars	\$953,350	\$463,900	\$401,225	\$18,529	\$883,654	\$253,062	(\$183,366)
Client Assistance Office	\$0	\$520,300	\$1,100	\$22,143	\$543,543	\$150,732	(\$694,275)
Communications	\$25,180	\$480,820	\$17,600	\$6,744	\$505,164	\$126,878	(\$606,862)
Disciplinary Counsel	\$83,750	\$1,777,700	\$118,750	\$82,533	\$1,978,983	\$371,876	(\$2,267,109)
General Counsel	\$2,500	\$416,500	\$48,950	\$19,599	\$485,049	\$102,878	(\$585,427)
Governance (BOG)	\$0	\$311,300	\$174,300	\$21,898	\$507,498	\$98,029	(\$605,527)
Legal Publications	\$362,597	\$594,200	\$113,999	\$24,370	\$732,569	\$205,515	(\$575,487)
Loan Repayment Assistance Progra	\$151,700	\$0	\$109,400	\$0	\$109,400	\$0	\$42,300
MCLE	\$294,500	\$165,230	\$1,750	\$10,701	\$177,681	\$93,074	\$23,745
Member Services	\$0	\$164,700	\$13,850	\$5,197	\$183,747	\$110,789	(\$294,536)
New Lawyer Mentoring Program	\$20,000	\$183,200	\$8,350	\$3,832	\$195,382	\$73,730	(\$249,112)
New Lawyers Division	\$6,650	\$65,700	\$77,200	\$4,680	\$147,580	\$44,253	(\$185,183)
Public Affairs	\$0	\$445,700	\$23,750	\$32,004	\$501,454	\$106,202	(\$607,656)
Referral & Information Services	\$600,900	\$439,300	\$61,500	\$9,832	\$510,632	\$217,376	(\$127,108)
Special Projects	\$200,000	\$9,200	\$173,200	\$375	\$182,775	\$0	\$17,225
<b>TOTAL PROGRAMS</b>	<b>\$4,088,052</b>	<b>\$6,494,150</b>	<b>\$1,930,344</b>	<b>\$299,574</b>	<b>\$8,724,068</b>	<b>\$2,203,664</b>	<b>(\$6,839,680)</b>
<b>ALLOCATIONS:</b>							
Finance & Operations	\$6,956,950	\$1,566,009	\$800,958	\$97,726	\$2,464,693	(\$2,198,963)	\$6,691,220
Less: Dept Charges/Offsets			(\$265,730)		(\$265,730)		\$265,730
Oregon State Bar Center						\$0	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
<b>TOTAL OPERATIONS</b>	<b>\$11,045,002</b>	<b>\$8,060,158</b>	<b>\$2,490,572</b>	<b>\$397,300</b>	<b>\$10,948,030</b>	<b>\$4,701</b>	<b>\$92,270</b>
Fanno Creek Place	\$835,402	\$119,500	\$1,523,840	\$31,800	\$1,675,140	(\$160,459)	(\$679,279)
<b>TOTAL GENERAL FUND</b>	<b>\$11,880,404</b>	<b>\$8,179,658</b>	<b>\$4,014,412</b>	<b>\$429,100</b>	<b>\$12,623,170</b>	<b>(\$155,758)</b>	<b>(\$587,009)</b>
<b>DESIGNATED FUNDS:</b>							
Diversity Inclusion	\$704,800	\$310,600	\$202,000	\$27,898	\$540,498	\$97,897	\$66,405
Client Security Fund	\$694,500	\$44,500	\$253,150	\$2,424	\$300,074	\$30,319	\$364,107
Legal Services	\$6,155,000	\$106,800	\$6,011,100	\$7,562	\$6,125,462	\$27,542	\$1,996
<b>TOTAL ALL FUNDS</b>	<b>\$19,434,704</b>	<b>\$8,641,558</b>	<b>\$10,480,662</b>	<b>\$466,984</b>	<b>\$19,589,205</b>	<b>\$0</b>	<b>(\$154,501)</b>

2015 Budget

Oregon State Bar

Five-Year Forecast

Operations

November-14

Proposed Fee increase for Year		\$0	\$75	\$0	\$0	\$30	\$0
Operations	BUDGET	BUDGET 2015	F O R E C A S T				
	2014		2016	2017	2018	2019	2020
<b>REVENUE</b>							
<b>MEMBER FEES</b>							
General Fund	\$7,076,000	\$7,157,000	\$7,193,000	\$8,322,400	\$8,364,000	\$8,904,000	\$8,993,000
Active Member Fee Increase		0	1,088,000	0	0	456,000	0
% of Total Revenue	63.8%	64.8%	68.0%	69.0%	69.3%	67.3%	69.6%
<b>PROGRAM FEES:</b>							
Admissions	743,446	716,643	609,100	609,100	639,600	703,600	703,600
CLE Seminars	1,247,485	953,350	953,350	962,884	962,884	962,884	962,884
Legal Publications (print sales)	312,102	362,597	300,000	250,000	200,000	200,000	200,000
Lawyer Referral New Model fees	360,000	485,900	562,000	588,000	500,000	550,000	550,000
All Other Programs	1,018,490	1,024,162	1,044,600	1,065,500	1,086,800	1,108,500	1,121,800
Total Program Fees	3,681,523	3,542,652	3,469,050	3,475,484	3,389,284	3,524,984	3,538,284
<b>OTHER INCOME</b>							
PLF Contribution	200,000	200,000	200,000	0	0	0	0
Investment & Other Income	141,250	145,350	227,600	264,400	309,800	341,000	381,600
<b>TOTAL REVENUE</b>	<b>11,098,773</b>	<b>11,045,002</b>	<b>12,177,650</b>	<b>12,062,284</b>	<b>12,063,084</b>	<b>13,225,984</b>	<b>12,912,884</b>
<b>EXPENDITURES</b>							
<b>SALARIES TAXES &amp; BENEFITS</b>							
Salaries - Regular	5,664,500	5,888,800	5,998,400	6,170,000	6,346,400	6,527,800	6,714,300
Benefits - Regular	2,159,600	2,155,300	2,437,100	2,561,800	2,714,400	2,873,500	3,022,800
Salaries & Taxes - Temp	28,035	16,058	40,000	30,000	40,000	30,000	40,000
Total Salaries & Benefits	7,852,135	8,060,158	8,475,500	8,761,800	9,100,800	9,431,300	9,777,100
% of Total Revenue	70.7%	73.0%	69.6%	72.6%	75.4%	71.3%	75.7%
<b>DIRECT PROGRAM:</b>							
CLE Seminars	411,800	401,225	405,200	409,300	415,400	419,600	425,900
Legal Publications	115,677	113,999	120,000	100,000	80,000	80,000	80,000
AMS Impact	0	0	100,000	100,000	100,000	100,000	100,000
All Other Programs	1,882,963	1,950,348	1,979,600	2,019,200	2,059,600	2,121,400	2,185,000
Total Direct Program	2,410,440	2,465,572	2,604,800	2,628,500	2,655,000	2,721,000	2,790,900
GENERAL & ADMIN (incl offsets)	362,305	402,002	408,000	416,200	424,500	437,200	450,300
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
<b>TOTAL EXPENSES</b>	<b>10,649,880</b>	<b>10,952,732</b>	<b>11,513,300</b>	<b>11,831,500</b>	<b>12,205,300</b>	<b>12,614,500</b>	<b>13,043,300</b>
<b>NET REVENUE/(EXPENSE) - OPERATIONS</b>	<b>\$448,893</b>	<b>\$92,270</b>	<b>\$664,350</b>	<b>\$230,784</b>	<b>(\$142,217)</b>	<b>\$611,484</b>	<b>(\$130,417)</b>

**2015 Budget**

**Five-Year Forecast**

**Fanno Creek Place**

EXHIBIT B

10

Fanno Creek Place		BUDGET	BUDGET	F O R E C A S T				
		2014	2015	2016	2017	2018	2019	2020
<b>REVENUE</b>								
RENTAL INCOME								
PLF	\$512,379	\$520,065	\$527,865	\$535,783	\$543,820	\$551,977	\$560,257	
First Floor Tenant - Suite 175 - Zip Realty	48,681	44,966	46,315	47,704	49,136	50,610	28,236	
First Floor Tenant - Suite 150 - Joffe	130,599	132,580	105,491	81,492	108,656	111,915	115,273	
First Floor Tenant - Suite 100 - Simpson Prop	23,486	24,191	25,700	26,500	27,300	28,119	28,963	
First Floor Tenant - Suite 110 - Prof Prop Gp	27,969	28,808	29,672	30,562	30,562	31,479	31,479	
First Floor Tenant - Suite 165 (vacant)	22,638	22,638	45,276	46,634	48,033	49,474	24,737	
OLF	29,288	30,264	31,200	32,100	33,100	34,100	35,100	
Meeting Rooms	40,000	30,000	30,000	25,000	24,000	24,000	24,000	
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400	
INTEREST	2,200	1,890	2,200	2,500	3,000	3,200	4,000	
<b>TOTAL REVENUE</b>	<b>837,240</b>	<b>835,402</b>	<b>846,719</b>	<b>831,376</b>	<b>870,807</b>	<b>888,175</b>	<b>855,444</b>	
<b>EXPENDITURES</b>								
OPERATING EXPENSE								
Salaries & Benefits	117,400	119,600	122,000	125,700	129,500	133,400	137,400	
Operations	330,639	347,300	354,200	364,800	375,700	387,000	398,600	
Depreciation	509,300	506,100	506,100	511,100	511,100	521,100	521,100	
Other	8,600	8,540	8,540	8,600	8,540	8,600	8,540	
DEBT SERVICE								
Interest	707,655	693,700	678,884	663,158	646,462	628,739	609,924	
<b>TOTAL OPERATING EXPENSES</b>	<b>1,673,594</b>	<b>1,675,240</b>	<b>1,669,724</b>	<b>1,673,358</b>	<b>1,671,302</b>	<b>1,678,839</b>	<b>1,675,564</b>	
ICA to Operations	(160,459)	(160,459)	(160,500)	(164,500)	(164,500)	(164,500)	(168,600)	
<b>NET EXPENSES</b>	<b>1,513,135</b>	<b>1,514,781</b>	<b>1,509,224</b>	<b>1,508,858</b>	<b>1,506,802</b>	<b>1,514,339</b>	<b>1,506,964</b>	
<b>NET REVENUE/(EXPENSE) - FC Place</b>	<b>(\$675,895)</b>	<b>(\$679,379)</b>	<b>(\$662,505)</b>	<b>(\$677,482)</b>	<b>(\$635,995)</b>	<b>(\$626,164)</b>	<b>(\$651,520)</b>	
<b>ACCRUAL TO CASH ADJUSTMENT</b>								
SOURCES OF FUNDS								
Depreciation Expense	509,300	506,100	506,100	511,100	511,100	521,100	521,100	
Landlord Contingency Fund	30,000	30,000				200,000		
Loan Proceeds								
USES OF FUNDS								
Assign PLF Subtenants' Leases (Net)								
TI's - First Floor Tenants	(30,000)	(30,000)						
Principal Pmts - Mortgage	(226,653)	(240,608)	(255,424)	(271,150)	(287,846)	(305,569)	(324,384)	
<b>NET CASH FLOW - FC Place</b>	<b>(\$393,248)</b>	<b>(\$413,887)</b>	<b>(\$411,829)</b>	<b>(\$437,532)</b>	<b>(\$412,741)</b>	<b>(\$210,633)</b>	<b>(\$454,804)</b>	

OSB 2015 BUDGET REPORT

2015 Budget

Five-Year Forecast

Funds Available/Reserve Requirement

	BUDGET	BUDGET	F O R E C A S T				
	2014	2015	2016	2017	2018	2019	2020
<b>FUNDS AVAILABLE</b>							
Funds Available - Beginning of Year	\$ 2,132,000	\$2,221,145	\$1,547,728	\$1,856,949	\$1,858,901	\$1,322,043	\$1,652,993
<b>SOURCES OF FUNDS</b>							
Net Revenue/(Expense) from operations	448,893	92,270	664,350	230,784	(142,217)	611,484	(130,417)
Depreciation Expense	140,000	114,100	116,400	118,700	121,100	122,300	123,500
Provision for Bad Debts	25,000	36,200	30,000	30,000	30,000	30,000	30,000
Increase in Investment Portfolio MV	85,000	62,000	68,000	78,000	0	101,000	122,000
Allocation of PERS Reserve	111,000	64,440	129,000	64,500			
Projected HIGHER Net Operating Revenue	0						
<b>USES OF FUNDS</b>							
Capital Expenditures	(54,400)	(62,150)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Expenditures - Building	(5,000)	0	(30,000)		(50,000)		(50,000)
Capital Reserve - AMS Software		(500,000)	(120,000)				
Capital Reserve Expenditures - Building						(200,000)	
Landlord Contingency Interest	(2,100)	(1,890)	(2,200)	(2,500)	(3,000)	(3,200)	(4,000)
Net Cash Flow - Fanno Creek Place	(393,248)	(413,887)	(411,829)	(437,532)	(412,741)	(210,633)	(454,804)
Addition to PERS Reserve	(129,000)	(64,500)	(64,500)				
<b>Projected LOWER Net Operating Revenue</b>	<b>(137,000)</b>						
<b>CHANGE IN FUNDS AVAILABLE</b>	<b>89,145</b>	<b>(673,417)</b>	<b>309,221</b>	<b>1,951</b>	<b>(536,857)</b>	<b>330,950</b>	<b>(443,720)</b>
<b>Funds Available - End of Year</b>	<b>\$2,221,145</b>	<b>\$1,547,728</b>	<b>\$1,856,949</b>	<b>\$1,858,901</b>	<b>\$1,322,043</b>	<b>\$1,652,993</b>	<b>\$1,209,273</b>
<b>RESERVE REQUIREMENT</b>							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
<b>Total - Reserve Requirement</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
<b>RESERVE VARIANCE</b>							
Over/(Under) Reserve Requirement	\$1,221,145	\$547,728	\$856,949	\$858,901	\$322,043	\$652,993	\$209,273
<b>RECONCILIATION</b>							
<b>CASH to ACCRUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>	<b>F O R E C A S T</b>				
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
NET REVENUE/(EXPENSE) - Operations	448,893	92,270	664,350	230,784	(142,217)	611,484	(130,417)
NET REVENUE/(EXPENSE) - FC Place	(675,895)	(679,379)	(662,505)	(677,482)	(635,995)	(626,164)	(651,520)
NET REVENUE/(EXPENSE) - OSB	(\$227,002)	(\$587,109)	\$1,845	(\$446,699)	(\$778,211)	(\$14,681)	(\$781,936)

## **Admissions**

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The Admissions Department administers the Supreme Court Rules for Admission of Attorneys in Oregon on behalf of the Board of Bar Examiners (BBX) and the Oregon Supreme Court. The department processes applications for admission via the bar examination, reciprocity, house counsel, law teacher admission, and pro bono admission. The office also assists the BBX in conducting character and fitness investigations on all applicants seeking admission to the bar.

- The Admissions office will process over 900 applications in 2014. Approximately 700 of those took the Oregon bar exam. Bar exam numbers remained relatively unchanged for the third consecutive year.
- The number of law school grads in 2015 is expected to decrease by 10-20% nationwide when compared to recent graduation numbers. The 2015 budget includes a decrease in graduates to reduce the total number of exam takers in Oregon by approximately 10%.
- Reciprocity applicants continue to gradually increase as 2014 is on pace to reach 175 applicants, which is approximately 10% more than anticipated. The 2015 estimate is conservatively in line with the 2014 projected amount.
- In 2014 two of Admissions largest expenses decreased when a staff position was eliminated by combining the duties of the Admissions Assistant and Admissions Specialist positions and the grading session was reduced by one day. The 2015 budget will continue to benefit from those reductions.
- Although bar exam applicants and overall revenue are expected to decline in 2015, related expenses were reduced to maintain a balanced budget for Admissions in 2015.



Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
101-4070-000	Applications - Bar Exam	437,500	403,124	-34,376
101-4070-100	Applications - W/O Bar Exam	106,250	116,875	10,625
101-4180-000	Supreme Court Certificate revenue	6,000	7,000	1,000
101-4320-000	Investigation Fees - Bar Exam	46,250	46,250	0
101-4320-100	Investigation Fees - W/O Bar Exam	72,250	79,475	7,225
101-4355-000	Late Fees - Bar Exam	38,500	28,000	-10,500
101-4490-000	Photocopies	4,950	4,950	0
101-4750-000	Laptop Fees	31,371	30,969	-402
<b>Total Revenues</b>		<b>\$743,071</b>	<b>\$716,643</b>	<b>(\$26,428)</b>
<i>Salaries &amp; Benefits</i>				
101-6100-000	Employee Salaries - Regular	218,400	208,200	-10,200
101-6105-000	Employee Taxes & Benefits - Regular	83,300	76,200	-7,100
<b>Total Salaries &amp; Benefits</b>		<b>\$301,700</b>	<b>\$284,400</b>	<b>(\$17,300)</b>
<i>Direct Program Expenses</i>				
101-7110-000	Bar Exam Multistate Fees - MBE	39,900	37,200	-2,700
101-7110-100	Bar Exam Multistate Fees - MPT	17,290	16,120	-1,170
101-7110-200	Bar Exam Multistate Fees - MEE	8,645	8,000	-585
101-7130-000	Bar Exam Special Testing Conditions	7,500	6,000	-1,500
101-7135-000	Laptop Exp - Special Testing Conditions	4,200	2,200	-2,000
101-7135-100	Bar Exam Laptop Testing Exp - Electrical	3,750	3,600	-150
101-7140-000	Bar Exam Specific expenses	12,000	12,000	0
101-7175-000	Supreme Court Certificates	4,000	2,000	-2,000
101-7265-000	Contract Services	2,000	1,000	-1,000
101-7360-000	Facilities	18,000	15,000	-3,000
101-7415-000	Hearings	5,000	3,000	-2,000
101-7450-000	Investigation - Character/Fitness	3,000	6,500	3,500
101-7765-000	Legal Research	0	6,500	6,500
101-7930-016	Travel & Expense - Board	145,950	127,000	-18,950
101-7940-000	Travel & Expense - Others	2,000	2,000	0
<b>Total Direct Program Expenses</b>		<b>\$273,235</b>	<b>\$248,180</b>	<b>(\$25,055)</b>
<i>General &amp; Administrative Expenses</i>				
101-9400-000	Messenger & Delivery Services	200	200	0
101-9500-000	Office Supplies	2,000	2,000	0
101-9600-000	In House Printing	3,000	5,000	2,000
101-9620-000	Postage	5,000	5,000	0
101-9640-000	Professional Dues	0	200	200
101-9680-000	Publications & Subscriptions	300	250	-50
101-9800-000	Telephone	100	100	0
101-9830-000	Training & Education	800	900	100
101-9850-000	Travel & Expense - Staff	6,704	19,140	12,436
<b>Total General &amp; Administrative Expenses</b>		<b>\$18,104</b>	<b>\$32,790</b>	<b>\$14,686</b>
<b>Total Expenses</b>		<b>\$593,039</b>	<b>\$565,370</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$150,032</b>	<b>\$151,273</b>	
101-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$120,694</b>	<b>\$127,621</b>	
<b>Net Revenue (Expense)</b>		<b>\$29,338</b>	<b>\$23,652</b>	

## **Bulletin**

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The Bulletin Department is responsible for the publication of OSB Bulletin, the ten-issue magazine mailed to every active, inactive and active pro bono member of the Oregon State Bar, advertisers, and approximately one hundred subscribers. Total circulation is approximately 18,900.

The Bulletin staff consists of a full-time editor, a half-time associate editor and a half-time administrative assistant. Advertising is handled by an independent contractor paid by commission. Design and production is handled by the bar's Creative Services Department.

Working with bar leadership and senior bar staff, the Bulletin staff develops an editorial calendar of articles, columns and other features, and works with bar leaders, bar staff, freelance writers and volunteers to procure and edit all editorial matter in the magazine. Staff also edit and write the several hundred press releases submitted every year for the Briefs, Bar News and the popular Bar People column ("Among Ourselves" and "Moves").

The Bulletin's major revenue is generated by three forms of advertising: display advertising, lawyer announcements, and classifieds. Pursuant to postal regulations, a small portion of the annual member fee (\$10 per year) is allocated to the Bulletin for the purpose of a subscription. Other minor revenue categories are royalties (Lexis-Nexis and Westlaw/Thomson Reuters) and photo fees (Bar People section).

Recent financial trends include:

- after several years of softness in the business-to-lawyer advertising sector (e.g., expert witnesses, professional services, publishers), the market has begun to stabilize and show signs of improvement;
- slow but continuing growth in the lawyer-to-lawyer advertising sector (firms seeking referrals, announcement of moves, openings and new hires);
- flattening revenues from classified advertising, mirroring a national trend;
- a continuing shift to smaller, or less frequent, advertisements, sometimes to the "Attorney Marketplace" or classified advertising sections; and
- small increases in postage (about 3% to 5%); printing, paper and other key expenses remain relatively flat.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
123-4005-001	Atty Market Place Adv - 5 issues	32,500	32,500	0
123-4006-001	Atty Market Place Ads - 10 issues	32,500	32,500	0
123-4010-xxx	Advertising - ALL	303,306	306,342	3,036
123-4015-xxx	Advertising - Classified - ALL	37,918	38,292	374
123-4020-xxx	Advertising - Lawyer Announceme - ALL	57,866	58,448	582
123-4405-000	Membership Fees - Subscriptions	191,300	194,200	2,900
123-4485-000	Photo Fees	4,000	4,000	0
123-4610-000	Royalties	2,500	3,600	1,100
123-4705-000	Subscriptions - Bulletin	900	400	-500
<b>Total Revenues</b>		<b>\$662,790</b>	<b>\$670,282</b>	<b>\$7,492</b>
<i>Salaries &amp; Benefits</i>				
123-6100-000	Employee Salaries - Regular	133,400	125,900	-7,500
123-6105-000	Employee Taxes & Benefits - Regular	50,900	46,100	-4,800
<b>Total Salaries &amp; Benefits</b>		<b>\$184,300</b>	<b>\$172,000</b>	<b>(\$12,300)</b>
<i>Direct Program Expenses</i>				
123-7090-000	Bank Fees - Credit Card Processing	1,200	2,000	800
123-7194-000	Commissions Expense	110,492	111,403	911
123-7265-xxx	Contract Services - ALL	35,500	36,250	750
123-7670-xxx	Postage - ALL	59,511	59,765	254
123-7700-xxx	Printing Services - ALL	65,268	63,824	-1,444
123-7875-xxx	Supplies - ALL	63,933	63,998	65
<b>Total Direct Program Expenses</b>		<b>\$335,904</b>	<b>\$337,240</b>	<b>\$1,336</b>
<i>General &amp; Administrative Expenses</i>				
123-9500-000	Office Supplies	150	150	0
123-9600-000	In House Printing	250	250	0
123-9620-000	Postage	1,000	1,000	0
123-9640-000	Professional Dues	634	534	-100
123-9660-000	Bad Debt Expense	250	250	0
123-9680-000	Publications & Subscriptions	25	25	0
123-9830-000	Training & Education	375	375	0
123-9850-000	Travel & Expense - Staff	1,452	1,713	261
123-9999-000	Miscellaneous Expense	50	50	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$4,186</b>	<b>\$4,347</b>	<b>\$161</b>
<b>Total Expenses</b>		<b>\$524,390</b>	<b>\$513,587</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$138,400</b>	<b>\$156,695</b>	
123-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$128,313</b>	<b>\$121,649</b>	
<b>Net Revenue (Expense)</b>		<b>\$10,087</b>	<b>\$35,046</b>	

## **Client Assistance Office**

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The Client Assistance Office (CAO) screens written complaints about lawyers practicing in Oregon and addresses other concerns about lawyers. CAO processes about 2,000 complaints a year, separating the credible ones that implicate a rule of professional conduct from ones that do not. Credible complaints that implicate a rule of conduct are forwarded to Disciplinary Counsel's Office. Complaints that are either nonjurisdictional or lacking credible evidence are dismissed in writing.

CAO often provides non-legal advice, answers questions about lawyer conduct and provides some assistance to the public such as referrals to other agencies, re-establishing good lines of communication between lawyers and clients and helping clients obtain their files. This assistance and the time spent speaking to the public occupies a great deal of CAO staff time.

CAO lawyers also speak at CLE's and national conferences, give informal ethics advice to members, and write Bar Counsel articles.

- CAO generates no revenue.
- The bulk of CAO's budget goes to employee salaries, taxes and benefits.
- A new staff attorney was hired in 2014 to replace the staff person promoted to CAO manager.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Salaries &amp; Benefits</b>				
112-6100-000	Employee Salaries - Regular	366,900	380,900	14,000
112-6105-000	Employee Taxes & Benefits - Regular	139,900	139,400	-500
<b>Total Salaries &amp; Benefits</b>		<b>\$506,800</b>	<b>\$520,300</b>	<b>\$13,500</b>
<b>Direct Program Expenses</b>				
112-7450-000	Inquiry/investigation related expense	600	700	100
112-7765-000	Legal Research	0	400	400
<b>Total Direct Program Expenses</b>		<b>\$600</b>	<b>\$1,100</b>	<b>\$500</b>
<b>General &amp; Administrative Expenses</b>				
112-9400-000	Messenger & Delivery Service	50	50	0
112-9500-000	Office Supplies	1,500	2,000	500
112-9600-000	In House Printing	2,000	2,500	500
112-9620-000	Postage	6,000	7,000	1,000
112-9640-000	Professional Dues	2,296	3,306	1,010
112-9680-000	Publications & Subscriptions	500	500	0
112-9800-000	Telephone	300	200	-100
112-9830-000	Training & Education	500	1,000	500
112-9850-000	Travel & Expense - Staff	3,546	4,987	1,441
112-9855-204	Staff Event Expenses - Diversity Outreach	0	400	400
112-9999-000	Miscellaneous Expense	100	200	100
<b>Total General &amp; Administrative Expenses</b>		<b>\$16,792</b>	<b>\$22,143</b>	<b>\$5,351</b>
<b>Total Expenses</b>		<b>\$524,192</b>	<b>\$543,543</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$524,192)</b>	<b>(\$543,543)</b>	
112-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$122,820</b>	<b>\$150,732</b>	
<b>Net Revenue (Expense)</b>		<b>(\$647,012)</b>	<b>(\$694,275)</b>	

## CLE Seminars

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The CLE Seminars Department provides Oregon attorneys and other legal professionals with continuing legal education in a variety of seminar formats, including live in-person, webcasts, and on-demand. In addition to sponsoring 45 to 55 live seminars annually, CLE Seminars partners with national CLE providers to give OSB members increased access to online seminars. The Department also provides OSB sections with a variety of CLE services, ranging from registration support to seminar and institute co-sponsorship, and sells section CLE programs on electronic media through its online catalog.

- Live seminar revenue is projected to continue decreasing as more members seek CLE not only from OSB, but also from other providers offering both in-person and online events and online-only sponsors.
- Online seminar revenue is expected to maintain its current levels but will not have the same gains in usage as when it was first introduced to OSB members. Although more members are attending seminars online via webcast or obtaining credit through on-demand seminars, there are more CLE competitors in the marketplace and ways for OSB members to share without charge OSB CLE Seminars programs on both electronic and hard media.
- CLE seminar registration rates will increase by \$5.00 in 2015. By streamlining certain processes and utilizing technology more efficiently, there has not been an increase in registration rates since 2008.
- There will be a drop in CLE revenue due to the discontinuation of the CLEasy Pass in 2014. Based on a three-year average of 1,400 registrations per year, it is anticipated that approximately one-third of those registrations will pay full registration rates in 2015 resulting in an estimated \$67,500 in revenue.

The consistent decline in Seminars revenue is a large part due to competition, especially competition that has come into the market with education available through electronic media. Based on 2013 data the bar's CLE Seminars retains the largest market share based on credit hours at 12.6%. However, this percent has been more than cut in half over the past five years.

- Some national CLE providers offer OSB members unlimited Oregon-approved CLE credit for rock-bottom prices (\$199 for one year). One such national provider is a noticeable source of MCLE credits for Oregon attorneys (a top 20 provider of CLE credit in Oregon).
- The Department will be launching new marketing, including discounts and special pricing. These efforts are expected to increase revenue by \$10,000 by increasing the frequency of purchases for OSB CLE seminars and products.
- Although CLE Seminars projects a significant net expense in 2015, it is expected to be less than the 2013 and 2014 results. A net expense will remain until Seminars can reverse its declining revenue trend.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Revenues</b>				
109-4235-000	Discounts on Sales	-12,000	-8,000	4,000
109-4290-000	Freight charge revenue	5,000	4,500	-500
109-4565-xxx	Registrations (Conferences/Semi - ALL	470,285	299,350	-170,935
109-4620-xxx	Sales - ALL	666,500	538,500	-128,000
109-4670-000	Services - Sections	20,200	25,000	4,800
109-4670-100	Services - Other	0	2,000	2,000
109-4760-000	Video Rentals	4,000	3,000	-1,000
109-4760-624	Audio Rental - Reciprocity	30,000	30,000	0
109-4760-628	Video Rentals - DVD's	8,000	8,000	0
109-4760-756	DVD Rental - Reciprocity	60,000	50,000	-10,000
109-4999-000	Miscellaneous Revenue	500	1,000	500
<b>Total Revenues</b>		<b>\$1,252,485</b>	<b>\$953,350</b>	<b>(\$299,135)</b>
<b>Salaries &amp; Benefits</b>				
109-6100-000	Employee Salaries - Regular	332,100	339,600	7,500
109-6105-000	Employee Taxes & Benefits - Regular	126,600	124,300	-2,300
<b>Total Salaries &amp; Benefits</b>		<b>\$458,700</b>	<b>\$463,900</b>	<b>\$5,200</b>
<b>Direct Program Expenses</b>				
109-7025-000	Advertising	3,000	1,000	-2,000
109-7085-xxx	Audio / Visual - ALL	67,600	70,100	2,500
109-7090-000	Bank Fees - Credit Card Processing	10,000	15,000	5,000
109-7165-xxx	Catering - ALL	118,350	119,950	1,600
109-7205-015	Computer - Website development/Mtce	500	500	0
109-7360-xxx	Facilities - ALL	9,000	9,700	700
109-7563-000	Mailhouse Services-	6,000	6,000	0
109-7670-xxx	Postage - ALL	18,000	15,850	-2,150
109-7700-xxx	Printing Services - ALL	28,400	26,600	-1,800
109-7730-xxx	Program Materials - ALL	26,300	24,650	-1,650
109-7810-000	Royalties expense	7,000	5,000	-2,000
109-7830-000	Section Services Expenses	1,200	1,400	200
109-7837-xxx	Speaker Airfare - ALL	9,800	12,600	2,800
109-7840-xxx	Speaker Expense - ALL	50,250	47,090	-3,160
109-7845-xxx	Lodging - ALL	18,520	19,220	700
109-7850-000	Special Projects	5,000	5,000	0
109-7875-625	Supplies - Audio CD's	14,000	5,000	-9,000
109-7875-628	Supplies - DVD's	6,000	3,000	-3,000
109-7965-xxx	Video Replays - ALL	3,800	3,100	-700
109-7999-xxx	Miscellaneous Expense - ALL	8,580	10,465	1,885
<b>Total Direct Program Expenses</b>		<b>\$411,300</b>	<b>\$401,225</b>	<b>(\$10,075)</b>
<b>General &amp; Administrative Expenses</b>				
109-9500-000	Office Supplies	500	500	0
109-9600-000	In House Printing	200	200	0
109-9620-000	Postage	10,000	5,000	-5,000
109-9640-000	Professional Dues	1,307	1,372	65
109-9660-000	Provision for Bad Debts	500	200	-300
109-9680-000	Publications & Subscriptions	50	50	0
109-9800-000	Telephone	50	50	0
109-9830-000	Training & Education	3,885	3,885	0
109-9850-000	Travel & Expense - Staff	8,406	7,172	-1,234
109-9999-000	Miscellaneous Expense	100	100	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$24,998</b>	<b>\$18,529</b>	<b>(\$6,469)</b>
<b>Total Expenses</b>		<b>\$894,998</b>	<b>\$883,654</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$357,487</b>	<b>\$69,696</b>	
109-9000-000	<b>Less: Indirect Cost Allocation</b>	<b>\$329,814</b>	<b>\$253,062</b>	
<b>Net Revenue (Expense)</b>		<b>\$27,673</b>	<b>(\$183,366)</b>	

## **Communications & Public Services**

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The Communications & Public Services Department coordinates the bar's organizational communications to ensure consistent and effective delivery of OSB information and priority messages to members and the public.

- Public service functions include development of website content, legal information pamphlets and specialty publications, and multimedia support.
- Member communications functions include content development for the bar's website and portions of the Bulletin; publication of the electronic Bar News and BOG Update e-newsletters, along with other all-member emails; coordination of special events including the annual Awards Luncheon and the 50-Year Member event, and assistance with OSB room rentals; and communications and marketing support to other bar programs and departments. The department director also has policy and oversight responsibilities for the Bulletin, Creative Services and Referral & Information Services programs, each of which has a separate budget.

More than 97% of non-ICA cost is salaries and benefits consisting of the department director and staff for marketing, project manager/events, public education/multimedia, and occasional temporary administrative support from other bar staff.

Revenue for the new online career center through Job Target exceeded projections passing the 2014 annual revenue target of \$11,000 in September. The 2015 budget projection includes a modest increase.

Most of the department's direct expenses have corresponding revenue lines. For example, catering expense correlates directly to catered event revenue, and printing expenses are largely offset by revenue from pamphlet sales. Revenue for sales of public education materials largely offsets associated printing expense.

Tel-Law phone expenses have declined for the past few years as the bar transitions away from telephone recordings in favor of online delivery. The phone system will be discontinued at the end of 2014.



Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Revenues</b>				
108-4165-000	Catered Events	10,800	10,000	-800
108-4185-000	Commissions - Job Target	11,000	13,500	2,500
108-4620-037	Sales - Legal Issues	0	80	80
108-4620-039	Sales - Pamphlets (Members)	1,500	1,600	100
<b>Total Revenues</b>		<b>\$23,300</b>	<b>\$25,180</b>	<b>\$1,880</b>
<b>Salaries &amp; Benefits</b>				
108-6100-000	Employee Salaries - Regular	353,300	349,400	-3,900
108-6105-000	Employee Taxes & Benefits - Regular	134,700	127,900	-6,800
108-6200-000	Employee Salaries - Temporary	0	3,200	3,200
108-6205-000	Employee Taxes & Benefits - Temporary	0	320	320
<b>Total Salaries &amp; Benefits</b>		<b>\$488,000</b>	<b>\$480,820</b>	<b>(\$7,180)</b>
<b>Direct Program Expenses</b>				
108-7090-000	Bank Fees - Credit Card Processing	100	100	0
108-7165-000	Catering Expense	10,800	11,200	400
108-7395-000	Gifts & Awards	1,400	1,500	100
108-7575-000	Marketing	3,500	3,500	0
108-7730-000	Materials	1,000	500	-500
108-7850-000	Special Projects	600	500	-100
108-7975-000	Volunteer Recognition	600	300	-300
<b>Total Direct Program Expenses</b>		<b>\$18,000</b>	<b>\$17,600</b>	<b>(\$400)</b>
<b>General &amp; Administrative Expenses</b>				
108-9500-000	Office Supplies	400	250	-150
108-9600-000	In House Printing	2,200	2,200	0
108-9620-000	Postage	950	950	0
108-9640-000	Professional Dues	0	1,094	1,094
108-9800-000	Telephone	1,500	500	-1,000
108-9830-000	Training & Education	1,600	1,200	-400
108-9850-000	Travel & Expense - Staff	800	400	-400
108-9999-000	Miscellaneous Expense	150	150	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$7,600</b>	<b>\$6,744</b>	<b>(\$856)</b>
<b>Total Expenses</b>		<b>\$513,600</b>	<b>\$505,164</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$490,300)</b>	<b>(\$479,984)</b>	
108-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$119,235</b>	<b>\$126,878</b>	
<b>Net Revenue (Expense)</b>		<b>(\$609,535)</b>	<b>(\$606,862)</b>	

## **Disciplinary Counsel**

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Regulatory Services and Disciplinary Counsel consists of eight full-time lawyers, an office manager, a part-time investigator, a legal assistant, and five full-time support staff. The department's responsibilities to maintain public and member confidence in the legal system include:

- Investigate complaints forwarded from Client Assistance Office
- Initiate complaints arising from reciprocal discipline matters, criminal convictions, and trust account overdrafts
- Seek suspension, where appropriate, based upon failure to respond, multiple complaints, or perceived disability or diminished capacity
- Pursue formal proceedings authorized by State Professional Responsibility Board to settlement or trial, including conducting discovery, limited motion practice, mediation, settlement negotiations, and hearings
- Draft appellate brief and attend oral argument, where necessary
- Represent BBX in the appeal of contested admission decisions
- Represent OSB in the trial and appeal of contested reinstatement proceedings
- Process status changes including resignations, inactive and pro bono status transfers, reinstatements, and *pro hac vice* applications
- Issue good standing certificates, respond to public records requests, maintain membership file storage and maintenance
- Develop curriculum and present Ethics School twice annually
- Monitor probations and diversions
- Speak and write articles for continuing education programs and related publications

Changes for the Disciplinary Counsel 2015 budget are:

- The budget includes an increase in travel and expense for staff to accommodate an additional attorney's attendance at conferences on lawyer regulation and Disciplinary Counsel's attendance at admission regulation conferences. The former is consistent with the goal of increasing Oregon's connectedness nationally with the attorney regulation community and the latter to pursue a similar path in bar admissions.
- There is a proposed increase to the contract services budget line due to additional mediations being conducted and the expense of the mediators.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
115-4080-000	Arbitration Registration Fees	2,000	3,500	1,500
115-4180-000	Certificates of Good Standing	13,000	14,000	1,000
115-4285-000	Filing Fees - PHV	5,500	5,500	0
115-4310-000	Interest - Judgments	750	750	0
115-4340-000	Judgments Collected	12,000	13,000	1,000
115-4490-000	Photocopies - Public Records	2,000	1,500	-500
115-4565-092	Registrations - Ethics School	3,500	3,500	0
115-4580-000	Reinstatement Fees	40,000	42,000	2,000
<b>Total Revenues</b>		<b>\$78,750</b>	<b>\$83,750</b>	<b>\$5,000</b>
<i>Salaries &amp; Benefits</i>				
115-6100-000	Employee Salaries - Regular	1,210,000	1,301,400	91,400
115-6105-000	Employee Taxes & Benefits - Regular	461,300	476,300	15,000
<b>Total Salaries &amp; Benefits</b>		<b>\$1,671,300</b>	<b>\$1,777,700</b>	<b>\$106,400</b>
<i>Direct Program Expenses</i>				
115-7015-000	Accused Cost Bills	2,000	2,000	0
115-7090-000	Bank Fees - Credit Card Processing	50	250	200
115-7190-000	Collection Fees - Judgments	500	500	0
115-7195-000	Committee Expense	500	500	0
115-7245-092	Ethics School course-related expense	1,500	2,500	1,000
115-7265-000	Contract Services	7,000	10,000	3,000
115-7275-000	Court Reporter	60,000	60,000	0
115-7285-000	Custodianship Expense	2,500	2,500	0
115-7450-000	Investigation/Litigation - Disciplinary	11,500	10,000	-1,500
115-7450-035	Investigation - Reinstatement	6,000	6,000	0
115-7700-000	Printing	3,000	2,500	-500
115-7765-000	Research	3,500	3,000	-500
115-7930-016	Travel & Expense - SPRB	12,000	15,000	3,000
115-7980-000	Witness/Filing Service Fees	4,500	4,000	-500
<b>Total Direct Program Expenses</b>		<b>\$114,550</b>	<b>\$118,750</b>	<b>\$4,200</b>
<i>General &amp; Administrative Expenses</i>				
115-9400-000	Messenger & Delivery Services	300	300	0
115-9500-000	Office Supplies	7,000	7,000	0
115-9600-000	In House Printing	10,000	9,500	-500
115-9620-000	Postage	11,500	11,000	-500
115-9640-000	Professional Dues	6,556	8,451	1,895
115-9680-000	Publications & Subscriptions	6,019	5,856	-163
115-9800-000	Telephone	100	50	-50
115-9830-000	Training & Education	8,440	8,390	-50
115-9850-000	Travel & Expense - Staff	29,417	30,986	1,569
115-9999-000	Miscellaneous Expense	500	1,000	500
<b>Total General &amp; Administrative Expenses</b>		<b>\$79,832</b>	<b>\$82,533</b>	<b>\$2,701</b>
<b>Total Expenses</b>		<b>\$1,865,682</b>	<b>\$1,978,983</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$1,786,932)</b>	<b>(\$1,895,233)</b>	
115-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$372,826</b>	<b>\$371,876</b>	
<b>Net Revenue (Expense)</b>		<b>(\$2,159,758)</b>	<b>(\$2,267,109)</b>	

## General Counsel

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General Counsel's Office consists of two full-time lawyers and one full-time support staff person to provide legal advice and assistance to the Board of Governors, bar staff, bar committees and sections, the Client Security Fund, and the Disciplinary Board. Additional legal services provided are:

- Serve as legal advisor to the Human Resources Director and other managers on personnel issues;
- draft and review contracts between the bar and sections and its vendors, tenants and contractors, and represent the bar's interests in non-disciplinary litigation;
- administer the OSB Fee Arbitration Program, oversee the operations of the Client Assistance Office and the Mandatory Continuing Legal Education Office, and serve as the Disciplinary Board Clerk's Office;
- provide support to the Unlawful Practice of Law Committee, the Legal Ethics Committee, the State Lawyers Assistance Committee, and BOG Task Forces.

Notable changes in the 2015 General Counsel Office budget are:

- Added as a separate line item is \$5,000 for evaluations of lawyers who have been referred to the State Lawyers Assistance Committee ("SLAC"). This item was in the budget for many years, but unused perhaps because it was under-utilized.

Most lawyers referred to SLAC suffer from drug or alcohol addiction. Over the last two years SLAC has received more referrals of lawyers with cognitive impairments and other serious mental health conditions. Evaluations for these conditions cost significantly more and the lawyers with these conditions are typically less likely to have the means to pay for the evaluations. This line item is restored so SLAC is able to comply with its statutory obligations to investigate and monitor referred lawyers who suffer from an untreated or unacknowledged condition that impairs their ability to practice law.

- The travel and expense line item has been increased for General Counsel to attend more specialty bar events in accordance with the strategies and goals of the diversity action plan, and to attend the National Association of Bar Executives Annual Conference for professional development, networking and educational purposes.
- Training and education is increased to account for additional training for General Counsel's administrative assistant, and General Counsel's attendance at the National Association of Bar Executives Annual Conference.
- Added to the budget is \$400 for production of pamphlets to support the UPL Committee's outreach campaign relating to notario fraud, which is also in accordance with the strategies and goals of the diversity action plan.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
117-4285-000	Filing Fees - Fee Arbitration	2,500	2,500	0
<b>Total Revenues</b>		<b>\$2,500</b>	<b>\$2,500</b>	<b>\$0</b>
<i>Salaries &amp; Benefits</i>				
117-6100-000	Employee Salaries - Regular	283,900	304,900	21,000
117-6105-000	Employee Taxes & Benefits - Regular	108,200	111,600	3,400
<b>Total Salaries &amp; Benefits</b>		<b>\$392,100</b>	<b>\$416,500</b>	<b>\$24,400</b>
<i>Direct Program Expenses</i>				
117-7090-000	Bank Fees - Credit Card related	0	100	100
117-7195-000	Committees - State Lawyers Assistance Committee In	0	5,000	5,000
117-7195-069	UPL Committee Expense	300	300	0
117-7265-000	Contract Services-Legal	30,000	30,000	0
117-7265-069	Legal & Contract Services - UPL	3,000	3,000	0
117-7650-000	Pamphlet Production	100	500	400
117-7710-060	Publication - Disciplinary Board Reporter	350	350	0
117-7765-000	Research	1,200	1,200	0
117-7930-060	Travel & Expense - Disciplinary Board	8,500	8,500	0
<b>Total Direct Program Expenses</b>		<b>\$43,450</b>	<b>\$48,950</b>	<b>\$5,500</b>
<i>General &amp; Administrative Expenses</i>				
117-9400-000	Messenger & Delivery Services	100	100	0
117-9500-000	Office Supplies	400	400	0
117-9600-000	In House Printing	1,500	1,500	0
117-9620-000	Postage	1,500	1,500	0
117-9640-000	Professional Dues	2,194	2,354	160
117-9680-000	Publications & Subscriptions	3,145	3,145	0
117-9800-000	Telephone	200	300	100
117-9800-069	Telephone - UPL	200	200	0
117-9830-000	Training & Education	2,000	3,000	1,000
117-9850-000	Travel & Expense - Staff	4,688	6,700	2,012
117-9999-000	Miscellaneous Expense	300	400	100
<b>Total General &amp; Administrative Expenses</b>		<b>\$16,227</b>	<b>\$19,599</b>	<b>\$3,372</b>
<b>Total Expenses</b>		<b>\$451,777</b>	<b>\$485,049</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$449,277)</b>	<b>(\$482,549)</b>	
117-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$76,073</b>	<b>\$102,878</b>	
<b>Net Revenue (Expense)</b>		<b>(\$525,350)</b>	<b>(\$585,427)</b>	

## **Governance**

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The Governance budget includes expenses for the House of Delegates' regional and annual meetings; travel and meeting expenses for the Board of Governors; travel and expense for the President and President-Elect; salaries and expenses for the Executive Director and Executive Assistant; and partial reimbursement for the bar's ABA Delegates.

The largest program expense is for the costs of the Board of Governors' meetings. This cost is expected to be higher in 2015 for travel reimbursement of board members.

- The budget of \$7,500 for bar employee reimbursement for travel to out-of-town BOG meetings is separated from BOG member bar-related expenses.
- The reimbursement to out-of-area BOG members for travel and lodging expenses is increased by \$5,500 to \$15,500.
- The Executive Director Special Projects line item varies year over year based on new or special events or activities developed by the Executive Director.
- The \$5,900 line item for Insurance is the annual premium for Directors & Officers Insurance.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Salaries &amp; Benefits</b>				
107-6100-000	Employee Salaries - Regular	218,000	227,900	9,900
107-6105-000	Employee Taxes & Benefits - Regular	83,100	83,400	300
<b>Total Salaries &amp; Benefits</b>		<b>\$301,100</b>	<b>\$311,300</b>	<b>\$10,200</b>
<b>Direct Program Expenses</b>				
107-7150-021	Pres/Pres Elect Taxable Spouse Exp	3,700	3,700	0
107-7150-022	BOG Conference Travel - President	12,000	12,000	0
107-7150-023	BOG Conference Travel - President-Elect	9,400	9,400	0
107-7150-024	BOG Officer Allowance - Local Bar Visits	3,000	3,000	0
107-7150-027	BOG Members - WSBC Conference Travel	6,000	6,000	0
107-7290-000	Delegate Expense - ABA	6,000	6,000	0
107-7395-000	Gifts & Awards	2,000	2,150	150
107-7445-000	Insurance	5,000	5,900	900
107-7538-000	Local Bar & Special BOG Events	13,000	13,000	0
107-7590-172	Meeting - House of Delegates	3,000	3,000	0
107-7851-018	Exec. Dir. Special Projects	12,500	12,500	0
107-7860-000	Sponsorships Evcmt Attendance	10,000	16,250	6,250
107-7885-016	Telephone - BOG	650	650	0
107-7930-xxx	Travel & Expense - ALL	66,500	80,750	14,250
<b>Total Direct Program Expenses</b>		<b>\$152,750</b>	<b>\$174,300</b>	<b>\$21,550</b>
<b>General &amp; Administrative Expenses</b>				
107-9400-000	Messenger & Delivery Services	200	200	0
107-9500-000	Office Supplies	500	500	0
107-9600-000	In-House Printing	500	500	0
107-9600-172	In House Printing - House of Delegates	150	150	0
107-9620-000	Postage	2,000	1,000	-1,000
107-9620-172	Postage - House of Delegates	250	250	0
107-9640-000	Professional Dues	1,800	1,800	0
107-9680-000	Publications & Subscriptions	250	100	-150
107-9800-000	Telephone	375	425	50
107-9830-000	Training & Education	3,750	3,400	-350
107-9850-000	Travel & Expense - Staff	13,233	13,573	340
<b>Total General &amp; Administrative Expenses</b>		<b>\$23,008</b>	<b>\$21,898</b>	<b>(\$1,110)</b>
<b>Total Expenses</b>		<b>\$476,858</b>	<b>\$507,498</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$476,858)</b>	<b>(\$507,498)</b>	
107-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$74,144</b>	<b>\$98,029</b>	
<b>Net Revenue (Expense)</b>		<b>(\$551,002)</b>	<b>(\$605,527)</b>	

## Legal Publications

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The Legal Publications Department is responsible for revising and updating 37 publications, the *Uniform Civil and Criminal Jury Instructions*, and the *Disciplinary Board Reporter* and posting all books to the BarBooks™ online library. Also included are the Public Affairs publication *Oregon Legislation Highlights* and three Professional Liability Fund books.

In 2015, Legal Publications will release supplements to the *Uniform Civil and Criminal Jury Instructions*, a 5-volume *Oregon Real Estate Deskbook* that will replace the five current real estate series titles and include several chapters from *Foreclosing Security Interests* (which has been in the works throughout 2014), *Environmental Law* vol. 2, a revision of *The Ethical Oregon Lawyer*, a revision of *Oregon Formal Ethics Opinions* with annotations and updated cross-references, a revision of *Creditors' Rights and Remedies* that will include several chapters from *Foreclosing Security Interests*, and a revision of *Damages*. The department also will begin work on revisions of *Elder Law* and *Juvenile Law*.

The sources of department revenue are:

### Print books

- New print titles sold on a pre-order basis to avoid excess inventory.
- Sales data indicates new titles are selling at a rate of 25% to 38% of pre-BarBooks™ sales. These figures have been used to project print book revenue for 2015.
- In 2011, 2012, and 2013, sales of older titles has consistently been \$3,000 per month. In 2014, that average increased to \$4,000 per month.

### BarBooks™ subscriptions

- Approximately 50 Staff Accounts sold to law firms for \$50 each per year.
- The State of Oregon Law Library pays \$3,275 per year for access to BarBooks™ for state employees who log in through the library portal page.
- The three Oregon law schools each pay \$1,500 per year for access to BarBooks™ for their students and faculty through their law school portal page.
- At least 20 county law libraries subscribe to BarBooks™ at a rate of \$295 per computer.

### Licensing agreements

- Legal Publications receives \$6,500 per year for licensing our *Uniform Civil and Criminal Jury Instructions* and \$26,000 per year for licensing our other books to Bloomberg Law for inclusion in its online database product.
- Legal Publications receives a 20% royalty on the revenue attributed to subscription access to our *Uniform Civil and Criminal Jury Instructions* from LexisNexis and Westlaw. Lexis revenue-to-date for 2014 is approximately \$700, increasing each month. It is too early to project the revenue from Westlaw.

The major Direct Program expenses include:

- **Printing** – The department gets at least two bids for each print project to ensure the best price and quality.
- **Indexing** – Indexing is outsourced at a rate of \$2.90 per page.
- **Contract Services** – Copyediting will no longer be outsourced in 2015 saving \$23,000.
- **Research** – WestlawNext and Westlaw Drafting Assistant allow the attorney editors to be more efficient and accurate in their substantive editing of chapters.
- **Supplies** – Generic 3-ring binders used for most publications. No binders were purchased in 2014, but a large order will be placed in 2015 to take advantage of quantity discounts.



Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
111-4175-000	Copyright Revenue	26,000	26,000	0
111-4290-000	Freight charge revenue	9,700	9,700	0
111-4610-555	Royalties - UCJI	3,450	4,000	550
111-4610-565	Royalties - UCrJI	3,450	3,350	-100
111-4620-xxx	Sales - ALL	263,777	301,897	38,120
111-4625-xxx	Sales - Online - ALL	16,175	17,650	1,475
<b>Total Revenues</b>		<b>\$322,552</b>	<b>\$362,597</b>	<b>\$40,045</b>
<i>Salaries &amp; Benefits</i>				
111-6100-000	Employee Salaries - Regular	418,500	435,000	16,500
111-6105-000	Employee Taxes & Benefits - Regular	159,500	159,200	-300
<b>Total Salaries &amp; Benefits</b>		<b>\$578,000</b>	<b>\$594,200</b>	<b>\$16,200</b>
<i>Direct Program Expenses</i>				
111-7040-000	Annual Event	1,150	1,150	0
111-7090-000	Bank Fees - Credit Card Processing	1,700	1,700	0
111-7205-083	Computer Software	144	144	0
111-7430-xxx	Indexing - ALL	16,725	22,350	5,625
111-7575-xxx	Marketing - ALL	200	200	0
111-7700-xxx	Printing Services - ALL	48,148	55,615	7,467
111-7765-000	Research	18,000	19,000	1,000
111-7850-000	Special Projects	100	100	0
111-7875-xxx	Supplies - ALL	3,000	10,000	7,000
111-7999-xxx	Miscellaneous Expense - ALL	2,910	3,740	830
<b>Total Direct Program Expenses</b>		<b>\$92,077</b>	<b>\$113,999</b>	<b>\$21,922</b>
<i>General &amp; Administrative Expenses</i>				
111-9500-000	Office Supplies	300	300	0
111-9600-000	In House Printing	100	250	150
111-9620-000	Postage	9,000	9,000	0
111-9640-000	Professional Dues	4,225	4,275	50
111-9660-000	Provision for Bad Debts	200	200	0
111-9680-000	Publications & Subscriptions	1,875	2,000	125
111-9800-000	Telephone	575	575	0
111-9830-000	Training & Education	1,380	3,000	1,620
111-9850-000	Travel & Expense - Staff	3,872	4,770	898
<b>Total General &amp; Administrative Expenses</b>		<b>\$21,527</b>	<b>\$24,370</b>	<b>\$2,843</b>
<b>Total Expenses</b>		<b>\$691,604</b>	<b>\$732,569</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$369,052)</b>	<b>(\$369,972)</b>	
111-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$257,667</b>	<b>\$205,515</b>	
<b>Net Revenue (Expense)</b>		<b>(\$626,719)</b>	<b>(\$575,487)</b>	

## **Loan Repayment Assistance Program (LRAP)**

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The mission of the Loan Repayment Assistance Program is to attract and retain public service lawyers by helping them pay their educational debt. The program will make a forgivable loan up to \$5,000 per year per program participant for a maximum of three consecutive years. The program's history shows that fewer than half of applicants in any given year have received loans.

Through 2014 the revenue to fund this program is \$5.00 allocated from each active member fee. Twenty-three participants received grants during the current year.

By previous board action, no administrative costs including .1 FTE staff time are allocated to the program. These costs are included in the Special Projects budget.

### **ACTION REQUIRED:**

The LRAP Committee requested that the \$5.00 allocation to LRAP be increased to \$10.00 for each active bar member beginning in 2015.

- At the October 3 meeting, the Budget & Finance Committee resolved to increase the allocation to \$10.00 per active member. The additional allocation will add \$76,800 in additional revenue to increase both the number of participants and the potential amount of each loan.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
106-4310-000	Interest - Fund Balance	500	500	0
106-4405-000	Membership Fees - LRAP	74,400	151,200	76,800
<b>Total Revenues</b>		<b>\$74,900</b>	<b>\$151,700</b>	<b>\$76,800</b>
<i>Direct Program Expenses</i>				
106-7183-000	LRAP Loan Disbursements	88,000	109,400	21,400
<b>Total Direct Program Expenses</b>		<b>\$88,000</b>	<b>\$109,400</b>	<b>\$21,400</b>
<b>Total Expenses</b>		<b>\$88,000</b>	<b>\$109,400</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$13,100)</b>	<b>\$42,300</b>	
106-9000-000	<i>Less: Indirect Cost Allocation</i>			
<b>Net Revenue (Expense)</b>				

## **Minimum Continuing Legal Education (MCLE)**

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The MCLE program is responsible for ensuring Oregon bar members comply with the requirements set forth in the MCLE rules.

The source of revenue is program sponsor fees and late fees.

- Sponsors applying for CLE accreditation pay a program sponsor fee of \$75 (for programs more than four credit hours) or \$40 (for programs four or fewer credit hours).
- A \$40 late fee is paid if the application is received more than 30 days after the program date. OSB members pay a late fee for failing to file their compliance report by the January 31 filing deadline (late fee starts at \$50 and increases in \$50 increments) or for failing to complete the minimum credit requirement by the end of the reporting period (late fee starts at \$200 and increases in \$50 increments).

Revenue from member late fees for 2015 is \$5,800 lower than 2014 based on the lower than expected revenue in 2014.

Duties of the department are to:

- process approximately 8,000 applications for CLE credit throughout the year;
- process approximately 5,000 compliance reports each year with approximately 95% of those reports being processed in December, January and February;
- conduct compliance report audits each spring;
- work with the MCLE Committee to propose rule and regulation amendments;
- gather attendance information for posting to member transcripts.

Due to the high volume of compliance reports and accreditation applications processed in December and January, an additional 40 hours per week for 10 weeks for temporary staffing is included in the 2015 budget.

Since the majority of compliance reports are sent via email and notices of noncompliance are sent via regular mail (not certified mail), the postage budget for 2015 is reduced by \$1,000.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
121-4355-000	Late Fees	57,800	52,000	-5,800
121-4355-045	Late Fees - Sponsors	8,500	8,500	0
121-4550-000	Sponsorship Fees	234,000	234,000	0
<b>Total Revenues</b>		<b>\$300,300</b>	<b>\$294,500</b>	<b>(\$5,800)</b>
<i>Salaries &amp; Benefits</i>				
121-6100-000	Employee Salaries - Regular	112,000	115,400	3,400
121-6105-000	Employee Taxes & Benefits - Regular	42,700	42,200	-500
121-6200-000	Employee Salaries - Temporary	6,528	6,936	408
121-6205-000	Employee Taxes & Benefits - Temporary	653	694	41
<b>Total Salaries &amp; Benefits</b>		<b>\$161,881</b>	<b>\$165,230</b>	<b>\$3,349</b>
<i>Direct Program Expenses</i>				
121-7090-000	Bank Fees - Credit Card Processing	1,500	1,750	250
<b>Total Direct Program Expenses</b>		<b>\$1,500</b>	<b>\$1,750</b>	<b>\$250</b>
<i>General &amp; Administrative Expenses</i>				
121-9500-000	Office Supplies	700	700	0
121-9600-000	In House Printing	500	500	0
121-9620-000	Postage	6,000	5,000	-1,000
121-9640-000	Professional Dues	500	500	0
121-9800-000	Telephone	100	100	0
121-9830-000	Training & Education	900	800	-100
121-9850-000	Travel & Expense - Staff	2,841	3,051	210
121-9999-000	Miscellaneous Expense	50	50	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$11,591</b>	<b>\$10,701</b>	<b>(\$890)</b>
<b>Total Expenses</b>		<b>\$174,972</b>	<b>\$177,681</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$125,328</b>	<b>\$116,819</b>	
121-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$71,468</b>	<b>\$93,074</b>	
<b>Net Revenue (Expense)</b>		<b>\$53,860</b>	<b>\$23,745</b>	

## **Member Services**

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The Member Services Department provides administrative support services to the bar's 41 sections and 19 committees. These services include:

- the scheduling of meeting rooms and maintenance of rosters;
- recruitment and appointment of volunteers;
- distribution of meeting and event notices;
- bar leadership training;
- administering the staff liaison network;
- compiling annual reports.

Similar services also are provided to several county and specialty bar associations.

The department is responsible for administering the bar's elections and judicial preference polls and providing staff assistance to the Board Development Committee of the Board of Governors.

The department specialist and director provide administrative and policy guidance to the Oregon New Lawyers Division whose budget is separate from the Member Services Department.

Changes to the Member Services Department 2015 budget include:

- The Bench and Bar Commission on Professionalism expects to produce a brochure in 2015 and has requested an increase of \$550 to cover printing costs.
- Conference phone expenses for all OSB standing committees are included in the department budget. Based on historical use of this line item the budget is reduced by \$250.
- A new line item is \$2,000 for pins for new members to be distributed by the bar president to welcome them to the Oregon State Bar.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Salaries &amp; Benefits</i>				
125-6100-000	Employee Salaries - Regular	117,100	120,600	3,500
125-6105-000	Employee Taxes & Benefits - Regular	44,600	44,100	-500
<b>Total Salaries &amp; Benefits</b>		<b>\$161,700</b>	<b>\$164,700</b>	<b>\$3,000</b>
<i>Direct Program Expenses</i>				
125-7040-000	Annual Event	1,000	1,000	0
125-7195-093	Professionalism Commission Expenses	250	800	550
125-7265-000	Contract Services - State Lawyers Assistance Commi	2,500	2,500	0
125-7585-000	New Member Welcome	0	2,000	2,000
125-7620-000	Local & Speciality Bar Outreach	500	500	0
125-7885-000	Telephone - Committee Expense	3,500	3,250	-250
125-7930-048	Committee and Section Liaison Travel & Expense	3,500	3,500	0
125-7999-000	Miscellaneous Expense	500	300	-200
<b>Total Direct Program Expenses</b>		<b>\$11,750</b>	<b>\$13,850</b>	<b>\$2,100</b>
<i>General &amp; Administrative Expenses</i>				
125-9500-000	Office Supplies	1,000	1,000	0
125-9600-000	In House Printing	500	500	0
125-9620-000	Postage	500	500	0
125-9640-000	Professional Dues	115	115	0
125-9800-000	Telephone	300	300	0
125-9830-000	Staff Training & Education	800	800	0
125-9850-000	Staff Travel & Expense	1,822	1,982	160
<b>Total General &amp; Administrative Expenses</b>		<b>\$5,037</b>	<b>\$5,197</b>	<b>\$160</b>
<b>Total Expenses</b>		<b>\$178,487</b>	<b>\$183,747</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$178,487)</b>	<b>(\$183,747)</b>	
125-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$104,910</b>	<b>\$110,789</b>	
<b>Net Revenue (Expense)</b>		<b>(\$283,397)</b>	<b>(\$294,536)</b>	

## **New Lawyers Mentoring Program**

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This budget consists of two areas of responsibility – the New Lawyer Mentoring Program (NLMP) and Media Relations. Most of the departments' costs are for personnel and in 2014 the NLMP added .4 FTE from another part-time staff position to handle the program responsibilities. This increase is reflected in the 2015 salaries and benefits budget.

The NLMP plans in 2015 call for two events to address the area most requested by Mentor and New Lawyer participants, i.e. more opportunities to cross-connect with other participants. This change is reflected in the increase in the Special Project line.

Staff travel is primarily to attend national conference and pursue the director's responsibilities as board member of the National Legal Mentoring Consortium and additional travel to reach to Eastern and Southern Oregon for mentor recruiting appearances.



Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
116-4565-000	NLMP Registration Fee Revenue	20,000	20,000	0
<b>Total Revenues</b>		<b>\$20,000</b>	<b>\$20,000</b>	<b>\$0</b>
<i>Salaries &amp; Benefits</i>				
116-6100-000	Employee Salaries - Regular	101,900	134,100	32,200
116-6105-000	Employee Taxes & Benefits Regular	38,800	49,100	10,300
<b>Total Salaries &amp; Benefits</b>		<b>\$140,700</b>	<b>\$183,200</b>	<b>\$42,500</b>
<i>Direct Program Expenses</i>				
116-7085-000	Lawyer Mentoring Program-Video	100	50	-50
116-7090-000	Bank Fees - credit card	50	100	50
116-7265-038	Contract Services	0	1,200	1,200
116-7320-000	Education - staff training	0	300	300
116-7500-000	Small furn & equip < \$500 - Direct Pgm	0	300	300
116-7620-000	Mentor Outreach	600	600	0
116-7670-000	Postage-Program related	300	600	300
116-7700-000	Printing Services	500	500	0
116-7850-000	Special Projects-	1,200	3,800	2,600
116-7930-000	Volunteer/Member Travel & Expense	200	300	100
116-9700-000	Small furn & equip < \$500 - Administrative	0	500	500
116-9999-000	Lawyer Mentoring Program-Miscellaneous Expense-	0	100	100
<b>Total Direct Program Expenses</b>		<b>\$2,950</b>	<b>\$8,350</b>	<b>\$5,400</b>
<i>General &amp; Administrative Expenses</i>				
116-9500-000	Office Supplies	0	150	150
116-9600-000	Photocopying	50	150	100
116-9640-000	Professional Dues	150	300	150
116-9800-000	Telephone	200	700	500
116-9830-000	Training & Education - Staff	0	300	300
116-9850-000	Staff Travel & Expense	1,490	2,232	742
<b>Total General &amp; Administrative Expenses</b>		<b>\$1,890</b>	<b>\$3,832</b>	<b>\$1,942</b>
<b>Total Expenses</b>		<b>\$145,540</b>	<b>\$195,382</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$125,540)</b>	<b>(\$175,382)</b>	
116-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$51,856</b>	<b>\$73,730</b>	
<b>Net Revenue (Expense)</b>		<b>(\$177,396)</b>	<b>(\$249,112)</b>	

## **New Lawyers Division (ONLD)**

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Every lawyer who has practiced six years or less, or is 36 years old or younger (whichever is later) is automatically a member of the ONLD. The ONLD represents over 3,500 lawyers (approximately 25% of the bar) and is the only bar division.

The mission of the ONLD is to:

- assist new lawyers with the transition to practicing law in Oregon, either from law school or from a practice in another jurisdiction;
- conduct programs of value to new lawyers and law students;
- promote public awareness and access to justice;
- provide opportunities for community service and public outreach; provide opportunities for leadership;
- and promote professionalism among new lawyers.

The goals of the ONLD are set by its members and acted upon by the Executive Committee and five subcommittees. The Executive Committee consists of eleven members, seven regional members (one from each bar region), four at-large members, and is governed by a chair, chair-elect, secretary and treasurer, all of whom are elected by the ONLD membership at the annual meeting.

The ONLD receives funding from the bar's general fund and is supported by staff from the Member Services Department.

In 2014 the ONLD budget underwent major restructuring to provide more insight to the type of expense rather than listing expenses by the event or program.

The 2015 budget does not include an increase or decrease in overall expenses, rather some redistribution of funds based on programming needs for next year. The most notable change is a new line item for law student leadership outreach. ONLD plans to begin an initiative incorporating its regional events with its Law School Outreach subcommittee. Taking inspiration from dinners the BOG hosts annually for ONLD leaders, this program aims to reach out similarly to law student leaders and foster the similar professionalism and commitment to OSB which ONLD-BOG dinners have provided. The "law student leaders" invited would include student body association leadership, law student presidents, and OLIO upper division students. The new line item request is for \$500 and will cover the cost of meals for approximately ten students per law school.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
124-4348-000	Registrations- Portland Lunch Series	2,500	2,500	0
124-4550-000	Sponsorship- Annual Events	50	50	0
124-4550-100	Sponsorships -Practical Skills Events	50	50	0
124-4550-200	Sponsorships-Special Events & Projects	50	50	0
124-4565-000	Registrations - Out of Town CLEs	500	500	0
124-4565-100	Registrations -ONLD Special Events & Projects	1,000	1,000	0
124-4565-200	Registrations-Super Saturday CLE	2,500	2,500	0
<b>Total Revenues</b>		<b>\$6,650</b>	<b>\$6,650</b>	<b>\$0</b>
<i>Salaries &amp; Benefits</i>				
124-6100-000	Employee Salaries - Regular	46,700	48,100	1,400
124-6105-000	Employee Taxes & Benefits - Regular	17,800	17,600	-200
<b>Total Salaries &amp; Benefits</b>		<b>\$64,500</b>	<b>\$65,700</b>	<b>\$1,200</b>
<i>Direct Program Expenses</i>				
124-7040-000	Annual Meeting	3,000	3,000	0
124-7090-000	Bank Fees - Credit Card Processing	150	150	0
124-7165-000	Catering-Events	9,200	9,200	0
124-7245-000	CLE Accreditation Fees	350	600	250
124-7395-000	Awards	2,000	2,000	0
124-7575-000	Marketing	1,000	1,000	0
124-7585-000	New Member Welcome	3,000	3,000	0
124-7590-000	Meeting Expense - OSB/Portland	0	500	500
124-7590-068	Meeting Expense - Law Student Leadership Outreach	0	500	500
124-7590-100	Meeting Expense - Off Site	17,500	17,500	0
124-7590-200	Board Meeting Expense - travel and expense reimburse	9,000	9,000	0
124-7590-300	Board Expense - Subcommittee meeting and event rei	2,100	2,100	0
124-7700-000	Photocopying & Printing Services	2,000	2,000	0
124-7850-000	Special Events & Projects	2,000	2,450	450
124-7860-000	Sponsorships	3,000	3,000	0
124-7885-000	Telephone	200	200	0
124-7930-000	Board Retreat	4,500	4,500	0
124-7930-028	Board Travel Reimbursements - ABA Young Lawyer Div	12,000	12,000	0
124-7930-100	Board Travel Reimbursements - Western States Bar C	2,500	2,500	0
124-7975-000	Volunteer Recognition	1,000	1,000	0
124-7999-000	Miscellaneous Expense	1,000	1,000	0
<b>Total Direct Program Expenses</b>		<b>\$75,500</b>	<b>\$77,200</b>	<b>\$1,700</b>
<i>General &amp; Administrative Expenses</i>				
124-9400-000	Messenger & Delivery Services	80	80	0
124-9500-000	Office Supplies	600	600	0
124-9620-000	Postage	1,000	1,000	0
124-9850-000	Travel & Expense - Staff	2,000	2,000	0
124-9999-000	Miscellaneous Expense	1,000	1,000	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$4,680</b>	<b>\$4,680</b>	<b>\$0</b>
<b>Total Expenses</b>		<b>\$144,680</b>	<b>\$147,580</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$138,030)</b>	<b>(\$140,930)</b>	
124-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$46,538</b>	<b>\$44,253</b>	
<b>Net Revenue (Expense)</b>		<b>(\$184,568)</b>	<b>(\$185,183)</b>	

## **Public Affairs**

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The Public Affairs Department works to apply the knowledge and experience of the legal profession for the public by advising governmental bodies, proposing legislation for law improvement and advocating on matters that affect the legal profession. Public Affairs implements bar priorities related to funding for the courts and low income legal services, both civil and criminal, as well as identifies and responds to significant public policy issues that affect the practice of law and the bar. The Public Affairs Department works with sections and committees to identify, monitor and formulate responses to substantive legislative issues through the law improvement program.

The move to Annual Sessions with legislative hearing days every other month has increased workload requirements and bar interaction with the executive, legislative, and judicial branches. In 2015, the legislature will hold a 120 day session and also will meet three times for legislative and organizational hearing days. In addition, the Public Affairs Department is involved in numerous task forces and special projects related to issues of importance to the legal profession and the practice of law including implementation of Oregon eCourt, judicial selection and court funding.

- The bulk of the department's budget goes to salaries and benefits. A new Public Affairs Legislative Attorney began late 2013 replacing the retired legislative attorney.
- With the long session occurring in 2015, certain budget expenses have increased to the odd-year budgets, such as travel and expense, rent for office space and parking, and the Day at the Capitol event.
- The Public Affairs Day at the Capitol event budget has increased by \$550 due to the vast increase in attendance at the 2013 Day at the Capitol.
- Public Affairs will not renew membership in Oregon Trial Lawyers Association/Oregon Association of Defense Counsel in 2015 which will decrease costs as it can obtain the information elsewhere.
- The Public Affairs budget will continue to allocate funds (\$15,000 in 2015) for outreach, education, and networking to ensure access to legislators on bar issues.

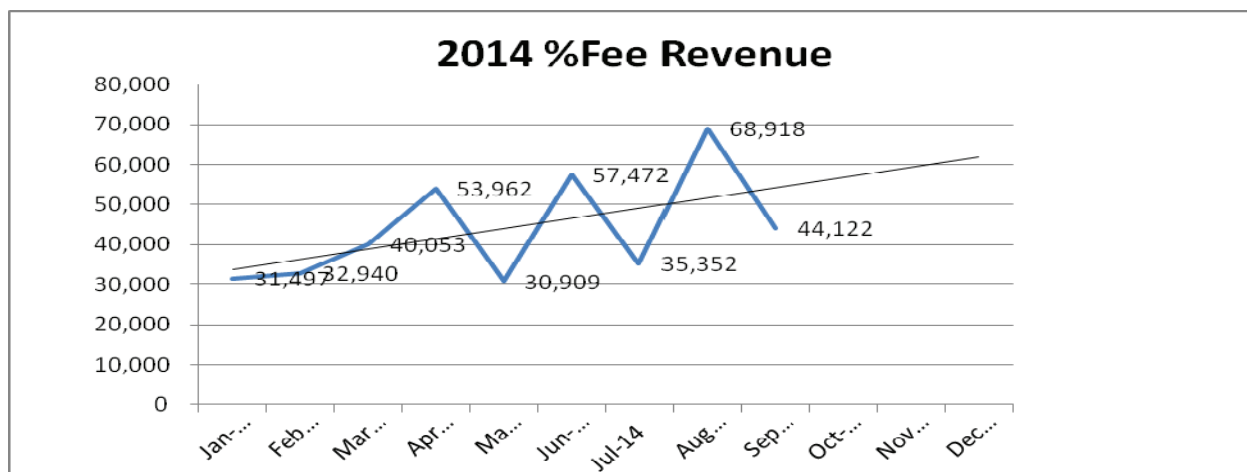
Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Salaries &amp; Benefits</b>				
119-6100-000	Employee Salaries - Regular	318,500	326,300	7,800
119-6105-000	Employee Taxes & Benefits - Regular	121,400	119,400	-2,000
<b>Total Salaries &amp; Benefits</b>		<b>\$439,900</b>	<b>\$445,700</b>	<b>\$5,800</b>
<b>Direct Program Expenses</b>				
119-7090-000	Bank Fees - Credit cards	50	50	0
119-7195-066	Committee - Public Affairs / Appellate Screening	3,500	3,500	0
119-7620-xxx	Outreach Programs - ALL	16,300	17,050	750
119-7700-000	Public Affairs-Printing Services	150	150	0
119-7765-000	Research	100	100	0
119-7780-000	Rent - Office Space & Parking	150	2,400	2,250
119-7999-000	Miscellaneous Expenses	500	500	0
<b>Total Direct Program Expenses</b>		<b>\$20,750</b>	<b>\$23,750</b>	<b>\$3,000</b>
<b>General &amp; Administrative Expenses</b>				
119-9500-000	Office Supplies	700	700	0
119-9600-000	In House Printing	600	600	0
119-9620-000	Postage	500	500	0
119-9640-000	Professional Dues	3,951	3,066	-885
119-9680-000	Publications & Subscriptions	1,910	1,576	-334
119-9800-000	Telephone	3,000	3,000	0
119-9830-000	Training & Education	4,500	4,500	0
119-9850-000	Travel & Expense - Staff	16,977	17,562	585
119-9999-000	Miscellaneous Expense	500	500	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$32,638</b>	<b>\$32,004</b>	<b>(\$634)</b>
<b>Total Expenses</b>		<b>\$493,288</b>	<b>\$501,454</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$493,288)</b>	<b>(\$501,454)</b>	
119-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$94,653</b>	<b>\$106,202</b>	
<b>Net Revenue (Expense)</b>		<b>(\$587,941)</b>	<b>(\$607,656)</b>	

## Referral & Information Services

The Lawyer Referral Service (LRS) is the oldest and largest program of the Referral and Information Services Department (RIS) and the only one that produces revenue. RIS also includes the Modest Means Program, Problem Solvers, Lawyer to Lawyer and the Military Assistance Panel. RIS receives approximately 65,000 calls and 8,000 emails per year, and makes approximately 50,000 referrals.

### Revenue

- Revenue from the new funding model began in October 2012. Due to implementation uncertainties RIS did not budget for any percentage fees revenue in 2012 and only a modest amount of \$55,000 for 2013.
- The amount of revenue generated from percentage fees has greatly exceeded projections. This revenue was \$391,942 in 2013 and will exceed that amount in 2014. Due to these successful revenue years, the percentage fee revenue is budgeted for \$485,900 in 2015.
- Panelist attrition has been less than projected. Attorney registration fee revenue was \$130,152 in 2013 and will be lower in 2014 and 2015, but not as much as expected with the roll-out of the percentage fee program.



### Expenses

- RIS continues to refine the database program that facilitates LRS reporting and payment obligations. In late 2012 the software provider agreed to a modified Statement of Work which ties seven packages of software enhancements to incentive payments for work completed and accepted within stated timeframes (a total of \$20,000, some of which are to be completed before the end of 2014). The 2015 budget contains the remainder of the incentive payments.
- An impact of implementation challenges are higher personnel costs. Public follow-up, a key component of successful LRS programs nationwide and important check on lawyer reporting compliance, has not yet been implemented and will require consistent, dedicated staff time.  
As the percentage fee revenue model matures, implementation concludes, and systems and processes stabilize in the next 2-3 years, RIS is projected to function with less staff resources. The current budget reflects the elimination of two part-time positions that are currently vacant.
- Marketing and printing expenses will increase to continue and expand RIS's multi-year grassroots marketing campaign and hopefully increase the number of referrals per lawyer.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
128-4185-000	LRS referral commissions	360,000	485,900	125,900
128-4565-000	LRS Registrations	115,500	115,000	-500
<b>Total Revenues</b>		<b>\$475,500</b>	<b>\$600,900</b>	<b>\$125,400</b>
<i>Salaries &amp; Benefits</i>				
128-6100-000	Employee Salaries - Regular	313,900	321,600	7,700
128-6105-000	Employee Taxes & Benefits - Regular	119,700	117,700	-2,000
<b>Total Salaries &amp; Benefits</b>		<b>\$433,600</b>	<b>\$439,300</b>	<b>\$5,700</b>
<i>Direct Program Expenses</i>				
128-7025-000	Advertising - Promotions	5,000	17,000	12,000
128-7090-000	Bank Fees - Credit Card Processing	1,800	1,500	-300
128-7265-000	Contract Services - LRS Software	0	22,000	22,000
128-7700-000	Printing	1,000	1,000	0
128-7885-000	Telephone - Lawyer Referral	19,000	20,000	1,000
<b>Total Direct Program Expenses</b>		<b>\$26,800</b>	<b>\$61,500</b>	<b>\$34,700</b>
<i>General &amp; Administrative Expenses</i>				
128-9500-000	Office Supplies	800	800	0
128-9600-000	In House Printing	800	1,000	200
128-9620-000	Postage	3,800	3,800	0
128-9640-000	Professional Dues	882	882	0
128-9680-000	Publications & Subscriptions	300	300	0
128-9800-000	Telephone	50	50	0
128-9830-000	Training & Education	1,500	1,500	0
128-9850-000	Travel & Expense - Staff	2,112	1,250	-862
128-9999-000	Miscellaneous Expense	200	250	50
<b>Total General &amp; Administrative Expenses</b>		<b>\$10,444</b>	<b>\$9,832</b>	<b>(\$612)</b>
<b>Total Expenses</b>		<b>\$470,844</b>	<b>\$510,632</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$4,656</b>	<b>\$90,268</b>	
128-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$182,984</b>	<b>\$217,376</b>	
<b>Net Revenue (Expense)</b>		<b>(\$178,328)</b>	<b>(\$127,108)</b>	

## **Special Projects**

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Special Projects is a collection of bar activities or grants that are not applicable to a specific bar program. These projects are:

- grants to the Campaign for Equal Justice (\$45,000), the Classroom Law Project (\$20,000), and the Council on Court Procedures (\$4,000). These grants have been in the budget at the same amounts for several years.
- the annual cost of the Fastcase legal research library available as a member benefit for all active OSB members;
- the personnel and administrative costs of the Loan Repayment Assistance Program.

Revenue recorded here is the \$200,000 grant from the PLF for BarBooks.



Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
140-4190-321	Grants Received - PLF	\$200,000	\$200,000	0
140-4998-000	Transfer from Reserves	\$0	\$0	0
<b>Total Revenues</b>		<b>\$200,000</b>	<b>\$200,000</b>	0
<i>Salaries &amp; Benefits</i>				
140-6100-000	Salaries - LRAP	\$11,500	\$6,700	-4,800
140-6105-000	Employee Taxes & Benefits - Regular-LRAP	\$4,400	\$2,500	-1,900
140-6150-000	Board Designated awards	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$15,900</b>	<b>\$9,200</b>	-6,700
<i>Direct Program Expenses</i>				
140-7195-079	Council on Court Procedures	\$4,000	\$4,000	0
140-7245-028	ABA Young Lawyers Division Conference	\$0	\$0	0
140-7250-000	Contingency	\$25,000	\$0	-25,000
140-7250-013	Reinstatements - Prior YR's Reinst Fee Refunds	\$0	\$0	0
140-7265-216	Casemaker	\$99,000	\$99,000	0
140-7265-218	Casemaker	\$0	\$0	0
140-7270-034	Contributions-Classroom Law Project	\$20,000	\$20,000	0
140-7270-055	Contributions-Campaign for Equal Justice	\$45,000	\$45,000	0
140-7270-066	Contributions - ProBono Recognition	\$5,000	\$5,000	0
140-7590-000	LRAP Meeting Exp	\$200	\$200	0
140-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	0
140-7850-103	Special Projects - Diversity Convocation	\$0	\$0	0
140-7850-310	Special Projects - Senior Lawyers	\$0	\$0	0
140-7850-312	Special Projects - Remote Communications	\$0	\$0	0
140-7870-000	Economic Survey	\$0	\$0	0
<b>Total Direct Program Expenses</b>		<b>\$198,200</b>	<b>\$173,200</b>	-25,000
<i>General &amp; Administrative Expenses</i>				
140-9600-000	LRAP Photocopy Expense	\$250	\$250	0
140-9620-000	LRAP Postage	\$50	\$75	25
140-9800-000	LRAP- Telephone	\$25	\$50	25
140-9999-000	Contingency Reserve	\$0	\$0	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$325</b>	<b>\$375</b>	50
<b>Total Expenses</b>		<b>\$214,425</b>	<b>\$182,775</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$14,425)</b>	<b>\$17,225</b>	

## **Client Security Fund**

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The Client Security Fund is established by Oregon Statutes and the key financial statutes are:

**9.625 Plan to relieve client losses; rules.** The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to this fund.

**9.645 Annual payment by state bar members.** To establish and maintain a client security fund, the board of governors may require an annual payment by each active member of the state bar. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual membership fee.

The Client Security Fund assessment was raised from \$15.00 to \$45.00 in 2013 to offset the large volume and size of claims in 2012 and 2013.

- The \$45.00 assessment will generate \$693,500 in assessment revenue in 2015.

Claims Paid in 2012 were \$673,535 and \$699,150 in 2013.

The Claims Paid budget is \$250,000 in 2015 as it has been for the past few years. However, claims will be far below that amount in 2014 and without any unexpected claims the rest of 2014, the fund balance at the end of 2014 will approximate \$500,000.

- Accordingly, if claims paid in 2015 range from \$150,000 to \$175,000, the fund balance at the end of 2015 should approximate \$1,000,000.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
113-4340-000	Judgments Collected	1,000	1,000	0
113-4405-000	Membership Fees - CSF Assessment	684,400	693,500	9,100
<b>Total Revenues</b>		<b>\$685,400</b>	<b>\$694,500</b>	<b>\$9,100</b>
<i>Salaries &amp; Benefits</i>				
113-6100-000	Employee Salaries - Regular	30,800	32,600	1,800
113-6105-000	Employee Taxes & Benefits - Regular	11,700	11,900	200
<b>Total Salaries &amp; Benefits</b>		<b>\$42,500</b>	<b>\$44,500</b>	<b>\$2,000</b>
<i>Direct Program Expenses</i>				
113-7185-000	Claims	250,000	250,000	0
113-7190-000	Collection Fees	2,000	1,500	-500
113-7195-000	Committee Expense	250	250	0
113-7930-000	Travel & Expense - Others	1,400	1,400	0
<b>Total Direct Program Expenses</b>		<b>\$253,650</b>	<b>\$253,150</b>	<b>(\$500)</b>
<i>General &amp; Administrative Expenses</i>				
113-9500-000	Office Supplies	150	150	0
113-9600-000	In House Printing	150	50	-100
113-9620-000	Postage	500	300	-200
113-9640-000	Professional Dues	200	200	0
113-9800-000	Telephone	150	150	0
113-9830-000	Training & Education	600	600	0
113-9850-000	Travel & Expense - Staff	874	974	100
<b>Total General &amp; Administrative Expenses</b>		<b>\$2,624</b>	<b>\$2,424</b>	<b>(\$200)</b>
<b>Total Expenses</b>		<b>\$298,774</b>	<b>\$300,074</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$386,626</b>	<b>\$394,426</b>	
113-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$16,279</b>	<b>\$30,319</b>	
<b>Net Revenue (Expense)</b>		<b>\$370,347</b>	<b>\$364,107</b>	

## **Diversity & Inclusion**

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Effective January 1, 2014, the Board of Governors and the House of Delegates approved an increase in the assessment for the Diversity & Inclusion Department, from \$30.00 to \$45.00 for over-two year members and from \$15.00 to \$25.00 for under-two year active members of the bar. The increased assessment raised an additional \$214,700 for D&I in 2014.

Changes to the 2015 budget due to the 2014 assessment increase are allocated primarily to enhance pipeline programs as follows:

- increase the Public Honors Fellowship payment from \$4,800 to \$5,000;
- add two additional fellowship grants - Access to Justice and Rural Opportunities;
- add two additional \$2,000 law school scholarships;
- add two \$2,000 LSAT preparation scholarships - one allocated to an Explore the Law Program participant.

If the Diversity & Inclusion budget is attained in 2014, the program's fund balance at the end of 2014 will approximate \$139,000. If the 2015 revenue and expenses align with the 2015 budget, the fund balance at the end of 2015 will approximate \$223,000.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
103-4190-031	Grant from OLF	500	500	0
103-4310-000	Interest - Fund Balance	2,200	2,200	0
103-4405-000	Membership Fees - AAP Assessment	637,100	650,000	12,900
103-4550-xxx	Sponsorship Fees - ALL	55,600	52,100	-3,500
<b>Total Revenues</b>		<b>\$695,400</b>	<b>\$704,800</b>	<b>\$9,400</b>
<i>Salaries &amp; Benefits</i>				
103-6100-000	Employee Salaries - Regular	221,800	227,400	5,600
103-6105-000	Employee Taxes & Benefits - Regular	84,600	83,200	-1,400
<b>Total Salaries &amp; Benefits</b>		<b>\$306,400</b>	<b>\$310,600</b>	<b>\$4,200</b>
<i>Direct Program Expenses</i>				
103-7040-000	Annual Event - OLIO Spring Social	1,600	1,600	0
103-7040-030	BOWLIO annual event expenses	4,000	6,000	2,000
103-7040-031	OLIO Orientation event	1,000	1,200	200
103-7040-047	Employment Retreat Expenses	1,800	1,800	0
103-7165-031	Catering - OLIO Orientation	19,000	21,000	2,000
103-7245-074	Bar Exam Prep seminar	6,300	6,300	0
103-7265-031	Contract Services - OLIO	1,500	1,500	0
103-7360-031	Facilities - OLIO Orientation	1,200	1,500	300
103-7375-000	Fellowship - Honors	28,800	40,000	11,200
103-7395-031	Gifts & Awards-OLIO	500	500	0
103-7400-074	Grants - Bar Exam	5,400	5,400	0
103-7495-000	Law Clerk Placement	32,000	36,800	4,800
103-7590-000	Meeting Expense	1,000	1,500	500
103-7620-000	Outreach/ Program Marketing	2,000	2,000	0
103-7670-031	OLIO - OLIO Postage	750	800	50
103-7815-000	Scholarships	16,000	20,000	4,000
103-7840-000	Speaker Expense	3,800	9,800	6,000
103-7845-031	Lodging - OLIO	19,000	21,000	2,000
103-7850-000	Special Projects - Pipeline Development	1,800	1,800	0
103-7850-313	Special Projects-Diversity Storywall	0	4,000	4,000
103-7860-000	Sponsorships	13,500	13,500	0
103-7930-031	Travel & Expense - OLIO	3,800	4,000	200
<b>Total Direct Program Expenses</b>		<b>\$164,750</b>	<b>\$202,000</b>	<b>\$37,250</b>
<i>General &amp; Administrative Expenses</i>				
103-9500-000	Office Supplies	500	500	0
103-9600-000	In House Printing	3,000	3,000	0
103-9620-000	Postage	500	500	0
103-9640-000	Professional Dues	2,694	3,168	474
103-9680-000	Publications & Subscriptions	400	400	0
103-9800-000	Telephone	200	200	0
103-9830-000	Training & Education	8,920	9,500	580
103-9850-000	Travel & Expense - Staff	13,085	7,130	-5,955
103-9850-031	Staff Travel & Exp-OLIO	3,500	3,500	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$32,799</b>	<b>\$27,898</b>	<b>(\$4,901)</b>
<b>Total Expenses</b>		<b>\$503,949</b>	<b>\$540,498</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$191,451</b>	<b>\$164,302</b>	
103-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$78,305</b>	<b>\$97,897</b>	
<b>Net Revenue (Expense)</b>		<b>\$113,146</b>	<b>\$66,405</b>	

## **Legal Services Program**

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The goal of the Legal Services Program (LSP) is to use revenue collected and directed to the bar under ORS 9.572 to:

- fund a statewide system of free civil legal aid services for the poor which is centered on the needs of the client community;
- to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians.

The LSP performs these duties by distributing the revenue collected to Oregon's five legal aid providers. The revenues collected are funds appropriated to the OSB LSP by ORS 9.577, pro hac vice funds, and unclaimed client funds from lawyer trust accounts.

The expected revenue collected in 2015 is \$5,950,000 - the same amount as 2014. An additional \$100,000 is raised from Pro Hac Vice applications and approximately \$100,000 from unclaimed client funds from lawyer trust accounts. From the total statutory appropriation revenue, \$5,806,000 will be distributed to the five legal aid agencies and the bar retains \$144,000 to administer the program.

Administration dollars fund staff and the LSP Committee to:

- provide ongoing oversight, evaluation and support to legal services providers to ensure compliance with the Standards and Guidelines and to further the program's goals.
- work with other funding sources and organizations to promote statewide collaboration and to improve access to civil justice in Oregon.
- provide oversight and coordination for the bar's Pro Bono Program and promote the OSB Pro Bono Aspirational Standard.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
120-4070-000	Applications - Pro Hac Vice	100,000	200,000	100,000
120-4345-000	Legal Aid Funds Collected by Courts	5,950,000	5,950,000	0
120-4510-000	Pro Bono Program Revenue	5,000	5,000	0
<b>Total Revenues</b>		<b>\$6,055,000</b>	<b>\$6,155,000</b>	<b>\$100,000</b>
<i>Salaries &amp; Benefits</i>				
120-6100-000	Employee Salaries - Regular	69,500	78,200	8,700
120-6105-000	Employee Taxes & Benefits - Regular	26,500	28,600	2,100
<b>Total Salaries &amp; Benefits</b>		<b>\$96,000</b>	<b>\$106,800</b>	<b>\$10,800</b>
<i>Direct Program Expenses</i>				
120-7183-xxx	County Disbursements - ALL	5,830,000	5,806,000	-24,000
120-7195-000	Legal Aid Committee	0	100	100
120-7750-000	Pro Bono Recognition & Promotion Expense	5,000	5,000	0
120-7783-000	Pro Hac Vice Distributions	100,000	200,000	100,000
<b>Total Direct Program Expenses</b>		<b>\$5,935,000</b>	<b>\$6,011,100</b>	<b>\$76,100</b>
<i>General &amp; Administrative Expenses</i>				
120-9500-000	Office Supplies	50	500	450
120-9600-000	In House Printing	50	500	450
120-9620-000	Postage	20	500	480
120-9640-000	Professional Dues	632	662	30
120-9680-000	Publications & Subscriptions	0	150	150
120-9800-000	Telephone	25	100	75
120-9830-000	Training & Education	0	1,150	1,150
120-9850-000	Travel & Expense - Staff	1,100	4,000	2,900
<b>Total General &amp; Administrative Expenses</b>		<b>\$1,877</b>	<b>\$7,562</b>	<b>\$5,685</b>
<b>Total Expenses</b>		<b>\$6,032,877</b>	<b>\$6,125,462</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$22,123</b>	<b>\$29,538</b>	
120-9000-000	<i>Less: Indirect Cost Allocation</i>	<b>\$52,676</b>	<b>\$27,542</b>	
<b>Net Revenue (Expense)</b>		<b>(\$30,553)</b>	<b>\$1,996</b>	





## Finance & Administration – All Support Departments

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This page is a summary of all the departments in Finance & Administration (F&A) that provide support services to all bar departments and programs and including sections.

The bulk of the costs are salaries for personnel in accounting, technology, distribution center (mailroom and copy center), receptionists, human resources, and creative services. The Direct Program expenses are the administrative costs and supplies necessary for the bar’s overall operation. These costs are allocated to all other programs as "Indirect Cost Allocation" (ICA) – commonly known as “overhead.”

Here is the summary of all departments making up F&A and a comparison of the current and 2015 budget.

Department	2014	2015	\$ Change	% Change
Accounting	\$418,229	\$430,918		
Creative Services	325,885	340,578		
Distribution Center	250,350	248,290		
Fanno Creek Place	160,459	160,459		
Finance	272,605	267,010		
Human Resources	230,560	242,567		
Information Technology	645,267	669,600		
<b>Totals</b>	<b>\$2,303,355</b>	<b>\$2,359,422</b>	<b>\$56,067</b>	<b>2.4%</b>

These costs are allocated to the departments using criteria such as the respective department’s/program’s FTE, space occupied, number of accounting transactions (e.g. receipts, payables), copy, postage, and mail services.

2015 Budget

Account Code	Acct Description	Current Year Budget	Budget 2015	Budget Inc / Dec
<b>Revenues</b>				
13x-4235-xxx	Discounts	\$0	\$0	\$0
13x-4250-xxx	Equipment Surplus	\$0	\$0	\$0
13x-4300-000	Insufficient Funds Fees	\$150	\$150	\$0
13x-4325-xxx	Investments	\$130,600	\$135,200	\$4,600
13x-4395-xxx	Realized Gain (Loss)	\$0	\$0	\$0
13x-4405-xxx	Membership Fees	\$6,810,300	\$6,811,600	\$1,300
13x-4475-000	Over (Short)	\$0	\$0	\$0
13x-4610-xxx	Royalties	\$0	\$0	\$0
13x-4620-xxx	Sales	\$3,000	\$3,000	\$0
13x-4670-xxx	Services	\$7,000	\$7,000	\$0
13x-4999-xxx	Miscellaneous Income	\$0	\$0	\$0
<b>Total Revenues</b>		<b>\$6,951,050</b>	<b>\$6,956,950</b>	<b>\$5,900</b>
<b>Salaries &amp; Benefits</b>				
13x-6100-xxx	Employee Salaries - Regular	\$1,108,500	\$1,142,800	\$34,300
13x-6105-xxx	Employee Taxes & Benefits - Reg	\$422,600	\$418,300	(\$4,300)
13x-6150-xxx	Employee Recognition Bonus	\$0	\$0	\$0
13x-6200-xxx	Employee Salaries - Temporary	\$5,040	\$4,463	(\$578)
13x-6205-xxx	Employee Taxes & Benefits - Tem	\$504	\$446	(\$58)
13x-6300-xxx	Long Term Temporary Employee -	\$0	\$0	\$0
<b>Total Salaries &amp; Benefits</b>		<b>\$1,536,644</b>	<b>\$1,566,009</b>	<b>\$29,365</b>
<b>Direct Program Expenses</b>				
13x-7080-000	Auditing	\$19,000	\$19,248	\$248
13x-7090-xxx	Bank Fees	\$111,500	\$127,020	\$15,520
13x-7170-000	Gift card purchases	\$5,700	\$4,200	(\$1,500)
13x-7205-xxx	Computer Services	\$88,947	\$94,630	\$5,683
13x-7262-xxx	Contract Services	\$0	\$500	\$500
13x-7265-xxx	Contract Services	\$0	\$0	\$0
13x-7265-xxx	Contract Services	\$104,000	\$136,190	\$32,190
13x-7295-xxx	Depreciation	\$140,000	\$114,100	(\$25,900)
13x-7385-xxx	Garbage	\$0	\$910	\$910
13x-7425-000	Hiring & Recruiting	\$7,900	\$9,150	\$1,250
13x-7445-xxx	Insurance	\$28,300	\$29,300	\$1,000
13x-7455-xxx	Interest Expense	\$0	\$0	\$0
13x-7460-xxx	Investment Expense	\$40,200	\$40,800	\$600
13x-7500-xxx	Office Equipment	\$1,000	\$1,000	\$0
13x-7535-xxx	Loss on Sale	\$0	\$0	\$0
13x-7540-000	Lease Expense	\$0	\$0	\$0
13x-7563-xxx	Mailhouse Services	\$0	\$0	\$0
13x-7570-xxx	Maintenance	\$3,000	\$4,000	\$1,000
13x-7660-000	Payroll Processing	\$22,000	\$15,000	(\$7,000)
13x-7670-xxx	Postage	\$94,200	\$79,950	(\$14,250)
13x-7700-xxx	Printing Services	\$500	\$300	(\$200)
13x-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	\$0
13x-7780-xxx	Rent	\$0	\$9,120	\$9,120
13x-7830-xxx	Section Services	\$0	\$0	\$0
13x-7870-000	Survey - Economic	\$0	\$0	\$0
13x-7875-xxx	Supplies	\$39,800	\$58,540	\$18,740
13x-7877-000	Data Protection	\$16,000	\$7,000	(\$9,000)
13x-7885-xxx	Telephone	\$48,500	\$50,000	\$1,500
13x-7995-044	YE Inventory Change - Bar Store	\$0	\$0	\$0
13x-7999-000	F & O - Gen'l-Miscellaneous Expense-	\$0	\$0	\$0
<b>Total Direct Program Expenses</b>		<b>\$770,547</b>	<b>\$800,958</b>	<b>\$30,411</b>
<b>General &amp; Administrative Expenses</b>				
13x-7262-xxx	Contract Services	\$0	\$0	\$0
13x-9300-152	F & O - Gen'l-Disaster Recovery Prepara-Facilities	\$0	\$0	\$0
13x-9400-xxx	Messenger & Delivery Services	\$4,600	\$4,600	\$0
13x-9500-xxx	Office Supplies	\$3,575	\$4,615	\$1,040
13x-9600-xxx	Photocopying	\$1,650	\$5,180	\$3,530
13x-9620-xxx	Postage	\$7,900	\$8,600	\$700
13x-9640-xxx	Professional Dues	\$1,050	\$1,270	\$220
13x-9660-xxx	Bad Debts Expense	\$25,000	\$36,200	\$11,200
13x-9680-xxx	Publications & Subscriptions	\$2,250	\$2,300	\$50

2015 Budget

Account Code	Acct Description	Current Year Budget	Budget 2015	Budget Inc / Dec
<b>General &amp; Administrative Expenses</b>				
13x-9700-xxx	Small furn & equip < \$500	\$500	\$500	\$0
13x-9800-xxx	Telephone	\$520	\$580	\$60
13x-9830-xxx	Training & Education	\$15,710	\$16,017	\$307
13x-9850-xxx	Staff Travel & Expense	\$5,440	\$9,414	\$3,974
13x-9855-000	Staff Expenses- FIRE Committee	\$6,100	\$6,400	\$300
13x-9999-xxx	Miscellaneous Expense	\$1,600	\$2,050	\$450
<b>Total General &amp; Administrative Expenses</b>		<b>\$75,895</b>	<b>\$97,726</b>	<b>\$21,831</b>
<b>Total Expenses Before Allocations:</b>		<b>\$2,383,086</b>	<b>\$2,464,693</b>	
<b>Service Reimbursements</b>				
13x-4710-xxx	Support Assessment	(\$137,200)	(\$136,000)	\$1,200
13x-4670-xxx	Services	(\$11,100)	(\$11,150)	(\$50)
13x-4505-xxx	Postage	(\$2,800)	(\$3,700)	(\$900)
13x-4490-xxx	Photocopies	(\$5,200)	(\$7,400)	(\$2,200)
<b>Total Service Reimbursements</b>		<b>(\$156,300)</b>	<b>(\$158,250)</b>	<b>(\$1,950)</b>
<b>Offsets</b>				
13x-9801-000	Telephone - Offset	\$0	\$0	\$0
13x-9621-000	Postage - Offset	(\$87,400)	(\$73,700)	\$13,700
13x-9601-000	Photocopying - Offset	(\$27,450)	(\$33,780)	(\$6,330)
<b>Total Offsets</b>		<b>(\$114,850)</b>	<b>(\$107,480)</b>	<b>\$7,370</b>
<b>Total Expense Allocations</b>		<b>(\$271,150)</b>	<b>(\$265,730)</b>	
<b>Net Expenses</b>		<b>\$2,111,936</b>	<b>\$2,198,963</b>	
<b>Net Revenue Before Indirect Cost Allocation</b>		<b>\$2,456,028</b>	<b>\$2,293,295</b>	
<b>Indirect Cost Allocations to Bar Programs:</b>				
	Admissions	\$120,694	\$127,621	\$6,927
	Diversity & Inclusion	\$78,305	\$97,897	\$19,592
	Loan Replacement Assistance Program			
	Governance	\$74,144	\$98,029	\$23,885
	Communications & Marketing	\$119,235	\$126,878	\$7,643
	CLE Seminars	\$329,814	\$253,062	(\$76,752)
	Legal Publications	\$257,667	\$205,515	(\$52,152)
	Client Assistance Program	\$122,820	\$150,732	\$27,912
	Client Security Fund	\$16,279	\$30,319	\$14,040
	Disciplinary Counsel	\$372,826	\$371,876	(\$950)
	New Lawyer Mentoring Program	\$372,826	\$371,876	(\$950)
	General Counsel	\$76,073	\$102,878	\$26,805
	Public Affairs	\$94,653	\$106,202	\$11,549
	Legal Services Program	\$52,676	\$27,542	(\$25,134)
	MCLE	\$71,468	\$93,074	\$21,606
	Bulletin	\$128,313	\$121,649	(\$6,664)
	New Lawyers Division	\$46,538	\$44,253	(\$2,285)
	Member Services	\$104,910	\$110,789	\$5,879
	Referral Information Services	\$182,984	\$217,376	\$34,392
<b>Total Indirect Cost Allocations</b>		<b>\$2,301,255</b>	<b>\$2,359,422</b>	
<b>Net Revenue (Expense)</b>		<b>\$4,757,283</b>	<b>\$4,652,717</b>	

## **Accounting**

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The Accounting Department processes the bar's accounts payable, accounts receivable, payroll, sales and inventory for all departments, and the annual billing and collections for member fees. These services also are performed also for all 41 sections.

The department also:

- prepares the approximately 50-page monthly financial statements for bar operations and the statements for all sections;
- administers the department and section budgets, and works with department staff and section volunteers to oversee and correctly manage their respective budgets;
- maintains bar-wide financial-related procedures and internal controls;
- monitors the bar's cash and short-term investments.

The number of members paying online by credit cards continues to grow each year. In 2014, 11,581 members (or 62% of all members billed) paid their membership fees with a credit card. The fees associated with those charges are a percentage of dollars charged so as member fees pay with a credit card increase, the cost to process these payments also increases.

- The current fee the bar pays is approximately 2.5% of credit card charges. For the twelve months from September 2013 to August 2014, \$5,160,844 of all purchases and payments were made by credit card.
- The 2015 budget includes \$124,100 in credit card fees.

The bar will be audited by an independent CPA firm in 2016 for the 2014 and 2015 fiscal years. The 2015 budget includes the one year accrual of the two-year fee based on the actual fee for the audit of the 2012 and 2013 fiscal years.

Although postage cost have decreased dramatically, the bar still mails fee statements to some members, sends postcards reminders in January to those who have not yet paid their member fees, and sends certified notices on the final fee due date.

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Salaries &amp; Benefits</i>				
132-6100-000	Employee Salaries - Regular	\$181,000	\$185,400	4,400
132-6105-000	Employee Taxes & Benefits - Regular	\$69,000	\$67,900	-1,100
132-6150-000	Employee Recognition Bonus	\$0	\$0	0
132-6200-000	Employee Salaries - Temporary	\$5,040	\$4,463	-578
132-6205-000	Employee Taxes & Benefits - Temporary	\$504	\$446	-58
132-6300-000	Temp Staff Salaries - Agency	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$255,544</b>	<b>\$258,209</b>	2,665
<i>Direct Program Expenses</i>				
132-7080-000	Auditing	\$19,000	\$19,248	248
132-7090-000	Bank Fees - Credit Card Processing	\$108,250	\$124,100	15,850
132-7090-100	Bank Fees - Other	\$3,250	\$2,920	-330
132-7500-000	Small furn & equip < \$500 - Direct Pgm	\$0	\$0	0
132-7563-000	Mailhouse Services	\$0	\$0	0
132-7660-000	Payroll Processing	\$22,000	\$15,000	-7,000
132-7700-000	Printing - Program related	\$500	\$300	-200
<b>Total Direct Program Expenses</b>		<b>\$153,000</b>	<b>\$161,568</b>	8,568
<i>General &amp; Administrative Expenses</i>				
132-9400-000	Messenger & Delivery Services - Accounting	\$0	\$0	0
132-9500-000	Office Supplies - Accounting	\$1,575	\$1,665	90
132-9600-000	In House Printing/Copies - Accounting	\$350	\$55	-295
132-9620-000	Postage - Accounting	\$7,200	\$7,600	400
132-9640-000	Professional Dues - Accounting	\$110	\$0	-110
132-9680-000	Publications & Subscriptions - Accounting	\$0	\$0	0
132-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$0	0
132-9800-000	Telephone - Accounting	\$0	\$0	0
132-9830-000	Training & Education - Accounting	\$450	\$697	247
132-9850-000	Travel & Expenses - Accounting Staff	\$0	\$1,124	1,124
132-9999-000	Miscellaneous Expense - Accounting	\$0	\$0	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$9,685</b>	<b>\$11,141</b>	1,456
<b>Total Expenses</b>		<b>\$418,229</b>	<b>\$430,918</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$418,229)</b>	<b>(\$430,918)</b>	

## **Creative Services**

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The Creative Services Department provides creative direction and production management of collateral promoting the programs, services, and organizational brand of the Oregon State Bar. Creative Services delivered to sections and local bars generate income that helps cover staff time, with direct costs passed through to the groups without markups.

CLE seminar content was integrated into the bar's website in 2014 with a seamless interface added to the third-party InReach registration site. Print and web brochures were rebranded and marketing metrics were inserted into the fall campaign to track communication reach, analysis of which will steer marketing efforts in 2015.

Ongoing department products include the design and layout of the *Bulletin* and management of the bar's website, including the features and services delivered through the website and the member dashboard. Efforts in 2015 will be centered on development of a new website that will be managed internally and will integrate seamlessly with the bar's new association management platform. Responsive design to accommodate viewing and interaction with the bar's website on mobile devices, and accessibility to people with disabilities will be a continued focus in 2015.

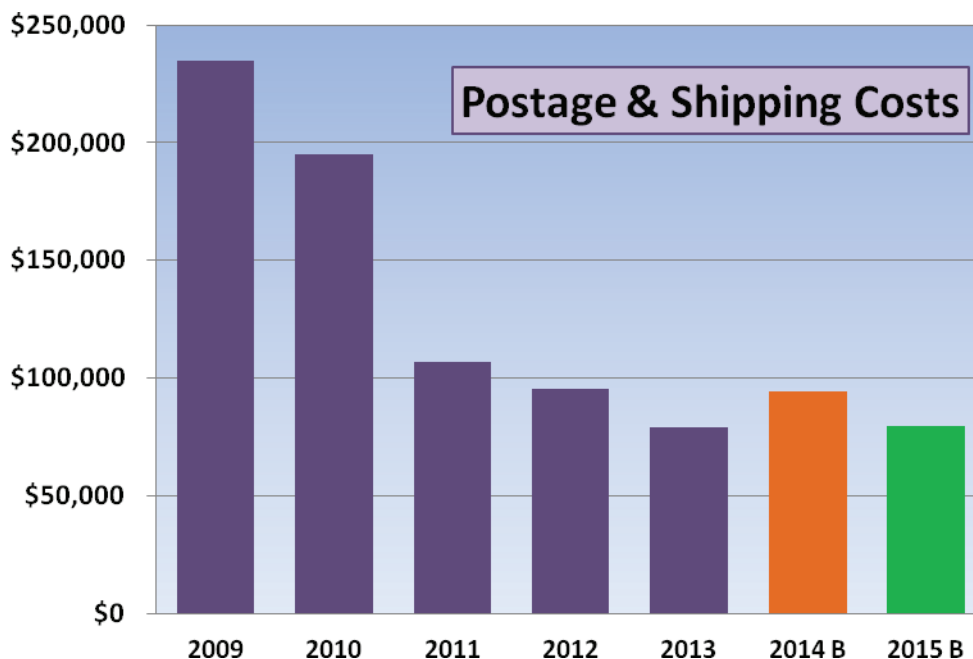
- Revenue historically received for sale of the printed membership directory has leveled off from the downward trend that followed the elimination of the full directory and the modified Bulletin supplement. The bar continues to provide a downloadable file on the member side of the website at no charge. Current year sales of 113 print copies and downloads of 2,554 files mirror 2013 experience and set the trend for 2015.
- Foundation was laid in 2014 for website advertising with in-house CLE seminar spots placed on the member dashboard and BarBooks. Potential for revenue from outside advertisers will be explored in 2015.

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
133-4620-605	Sales - Member Directory	\$3,000	\$3,000	0
133-4670-000	Services - Sections/Local Bars	\$7,000	\$7,000	0
<b>Total Revenues</b>		<b>\$10,000</b>	<b>\$10,000</b>	0
<i>Salaries &amp; Benefits</i>				
133-6100-000	Employee Salaries - Regular	\$231,300	\$239,300	8,000
133-6105-000	Employee Taxes & Benefits - Regular	\$88,200	\$87,600	-600
133-6150-000	Employee Recognition Bonus	\$0	\$0	0
133-6200-000	Employee Salaries - Temporary	\$0	\$0	0
133-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	0
133-6300-000	Long Term Temporary Employee - Agency	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$319,500</b>	<b>\$326,900</b>	7,400
<i>Direct Program Expenses</i>				
133-7205-083	Computer Services - Software Licenses	\$0	\$2,700	2,700
133-7670-605	Postage - Directory	\$100	\$100	0
133-7830-000	Section Services - Projects	\$0	\$0	0
133-7875-070	Supplies - Program Related-Art	\$2,500	\$2,000	-500
<b>Total Direct Program Expenses</b>		<b>\$2,600</b>	<b>\$4,800</b>	2,200
<i>General &amp; Administrative Expenses</i>				
133-9400-000	Messenger & Delivery Services	\$0	\$0	0
133-9500-000	Office Supplies	\$600	\$600	0
133-9600-000	In House Printing	\$500	\$4,000	3,500
133-9620-000	Postage	\$100	\$100	0
133-9640-000	Professional Dues	\$115	\$115	0
133-9680-000	Publications & Subscriptions	\$750	\$750	0
133-9800-000	Telephone	\$0	\$0	0
133-9830-000	Training & Education	\$1,500	\$1,500	0
133-9850-000	Travel & Expense - Staff	\$120	\$1,713	1,593
133-9999-000	Miscellaneous Expense	\$100	\$100	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$3,785</b>	<b>\$8,878</b>	5,093
<b>Total Expenses</b>		<b>\$325,885</b>	<b>\$340,578</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$315,885)</b>	<b>(\$330,578)</b>	

## Distribution Center

The Distribution Center handles the mailroom, shipping and receiving, and copy center duties of the bar. These duties also include similar services for sections. The gross cost of all postage and shipping is recorded in this department before it is directly charged or allocated to the respective bar programs as part of the ICA.

- The bar’s postage costs have been in a consistent decline with the distribution of much bar communication via email and other electronic messages.



- Even though the 2014 budget shows an increase in postage costs over 2013, with three-fourth (75%) of 2014 complete the bar’s postage & shipping costs are only 56% of budget, and will undoubtedly finish under budget. The 2015 budget is similar to the actual cost of 2013.

The second component of the Distribution Center is the Copy Center, which produces volume printing and product assembly for bar and section activities. Contract Services line item is the cost of an employee of the vendor, the lease for 12 copiers/printers and the mail machine, and the maintenance and supplies of the copiers.

- The copy center costs dropped dramatically in mid 2013 as a five-year lease terminated and was replaced by a new five-year lease with the competitive contract of a new vendor and led to substantial savings in less copying/printing, personnel, leasing of new equipment, and lower maintenance costs.
- The cost of copying and printing is charged directly to the department or allocated as part of indirect costs (ICA).



Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<b>Salaries &amp; Benefits</b>				
138-6100-000	Employee Salaries - Regular	\$36,300	\$37,400	1,100
138-6105-000	Employee Taxes & Benefits - Regular	\$13,800	\$13,700	-100
138-6150-000	Employee Recognition	\$0	\$0	0
138-6200-000	Employee Salaries - Temporary	\$0	\$0	0
138-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	0
138-6300-000	Long Term Temporary Employee - Agency - Distrib	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$50,100</b>	<b>\$51,100</b>	1,000
<b>Direct Program Expenses</b>				
138-7265-000	Contract Services- Distribution	\$0	\$0	0
138-7265-040	Contract Services - IKON	\$77,400	\$86,800	9,400
138-7265-076	Contract Services - Fulfillment	\$0	\$0	0
138-7265-081	Contract Services -Scanning	\$0	\$0	0
138-7500-000	Office Equipment & Furniture <\$500 tagged	\$500	\$500	0
138-7563-000	Mailhouse Services	\$0	\$0	0
138-7570-000	Maintenance - Mailing Equipment	\$2,000	\$1,000	-1,000
138-7570-040	Mtce & Repairs-Copying/Duplicating Equipment	\$0	\$0	0
138-7670-000	Postage - Meter	\$57,300	\$47,700	-9,600
138-7670-097	Postage - Permit	\$15,600	\$10,900	-4,700
138-7670-098	Postage - UPS/Parcel	\$19,100	\$19,000	-100
138-7670-099	Postage - Misc.	\$2,100	\$2,250	150
138-7770-013	Reinstatements - Prior YR's Reinst. Fee Refunds	\$0	\$0	0
138-7875-000	Supplies - Mailing	\$5,800	\$6,040	240
138-7875-040	Supplies - Duplicating	\$14,400	\$16,200	1,800
<b>Total Direct Program Expenses</b>		<b>\$194,200</b>	<b>\$190,390</b>	-3,810
<b>General &amp; Administrative Expenses</b>				
138-9400-000	Messenger & Delivery Services - Distribution Ctr	\$4,500	\$4,500	0
138-9500-000	Office Supplies - Distribution Center	\$200	\$600	400
138-9600-000	In House Printing - Distribution Center	\$0	\$50	50
138-9620-000	Postage - Distribution Center	\$100	\$200	100
138-9700-000	Small furn & equip < \$500 - Administrative	\$500	\$500	0
138-9800-000	Telephone - Distribution Center	\$50	\$50	0
138-9830-000	Training & Education - Distribution Center	\$300	\$300	0
138-9850-000	Travel & Expense - Distribution Center Staff	\$400	\$600	200
138-9999-000	Miscellaneous Expense - Distribution Center	\$0	\$0	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$6,050</b>	<b>\$6,800</b>	750
<b>Total Expenses</b>		<b>\$250,350</b>	<b>\$248,290</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$250,350)</b>	<b>(\$248,290)</b>	

## Finance & Administration - General

Finance & Administration records the revenue and expenses that apply to the overall administration of all bar programs. The revenue is the membership fees and investment income earned on the general and section funds and the service charge to sections.

### Revenue

Member Fee For:	2014	2015	\$ Change	% Chge	Fee
General	\$ 6,729,700	\$ 6,755,800	\$ 26,100		\$ 427.00
Late Fees	80,600	55,800	(24,800)		
	<b>\$ 6,810,300</b>	<b>\$ 6,811,600</b>	<b>1,300</b>	<b>0.02%</b>	<b>\$ 427.00</b>
Bulletin	191,300	194,200	2,900		10.00
LRAP	74,400	151,200	76,800		10.00
<b>Total General Fund</b>	<b>\$ 7,076,000</b>	<b>\$ 7,157,000</b>	<b>81,000</b>	<b>1.14%</b>	<b>\$ 447.00</b>
D&I	637,100	650,000	12,900		45.00
CSF	684,400	693,500	9,100		45.00
<b>Total All Funds</b>	<b>\$ 8,397,500</b>	<b>\$ 8,500,500</b>	<b>\$ 103,000</b>	<b>1.23%</b>	<b>\$ 537.00</b>

The overall increase in *member fee* revenue is slightly higher than the 2014 increase. The 2015 budget does not include an active member fee increase, but the unrestricted general fee revenue increases by only \$1,300 (after late fees) with the additional \$5.00 allocation to LRAP.

Revenue from *Late Fees* is projected for another drop based on 2013 and 2014 experience. The drop is attributable to the shorter deadline for making payment before suspension and as more members pay by credit card (51.3% of all fee paid by the January 31, 2014 deadline).

*Investment income* is the dividend and interest income earned on the portfolios managed by the two investment firms and the interest on the short-term funds in the Local Government Investment Pool (LGIP).

The revenue budget includes the \$8.00 *administrative fee* charged to sections. The assessment was increased from \$6.50 in 2014, but revenue generated from the assessment has declined slightly over the past few years as fewer member join sections. The assessment is estimated at half the cost of services provided to the sections by bar staff and as approved by previous BOG action.

### Expenses

- Personnel costs are for the two receptionists and most of the CFO.
- The investment management fee is the fee charged by Becker Capital and Washington Trust Bank to manage the bar's investment portfolio. The fee from both firms is based on the value of the portfolio, so as the portfolio increases so does the fee.
- Depreciation is the non-cash charge for the past cost of furniture, fixtures, equipment, and any capitalized software. This expense is declining as in 2014 \$215,000 in capital assets which are carryovers from the former building, or assets purchased with the new building reached the end of their depreciable life.
- Insurance expense is insurance not related to the building including liability, crime, employee practices liability, and umbrella. Market conditions are causing regular annual increases in premiums.
- The Bad Debt allowance consists of members who have resigned or been disciplined and still have fee payments outstanding and lawyer referral percentage fees, and a small amount for accounts receivable.

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Revenues</i>				
135-4235-000	Discounts	\$0	\$0	0
135-4235-044	Discounts - Company Store	\$0	\$0	0
135-4235-100	Discounts - Company Store	\$0	\$0	0
135-4250-000	Surplus Equipment Sales	\$0	\$0	0
135-4300-000	Insufficient Funds Fees	\$150	\$150	0
135-4325-xxx	Investments - ALL	\$130,600	\$135,200	4,600
135-4395-600	Realized (Gain) Loss - Becker	\$0	\$0	0
135-4395-700	Realized Investment (Gain)/Loss-WTB	\$0	\$0	0
135-4395-800	Realized Investment (Gain)/Loss-Lazard	\$0	\$0	0
135-4405-000	Membership Fees - General	\$6,729,700	\$6,755,800	26,100
135-4405-013	Membership Fees - Prior Years Adjustments	\$0	\$0	0
135-4405-100	Membership Fees - Interim Years Dues	\$0	\$0	0
135-4405-200	Membership Fees - Late Payment Fee Increase	\$80,600	\$55,800	-24,800
135-4475-000	Over (Short)	\$0	\$0	0
135-4610-000	Royalties - Credit Card Program	\$0	\$0	0
135-4610-680	Survey - Economic	\$0	\$0	0
135-4620-044	Sales - Company Store	\$0	\$0	0
135-4999-000	Miscellaneous Revenue	\$0	\$0	0
<b>Total Revenues</b>		<b>\$6,941,050</b>	<b>\$6,946,950</b>	5,900
<i>Salaries &amp; Benefits</i>				
135-6100-000	Employee Salaries - Regular	\$188,100	\$192,200	4,100
135-6100-100	Employee Salaries - Regular - Recptn	\$0	\$0	0
135-6100-108	Employee Salaries - Reception Staff Regular	\$0	\$0	0
135-6105-000	Employee Taxes & Benefits - Regular	\$71,700	\$70,300	-1,400
135-6105-100	Employee Taxes & Benefits - Regular - Recptn	\$0	\$0	0
135-6105-108	Employee Taxes & Benefits - Reception Regular	\$0	\$0	0
135-6150-000	Employee Recognition Bonus	\$0	\$0	0
135-6150-100	Employee Recognition Bonus - Recptn	\$0	\$0	0
135-6150-108	Bonus-Reception	\$0	\$0	0
135-6200-000	Employee Salaries - Temporary	\$0	\$0	0
135-6200-100	Employee Salaries - Temporary - Recptn	\$0	\$0	0
135-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	0
135-6205-100	Employee Taxes & Benefits - Temporary - Recptn	\$0	\$0	0
135-6300-000	Long Term Temporary Employee - Agency	\$0	\$0	0
135-6300-108	Temp Staff-Agency-Reception	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$259,800</b>	<b>\$262,500</b>	2,700
<i>Direct Program Expenses</i>				
135-7090-000	Bank Fees - Credit Card Processing	\$0	\$0	0
135-7262-152	F & O - Gen'l-Contract Services-Facilities	\$0	\$500	500
135-7265-000	Contract Services	\$1,000	\$800	-200
135-7265-152	F & O - Gen'l-Contract Services-Facilities	\$0	\$0	0
135-7295-000	Depreciation-Furniture/Equip/Software	\$140,000	\$114,100	-25,900
135-7385-152	F & O - Gen'l-Garbage-Facilities	\$0	\$910	910
135-7445-000	Insurance & Bonding	\$28,300	\$29,300	1,000
135-7455-000	Interest - Capital Lease	\$0	\$0	0
135-7460-000	Investment Expense	\$40,200	\$40,800	600

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Direct Program Expenses</i>				
135-7460-100	Investment Expense-Wash Trust Bank	\$0	\$0	0
135-7460-200	Investment Expense-Becker/WCT	\$0	\$0	0
135-7500-000	Office Equipment & Furniture <\$500 tagged	\$500	\$500	0
135-7535-000	Loss on Sale - Equipment/Furniture	\$0	\$0	0
135-7540-000	Lease Expense	\$0	\$0	0
135-7570-000	Maintenance - Equipment	\$0	\$0	0
135-7570-152	F & O - Gen'l-Maintenance & Repairs-Facilities	\$0	\$2,000	2,000
135-7780-152	F & O - Gen'l-Rent-Facilities	\$0	\$9,120	9,120
135-7830-000	Section Services	\$0	\$0	0
135-7870-000	Survey - Economic	\$0	\$0	0
135-7875-000	Supplies - Operating	\$5,100	\$5,300	200
135-7875-152	F & O - Gen'l-Supplies - Program Relate-Facilities	\$0	\$16,000	16,000
135-7995-044	YE Inventory Change - Bar Store	\$0	\$0	0
135-7999-000	F & O - Gen'l-Miscellaneous Expense-	\$0	\$0	0
<b>Total Direct Program Expenses</b>		<b>\$215,100</b>	<b>\$219,330</b>	4,230
<i>General &amp; Administrative Expenses</i>				
135-7262-000	F & O - Gen'l-Contract Services-	\$0	\$0	0
135-9300-152	F & O - Gen'l-Disaster Recovery Prepara-Facilities	\$0	\$0	0
135-9400-000	Messenger & Delivery Services	\$100	\$100	0
135-9500-000	Office Supplies	\$200	\$300	100
135-9500-152	F & O - Gen'l-Office Supplies-Facilities	\$0	\$200	200
135-9600-000	In House Printing	\$300	\$500	200
135-9600-680	In House Printing - Economic Survey Printing	\$0	\$0	0
135-9620-000	Postage	\$200	\$400	200
135-9640-000	Professional Dues	\$575	\$570	-5
135-9660-000	Provision for Bad Debts	\$25,000	\$36,200	11,200
135-9680-000	Publications & Subscriptions	\$300	\$500	200
135-9680-100	Publications & Subscriptions - Library	\$0	\$0	0
135-9680-152	F & O - Gen'l-Publications & Subscripti-Facilities	\$0	\$0	0
135-9700-000	Small furn & equip < \$500 - Administrative	\$0	\$0	0
135-9800-000	Telephone	\$50	\$50	0
135-9830-000	Training & Education	\$1,660	\$1,720	60
135-9850-000	Travel & Expense - Staff	\$3,220	\$3,670	450
135-9850-044	Staff Expense - Company Store	\$0	\$0	0
135-9850-152	F & O - Gen'l-Staff Travel & Expense-Facilities	\$0	\$0	0
135-9850-200	Staff Expense - Company Store	\$0	\$0	0
135-9855-000	Staff Expenses- FIRE Committee	\$6,100	\$6,400	300
135-9999-000	Miscellaneous Expense	\$300	\$300	0
135-9999-152	F & O - Gen'l-Miscellaneous Expense-Facilities	\$0	\$0	0
<b>Total General &amp; Administrative Expenses</b>		<b>\$38,005</b>	<b>\$50,910</b>	12,905
<i>Service Reimbursements</i>				
135-4490-000	In House Printing - Sections	(\$5,200)	(\$7,400)	-2,200
135-4490-100	In House Printing - Others	\$0	\$0	0
135-4505-000	Postage - Sections	(\$2,800)	(\$3,700)	-900
135-4505-100	Postage - Others	\$0	\$0	0
135-4670-000	Services - Labels/Address Imprinting - Sections	(\$100)	(\$150)	-50
135-4670-100	Services - Other / Misc. Services - Sections	\$0	\$0	0

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Service Reimbursements</i>				
135-4670-200	Services - Labels/Address Imprinting - Others	(\$11,000)	(\$11,000)	0
135-4670-300	Services - Other / Misc. Services - Others	\$0	\$0	0
135-4670-999	Services - Miscellaneous Section	\$0	\$0	0
135-4710-000	Support Assessments - Sections	(\$137,200)	(\$136,000)	1,200
135-4710-320	Support Services - OLF	\$0	\$0	0
<b>Total Service Reimbursements</b>		<b>(\$156,300)</b>	<b>(\$158,250)</b>	-1,950
<i>Offsets</i>				
135-9601-000	Photocopying - Offset	(\$27,450)	(\$33,780)	-6,330
135-9621-000	Postage - Offset	(\$87,400)	(\$73,700)	13,700
135-9801-000	Telephone - Offset	\$0	\$0	0
<b>Total Offsets</b>		<b>(\$114,850)</b>	<b>(\$107,480)</b>	7,370
<b>Total Expenses</b>		<b>\$512,905</b>	<b>\$532,740</b>	
<b>Net Operating Revenue (Expense)</b>		<b>\$6,428,145</b>	<b>\$6,414,210</b>	

## Human Resources

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The Human Resources Department maintains compliance with all local, state, and federal regulations related to human resources and safety and wellness issues, and develops policies to ensure compliance; maintains a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; guides directors and managers with the management, evaluation, and discipline of staff; manages a comprehensive and cost effective benefit program; and creates and enhances training options at all staff levels.

Like many departments, most of Human Resources costs are personnel salaries, taxes, and benefits.

- Recruitment advertising increased to reflect expenses for recruiting of the new Executive Director.
- Publications & Subscriptions increased to cover the increase for a subscription to Oregon Labor Law Letter and to conduct a staff survey about wellness programs.
- Training and Education increased to provide all staff training for American Disability Act compliance, updated harassment training, and continued diversity training.
- Travel & Expense increased to reflect attendance at one conference after two years without conference participation. Also included are funds to attend at least one diverse community event.
- Funding for the Employee Recognition Committee Activities replaces the \$4,000 for spot bonus gift cards.

Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Salaries &amp; Benefits</i>				
136-6100-000	Employee Salaries - Regular	\$148,700	\$155,700	7,000
136-6105-000	Employee Taxes & Benefits - Regular	\$56,700	\$57,000	300
136-6150-000	Employee Recognition	\$0	\$0	0
136-6150-100	Spot Bonus Gift Cards	\$0	\$0	0
136-6200-000	Employee Salaries - Temporary	\$0	\$0	0
136-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	0
136-6300-000	Long Term Temporary Employee - Agency - HR	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$205,400</b>	<b>\$212,700</b>	7,300
<i>Direct Program Expenses</i>				
136-7170-000	Gift card purchases	\$5,700	\$4,200	-1,500
136-7265-000	Contract Services	\$0	\$0	0
136-7425-000	Hiring & Recruiting	\$7,900	\$9,150	1,250
136-7500-000	Small furn & equip < \$500 - Direct Pgm	\$0	\$0	0
<b>Total Direct Program Expenses</b>		<b>\$13,600</b>	<b>\$13,350</b>	-250
<i>General &amp; Administrative Expenses</i>				
136-9400-000	Messenger & Delivery Services - Human Resources	\$0	\$0	0
136-9500-000	Office Supplies - Human Resources	\$500	\$750	250
136-9600-000	In House Printing - Human Resources	\$500	\$500	0
136-9620-000	Postage - Human Resources	\$200	\$200	0
136-9640-000	Professional Dues - Human Resources	\$360	\$360	0
136-9680-000	Publications & Subscriptions - Human Resources	\$700	\$800	100
136-9700-000	Small furn & equip < \$500-	\$0	\$0	0
136-9800-000	Telephone - Human Resources	\$0	\$0	0
136-9830-000	Training & Education - Human Resources	\$2,800	\$5,300	2,500
136-9830-100	Staff Tuition Reimbursement	\$5,000	\$5,000	0
136-9850-000	Travel & Expense - Human Resources Staff	\$300	\$2,057	1,757
136-9999-000	Miscellaneous Expense - Human Resources	\$1,200	\$1,550	350
<b>Total General &amp; Administrative Expenses</b>		<b>\$11,560</b>	<b>\$16,517</b>	4,957
<b>Total Expenses</b>		<b>\$230,560</b>	<b>\$242,567</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$230,560)</b>	<b>(\$242,567)</b>	

## Information Technology (IT)

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The IT focus in 2015 will be the Software Modernization Project which aims to replace most functionality within the bar's 30 year old database. In 2014 the bar developed an extensive request for proposal (RFP) outlining what features the organization needs in an Association Management Software (AMS) system. As a result the bar received four responses and each vendor was invited to provide a demonstration in late September. The vendor selection and contract process is on target to be complete by the end of 2014. Current timeline projections extend the AMS implementation into 2016 with most of the activity to be complete in 2015. Work includes formal solution design process, execution of configuration items, development of web features and forms, conversion of data, construction testing, user acceptance testing and training.

In addition to project related efforts staff maintains normal business operations in a variety of systems. The department staff holds a wide range of expertise to sustain technical support for approximately 110 computers, 12 servers, a collection of systems relating to audio and video conferencing, over 30 distinct applications, and several desktop tools (e.g. MS Office).

There are three distinct functions IT is responsible for to adhere to technical expectations of the bar.

### 1. Incident Management

- Technical support for computers, printers, telephones, and other devices used on a daily basis.
- Assistance in retrieving data, training, trouble shooting, bug fixes and minor enhancements in various supported applications using internal staff and contract services (\$48,590 in technical support for the OSB website, core member and case management database, accounting software and document management software).
- Generate mailing list requests and statistics needed by staff, sections or members for the various programs.
- Audio/Video and technical meeting room support for staff, member groups and customers.
- Maintain all hardware and components to ensure parts are replaced or fixed (\$14,000 in miscellaneous parts for computers, phones, peripherals, printers and audio/video equipment).

### 2. Infrastructure Maintenance

- Maintain the integrity, security, and availability of the bar's resources and information.
- Build and maintain systems that automate the operations of the bar including: network devices and cabling, server hardware and software, conference room presentation and communication systems, and building security and automation systems.
- Manage service providers that supply voice (\$20,000) and data service (\$30,000), email filtering and archiving (\$5,800), website hosting (\$19,920), offsite data storage (\$7,000), software maintenance (\$57,610) and other services (\$8,600).

### 3. Systems Development and Project Support

- Work with staff to analyze processes and provide systems design and architecture.
- Develop new applications when requirements arise that cannot be handled in existing systems or when enhancing an existing system is not practical.
- Coordinating tasks and communications between staff, IT and outside vendors.
- Maintain the integrity of the data in the membership database and subsidiary programs.
- Document the various existing applications.
- Perform and coordinate construction and user acceptance testing.



Account #	Account Description	Current Yr Budget	2015 Budget	Budget Inc / Dec
<i>Salaries &amp; Benefits</i>				
134-6100-000	Employee Salaries - Regular	\$323,100	\$332,800	9,700
134-6105-000	Employee Taxes & Benefits - Regular	\$123,200	\$121,800	-1,400
134-6150-000	Employee Recognition	\$0	\$0	0
134-6200-000	Employee Salaries - Temporary	\$0	\$0	0
134-6205-000	Employee Taxes & Benefits - Temporary	\$0	\$0	0
134-6300-000	Temporary Employee - Agency	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$446,300</b>	<b>\$454,600</b>	8,300
<i>Direct Program Expenses</i>				
134-7090-000	Bank Fees- Credit card	\$0	\$0	0
134-7090-100	Bank Chgs - Other	\$0	\$0	0
134-7205-015	Hosted Services & Infrastructure	\$33,169	\$34,320	1,151
134-7205-083	Software License Renewal & Maint	\$55,778	\$57,610	1,832
134-7205-100	Computer Services - - Contract Services	\$0	\$0	0
134-7205-200	Computer Services - - Data Protection	\$0	\$0	0
134-7265-000	Contract Svcs - Consulting - General	\$0	\$11,590	11,590
134-7265-015	Contract Svcs - Web programming	\$7,600	\$19,000	11,400
134-7265-050	Contract Svcs - Network support	\$0	\$0	0
134-7265-083	Contract Svcs - Software programming	\$18,000	\$18,000	0
134-7500-000	Office Equipment & Furniture <\$500 tagged	\$0	\$0	0
134-7570-000	Maintenance - Computer	\$1,000	\$1,000	0
134-7570-100	Maintenance - Telephone	\$0	\$0	0
134-7700-000	Outside printing services	\$0	\$0	0
134-7875-000	Supplies - Hardware	\$12,000	\$13,000	1,000
134-7875-070	DO NOT USE - USE 134-7500-000	\$0	\$0	0
134-7875-100	Supplies - Telecom	\$0	\$0	0
134-7877-000	Data Protection	\$16,000	\$7,000	-9,000
134-7885-000	Telephone - Data	\$30,000	\$30,000	0
134-7885-100	Telephone - All bar general	\$18,500	\$20,000	1,500
<b>Total Direct Program Expenses</b>		<b>\$192,047</b>	<b>\$211,520</b>	19,473
<i>General &amp; Administrative Expenses</i>				
134-9400-152	Messenger & Delivery Services - Facilities	\$0	\$0	0
134-9500-000	Office Supplies - IS	\$500	\$500	0
134-9600-000	In House Printing - IS	\$0	\$75	75
134-9620-000	Postage - IS	\$100	\$100	0
134-9640-000	Professional Dues - IS	\$0	\$225	225
134-9680-000	Publications & Subscriptions - IS	\$500	\$250	-250
134-9700-000	Small furn & equip < \$500-	\$0	\$0	0
134-9800-000	Telephone - IS	\$420	\$480	60
134-9830-000	Training & Education - IS	\$4,000	\$1,500	-2,500
134-9850-000	Travel & Expense - IS Staff	\$1,400	\$250	-1,150
134-9999-000	Miscellaneous Expense - IS	\$0	\$100	100
<b>Total General &amp; Administrative Expenses</b>		<b>\$6,920</b>	<b>\$3,480</b>	-3,440
<b>Total Expenses</b>		<b>\$645,267</b>	<b>\$669,600</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$645,267)</b>	<b>(\$669,600)</b>	

## Fanno Creek Place (FCP)

The operation of the Oregon State Bar Center is reported as a separate company entitled *Fanno Creek Place*, which is the name given by the developer Opus Northwest in 2007 to the three-building complex of which the bar center is the largest building.

FCP was built in 2007 and the bar occupied the building in January 2008 and purchased the building from Opus NW in September 2008. The bar occupies 54% of the 68,525 s.f. building and the balance is occupied by tenants. "Rent 2015" in the schedule below is the annual rent or projected rent for the tenant in 2015.

Tenant	RSF	% RSF	Rent 2015	Expiration
<b>Simpson Property Group</b>	938	1.37%	\$ 24,191	August 2018
<b>Professional Practices Group</b>	1,086	1.58%	\$ 28,808	December 2017
<b>Joffe Medi-Center</b>	6,015	8.78%	\$ 132,580	September 2016
<b>Zip Realty</b>	2,052	2.99%	\$ 44,966	September 2017
<b>Vacant</b>	2,058	3.00%	\$ 22,638	
<b>PLF</b>	19,060	27.81%	\$ 520,065	February 2023
	<b>31,209</b>	<b>45.54%</b>	<b>\$ 773,248</b>	
<b>Oregon State Bar (owner)</b>	37,316	54.46%		
<b>Totals</b>	<b>68,525</b>	<b>100.00%</b>		

- In addition to the rental income from tenants, the 2015 budget includes income from rental of the bar center's conference and meeting rooms. This revenue source has declined in 2014 as the most frequent renter's business has declined. The 2015 budget includes \$30,000 which will be less than the amount of revenue expected in 2014. The bar also receives rent of \$30,264 from the Oregon Law Foundation.
- The bar purchased the building with a \$13 million loan from Thrivent Financial, a mutual insurance company in Minneapolis, Minnesota. The loan is amortized over 30 years at 5.99%. A balloon payment is due February 2023. The monthly payment is \$77,859, and the largest change in the FCP budget is the decline in interest expense of \$14,000-\$15,000 each year.
- The next largest expense after interest is the non-cash expense for depreciation budgeted at \$506,100.
- The bar is responsible for all operation costs and accounting and oversight duties (common area maintenance (CAM)) of the three buildings of the six-acre Fanno Creek Place development. The bar is reimbursed fully for the costs related to buildings B&C in the complex.
- Excluding interest and depreciation, operating costs are projected to increase by 5% (\$16,521) in 2015. The increase is due almost entirely to common area costs since the parking lot is scheduled for seal coating and restriping and landscape and sprinkler improvements.

Account #	Account Description	Current Budget	2015 Budget	Budget Inc / Dec
<b>Revenues</b>				
139-4250-000	Sale of surplus equipment	\$0	\$0	0
139-4325-400	Interest - Mortgage reserve	\$2,200	\$1,890	-310
139-4325-500	Interest - F & O portion	\$0	\$0	0
139-4590-xxx	Rent - ALL	\$835,140	\$833,512	-1,628
139-4670-000	Management Fee Revenue	\$0	\$0	0
139-4999-000	Miscellaneous Income	\$0	\$0	0
<b>Total Revenues</b>		<b>\$837,340</b>	<b>\$835,402</b>	-1,938
<b>Salaries &amp; Benefits</b>				
139-6100-000	Employee Salaries - Regular	\$85,000	\$87,500	2,500
139-6105-000	Employee Taxes & Benefits - Regular	\$32,400	\$32,000	-400
139-6150-000	Employee Recognition Bonus	\$0	\$0	0
<b>Total Salaries &amp; Benefits</b>		<b>\$117,400</b>	<b>\$119,500</b>	2,100
<b>Direct Program Expenses</b>				
139-7090-000	Bank Fees - Credit Cards	\$600	\$450	-150
139-7090-100	Fanno Creek Place-Bank Fees	\$0	\$0	0
139-7265-xxx	Contract Services - ALL	\$20,910	\$19,050	-1,860
139-7280-100	PLF rent exp to Shorenstien	\$0	\$0	0
139-7295-000	Depreciation - Building	\$509,300	\$506,100	-3,200
139-7385-000	Trash removal FCP	\$5,500	\$5,590	90
139-7445-000	Insurance & Bonding	\$46,600	\$48,200	1,600
139-7455-000	Interest - Mortgage Fanno Creek Place	\$707,655	\$693,700	-13,955
139-7475-000	Janitorial Services	\$73,100	\$70,000	-3,100
139-7485-000	Landscape Maintenance & Supplies	\$1,850	\$1,850	0
139-7500-000	Furniture & Equipment < \$500 tagged	\$500	\$500	0
139-7535-000	Loss/gain on sale of assets	\$0	\$0	0
139-7570-000	Maintenance - Building	\$17,000	\$16,000	-1,000
139-7570-100	Maintenance -HVAC system	\$7,500	\$7,900	400
139-7575-000	Marketing - OSBC Meeting Rooms	\$1,000	\$1,000	0
139-7590-000	Meeting Room Operating Expense	\$1,500	\$1,500	0
139-7780-000	Rent- Offsite storage	\$0	\$0	0
139-7780-100	Rent - Fanno Creek Place	\$0	\$0	0
139-7875-000	Supplies - FCP	\$4,500	\$5,600	1,100
139-7875-100	Supplies - Janitorial	\$5,500	\$5,500	0
139-7882-000	Taxes - R/E taxes on FCP	\$21,700	\$22,400	700
139-7885-000	Telephone	\$2,000	\$1,900	-100
139-7960-000	Electricity	\$85,800	\$86,600	800
139-7960-100	FCP Electricity-interior common space	\$0	\$0	0
139-7960-200	Water & Sewer	\$26,200	\$27,600	1,400
139-7960-300	Natural Gas	\$2,300	\$2,400	100
<b>Total Direct Program Expenses</b>		<b>\$1,541,015</b>	<b>\$1,523,840</b>	-17,175
<b>General &amp; Administrative Expenses</b>				
139-9100-000	Common Area Maintenance-	\$15,279	\$31,600	16,321
139-9500-000	Office Supplies - Facilities	\$0	\$0	0
139-9660-000	Fanno Creek Place-Bad Debts Expense-	\$0	\$0	0
139-9700-000	Fanno Creek Place-Small furn & equip < \$500-	\$0	\$0	0
139-9800-000	Telephone - Facilities	\$0	\$0	0
139-9999-000	Miscellaneous Expense - Facilities	\$0	\$200	200
<b>Total General &amp; Administrative Expenses</b>		<b>\$15,279</b>	<b>\$31,800</b>	16,521
<b>Total Expenses</b>		<b>\$1,673,694</b>	<b>\$1,675,140</b>	
<b>Net Operating Revenue (Expense)</b>		<b>(\$836,354)</b>	<b>(\$839,738)</b>	







# OREGON STATE BAR

## Governance & Strategic Planning Agenda

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**Meeting Date:** June 27, 2014  
**From:** Josh Ross  
**Re:** Preference Polls for Circuit Court Appointments

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### Discussion

OSB Bylaw Section 2.7 governs judicial selection. Section 2.701 provides that the Bar will conduct preference polls in all statewide and circuit court elections. Section 2.702 provides that the Bar will conduct preference polls for circuit court judicial appointments only at the request of the Governor or the Board. Section 2.703 describes the appellate recommendation process the Bar undertakes to vet candidates for appointment to the Oregon appellate courts. Thus, preference polls for circuit court appointments are required only at the request of the Governor or the Board, while preference polls for statewide or circuit court elections and the appellate recommendation process for appointments to the appellate courts are always conducted.

Section 2.702 dates back to at least 2003. In 2003, the Board changed Board Policy 5.603(C) (now Bylaw section 2.702) to eliminate preference polls for appointment to circuit courts, unless requested by the Governor or the Board. Between April 2003 (when the policy changed) and February 2013 neither the Governor nor the Board requested that the Bar conduct a preference poll for appointments to the circuit courts, and the Bar did not do so.

In November 2012, this Committee reviewed that policy and, specifically, the question of whether the Bar should permanently begin conducting preference polls for circuit court appointments. Sylvia's memo on the subject is attached for your review. Based on a recommendation from this Committee, in February 2013 the BOG unanimously voted to change the long-standing policy and, essentially, instituted a permanent, ongoing request that the Bar conduct preference polls for all circuit court appointments. David Wade's memorandum on the subject is also attached for your review. Since February 2013, the Bar has conducted eight preference polls in contested elections. Here are some statistics from those polls:

- Participation rates in 2013 and 2014 preference polls (by judicial district): 60%, 29%, 24%, 63%, 52%, 18%, 57%, 23% (average: 41%).
- Overall participation rate in 2012 and 2014 primary and general *election* preference polls: 15%, 23%, 14%.
- Attached are statistics showing voter participation in each of the nine appointments in 2013 and 2014. The Governor appointed the person with the most votes in preference polls four times. He appointed two candidates who finished in second place; one candidate who finished in third place; one candidate who finished in fifth place; and one candidate who finished in last place.

The Bar publishes preference poll results on its website but does not distribute them via email or announce them in the Bulletin. The Bar does not issue a press release to announce the results of preference polls in appointment cycles and, of course, it is the Governor (and not the public) that makes the appointment for those positions.

As noted in Sylvia's and David's prior memoranda, there are different views about the value of preference polls and the reasons the Bar should (or should not) conduct them. The policy behind conducting preference polls is found in Bylaws section 2.700:

The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.

Thus, the Bylaws imply that the reason for conducting preference polls is twofold: to inform the public and to influence the decision the Governor makes. That "policy" must be viewed in light of the fact that the Bylaws do not require preference polls for circuit court appointments and, rather, expressly require them only when requested.

I asked that this issue be put on the Committee's agenda so that we could begin a discussion about whether the Board's February 2013 change in policy was a useful one. It is unknown whether or not preference polls are useful to the Governor, or in any way influence his/her decision, because no Governor has asked the Bar to conduct a preference poll. Until last year, neither did the Board. I am also not aware of any formal data or information indicating that preference polls are, or are not, useful to the public (which, ultimately, has no say in a judicial appointment and therefore is less likely to have use for those polls) or to the candidates themselves.

Here are some questions I ask the committee to consider:

1. What are the reasons the Bar feels compelled to conduct preference polls?
  - o Is there a public service goal/s in conducting preference polls despite that the public plays no role in judicial appointments?
  - o Does the Bar hope to influence the Governor's decision?
  - o Does the Bar hope to be helpful to the Governor?
  - o Does the Bar hope polls will be useful to candidates?
2. Are preference polls in circuit court appointments currently serving any of these goals/purposes?
3. Is the Committee interested in continuing this discussion? If so, would it be useful to solicit input from stakeholders (such as the Governor's office; candidates who have been through the process; local Bar organizations that otherwise conduct some form of polling/vetting; local Bar organizations that do not do anything; others)?



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# OREGON STATE BAR

## Policy and Governance Committee Agenda

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**Meeting Date:** November 11, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Preference Polls for Circuit Court Appointments

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### **Action Recommended**

Consider whether to recommend that the Board resume conducting preference polls for circuit court appointments.

### **Background**

Pursuant to OSB Bylaw 2.701, the bar conducts preference polls of judicial candidates for statewide and circuit court elections. Pursuant to Bylaw 2.702, preference polls for circuit court appointments are conducted only “at the request of the Governors of the State of Oregon or the Board.”

Since about 2005, neither the governor nor the board has requested a poll for a circuit court appointment. Rather, the BOG has encouraged local bars to conduct an interview-based screening process similar to what the board uses for statewide judicial appointments. The Multnomah Bar Association’s judicial screening process is possibly the oldest most structured of the various county bar mechanisms. Many county bars do nothing formal in regard to their circuit court appointments.

Preference polls are disfavored by some as being nothing more than “popularity contests.” Proponents counter that many (if not most) bar members take the polls seriously, making their selections based on their knowledge of the candidates and their assessment of the candidates’ respective qualifications. Particularly in counties that don’t have a screening process (or where the county bar’s screening process is perceived to be flawed), a preference poll can provide valuable information to the governor.

Preference polls are relatively easy and inexpensive for the bar to administer.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 22, 2013  
**From:** David Wade, Chair, Governance and Strategic Planning Committee  
**Re:** Preference Polls for Circuit Court Appointments

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### Action Recommended

Approve the Governance and Strategic Planning Committee's recommendation to resume conducting preference polls for circuit court appointments.

### Background

Pursuant to OSB Bylaw 2.701, the bar conducts preference polls of judicial candidates for statewide and circuit court *elections*. Pursuant to Bylaw 2.702, preference polls for circuit court *appointments* are conducted only "at the request of the Governor of the State of Oregon or the Board."

Since about 2005, neither the Governor nor the board has requested a poll for a circuit court appointment. Preference polls for appointments were eliminated at the same time that the BOG stopped ranking its recommendations for appellate court appointments, at the request of the then-Governor.

In place of preference polls of bar members in the county/judicial district of the vacancy, the BOG has encouraged local bars to conduct an interview-based screening process similar to what the board uses for statewide judicial appointments. The Multnomah Bar Association's judicial screening process is possibly the oldest most structured of the various county bar mechanisms. Lane and Washington Counties have similar processes, but many county bars do nothing formal in regard to the circuit court appointments.

Preference polls are disfavored by some as being nothing more than "popularity contests." Proponents counter that many (if not most) bar members take the polls seriously, making their selections based on their knowledge of the candidates and their assessment of the candidates' respective qualifications. Particularly in counties that don't have a screening process (or where the county bar's screening process is perceived to be flawed), a preference poll can provide valuable information to the Governor and to the public.

Preference polls are relatively easy and inexpensive for the bar to administer electronically and will not impose a significant burden on staff.

## 2014

### Appointment Preference Polls

**7<sup>th</sup> Judicial District, Position 3** *Hood River, Wasco, Sherman, Gilliam, and Wheeler Counties*

57% overall participation

<b>Karen Ostrye</b>	<b>32 votes</b> (Appointed by Gov. on June 6, 2014)
John T. Sewell	14 votes
Sheri L. Thonstad	5 votes
Timothy Farrell	2 votes
Carrie E. Rasmussen	2 votes

**20<sup>th</sup> Judicial District, Position 12** *Washington County*

23% overall participation

<b>Beth Roberts</b>	<b>48 votes</b> (Appointed by Gov. on March 5, 2014)
John S. Knowles	38 votes
Amy N. Velázquez	30 votes
Erik M. Buchér	23 votes
David G. Gannett	21 votes
Kellie F. Johnson	21 votes
David M. Veverka	16 votes
Mark John Holady	15 votes
Edward A. Kroll	11 votes
Grant Yoakum	10 votes
Theodore E. Sims	9 votes
Chris Burnett	8 votes
Edward S. McGlone	8 votes
Steven C. Burke	7 votes
Daniel E. Russell	5 votes
Brandon M. Thompson	5 votes
Conrad G. Hutterli	4 votes
Christopher A. McCormack	1 vote
Ian Jeffrey Slavin	1 vote

## 2013

### Appointment Preference Polls

**1<sup>st</sup> Judicial District, Positions 2 and 3** *Jackson County*

60% overall participation

<b>Douglas M. McGeary</b>	<b>93 votes</b>
<b>Kelly W. Ravassipour</b>	<b>71 votes</b> (Appointed by Gov. on September 18, 2013)
Christian E. Hearn	53 votes
David G. Hoppe	39 votes
J Adam Peterson	35 votes (Appointed by Gov. on September 18, 2013)
James J. Stout	24 votes
Joseph M. Charter	20 votes
David J. Orr	11 votes
Allan E. Smith	7 votes

Nathan D. Wentz 6 votes

**2<sup>nd</sup> Judicial District, Position 15** *Lane County*

29% overall participation

**John H. Kim 85 votes**

Clara L. Rigmaiden 80 votes (Appointed by Gov. on September 6, 2013)

Megan I. Livermore 42 votes

Debra E. Velure 38 votes

Marshall L. Wilde 13 votes

Robert W. Rainwater 12 votes

**4<sup>th</sup> Judicial District, Position 19** *Multnomah County*

24% overall participation

**Michael A. Greenlick 254 votes** (Appointed by Gov. on September 6, 2013)

Eric L. Dahlin 185 votes

Geoffrey G. Wren 82 votes

Henry H. Lazenby Jr 80 votes

Diane Schwartz Sykes 70 votes

Steven A. Todd 70 votes

Melvin Oden-Orr 56 votes

James Gordon Rice 55 votes

Kellie F. Johnson 45 votes

Michael C. Zusman 42 votes

Sibylle Baer 41 votes

Charles R. Henderson 41 votes

Todd L. Van Rysselberghe 41 votes

Christopher Andrew Ramras 40 votes

Andrea J. Anderly 38 votes

Andrew Morgan Lavin 37 votes

Lissa K. Kaufman 31 votes

Richard A. Weill 29 votes

Christine Mascal 27 votes

Timothy Daly Smith 26 votes

Joshua P. Stump 16 votes

Rodney H. Grafe 11 votes

Jason E. Hirshon 9 votes

Christopher M. Clayhold 7 votes

Christopher A. McCormack 7 votes

Monica M. Smith-Herranz 7 votes

Lynne Dickison 8 votes

Marcia Lynn Ohlemiller 4 votes

Daniel E. Russell 3 votes

**16<sup>th</sup> Judicial District, Position 1** *Douglas County*

63% overall participation

**Ann Marie G. Simmons 24 votes** (Appointed by Gov. November 19, 2013)

Julie A. Zuver 18 votes

Steve H. Huddle 11 votes

Charles F. Lee 12 votes  
Nancy E. Howe 4 votes

**19<sup>th</sup> Judicial District, Position 1** *Columbia County*

52% overall participation

**Cathleen B. Callahan** 8 votes  
Jason A. Heym 7 votes  
Teri L. Powers 7 votes  
John N. Berg 5 votes  
Jean M. Martwick 2 votes (Appointed by Gov. on September 30, 2013)

**20<sup>th</sup> Judicial District, Position 8** *Washington County*

18% overall participation

**John S. Knowles** 34 votes tied for first place  
**Amy N. Velázquez** 34 votes tied for first place  
Ricardo J. Menchaca 33 votes (Appointed by Gov. on September 6, 2013)  
Michelle R. Burrows 26 votes  
Beth L. Roberts 25 votes  
Brandon M. Thompson 18 votes  
David G. Gannett 15 votes  
Mark John Holady 14 votes  
Edward S. McGlone 11 votes  
John C. Gerhard IV 10 votes  
Daniel E. Russell 4 votes  
Karen M. Wilson 4 votes

DRAFT

## **BOG Resolution in support of state funding for court facilities**

*Whereas*, the worsening condition of Oregon's court facilities, including the Multnomah County Courthouse, has been documented in over 25 different studies since 1968.

*Whereas*, the Oregon State Legislature approved funding or state bonding authority for courthouse maintenance, upgrades, and replacement in Curry, Gilliam, Jefferson, Malheur, Multnomah, Union, and Wallowa counties and the Oregon Supreme Court building in the 2013-2015 legislatively adopted and approved budget.

*Whereas*, the Multnomah County Courthouse, built 100 years ago, is a seismic hazard and in poor condition, with substantial security and public safety limitations which would benefit from \$17.4 million in state bonding authority in the 2015-17 biennium towards the replacement of the county courthouse; and

*Whereas*, the mission of the Oregon State Bar includes improving the quality of legal services and increasing access to justice.

Resolved, That:

1. The Oregon State Bar supports the Chief Justice's requests for state funding to support capital investments and/or life and safety upgrades in Oregon's inadequate court facilities, including the Multnomah County Courthouse.
2. The Board of Governors should take reasonable and necessary action to support the state support for safe, suitable and sufficient county court facilities; and
3. All members of the Oregon State Bar are urged to communicate with their legislators regarding the need for a safe court system for themselves, their clients, and Oregon Judicial Department employees and judges.

### ***Background***

The Board of Governors (BOG) believes that all Oregonians deserve safe, suitable and sufficient state court facilities. Many, if not all, of the county courthouses in Oregon have moderate to severe deferred maintenance issues. These problems include the need for seismic upgrades, replacements of outdated and unsafe electrical systems and the need to make the courthouses more accessible to the public. The BOG appreciates the efforts of the Oregon State Legislature in addressing the facility needs of Oregon circuit courthouses and supports the continued focus on all of Oregon's circuit courts, including the proposed replacement of the Multnomah County Courthouse.



## Position Description

Title of Position: <b>Executive Director</b>	Exempt: Yes
Department: Executive Services	Range: NA
Supervisor's Title: Board of Governors	FTE: 1.0

### **Overall Position Objective:**

Serves as the chief executive officer for the Oregon State Bar (OSB). Responsible for the day-to-day administration of the OSB.

### **Essential Duties:**

- Works with the board in articulating and implementing the OSB's mission and goals.
- Creates a strong integrated team environment which results in excellent staff morale.
- Models behavior and provides leadership that recognizes diversity and uses inclusive and culturally competent practices.
- Models behavior and provides leadership that promotes professionalism.
- Oversees implementation of all OSB programs and services, including planning, budgeting, financing, and implementing board directives.
- Develops the board agenda working closely with board officers, committee chairs, and key bar staff. Responsible for accurate board minutes.
- Supervises the election of bar officers, Board of Governors (BOG) members, and other elected bar representatives.
- Formulates and implements internal operating policies and procedures for the bar.
- Evaluates OSB operations, service delivery, and programs on the basis of measurable outcomes and reports the results of the measurement to the board.



- Serves as an official spokesperson for the OSB to the public and the media; oversees all other communication with the bar membership and the public.
- Assists the BOG with the development and implementation of long-term policy and planning.
- Prepares budget for BOG approval and supervises fiscal and budgetary matters of the bar including, but not limited to, negotiating and executing contracts; collecting debts owed to the bar; and acquiring, managing, and disposing of personal property related to the bar's operation.
- Develops and maintains effective communication with a broad constituency, including members of the bar, the Board of Governors, officers, local and specialty bar associations, law schools, the Professional Liability Fund, and other law-related membership entities.
- Creates, organizes, and participates in public speaking and public relations events on a frequent basis.
- Represents the bar and the Board of Governors before bar-related entities, the judicial system, the legislature, the membership, and the community.
- Responsible for the direct supervision of the managers and supervisors of the bar, excluding those staff working for the Professional Liability Fund.
- Directs and supervises management of all bar staff, including without limitation, hiring, training, scheduling, reviewing work, and evaluating performance of professional and non-professional staff.
- Monitors development and implementation of human resources policies assuring compliance with all appropriate laws and regulations.
- Performs other duties as imposed by the Bar Act, the Bar Bylaws, or as otherwise directed by the board.

**Other Duties:**

- Maintains contact with relevant national and state bar associations and professional groups.
- Serves as bar liaison to committees, sections, task forces and other groups.
- Other duties as assigned by the board.

## **Qualifications:**

- Graduation from an accredited law school; admission to the Oregon State Bar; five years of experience practicing in a law-related field in Oregon.
- Five years administration management experience including program planning, administration, evaluation, and budgeting as well as personnel selection, supervision, and evaluation.
- Three years of experience working with a governing body, such as a Board of Directors in a public, private, or non-profit organization.
- Experience representing or working with professionals and outreach to people from a variety of backgrounds.
- Successful experience working with a variety of internal and external groups including obtaining consensus and support for program initiatives and solutions.
- Combination of experience and training that demonstrates knowledge, understanding, and utilization of diversity and its related concepts and practices and cultural competency issues.
- Knowledge and understanding of public sector administrative and regulatory law, and of the legislative process.
- Demonstrated ability to work collaboratively and effectively with difficult issues at various levels of an organization.
- Strong organizational skills.
- Excellent presentation and written and oral communication skills.
- Excellent interpersonal and conflict management skills with strong ability to use tact.
- Evidence of successful use of project management and time management skills.
- Ability to work in a team environment.
- Ability to set priorities and work with various groups or individuals with conflicting demands.
- Ability to exercise professional demeanor and provide a high level of professional customer service for a potentially demanding customer base.

- Ability to exercise sound judgment in keeping with the objectives and policies of the Oregon State Bar.
- Evidence of excellent interpersonal communication, public speaking, public relations, and conflict management skills, including ability to communicate with a broad constituency.
- Any satisfactory equivalent combination of experience and training which ensures the ability to perform the work may be considered for the above.

**Job-Related Physical Characteristics:**

- Ability to communicate in person, in writing, by e-mail, and by telephone.
- Ability to operate a computer for long periods of time.
- Ability to remain in a stationary position for long periods of time.
- Ability to manipulate data for program purposes and typing.
- Ability to use standard office equipment and computer peripherals.
- Ability to travel overnight, inside and outside Oregon, for meetings, seminars, and conferences.
- Ability to work in a moderately noisy, open environment.
- Ability to perform as a public speaker.

**LEGAL TECHNICIAN'S TASK FORCE****FINAL REPORT TO THE BOARD OF GOVERNORS**

November, 2014

**Introduction**

In mid-2013, the Board of Governors through the Bar's President, Michael Haglund, established this Task Force to consider the possibility of the Bar's supporting a Limited License for Legal Technicians (LLLT)<sup>1</sup>, and if recommended, to outline the preliminary consideration and factors to be considered.

The task force was composed of 16 members, drawn from a variety of sources, including representatives from Legal Aid providers, young lawyers, the judiciary, Professional Liability Fund, Board of Bar Examiners, paralegal schools, and people with a history of working with and for self-represented litigants. In addition, other interested individuals attended some or all of the task force's meeting, representing various constituencies.

Members of the task force were: Gerald Brask, Hon. Suzanne Bradley Chanti, Michele Grable, Guy B. Greco, William J. Howe III, Bradley D. Maier, John J. Marandas, Hon. Maureen H. McKnight, Mitzi M. Naucler, Hon. Jill A. Tanner, Theresa L. Wright, Joshua L. Ross, Michael E. Haglund, Sylvia E. Stevens, Linda Odermott, and Sean Mazorol.

**Executive Summary**

At its November meeting, the Task Force determined to submit a proposal to the BOG, recommending the Bar proceed with exploring a plan to develop a Limited Licensed Technician program in Oregon, although not all Task Force members concur with this recommendation.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program, utilizing the Washington State program as a model.

**Methodology**

Beginning July 27, 2013, and through the end of the year, the Task Force met six

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<sup>1</sup> The Task Force utilized this name for purposes of discussion only, and recommends that a different permanent title be chosen, as "LLLT" seems a bit cumbersome.

times, approximately once per month for two to three hours each meeting.

Task Force members reviewed significant written material before the first meeting, and additional materials after that. These materials included: Paralegal Regulation by State; The Last Days of the American Lawyer by Thomas D. Morgan; numerous articles from the states of California, New York and Washington, and the country of Canada; OSB 1992 Task Force report; Appendix Apr 28 Regulations of the Apr 28 Limited License Legal Technician Board; WSBA Changing Profession – Challenges and Opportunities; Roadmap for Action – Lessons From the Implementation of Recent Civil Rules Projects; Oregon Family Courts – What’s new What’s to Come by SFLAC; OSB Referral Information Services statistics; a WSBA Webinar that included Regulation of the April 28 LLLT Board, WSBA Pathway to LLT Admission, and Program and Licensing Process; Protecting the Profession of the Public? By D. Rhode & L. Ricca; and The Incidental Lawyer by Jordan Furlong.

The Task Force spent a fair amount of time reviewing and discussing the 1992 Task Force report regarding the same subject and the outcome, and how this result could be different given the years that had passed in the interim. Most notably, the Task Force was cognizant of the fact that there are more people unable or unwilling to afford lawyers now than when the last report was issued, and no adequate solution has been found.

In addition, during the first two meetings, members discussed a variety of matters, including pros and cons of moving forward, access to justice, reasons for creating (or not creating) a Limited License, and other related matters. The October meeting was dedicated to a presentation from Paula Littlewood, Executive Director of the Washington Bar Association, about Washington’s efforts to create a Limited License Legal Technicians program. (See description below.) During the final meeting, the Task Force received reports from various subcommittees (see below), and determined the actions to recommend to the Board.

## Washington Program

Washington spent approximately two years in developing its Licensed Legal Technician’s program, so it is well thought out. The Task Force believes that, should the Board of Governors choose to proceed with the idea of Licensed Legal Technicians, that the plan be modeled after the Washington scheme. This includes educational and training requirements, along with “apprenticing.” Additionally, there are provisions for on-going continuing legal education and malpractice requirements. Their first class of Licensed Legal Technicians is in the area of family law.

In summary, the Washington scheme requires that the applicant be at least 18 years of age with a minimum of an Associate’s Degree. Additionally, applicants must complete 45 quarter

hours (or the equivalent) of legal students core curriculum<sup>2</sup>.

Subcommittee Recommendations

After discussion, Task Force members determined that there were certain areas of law more conducive to non-attorney representation than others, discussed possible legislative amendments needed, and issues such as Continuing Legal Education and malpractice coverage. As a result, the Task Force formed the following Subcommittees to give close consideration to specific issues presented by the Subcommittee assignments:

The following three Subcommittees focused on implementation issues:

Implementing Legislation  
Client Protection/Ethics/Malpractice  
Education and Licensing

and the following focused on substantive legal issues:

Family Law  
Landlord/Tenant  
Estate Planning

Each of these Subcommittees presented a written report to the Task Force. These written reports are attached to this report as exhibits.

Issues and Considerations Identified

The Task Force discussed the positives, negatives, and other factors to be considered to determine if Oregon should implement a Licensed Legal Technician program.

The major two factors the Task Force considered is the vast need for legal assistance for the low- to moderate- income populations, and the concern that the Legislature might proceed with proposed legislation if the Bar does not act itself with a preferred program.

Other factors discussed included:

Pro

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<sup>2</sup> Some or all of this educational requirement may be satisfied in the applicant's degree studies, provided the program is certified through the ABA or State Bar.

This is large step forward to providing access to justice for poor to moderate income Oregonians

Con

Legal Technicians could draw work away from new lawyers  
If ongoing legal education and malpractice coverage are required, can Limited License Technicians really charge much less than lawyers?  
How the Bar assure that Legal Technicians stay “within the lines?”

Other

Who pays for the initial implementation of the program?  
If Legal Technicians are required to have malpractice insurance, should it be through the PLF or other entity?  
Bar Act would need to be amended to allow this category of legal practitioner  
Supreme Court approval would also need to be sought  
Should Licensed Legal Technicians be allowed to choose forms for parties?  
Should Licensed Legal Technicians be required to have trust accounts?  
What about a Client Security Fund?  
What requirements should be statutorily imposed, and what left to the discretion of the governing board?  
How many of the above requirements should be statutory v. non?  
Should it matter where the LLLT’s office is located?  
How should Oregon handle LLLT’s working from other states?  
Should Oregon recognize LLLT’s who have obtain licensure from another state having similar requirements to Oregon’s?

There should be clarification as to the different responsibilities LLLT’s would have depending on whether they are under the direction and supervision of an attorney or not.

If the Bar follows the Washington scheme, the Bar/Supreme Court/Legislature should establish an entity separate from the Bar to administer the program.

Conclusions

In short, the Task Force recommends that the Board of Governors create a Licensed Legal Technician’s Board in Oregon similar to Washington’s. It further recommends that the Board begin with the suggestions developed by Task Force Subcommittees in doing its work. The Task Force also suggests that the first area that be licensed is family law, to include Guardianships.

## Summary of 2014 House of Delegates Actions November 7, 2013

### Passed

In Memoriam (BOG Resolution No. 1)

Amend Oregon Rule of Professional Conduct 8.4 (BOG Resolution No. 2)

Amendment of Oregon Rules of Professional Conduct 5.5. (BOG Resolution No. 3)

Veterans Day Remembrance extending gratitude to those serving in the military service and offering condolences to the families of those who have died in service to their country (BOG Resolution No.4)

Amendment of Oregon Rules of Professional Conduct 1.2. (BOG Resolution No. 5) as amended. **[Exhibit A]**

Support for Adequate Funding for Legal Services to Low-Income Oregonians (Delegate Resolution No. 2)

Fair Compensation for Indigent Defense Providers (BOG Resolution No. 6)

### Failed

Investigation Regarding Change to Oregon State Bar Logo (Delegate Resolution No. 3)

HOD Agenda Items (Delegate Resolution No. 4)



## Exhibit A

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### 7. Amendment of Oregon Rule of Professional Conduct 1.2 (Board of Governors Resolution No. 5)

*Whereas*, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

*Whereas*, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

*Resolved*, That the amendment of Oregon Rule of Professional Conduct 1.2 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

#### **RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) 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.

**(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.**

## AMERICAN BAR ASSOCIATION

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**To: ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Law Schools, Disciplinary Agencies, Individual Clients and Client Entities**

**From: ABA Commission on the Future of Legal Services**

**Date: November 3, 2014**

**Re: Issues Paper on the Future of Legal Services**

## I. Introduction

The American Bar Association Commission on the Future of Legal Services is conducting a comprehensive examination of issues related to the delivery of, and the public's access to, legal services in the United States. This issues paper is intended to identify and elicit comments on topics that the Commission is currently exploring.

**The Commission takes no position on the matters addressed in this paper at this time.** Rather, the Commission expects to use any comments and supporting documents that it receives to supplement its research, decide which issues to address, and guide the development of various reports, proposals, and recommendations. Comments received by the Commission may be posted to the Commission's website and should be submitted by **Wednesday, December 10, 2014.**

## II. Background

Access to affordable legal services for the public is critical in a society based on the rule of law. The resolution of legal matters is growing more expensive, time-consuming, and complex. Many who need legal advice cannot afford to hire a lawyer and are forced to represent themselves. Even those who can afford legal services often do not use them or turn to less expensive law-related alternatives. For those whose legal problems require entry into the court system, various challenges arise due to serious underfunding of the courts.

At the same time, technology, globalization, economic, and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers emerging online and offline offer a range of services in dramatically different ways.

The Commission has created six working groups to study these developments and draft recommendations and related work product for the Commission's consideration and possible approval:

- **Data on Legal Services Delivery.** This working group will assess the availability of current, reliable data on the delivery of legal services, such as data on the public's legal needs, the extent to which those needs are being addressed, and the ways in which legal and law-related services are being delivered; identify areas where additional data would be useful; and make existing data more readily accessible to practitioners, regulators, and the public.
- **Dispute Resolution.** This working group will assess developments, and recommend innovations, in: (a) court processes, such as streamlined procedures for more efficient dispute resolution, the creation of family, drug and other specialized courts, the availability of online filing and video appearances, and the effective and efficient use of interpreters; (b) delivery mechanisms, including kiosks and court information centers; (c) criminal justice, such as veterans' courts and cross-innovations in dispute resolution between civil and criminal courts; (d) alternative dispute resolution, including online dispute resolution services; and (e) administrative and related tribunals.
- **Preventive Law, Transactions, and Other Law-Related Counseling.** This working group will assess developments, and recommend innovations, in delivering legal and law-related services that do not involve courts or other forms of dispute resolution, such as contract drafting, wills, trademarks, and incorporation of businesses.
- **Access Solutions for the Underserved.** This working group will assess developments, and recommend innovations, in facilitating access to legal services for underserved communities.
- **Regulatory Opportunities.** This working group will study existing regulatory innovations, such as [Alternative Business Structures](#) in countries outside of the U.S. and Washington State's [Limited License Legal Technicians](#), as well as related developments, including the recently-released [Canadian Bar Association's Legal Futures Initiative](#) report. The working group will then recommend regulatory innovations that improve the delivery of, and the public's access to, competent and affordable legal services.
- **Blue Sky.** This working group will propose innovations that do not necessarily fit within the other working groups, but could improve how legal services are delivered and accessed, such as innovations developed in other professions to improve effectiveness and efficiency, collaborations with other professions, and leveraging technology to improve the public's access to law-related information.

### III. Issues for Public Input

To guide its work over the coming months, the Commission seeks comments on the following questions:

1. **Better service.**
  - a. **Clients.** How can the legal profession better serve clients of all types, including individuals, governments, corporations, and institutions?
  - b. **Potential clients.** How can the legal profession better serve people who currently cannot afford a lawyer, or who decide to use alternative service providers or go it alone?
2. **Most important problems in delivering legal and law-related services.**
  - a. **Dispute resolution/litigation.**
    - i. What are the most important problems in delivering legal and law-related services in dispute resolution/litigation?
    - ii. How do you think those problems should be addressed?
    - iii. What existing innovations should the Commission study?
    - iv. What ideas for new innovations do you have?
  - b. **Outside of dispute resolution/litigation.**
    - i. What are the most important problems in delivering legal and law-related services outside of dispute resolution/litigation (e.g., wills, contract drafting, trademarks, incorporation of businesses, etc.)?
    - ii. How do you think those problems should be addressed?
    - iii. What existing innovations should the Commission study?
    - iv. What ideas for new innovations do you have?
3. **Alternative providers and regulatory innovations.**
  - a. **No J.D./law license requirement.** Can access to legal services be improved if the pool of available providers is expanded to include people without a J.D. and full law license?
    - i. Will legal services become more affordable if people without a full law school education and law license are authorized to deliver legal services?
    - ii. How can the delivery of legal services be effectively regulated to prevent harm to consumers if the system of providers is expanded in these ways?
  - b. **Ownership interest in law firms.** To what extent should those who are not licensed to practice law be permitted to have an ownership interest in law firms?
  - c. **Other regulatory innovations.** What other kinds of regulatory innovations in the United States or other countries could help to improve the delivery of legal services (e.g., entity regulation and proactive risk-based management/compliance programs, such as those in Australia that have helped foster ethical infrastructures and reduced complaints against regulated firms)?

4. **Underserved communities.**
  - a. **Facilitating access.** How can we better facilitate access to civil and criminal legal services for underserved communities?
    - i. What services are most needed by those who are underserved?
    - ii. What barriers prevent them from accessing such services?
    - iii. What existing models or innovations have had the greatest impact on expanding access to legal services?
    - iv. What further innovations might help to expand access to legal services?
    - v. How can the profession help to educate the underserved about their legal needs and ways to address those needs?
  - b. **Facilitating delivery by small law practices.** How can small law practices (e.g., solo practitioners, lawyers in rural communities, small firm lawyers, etc.) sustainably represent those who do not have access to legal services?
    - i. What specific tools or innovations can lawyers leverage to reach this goal?
    - ii. What kind of new training might lawyers need to meet this goal?
5. **Policy changes.** To what extent should the Commission explore policy changes to improve access to legal services (e.g., recommending that the ABA lobby for changes to government policies that would improve the quality of, or access to, legal services)?
6. **Insights from other fields.** What insights might the legal profession gain from innovations in other professions, industries, or disciplines (e.g., WebMD, IBM Watson, technology advancements, design-thinking, project management, gamification, checklists, organizational psychology, etc.)?
7. **Data.** Significant amounts of data are available on lawyers, the delivery of legal services, and the legal needs of the public. What additional data is needed?
8. **Legal education and training.** In what ways should the profession address the findings of the [ABA Task Force on the Future of Legal Education Report](#)? What competencies and specialized training does the public expect and need from lawyers (problem-solving, familiarity with related disciplines, etc.)?
9. **Diversity and Inclusion.** How can the legal profession address diversity and inclusion in the recruitment and retention of practicing lawyers? What impact do diversity and inclusion have on the public's need for legal services? Would greater diversity and inclusion enhance access?
10. **Other considerations.**
  - a. **Specific issue or challenge.** Is there a specific issue or challenge regarding access to, or delivery of, legal services that has not been addressed by the above questions and that you think needs the Commission's attention? If so, what is the issue and why do you see it as important?

- b. **Other questions.** What other questions should the Commission consider that are not addressed above?

The Commission would particularly appreciate submitted comments with links to relevant resources and citations to specific examples, illustrations, and solutions. Any comments should be submitted by **Wednesday, December 10, 2014** to:

Katy Englehart  
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321 N. Clark Street  
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(312) 988-5134  
F: (312) 988-5100  
Email to: [IPcomments@americanbar.org](mailto:IPcomments@americanbar.org)

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**Memo Date:** October 31, 2014  
**From:** Rod Wegener, CFO  
**Re:** Revision to 2012-2013 Audit Opinion Letter

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### Action Recommended

Acknowledge receipt of the revised 2-page "Report of Independent Auditors" letter from Moss Adams.LLP.

### Background

During an internal review by Moss Adams of the bar's audit report for fiscal years 2012-2013, Moss Adams prepared a revised "Report of Independent Auditors" (exhibit following this memo). This 2-page letter is the lead in the audit report the board received at its June 27 meeting.

The only change in the revised letter is the addition of the paragraph under "Emphasis of Matter." This paragraph was included in the 2010-2011 letter, but incorrectly omitted in the 2012-2013 report the bar received. The paragraph states that the audit covers the bar's general fund only and does not include the PLF (although not specifically stated.)

## REPORT OF INDEPENDENT AUDITORS

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

### Report on the Financial Statements

We have audited the accompanying statements of net position of the Oregon State Bar Fund (the Bar), as of December 31, 2013, and the related statements of revenues, expenses and changes in net position and cash flows for the two-year period then ended, and the related notes to the financial statements, as listed in the table of contents.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement to the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



## REPORT OF INDEPENDENT AUDITORS (continued)

### ***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Oregon State Bar Fund as of December 31, 2013, and the respective changes in financial position and cash flows, where applicable thereof for the two-years then ended in conformity with accounting principles generally accepted in the United States of America.

### ***Emphasis of Matter***

As discussed in Note 1, the financial statements present only the Oregon State Bar Fund and do not purport to, and do not, present fairly the financial position of the Oregon State Bar as of December 31, 2013, and the changes in its financial position, or, where applicable, its cash flows for the two-year period ended December 31, 2013 in conformity with accounting principles generally accepted in the United States of America.

### ***Other Matter***

#### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis on pages 3 through 7, and the Schedule of Funding Progress Other Postemployment Benefit Plans on page 28 be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

### ***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated June 12, 2014 on our consideration of the Bar's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of the report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

*Moss Adams LLP*

Portland, Oregon  
June 12, 2014

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 5, 2014  
**Open Session Minutes**

The meeting was called to order by President Tom Kranovich at 1:00 p.m. on September 5, 2014. The meeting adjourned at 5:00 p.m. Members present from the Board of Governors were Jenifer Billman, James Chaney, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Joshua Ross, Richard Spier, Simon Whang, Timothy Williams and Elisabeth Zinser. Not present were Patrick Ehlers and Charles Wilhoite. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Kay Pulju, Dawn Evans, Judith Baker, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair; and Guy Greco, PLF Board of Directors.

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

**Motion:** Ms. Mitchel-Markley moved, Mr. Kehoe 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 that he'd had a busy several weeks. He commented specifically on the meetings with the Chief Justice and the Awards Committee. He spoke at OLIO and noted that the criteria for participating in OLIO have expanded. He also gave a speech on professionalism at Willamette Law School's orientation session.

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

In writing.

**C. Report of the Executive Director**

In addition to her written report, Ms. Stevens reported on the meeting with attorneys from Ukraine at the Bar Center.

**D. Director of Regulatory Services**

In addition to her written report, Ms. Evans reported that they are making a concerted effort to work on the oldest open cases in her department.

**E. Director of Diversity & Inclusion**

No report.

**F. MBA Liaison Reports**

Mr. Whang reported on the September 3, 2014 MBA board meeting.

## G. Oregon New Lawyers Division Report

Mr. Eder announced the ONLD CLE which will be held in conjunction with the OSB Litigation Section. The ONLD participated in a rafting trip with OLIO. Karen Clevering is the ONLD Chair for 2015.

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

In Mr. Zarov's absence, Mr. Greco announced that Carol Bernick was hired to replace Mr. Zarov as Chief Executive Officer when he retires at the end of September. Former Board of Directors member John Berge was hired as a claims attorney. Mr. Greco submitted a general update on the PLF's positive financial status and discussed the potential for a pro-rated assessment for part-time lawyers as well as monthly payments.

Mr. Greco asked the board to approve the PLF 2015 budget and assessment. The assessment will remain at \$3500, unchanged from 2014. **[Exhibit A]**

**Motion:** Mr. Kehoe moved, Mr. Prestwich seconded, and the board voted unanimously to approve the PLF 2015 budget and assessment as requested.

**Motion:** Mr. Kehoe amended his motion to include the provision to adjust the PLF budget to reflect the same salary increase in the OSB budget when approved by the BOG at its meeting in November. Mr. Prestwich seconded, and the board voted unanimously to approve the amended motion.

Mr. Greco asked the board to approve the recommended changes to PLF Policy 7.700 which will make excess coverage "continuity credit" discretionary. **[Exhibit B]**

**Motion:** Mr. Mansfield moved, Mr. Spier seconded, and the board voted unanimously to approve the changes to PLF Policy 7.700 as requested.

Mr. Greco asked the board to approve the recommended changes to PLF Policy 3.250 – Step-Rated Assessment. Changes in the step-rated assessment amounts will benefit new attorneys since the economics of law practice have become more problematic. This change will have a cost, but in recent years the PLF balance sheet has been very positive. **[Exhibit C]**

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted unanimously to approve the changes to PLF Policy 3.250 as requested. Mr. Spier abstained.

### 4. OSB Committees, Sections and Councils

#### A. Legal Ethics Committee

Ms. Hirschbiel announced that the committee will have a proposed amendment to RPC 1.2(c) for the board's approval in October. If so, the delegate resolution already submitted asking the BOG to formulate the same amendment will be moot. **[Exhibit D]**

#### B. Legal Services Program Committee

Ms. Baker presented the proposed updates to the Legal Services Program Standards and Guidelines for the board's approval. **[Exhibit E]**

**Motion:** Ms. Zinser moved, Mr. Heysell seconded, and the board voted to approve the committee's requested changes.

**C. Client Security Fund Committee**

Ms. Stevens asked the board to consider the claimant's request for review of the CSF Committee's denial of CSF claim CONNALL(Briggs)2014-11. **[Exhibit F]**

**Motion:** Mr. Williams moved, Mr. Kehoe seconded, and the board voted to uphold the committee's denial of the claim.

Ms. Stevens asked the board to approve the committee's claims recommended for payment. **[Exhibit G]**

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted to approve payment of claim 2013-48 BERTONI (Monroy) in the amount of \$5000.00.

**Motion:** Ms. Matsumonji moved, Mr. Chaney seconded, and the board voted to deny payment of claim 2014-01 McCARTHY (Snellings) in the amount of \$7000.00. Ms. Mitchel-Markley, Mr. Prestwich, Mr. Ross and Ms. Billman voted no. Mr. Emerick, Mr. Kehoe, and Mr. Williams abstained. All others voted in favor of the motion.

**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 2015 BOG Public Member appointment of Kerry L. Sharp. **[Exhibit H]**

**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.

**C. Governance and Strategic Planning Committee**

Mr. Spier asked the board to consider the Committee's recommendation to sunset the OSB Federal Practice and Procedure Committee.

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

Mr. Spier asked the board to pursue legislation that will create an out-of-state region for the Board of Governors, represented on the board by one lawyer-member. **[Exhibit I]**

**Motion:** The board approved the committee motion. Mr. Kehoe, Ms. Kohlhoff and Ms. Zinser were opposed. All others voted in favor of the motion.

**D. Public Affairs Committee**

Mr. Prestwich updated the board on the latest legislative activity, the status of the bar's list of law improvement proposals, and the upcoming election. He updated the board on the request by the Legal Services Corporation (LSC) to support proposed legislation in the U.S. Senate to give the Federal Deposit Insurance Corporation (FDIC) protection to IOLTA accounts held in credit unions.

**E. Executive Director Selection Special Committee**

Mr. Kehoe and Ms. Billman discussed the process for selecting a new executive director and for drafting the job description. Materials will be sent to board members for input.

**F. International Trade in Legal Services Task Force**

Ms. Hirschbiel explained that this is the first piece of the task force's recommendations and is presented now to be in time for the November HOD agenda. She explained the committee's analysis and recommendation to expand RPC 5.5 to allow for temporary practice by lawyers trained outside the US. . **[Exhibit J]**

**Motion:** Mr. Whang moved, Mr. Spier seconded, and the board voted to adopt the task force's recommendation to amend RPC 5.5(c) and to put it on the 2014 HOD agenda. Mr. Kehoe, Mr. Heysell, Ms. Mitchel-Markley and Ms. Kohlhoff were opposed. All others voted in favor of the motion.

**G. OSB Awards Nominations Committee**

Ms. Pulju asked the board to approve the committee's nominations. Mr. Kranovich nominated Judge Alfred Goodwin for a second Wallace P. Carson, Jr. Award. **[Exhibit K]**

**Motion:** The board voted unanimously to accept the committee's nominations with Mr. Kranovich's additional nominee.

**6. Other Action Items**

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

**Motion:** Ms. Matsumonji moved, Mr. Whang seconded, and the board voted unanimously to approve the various appointments.

Mr. Spier informed the board of the status and procedure for ongoing strategic planning by this board and future boards.

Ms. Kohlhoff asked the board to endorse Ballot Measure 89. After discussion, the matter died for lack of a motion.

Ms. Pulju asked the board to approve the four recommendations in the proposed CLE Seminars business model. **[Exhibit M]**

**Motion:** Mr. Spier moved, Mr. Williams seconded, and the board voted to approve and direct staff to carryout recommendation #1 in the proposed business model.

The board agreed to have the OSB Accounting department carryout recommendation #2 in the proposed business model.

**Motion:** Ms. Mitchel-Markley moved, Mr. Prestwich seconded, and the board voted to send recommendations #3 & #4 in the proposed business model to the MCLE committee for further review.

Mr. Spier informed the board that the nominating committee had interviewed the two candidates for 2015 President-elect and would be following up to confer with the remaining

board members. He expects the committee's selection will be announced by the end of September.

**7. Consent Agenda**

**Motion:** Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes and a section's name change request. **[Exhibit N]**

**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)**

Ms. Stevens reported on Lewis & Clark Law School's announcement that it will be closing its low-income legal services clinic in May 2015.

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**Oregon State Bar  
Board of Governors Meeting  
September 5, 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 discussed the Executive Director Evaluation. No action taken.

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# OREGON STATE BAR

## Board of Governors Agenda

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

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### **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

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### **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:

	<b><u>2014 Projections</u></b>	<b><u>2015 Budget</u></b>
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
<b>Total</b>	<b>50.28 FTE</b>	<b>50.28 FTE</b>

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.

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**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>
<b><u>Revenue</u></b>					
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>
<b><u>Expenses</u></b>					
<b>Provision for Claims</b>					
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>
<b>Expense from Operations</b>					
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>Expenses</u>	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</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
<b>Total Operating Expenses</b>	<b><u>\$7,172,130</u></b>	<b><u>\$7,444,018</u></b>	<b><u>\$7,831,273</u></b>	<b><u>\$7,485,663</u></b>	<b><u>\$8,090,412</u></b>
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>
<b>Full Time Employees (See Explanation)</b>	<b>44.56</b>	<b>43.88</b>	<b>45.88</b>	<b>50.86</b>	<b>51.28</b>
<b>Number of Full Pay Attorneys</b>	<b>7,030</b>	<b>7,093</b>	<b>7,104</b>	<b>7,064</b>	<b>7,135</b>
<b>Non-personnel Expenses</b>	<b>\$1,792,915</b>	<b>\$1,841,746</b>	<b>\$1,884,358</b>	<b>\$1,878,799</b>	<b>\$2,179,993</b>
Allocated to Excess Program	<u>(\$275,635)</u>	<u>(\$278,874)</u>	<u>(\$270,406)</u>	<u>(\$270,406)</u>	<u>(\$338,705)</u>
<b>Total Non-personnel Expenses</b>	<b><u>1,517,280</u></b>	<b><u>1,562,872</u></b>	<b><u>1,613,952</u></b>	<b><u>1,608,393</u></b>	<b><u>1,841,288</u></b>

**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>Expenses</u>	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</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	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total Operating Expenses</b>	<b><u>\$2,200,578</u></b>	<b><u>\$2,266,674</u></b>	<b><u>\$2,482,372</u></b>	<b><u>\$2,389,557</u></b>	<b><u>\$2,552,652</u></b>
 Allocated to Excess Program	 <u>(\$430,118)</u>	 <u>(\$430,857)</u>	 <u>(\$461,595)</u>	 <u>(\$426,696)</u>	 <u>(\$563,239)</u>
 <b>Administration Full Time Employees</b>	 8.75	 8.00	 10.00	 9.00	 9.00
 <b>CHANGE IN OPERATING EXPENSES:</b>					
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

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Expenses</u></b>					
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
  <b>CHANGE IN OPERATING EXPENSES:</b>					
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**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Expenses</u></b>					
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
Beeepers & 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	0	0	0	0	0
<b>Total Operating Expenses</b>	<b><u>\$1,824,653</u></b>	<b><u>\$1,829,743</u></b>	<b><u>\$2,070,773</u></b>	<b><u>\$1,911,333</u></b>	<b><u>\$2,139,706</u></b>
<b>Allocated to Excess Program</b>	<b><u>(\$202,122)</u></b>	<b><u>(\$209,540)</u></b>	<b><u>(\$225,930)</u></b>	<b><u>(\$209,248)</u></b>	<b><u>(\$241,636)</u></b>
<b>L P Depart Full Time Employees (Includes OAAP)</b>	<b>11.83</b>	<b>11.83</b>	<b>13.58</b>	<b>14.58</b>	<b>14.58</b>

**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>
<b><u>Expenses</u></b>					
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
<b>CHANGE IN OPERATING EXPENSES:</b>					
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**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Capital Items</u></b>					
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

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Revenue</u></b>					
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>
<b><u>Expenses</u></b>					
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	0	0	0	0	0
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,



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

CVF: ms  
Enclosure

cc: Mr. Philip S. Dial

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# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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:

<u>Prior Coverage Period Total</u>	<u>Step Rating Credit</u>
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>

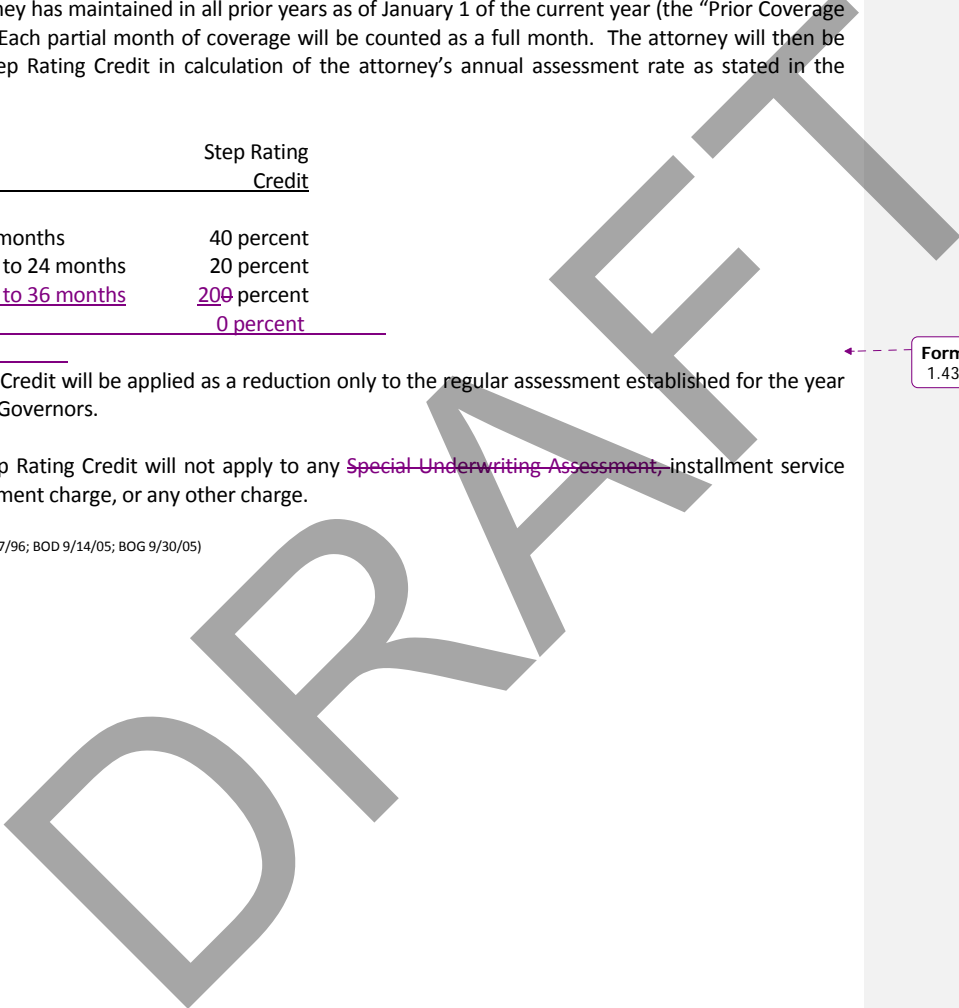
The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(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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# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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.

**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](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 a 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.

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**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

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### **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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- 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

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## 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.”*

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## 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

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.

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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 1<sup>ST</sup> AND MY SISTER ON FEBRUARY 14<sup>TH</sup>. 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

Page 3

PAGE 3

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



LAGALE BRIGGGS

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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

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

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<sup>1</sup> 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.

<sup>2</sup> 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,<sup>3</sup> 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*

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<sup>3</sup> 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.

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last) <b>Kerry L. Sharp</b>	
Residence Address: (number, street, city, state, zip) <b>3827 Bass Lane Lake Oswego, OR 97034</b> County: USA	Residence Phone:
	Office Phone: 503.784.9278
Office Address: (number, street, city, state, zip) <b>3827 Bass Lane Lake Oswego, OR 97034</b> County: USA	E-Mail Address: <b>kerrysharp@earthlink.net</b>
Office Mailing Address: (if different)  County:	Occupation: (and job title, if any) Management Consultant

**College and Post-Graduate Education:**

School	Location	Dates	Degrees
Michigan State University	East Lansing, MI	1966-1971	BS Civil Engineering
Harvard Business School	Boston, MA	1975-1977	MBA

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

Dates (from/to)	Employer and Position Held	City/State
2011-present	Niobrara Holding Company - Principal	Lake Oswego, OR
2007-present	Portland State University - Adjunct Instructor	Portland, OR
2007-2011	Point B, Inc - Senior Associate	Portland, OR
2002-2006	Stancorp Financial Group - AVP	Portland, OR
1999-2001	Louisiana-Pacific Corp - Director of Marketing	Portland, OR

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

Dates (from/to)	Organization and Position Held	City/State
2010-2011	Urban League - ProBono Strategy Lead	Portland, OR
1990-1994	Oregon National Guard Assn - Board President	Salem, OR
1989-1990	PACC Health Plans - Board of Trustees Member	Clackamas, OR
1987-1988	Lake Oswego Chamber of Commerce - Leadership LO	Lake Oswego, OR

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

I know from personal experience that effective legal services can be critical in time of need. I believe service as a public member of the OSB board offers a unique opportunity to help influence and ensure accessibility of essential legal services, and to help promote public trust and credibility. I see this as an opportunity to work closely with fellow board members to help ensure organizational priorities are appropriate, and that key initiatives and programs are well-defined and prioritized. And, just as importantly, to help ensure that actions and messages are appropriately focused, balanced and effectively communicated. I recognize the need to continually ensure that OSB is best serving the needs of its stakeholders - not only members of the bar, but also all Oregonians.

My professional focus is on working closely with leadership teams to help them develop clear strategic priorities, define and prioritize key imperatives, and ensure focus on execution and results. I believe effective boards are those that value questions, challenge assumptions and seek clarity. I feel that my professional experience has helped me develop perspective that will enable me to contribute effectively to the workings of the board.

My background includes leadership roles in corporate, consulting, military, educational and nonprofit organizations. I've worked with senior leadership as well as front-line employees. I have followed the emergence of military and veterans law initiatives and would like to help ensure these get the emphasis and attention they deserve.

On a personal note, I enjoy opportunities to learn new things, particularly learning from and working around people that are making a difference. In this sense, I think service on the OSB board would be a lot of "fun". I'm excited.

**Miscellaneous:**

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


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

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

**Committees:**

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

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

Name	Address
Peter Engel	President, Fred Meyer Jewelers
Phone	Email Address
(503) 797-5550	peter.engel@fredmeyer.com
Name	Address
Joanne Warner	Dean, School of Nursing, University of Portland
Phone	Email Address
(503) 943-8045	warner@up.edu
Name	Address
Jim Pittman	President, Insurance Consulting Services, Inc.
Phone	Email Address
(503) 542-4085	jim@icspdx.com
Applicant's Signature	Date
	July 29, 2013

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

Current Board of Governors public member Maureen O'Connor has spoken highly of this opportunity to serve.

**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.

\* \* \*

## 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 22, 2014  
**From:** Tom Kranovich, OSB President  
**Re:** Award recommendations for 2014

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### Action Recommended

Approve the following slate of nominees for the 2013 President's awards, Wallace P. Carson, Jr., Award for Judicial Excellence and the Award of Merit:

President's Membership Service Award:	Edward J. Harri, Renee E. Rothauge
President's Public Service Award:	Hong Kim Thi Dao, Stephen L. Griffith, Lake James H. Perriguy
President's Diversity & Inclusion Award:	Liani JH Reeves, Kim Sugawa-Fujinaga
President's Sustainability Award:	Steven R. Schell
Wallace P. Carson, Jr., Award:	Hon. Alfred T. Goodwin, Hon. Nan Waller
OSB Award of Merit:	Ira Zarov

### Background

At its July meeting the BOG formed a special committee to review award nominations and submit recommendations to the full board. Committee members Tom Kranovich, Matt Kehoe, Simon Whang, Tim Williams, Caitlin Mitchel-Markley, Rich Spier, Jim Chaney and John Mansfield met by conference call on August 13 to discuss the nominations, resulting in the recommendations listed above.

The awards will be presented at a luncheon on December 4 at the Sentinel Hotel (formerly Governor Hotel) in Portland.



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# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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

# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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

DRAFT

# 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

**Oregon State Bar  
Special Open Session of the Board of Governors  
October 3, 2014  
Minutes**

The meeting was called to order by President Tom Kranovich at 11:48 a.m. on October 3, 2014. The meeting adjourned at 1:10 p.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Patrick Ehlers, Hunter Emerick, Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Josh Ross, Richard Spier, Simon Whang, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Not present were Matthew Kehoe and Travis Prestwich. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Susan Grabe, Dawn Evans, Kay Pulju, Mariann Hyland, Dani Edwards and Camille Greene. In addition, present was Carol Bernick, PLF CEO; Bonnie Richardson, David Elkanich, Michael Levelle, and Judge David Schuman from the RPC 8.4 Task Force.

**1. Call to Order**

Mr. Kranovich asked whether there were any changes to the agenda.

**Motion:** Mr. Chaney moved, Ms. Zinser seconded, and the board voted to accept the agenda as submitted.

**2. Legal Ethics Committee Proposal for Amending RPC 1.2**

Ms. Hierschbiel presented the committee's proposed HOD resolution to amend RPC 1.2. She also reported that if the BOG adopts the committee's recommendation, his resolution should be considered withdrawn. Three possible substitutions for "conduct regarding Oregon's marijuana-related laws" were discussed: "conduct permitted by," "conduct not prohibited by," and "conduct in compliance with." **[Exhibit A]**

**Motion:** Mr. Ehlers moved, Mr. Spier seconded, and the board voted to accept the committee's recommendation and add it to the HOD agenda. Mr. Mansfield and Ms. Matsumonji were opposed. All others were in favor.

**3. Approve HOD Agenda**

Mr. Kranovich presented the preliminary HOD agenda. Before the BOG vote to approve it, Mr. Kranovich asked to address the concerns that had been raised about the BOG's RPC 8.4 resolution. **[Exhibit B]**

Ms. Richardson and Mr. Elkanich reiterated that the RPC 8.4 Task Force limited its role to drafting language that would meet the Supreme Court's constitutional concerns and took no position on the policy behind the rule. The Task Force voted unanimously to submit the language that is the BOG resolution. Judge Schuman stated that, while it is impossible to predict how the court might rule on the question, the Task Force was confident that the proposed language is constitutionally valid. Mr. Levelle confirmed that the rule was accurately

represented to the board at its June 2014 meeting. Mr. Kranovich commented that Mr. Ford's objections are for the HOD to debate, not the BOG.

Mr. Ehlers reported that he had been contacted by a delegate who had intended to submit a resolution supporting adequate funding for indigent defense, but missed the deadline.

**Motion:** Mr. Ehlers moved, Ms. Kohlhoff seconded, and the board voted unanimously to approve adding to the HOD agenda a BOG resolution supporting indigent defense, similar to the language used in the 2008 resolution.

Ms. Billman volunteered to present the In Memoriam resolution.

Mr. Kranovich then asked for BOG positions on the two delegate resolutions.

Ms. Billman moved, Mr. Heysell seconded, and the board unanimously voted to oppose Delegate Resolution #3 re: OSB logo. Mr. Emerick volunteered to present the reasoning for the board's opposition.

**Motion:** Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to oppose HOD Resolution #4 re: HOD agenda items. Mr. Williams volunteered to present the board's position.

**Motion:** Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to adopt the HOD agenda. **[Exhibit C]**

#### **4. NBLSA Sponsorship Request**

Ms. Hyland presented the request of the National Black Law Student Association for sponsorship of its 2015 conference in Portland, and recommended the \$5000 Silver level. Mr. Levelle explained his personal experience and his opinion that supporting the event would help attract law students of color to Oregon law schools. Mr. Chaney agreed. **[Exhibit D]**

**Motion:** Ms. Zinser moved, Mr. Ross seconded, and the board voted unanimously to sponsor the NBLSA at the \$5000 Silver level.

**Motion:** Mr. Ehlers moved, Mr. Whang seconded, and the board voted unanimously to send a subgroup of the board to the Hilton to encourage them to sponsor at the \$15,000 Platinum level.

#### **5. PLF Board of Directors Vacancy Appointment**

Ms. Bernick asked the board to approve the PLF Board of Directors appointment recommendation of Ira Zarov to immediately fill the vacant BOD position that resulted from board member John Berge's resignation.

**Motion:** Mr. Chaney moved, Mr. Spier seconded, and the board voted unanimously to approve the appointment of Ira Zarov to fill the vacant seat.

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

**Oregon State Bar  
Board of Governors Meeting  
October 3, 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, to consult with counsel, and per executive Session per ORS 192.660(2)(i) – E.D. Evaluation. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Other Matters

Motion: To adopt the draft of the Executive Director Annual Performance Appraisal – Summary of Reports evaluation handed out at this meeting. [Tim moved (Simon seconded). All in favor: *unanimous*, All opposed: *None*, Abstentions: *None*. (John and Matt were not present) Submitted by Caitlin Mitchell-Markley, October 30, 2014.

DRAFT



## LEC Proposed Amendment to RPC 1.2

### **Rule 1.2 Scope of Representation and allocation of authority between client and lawyer**

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) 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.

**(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.**

*Executive Board*  
Christopher Ling, Co-Chair  
Chase Morinaka, Co-Chair  
Adam Gamboa, Treasurer  
Daniel Simon, Secretary



**Oregon Minority Lawyers Association**

5895 Jean Road, Lake Oswego, OR 97035 · 503.697.1035

*Board Members at Large*  
Samantha Copeland  
Louise Hansen  
Toni Kelich  
Sujata Patel  
Suzanne Trujillo

*Honorary Board Members*  
Ernest Estes  
Anastasia Yu Meisner  
Hon. Adrienne Nelson

October 3, 2014

Board of Governors  
Oregon State Bar  
16036 SW Upper Boones Ferry Rd  
Tigard, Oregon 97224

Re: June 2, 2014 Proposed Amendment to Rule 8.4 of the Oregon Professional Rules of Conduct

Dear Board of Governors:

The Oregon Minority Lawyers Association (OMLA) recently received a copy of a September 11, 2014 letter written by a fellow attorney and colleague, Kelly Ford regarding the most recent proposed revisions to Rule 8.4 of the Oregon Rules of Professional Conduct. In his letter, Mr. Ford raises several constitutional and policy related concerns in opposition to the adoption of this amendment into our professional rules. We respectfully submit the following response in support of the Rule 8.4 amendment.

**A. Current RPC 8.4 Drafting Committee proposed amendment.**

On June 2, 2014, the RPC 8.4 Drafting Committee adopted the following proposed amendment to Rule 8.4:

“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.”

**B. The cases cited by Mr. Ford are distinguishable.**

*State v. Robertson*, 293 Or 402 (1982), is the seminal case on free speech under Article I, section 8, of the Oregon Constitution. *State v. Babson*, 355 Or 383, 390-391 (2014), summarizes a three-category framework established by *Robertson* and its progeny to evaluate constitutional free speech challenges:

“Under the first category, the court begins by determining whether a law is “written in terms directed to the substance of any ‘opinion’ or any ‘subject’ of communication.” [ ] If it is, then the law is unconstitutional, unless the scope of the restraint is “wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach.” [ ] If the law survives that inquiry, then the court determines whether the law focuses on forbidden effects and “the proscribed means [of causing those effects] include speech or writing,” or whether it is “directed only against causing the forbidden effects.” [ ] If the law focuses on forbidden effects, and the proscribed means of causing those effects include expression, then the law is analyzed under the second Robertson category. Under that category, the court determines whether the law is overbroad, and, if so, whether it is capable of being narrowed. [ ] ***If, on the other hand, the law focuses only on forbidden effects, then the law is in the third Robertson category, and an individual can challenge the law as applied to that individual's circumstances.*** [ ]”

(*emphasis* added) (internal citations omitted)

Mr. Ford’s September 11, 2014 letter cites *State v. Johnson*, 345 Or 190 (2008)<sup>1</sup> in support of his concern that the Rule 8.4 amendment, as currently proposed, is unconstitutional. The statute in *Johnson*, ORS 166.065(1)(a)(B), fell under the second *Robertson* category; in other words, it was a statute that “focuses on effects the legislature wishes to forbid\* \* \* [by] expressly prohibit[ing] the use of particular forms of expression.” *Id.* at 195. In reaching that conclusion, the court focused on the following prohibition within ORS 166.065(1)(a)(B):

“A person commits the crime of harassment if the person intentionally:

“(a) Harasses or annoys another person by:

“ \* \* \* \* \*

“(B) ***Publicly insulting such other person by abusive words or gestures*** in a manner intended and likely to provoke a violent response[.]”

(*emphasis* added)

The Oregon Supreme Court invalidated that statute as “overbroad on its face.” *Id.* at 197. By contrast, an analysis of the proposed amendment to Rule 8.4 under the framework established by *Robertson* and its progeny reveal that *Johnson* and the other cases Mr. Ford cites—*State v.*

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<sup>1</sup> Cited as *Oregon v. Johnson*, 191 P3d 665 (2008).

*Harrington*, 67 Or App 608 (1984)<sup>2</sup> and *State v. Blair*, 287 Or 519 (1979)<sup>3</sup>—are inapplicable.<sup>4</sup>

The proposed amendment does not fall under the first *Robertson* category because it is not written in terms directed to the substance of any opinion or any subject of communication. *Babson*, 355 Or at 393-394; *see also City of Hillsboro v. Purcell*, 306 Or 547, 554-555. Neither does it fall under the second *Robertson* category because, while it identifies forbidden effects (intimidation and harassment), the proposed rule does not “expressly or obviously restrain expression.” *Babson*, 355 Or at 403; *see also id.* (when law does not refer to expression, enacting body “is not required to consider all apparent applications of that law to protected expression and narrow the law to eliminate them”; statutes “by their terms, [must] expressly or obviously refer to protected expression” to fall within *Robertson’s* second category).

Instead, the proposed Rule 8.4 amendment falls under the third *Robertson* category because it “focus[es] on proscribing the pursuit or accomplishment of forbidden results without referencing expression at all.” *State v. Koenig*, 238 Or App 297, 303 (2010). Thus, under this category, any constitutional challenges under Article I, Section 8, are limited to “as-applied” challenges based on the particular circumstances of an individual’s case.

Ultimately, despite Mr. Ford’s constitutional concerns, the proposed amendment to Rule 8.4 is not facially invalid under Article I, section 8, and should be adopted.

**C. The proposed amendment to Rule 8.4 is entirely necessary and appropriate in scope.**

Mr. Ford’s letter also raises several policy-based concerns for the proposed amendment to Rule 8.4. They are each addressed in turn below.

*1. Concerns over necessity are unwarranted.*

Mr. Ford argues that the existence of Rules 8.4(a)(2) and 4.4(a) make the proposed amendment to Rule 8.4 duplicative and unnecessary. That is simply untrue.

Rule 8.4(a)(2), as Mr. Ford correctly notes, is directed toward “a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” However, this rule’s specific focus on “a criminal act” was the primary reason why the Board of Governors (BOG) and the Legal Ethics Committee (LEC) were first charged with developing this amendment. As you know, in 2010, a Portland attorney filed an ethics complaint against another attorney under Rule 8.4(a)(2) for sexual harassment related to pending litigation involving both attorneys. Initially, the complainant wished to file a bar complaint without also filing a criminal complaint against the other attorney due to personal and professional reasons. However, the Client Assistance Office (CAO) advised the complainant that criminal charges had

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<sup>2</sup> Cited as *Oregon v. Harrington*, 680 P2d 666 (OR 1984).

<sup>3</sup> Cited as *Oregon v. Blair*, 601 P2d 766 (OR 1979).

<sup>4</sup> *Harrington* and *Blair* mirror the overbroad language used in *Johnson* and were both invalidated as facially unconstitutional under Article I, section 8 of the Oregon Constitution.

to be filed to sustain the bar complaint, forcing the complainant to undergo further undue stress, embarrassment, and public exposure before the other attorney was disciplined.

Recognizing the restrictiveness of limiting discipline against harassment to “a criminal act,” the Oregon Women Lawyers (OWLS), Oregon Chapter of the National Bar Association (OC-NBA), OMLA, and Oregon Asian Pacific American Bar Association (OAPABA) submitted a March 18, 2011 open letter to the BOG requesting that the LEC establish a task force to amend the Oregon Rules of Professional Conduct to decisively address intimidation and harassment. Since then, the LEC and the BOG have dedicated substantial time and effort to crafting a rule that reflects our commitment to professionalism and our adherence to the rule of law.

Similarly, Rule 4.4(a) would insufficiently address the types of intimidation and harassment covered by the proposed amendment to Rule 8.4. That rule states:

“(a) In representing a client or the lawyer’s own interests, a lawyer shall not use means ***that have no substantial purpose*** other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.”

*(emphasis added)*

The proposed amendment to Rule 8.4 is substantially different because it has no such “no substantial purpose” language of limitation, only a limitation as to “legitimate advocacy.” In that regard, the interplay between Rule 4.4(a) and the proposed amendment to Rule 8.4 functions along similar lines as our federal jurisprudence on the Fourteenth Amendment, specifically with regard to concepts of strict scrutiny, intermediate level scrutiny, and rational basis review. In other words, the public policy behind the proposed amendment to Rule 8.4 is that intimidation and harassment that is based off of “race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability” is so fundamentally improper that it should never be tolerated, outside of “legitimate advocacy,” particularly when these protected classes are at issue in a case.

On the other hand, Rule 4.4 should be viewed more along the lines of a general limit on the zealousness of a lawyer’s advocacy with respect to third persons. If an attorney uses means that may also “embarrass, delay, harass, or burden” a third party but also has a “substantial purpose” in negotiating settlement or advocating for their client at trial, then the attorney has not violated such Rule.<sup>5</sup>

2. *The amendments are appropriately broad in whom they protect.*

The September 11, 2014 letter inaccurately characterizes the public policy behind this proposed amendment to Rule 8.4. The underlying public policy is not to generally avoid the

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<sup>5</sup> As a side note, because the text of Rule 4.4(a) specifically makes reference to “means” (a form of conduct), it would be more likely to be subject to facial challenges to free speech under *Robertson* and its progeny, as compared to the proposed amendment to Rule 8.4(a).

forbidden effects of intimidation and harassment, but is targeted toward intimidation and harassment based on “race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability,” historically and legally recognized protected classes on either the federal or state level. Thus, in response to the comparison Mr. Ford raises regarding political speech versus race or religion, the proposed amendment to Rule 8.4 was never intended and is not required to be a panacea toward all intimidation and harassment. It instead reflects the evolution of our federal and state jurisprudence regarding the guarantees of equal rights under the federal and state constitutions, while being precisely crafted to address our constitutional rights to free speech.

As mentioned previously, the catalyst for drafting of the proposed amendment to Rule 8.4 was a specific and perceived failure by the Oregon Rules of Professional Conduct to protect third parties from intimidation and harassment based on federal and state-recognized protected classes of individuals. The LEC has spent years crafting a rule that adheres to the free speech guarantees under Article I, Section 8 of the Oregon Constitution, while reflecting the growing view in our state bar that attorneys should be held to a higher standard of ethics and professionalism regarding intimidation and harassment beyond simple conformity with criminal statutes. This proposed amendment to Rule 8.4 is appropriate, necessary, and should be adopted.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Ling". The signature is written in a cursive, flowing style. A large, semi-transparent "DRAFT" watermark is overlaid diagonally across the signature.

Christopher Ling  
Co-Chair, Oregon Minority Lawyers Association

**KELLY E. FORD, P.C.**

KELLY FORD, ATTORNEY AT LAW  
4800 Southwest Griffith Drive, Suite 320  
Beaverton, Oregon 97005-8716

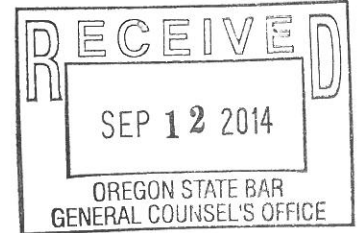
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Telephone (503) 641-3044

kelly@kellyfordpc.com

September 11, 2014

Helen M Hirschbiel, General Counsel  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
PO Box 231935  
Tigard OR 97281



Re: Comments for HOD's consideration of proposed revisions to RPC 8.4

Dear Helen,

You requested I join the ad hoc committee formed early this year for the purpose of editing the proposed revisions to RPC 8.4. The previous work on that rule had been approved by the BOG and by the HOD in its November, 2013 meeting, but were referred by the Supreme Court for reconsideration at its December, 2013 public meeting. I was a coauthor of comments to the Supreme Court concerning the 2013 version, containing constitutional and public policy concerns to the proposed amendments pending in 2013. Following the Court's rejection of the 2013 proposed amendments, BOG's charge to the ad hoc committee was to address the Court's constitutional concerns with the 2013 version, but not to revisit policy considerations to the rule's adoption. We followed that charge. I voted in favor of the new proposed amendments strictly in view of that limited charge, because I believe the new version is more likely to survive constitutional challenge than its predecessor. However, I do not agree the amendments should be enacted into the RPC.

These comments, which I ask you to include in the HOD members' package for the November 14<sup>th</sup> meeting, are directed to my continuing constitutional concerns, as well as to the advisability and necessity of enacting the amendments as now constituted.

Continuing Constitutional Concerns.

The committee struggled mightily to craft wording that would meet the stringent standard for protection of speech under the Oregon Constitution, Article I, Section 8. After several hours of attempting, unsuccessfully, to reach an agreed statement of attorney misconduct that results in listed proscribed effects, the committee defaulted to the "intimidate or harass" language contained in the current draft rule. This language, while not as patently unconstitutional as its predecessor, will still prove problematic, at least until tested under fire.

In *Oregon v. Johnson*,, 191 P3d 665 (2008), the Oregon Supreme Court said this when it struck down a criminal harassment statute as a violation of Article I, Section 8 of the Oregon Constitution:

Harassment and annoyance are among common reactions to seeing or hearing gestures or words that one finds unpleasant. Words or gestures that cause only that kind of reaction, however, cannot be prohibited in a free society, even if the words or gestures occur publicly and are insulting, abusive, or both.

*See also Oregon v. Harrington*, 680 P2d 666 (OR 1984) and *Oregon v. Blair*, 601 P2d 766 (OR 1979). In *Oregon v. Hendrix*, 813 P2d 1115 (Or App 1991), the Court of Appeals upheld the constitutionality of Oregon's criminal racial intimidation statute against an Article I, Section 8 challenge because the statute prohibited inflicting physical injury on a victim, whereas in *Harrington, supra*, the court struck down a harassment statute under Article I Section 8 that provided

A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, the actor . . . (b) publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response.

Rejecting the state's argument the statute was directed at preventing violence, the court found the statute impermissibly punishes insulting language regardless of the effect upon the listener. Obviously, there is no element of physical injury or even threatened physical injury, to save our work from an Article I, Section 8 challenge.

It is impossible to know in advance whether the Supreme Court will afford attorneys in a disciplinary context the same speech protections as it does criminal defendants. The Court could extend the "incompatibility exception" developed in *In re Laswell*, 673 P.2d 855 (OR 1983) and *In re Fadeley* 802 P2d 31 (OR 1990) to this context and find the new rule facially constitutional, or, in light of the importance of zealous advocacy as a core principal of legal representation, it could apply a constitutional standard as rigorous as in *Johnson, supra* to protect attorneys acting on behalf of their clients. If it does, the committee's efforts will have failed.

#### Policy Considerations.

1. The amendments are largely unnecessary.

If a lawyer is guilty of criminal intimidation based on a protected category, the lawyer undoubtedly has committed a crime that "reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects: ORPC 8.4 (a)(2). *See, e.g.*, ORS 166.065; 166.155. So, the amendments to Rule 8.4 are unnecessary to apply discipline to such criminal conduct.

RPC 4.4(a) provides that "in representing a client or the lawyer's own interests, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass, or burden a third person . . ." In one respect this prohibition is *broader* than the proposed Rule 8.4



amendments, in that it is not restricted to conduct based on the third person's membership in a protected class. I criticized the committee's work in that respect, requesting to the group that the amendments be made generally applicable to all third persons, but I received no support in the committee for that position.

Existing RPC 4.4(a) in my opinion, adequately synthesizes the conduct that could be prohibited under the amendments to Rule 8.4, including its "legitimate advocacy" exception. In other words, in my opinion, Rule 4.4(a) already prohibits all the conduct that I believe should or would be prohibited by proposed Rule 8.4, as protected by the legitimate advocacy exception. If so, the amendments are redundant and should be rejected for that reason alone.

At best, the new rule would add a layer of uncertainty and confusion concerning how it could be constitutionally applied to conduct not already prohibited by ORPC 8.4(a)(2) and 4.4(a). I have heard no convincing explanation why the proposed rule is needed in the form we have written, insofar as punishing categories of behavior that should be, can be, but are not already punishable.

2. The amendments are under broad in who they protect.

The public policy underlying creating a prohibition on attorney speech that is intimidating or harassing is that the behavior causes undesirable effects - feelings of intimidation or harassment - in third parties under circumstances where the behavior is not part of the advocacy process. Due to attorneys' unique role in society, the argument goes, such conduct should not be permitted. But that public policy is not dependent upon - indeed, is completely unrelated to - the characteristics of the third party victims, insofar as I can discern. I know of no reason why an attorney should, for example, escape discipline for harassing behavior directed to a person's political beliefs if the same type of behavior is punishable when directed to the person's race or religion. Indeed, a complainant - based - on - politics could make out a violation of RPC 4.4(a) while being excluded from protection under Rule 8.4. This makes no sense to me. Whether or not this "under inclusiveness" survives constitutional concerns, a matter not researched by the committee, it is bad public policy in my view.

For the preceding reasons, my view is that the proposed amendments to RPC 8.4 are ill advised and should be rejected.

Thank you.

Very truly yours,



Kelly E. Ford

**Oregon State Bar**  
**2014 House of Delegates Meeting**

*Oregon State Bar Center*  
*16037 SW Upper Boones Ferry Road*  
*Tigard, Oregon 97224*  
*503.620.0222*  
*Friday, November 7, 2014*  
*10:00 a.m.*

Oregon State Bar

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Dear Oregon State Bar Member:

I am pleased to invite you to the 2014 OSB House of Delegates meeting, which will begin at **10:00 a.m.** on **Friday, November 7, 2014**, at the Oregon State Bar Center.

The preliminary agenda for the meeting includes proposed amendments to the Oregon Rules of Professional Conduct, a resolution supporting adequate funding for low-income legal services, and two delegate resolutions seeking input from the membership regarding the OSB logo and the nature of appropriate matters for HOD consideration. The agenda also includes a notice of the annual membership fees and assessments for 2015, which will remain unchanged from 2014.

All bar members are welcome and encouraged to participate in the discussion and debate of HOD agenda items, but only delegates may vote on resolutions. If you are unable to attend, please contact one of your delegates to express your views on the matters to be considered. Delegates are listed on the bar's website at [www.osbar.org/docs/leadership/hod/hodroster.pdf](http://www.osbar.org/docs/leadership/hod/hodroster.pdf).

If you have questions concerning the House of Delegates meeting, please contact Camille Greene, Executive Assistant, by phone at 503-431-6386, by e-mail at [cgreene@osbar.org](mailto:cgreene@osbar.org), or toll free inside Oregon at 800-452-8260 ext 386. Remember that delegates are eligible for reimbursement of round-trip mileage to and from the HOD meeting. Reimbursement is limited to 400 miles and expense reimbursement forms must be submitted within 30 days after the meeting.

I look forward to seeing you at the HOD Meeting on November 7, and I thank you in advance for your thoughtful consideration and debate of these items.

I hope you will also join us following the HOD meeting for the 2:00 p.m. unveiling of the Diversity Story Wall. The Story Wall is a museum-quality informational display highlighting diversity in the legal profession in Oregon together with major milestones that have advanced diversity and access to justice in Oregon and across the U.S. It is a significant addition to the OSB Center that evidences the Bar's commitment to diversity, inclusion and access to justice for all.



Tom Kranovich, OSB President

# OREGON STATE BAR

## 2014 House of Delegates Meeting AGENDA

Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97224

10:00 a.m., Friday, November 7, 2014

Presiding Officer: Tom Kranovich, OSB President

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### Reports

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|---|--|
| 1. Call to Order<br><i>Tom Kranovich</i><br><i>OSB President</i>                    | 4. Comments from the Chief Justice of the Oregon Supreme Court<br><i>Thomas A. Balmer, Chief Justice</i><br><i>Oregon Supreme Court</i>        |
| 2. Adoption of Final Meeting Agenda<br><i>Tom Kranovich</i><br><i>OSB President</i> | 5. Report of the Board of Governors Budget and Finance Committee<br><i>Hunter B. Emerick, Chair</i><br><i>BOG Budget and Finance Committee</i> |
| 3. Report of the President<br><i>Tom Kranovich</i><br><i>OSB President</i>          | 6. Overview of Parliamentary Procedure<br><i>Alice M. Bartelt, Parliamentarian</i>   |
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### Resolutions

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|--|---|
| 7. In Memoriam<br>(Board of Governors Resolution No. 1)<br><i>Presenter: Tom Kranovich, OSB President</i>  | 12. Amendment of Oregon Rule of Professional Conduct 1.2<br>(Delegate Resolution No. 1)<br><i>Presenter: Eddie D. Medina, HOD, Region 4</i>   |
| 8. Amendment of Oregon Rule of Professional Conduct 8.4<br>(Board of Governors Resolution No. 2)<br><i>Presenter: David Elkanich?</i>                    | 13. Support for Adequate Funding for Legal Services to Low-Income Oregonians<br>(Delegate Resolution No. 2)<br><i>Presenters:</i><br><i>Kathleen Evans, HOD, Region 6</i><br><i>Gerry Gaydos, HOD, Region 2</i><br><i>Ed Harnden, HOD, Region 5</i> |
| 9. Amendment of Oregon Rule of Professional Conduct 5.5<br>(Board of Governors Resolution No. 3)<br><i>Presenter: Helen Hirschbiel, General Counsel</i>  | 14. Investigation Regarding Change to Oregon State Bar Logo<br>(Delegate Resolution No. 3)<br><i>Presenter: David Seulean, HOD, Region 3</i>  |
| 10. Veterans Day Remembrance<br>(Board of Governors Resolution No. 4)<br><i>Presenter: Richard Spier, BOG, Region 5</i>                                  | 15. HOD Agenda Items<br>(Delegate Resolution No. 4)<br><i>Presenter: Danny Lang, Douglas Co. Bar</i>  |
| 11. Amendment of Oregon Rule of Professional Conduct 1.2<br>(Board of Governors Resolution No. 5)<br><i>Presenter: Helen Hirschbiel, General Counsel</i> |   |
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### Resolutions

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#### 7. In Memoriam (Board of Governors Resolution No. 1)

Hon T. Abraham	Joseph A. Brislin Jr	David F. Cargo	Shannon K. Connall
Richard H. Allen	James W. Britt III	Richard R. Carney	Des Connall
Arthur R. Barrows	Nancy Elizabeth Brown	Robert R. Carney	Debra Deem
David S. Barrows	Franklyn N. Brown	Lawrence Lee Carter	Michael J. Dooney
William R. Barrows	Ellen P. Bump	James Casby	Edward Ray Fechtel
William O. Bassett	John H. Buttler	Kelly WG Clark	Douglas M. Fellows
Marc D. Blackman	Victor Calzaretta	Lynda A. Clark	Barbara H. Fredericks

George C. Fulton	Thomas A. Kennedy	C Richard Neely	Herman F. Smith
Joel A. Gallob	Peter R. Knipe	Robert J. Neuberger	Monica A. Smith
Caroline D. Glassman	James P. Leahy	Gregory A. Nielson	Scott D. Sonju
James B. Griswold	Hon Winfrid K.F. Liepe	Hon Albin W. Norblad	Harvard P. Spigal
Hon Harl H. Haas	Margaret M. Maginnis	Hon Jack F. Olsen	Garth F. Steltenpohl
Samuel A. Hall Sr	Michael V. Mahoney	James P. O'Neal	Sharon C. Stevens
Lloyd G. Hammel	Lisa A. Maybee	Michelle I. Pauly	Randolph J. Stevens
John N. Harp Jr	Daniel T. McCarthy	Walter H. Pendergrass	Robert H. Thomson
Eric Haws	William S. McDonald	Lester L. Rawls	Harold Uney
Donald E. Heisler	Lee J. McFarland	Steve Rissberger	Hon Darrell J. Williams
Loren D. Hicks	Rodney W. Miller	John Leslie Roe	Gerald Williams
Hon Ralph M. Holman	Robert Mix	Matthew C. Runkle	M Keith Wilson
James H. Huston	Richard H. Muller	William A. Sabel	
Hon Robert E. Jones	Stephen B. Murdock	Ross M. Shepard	

*Presenter: Tom Kranovich  
OSB President*

**8. Amendment of Oregon Rule of Professional Conduct 8.4  
(Board of Governors Resolution No. 2)**

*Whereas*, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

*Whereas*, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

*Resolved*, That the amendment of Oregon Rule of Professional Conduct 8.4 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**RULE 8.4 MISCONDUCT**

- (a) It is professional misconduct for a lawyer to:
  - (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
  - (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
  - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
  - (4) engage in conduct that is prejudicial to the administration of justice;
  - (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law; *[or]*
  - (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law~~].~~; **or**

**(7) in the course of representing a client, knowingly 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.**

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

**(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.**

### **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 would 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 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. There were also two non-voting BOG liaisons.

In its charge from the BOG, 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 provided 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 recommended that the language set forth above be presented to the Board of Governors for its consideration. At its meeting on June 27, 2014, the BOG considered the Committee’s proposal and voted unanimously to recommend it to the HOD.

*Presenter: David Elkanich  
RPC 8.4 Drafting Committee Member*

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## **9. Amendment of Oregon Rule of Professional Conduct 5.5 (Board of Governors Resolution No. 3)**

*Whereas*, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

Whereas, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, That the amendment of Oregon Rule of Professional Conduct 5.5 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**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.

### **Background**

In May 2013, the BOG appointed the Task Force on International Trade in Legal Services to study the effect of free trade agreements and the regulatory framework for lawyers practicing law in Oregon on the delivery of legal services across international borders.

The reasons for the Task Force were two-fold. First, international trade is increasingly important in Oregon. It supports nearly 490,000 jobs, and Oregon exports billions of dollars in goods and services annually to customers in 203 countries around the globe. Foreign-owned companies invest in Oregon and employ more than 40,000 Oregonians. Thus, Oregon lawyers are more often serving clients who have legal needs that cross international borders.

Second, in addition to the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA), the United States has negotiated 15 other international trade agreements all of which contain a common clause requiring that parties to the treaty ensure that domestic regulation measures do not create unnecessary barriers to trade. Lawyer regulation is no exception, and the federal government arguably has the power to compel states to ensure that their lawyer regulations do not unreasonably interfere with trade agreement obligations. Therefore, many jurisdictions are recognizing that reviewing regulations relating to the practice of law for "unnecessary barriers to trade" is a prudent undertaking.

The Task Force has studied issues relating to both permanent and temporary practice in Oregon by foreign-licensed lawyers and continues to work on its final report and recommendations. This proposal relates only to the Task Force's findings and recommendations relating to temporary practice by foreign-licensed lawyers.

#### *A. Barriers to Trade*

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. In fact, unless they are also licensed in Oregon, lawyers licensed outside of the United States are not authorized to provide any legal services within the state of Oregon under any circumstances.

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 Task Force assumed 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 Task Force found no empirical evidence for this conclusion, 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. The rules of professional conduct as currently written, however, stand as a barrier to the provision of such services. The Task Force then asked whether the barrier is necessary. Laws prohibiting the practice of law without a license are consumer protection measures, the purpose of which are to protect the public from the consequences that flow from efforts to provide services by those who are neither trained nor qualified to do so. The Task Force expressed concern that precluding foreign lawyers from providing legal services on a temporary basis in Oregon—under the same terms and conditions that lawyers licensed in other U.S. jurisdictions do—is not necessary in order to protect the public and therefore constitutes an unnecessary barrier to trade. Specifically, the Task Force could not find any basis to conclude that 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) and (d). This conclusion is based in large part on the restrictions that currently exist within the rule that serve to protect the consumer.

#### *B. Existing Rule and Effect of Changes*

The proposed amendment would allow lawyers licensed to practice law outside of the United States to provide legal services on a temporary basis in Oregon to the same extent as lawyers who are licensed in other U.S. jurisdictions are currently allowed to do.

Currently, under RPC 5.5(c)(1) an out-of-state lawyer may provide legal services on a temporary basis in Oregon as long as undertaken in association with a lawyer admitted to practice in Oregon. The consumer is protected because services provided under this provision are undertaken in association with an Oregon lawyer.

Under the existing RPC 5.5(c)(2), an out of state lawyer may appear in Oregon courts as long as the lawyer complies with the *pro hac vice* admission requirements, including, associating with an Oregon lawyer who participates substantially in the matter, certifying that he or she will comply with all Oregon laws, and carrying professional liability insurance coverage substantially equivalent to that required of Oregon lawyers. See UTCR 3.170. Most importantly, the court in which the lawyer will be appearing has to approve *pro hac vice* admission and has continued oversight and ability to revoke the *pro hac vice* admission. Again, the consumer is protected by the strict requirements of *pro hac vice* admission and the oversight of the courts.

Currently, under RPC 5.5(c)(3) and (4), an out-of-state lawyer may provide legal services on a temporary basis in Oregon without association of local counsel so long as they arise out of or are reasonably related to the lawyer's practice in the jurisdiction in which the lawyer is licensed. Although this phrase has not been interpreted in Oregon, the ABA Model Rule 5.5, Comment [14] offers examples of how such a relationship might be determined:

*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.*

The underlying premise of RPC 5.5(c)(3) and (4) is that clients are protected either by virtue of having a past relationship with the lawyer or because the lawyer has some expertise in the area of law at issue. In addition, when an out-of-state lawyer provides legal services in connection with a mediation or arbitration in Oregon, the lawyer must complete the certification requirements set forth in RPC 5.5(e), which provide additional protections to the consumer.

Under current RPC 5.5(c)(5) an out of state lawyer may provide legal services to the lawyer's employer or its organizational affiliates. As noted by the ABA Model Rule 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.

Finally, RPC 5.5(d) recognizes that federal law preempts state licensing requirements to the extent that the 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.

The proposed amendment would allow a foreign-licensed lawyer to provide legal services in Oregon on a temporary basis under the same conditions as set forth above. The same consumer protection measures that currently exist would be equally applicable to foreign lawyers. Furthermore, just like out-of-state lawyers, foreign lawyers would not be allowed to 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.

### *C. Comparison to ABA Model Rule*

ABA Model Rule 5.5 takes a narrower approach than what is proposed here, permitting foreign-licensed lawyers to practice temporarily in a U.S. jurisdiction only as house counsel on foreign law issues or as otherwise authorized by federal law.

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. Ten jurisdictions (Colorado, Delaware, the District of Columbia, Florida, Georgia, Idaho, New Hampshire, North Carolina, Pennsylvania, and Virginia) have amended their Rule 5.5 in the same manner as proposed here.

*D. Conclusion*

Because of the potential problems with the current rule, the BOG concurs with the Task Force recommendation that RPC 5.5(c) and (d) be amended to allow the temporary practice of law in Oregon by lawyers licensed in jurisdictions outside of the United States. This can be accomplished simply by deleting the words "United States" from RPC 5.5(c) and (d).

*Presenter: Helen Hirschbiel  
OSB General Counsel*

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**10. Veterans Day Remembrance  
(Board of Governors Resolution No. 4)**

*Whereas*, Military service is vital to the perpetuation of freedom and the rule of law; and

*Whereas*, Thousands of Oregonians have served in the military, and many have given their lives; now, therefore, be it

*Resolved*, That the Oregon State Bar hereby extends its gratitude to all those who have served, and are serving, in the military and further offers the most sincere condolences to the families and loved ones of those who have died serving their country.

*Presenter: Richard Spier  
Board of Governors, Region 5*

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**11. Amendment of Oregon Rule of Professional Conduct 1.2  
(Board of Governors Resolution No. 5)**

*Whereas*, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

*Whereas*, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

*Resolved*, That the amendment of Oregon Rule of Professional Conduct 1.2 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**Rule 1.2 Scope of Representation and  
allocation of authority between client and lawyer**

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall

consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) 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.

**(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.**

### Background

In November 1998, Oregon voters approved the Oregon Medical Marijuana Act (OMMA). The state implemented a registration program the following year and, early this year, a medical marijuana dispensary program. In November 2014, Oregon voters will decide whether to legalize and regulate the recreational use of marijuana.

Currently, lawyers are being asked to assist clients with various legal matters relating to the medical marijuana industry, such as: real estate transactions where use of the property will involve the cultivation, dispensation, sale or use of marijuana; entity formation for the purpose of operating a marijuana business authorized by OMMA; and, regulatory compliance with OMMA. If recreational use of marijuana is legalized in Oregon, the need for legal counsel will likely expand further.

While users, growers and dispensaries who comply with OMMA requirements are protected from state criminal prosecution for production, possession or delivery of marijuana, OMMA does not protect individuals from federal prosecution under the Federal Controlled Substances Act or related federal statutes. In other words, while the client's conduct may be legal under state law, it remains illegal under federal law. Thus, lawyers who assist their clients with such conduct, arguably violate Oregon RPC 1.2(c) as written.

Other states that have legalized the medical or recreational use of marijuana have encountered similar questions about the limitations imposed by Rule 1.2. The bars and courts in these other jurisdictions have responded in differing ways. The State Bar of Arizona adopted a formal ethics opinion that allows lawyers to counsel or assist clients in legal matters permitted under the Arizona Medical Marijuana Act as long as: (1) the Act has not been held to be preempted, void or invalid; (2) the lawyer reasonably believes the client's conduct is allowed under the Act; and

(3) the lawyer advises the client about the federal law implications. See State Bar of Arizona Ethics Op No 11-01.

By contrast, the Colorado Bar Association concluded in its formal ethics opinion that “a lawyer cannot advise a client regarding the full panoply of conduct permitted by” Colorado’s marijuana laws. Specifically, the Colorado Bar Association determined that the plain language of Rule 1.2 would prohibit lawyers from assisting clients in structuring or implementing transactions in furtherance of a marijuana business, because the client’s conduct would violate federal law. See Colorado Bar Association Formal Op No 125. Subsequently, the Colorado Supreme Court adopted commentary to its Rule 1.2 which clarifies that lawyers may counsel and assist clients regarding their state’s medical marijuana laws. To the extent that such laws conflict with federal law, the commentary also requires that lawyers advise the client regarding related federal law and policy. The Nevada Supreme Court followed suit, adopting commentary to its Rule 1.2, and the Washington Supreme Court is also considering adopting commentary to its Rule 1.2.

The Oregon Supreme Court has thus far declined to add commentary to the Oregon Rules of Professional Conduct, so the Colorado approach is not an option in Oregon. To resolve the uncertainty surrounding this issue, the OSB Board of Governors asked the OSB Legal Ethics Committee to either draft a formal ethics opinion or an amendment to the rules that would clarify that lawyers may provide legal counsel and assistance to clients with medical marijuana businesses without running afoul of their professional responsibilities.

A majority of the Legal Ethics Committee determined that any opinion they would draft would likely reach a conclusion similar to that reached by the Colorado Bar Association. Moreover, the LEC felt that an amendment to RPC 1.2 would provide greater clarification and assurance to lawyers about the propriety of advising and assisting clients with their marijuana-related businesses. Therefore, the LEC drafted and recommended adoption of the proposed amendment.

In order to avoid the unintended consequences of a very broadly worded exception to RPC 1.2(c), the LEC proposal limits the exception to marijuana-related laws. On the other hand, the proposal does not refer specifically to OMMA so that it would cover any issues that might similarly arise from the legalization of recreational marijuana. Given the continued existence of conflicting federal law, the LEC felt it important to require lawyers to advise clients about federal law and policy related to marijuana. This requirement is similar to language included both in the commentary adopted by the Colorado and Nevada Supreme Court, and in the Arizona Formal Ethics Opinion.

*Presenter: Helen Hierschbiel  
OSB General Counsel*

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## **12. Amendment of Oregon Rule of Professional Conduct 1.2 (Delegate Resolution No. 1)**

*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 ORPC 1.2(c), for approval by the House of Delegates and adoption by the Supreme Court, that clarifies ORPC 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.

### **Background**

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 ORPC 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](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 a 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.

*Presenter: Eddie D. Medina  
House of Delegates, Region 4*

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**13. Support of Adequate Funding for Legal Services for Low-Income Oregonians  
(Delegate Resolution No. 2)**

*Whereas*, Providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar; and

*Whereas*, Equal access to justice plays an important role in the perception of fairness of the justice system; and

*Whereas*, Programs providing civil legal services to low-income Oregonians is a fundamental component of the Bar’s effort to provide such access; and

*Whereas*, Since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the Bar’s Standards and Guidelines ( which incorporate national standards for operating a statewide legal aid program); and

*Whereas*, Poverty in Oregon increased 61% between 2000 and 2011, the 8<sup>th</sup> largest increase in the nation, and most of Oregon’s poor have nowhere to turn for free legal assistance; and

*Whereas*, During the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon; and

*Whereas*, Oregon’s legal aid program currently has resources to meet about 15% of the civil legal needs of Oregon’s poor creating the largest “justice gap” for low-income and vulnerable Oregonians in recent history; and

*Whereas*, Oregon currently has 1 legal aid lawyer for every 9,440 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians; and

*Whereas*, Assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system; now, therefore, be it,

*Resolved*, That the Oregon State Bar:

(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and

maintenance of adequate support and funding for Oregon’s legal aid programs and through support for the Campaign for Equal Justice.

(2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation, which provides federal support for legal aid.

(3) Work with Oregon’s legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing \$50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

(7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

### **Background**

“The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” OSB Bylaw 1.2. One of the four main functions of the bar is to be “a provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all.” *Id.*

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolutions in 1996, 1997, 2002, 2005–2013). This resolution is similar to the resolution passed in 2013, but specifically provides updates regarding “justice gap”.

The legal services organizations in Oregon were established by the state and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by state and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute the state statutory allocation for civil legal services and provide methods for evaluating the legal services programs. The Campaign for Equal Justice works collaboratively with the Oregon Law Foundation and the Oregon State Bar to support Oregon’s legal aid programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

Oregon’s legal aid program consists of four separate non-profits that work together as part of an integrated service delivery system designed to provide high priority free civil legal services to



low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and two county wide programs, Lane County Legal Aid and Advocacy Center and the Center for Non-Profit Legal Services (Jackson County). Because the need is great and resources are limited, legal aid offices address high priority civil legal issues such as safety from domestic violence, housing, consumer law, income maintenance (social security, unemployment insurance, and other self-sufficiency benefits), health, employment and individual rights. Over 40% of legal aid's cases are family law cases, usually helping victims of domestic violence. All of these programs work to stretch limited resources through pro bono programs and self help materials. Legal aid's website, oregonlawhelp.com receives about 70,000 unique visitors a year.

Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. An Oregon study concluded that low-income Oregonians who have access to a legal aid lawyer have a much improved view of the legal system compared with those who do not have such access: 75% of individuals without access to a lawyer felt very negatively about the legal system, but of those who had access to a legal aid lawyer, 75% had a positive view of the legal system regardless of the outcome of their case. The 2014 Task Force on Legal Aid Funding, which included representatives of the Bar, the Law Foundation, the judiciary, the legislature and private practice concluded that legal aid funding should be doubled over the next 10 years. Because funding for legal aid is a state, federal and private partnership, with about 80 different sources of funding, increases in funding must be made across the board to address the justice gap.

Currently, slightly more than 20% of lawyers contribute to the Campaign for Equal Justice, but in some Oregon regions (Jackson County and Lane County, for example), participation is as high as 40%.

*Presenters:*

*Kathleen Evans, HOD, Region 6*

*Gerry Gaydos, HOD, Region 2*

*Ed Harnden, HOD, Region 5*

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#### **14. Investigation Regarding Change of Oregon State Bar Logo (Delegate Resolution No. 3)**

*Whereas*, The previous Douglas Fir logo of the Oregon State Bar was a beautiful symbolic representation for the Oregon State Bar; and

*Whereas*, The current logo of the Oregon State Bar is a simple block list sets forth no distinguishing characteristic logo for the Oregon State Bar; and

*Whereas*, Certain members of the Oregon State Bar have expressed an interest in changing the logo of the Oregon State Bar back to the Douglas Fir logo; now, therefore, be it

*Resolved*, The administrative staff of the Oregon State Bar shall investigate the costs associated with changing the Oregon State Bar logo back to the Douglas Fir logo and conduct a survey among members of the Oregon State Bar to determine whether or not a majority of the

membership of the Oregon State Bar desires a change back to the Douglas Fir logo and report such findings back to the membership of the Oregon State Bar House of Delegates for considering whether or not to change the logo of the Oregon State Bar back to the Douglas Fir logo at the 2015 Oregon State Bar House of Delegates meeting.

### **Background**

The previous logo of the Oregon State Bar contained emblems of Douglas fir trees and presented a logo that uniquely represented the Oregon State Bar and its membership. The current logo is a simple block that does not make the representation for the bar and its members. A survey of the membership of the Oregon State Bar should be undertaken to determine logo the membership desires.

Financial impact: Financial impact of any change will be determined by its Oregon State Bar administrative staff research. Determination of the desire of the Oregon State Bar membership regarding a change of logo would be minimal.

*Presenter: David P.A. Seulean  
House of Delegates, Region 3*

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### **15. HOD Agenda Items (Delegate Resolution No. 4)**

*Whereas*, Section 1.2 [Purposes] of the By-Laws of the Oregon State Bar includes providing for consideration of Matters relevant to the “Advancement of the Science of Jurisprudence”; and

*Whereas*, Bar members and HOD Delegates have submitted Proposed HOD Agenda Items upon a variety of subjects under the umbrella of pertaining to the “Advancement of the Science of Jurisprudence”; and

*Whereas*, examples of subject matter for inclusion may or may not include matter so Public Interest, such as the Oregon Death Penalty, legalization of marijuana, Gay Marriage, Gender and Economic Bias; compared with subjects limited to internal Oregon State Bar Issues such as Admittance, Bar Exam, and Discipline; and

*Whereas*, Issues have arisen among Oregon State Bar Members and within the Board of Governors as to whether or not each such topic qualified for inclusion upon the House of Delegates Agenda; now, therefore, be it

*Resolved*, That the House of Delegates recommends that the Board of Governors undertake a Survey of the Membership to better focus the scope of Matters allowed to be placed upon the House of Delegates Agenda and provide guidance/standards for inclusion or exclusion accordingly.

*Presenter: Danny Lang  
Douglas County Bar Association Alternate for  
Ron Sperry, III  
Douglas County Bar Association President*

## 2014 HOD Resolutions

Item	Sponsor	Description	On HOD Agenda?	Presenter	BOG Position?	Presenter of BOG Position
7	BOG	In Memoriam	Yes	Ms. Billman	n/a	n/a
8	BOG	Amend RPC 8.4	Yes	David Elkanich?	support	
9	BOG	Amend RPC 5.5	Yes	Helen Hierschbiel	support	
10	BOG	Veterans' Day Rememberance	Yes	Rich Spier	support	
11	BOG	Amend RPC 1.2	Yes	Helen Hierschbiel	support	
12	Delegate	Amend RPC 1.2	No	Eddie D. Medina, HOD Reg 4	withdrawn by Mr. Medina	
13	Delegate	Adeq. Funding for Legal Svcs.	Yes	K.Evans/G.Gaydos/E.Harnden	support	
14	Delegate	Change OSB Logo	Yes	David Seulean, HOD Reg 3	Opposed	Hunter Emerick
15	Delegate	HOD Agenda Items	Yes	Danny Lang, Douglas Co Bar	Opposed	Tim Williams
16	BOG	Adeq. Funding for xxx	Yes	Patrick Ehlers	support	



# NBLSA<sup>TM</sup>

*Striving to Balance Since 1968.*



*We look forward to seeing you in Portland for the 47<sup>th</sup> Annual  
National Black Law Students Association Convention!*

**March 11-15 2015**



## NATIONAL BLACK LAW STUDENTS ASSOCIATION

1225 11<sup>th</sup> Street, N.W., Washington, DC 20001

**Halimah Najieb-Locke**  
NATIONAL CHAIR

**Caylin Young**  
NATIONAL VICE-CHAIR

**Porscha Brown**  
NATIONAL SECRETARY

**Antwan Williams**  
NATIONAL TREASURER

**Anthony Franklyn**  
NATIONAL DIRECTOR-THURGOOD MARSHALL  
MOCK TRIAL COMPETITION

**Justin Mitchell**  
NATIONAL DIRECTOR-FREDERICK DOUGLASS  
MOOT COURT COMPETITION

**Erica Clark**  
NATIONAL DIRECTOR  
OF COMMUNITY SERVICE

**Jordan Hadley**  
ATTORNEY GENERAL

**Alisha Lubin**  
NATIONAL DIRECTOR OF PROGRAMMING

**Evelina Rene**  
MID-ATLANTIC REGIONAL CHAIR

**Grace Akinlembola**  
MIDWEST REGIONAL CHAIR

**John-Raphael Pichardo**  
NORTHEAST REGIONAL CHAIR

**Myriah Downs**  
ROCKY MOUNTAIN REGIONAL CHAIR

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**Erin McIntire**  
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**Joy Anderson**  
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NATIONAL DIRECTOR OF COMMUNICATIONS

**Kim Brimm**  
NATIONAL DIRECTOR OF PUBLIC RELATIONS

**Betty Gentle**  
NATIONAL DIRECTOR OF MEMBERSHIP

**Simone Otenaika**  
NATIONAL CONVENTION COORDINATOR

**Royce Williams**  
NATIONAL DIRECTOR  
OF CORPORATE RELATIONS

**Shawn Greene**  
NATIONAL FINANCIAL SECRETARY

**Brandon Hicks**  
NATIONAL SOCIAL ACTION CHAIR

**Julianne Kelly**  
NATIONAL DIRECTOR OF NELSON MANDELA  
INTERNATIONAL NEGOTIATIONS  
COMPETITION

**Kiara Gradney**  
NATIONAL DIRECTOR OF EDUCATION  
AND CAREER DEVELOPMENT

**Cameo-Diamond Joseph**  
NATIONAL DIRECTOR OF INTERNATIONAL  
RELATIONS

**Kenneth Mitchell**  
NATIONAL DIRECTOR OF THE  
PRE-LAW STUDENT DIVISION

**Belashia Wallace**  
NATIONAL DIRECTOR OF ALUMNI AFFAIRS &  
DEVELOPMENT

**Donald Cooley**  
NATIONAL PARLIAMENTARIAN

**Dania Lofton**  
NATIONAL HISTORIAN

**A.J. Cooper, Esq.**  
IN-HOUSE COUNSEL

Dear Sir or Madam:

I bring you greetings on behalf of the National Black Law Students Association (NBLSA). It is my sincerest desire that this letter finds you well. NBLSA is a 501(c)(3) corporation and the nation's largest student-run organization representing nearly 6,000 minority law students from over 200 chapters and affiliates throughout the United States and six other countries. NBLSA will host its 47th annual convention in Portland, Oregon from March 11 -15, 2015. This is a three-day convention beginning with a reception Thursday and full day activities and seminars Friday and Saturday, culminating in a black tie banquet Saturday evening, and we invite you to join us.

The theme for the 2014-2015 term of NBLSA is *Igniting the Spirit of NBLSA on the Road to 50*. As we approach NBLSA's 50th Anniversary, we must press forward doing the great work of our organization and return to its mission to improve the relationship between Black law students, Black attorneys, and the American legal structure. In the 2014-2015 term, we will further our mission by strengthening our partnership with organizations like yours that increase our outreach for minority law students and align with our mission of increasing the diversity within the legal profession through academic and professional preparation. In addition to our national presence, NBLSA has overseas chapters in six different countries, including affiliates in Nigeria and South Africa. NBLSA has readily championed diversity in all its forms, and assisted with the formation of the National Latino/Latina Law Students Association ("NLLSA"), the National Association of Law Students with Disabilities ("NALSD"), and the National Asian Pacific American Law Student Association ("NAPALSA").

Our success greatly depends on the generosity of corporate sponsors. Serving as an official sponsor is an opportunity for your organization to become an active participant in NBLSA. Moreover, your sponsorship highlights your ongoing commitment to diversity in the legal profession and advances your company as an industry leader and agent of positive social change.

NBLSA members are not only talented law students, but also involved community advocates. Our alumni are among the most talented and respected legal practitioners and are active and influential community leaders. NBLSA remains committed to helping minority law students think intensively and critically to foster positive change in the world.

NBLSA's success greatly depends on the generosity of corporate sponsors and partners. Serving as an official sponsor for NBLSA's Annual National Convention is a great opportunity for your organization to become an active participant with NBLSA. Moreover, your sponsorship highlights your ongoing commitment to diversity in the legal profession and advances your company as an industry leader and agent of positive social change.

Attached to this cover letter are the levels of sponsorship that are available and the opportunities and benefits for each of the sponsorship levels. We truly hope that you will consider being a Silver Sponsor, \$5,000, or higher for our convention.

Thank you for your support,

Royce Williams

Lewis and Clark Law School | Juris Doctor Candidate 2015  
National Director of Corporate Relations, 2014-2015  
National Black Law Students Association

## MEMBER DEMOGRAPHICS

NBLSA members are not only talented law students, but also involved community advocates. Our alumni are among the most talented and respected legal practitioners and are active and influential community leaders

Last year, over 200 schools were represented in our membership, including:

- The George Washington University
- John Marshall
- American University
- Columbia University
- Cornell University
- Duke University
- Emory University
- Florida A&M
- Georgia State University
- Georgetown University
- Harvard University
- Howard University
- Lewis and Clark
- Loyola University Chicago
- New York University
- North Carolina Central University
- Northwestern University
- Stanford University
- Southern University
- Southern Methodist University
- Texas Southern University
- Tulane University
- UCLA
- University of Missouri
- University of Pennsylvania
- University of Texas at Austin
- University of South Carolina
- University of Virginia
- University of Wisconsin
- Vermont
- Yale University

Last year NBLSA rose  
A total in cash donation amount of  
\$118,650  
And  
A total in-kind donation of \$83,750

**This year our goal with your  
help is to raise \$500,000!**

## CONVENTION SPONSORSHIP OPPORTUNITIES & BENEFITS

### PLATINUM SPONSOR (15,000)

- Opportunity to deliver greetings/remarks Reception
- Seven all-access Convention passes \*\*
- One reserved table at gala
- Table at Career Fair Expo
- Promotional item/material in all convention bags
- Recognition on NBLSA official signage
- Logo/link placement on website
- Recognition in NBLSA Magazine and Annual Report
- 2 page ad in Convention Guide to include but not limited to the back cover of the Convention Guide
- Recognition in Luncheon Programs
- Access to NBLSA Resume Book
- High visibility for logo on all Convention marketing materials
- Recognition as Platinum Sponsor in Convention Program included in Convention bag

### GOLD SPONSOR (10,000)

- Opportunity to deliver greetings/remarks at an appropriate event
- Three all-access Convention passes \*\*
- Table at Career Fair Expo
- Workshop panelist opportunities
- Logo on Convention materials and website
- Recognition as Gold Sponsor in Convention Program
- Recognition in NBLSA Magazine and Annual Report
- 1 page ad in Convention Guide
- Ability to provide marketing materials for Convention attendees
- Access to Resume Book

## SILVER SPONSOR (5,000)

- Two all-access Convention passes \*\*
- Table at Career Fair Expo
- Workshop panelist opportunities
- Logo/link placement on website
- Recognition in NBLSA Magazine
- 1/2 page ad in Convention Guide
- Recognition as Silver Sponsor in Convention Program
- Opportunity to have 2 representatives judge both the Thurgood Marshal Mock Trial Competition and the Fredrick Douglas Moot Court Competition

## BRONZE SPONSOR (3,000)

- Recognition as Bronze Sponsor in Convention Program
- 1/4 page ad in Convention Guide
- One all-access Convention pass \*\*
- Opportunity to have 1 representative judge both the Thurgood Marshal Mock Trial Competition and the Fredrick Douglas Moot Court Competition

## COPPER SPONSOR (2,000)

- Recognition as Copper Sponsor in Convention Program
- One all-access Convention pass \*\*
- Opportunity to have 1 representative judge either the Thurgood Marshal Mock Trial Competition, the Fredrick Douglas Moot Court Competition, or the Nelson Mandela International Negotiations Competition

## CHROME SPONSOR (1,000)

- Recognition as Chrome Sponsor in Convention Program
- One all-access Convention pass\*\*

**SPECIAL PACKAGES ARE AVAILABLE UPON REQUEST  
ALL SPONSORSHIP LEVEL PRICING IS SUGGESTED**

\*\*All-Access Convention pass includes tickets to all luncheons, receptions and gala in addition to the panels and networking opportunities during the convention.

## *Additional Convention Sponsorships and Benefits*

### EVENT PROGRAM ADVERTISEMENT \$250-\$750

Place your advertisement in the 47th Annual National Convention Program  
The Event Program allows you to:

- Promote your organization's services, products, and career opportunities;
- Celebrate your NBLSA chapter's extraordinary accomplishments;
- Show support of a local, regional, or national NBLSA member; and
- Join us in celebrating 47 years of service to our communities. Highlight your moment with an:
  - Quarter-page advertisement - \$250
  - Half-page advertisement - \$500
  - Full-page advertisement. - \$750

### VENDOR'S EXHIBITOR SPACE \$325

Exhibitor space allows you to showcase your services, products and distribute marketing materials to attendees throughout the 47th Annual National Convention.

### T-Shirt sponsor \$3,500

Logo prominently displayed on official convention T-shirt

### Bags \$3,500

Logo prominently displayed on outside of convention bag

### Bag inserts \$2,500

Promotional item/material in all convention bags

### Workshop sponsor \$2,000

Opportunity to pick topic and panelists for convention workshop

### Convention Breakfast \$4,000

The Convention Breakfast will take place on

## **SPECIAL SPONSORSHIP OPPORTUNITIES 2015**

### CHAMPION CIRCLE (500)

- Recognition as a Champion of NBLSA in the Convention Program
- A Legacy of NBLSA Reception Sponsor

### ADVOCATE CIRCLE (400)

- Recognition as an Advocate of NBLSA in the Convention Program
- A Legacy of NBLSA Reception Sponsor

### SUPPORTER CIRCLE (300)

- Recognition as a
- Reception Sponsor
- Supporter of NBLSA in the Convention Program
- A Legacy of NBLSA



## *Competition Sponsorship Opportunities and Benefits*

### **MOOT COURT COMPETITION SPONSOR \$10,000**

**The Moot Court Competition will be held from March 11-14, 2015**

- Company logo on all NBLSA Moot Court Competition Materials
- Exclusive official NBLSA Moot Court Competition signage
- Recognition during gala
- Presentation of NBLSA Moot Court Awards at gala
- 5 all-access Convention passes
- Logo/link placement on website
- 1/2 page ad in Convention Guide
- Recognition in NBLSA Magazine and Annual Report

### **MOCK TRIAL COMPETITION SPONSOR \$10,000**

**The Mock Trial Competition will be held from March 11-14, 2015**

- Company logo on all NBLSA Mock Trial Competition Materials
- Exclusive official NBLSA Mock Trial Competition signage
- Recognition during gala Presentation of NBLSA Mock Trial Awards at gala
- 5 all-access Convention passes
- Logo/link placement on website
- 1/2 page ad in Convention Guide
- Recognition in NBLSA Magazine and Annual Report

### **NEGOTIATIONS COMPETITION SPONSOR \$10,000**

**The Negotiations Competition will be held from March 11-14, 2015**

- Company logo on all NBLSA Negotiations Competition Materials
- Exclusive official NBLSA Competition signage
- Recognition during gala Presentation of NBLSA Negotiations Awards at gala
- 5 all-access Convention passes
- Logo/link placement on website
- 1/4 page ad in Convention Guide
- Recognition in NBLSA Magazine and Annual Report



**Oregon State Bar  
Special Open Session of the Board of Governors  
November 7, 2014  
Minutes**

President Tom Kranovich called the meeting to order at 9:30 a.m. on November 7, 2014. The meeting adjourned at 9:45 a.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, Ray Heysell, Theresa Kohlhoff, Audrey Matsumonji, Caitlin Mitchel-Markley, Josh Ross, Richard Spier, Simon Whang, and Tim Williams. Staff present were Sylvia Stevens, Susan Grabe, and Dani Edwards.

**1. Call to Order**

Mr. Kranovich asked for BOG approval of outreach by Tom and Rich Spier to the dean of the Lewis & Clark Law School to express dismay at the impending closure of the low-income legal services clinic. Tom suggested an in-person visit as well as a letter. After discussion, CMM moved, seconded by PE that Tom and Rich write a letter and request a meeting with Dean Johnson to encourage reinstatement of the clinic.

**Motion:** The board approved the motion unanimously.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 15, 2014  
**From:** Helen Hirschbiel, General Counsel  
**Re:** Custodianship of Don Willner's Law Practice  
*Attorney-Client Privileged Communication*

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### Issue

Decide whether to initiate a custodianship proceeding over Don Willner's law practice.

### Background

Don Willner was admitted to the Oregon State Bar in 1952. For nearly his entire legal career his primary office for the practice of law was in Portland, Oregon. He died March 27, 2012.

Shortly before his death, Mr. Willner had retired to Trout Lake, Washington. As far as we are aware, the only outstanding matter that Mr. Willner had not fully resolved prior to his retirement and death related to his representation of the Benjamin Franklin Savings and Loan—a thrift based in Portland, Oregon—and its shareholders against the United States Government in the United States Court of Federal Claims.<sup>1</sup>

In order to fund the suit, shareholders had contributed to a "litigation fund" that Mr. Willner maintained in his client trust account. In 2006, the FDIC agreed to reimburse the shareholders the money they had spent for their attorney fees. The money was deposited into Mr. Willner's trust account, and he issued reimbursement checks to the shareholders. Mr. Willner had lost contact with some of the shareholders over the years during which the lawsuit was pending and no longer had good addresses for them. In those instances where he knew he did not have a good address, he did not issue a check, but made efforts to locate the individual.

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<sup>1</sup> In 1982, Benjamin Franklin was asked by the Federal Savings & Loan Insurance Corporation ("FSLIC") to acquire a failing thrift, Equitable Savings and Loan. As was common at time, the agreement with the government included a 40-year amortization of over \$330 million in "Supervisory Goodwill". In response to the S&L crisis of the mid-80's—during which officers of several thrifts were accused of defrauding investors and depositors—Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). Shortly thereafter in late 1989, regulators notified Benjamin Franklin that the \$330 million in phantom capital provided for under the "Supervisory Goodwill Agreement" from the Equitable S&L merger had to be removed from the balance sheets under the new FIRREA rules. Benjamin Franklin was informed that unless it came up with a replacement for that \$330 million in capital within about 90 days, it would be declared insolvent and seized. Needless to say, Benjamin Franklin was unable to come up with the capital, and took the position that the new requirement to raise additional capital was a violation of their contract. The federal government declared Benjamin Franklin insolvent and seized its assets in 1990 under protest. Shortly thereafter, Mr. Willner filed suit alleging that the seizure was unconstitutional and a breach of contract.

For those checks that were issued, some were returned as undeliverable and unable to forward. On others, it was noted that the person was deceased.

Although the lawsuit was resolved in April 2011, approximately \$154,000 of the litigation fund money remains in trust. It is currently being held in two accounts at Umpqua Bank (formerly Sterling Bank) in White Salmon, Washington—one a CD and one a regular savings account, both of which are titled, “Benjamin Franklin Shareholder Litigation Fund, Don Willner, trustee” (“Litigation Fund”). Don Willner is the only signor on the accounts, but according to Mr. Willner’s accountant, Mr. Willner’s social security number is not associated with the accounts.

Mr. Willner’s former accountant has shared his books relating to these accounts, as well as copies of the returned checks. Based on our initial review of the electronic and hard files, we have been able to determine with certainty that approximately \$25,000 of the money belongs to Oregon residents and another \$5,000 or so belongs to residents of other states. For the remaining \$124,000, we have not as yet been able to determine ownership of the funds. Moreover, because the records are in such disarray, it seems unlikely that we will be able to determine ownership of the vast majority of the funds.

Mr. Willner’s widow has made several efforts to gain control over the accounts in order to pay the monies over to the appropriate entity as unclaimed funds. Because of the way in which the account is titled, however, she has been unsuccessful in her efforts. Although she is successor trustee of her husband’s trust (and as such was able to wind up the remainder of her husband’s law practice), she is not listed as successor trustee for the Litigation Fund. Because her husband is not the owner of the funds in the accounts, she also has not been able to access the funds as the personal representative for her husband’s estate.

We have spoken with assistant general counsel for Umpqua Bank, and unless some action is taken soon to claim the funds, the bank plans to presume that the funds are abandoned and remit them to the Washington Department of State Lands because the accounts are in a bank branch located in Washington State. Because we have expressed an interest in the funds, they have agreed to hold off on doing so for the immediate future.

## **Discussion**

The purpose of initiating a custodianship proceeding over Don Willner’s practice is two-fold: 1) to ensure that for those individuals who can be identified, their property is held in a manner and in a place where they are most likely to find it, and 2) to use the money belonging to individuals who cannot be identified to help fund Oregon’s legal aid programs.

A custodianship proceeding would allow the Oregon State Bar to assume control over the Litigation Fund. Pursuant to ORS 9.710, the court for the county in which an attorney’s law practice is or was located may take jurisdiction over the attorney’s practice upon petition by Oregon State Bar whenever such attorney for any reason “is incapable of devoting the time and

attention, personally or through another attorney, to the law practice of the attorney which is necessary to protect the interests of the clients of the attorney.” When necessary to protect the interests of the public and clients, the court may appoint a custodian to take possession and control of all property of the practice, including lawyer trust accounts, and may issue orders for the windup of the practice and distribution of the property.

Because Mr. Willner is deceased, and no other person or lawyer is in a position to protect clients who have an interest in the monies in the Litigation Fund, the Oregon State Bar may petition the Multnomah County Circuit Court to take jurisdiction over Mr. Willner’s law practice, appoint a custodian, and provide for the distribution of the funds in the Litigation Fund. Scott Seidman, a lawyer who formerly served on the Legal Services Committee has agreed to act as custodian pro bono.

Further, pursuant to Oregon’s unclaimed property statute, it would be appropriate for the court to order distribution of a substantial portion of the Litigation Fund to the Oregon State Bar. Oregon’s unclaimed property statute provides that lawyer trust account funds that are presumed abandoned should be reported to the Oregon Department of State Lands, but delivered to the Oregon State Bar. These monies may be used for the funding of legal services provided through the Legal Services Program. ORS 98.386(2).

Funds in a lawyer trust account are subject to the custody of the Oregon State Bar as unclaimed property only if the property has been “abandoned” as provided under ORS 98.342, and either: 1) the last-known address, as shown on the records of the holder, of the apparent owner is in this state, or 2) the transaction out of which the property arose occurred in this state, and there is no known address of the apparent owner or other person entitled to the property. ORS 98.304. Where the owner of the funds resided in another state, those funds must be paid to the state of the owner’s last known residence. Generally, property is presumed abandoned if it has remained unclaimed by the owner for more than two years after it became payable.

Although not specifically denominated as such, the bar could easily argue that the Litigation Fund is a lawyer trust account under the Unclaimed Property Statute because it is a trust account held and controlled by a lawyer. In addition, the funds therein would be presumed abandoned because they have remained unclaimed for more than two years. Those funds whose owners we can identify as being from out of state would have to be paid to the state where the owner last resided; however, approximately \$25,000 of the funds belong to Oregon residents and therefore should be paid to the Oregon State Bar.

As to the bulk of the funds—for whom we are unable to identify an owner—the bar could argue that the transaction out of which the funds arose occurred in Oregon because Benjamin Franklin Savings and Loan was an Oregon-based thrift and the lawyer hired for the litigation an Oregon lawyer. If that argument were accepted by the court, the funds for which no owner can be identified should be paid to the Oregon State Bar pursuant to ORS 90.304. The risk is that the court would determine that the transaction actually occurred in Washington,

D.C. because that is where the lawsuit was filed and where the United States government initiated the action to seize Benjamin Franklin Savings and Loan. If the court were to determine that the transaction out of which the funds arose was not in Oregon, then the bar would have put forth a lot of effort into a custodianship proceeding without much return for the Legal Services Program.

**Oregon State Bar  
Special Open Session of the Board of Governors  
December 3, 2014  
Minutes**

President Tom Kranovich called the meeting to order at 9:00 a.m. on December 3, 2014. The meeting adjourned at 9:30 a.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Pat Ehlers, Hunter Emerick, Ray Heysell, Matthew Kehoe, John Mansfield, Caitlin Mitchel-Markley, Travis Prestwich, Richard Spier, Josh Ross, Simon Whang, Charles Wilhoite, Tim Williams and Elisabeth Zinser. Staff present were Sylvia Stevens and Camille Greene.

**1. 2015 PLF Board Appointment**

Ms. Bernick presented the PLF Board of Directors (BOD) request that the Board of Governors appoint Robert Raschio to fill the vacant seat on the PLF Board for the term beginning January 1, 2015.

**Motion:** Mr. Spier moved, Mr. Mansfield seconded, and the board voted unanimously to approve the appointment as requested.

**2. Other**

**A. Letter to Lewis & Clark Law School Dean**

Mr. Kranovich, Mr. Ehlers and Mr. Mansfield reported on their conversations with Dean Johnson following her receipt of the letter from Mr. Kranovich and Mr. Spier expressing the board's disappointment at the closing of the law school's low-income clinic. Mr. Kranovich and Mr. Spier are scheduled to meet with the Dean on December 9. There followed a discussion of the board members' varying views on the issue.

**B. Board Vacancy**

Mr. Kranovich announced the resignation of Caitlin Mitchel-Markley effective 1-1-2015. Ms. Stevens suggested options to fill the vacancy. By consensus, the board decided to open up the position to Region 4 members who would like to seek appointment to the position. The board will make its appointment at the January 9, 2015 special meeting.



**Oregon State Bar  
Special Open Session of the Board of Governors  
December 23, 2014  
Minutes**

President Tom Kranovich called the meeting to order at 9:02 a.m. on December 23, 2014. The meeting adjourned at 9:04 a.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Hunter Emerick, Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Caitlin Mitchel-Markley, Travis Prestwich, Josh Ross, Richard Spier, Simon Whang, Tim Williams and Elisabeth Zinser. Also present were 2015 board members Vanessa Nordyke and Per Ramfjord. Staff present were Helen Hirschbiel, Dani Edwards and Camille Greene.

**1. Region 4 BOG Appointment**

Caitlin Mitchel-Markley, Region 4 BOG Member, submitted her resignation from the board effective January 1, 2015. As provided in ORS 9.040 (5), the board must appoint a member to fill a vacancy that occurs 24 months or less before the expiration of the exiting member's term. Based on an open call for candidates the following members requested consideration for appointment to the open region 4 position beginning January 1, 2015, and ending December 31, 2016:

John M. Berman, bar number 720248

Ramón A Pagán, bar number 103072

**Motion:** Mr. Kehoe moved, Mr. Mansfield seconded, and the board members voted to approve the appointment of Ramón A Pagán. Ms. Mitchel-Markley abstained.

**Oregon State Bar**  
**Special Open Session of the Board of Governors**  
**January 9, 2015**  
**Minutes**

President Richard Spier called the meeting to order at 8:30 a.m. on January 9, 2015. The meeting adjourned at 9:45 a.m. Members present from the Board of Governors were Jim Chaney, Guy Greco, Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramón A. Pagán, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Tim Williams and Elisabeth Zinser. Not present was Charles Wilhoite. Staff present were Sylvia Stevens, Helen Hirschbiel, Dawn Evans, Susan Grabe, Judith Baker, Mariann Hyland, Kateri Walsh, Dani Edwards and Camille Greene.

**1. Call to Order**

Mr. Spier swore in new board members Guy Greco, Vanessa Nordyke, Ramón A. Pagán, Per Ramfjord, Kathleen Rastetter and Kerry Sharp.

Mr. Spier presented a request from the OMLA for board to support the nomination of Minoru Yasui to receive a posthumous 2015 Presidential Medal of Freedom.

**Motion:** Mr. Greco moved, Mr. Whang seconded, and the board voted unanimously to support the nomination. Mr. Spier will draft a letter as president of the bar, acknowledging the OSB's support and to accompany the OMLA letter. **[Exhibit A]**

Mr. Prestwich led discussion of whether the board should reaffirm priorities **[Exhibit B]** adopted in November 2014, specifically, its support of legislation that incorporates the *cy pres* doctrine into Oregon law. Options:

- a. Reaffirm support for low-income legal services and *cy pres* legislation that would help fund low-income legal services.
- b. Oppose legislation that would incorporate the *cy pres* doctrine into Oregon law.
- c. Remain neutral on proposed legislation that would incorporate the *cy pres* doctrine into Oregon law.

Ms. Grabe suggested that the board support the adoption of the concept of *cy pres* as a means of funding low-income legal services without getting into the substance of how the bill might affect class action cases. There followed a discussion of whether and how to prioritize the rationales for the BOG's support, and whether to continue the positions taken in the past.

**Motion:** Mr. Ramfjord moved, and Ms. Zinser seconded, and the board voted unanimously to adopt Option a: Reaffirm support for low-income legal services and *cy pres* legislation that would help fund low-income legal services.

The BOG went into a judicial session, at the end of which the BOG meeting was concluded.

**Oregon State Bar  
Board of Governors Meeting  
January 9, 2015  
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.

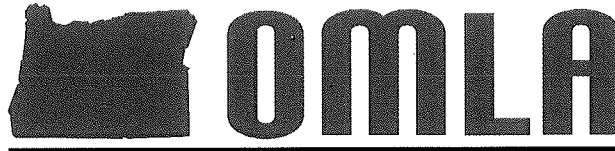
A. Reinstatement Request

Ms. Evans asked the board to decide whether to approve the reinstatement application from Ms. Sally Leisure and make the recommendation for reinstatement, pursuant to BR 8.1(e), to the Oregon Supreme Court.

**Motion:** Mr. Heysell moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the recommendation of Ms. Leisure's reinstatement to the Oregon Supreme Court.

*Executive Board*

Christopher Ling, Co-Chair  
Chase Morinaka, Co-Chair  
Adam Gamboa, Treasurer  
Daniel Simon, Secretary



**Oregon Minority Lawyers Association**

818 SW 3rd Ave., #438, Portland, OR 97204-2405

*Board Members at Large*

Samantha Copeland  
Louise Hansen  
Toni Kelich  
Sujata Patel  
Suzanne Trujillo

*Honorary Board Members*

Ernest Estes  
Anastasia Yu Meisner  
Hon. Adrienne Nelson

January 20, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

**RE: Nomination of Minoru “Min” Yasui for 2015 Presidential Medal of Freedom**

Dear Mr. President:

The Oregon Minority Lawyers Association (“OMLA”) and Oregon Asian Pacific American Bar Association (“OAPABA”) are proud to endorse the nomination of Minoru “Min” Yasui for a 2015 Presidential Medal of Freedom. In 1991, OMLA was founded as one of the first Oregon specialty bar organizations to promote the fair and just treatment of all people under law regardless of race or color. Similarly, OAPABA was founded in 2009 to support legal services impacting Asian Pacific American communities and to advocate their interests in the community. We believe Mr. Yasui’s trailblazing in civil rights, access to justice, and diversity and inclusion—which is emblematic of the pioneer spirit of the Pacific Northwest where he was born and raised—makes him an excellent candidate to receive one of our nation’s highest honors.

Mr. Yasui is credited for several important “firsts” in our national history. He became the first Japanese-American graduate of the University of Oregon Law School and the first Japanese-American member admitted to the Oregon State Bar in 1939. He is further developed the law of this nation in his courageous role as plaintiff in *Yasui v. United States*, the first of several United States Supreme Court cases challenging discriminatory wartime restrictions targeting Japanese-Americans and Japanese nationals during World War II. On March 28, 1942, Mr. Yasui openly and deliberately violated a military curfew that applied only to those of Japanese descent, resulting in his conviction and incarceration (including nine months of solitary confinement) as he appealed his case to the U.S. Supreme Court. His refusal to adhere to the curfew was a principled exercise of civil disobedience, borne out of his unwavering belief in the equal rights enshrined in our Constitution and laws. Although Mr. Yasui was ultimately unsuccessful in his appeal, his faith in our legal system was unshaken, and he continued to fight for the civil rights of all individuals, regardless of race, nationality, or ethnicity.

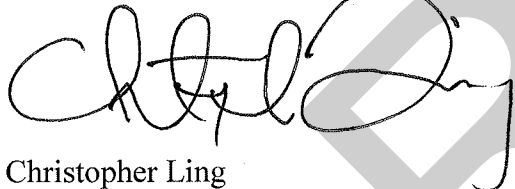
In Colorado in 1944, he successfully challenged the denial of his admission into the Colorado State Bar due to his wartime civil disobedience. There, he contributed to several U.S. Supreme Court amicus briefs filed by the Japanese American Citizens League (“JACL”) in support of those who had been discriminatorily targeted because of their race, nationality, and ethnicity, including defending the rights of Chinese schools and individuals to teach the Chinese language in the then-Territory of Hawai’i (*Stainback v. Mo Hock Ke Lok Po*), and the right of an African-American Ph. D student at the

University of Oklahoma to have equal accommodations on campus (*McLaurin v. Oklahoma State Regents for Higher Education et al.*, a precursor to the landmark case of *Brown v. Board of Education*).

Mr. Yasui brought his pioneering spirit in support of a wide range of diverse organizations outside of the legal profession as well. In addition to being an active member of JACL, he was a founding member of the Urban League of Denver (1946), the Latin American Research and Service Agency (1964), and Denver Native Americans United (1977). He was a member and later served as the executive director of Denver's Human Rights Commission, then referred to as the Community Relations Commission. In all regards, Mr. Yasui's tireless spirit and his contributions to civil rights, equal treatment, and individual freedoms embodies the promises of equality inherent in our United States Constitution.

Today, the continued existence of organizations such as OMLA and OAPABA is testament to the enduring legacy of Minoru Yasui and the fundamental values he championed: equality, fairness, and justice. To share his story with a new generation of Asian Pacific American lawyers and judges, OAPABA recently organized continuing legal education ("CLE") courses on Mr. Yasui's impact on civil rights as part of its program for the 2011 and 2014 National Asian Pacific American Bar Association's ("NAPABA") Western Regional Conference. With this honor, we hope to inspire countless more generations of Americans with Mr. Yasui's courage and commitment to the law in the face of adversity. For those reasons, OMLA and OAPABA endorse Minoru Yasui's nomination for a 2015 Presidential Medal of Freedom, without reservation.

On Behalf of the OMLA Board of Directors,



Christopher Ling  
Co-Chair, Oregon Minority Lawyers Association

And

On Behalf of the OAPABA Board of Directors,

Toan Nguyen  
President, Oregon Asian Pacific American Bar Association

## 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.**
    - 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 17 proposals from 12 bar groups.

**Oregon State Bar  
Special Open Session of the Board of Governors  
January 27, 2015  
Minutes**

President Richard Spier called the meeting to order at 8:00 a.m. on January 27, 2015. The meeting adjourned at 8:14 a.m. Members present from the Board of Governors were Guy Greco, Ray Heysell, Theresa Kohlhoff, Audrey Matsumonji, Vanessa Nordyke, Ramón A. Pagán, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Charles Wilhoite, Tim Williams and Elisabeth Zinser. Not present were Jim Chaney and John Mansfield. Staff present were Sylvia Stevens, Dawn Evans, Susan Grabe and Camille Greene.

**1. Call to Order and Roll Call**

Mr. Spier determined we have a quorum.

**2. Reconsideration of Board of Bar Examiners Legislation**

Mr. Spier presented a request from Chief Justice Balmer to withdraw the portion of the OSB legislative package involving the Board of Bar Examiners, but to continue discussing a long-term resolution of the issues.

**Motion:** Mr. Greco moved, Mr. Heysell seconded, and the board voted unanimously to withdraw sections 6 and 7 of the attached SB 381 [Exhibit A] and to work with the Chief Justice and the BBX on the issues. .

1 an “employee” as the term is defined in the public employees’ retirement laws. However, an em-  
 2 ployee of the state bar may, at the option of the employee, for the purpose of becoming a member  
 3 of the Public Employees Retirement System, be considered an “employee” as the term is defined in  
 4 the public employees’ retirement laws. The option, once exercised by written notification directed  
 5 to the Public Employees Retirement Board, may not be revoked subsequently, except as may other-  
 6 wise be provided by law. Upon receipt of such notification by the Public Employees Retirement  
 7 Board, an employee of the state bar who would otherwise, but for the exemption provided in this  
 8 subsection, be considered an “employee,” as the term is defined in the public employees’ retirement  
 9 laws, shall be so considered. The state bar and its employees shall be exempt from the provisions  
 10 of the State Personnel Relations Law. No member of the state bar shall be considered an  
 11 “employee” as the term is defined in the public employees’ retirement laws, the unemployment  
 12 compensation laws and the State Personnel Relations Law solely by reason of membership in the  
 13 state bar.

14 **SECTION 5.** ORS 9.200 is amended to read:

15 9.200. (1) Any member in default in payment of membership fees established under ORS 9.191 (1)  
 16 [*for a period of 30 days, or any person in default in payment of membership fees established under*  
 17 *ORS 9.191 (2) for a period of 30 days after admission or as otherwise provided by the board,*] or any  
 18 member in default in payment of assessed contributions to a professional liability fund **established**  
 19 **under ORS 9.080 (2) [*for a period of 30 days, shall, after 60 days’ written notice of the delinquency,***  
 20 ***be suspended from membership in the bar*]** **shall be given written notice of delinquency and a**  
 21 **reasonable time to cure the default.** The executive director of the Oregon State Bar shall send  
 22 the notice of delinquency to the [*delinquent*] member at the member’s electronic mail address on file  
 23 with the bar on the date of the notice. The executive director shall send the notice by mail to any  
 24 member who is not required to have an electronic mail address on file with the bar under the rules  
 25 of procedure. If a [*delinquent*] member fails to pay the fees or contributions within [*60 days after the*  
 26 *date of*] **the time allowed to cure the default as stated in** the notice, the member is automatically  
 27 suspended. The executive director shall provide the names of all members suspended under this  
 28 section to the State Court Administrator and to each of the judges of the Court of Appeals, circuit  
 29 and tax courts of the state.

30 (2) An active member delinquent in the payment of fees or contributions is not entitled to vote.

31 (3) A member suspended for delinquency under this section may be reinstated only on compli-  
 32 ance with the rules of the Supreme Court and the rules of procedure and payment of all required  
 33 fees or contributions.

## 34 35 BOARD OF BAR EXAMINERS

36  
37 **SECTION 6.** ORS 9.210 is amended to read:

38 9.210. [*The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar*  
 39 *examiners. The Supreme Court shall also appoint two public members to the board who are not active*  
 40 *or inactive members of the Oregon State Bar. The board shall examine applicants and recommend to*  
 41 *the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law*  
 42 *and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and*  
 43 *collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the*  
 44 *bar.*]

45 (1) **The Board of Governors of the Oregon State Bar shall nominate for appointment by**



1 the Supreme Court a board of bar examiners to examine applicants, investigate their char-  
2 acter and fitness and other qualifications and certify to the Supreme Court for admission to  
3 the Oregon State Bar those applicants who fulfill the requirements prescribed by law and the  
4 rules of the Supreme Court. The composition of the board of bar examiners shall be as pro-  
5 vided in the rules adopted under subsection (2) of this section. The Supreme Court may ap-  
6 point the nominated individuals or may appoint other individuals to the board of bar  
7 examiners.

8 (2) The board of governors shall formulate rules for carrying out the functions of the  
9 board of bar examiners and rules governing the qualifications, requirements and procedures  
10 for admission to the bar by examination and otherwise. After the rules are adopted by the  
11 Supreme Court, the board of governors has the power to enforce the rules.

12 (3) With the approval of the Supreme Court, the board of governors shall fix and collect  
13 fees to be paid by applicants for admission to the bar.

14 (4) Applications for admission and any other materials pertaining to individual applicants  
15 are confidential and may be disclosed only as provided in the rules described in subsection  
16 (2) of this section. The bar's consideration of an individual applicant's qualifications is a ju-  
17 dicial proceeding for purposes of ORS 192.610 to 192.690.

18 SECTION 7. The Board of Governors of the Oregon State Bar shall first nominate and  
19 the Supreme Court shall first appoint the board of bar examiners in accordance with the  
20 amendments to ORS 9.210 by section 6 of this 2015 Act on or before September 1, 2015.

21  
22 **UNIT CAPTIONS**

23  
24 SECTION 8. The unit captions used in this 2015 Act are provided only for the convenience  
25 of the reader and do not become part of the statutory law of this state or express any leg-  
26 islative intent in the enactment of this 2015 Act.

27  
28 **EMERGENCY CLAUSE**

29  
30 SECTION 9. This 2015 Act being necessary for the immediate preservation of the public  
31 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
32 on its passage.  
33

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**OREGON STATE BAR**  
**Client Security - 113**  
**For the Eleven Months Ending November 30, 2014**

Description	November 2014	YTD 2014	Budget 2014	% of Budget	November Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$216	\$2,290	\$3,300	69.4%	\$7	\$1,817	26.0%
Judgments	100	950	1,000	95.0%	150	17,781	-94.7%
Membership Fees	1,575	675,374	684,400	98.7%	2,610	673,500	0.3%
<b>TOTAL REVENUE</b>	<b>1,891</b>	<b>678,614</b>	<b>688,700</b>	<b>98.5%</b>	<b>2,767</b>	<b>693,098</b>	<b>-2.1%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	1,199	26,293	30,800	85.4%	2,229	26,494	-0.8%
Employee Taxes & Benefits - Reg	828	9,968	11,700	85.2%	879	9,520	4.7%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>2,027</b>	<b>36,261</b>	<b>42,500</b>	<b>85.3%</b>	<b>3,107</b>	<b>36,014</b>	<b>0.7%</b>
<b>DIRECT PROGRAM</b>							
Claims		23,044	250,000	9.2%	13,600	661,410	-96.5%
Collection Fees	63	1,194	2,000	59.7%		9,362	-87.2%
Committees			250				
Travel & Expense		1,123	1,400	80.2%		1,203	-6.7%
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>63</b>	<b>25,360</b>	<b>253,650</b>	<b>10.0%</b>	<b>13,600</b>	<b>671,975</b>	<b>-96.2%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Office Supplies			150				
Photocopying		34	150	22.8%			
Postage	19	290	500	58.0%	23	337	-13.9%
Professional Dues		200	200	100.0%		300	-33.3%
Telephone	18	68	150	45.4%		60	13.4%
Training & Education			600			425	-100.0%
Staff Travel & Expense		478	874	54.7%		60	696.2%
<b>TOTAL G &amp; A</b>	<b>37</b>	<b>1,070</b>	<b>2,624</b>	<b>40.8%</b>	<b>23</b>	<b>1,182</b>	<b>-9.5%</b>
<b>TOTAL EXPENSE</b>	<b>2,127</b>	<b>62,691</b>	<b>298,774</b>	<b>21.0%</b>	<b>16,730</b>	<b>709,171</b>	<b>-91.2%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(236)</b>	<b>615,922</b>	<b>389,926</b>		<b>(13,964)</b>	<b>(16,073)</b>	<b>#####</b>
Indirect Cost Allocation	1,357	14,927	16,279		1,219	13,409	11.3%
<b>NET REV (EXP) AFTER ICA</b>	<b>(1,593)</b>	<b>600,995</b>	<b>373,647</b>		<b>(15,183)</b>	<b>(29,482)</b>	<b>#####</b>
Fund Balance beginning of year		50,801					
<b>Ending Fund Balance</b>		<b>651,797</b>					
<b>Staff - FTE count</b>		<b>.00</b>	<b>.00</b>			<b>.00</b>	

CLAIM year	CLAIM No.	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2009	39	Pottle, John	Ryan, T. Michael	\$ 500.00	\$ 200.00	Franco	CSF Approved 07.20.2013
2012	54	Lupton, Lela Mae	Gruetter, Bryan W	\$ 22,500.00	\$ 21,500.00	Miller	ck sent 12/11/14
2013	24	Mantell, Elliott J	Goff, Daniel	\$ 47,609.00	\$ 47,609.00	Davis	CSF Denied 11.16.13 Appeal in March or May
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
2014	1	Snellings, Calvin James	McCarthy, Steven M.	\$ 7,000.00	\$ -	Butterfield	9/5/14 BOG denied
2014	2	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Raher	copies of claim to Raher 1/27/15
2014	7	Wong, Martha and Bernath, Daniel A.	Foster, Rosemary	\$ 20,000.00	\$ -	Reinecke	11/15/14 BOG denied
2014	11	Briggs, Lagale for Clayton Briggs	Connall, Des & Shannon	\$ 10,000.00	\$ -	Naucler	9/5 BOG denied
2014	12	Austin, Evan Roy	Landers, Mary	\$ 11,000.00	\$ 7,400.00	Keeler	ck sent 12/18/14
2014	14	Plancarte, Gladys for Pedro Lagunas Dor	McBride, Jason	\$ 1,300.00	\$ 1,300.00	not assigned	4/11/14 wait for info from claimant
2014	15	Soto-Santos, Armando	McBride, Jason	\$ 5,000.00	\$ 5,000.00	Atwood	9/13/14 still investigating
2014	16	Dickinson, Bruce	Stevens, Randolph J.	\$ 1,500.00	\$ 1,167.46	Timmons	1/29 ck mailed
2014	17	Henbest, Debra Lynn	Bosse, Eric M.	\$ 3,000.00	\$ -	Atwood	11/8/14 CSF denied
2014	18	Crocker, Suzanne	McCarthy, Steven M.	\$ 1,500.00	\$ 1,500.00	Butterfield	
2014	19	Asgari, Ali Reza	McLean, Clifford Michael	\$ 600.00	\$ -	Bennett	11/8/14 CSF denied
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	\$ -	Bennett	11/8/14 CSF closed - pd by atty
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	Raher	copies of claim to Raher 1/27/15
2014	29	Madera, Benjamin and Irene	Roller, Dale Maximiliano	\$ 1,500.00	\$ 1,500.00	Reinecke	
2014	30	Dillon, Helen C	Phinney, W. Scott	\$ 722.47	\$ -	Reinecke	CLOSED 2014. Atty pd in full.
2014	31	Games, Gary Raymond	Roller, Dale Maximiliano	\$ 17,000.00	\$ 17,000.00	Reinecke	
2014	32	Scott, Andrew L.	Allen, Sara Lynn	\$ 5,000.00	\$ 5,000.00	Bennett	
2014	33	Henry, Jennifer Lynn	Connall, Des & Shannon	\$ 20,000.00	\$ 20,000.00	Davis	
2015	1	Smith, Steven Lee	Ettinger, Mariel	\$ 868.50	\$ 868.50	Park	
2015	2	Miranda, Francisco	Bertoni, Gary B	\$ 1,500.00	\$ 1,500.00	Bennett	
2015	3	Smith, Devin	Eckrem, John P	\$ 1,000.00	\$ 1,000.00	Miller	
2015	4	Godier, John	Webb, Sandy N	\$ 46,000.00	\$ 46,000.00	Thompson	
					<b>\$ 229,359.10</b>		
		Funds available for claims and indirect costs allocation as of November 2014	Total in CSF Account		\$ 651,797.00		
			<b>Fund Excess</b>		<b>\$ 422,437.90</b>		

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Client Security Fund Awards Less than \$5,000

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The Client Security Fund made the following award at its January 10, 2015 meeting:

No. 2014-16 Stevens (Dickinson)	\$1,167.46
---------------------------------	------------

Claimant hired Portland attorney Randolph Stevens to represent him in a custody matter pending in Arizona; Stevens had previously represented Claimant in an earlier custody/parenting time matter. On January 6, 2014, Claimant gave Stevens a \$1,500 retainer against hourly fees in the matter. Stevens deposited the retainer into his trust account.

On January 27, 2014, Stevens died. According to trust records, on the day of his death Stevens withdrew \$400 from trust, applying \$136.54 to fees owed by Claimant from the prior matter and the balance to new fees of \$196.00. (For reasons that are not clear, this resulted in an overpayment to Stevens of \$69.46.)

The balance of Stevens's IOLTA account as of his death was \$1,595.97, but according to his ledgers, there should have been a balance of \$4,140.80. No probate has been opened and information provided to the Committee investigator is that Stevens died insolvent.

Claimant seeks return of \$1,363.46 (\$1,500 - \$136.54), alleging that the minimal work Stevens did on the new matter was of no value. The Committee had insufficient evidence to determine whether the \$196.00 billed by Stevens prior to his death was of any value to Claimant. It concluded that Claimant was, however, clearly entitled to the difference between what had been billed (including the prior outstanding balance) and the retainer he had paid (\$1,500 - \$136.54 - \$196 = \$1,167.46).

The CSF Committee did not believe that Stevens had engaged in any dishonesty with regard to this claim, but was concerned that his trust account balance did not conform to the trust records and that there may be more claims. The Committee voted unanimously to reimburse the Claimant, with the understanding that staff will endeavor to recover the trust account balance from Stevens's bank. Given the circumstances, the Committee also voted to waive the requirement that Claimant obtain a civil judgment.

**Board of Governors**

*President*

Richard G. Spier, Portland

*President-elect*

R. Ray Heysell, Medford

*Region 1*

Timothy L. Williams, Bend

*Region 2*

James C. Chaney, Eugene

*Region 3*

R. Ray Heysell, Medford

*Region 4*

Guy B. Greco, Newport  
Ramón A. Pagán, Hillsboro

*Region 5*

Theresa M. Kohlhoff, Portland  
Johnathan E. Mansfield, Portland  
Per A. Ramfjord, Portland  
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**Executive Director**

Sylvia Stevens, Tigard

January 21, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Re: Nomination of Minoru Yasui for 2015 Presidential Medal of Freedom

Dear Mr. President:

On behalf of the Oregon State Bar Board of Governors, I write to endorse the nomination of Minoru Yasui for the 2015 Presidential Medal of Freedom.

Mr. Yasui was a graduate of the University of Oregon Law School and the first Japanese-American member of the Oregon State Bar when he was admitted to practice in 1939.

Although Mr. Yasui practiced law in Oregon only briefly, his entire career exemplified the Oregon State Bar's mission of and commitment to access to justice beginning with his challenge to the military exclusion zones in Oregon established by Executive Order in 1942. Mr. Yasui was arrested, convicted, stripped of his citizenship and jailed before the US Supreme Court held the lower court ruling unconstitutional and restored Mr. Yasui's citizenship the following year. Nevertheless, Mr. Yasui spent the remainder of World War II in an internment camp. Upon release, he moved to Denver, Colorado, where he lived the rest of his life.

Mr. Yasui's wartime experiences did not diminish his love for his country; rather it propelled him to spend the ensuing years fighting for civil rights for all minorities and to seeking redress for those interned during World War II. He was recognized as an outstanding citizen by the city of Denver, which established a service award in his honor. Mr. Yasui died in 1986, two years before the Civil Liberties Act called on the President to apologize for internment. He is buried in Hood River, Oregon, where he was born.

President Barack Obama

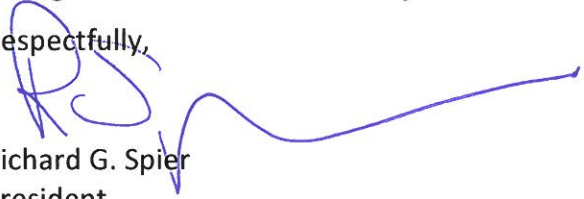
January 21, 2015

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The Presidential Medal of Freedom recognizes civilians who have made a meritorious contribution to the security or national interests of the United States, world peace, cultural or other significant public or private endeavors. Mr. Yasui's lifetime commitment to civil rights, access to justice and diversity make him an ideal candidate.

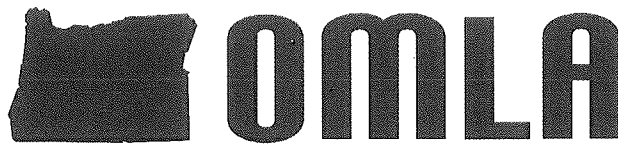
The OSB Board of Governors is proud to endorse Minoru Yasui for the Medal and encourages you to recognize his many contributions to making the United States a more just nation.

Respectfully,



Richard G. Spier  
President

*Executive Board*  
Christopher Ling, Co-Chair  
Chase Morinaka, Co-Chair  
Adam Gamboa, Treasurer  
Daniel Simon, Secretary



**Oregon Minority Lawyers Association**

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Hon. Adrienne Nelson

January 20, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

**RE: Nomination of Minoru “Min” Yasui for 2015 Presidential Medal of Freedom**

Dear Mr. President:

The Oregon Minority Lawyers Association (“OMLA”) and Oregon Asian Pacific American Bar Association (“OAPABA”) are proud to endorse the nomination of Minoru “Min” Yasui for a 2015 Presidential Medal of Freedom. In 1991, OMLA was founded as one of the first Oregon specialty bar organizations to promote the fair and just treatment of all people under law regardless of race or color. Similarly, OAPABA was founded in 2009 to support legal services impacting Asian Pacific American communities and to advocate their interests in the community. We believe Mr. Yasui’s trailblazing in civil rights, access to justice, and diversity and inclusion—which is emblematic of the pioneer spirit of the Pacific Northwest where he was born and raised—makes him an excellent candidate to receive one of our nation’s highest honors.

Mr. Yasui is credited for several important “firsts” in our national history. He became the first Japanese-American graduate of the University of Oregon Law School and the first Japanese-American member admitted to the Oregon State Bar in 1939. He is further developed the law of this nation in his courageous role as plaintiff in *Yasui v. United States*, the first of several United States Supreme Court cases challenging discriminatory wartime restrictions targeting Japanese-Americans and Japanese nationals during World War II. On March 28, 1942, Mr. Yasui openly and deliberately violated a military curfew that applied only to those of Japanese descent, resulting in his conviction and incarceration (including nine months of solitary confinement) as he appealed his case to the U.S. Supreme Court. His refusal to adhere to the curfew was a principled exercise of civil disobedience, borne out of his unwavering belief in the equal rights enshrined in our Constitution and laws. Although Mr. Yasui was ultimately unsuccessful in his appeal, his faith in our legal system was unshaken, and he continued to fight for the civil rights of all individuals, regardless of race, nationality, or ethnicity.

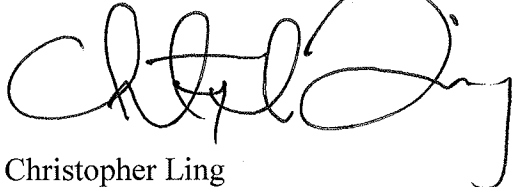
In Colorado in 1944, he successfully challenged the denial of his admission into the Colorado State Bar due to his wartime civil disobedience. There, he contributed to several U.S. Supreme Court amicus briefs filed by the Japanese American Citizens League (“JACL”) in support of those who had been discriminatorily targeted because of their race, nationality, and ethnicity, including defending the rights of Chinese schools and individuals to teach the Chinese language in the then-Territory of Hawai’i (*Stainback v. Mo Hock Ke Lok Po*), and the right of an African-American Ph. D student at the

University of Oklahoma to have equal accommodations on campus (*McLaurin v. Oklahoma State Regents for Higher Education et al.*, a precursor to the landmark case of *Brown v. Board of Education*).

Mr. Yasui brought his pioneering spirit in support of a wide range of diverse organizations outside of the legal profession as well. In addition to being an active member of JACL, he was a founding member of the Urban League of Denver (1946), the Latin American Research and Service Agency (1964), and Denver Native Americans United (1977). He was a member and later served as the executive director of Denver's Human Rights Commission, then referred to as the Community Relations Commission. In all regards, Mr. Yasui's tireless spirit and his contributions to civil rights, equal treatment, and individual freedoms embodies the promises of equality inherent in our United States Constitution.

Today, the continued existence of organizations such as OMLA and OAPABA is testament to the enduring legacy of Minoru Yasui and the fundamental values he championed: equality, fairness, and justice. To share his story with a new generation of Asian Pacific American lawyers and judges, OAPABA recently organized continuing legal education ("CLE") courses on Mr. Yasui's impact on civil rights as part of its program for the 2011 and 2014 National Asian Pacific American Bar Association's ("NAPABA") Western Regional Conference. With this honor, we hope to inspire countless more generations of Americans with Mr. Yasui's courage and commitment to the law in the face of adversity. For those reasons, OMLA and OAPABA endorse Minoru Yasui's nomination for a 2015 Presidential Medal of Freedom, without reservation.

On Behalf of the OMLA Board of Directors,



Christopher Ling  
Co-Chair, Oregon Minority Lawyers Association

And

On Behalf of the OAPABA Board of Directors,

Toan Nguyen  
President, Oregon Asian Pacific American Bar Association



# Facing up to the challenge: It's time to prepare law students for their profession

Posted Jan 29, 2015 8:45 AM CST

By Michael Roster



Michael Roster

The legal profession is under immense pressures. Clients are demanding steep discounts and increasingly insist on fixed prices or other forms of value-based fees. Law firm realization rates (that is, revenue received versus what was reported on time sheets) once averaged 92 percent, fell to the lower 80 percent range in recent years and are now moving to the 70 percent range. Many clients won't allow junior associates to work on their matters, and many law firms aren't even hiring recent graduates. And many well-known firms have failed or alternatively undertook mergers that one knowledgeable observer calls disguised liquidations.

Meantime, law school applications are down 38 percent since 2010. To maximize U.S. News rankings, generous scholarships are offered to first-year applicants with high GPAs and LSAT scores while other qualified applicants are placed on waiting lists so the yield looks good. Schools are simultaneously admitting as many as 80 or more second-year transfer students and up to 200 or more LL.M.s in order to help close the widening budget gap. Never mind that law schools were cash cows until the past 20 years when other priorities took over.

And yet law school graduates, having gone deeply into debt, find they actually don't know how to practice law and increasingly can't find work. They were taught interesting theory but typically weren't taught the skills and even the substantive material they need for their profession.

For example, all first-year U.S. law students take a course in contracts. Later, they take courses in corporate law, real estate and other substantive areas that all rely heavily on contracts. Yet most have never seen or drafted a contract in any of their courses by the time they graduate. Any rational layperson would ask: How can you teach contracts without looking at a contract?

Here's another example. It's been reported that half or more of the lawyers in London's Magic Circle law firms—firms that compete directly with top tier U.S. firms—didn't go to law school. They spend three years for their undergraduate degree and then complete a one-year program

on the knowledge and skills needed to practice law, for four years total. In the U.S., we require four years solely for the undergraduate degree and then three more years for law school, for a total of seven years and up to \$450,000 in cost. And yet after seven years of this advanced education, our law school graduates largely lack the knowledge and skills to be lawyers.

As law firms return to a business model where profitability turns on expertise and efficiency versus how many hours can be racked up, law school graduates who are much farther up the learning curve will have a competitive edge.

## An Audacious Goal for Legal Education

With that background, let me propose an audacious\* but very realistic goal for legal education:

**By 2018, every graduate from a U.S. law school will have the knowledge and skills currently expected of a second-year lawyer or higher and as such can function as a midlevel associate, a solo practitioner, an agency or judicial officer, a junior faculty member or in similar capacities. To achieve this proficiency, every student will have had courses or comparable experiences involving all of the following: traditional substantive law, client skills, social service, advocacy and dispute resolution, government and administrative processes, and teaching and scholarly inquiry.**

This goal is readily achievable with existing resources. And to put it bluntly, there's no excuse for not doing it, especially given the market pressures that are sending clear messages to lawyers and educators alike.

### Key elements

Here's what is meant by each of the elements in the proposed goal for legal education:

- *Traditional substantive law.* This includes the rigorous training that helps first-year law students learn to challenge assumptions, consider alternative views and defend their positions. That's a two- to three-month process which then can be enhanced while at the same time developing substantive expertise and professional skills.
- *Client skills.* This means knowing how to communicate with clients, assess the competing issues at stake, counsel clients on risks and alternatives, develop a formal or informal project management plan, execute on that plan and interact with other parties. It includes a wide range of professional and ethical issues, such as what to do with clients who are skirting or breaking the law, what to do when you have information that is important but not known to the other side, and the like.

- *Advocacy and dispute resolution.* This means an ability to present a client's position, whether in court, before an arbitrator or mediator, in front of legislative and regulatory bodies, or vis-à-vis opposing parties.
- *Government and administrative processes.* A significant part of modern law, in the U.S. and worldwide, is through governmental and administrative processes. An understanding of these processes and how to effectively represent clients is essential for a modern-day lawyer
- *Teaching and scholarly inquiry.* Some law schools pride themselves on the number of law school professors they produce, and among law school deans, this often is the most important factor when assessing competing law schools. Whether or not this is a valid standard doesn't matter. Every law student should have a minimum exposure to scholarly research, and likewise, one of the best ways to learn a subject is to teach it. Teaching likewise can help develop the skills needed to supervise and mentor others, and if you think about it, what lawyers do vis-à-vis clients, judges, administrative bodies and others is largely a form of teaching.

### **Not a trade school**

Every profession has certain substantive knowledge at its core (basic sciences in medical school, for example). But professional school graduates then need to acquire the more advanced knowledge and skills that are required to practice their profession. Professions by definition can't be reduced to a series of rules but involve learning how to constantly make difficult trade-offs and judgment calls. And to assure law school graduates have these skills doesn't make law school a trade school. Rather, it's what any professional school should, at a minimum, be doing.

### **Block scheduling**

A related reform will be to move to block scheduling, as many leading U.S. medical schools already have done and at least some business school faculty are doing. In block scheduling, rather than taking three to five courses in fits and starts through a semester, students take one or two courses in intensive blocks of time. I teach one section of my advanced contracts course, for example, in five Saturday sessions, three going a half-day and two going for the entire day.

My first year I was concerned whether this would be too much for students to handle, even though this is what their working lives will be like. It turns out the students remained intensively involved throughout the sessions, and as others also have seen, there was much greater comprehension and retention since this approach allows for ongoing interactions and a mastery of the material.

This approach also gets away from the semester-end or year-end pressure of all exams coming at once. Plus it allows students to use the ongoing feedback to improve themselves as they take on subsequent segments of the curriculum.

### **Why it's doable**

I said at the outset that achieving this goal for legal education is doable with existing resources. It would require only modest adjustments in what we teach and why we teach it. Adjunct faculty can provide the substantive knowledge and skills that the tenured faculty might lack. This also means better coordination between the tenured and adjunct faculty so that, for example, the basic elements of a contract are taught at the same time as the theory of contracts, or the interaction of evidence and civil procedure can be explored at the same time advocacy skills are developed.

If there are doubts about the traditional curriculum versus one with these modifications, one approach would be to create a separate track, even at the so-called top 20 schools. That track would deliver a three-year course of study, including all of the traditional curriculum but also the elements needed to achieve the audacious goal above. Students could then select which version of curriculum they want to pursue.

### **Resulting careers**

The legal education goal intentionally includes preparing students for a wide range of possible careers—an important element since no career path today is guaranteed.

- *Midlevel associate.* Some would ask, how can a law school graduate already be at a second-year lawyer level? I used the knowledge and skills matrix used by a number of leading U.S. law firms in developing my advanced contracts course so that most students are at a second-year lawyer level by the end of the course, and many are well above that.
- *Solo practitioner.* Because of the scarcity of jobs—which is likely to become all the worse as law firms reduce leverage and the turnover of lawyers in response to client and economic pressures—more students are starting their own solo practices or working in areas tangential to law. A target for the audacious goal in legal education must be that our JD graduates have the knowledge and skills to immediately enter the profession without the further mentoring we had otherwise expected would come from starting at a law firm.
- *Public service.* There's a lot of talk that we have too many lawyers, and yet most observers believe we don't have enough lawyers serving the needs of lower- and even moderate-income individuals, families and businesses. Plus, law is a profession that rightly emphasizes pro bono and other forms of public service. Every law school graduate should have experience and be

prepared for what is needed in public service, whether they subsequently engage in it full time or as volunteers.

- *Agency or judicial officer.* Another career path is to go into the judiciary or become administrative hearing officers, mediators, arbitrators or providers of alternative legal services. Part of a required law school course of study should include the basic substantive knowledge and skills for any graduate to be able to go into these areas of law. And for those who start at law firms or pursue other career paths, having a basic understanding of the agency and judicial processes will actually make them better lawyers when practicing before these tribunals, or when later in their careers they move into the judiciary or other government entities.

- *Junior faculty member.* In other parts of the university, graduates with advanced degrees often go into university teaching. Forty years ago, U.S. law schools started granting a doctorate degree (JD) instead of the long-standing bachelor's in law (LLB). But if we want to justify that what we do in law school produces actual doctorates, at very least students should be exposed to the challenges and rigors expected of other doctorate degree-holders. That includes basic teaching and research. Moreover, one of the best ways to learn a field is to teach it and engage in basic research, and this should apply to everyone getting a doctorate in law—that is, a JD. It's also a way to identify early on those who have extraordinary skills in both teaching and research and to assist them to enter into true academic (albeit also professional) careers.

## Conclusion

Many areas of education use what is called backward curriculum planning. In this process, you first identify what outcomes you want. In law, this means what substantive knowledge and professional skills are needed for becoming a lawyer. Having identified those areas, you would next ask, how would we know a given student has mastered the relevant knowledge and skills? Through written exams? Other approaches?

Once those questions have been answered, and only then, do you ask, so what is the best way to teach that knowledge and those skills?

I think anyone who undertakes this kind of inquiry in a neutral fashion would likely design a law school curriculum similar to the audacious goal proposed here.

This goal is readily doable, and with existing resources. There's no excuse for not doing it, especially given the legitimate expectations of our students, our profession, our clients and society itself.

**\*This article's audacious goal for legal education borrows from the concept of a "big hairy audacious goal" in the book by Stanford business school professors James C. Collins and Jerry I. Porras, *Built to Last—Successful Habits of Visionary Companies*. New York: Harper Collins.**

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*Michael Roster is former managing partner of Morrison & Foerster's Los Angeles office and co-chair of the firm's financial institutions practice group worldwide. He subsequently was general counsel of Stanford University and Stanford Medical Center and then of Golden West Financial Corporation. He is a former chair of the Association of Corporate Counsel and the Stanford Alumni Association, a former outside director and vice chair of Silicon Valley Bank and currently a director of MDRC in New York. For the past five years he has been teaching an advanced contracts course at the University of Southern California Gould School of Law.*

**Editor's note:** [The New Normal](#) is an ongoing discussion between [Paul Lippe](#), the CEO of Legal OnRamp, [Patrick Lamb](#), founding member of Valorem Law Group and their guests. New Normal contributors spend a lot of time thinking, writing and speaking about the changes occurring in the delivery of legal services. You're invited to join their discussion.

# THE LAWYER’S MONOPOLY—WHAT GOES AND WHAT STAYS

*Benjamin H. Barton\**

*We live in a time of unprecedented changes for American lawyers, probably the greatest changes since the Great Depression. That period saw the creation of the lawyer’s monopoly through a series of regulatory modifications. Will we see the same following the Great Recession? Formally, no. This Article predicts that formal lawyer regulation in 2023 will look remarkably similar to lawyer regulation in 2013. This is because lawyer regulators will not want to rock the boat in the profession or in law schools during a time of roil.*

*Informally, yes! We are already seeing a combination of computerization, outsourcing, and nonlawyer practice radically reshape the market for law from one that centers on individualized, hourly work done for clients to a market of much cheaper, commoditized legal products. This trend will accelerate over time. The upshot? Formal lawyer regulation will continue on with little change, but will cover an ever-shrinking proportion of the market for legal services.*

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#### INTRODUCTION

My very first law review article was published in 2001.<sup>1</sup> The article contrasted the various economic justifications for lawyer regulation with the regulations themselves.<sup>2</sup> The article reached the then radical conclusion that we should deregulate the profession altogether, except for the regulations that dealt with in-court appearances.<sup>3</sup> I argued that most lawyer regulation was self-interested, anticompetitive, and unnecessary for consumer protection, but that some regulation should remain to protect the courts.<sup>4</sup> I used this paper as my “job talk,” the paper I presented to law schools considering hiring me as a tenure-track professor. Unsurprisingly, I encountered significant resistance and faced some tough audiences. In particular, there was general agreement that, regardless of the merits of my suggestions, there was no chance they would come to fruition. I was told repeatedly that lawyer regulators would *never* pare back their regulatory authority so radically.

Ironically, these critics were *half* right. Lawyer regulators—meaning state supreme courts and bar associations—will not consciously cede so much authority. In fact, half of this Article’s argument is exactly that: in the face of unprecedented change and roil in the market for legal services, lawyer regulators will hunker down and change as little as possible.

Unfortunately for lawyer regulators, just twelve short years after my first law review article called for broad deregulation, the nature of the market for legal services has changed so radically that my proposed solution is likely to become the *de facto* status quo sooner rather than later. Between computerization, outsourcing, insourcing, and nonlawyer workers, lawyers will have to share their turf outside of court, and, as a result, the effect of lawyer regulations will likewise be pared back.

This Article makes five arguments: (1) the market for legal services is changing radically, and the portion of the market reserved for lawyers is shrinking; (2) in the face of these radical changes, lawyer regulators will not want to rock the boat in stormy seas, so the letter of current lawyer regulation will remain substantially the same; (3) maintaining the status quo in regulation will actually result in a substantial deregulation of the market for legal services as that market continues to transform around lawyer regulators; (4) lawyer regulation will remain at its most potent for in-court

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1. Benjamin Hoorn Barton, *Why Do We Regulate Lawyers?: An Economic Analysis of the Justification for Entry and Conduct Regulation*, 33 ARIZ. ST. L.J. 429 (2001).

2. *See generally id.*

3. *Id.* at 456–63.

4. *See generally id.*



activities and at its weakest for out-of-court, nonlitigation “legal work”; and (5) this will work out wonderfully for consumers of legal services.

The Article proceeds as follows: Part I briefly describes the changes that are occurring in the market for legal services. Part II summarizes the current state of lawyer regulation—who the regulators are and how they have reacted to the market changes. Part III argues that the regulators are unlikely to radically change their approach, which will result in a substantial deregulation of the market for legal services even as lawyers remain heavily regulated. The Article concludes in Part IV by hedging a bit and describing some other possible scenarios, including the nuclear option of a large-scale attempt to enforce prohibitions against the unauthorized practice of law.

#### I. RADICAL CHANGE FINALLY COMES TO THE LEGAL MARKET

British legal futurist Richard Susskind uses the term “bespoke” to describe the way lawyers have practiced law for hundreds of years.<sup>5</sup> Bespoke was originally a tailoring term, denoting made-to-order clothes for individuals. It has since come to be used more broadly to refer to any individualized, custom service. The private practice of law has largely consisted of individual lawyers representing individual clients on individual legal matters. Billing is typically by the hour, or sometimes by the task, but the work itself is individualized, as opposed to commoditized and sold en masse.

Legal practice has changed in tools (consider computers) and in scope (the rise of the massive law firm), but not in kind. Law may have changed less than any other area of the economy over the last 150 years. The same basic product is being sold and the same basic services (e.g., researching the law, drafting legal documents, appearing in court) are being performed.

If the last 150 years have taught us anything, however, it is the relentlessness of technology. In one field of endeavor after another, mechanization, routinization, and commoditization have replaced individualized services. The Industrial Revolution brought mass production to manufacturing. Everything from shoes to clothes to automobiles changed from individually made to factory produced. Over time, these items grew cheaper and better, as mass production allowed for advances in quality and cost. Some bespoke providers remained for the highest-end work, but very few.<sup>6</sup>

Lawyers and other professionals who relied on intellect survived (and thrived) through these changes, as it proved impossible to mechanize complex, brain-heavy activities like practicing law. The information revolution and the continuous growth in the power and speed of computers, however, have started to bring knowledge workers to heel. In multiple

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5. RICHARD SUSSKIND, *THE END OF LAWYERS?* 36–39 (2008).

6. See Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-global Law Firms*, 28 NW. J. INT'L L. & BUS. 527, 532–47 (2008).

areas of the economy, computers now handle work once done on an individualized basis by highly paid professionals.

The pattern for these changes was set in the Industrial Revolution and continues today. Bespoke work done by individuals for other individuals on a custom basis is supplanted by standardized work, and then commoditized, mass produced, and sold at a much, much lower cost. The total number of people needed to create the good goes down, as does the average wage earned by those in the industry. The few at the top who control the process or design the product, however, make much more than any former provider of bespoke services ever could. Bespoke services naturally remain for the most complicated and lucrative work. Over time, however, as alternatives to expensive work by well-paid humans get better, the share of the market that is bespoke inevitably shrinks.

The evidence that this process has begun in earnest for lawyers surrounds us. Computerization, outsourcing, insourcing, and nonlawyer workers are all replacing traditional legal work. Lawyers practicing law the old-fashioned way—by the hour, performing individualized work for individual clients—are being replaced by alternate providers or new business models. We are only in the initial stages of this revolution, but if the information age's script holds true, the rest of the story is not hard to see.

#### A. Computerization—Overview

The computerization of legal services is occurring across multiple fronts. As John McGinnis and Russell Pearce's scholarship establishes, we are in the very early stages of the computerization of legal services, and what appears to be state of the art today is likely to seem crude and rudimentary in the near future.<sup>7</sup> Right now, computerization is reaching low-hanging fruit: using predictive coding and search engines to mechanize electronic discovery or using the internet and interactive forms to draft simple legal documents. These relatively basic uses of computing power are already displacing the work of lawyers, but they are really only the tip of the iceberg. The best, or perhaps the worst, is yet to come.

Techno-skeptics note that computerization right now is very mechanical and misses much of the nuance and complexity in legal argumentation. Skeptics also note that it will be a long time before a computer can actually simulate the high-level human thinking necessary to practice law.<sup>8</sup>

Computers do not need to simulate human thinking to handle complicated mental tasks, however. For example, two recent triumphs of computer intelligence include IBM's Deep Blue defeating chess grand

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7. John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3046 (2014).

8. See, e.g., Stuart LaRosa, *Why Machines Can't Replace Lawyers*, XEROX BLOGS (June 19, 2012), <http://ediscoverytalk.blogs.xerox.com/2012/06/19/why-machines-can%E2%80%99t-replace-lawyers/>.

master Garry Kasparov and IBM's Watson defeating *Jeopardy* champions.<sup>9</sup> In both cases, the computers won not because they imitated human cognition. To the contrary, Deep Blue and Watson triumphed by doing what computers do exceptionally well—performing an avalanche of calculations on a mass of data very quickly.<sup>10</sup>

Chess is a complicated game, but it has clear boundaries: a set number of squares, pieces, and rules for how and where each piece can move.<sup>11</sup> Nevertheless, because of the number of possible moves and the length of the game, there are too many possible moves and outcomes for even the most powerful current computer to consider *every* move.<sup>12</sup> Likewise, it is very hard to program a computer to think strategically like a human being.<sup>13</sup>

Deep Blue circumvented these problems with a mix of chess strategy and brute computing power.<sup>14</sup> In order to determine the best move, Deep Blue considered many more moves than any human could and also consulted a database filled with the results of hundreds of thousands of chess games played by grand masters, and could thus choose a move that had been the most likely to be successful in the past.<sup>15</sup> Thus, a human plays not only a computer, but also the ghosts of grand masters past. Deep Blue did not defeat chess masters via superior strategy or tactics; it won by performing so many calculations so quickly on such a mass of data that humans were eventually outmatched.<sup>16</sup>

*Jeopardy* presented a much messier problem for computers. It requires an understanding of puns, natural language, and nuance.<sup>17</sup> Watson followed the Deep Blue playbook for defeating humans. It loaded up more data than a human could memorize and then used a computer capable of searching 200 million pages of text in a second to analyze each *Jeopardy* answer to find the suitable response.<sup>18</sup> Watson worked from about a terabyte of searchable text, including the entirety of Wikipedia, a complete dictionary, a complete thesaurus, the Bible, the Internet Movie Database, and other documents.<sup>19</sup> For each *Jeopardy* answer, Watson searched its

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9. McGinnis & Pearce, *supra* note 7, at 3045; *Deep Blue*, IBM, <http://www-03.ibm.com/ibm/history/ibm100/us/en/icons/deepblue/> (last visited Apr. 26, 2014).

10. McGinnis & Pearce, *supra* note 7, at 3044–46.

11. NATE SILVER, THE SIGNAL AND THE NOISE 265–92 (2012); Marshall Barin, *How Was IBM's Watson Computer Able To Answer the Questions on Jeopardy? How Did the Technology Work? How Might It Be Used?*, HOWSTUFFWORKS (Feb. 18, 2011), <http://blogs.howstuffworks.com/2011/02/18/how-was-ibms-watson-computer-able-to-answer-the-questions-on-jeopardy-how-did-the-technology-work-how-might-it-be-used/>;

*Deep Blue*, *supra* note 9; *The Science Behind Watson*, IBM, [http://www-03.ibm.com/innovation/us/watson/the\\_jeopardy\\_challenge.shtml](http://www-03.ibm.com/innovation/us/watson/the_jeopardy_challenge.shtml) (last visited Apr. 26, 2014).

12. SILVER, *supra* note 11, at 269.

13. *Id.* at 273.

14. *Id.*

15. *Id.* at 276–85.

16. *Id.* at 279, 283.

17. David Davidian, *IBM Watson Does Not Answer Questions Like Humans*, IBM (Feb. 14, 2011), [https://www-304.ibm.com/connections/blogs/davidian/entry/ibm\\_watson\\_does\\_not\\_answer\\_questions\\_like\\_humans18?lang=en\\_us](https://www-304.ibm.com/connections/blogs/davidian/entry/ibm_watson_does_not_answer_questions_like_humans18?lang=en_us).

18. *Id.*

19. Barin, *supra* note 11.

database using different algorithms and came to an expected best answer.<sup>20</sup> When Watson was sure enough of an answer (the probability that its answer was correct was high enough), it rang in and answered.<sup>21</sup>

Both Deep Blue and Watson triumphed not by beating humans at their own game, but by doing what computers do well (calculations and searches through large datasets) very quickly. In law the question is not whether a computer can accurately imitate the way humans think. Rather, it is whether brute computing power and speed can allow computers to reach appropriate answers through different routes. In particular, much legal work consists of analyzing legal arguments and predicting future outcomes like the range of results from an ongoing litigation. Insurance companies already use their vast reservoir of data to set settlement amounts, determine legal strategies, and choose which cases to litigate and how. Lex Machina, a legal data and analytics company, claims to do the same for intellectual property litigation.<sup>22</sup> Much of the raw data of legal work (briefs, SEC filings, even oral arguments) are publicly available and thus potentially available for a predictive computer dataset.

Further, computers do not necessarily need to be better than humans to replace humans. Once data is gathered, software is written, and processes are created, computers are much cheaper than humans. The computer programs that now handle document review claim to be at least as accurate as humans. But even if they were less accurate, if they are 10 percent of the price or lower, computers do not need to be better; they just need to be acceptable.

### B. Computerization's Many Faces

The most obvious examples of computerization in legal services are online forms providers like LegalZoom and Rocket Lawyer. These companies provide both blank and interactive forms to online consumers for matters ranging from entity formation (LLCs, corporations, S-corps), to trademarks, simple contracts, patents, wills and trusts, bankruptcy, and divorce, among many others.<sup>23</sup>

LegalZoom filed an S-1 form with the SEC in 2012 in advance of a possible initial public offering (IPO).<sup>24</sup> The IPO has been shelved for the

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20. *Id.*

21. *Id.*

22. See *Lex Machina Introduces Legal Analytics To Power Data-Driven IP Business Strategy*, LEX MACHINA (Oct. 29, 2013), <https://lexmachina.com/media/press/lex-machina-introduces-legal-analytics-to-power-data-driven-ip-business-strategy/>.

23. See, e.g., *Legal Documents & Legal Forms*, ROCKET LAW., <http://www.rocketlawyer.com/legal-documents-forms.rl> (last visited Apr. 26, 2014); *Our Products & Services*, LEGALZOOM, <http://www.legalzoom.com/products-and-services.html> (last visited Apr. 26, 2014).

24. LegalZoom.com, Inc., Registration Statement (Amendment No. 1 to Form S-1) (June 4, 2012) [hereinafter LegalZoom Form S-1], available at <http://www.sec.gov/Archives/edgar/data/1286139/000104746912006446/a2209713zs-1a.htm>.

time being,<sup>25</sup> but the S-1 remains the first widely available public data about LegalZoom. As one would expect pre-IPO, it tells a rosy tale of growing revenues and future profits. The overview:

We developed our easy-to-use, online legal platform to make the law more accessible to small businesses and consumers. Our scalable technology platform enables the efficient creation of personalized legal documents, automates our supply chain and fulfillment workflow management, and provides customer analytics to help us improve our services. For small businesses and consumers who want legal advice, we offer subscription legal plans that connect our customers with experienced attorneys who participate in our legal plan network.

We have served approximately two million customers over the last 10 years. In 2011, nine out of ten of the approximately 34,000 customers who responded to a survey we provided said they would recommend LegalZoom to their friends and family. Our customers placed approximately 490,000 orders and more than 20 percent of new California limited liability companies were formed using our online legal platform in 2011. We believe the volume of transactions processed through our online legal platform creates a scale advantage that deepens our knowledge and enables us to improve the quality and depth of the services we provide to our customers.<sup>26</sup>

This description helps lay out the full scope of the threat to traditional lawyers. LegalZoom generated *20 percent* of the new LLC filings in California in 2011.<sup>27</sup> Some of these customers may not have been able to afford a lawyer in the first instance, but drafting LLC forms or incorporating businesses has long been a staple of legal practice. That 20 percent of new LLC filings in California went to LegalZoom is not a promising sign for traditional lawyers. Moreover, LegalZoom (and its many competitors) seem unlikely to stall at only 20 percent of that business.

LegalZoom and Rocket Lawyer are for-profit, but there are significant free sources of legal forms as well. For example, the Legal Services Corporation has started a website of publicly available free legal forms,<sup>28</sup> and some state court systems have as well.<sup>29</sup> Chicago-Kent College of Law has created the “A2J Author” project, an interactive platform meant to spur the online provision of free legal documents for the poor.<sup>30</sup> While these forms are often aimed at the indigent, anyone with an internet connection and a printer can examine or use them.

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25. Olivia Oran, *LegalZoom IPO Delayed*, REUTERS (Aug. 2, 2012, 4:40 PM), <http://www.reuters.com/article/2012/08/02/legalzoom-idUSL2E8J2EZF20120802>.

26. LegalZoom Form S-1, *supra* note 24, at 1.

27. *Id.*

28. *Fill Out Legal Forms Faster*, L. HELP INTERACTIVE, <https://lawhelpinteractive.org/> (last visited Feb. 27, 2014).

29. *See, e.g., Family Law Forms Index*, MD. COURTS, <http://mdcourts.gov/family/forms/index.html> (last visited Apr. 26, 2014); *Online Court Assistance Program*, UTAH ST. COURTS, <http://www.utcourts.gov/ocap/> (last visited Apr. 26, 2014).

30. *A2J Author*, IIT CHI.-KENT C.L., <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author> (last visited Apr. 26, 2014).

Online forms providers claim that they do not to provide legal advice.<sup>31</sup> However, there are lawyer-form hybrids, where the customer fills in the legal forms and a licensed lawyer “reviews” them. Richard Granat was a pioneer in this field with his fixed-fee divorces in Maryland at [mdfamilylawyer.com](http://mdfamilylawyer.com).<sup>32</sup> SmartLegalForms offers legal forms and legal advice by a lawyer in a packaged deal, with an explicit dig at LegalZoom, calling it a more expensive “non-lawyer document preparation service” and “the old way” of internet law.<sup>33</sup> LegalZoom and Rocket Lawyer have responded by also offering lawyer review of their documents, as well as discounted deals for actual legal advice.<sup>34</sup>

Many small firms’ and solo practitioners’ offices are occupying another middle space, essentially operating as a front for online forms providers. For example, the National Law Foundation offers “fully-editable form(s)” to lawyers for “as low as \$19,” covering virtually every type of legal drafting.<sup>35</sup> Similarly, state bar associations are creating online databases of interactive forms for use by their members, with an explicit eye towards “competition from web-based companies like LegalZoom and Rocket Lawyer.”<sup>36</sup>

There are also websites offering free or very inexpensive legal advice. For instance, there is the truly free provision of advice in online communities like MetaFilter.<sup>37</sup> The acronyms “IANAL” (“I am not a lawyer”) and “IAALBANYL” (“I am a lawyer, but not your lawyer”)<sup>38</sup> are common introductions to question-and-answer sessions on legal matters. The advice is general and informal, but is permanent, searchable, and available to the public.

Other websites attempt to leverage free legal advice into business for the lawyers who answer the requests for advice. Avvo is a website that serves

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31. See, e.g., LEGALZOOM, <http://www.legalzoom.com> (last visited Apr. 26, 2014) (stating under the heading “Disclaimer” that “[w]e are not a law firm or a substitute for an attorney or law firm. We cannot provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies”).

32. *Fixed Fee Online Legal Services*, MDFAMILYLAWYER.COM, <http://www.mdfamilylawyer.com/> (last visited Apr. 26, 2014).

33. *SmartLegalForms vs. LegalZoom*, SMARTLEGALFORMS, <http://www.smartlegalforms.com/smartlegalforms-vs-legalzoom.html> (last visited Apr. 26, 2014).

34. *Find an Attorney You Can Trust for Your Family*, LEGALZOOM, <http://www.legalzoom.com/attorneys-lawyers/legal-plans/personal.html> (last visited Apr. 26, 2014); *Get Connected with an on Call Lawyer: Members Save Thousands of Dollars with Pre-negotiated Rates*, ROCKET LAW., <http://www.rocketlawyer.com/find-a-lawyer.rl> (last visited Apr. 26, 2014).

35. *Practical Forms for Attorneys*, NAT’L L. FOUND., <http://www.nlfforms.com/> (last visited Apr. 26, 2014).

36. John G. Locallo, *Behind the Technology Curve? The ISBA Can Help*, 100 ILL. B.J. 124 (2012).

37. For a great discussion of this site, see Cassandra Burke Robertson, *The Facebook Disruption: How Social Media May Transform Civil Litigation and Facilitate Access to Justice*, 65 ARK. L. REV. 75, 84–85 (2012).

38. IAALBANYL, METAFILTER (Dec. 21, 2007, 11:15 AM), <http://metatalk.metafilter.com/15513/IAALBIANYL>.

as an attorney evaluation service and offers free legal advice.<sup>39</sup> Users post questions and attorneys answer them publicly.<sup>40</sup> Avvo works like “Ask.com” or other crowdsourcing question-and-answer sites: the answers are stored, browsable, and searchable.<sup>41</sup> Avvo also has listings of lawyers, with a controversial (at least among lower-ranked lawyers), multifactor rating system.<sup>42</sup> Avvo makes money through advertising on the site and selling “Avvo Pro,” a subscription service for lawyers to track their Avvo profile.<sup>43</sup> Avvo thus leverages its ratings and traffic to draw lawyers into giving free advice with the hope of gaining paid work. Avvo draws traffic and potential clients to the site with free advice or ratings.

LawPivot offers more formal and confidential free legal advice. Lawyers answer specific and detailed questions for free, again with an eye towards generating business.<sup>44</sup> Rocket Lawyer recently acquired LawPivot.<sup>45</sup> Rocket Lawyer has kept LawPivot as a freestanding business, but also plans to adopt its question-and-answer method on its own site.<sup>46</sup>

Online Dispute Resolution (ODR) is another source of competition. Colin Rule directed the eBay and PayPal ODR systems from 2003 to 2011.<sup>47</sup> eBay and PayPal are natural sites for ODR: they have lots of low-dollar transactions that occur across state and even international lines, making litigation cost prohibitive or simply impossible.<sup>48</sup> The eBay process proved exceptionally successful, handling up to 60 million disputes per year, and settling approximately 90 percent of them with no human input on the company side.<sup>49</sup>

Colin Rule and others licensed the eBay software and launched Modria, an ODR system for hire.<sup>50</sup> Modria sells a “fairness engine” that attempts substantive as well as financial settlement of disputes. It starts with a

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39. *About Us*, AVVO, [http://www.avvo.com/about\\_avvo](http://www.avvo.com/about_avvo) (last visited Apr. 26, 2014).

40. *Id.*

41. *Id.*

42. *Id.*; see also Adam W. Lasker, *AVVO Launches Controversial Lawyer Bidding Service*, 101 ILL. B.J. 68 (2013) (discussing the controversy).

43. Stephen Fairley, *Using Avvo To Market Your Law Firm on the Internet*, RAINMAKER BLOG (May 12, 2010), <http://www.therainmakerblog.com/2010/05/articles/law-firm-marketing-1/using-avvo-to-market-your-law-firm-on-the-internet/>.

44. Leena Rao, *Rocket Lawyer Acquires LawPivot To Add a Quora-Like Q&A Platform to Online Legal Services Site*, TECH CRUNCH (Jan. 14, 2013), <http://techcrunch.com/2013/01/14/rocket-lawyer-acquires-lawpivot-to-add-a-quora-like-qa-platform-to-online-legal-services-site/>.

45. *Id.*

46. *Id.*

47. Julia Wilkinson, *Colin Rule: From eBay Conflicts to Global Peace Initiatives*, ECOMMERCEBYTES.COM (June 26, 2011), <http://www.ecommercebytes.com/cab/abu/y211/m06/abu0289/s05>.

48. *Id.*

49. U.S. DEP'T OF HEALTH & HUMAN SERVS., POLICY ISSUES RELATED TO PATIENT REPORTED DATA 8 (2012), available at [http://www.healthit.gov/sites/default/files/archive/FACA%20Hearings/2012-06-08%20Policy%3A%20Meaningful%20Use%20WG%20Patient%20Generated%20Health%20Data%20Hearing/dullabh\\_testimony\\_hitpc\\_060812.pdf](http://www.healthit.gov/sites/default/files/archive/FACA%20Hearings/2012-06-08%20Policy%3A%20Meaningful%20Use%20WG%20Patient%20Generated%20Health%20Data%20Hearing/dullabh_testimony_hitpc_060812.pdf).

50. Wilkinson, *supra* note 47.

“diagnosis module” that gathers relevant information.<sup>51</sup> A “negotiation module” summarizes areas of agreement and disagreement and makes suggestions for solving the issue.<sup>52</sup> If these steps do not result in settlement, a “mediation module” with a neutral third party begins.<sup>53</sup> The final step is arbitration.<sup>54</sup> Modria claims that the “vast majority” of claims are settled in the first two steps without a human ever becoming involved.<sup>55</sup> Nor does Modria see itself only as a small claims alternative for e-business: it is targeting bigger-ticket disagreements, as well as complicated issues like patent disputes.<sup>56</sup>

Modria regularly notes the expense of in-court litigation and court backlogs as selling points for its services.<sup>57</sup> Online divorce mediation is a particularly hot area. Modria and LawMediaLabs have created DivorceMediationResources.com,<sup>58</sup> an online program meant to change contested divorces into uncontested divorces, i.e., to change divorces from work for lawyers to work for online retailers.

The model has been so successful that UNCITRAL, the U.N. working group on international law, has sought to make it industry standard for cross-border e-commerce and business to business disputes.<sup>59</sup> Like all of these technological advances, ODR is radically cheaper than using humans to resolve disputes, so if it continues to succeed, it will naturally drift up from lower-value disputes to higher-value ones.

This brief overview of some of the new developments in the market for computerized legal services establishes that we are still in the early stages of the revolution, and that there is substantial uncertainty about which approaches will prove successful and lucrative long term. The sheer volume of the activity and the type of venture capital involved, however, suggests that technology companies feel confident they can disrupt the current market and replace expensive human labor with cheaper information technology.

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51. *Our Modular Dispute Resolution System*, MODRIA, <http://www.modria.com/resolution-center/> (last visited Apr. 26, 2014).

52. *Id.*

53. *Id.*

54. *Id.*; see also Thomas Claburn, *Modria's Fairness Engine: Justice on Demand*, INFORMATIONWEEK (Nov. 16, 2012, 6:46 PM), <http://www.informationweek.com/cloud-computing/platform/modrias-fairness-engine-justice-on-deman/240142275>.

55. *About*, MODRIA, <http://www.modria.com/about/> (last visited Apr. 26, 2014).

56. Eric Johnson, *Modria Wants You To Settle Your Workplace Problems (and Even Patent Disputes) Online*, ALL THINGS D (Nov. 24, 2012, 9:00 AM), <http://allthingsd.com/20121124/modria-wants-you-to-settle-your-workplace-problems-and-even-patent-disputes-online/>.

57. Humayun Khan, *Modria Launches Dispute Resolution Tool To Scale Former eBay and PayPal Tech*, BETAKIT (Nov. 19, 2012), <http://betakit.com/modria-launches-dispute-resolution-tool-to-scale-former-ebay-and-paypal-tech>.

58. DIVORCEMEDIATIONRESOURCES.COM, <http://divorcemediationresources.com/> (last visited Apr. 26, 2014).

59. See Jill Gross, *Vikki Rogers on UNCITRAL's Working Group III on Online Dispute Resolution*, ADR PROF BLOG (July 30, 2012), <http://www.indisputably.org/?p=3754>.



### C. Outsourcing

Outsourcing takes two different forms. The first, more obvious form, is finding cheaper lawyers overseas to do corporate legal work. Pangea3 is a fast growing “legal process outsourcing” (LPO) firm that employs English-speaking and common law-trained lawyers in India to do legal work like document review or due diligence that used to be done in the United States.<sup>60</sup> Pangea3 claims to have grown between 40 and 60 percent per year since its founding in 2004 and currently employs 850 lawyers.<sup>61</sup> Pangea3 was successful enough to be purchased by legal information giant Thomson Reuters in 2010.<sup>62</sup> As of yet, LPO work has passed muster under state prohibitions of the unauthorized practice of law because the LPO provider is working under a licensed lawyer, who is ultimately responsible for the work.<sup>63</sup> Pangea3 has not moved outside of corporate legal work yet, but as outsourcing proves workable, it seems likely that wills drafted in India for American jurisdictions will become more prevalent.

Computerized LPO vendors are offering a completely different version of the product: replacing routine and large-scale discovery and due diligence work that has previously been done by imperfect humans with powerful computers. Both the *Atlantic* and the *Wall Street Journal* have highlighted the advantages in accuracy and cost of using computers to do large-scale discovery work.<sup>64</sup> The computer programmers claim that these programs are radically cheaper *and* more accurate than humans.<sup>65</sup> Using predictive search and artificial intelligence for e-discovery is the simplest and most basic application of computer power. Programmers are already working on computer generated legal briefs or research memos.<sup>66</sup>

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60. Niraj Seth & Nathan Koppel, *With Times Tight, Even Lawyers Get Outsourced*, WALL ST. J., Nov. 26, 2008, at B1.

61. Anuj Agrawal, *In Conversation: Sanjay Kamani and David Perla, Co-CEO's of Pangea3*, B. & BENCH (June 27, 2012, 4:28 PM), [http://barandbench.com/content/conversation-sanjay-kamani-and-david-perla-co-ceos-pangea3#Uxt-K\\_aV9YA](http://barandbench.com/content/conversation-sanjay-kamani-and-david-perla-co-ceos-pangea3#Uxt-K_aV9YA).

62. Ashby Jones, *True Believer: Thomson Reuters Betting Big on LPO Boom*, WALL ST. J. (Nov. 19, 2010, 9:21 AM), <http://blogs.wsj.com/law/2010/11/19/true-believer-with-purchase-thomson-reuters-bets-big-on-lpo-market/>.

63. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 08-451 (2008) (discussing lawyers' obligations when outsourcing legal and nonlegal support services), available at <http://www.aapipara.org/File/Main%20Page/ABA%20Outsourcing%20Opinion.pdf>.

64. See Joe Palazzolo, *Why Hire a Lawyer? Computers Are Cheaper*, WALL ST. J., June 18, 2012, at B1; Jordan Weissmann, *iLawyer: What Happens When Computers Replace Attorneys?*, ATLANTIC (June 19, 2012, 1:31 PM), <http://www.theatlantic.com/business/archive/2012/06/ilawyer-what-happens-when-computers-replace-attorneys/258688/>.

65. Joe Palazzolo, *How a Computer Did the Work of Many Lawyers*, WALL ST. J. (Jan. 17, 2013, 4:44 PM), <http://blogs.wsj.com/law/2013/01/17/how-a-computer-did-the-work-of-many-lawyers>.

66. Cf. Eric A. Engle, *An Introduction to Artificial Intelligence and Legal Reasoning: Using xTalk To Model the Alien Tort Claims Act and Torture Victim Protection Act*, 11 RICH. J.L. & TECH. 2 (2004).

#### D. Insourcing

Corporate law departments have grown larger and more powerful. The general counsel, and not outside counsel, is now the main source of legal counsel and advice to corporate leadership and is in charge of divvying out the work.<sup>67</sup> The *Harvard Business Review* (HBR) has noted the change in the nature and stature of in-house counsel. These offices no longer are staffed by former big-law generalists, but by a bevy of high-quality specialists, headed up by a general counsel who is involved at all levels of corporate decisionmaking.<sup>68</sup> The HBR's upshot? Larger and better in-house counsel means "a smaller total legal spend (inside plus outside) for the company."<sup>69</sup>

This is partially because in-house corporate offices are frequently staffed with cheaper paralegals to perform routine tasks.<sup>70</sup> Likewise, corporations are increasingly comfortable with computerization and outsourcing, diverting funds that used to go to large corporate law firms.<sup>71</sup>

#### E. Nonlawyers

Cheaper nonlawyers are also starting to horn in on legal work. Professor Bill Henderson looked at the U.S. Census data for "law office employment" and compared it to what the Census Bureau calls "all other legal services."<sup>72</sup> Law office employment has actually shrunk since 1998, while all other legal services have grown 8.5 percent annually and 140 percent over the entire period.<sup>73</sup> The workers in the other legal services category are much cheaper. The average job in a law office pays \$80,000.<sup>74</sup> The average other legal services job pays \$46,000.<sup>75</sup> There are still many, many more employees in law offices than in other legal services (1,172,748 versus 23,504), but the growth and the trend in favor of nonlawyers is clear.<sup>76</sup>

Examples of this growth in practice are settlement mills. In these "law firms," a few lawyers sit atop a pyramid of paralegals who do virtually all of the work. Consider Nora Freeman Engstrom's outstanding work on

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67. For an excellent discussion of these trends, see THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* 112–23 (2010).

68. Ben W. Heineman, Jr., *The Rise of the General Counsel*, HARV. BUS. REV. (Sept. 27, 2012, 1:00 PM), [http://blogs.hbr.org/cs/2012/09/the\\_rise\\_of\\_the\\_general\\_counsel.html](http://blogs.hbr.org/cs/2012/09/the_rise_of_the_general_counsel.html).

69. *Id.*

70. *Id.*

71. *Id.*

72. William D. Henderson, *From Big Law to Lean Law* 8 (Ind. Univ. Maurer Sch. of Law, Working Paper No. 271, 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2356330](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2356330).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

settlement mills.<sup>77</sup> She notes ten hallmark features of the settlement mills (in comparison to more traditional plaintiff's side practice):

Settlement mills necessarily (1) are high-volume personal injury practices that (2) engage in aggressive advertising from which they obtain a high proportion of their clients, (3) epitomize "entrepreneurial legal practices," and (4) take few—if any—cases to trial. In addition, settlement mills generally (5) charge tiered contingency fees; (6) do not engage in rigorous case screening and thus primarily represent victims with low-dollar claims; (7) do not prioritize meaningful attorney-client interaction; (8) incentivize settlements via mandatory quotas or by offering negotiators awards or fee-based compensation; (9) resolve cases quickly, usually within two-to-eight months of the accident; and (10) rarely file lawsuits.<sup>78</sup>

Plaintiff's side lawyers carry heavy caseloads, frequently as many as seventy open files at a time.<sup>79</sup> But traditional plaintiff's attorneys are pikers in comparison to the settlement mill counterpart: settlement mill attorneys carry upwards of 200 to 300.<sup>80</sup> How is it possible to carry such a high caseload? Paralegals interview the clients and prepare the settlements with as little involvement from the lawyers as possible.<sup>81</sup> Settlement mills have thus taken some cases that would have been handled in a bespoke manner by a lawyer working on a contingency fee and transferred them to nonlawyers. Immigration law firms likewise tend to be paralegal heavy.<sup>82</sup>

#### F. The Upshot

The upshot is that lawyers—from big law firms to solo practitioners—have started to see a slow bleed of business to nonlawyers. The spate of layoffs at large law firms and the continued shrinkage in solo practitioner earnings are all evidence of this process. And unfortunately for lawyers, the process is just beginning. Information technology improves exponentially as additional data and computing power becomes available.

The scariest thing about LegalZoom and its kin is not that it is much cheaper than a live lawyer, but rather that it may soon be cheaper *and* better. LegalZoom may eventually do a volume of business that will allow it to surpass the quality of individualized work. As LegalZoom puts it: "The high volume of transactions we handle and feedback we receive from customers and government agencies give us a scale advantage that deepens our knowledge and enables us to further develop additional services to

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77. See Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805 (2011); see also Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 GEO. J. LEGAL ETHICS 1485 (2009) [hereinafter Engstrom, *Run-of-the-Mill*].

78. Engstrom, *Run-of-the-Mill*, *supra* note 77, at 1491–92.

79. *Id.* at 1492.

80. *Id.*

81. *Id.* at 1493–95.

82. Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 WM. MITCHELL L. REV. 80, 103 (2012).

address our customers' needs and refine our business processes."<sup>83</sup> The feedback loop of providing forms, receiving customer and court feedback, and redesign may allow LegalZoom and others to operate at a level no single human lawyer can match.

Nevertheless, protections against the unauthorized practice of law (UPL) mean that at least one realm will remain lawyers only: the in-court practice of law. This is because UPL is easiest to enforce in court before individual judges. As long as judges continue to insist that only lawyers may represent clients in court, litigants will need to proceed pro se or pay for a lawyer.

## II. CURRENT LAWYER REGULATION

State supreme courts control lawyer regulation in all fifty states.<sup>84</sup> Many state supreme courts have claimed an exclusive "inherent authority" to regulate lawyers, barring legislative encroachment.<sup>85</sup> The "inherent powers" doctrine is an outgrowth of the constitutional separation of powers between the legislative and judicial branches.<sup>86</sup> The inherent authority cases hold that a state constitution's creation of a judicial branch presupposes certain uniquely "judicial" powers, including the regulation of lawyers.<sup>87</sup>

State supreme court inherent authority over lawyer regulation has been predictably advantageous to lawyers. Courts have used their inherent authority to create unified bars in multiple states (in these states all licensed lawyers must belong to the state bar association), to prosecute the unauthorized practice of law, to adopt the American Bar Association's (ABA) Rules of Professional Conduct, and to require bar passage and attendance at an ABA-accredited law school.<sup>88</sup>

Generally speaking, state supreme courts have not proven particularly interested in the nuts and bolts of lawyer regulation. As a result, they have either formally or informally delegated much of their regulatory authority to bar associations.<sup>89</sup> For example, the ABA drafts the rules of professional responsibility in the first instance and, in unified bar states, the bar associations run most aspects of lawyer regulation.<sup>90</sup>

Thus, American lawyers have a unique claim to self-regulation. All other professions, from doctors to hairdressers, are regulated in the first instance

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83. LegalZoom Form S-1, *supra* note 24, at 2.

84. BENJAMIN H. BARTON, *THE LAWYER-JUDGE BIAS IN THE AMERICAN LEGAL SYSTEM* 105 (2011).

85. See Charles W. Wolfram, *Lawyer Turf and Lawyer Regulation—The Role of the Inherent-Powers Doctrine*, 12 U. ARK. LITTLE ROCK L.J. 1, 6–16 (1989).

86. See, e.g., *In re Nenno*, 472 A.2d 815, 819 (Del. 1983) (holding that the Delaware Supreme Court "alone, has the responsibility for" lawyer regulation and that the "principle is immutable").

87. See CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* 22–32 (1986).

88. *Id.* at 24.

89. BARTON, *supra* note 84, at 105–59.

90. See *id.* at 122–26, 154–59.

by state legislatures. Lawyers, by contrast, are regulated by other lawyers—the justices of their state supreme courts.

A. *The Unauthorized Practice of Law*

UPL is prohibited in all fifty states.<sup>91</sup> The definition of the “practice of law” and the levels of enforcement differ from state to state,<sup>92</sup> but at a minimum in no state may a nonlawyer appear in court on behalf of another party.<sup>93</sup> Likewise, nonlawyers may not give “legal advice.” State bars have long allowed the publication of “forms books” despite the UPL strictures, but have drawn the line at the provision of advice along with forms.<sup>94</sup>

Internet forms providers present a hybrid UPL case. A human does not offer advice along with the forms or fill the forms out for someone else, but the websites are packed with instructions and suggestions that look a lot like advice. LegalZoom, for example, sells both blank forms for customers to fill in themselves, which courts have found to be virtually identical to a formbook,<sup>95</sup> and interactive forms, where the customers answer questions and LegalZoom builds out the forms.<sup>96</sup>

Nevertheless, lawyer regulators have yet to launch an all out assault on computerization. LegalZoom debuted in 2001 and has only faced three real UPL challenges. The Washington State attorney general investigated LegalZoom for UPL in 2010. LegalZoom settled by paying \$20,000 in costs and agreeing not to violate Washington law, while continuing to operate in the state with no changes in its business practices.<sup>97</sup> In 2011, a private lawyer in Missouri filed a class action UPL suit against LegalZoom.<sup>98</sup> The case was settled before trial when LegalZoom agreed to

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91. Tanina Rostain, *The Emergence of “Law Consultants,”* 75 *FORDHAM L. REV.* 1397, 1407 n.53 (2006).

92. Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions,* 34 *STAN. L. REV.* 1, 15 (1981).

93. Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters,* 67 *FORDHAM L. REV.* 2581, 2589 (1999). This rule is relaxed in some administrative settings. See, e.g., Drew A. Swank, *Non-attorney Social Security Disability Representatives and the Unauthorized Practice of Law,* 36 *S. ILL. U. L.J.* 223, 233 (2012).

94. See, e.g., Fla. Bar v. Stupica, 300 So. 2d 683, 686 (Fla. 1974) (finding that providing divorce forms with advice was UPL); State ex rel. Ind. State Bar Ass’n v. Diaz, 838 N.E.2d 433, 448 (Ind. 2005) (finding that providing immigration forms with advice was UPL).

95. See, e.g., Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1062–63 (W.D. Mo. 2011).

96. *Id.*

97. Press Release, LegalZoom, LegalZoom Enters into Agreement with State of Washington (Sept. 16, 2010), available at <http://www.globenewswire.com/newsroom/news.html?d=201745>. For the settlement itself, see Assurance of Discontinuance, *In re* LegalZoom.com, Inc., 10-2-02053-2 (Super. Ct. Wash. Sept. 15, 2010), available at [http://www.atg.wa.gov/uploadedFiles/Home/News/Press\\_Releases/2010/LegalZoomAOD.pdf](http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf).

98. Nathan Kopel, *Seller of Online Legal Forms Settles Unauthorized Practice of Law Suit*, WALL ST. J. (Aug. 23, 2011, 11:47 AM), <http://blogs.wsj.com/law/2011/08/23/seller-of-online-legal-forms-settles-unauthorized-practiced-of-law-suit/>.

a small payment and some unspecified changes in its business practices.<sup>99</sup> LegalZoom lost its summary judgment motion and a Missouri federal district court held that interactive forms constitute the unauthorized practice of law.<sup>100</sup> The CEO of LegalZoom stated that they settled the suit “with little change in [the] business, agreeing mainly to pay lawyers’ fees”<sup>101</sup> and LegalZoom operates the same in Missouri as it does in other states.

LegalZoom has actually brought suit against the state bar in North Carolina, seeking a declaratory judgment that it is not engaging in UPL.<sup>102</sup> So far LegalZoom has survived a motion to dismiss, but the district court has not ruled on the central UPL issue.<sup>103</sup>

### B. Why So Little UPL Activity?

There are several reasons for the relative lack of UPL challenges brought by lawyer regulators against these new operators. Lawyers have been a little like a frog in a pot of slowly heating water. They did not notice the threat that computerized legal services presented until it was too late. At first, LegalZoom and other internet providers were no competition at all. The forms themselves were rudimentary and not even jurisdiction specific, and LegalZoom’s clients likely could not afford a lawyer anyway. This is especially likely because hiring a lawyer is too expensive for most Americans to afford.<sup>104</sup>

As the forms have improved and public acceptance has risen, however, people who could otherwise afford a lawyer have started using online providers. For example, a colleague of mine recently decided to update his will. He called the lawyer who had written the first will ten years ago and was so stunned by the cost that he built a new will on LegalZoom for roughly one-tenth the price.

Given LegalZoom’s rise, scrutiny will likely increase.<sup>105</sup> Nevertheless, at this point, LegalZoom is a famous company with a large advertising budget.<sup>106</sup> Any effort to put it out of business in any particular state would

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99. *Id.*

100. *Janson*, 802 F. Supp. 2d at 1064–65.

101. Daniel Fisher, *Silicon Valley Sees Gold in Internet Legal Services*, FORBES (Oct. 5, 2011, 12:02 PM), <http://www.forbes.com/sites/danielfisher/2011/10/05/silicon-valley-sees-gold-in-internet-legal-services/>.

102. Craig Jarvis, *Online Legal Firm in Bar Fight*, CHARLOTTE NEWS OBSERVER (Oct. 5, 2011), <http://www.newsobserver.com/2011/10/05/1540408/online-firm-in-bar-fight.html>.

103. Nate Raymond, *LegalZoom Lawsuit Against NC Bar May Proceed*, THOMPSON REUTERS NEWS & INSIGHT (Aug. 29, 2012), <http://www.webcitation.org/6EkcXBVa9>. For the order itself, see *LegalZoom.com, Inc. v. N.C. State Bar*, No. 11 CVS 15111, 2012 WL 3678650 (N.C. Super. Ct. Aug. 27, 2012).

104. Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129 (2010).

105. See, e.g., Jonathan G. Blattmachr, *Looking Back and Looking Ahead: Preparing Your Practice for the Future: Do Not Get Behind the Change Curve*, 36 ACTEC J. 1, 19–23 (2010) (arguing that LegalZoom service is the unauthorized practice of law and describing his personal, negative experience with LegalZoom).

106. See LegalZoom Form S-1, *supra* note 24, at F-17 (listing \$36.4 million as advertising costs in 2011).

bring significant negative attention to that state's lawyer regulators. For example, in the late 1990s, the State Bar of Texas successfully prosecuted an offline program called "Quicken Family Lawyer" for UPL, only to be briskly overruled by the Texas legislature.<sup>107</sup>

Likewise, in the early 2000s, the ABA sought to create a model definition of the practice of law,<sup>108</sup> likely as a precursor to increased UPL enforcement. The U.S. Department of Justice and the Federal Trade Commission quickly sent the ABA a comment letter objecting to the proposed definition as overbroad and anticompetitive.<sup>109</sup> Given that the ABA settled an antitrust investigation over its accreditation of law schools in 1995,<sup>110</sup> this letter was a shot across the bow on UPL.

There is also a broader enforcement problem: even if UPL challenges could destroy LegalZoom, what about the websites that promise that a lawyer "reviews" the documentation? These sites are priced competitively with LegalZoom and are much cheaper than a traditional lawyer, so the problem would persist even with aggressive UPL enforcement.

In the corporate law arena, UPL challenges are also unlikely to succeed, because as long as a lawyer supervises the work (i.e., inside counsel or a big firm), the work has generally not been considered UPL. Lawyer regulators have also historically left corporate law firms to their own devices: state bar complaints or investigations are extremely rare, as are UPL prosecutions.<sup>111</sup>

### III. FORMAL LAWYER REGULATION WILL LIKELY REMAIN LARGELY THE SAME

In 2008, Rahm Emanuel reminded us that we should never let a crisis go to waste,<sup>112</sup> and proponents of changes in lawyer regulation have taken that advice to heart. There have been increased calls for the slackening of UPL,<sup>113</sup> allowing nonlawyers to provide simple legal services,<sup>114</sup> and the

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107. *Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, 179 F.3d 956, 956 (5th Cir. 1999) (vacating the district court's injunction banning Quicken Family Lawyer after the Texas Legislature amended its unauthorized practice of law statute).

108. See TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF LAW, REPORT (2003), available at [http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/taskforce\\_rpt\\_803.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/taskforce_rpt_803.authcheckdam.pdf).

109. Letter from the Dep't of Justice & the Fed. Trade Comm'n to the Task Force on the Model Definition of the Practice of Law (Dec. 20, 2002), available at <http://www.justice.gov/atr/public/comments/200604.pdf>.

110. Press Release, Dep't of Justice, Justice Department and American Bar Association Resolve Charges That the ABA's Process for Accrediting Law Schools Was Misused (June 27, 1995), available at [http://www.justice.gov/atr/public/press\\_releases/1995/0257.pdf](http://www.justice.gov/atr/public/press_releases/1995/0257.pdf).

111. See Symposium, *How Should We Regulate Large Law Firms? Is a Law Firm Disciplinary Rule the Answer?*, 16 GEO. J. LEGAL ETHICS 203 (2002).

112. Gerald F. Seib, *In Crisis, Opportunity for Obama*, WALL ST. J. (Nov. 21, 2008, 12:01 AM), <http://online.wsj.com/news/articles/SB122721278056345271>.

113. DEBORAH L. RHODE, ACCESS TO JUSTICE 88 (2004); Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1692-95 (2008).

corporate ownership of law firms.<sup>115</sup> Likewise, Richard Posner, Deborah Rhode, and others have criticized the utility of the third year of law school.<sup>116</sup>

Nevertheless, even in the teeth of great change in the legal profession, it seems likely that lawyer regulators will stand pat. Why? The changes at hand are so profound, the possible effects of any changes so unclear, the antipathy of the public towards lawyer self-interest so deep, and the profession sufficiently divided and demoralized that the regulatory status quo will appear the safest route.

#### A. *Disruptive Innovations and Market Uncertainty*

Clayton Christensen's book *The Innovator's Dilemma* presents a model for disruptive technologies that readily applies to lawyers.<sup>117</sup> Christensen argues that disruptive technologies tend to come from the lower end of the market.<sup>118</sup> The competitors start by focusing on a segment of the market that is lower margin, frequently offering a worse product to these customers at much cheaper prices.<sup>119</sup> The producers at the top of the market who are providing the higher-margin goods are at first unconcerned.<sup>120</sup> Why would they worry about losing the low end of the market when they are dominating the higher-margin work? At first this strategy actually *improves* profitability, as market leaders abandon low-margin work to focus on the most profitable areas.<sup>121</sup> Further, the high-end producers do not want to compete with the low-end producers: the disruptive product is worse, much cheaper, and lower margin, so competing with the disruptive technology might even cannibalize more profitable sales.<sup>122</sup>

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114. Laurel A. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, 2012 J. PROF. LAW. 79, 128–29.

115. Stephen Gillers, *How To Make Rules for Lawyers: The Professional Responsibility of the Legal Profession*, 40 PEPP. L. REV. 365, 396–97 (2013).

116. See Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001); Deborah Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); Richard Posner, Editorial, *Let Employers Insist If Three Years of Law School Is Necessary*, L.A. DAILY J., Dec. 15, 1999, at 6.

117. See CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS* (First Harper Bus. Paperback ed. 2011) [hereinafter CHRISTENSEN, *THE INNOVATOR'S DILEMMA*]. Christensen has turned the original book into something of a cottage industry, including new books entitled CLAYTON M. CHRISTENSEN & CURTIS W. JOHNSON, *DISRUPTING CLASS: HOW DISRUPTIVE INNOVATION WILL CHANGE THE WAY THE WORLD LEARNS* (2011); CLAYTON M. CHRISTENSEN & HENRY J. EYRING, *THE INNOVATIVE UNIVERSITY: CHANGING THE DNA OF HIGHER EDUCATION FROM THE INSIDE OUT* (2011); and CLAYTON M. CHRISTENSEN & MICHAEL E. RAYNOR, *THE INNOVATOR'S SOLUTION* (2003). Ray W. Campbell applies Christensen's work more fully to the legal services market. See Ray W. Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & BUS. 1 (2012).

118. See CHRISTENSEN, *THE INNOVATOR'S DILEMMA*, *supra* note 117, at xviii.

119. *Id.*

120. *Id.* at xx.

121. *Id.*

122. See *id.*



But the producers in the lower end of the market eventually master the low-margin work and gradually work their way up the chain to compete for the higher-margin work.<sup>123</sup> Thus, what appears to be the best strategy short term turns out to be disastrous long term, as the disruptive technology eventually captures most or all of the market.<sup>124</sup>

Established providers tend to double down on what they have always done, rather than try to compete with the innovative technology.<sup>125</sup> Uncertainty also tends to breed inertia.<sup>126</sup> Lastly, it is hard to teach old dogs new tricks. The legacy industry is expert at one way of doing business, but the disruptive innovation presents a radically different model.<sup>127</sup>

The reaction of lawyers to their changed circumstances has been straight out of this playbook: they ignored computerization at first. Then they dismissed it. Now they deride it as substandard, but have largely failed to meet the competition head on. This provides a market opportunity for the lawyers that have adopted virtual and online law practices. But it presents a significant challenge to everyone else. Frequently these sorts of challenges have been met by inertia rather than radical change.

#### *B. The Public Will Not Stand for a UPL Revolution*

LegalZoom and other computerized providers of legal services have grown prevalent and profitable enough to present a strong challenge to any UPL enforcement effort. Generally speaking, UPL enforcement has been at its most robust when aimed against individuals. For example, one of the more notable UPL cases against a computerized form punished the individual who filled an electronic will form for an elderly neighbor, rather than the form provider itself.<sup>128</sup> Similarly, publishers of legal forms have had more success fighting UPL than individual nonlawyer scriveners.<sup>129</sup> This is because individuals often lack the funds or political power to defend themselves. So UPL prosecutions of small legal websites are more likely to proceed and succeed than any prosecution large enough to slow the current tide.

#### *C. Bar Associations and State Supreme Courts Still Run Lawyer Regulation*

The two subsections above explain why a large-scale UPL attack on nonlawyers and computers is unlikely. This section explains why other regulatory changes are likely to flounder.

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123. *See id.* at xviii–xx.

124. *See id.*

125. *See id.* at xxiii–xxvi.

126. *See id.* at xxv.

127. *See generally id.* at xi–xxxii.

128. Mathew Rotenberg, Note, *Stifled Justice: The Unauthorized Practice of Law and Internet Legal Resources*, 97 MINN. L. REV. 709, 709–10 (2012).

129. Catherine J. Lancot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 822–36 (2002).

The first reason is that many of the current demands for change are responses to general, longstanding problems and not a response to the current challenge to lawyer hegemony. For example, there has been a renewed effort to push law schools to provide more practical training.<sup>130</sup> Nevertheless, teaching law graduates the basics of actually practicing law has been an obvious need since law schools and the case method replaced apprenticeships for lawyer training.<sup>131</sup> Graduating practice-ready lawyers might help an individual school's students compete in a tough market, but it does nothing to address the baseline problem: due to changes in the market, there are too few jobs. It also begs the question of what "practice ready" means in a radically shifting market.

Second, barring turnover in who regulates law schools (the ABA and state supreme courts), no large changes are likely to happen in the near term. Why? Because any large-scale changes would cost a lot of money, reduce tuition, or increase competition in a crowded market. State supreme courts and the ABA control admission to the profession and the accreditation of American law schools. These bodies have proven predictably responsive to their main constituencies (lawyers and law schools),<sup>132</sup> so for any proposed solution one should ask "would ABA members or law school faculties and administrators object to this change?" If the answer is yes, the change is unlikely to occur.

Take the idea of a two-year law school program. Northwestern University Law School offers a two-year program, but those students pay full tuition and attend school full-time through two or three summer sessions.<sup>133</sup> That two-year program is just a three-year program squeezed into two full years. A true two-year program would require fewer credit hours and would be cheaper and faster. That would result in more law graduates, fewer total students per year, or both. In short, an ABA-accredited, two-year program would be a disaster for already struggling law schools and a saturated job market. Even if state supreme courts and the ABA thought these ideas were worth pursuing, the opposition from law school deans and the rank and file would be excruciating.

Likewise, consider the failure of the ABA Commission on Ethics 20/20 to address the prohibition of nonlawyer ownership of law firms. William Henderson has rightly called the prohibition a "farce" that keeps lawyers from engaging with the world of nonlegal entities that are entering the field.<sup>134</sup> Nevertheless, bar associations have asked the band to play on as

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130. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

131. See, e.g., ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 281 (1921) ("The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.").

132. I wrote a whole book about this. BARTON, *supra* note 84.

133. Dan Slater, *Law School in 2 Years (Same \$\$?)—Assessing Northwestern's Program*, WALL ST. J. (June 20, 2008, 11:06 AM), <http://blogs.wsj.com/law/2008/06/20/law-school-in-2-years-same-price-assessing-northwesterns-program/>.

134. William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 490 (2012).

the ship sinks around them, arguing over ethics rules that only bind a very limited group of lawyers.<sup>135</sup>

There has been quite a bit of controversy over a recent ABA Task Force on the Future of Legal Education report, which called for liberalizing or eliminating a number of accreditation standards.<sup>136</sup> The recommendations have proven controversial,<sup>137</sup> and time will tell if they have much effect when they reach the broader membership of the ABA.

Similarly, based on the Washington State “limited license legal technicians”<sup>138</sup> (LLLT) program described more fully in Laurel Rigertas’s article,<sup>139</sup> there is much hope that nonlawyers may finally be able to compete with lawyers in providing legal services. The Washington program is less than it appears, however. It does not loosen UPL restrictions. To the contrary, it attempts to extend regulatory authority to nonlawyers in the field.

In Washington State, nonlawyers will be licensed and allowed to draft legal instruments in limited areas (at first, just domestic relations) and offer related advice.<sup>140</sup> The LLLTs will not be allowed to appear in court.<sup>141</sup> At first blush, this appears to be a significant and unexpected concession by the Washington Supreme Court. There have been unsuccessful efforts to loosen UPL to address access to justice concerns for years. Deborah Rhode led a very persuasive and successful one-woman charge against UPL in the 1970s and 1980s.<sup>142</sup> In 1995, the ABA Commission on Nonlawyer Practice was finally persuaded, releasing a report describing the legal work that legal paraprofessionals already safely performed and suggesting that the ABA reconsider its ethics rules and its description of the unauthorized practice of

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135. See Ted Schneyer, “Professionalism” As Pathology: *The ABA’s Latest Policy Debate on Nonlawyer Ownership of Law Practice Entities*, 40 *FORDHAM URB. L.J.* 75 (2012).

136. See *ABA Task Force on the Future of Legal Education Issues Draft Report on Proposed Reforms to Pricing, Accrediting and Licensing*, A.B.A. NEWS (Sept. 20, 2013), [http://www.americanbar.org/news/abanews/aba-news-archives/2013/09/aba\\_task\\_force\\_onth.html](http://www.americanbar.org/news/abanews/aba-news-archives/2013/09/aba_task_force_onth.html).

137. See, e.g., Matt Bodie, *Notice to All Law Faculty: Read This Report*, PRAWFSBLAWG (Sept. 20, 2013), <http://prawfsblawg.blogs.com/prawfsblawg/2013/09/notice-to-all-law-faculty.html>.

138. *Supreme Court Adopts Limited License Legal Technician Rule*, WASH. ST. B. ASS’N, <http://www.wsba.org/News-and-Events/News/Supreme-Court-Adopts-Limited-License-Legal-Technician-Rule> (last visited Apr. 26, 2014).

139. See generally Laurel A. Rigertas, *The Legal Profession’s Monopoly: Failing To Protect Consumers*, 82 *FORDHAM L. REV.* 2683 (2014).

140. WASH. ADMISSION TO PRACTICE R. 28(F).

141. *Id.* R. 28(G)(3)(a).

142. See Rhode, *supra* note 92; Ralph C. Cavanagh & Deborah L. Rhode, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 *YALE L.J.* 104 (1976).

law to allow greater freedom.<sup>143</sup> The ABA ignored the reports and many local bar associations ramped up UPL enforcement afterwards.<sup>144</sup>

So maybe Washington's action is a significant deregulation? Not so much. First, the Washington State Bar Association (and not the Supreme Court) will license and regulate LLLTs in the first instance, making any radical new competition from nonlawyers unlikely.<sup>145</sup> Second, the rules for becoming an LLLT are quite stringent, including years of school<sup>146</sup> and apprenticeship,<sup>147</sup> making a flood of new entrants unlikely. Third, in some ways the regulations are already stricter for LLLTs than lawyers. LLLTs must carry malpractice insurance, for example.<sup>148</sup> Last, the new program is not a loosening of UPL. To the contrary, it is an attempt to regulate *more* of the market for legal services, by essentially regulating paralegals. Thus, the entire program may be a stalking horse for greater tightening of lawyer control.

#### IV. A CONCLUSION WITH SOME HEDGING

Hard times can bring bad regulation. The Depression was the last time that the American legal profession faced an existential threat. State supreme courts and the ABA responded by ratcheting up entry regulations and heavily prosecuting UPL.<sup>149</sup> If the protectionist approach repeated itself today, it would reverse much of what I have argued elsewhere is a helpful loosening of the market for legal services.<sup>150</sup>

The relevant question is whether bar associations and courts will remain relatively passive as the market for legal services changes (or collapses) around them. If the market for lawyers continues to shrink, bar associations and state supreme courts may want to do *something*.

An alternative to large-scale changes or aggressive UPL enforcement may be lower-profile moves like quietly adjusting the bar passage rate downwards or disaccrediting some law schools. Low-profile tightening seems much more likely than any loosening or radical changes.

The likeliest result is that regulations for law schools and lawyers stay basically the same, but grow less relevant, as everything except for in-court and other bespoke legal work is swamped by competition from computers, outsourcing, and nonlawyers. Rather than try to regain lost ground, lawyers

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143. ABA COMMISSION ON NONLAWYER PRACTICE: NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS (1995), available at [http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non\\_Lawyer\\_Activity.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non_Lawyer_Activity.authcheckdam.pdf).

144. Nathan M. Crystal, *Core Values: False and True*, 70 FORDHAM L. REV. 747, 764–65 (2001).

145. WASH. ADMISSION TO PRACTICE R. 28(B)(9), (C)(1).

146. *Id.* R. 28(D)(3).

147. *Id.* R. 28(E)(2).

148. *Id.* R. 28 app. (2013) (Regulation 12), available at <http://www.wsba.org/~media/Files/WSBA-wide%20Documents/LLLT/Rules%20and%20Regulations/20130903%20Appendix%20APR%2028%20Regulations%20112.ashx>.

149. BARTON, *supra* note 84, at 122.

150. BENJAMIN H. BARTON, GLASS HALF FULL: AMERICA'S LAWYER CRISIS AND ITS UPSIDE (forthcoming 2014) (on file with *Fordham Law Review*).

and law schools will try to hold on to what they still have, even as it shrinks around them. I think of it as a sand castle facing a rising tide: the outer walls will be lost, but perhaps the citadel can be maintained.

There is the possibility for some targeted deregulation to allow lawyers to compete more effectively with the explosion of nonlawyer services on the internet. Right now, regulatory sluggishness is keeping many lawyers on the sideline while unregulated nonlawyers are rushing in. For example, the ABA and most state bar associations continue to drag their feet on changes to ABA Model Rule of Professional Responsibility 5.4, which bars nonlawyer ownership of law firms and sharing legal fees with nonlawyers.<sup>151</sup> As Bill Henderson has noted, this ban is allowing nonlawyers to provide legal-type services in multiple guises and with creative financing, while leaving law firms hamstrung.<sup>152</sup> Gillian Hadfield has argued that loosening Rule 5.4 would also greatly increase access to justice, because nonlawyer owners could leverage economies of scale and logistics to streamline the types of representation needed by the poor and middle class.<sup>153</sup>

Regulatory bans on multijurisdictional law practice likewise make it hard for licensed lawyers to compete on the internet. LegalZoom and Rocket Lawyer are available in all fifty states. A lawyer-run virtual law practice, however, must satisfy licensing requirements of each jurisdiction, making a national virtual law firm competitor a very difficult proposition.<sup>154</sup>

The alternative—a full-scale attempt to bring nonlawyers, outsourcing, and computerization to heel via UPL or more aggressive regulation—would require a great deal of political will and capital from state supreme courts. Truly aggressive moves would be likely to draw federal antitrust and congressional attention. If push came to shove, state supreme courts and lawyer regulators would face a potentially existential crisis: attempting to maintain their inherent authority to regulate lawyers against an angry populace and an engaged federal government. It is well beyond the scope of this Article to determine whether federal supremacy would overrule bedrock state constitutional law in such a showdown. Simply describing the parameters of the potential showdown helps explain why lawyer regulators have and will continue to tread lightly.

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151. Chris Bonjean, *ISBA Submits Resolution Regarding ABA's Ethics 20/20*, ILL. ST. B. ASS'N (June 20, 2012), <http://iln.isba.org/blog/2012/06/20/isba-submits-resolution-regarding-abas-ethics-2020>.

152. Bill Henderson, *Connecting the Dots on the Structural Shift in the Legal Market*, LEGAL WHITEBOARD (Aug. 3, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/08/connecting-the-dots-on-the-structural-shift-in-the-legal-market.html>.

153. Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the Corporate Practice of Law* (Ctr. in Law, Econ. & Org. Research Paper Series No. C12-16, Legal Studies Research Paper Series No. 12-26, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2183978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2183978).

154. See Stephanie L. Kimbro, *Regulatory Barriers to the Growth of Multijurisdictional Virtual Law Firms and Potential First Steps to Their Removal*, 13 N.C. J.L. & TECH. ONLINE 165 (2012).

The most likely result is little formal change amidst massive informal changes. This will have a negative impact on the legal profession, which will need to find new sources of business or will face significant shrinkage. It will be outstanding news for the public at large. In 2001, I joined a distinguished chorus of legal scholars—Deborah Rhode, Stephen Gillers, and David Luban—in calling for large-scale deregulation of the legal profession. It appears my hopes for massive changes in lawyer regulation will remain unfulfilled. My hope for a deregulated market for legal services, however, is coming true before our eyes. Given that much lawyer regulation is protectionist and not aimed at benefitting the public and that most Americans cannot afford a lawyer for even relatively basic legal needs, if this deregulation continues unabated, the broader public will be the beneficiaries.

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# Changing the Outside Firm Business Model

William C. Cobb, Accounting and Financial Planning for Law Firm

November 18, 2014

For years, ever since we published our first book on Alternative Billing in 1989, this author has been talking about the changes needed in the law firm business model. Most law firms are almost 60 years behind their clients!

For 60 years, the commercial world has been reinventing itself to become more customer-responsive and competitive by mapping the decision and production processes they use to deliver products and services. Industry has been using experts like Edward Deming and more recent authors like those listed below as its guide. I have incorporated many of their ideas into the experience I bring to the process as a consultant to professional firms for many years.

## Alternative Fee Arrangements

There are now many articles on AFA (alternative fee arrangements). Recently, there was a good [article on the "three P's,"](#) written by Steven Nelson of The McCormick Group, for Attorney at Work. The article covered: 1) pricing; 2) project management; and 3) process. However, in my opinion, there is a problem with the order of these steps. Let me redefine their order of implementation; 1) process development and improvement; 2) project management; and 3) the ability to price work for clients. These steps are confirmed by James H. Saylor in his book, "TQM Field Manual" (McGraw Hill, New York, NY, 1996).

If a law firm wants to conform to a client's need for responsiveness in the new competitive environment, big changes are required in its business model and, culturally, lawyers need to recognize that other professionals are better at certain tasks than lawyers. In addition, studies have shown that 60-plus percent of what lawyers do can be done by other professionals. According to Steve Nelson's article, more and more law firms are employing project management and pricing professionals to direct their practice. These professionals are much more important to law firms and their future than previously thought. Lawyers are not typically educated in process development and project management due to the old "Hour times a lawyer's rate equals value added" model. This old business model promotes inefficiency by fogging more hours into a file than necessary.

Change will require a whole new set of educational challenges for law schools and law firms. That is why the thoughts of Dr. Michael Hammer (Hammer, Michael & Champy, James: "Reengineering the Corporation," Harper Collins Publishers, Inc., New York, NY, 1993) and Peter Senge (Senge, Peter: "The Fifth Discipline: The Art & Practice of the Learning Organization," Doubleday, New York, NY, 2006) are so critical to the future of the legal profession.

## Process Improvement

If lawyers cannot define the process by which they deliver services, they will not be able to adapt to the new legal environment. Process development and improvement are an integral first step in understanding what has to be done, by whom, when, and under what timeline and budget constraints. The "new practice" lawyers know that the old model is dead. Value added depends upon much more than time and billing rate. And it depends upon the client's view of value added—quality of product combined with cost, schedule and risk. For example, suppose a partner offers his clients a value-driven option. If they want him to solve a problem with his team of professionals, he will charge his normal billing rate. However, if they want him to jump on it personally and provide a quick turnaround, his rate would be tripled.

Therefore, lawyers must understand the process by which they deliver a legal solution. That means they understand every task in the process and who should be performing those tasks, whether it is a partner, an associate, a paralegal, or another professional. This requires a flow chart of tasks that are to be performed—a map of each task on a timeline laid out linearly like any construction product. If an engineering firm is building a plant, it knows by the flow chart when the welders come in and when the painters come in. If everyone on the client service team understands the process, the law firm will be more efficient, clients will be more loyal, and profits will go up. If "effective" means doing the right things while "efficient" means

doing things right, upon completion of a matter the process is reviewed to evaluate what in the process can be changed to make it more effective and how tasks can be performed more efficiently.

Once your firm's attorneys understand the process, they are more involved and buy into the ways efficiency can be improved. As a byproduct, turnover will decrease because members of the team are more involved with the process and understand their respective roles. By looking at the process, clients can see where they can make the most effective contribution. Showing the clients the process can improve their understanding of the approach and how efficiency can be achieved by the law firm. In addition, the client team members can see changes coming in the legal environment and alter the process. How? They will have input into their roles in the process, and can suggest appropriate changes.

## Project Management

Project Management is defined as planning, organization, staffing, direction and control. Without a process, there is little planning because there is not a baseline to start with in setting up the project plan. Once the planning is in place, the lawyer can organize the events, and staff people and talents to the process tasks. Then he or she can assign people based upon their experience and talents. Finally, the project plan gives the lead lawyer a way to control the process. He or she can check status reports to determine whether the matter is over or under timeline check points, and review the budget at any time. In some law firms, project managers are not even lawyers. Some firms have brought in project managers from outside.

With real-time information, the team leader can control the investment of time into the matter, come in under budget, and increase profitability. This may be an internal budget where a firm sets up a process and tests the results before launching and pricing a matter for a client. It may also be an external budget demanded by a client. After a project, the lawyers can and should debrief to determine what in the process is ineffective and what can be changed. In the best cases, the client is involved in the debriefing. Debriefing is not a habit of client teams but it is essential.

What are the benefits of a process and good project management? Assume the firm gave the client a fixed fee of \$300,000 and through the process and good project management only invested \$270,000 of time. The effective billing rate would be 111 percent of normal rates. That would mean that \$30,000 of the fee would go straight to the bottom line without any additional overhead. Increasing the overall return in a \$50 million firm by 10 percent would mean additional distributable income to the partners of \$5 million.

## Pricing

Once a firm has the process in place and the ability to manage a process, it can set pricing for the matter. The process provides a map of each phase of the project. If there is no process or project management, there is no way a firm can project and meet the expectations of its pricing projections. The process map identifies the tasks required including who will perform the task and how much time is involved on each task and therefore the firm's investment in the matter. A firm cannot use the "dance" that "we cannot project what the other side may do." The firm is being hired for its experience, not its lack of experience. The firm should know what the "kick-out" provisions should be for a change in scope outside its process plan.

The Cobb Value Curve, discussed in many of my previous articles in this newsletter and its sister *Law Firm Partnership & Benefits Report*, shows how clients value legal services. Description of the Cobb Value Curve can be found at [www.Cobb-Consulting.com](http://www.Cobb-Consulting.com). If the matter is a nuclear event for the client, the client will pay more. If the event requires an expert, then the price point is above median price. If the service just requires a recognized brand name (a client-recognized firm), there is usually a discount requested by the client. Finally, if the client perceives the service as a commodity, any lawyer can do the job, then price is a big factor. A lawyer with good process and project management will be able to ask all the right questions in order to define an excellent scope of work to the client.

A few examples will help here. With a process and project management in place, pricing can become more innovative. For example, a firm in California is providing services to a large commercial real estate developer. Its process allowed the lawyers to price each matter based upon the cost per square foot of the development; and, of course, their project management skills enabled them to get a return higher than their average billing rates.

In another example, a nationally known litigator set up a process for the initial assessment of a loan default to bill a client one fee if the client's job is in jeopardy, and a lower fee if the bank's special asset division is involved. In this example, the litigator finds that the client is a loan officer whose \$100M loan is in trouble and his job is on the line. The client perceives the problem as a nuclear event and is willing pay more. Therefore, the initial discovery would cost much more and the timeline would be much shorter. If the matter is coming from the bank's special asset division that has hundreds of such loan problems, it is a commodity. If the lead lawyer can delegate the problem to others in the firm to fit the special asset division's requirements, the fee will be lower through leverage, and the timeline will be longer.



Regarding the above examples, if the client feels this is a "you-bet-your-job" issue, he is willing to pay a lot more to quickly solve the problem. If the client is looking at hundreds of the same types of matters, it is a commodity, and the client will not pay those expert fees. Without a process, a firm is likely to lose money on such matters. If the firm has a process to estimate the fees, it can give the client a price. If the firm has project management talent, it can control the investment the law firm must make.

## Summary

Process, project management, and pricing go hand in hand. One follows another. A firm cannot do one without another. First, the firm must have a process. Second, it must have people who are good project managers, even if they are not lawyers. And finally, the firm must have pricing people who understand the process and are able to count on the process and the project managers to conform to the pricing budgets. Pricing without the underlying infrastructure will not work.

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# Indie Lawyering: A New Model for Solo and Small Firm Practice

By Lucille A. Jewel

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## Introduction

At this moment, solo and small-firm lawyers are in a position to capture zeitgeist<sup>1</sup> market and cultural trends and use new technology to design and deliver legal services that are both innovative and aligned with community values. Individual lawyers can deliver new legal products to niche markets that are linked to the sharing economy, community-based consumption, do-it-yourself (or DIY) practices, and social enterprise businesses. Unlike mass-produced legal products like LegalZoom or Rocket Lawyer, individual lawyers are in a position to innovate but also stay true to the service ideals that form the core of the lawyer’s professional identity. Moreover, if individual lawyers can successfully harness technology in a novel way to deliver limited but individualized legal services to clients, this could help solve our current access-to-justice crisis.<sup>2</sup>

There are, however, several regulatory barriers that could get in the way of this new form of lawyering. For instance, Rule 5.5 of the Model Rules of Professional Conduct, which prohibits a multi-jurisdictional practice, hampers the development of niche markets, where success requires lawyers to cast a net and draw in clients from across jurisdictions. Because we are considering new legal products that consumers may not think they need, we might reconsider Rule 7.3’s ban on direct solicitation. And finally, we should remodel Rule 5.4 to allow lawyers to join forces with non-lawyers to create businesses that take an interdisciplinary and more community-centric approach.

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In addition to these regulatory barriers, the high cost of law school will prevent many graduates from embarking on an innovative solo practice. Only lawyers who graduate with a minimum amount of law school debt might be able to shoulder the risk of starting their own practice. As it stands now, the only lawyers who are able to graduate without law school debt likely come from wealthy backgrounds, or have high-paying non-law jobs while attending school part-time. If the indie lawyer model is only available to law graduates with pre-existing wealth (or the rare enabling job), then we might end up with a new style of law practice, but it would be by the privileged and for the privileged. This cultural and socio-economic limitation affects other aspects of indie culture as well. For instance, wealthy individuals have access to local, organic, and healthy food, while others live in “food deserts,” where inexpensive and healthy food is difficult to find.

Socioeconomic diversity for this new style of practice would ensure that the indie model gets off the ground and impacts clients at all points on the economic spectrum. Moreover, the growth of the indie lawyer model will produce innovation in the individual practice of law, which will in turn improve the public’s access to lawyers. Accordingly, we should consider adopting generous government-funded loan forgiveness programs that would incentivize lawyers to enter solo or small-firm practice, particularly in underserved areas.

### **The Setting**

Imagine a leisurely Saturday morning in a typical American city. Walking through the downtown area, one might pass through a farmer’s market selling produce from local farmers, then notice tourists exiting apartments rented through an online apartment sharing service. At the farmer’s market, which is doing brisk business, one might choose to purchase a cup of fair trade coffee, a chocolate bar from an organization that gives a portion of its profits to help preserve an endangered animal species, or a hand-crafted tamale from a food truck. Across town, high school students from the region are participating in a robotics meet-up, showing off the robots they have made in an after-school robotics program. Back at home, in the afternoon, one might access the Internet to view a cult Italian horror movie recently re-released by a specialty online video licensing company.

This description illustrates a number of zeitgeist cultural trends: the sharing economy (the apartment sharing program); interest in local and community based consumption (the farmer’s market and the fair trade coffee); consumer desire for artisan or hand-crafted products (the tamale); social enterprise (the chocolate bar company that

gives its profits to an environmental cause); long tail markets (the availability of the Italian horror movie online); and DIY culture (the robotics meet-up). All of these trends, taken together, can also be referred to as *indie* culture. Indie, a word borrowed from the music and film industry, is a shortened form of the word independent. In the entertainment industry, indie originally referred to products produced outside the confines of a large record label or film company. Now, it generally refers to products that are produced by individuals or groups outside the influence of large (usually corporate) institutions.

### **What Is an Indie Lawyer?**

Does this everyday cultural experience have any relation to the practice of law? I argue that yes, it does. These trends support *indie lawyering*, a new style of individual lawyering where technology brings together the individual practitioner with individual clients to engage with legal problems in a new way. Part of the challenge in predicting future trends is that in the present, only the seeds are discernible. As explained below, however, there are already a few attorneys who exemplify the trend, and there are a few soon-to-be lawyers who plan to adopt this style of lawyering.

I refer to these lawyers as indie lawyers. Although solo practitioner is the traditional term for lawyers practicing on their own, indie is a better designation because the word embraces a liberating autonomy, individuality, and freedom from large-scale institutions. It is an alternative to the big-law approach to lawyering, but also a rhetorical choice that counters the negativity that is often directed at solo practitioners. In terms of status and prestige, solo practitioners are perceived to occupy the lowest rungs of the legal profession.<sup>3</sup> Sociologist Jerome Carlin, who studied solo practitioners, summarized his conclusion that most solo practitioners “turned to the law as the easiest way to make a buck.”<sup>4</sup> Popular culture instantiates this view with characters like Saul Goodman, the sleazy and greedy lawyer on the television series *Breaking Bad*.<sup>5</sup> Although the image of the solo practitioner as a money hungry and unethical lawyer could be viewed as out of date, the stereotype persists in our culture.

The remainder of this essay will explain five integral zeitgeist trends that support the emergence of indie lawyering, describe the indie lawyer’s ethos and style of practice, and then outline why we should remodel our ethics rules and adopt loan forgiveness programs that would enable this style of practice to flourish.

**Five Zeitgeist Trends**

Social enterprise, the sharing economy, DIY culture, consumer demand for artisan and craft products, and long tail markets, taken together, represent a cultural convergence with the capacity to support a new framework for the individual practice of law. These trends emphasize community, sharing, autonomy, independence, and an individualized approach to production, all concepts that can be applied to legal services. When we combine these cultural trends with lawyering, the result is a style of law practice that is refreshingly individual and independent. Indie lawyering is also centered on community and service, which closely aligns with the normative ideals of the lawyer as a public citizen,<sup>6</sup> values that many fear we have lost.<sup>7</sup>

Social enterprise refers to dual-purpose businesses that endeavor to make money but also give back to the community. Well-known social enterprise companies include Toms Shoes, which donates a pair of shoes for every pair that is purchased, and Warby Parker, which does the same for eyeglasses. The Endangered Species Chocolate company donates ten percent of its net profits from sales of chocolate bars to an organization dedicated to preserving an endangered animal species. The social enterprise model has successfully captured consumers' concern over the impact their buying choices have on the greater community and the environment. Thus, the social enterprise trend is also visible in products touting their fair trade or sweatshop-free credentials. Finally, the popular trend of buying local products from community businesses is closely tied to the social enterprise model. Buying locally sourced products ensures that the money one spends goes back into the locality, rather than flowing to a far-flung institution with no community connections.

Most references to the sharing economy refer to new forms of commerce supported by Internet technology, which allows users to monetize surplus property under their control. Airbnb, the online apartment sharing service, and Uber, the mobile phone powered carpooling service, are two of the most well known sharing economy businesses. Last year, Forbes estimated the sharing economy generated \$3.5 billion dollars in income for its users.<sup>8</sup>

In a broader sense, the sharing economy also encompasses arrangements that allow people to jointly use property and collectively participate in business endeavors. Examples include co-ownership of residential property, shared child-care arrangements, shared ownership of cars, community gardens, food cooperatives, and worker cooperatives. This aspect of the sharing economy is grounded in the philosophy of the commons, the idea that shared ownership does not preclude efficiency in managing resources.<sup>9</sup> This more expansive framing of the sharing economy also reflects post-

recession economic realities – co-ownership of property allows one to save money and do more with less. Finally, like the social enterprise movement, there is a community focus here that rejects a winner-takes-all business model. The sharing economy's community focus is visible in the rising popularity of worker-owned cooperatives as a form for doing business.<sup>10</sup>

Similar to the values that underpin the sharing economy, the do-it-yourself trend emphasizes autonomy and self-reliance. The movement involves people making goods and technology products in their homes and garages. DIY production lessens dependence on mass industry, or even government infrastructure, for goods and technology. Although DIY culture is not new, it is undergoing a resurgence, observable in various “Maker” conventions happening around the country and in the new magazine *Make*,<sup>11</sup> which champions DIY practices.<sup>12</sup> With the Internet, DIY practitioners are able to form communities with each other and share information and advice for projects. Moreover, new technology like 3D printing makes it possible for individuals to produce things that once were the exclusive province of businesses and government institutions with access to large amounts of capital.

Consumer demand for individualized, bespoke products is the fourth zeitgeist trend that connects with the indie lawyer model. Perhaps as a response to years and years of cookie-cutter mass production, consumers now demand unique and exclusive “one-of-a-kind” products. New production technologies coupled with Internet retail interfaces allow customers to customize a host of retail products such as shoes, artwork, even cereal.<sup>13</sup> A walk through any grocery store reveals multiple products marketed as “artisan” or “hand-crafted.” The demand for hand-made craft items is further substantiated by the growth of the Etsy website, where sales have exceeded \$400 million, with 875 active shops.<sup>14</sup> The desire for hand-crafted products may also reflect non-economic desires grounded in nostalgia – nostalgia for “a more materially substantive past.”<sup>15</sup> In this way, the allure of hand-crafted products generates utopian images of community artisans making things, rather than the outsourcing of production to overseas factories that exploit their workers.

The long tail market phenomenon is the last interlocking piece of the foundation for indie lawyering. Long tail markets are niche markets made possible by the Internet. Internet retailers are not limited by shelf space and thus can afford to stock a much wider array of products than one might see at a bricks and mortar retailer. For instance, Wal-Mart only stocks the biggest blockbuster movies and top-40 artists. Amazon and iTunes, on the other hand, can afford to stock thousands upon thou-

sands of media products. In a statistical chart of sales, the long tail refers to the end of the chart, indicating products that sell in very small numbers. The interesting thing about the long tail is that these small number sales add up to very big numbers in the aggregate.

Long tail markets flourish on the Internet because the Internet allows a wide net of potential purchasers. A niche product like *Suspiria*,<sup>16</sup> a cult Italian horror movie from 1977, might not generate enough sales to justify it being stocked in a store or featured in a movie theater. However, it can generate enough sales if included in the inventory of an Internet retailer like Amazon, because that retailer can access potential purchasers from all across the country, and even the world.<sup>17</sup>

### **The Indie Lawyer's Community-Centered and Sustainable Law Practice**

How do these cultural and market forces, which I am collectively referring to as indie culture, relate to lawyering? Indie culture applies to lawyers in two ways. First, indie culture supports the emergence of a potential market for new legal products and a different style of law practice that uses technology to deliver customized client-centered legal services on a larger scale. Second, an indie approach to lawyering invites a reframing of the solo practice of law. This reboot of the solo practice of law emphasizes individual autonomy in a liberating way and enshrines the community service values that should form the core of a lawyer's professional identity.

Lawyer Janelle Orsi is the prototypical indie lawyer. Her excellent but little noticed book, *Practicing Law in the Sharing Economy*,<sup>18</sup> documents her law practice in the San Francisco Bay area of California with the aim of guiding other lawyers to develop similar practices. She maintains an individual practice<sup>19</sup> and also manages a nonprofit, the Sustainable Economies Law Center.<sup>20</sup> Her law practice encapsulates the zeitgeist trends discussed above: social enterprise business models, the sharing economy, DIY culture's emphasis on resilience, and consumer demand for individualized niche legal products.

Orsi's practice is primarily transactional. She helps individuals structure new collaborative transactions, grounded in the sharing economy. In many instances, she is helping clients capitalize upon efficiencies generated from sharing – the idea that one can benefit from having access to a thing without having to exclusively own it.<sup>21</sup> Many of the legal arrangements that Orsi facilitates do not easily match up with pre-existing legal categories such as buyer/seller, landlord/tenant, or employer/employee. For

instance, for traditional work arrangements, employment and agency law is sufficient to delineate the obligations of employer and employee. On the other hand, a collaborative approach to work, like a co-operative, requires different legal approaches.

In a broad sense, Orsi offers individualized legal products that allow consumers to restructure their lives and do more with less. Examples of these legal products could include agreements for joint ownership of property, the sharing of a car, sharing of childcare expenses, and operating businesses that take alternate forms.<sup>22</sup> Orsi's model for law practice is not just theoretical and aspirational. She is making a successful living as a solo practitioner, helping clients create more resilient approaches to work and business with a goal of sending value back to the community.

Orsi's take on professional identity is also refreshing. She maintains that her goal is to make a reasonable living from a sustainable law practice model. For Orsi, a sustainable law practice can be found in the independent and autonomous practice of law, decoupled from traditional concepts of status and prestige. She views the lawyer's constant quest for status and prestige as a toxicity that harms the profession and clients.<sup>23</sup> In her book, Orsi argues that if lawyers could offer more legal services at a lower cost, this would ameliorate some of the access to law problem that so many middle-class and working-class Americans face.<sup>24</sup> But she concedes that lowering prices in this fashion would also diminish the status that lawyers have traditionally enjoyed in American society.<sup>25</sup> She also argues that the traditional way lawyers value and bill for their time produces "crushing pressure," which then might contribute to the high rates of mental illness and substance abuse among lawyers.<sup>26</sup> Orsi writes that "[t]here is nothing sustainable about spending the majority of your working hours feeling that you are not contributing to the world you want to live in."<sup>27</sup>

Orsi's approach to the individual practice of law also emphasizes the client, whom she views as a collaborative partner for creating new arrangements that "will become the replicable blueprints for a new economy."<sup>28</sup> In billing and fee matters, she notes how the individual lawyer's autonomy allows her to make a reasonable living but also take into account a particular client's income limitations.<sup>29</sup> Orsi advocates that solo lawyers should emphasize collaboration and community in their practice, arguing that the synergy between a community-based law practice and the emerging sharing economy will help the lawyer grow her practice.<sup>30</sup> In Orsi's framework, a sincere focus on collaboration and community enables the individual attorney to retake her role in playing "a vital role in the preservation of society."<sup>31</sup>



By helping individual clients strengthen ties through new legal approaches to property ownership, business, and work, this kind of law practice revitalizes community-centered lawyering. In inspiring fashion, the work of the individual lawyer effectively merges community-building goals with the goal of making a living that all lawyers must have. This autonomous style of lawyering takes the lack of prestige typically afforded to solo practice and turns it on its head. Indie lawyering also offers a liberating 180 degree turn away from the negative stereotypes that have previously been associated with solo practice. The indie lawyer model has the potential to resurrect Anthony Kronman's Lost Lawyer in the form of a community-centered public servant who dispenses professional wisdom for the benefit of his community, without becoming overly burdened with status-oriented pecuniary drives.<sup>32</sup>

The growth of Orsi's trailblazing law practice may have been aided by her location – the densely populated and progressive-leaning San Francisco Bay Area of California. But indie lawyering has the potential to take off elsewhere in the United States. For instance, students at Michigan State Law School's visionary Reinvent Law program are developing projects that fit the indie lawyer mold. As a recent guest at a Reinvent Law workshop, I observed students present various legal business models that would utilize technology to deliver legal advice to educators, help independent film-makers structure their contracts, and provide privacy law advice to computer users. Another Reinvent Law student, Karen Francis-McWhite, has a plan to help individuals with achieving a homesteading lifestyle, emphasizing home ownership, self-reliance, sustainable consumption, urban farming, and generative energy practices (i.e., living off the grid).<sup>33</sup> Soon-to-be lawyers are designing new business models that embrace an independent, autonomous, and innovative approach to legal practice.

While Janelle Orsi describes the practice of law in the sharing economy as mostly transactional, it is possible for the model to thrive in a litigation context. Lawyers could harness technology to offer limited or unbundled legal services<sup>34</sup> to help clients with family law issues, small claims suits, debt-collection, or landlord/tenant disputes. Legal businesses using technology to deliver unbundled legal services already exist. For instance, Richard Granat, one of the pioneers in the Internet delivery of legal services, built a successful practice using computerized forms to help clients file uncontested divorces in Maryland courts.<sup>35</sup> Granat managed his Maryland-based business while living in Florida.

Because of its community-centered ethos, indie lawyering adds something new to the business model for the technological delivery of unbundled services. Indie lawyering gives clients a human face and a counseling model founded upon the Aristotlean concept of practical wisdom. In law, practical wisdom is the skill of seeing beyond formal legal categories and analyzing a problem armed with knowledge of the law but also with an emotional intelligence attuned to the non-legal, human aspects of the problem.<sup>36</sup> When Richard Granat operated his Maryland family law business, he spent 30 minutes a day reviewing the forms his clients submitted on his website.<sup>37</sup> Thirty minutes a day is not much time for practical wisdom to flourish. Many technological legal products are form-based – clients fill in the blanks and check various boxes. In some ways, technological law practice presents us with a de-humanized style of lawyering, algorithmic lawyering.

Indie lawyers can move beyond faceless forms and use technology to strengthen community bonds and provide individualized legal services. Online communities enjoy the same sense of belonging and human connection as traditional communities centered in a geographic place.<sup>38</sup> For instance, lawyers can use technology – email, Skype, texting, tweeting, online chatting – to counsel clients on various small legal issues, to help clients navigate the legal system as pro-se litigants, and build up knowledge in the community. Technology can be used to counsel clients in an individualized fashion. In this sense, the indie model adopts a *bespoke* approach to legal services, even if those services are limited in scope. The indie model's individualized approach differs markedly from other technological legal services such as LegalZoom or Rocket Lawyer. Scholars have argued that the law is and should be moving away from a bespoke craft-based model because the individualized model is too cumbersome and expensive.<sup>39</sup> However, there is a strong counter-argument for preserving the individualized, craft-based model for lawyering, which is that individualized lawyering allows practical wisdom to flourish. It allows lawyers to do what we are supposed to do.

### **What Changes Would Further Help Fuel Indie Lawyering?**

Changes to several rules of professional responsibility would help the indie lawyering model flourish. These ethics rules, as currently formulated, prevent lawyers from fully capturing long tail markets, limit a lawyer's ability to promote new legal products, and constrain the development of alternative forms of law businesses, which could adopt an interdisciplinary or social enterprise approach to legal services. In addition to these ethical rules, the high cost of law school presents a formidable obstacle to individual lawyer innovation. Accordingly, we should consider adopting government-

funded loan forgiveness programs that might incentivize indie lawyering. I conclude this essay by reiterating the strong policy reasons that support initiatives to stimulate indie lawyering and transform the individual practice of law.

#### Multi-Jurisdictional Practice: Rule 5.5(b) and Long Tail Markets

A long tail niche market can only happen if a large segment of consumers can be captured. For instance, a bricks and mortar store selling cult movies would be unlikely to thrive, except, perhaps, in a large, densely populated city.<sup>40</sup> In any given geographic location, the number of customers interested in viewing cult movies is likely to be small. But a cult movie store could thrive online, with no limit to shelf space and the ability to capture thousands of consumers around the world.<sup>41</sup> In the aggregate, cult movie purchases from customers around the world add up to something substantial.

The same long tail market concept may hold true for law. Imagine that an entrepreneurial lawyer develops the idea of drafting inexpensive agreements that would memorialize various obligations and copyright rights for members of an unsigned band. If this lawyer could cast her net over the entire United States, there might be a viable market for this kind of service. But in any given US jurisdiction, there may be just a handful of consumers interested in such an agreement. One might also envision a niche market for litigation services, for instance, specialized *pro se* guidance services on debt collection matters. Low cost but customized legal services are only feasible if lawyers can operate on a large scale, which is only possible if they have access to the entire US population.

As currently drafted, however, Model Rule of Professional Responsibility 5.5(b) generally prohibits a lawyer licensed in one state from offering legal services in jurisdictions that he is not licensed in. Adoption by the states of this liberalized rule would allow indie lawyers to use technology to reach large segments of the US population, which would enable the capture of latent long tail markets.

To account for lawyers needing to know distinctions between the laws of different states, one approach might be to allow multi-jurisdictional practice for transactional work or limited litigation services. Expanding the geographic scope of the Uniform Bar Exam and reducing the amount of bar admission fees might be another workable approach.

**Direct Solicitation: Rule 7.3(a) and Unlocking Latent Markets**

Janelle Orsi's client base is situated in the San Francisco Bay area of Northern California, a densely populated area with a high cost of living and a progressive culture already attuned to approaches based on the commons, sharing, and social enterprise. Outside of progressive enclaves, most Americans may be unaware of the benefits that flow from new legal forms grounded in the sharing economy. If we expand indie lawyering to a litigation context, such as technology-enabled assistance for *pro se* litigants maneuvering within the legal system, there would be a need to directly approach clients with information about this kind of service. For this reason, we should rethink the prohibition on lawyers directly soliciting clients for legal services.

In order to bring potential latent markets alive, lawyers need to be able to directly sell the novel services that they have designed. Lawyers need to be able to make potential clients cognizant of how private-law services might improve their lives. For the most part, only the most elite segments of the population benefit from private-law agreements – high-level managers, executives, even tenure-track professors. Starting businesses and structuring work around a collaborative model (such as a cooperative) would allow greater segments of the American population to achieve the kind of security and certainty that has previously only been available to a few in our winner-takes-all society. Other clients could be unaware of how contractual arrangements might help them access the benefits of a property or service, without the burdens of exclusive ownership. Even in a litigation context, lawyers should be able to directly explain how they can help clients provide low-cost but individualized assistance with the legal system.

The aim of direct solicitation is to generate fee-paying clients, but there are other important collateral benefits. Directly conversing with potential clients would enable indie lawyers to maintain and build ties in the community. Face to face conversation creates a much stronger bond than advertising, perceived by most as gauche. Direct conversations also generate knowledge in the community, dispersing information on how the law can improve daily life and how one can successfully navigate the legal system. This knowledge-building function furthers important normative goals for the legal profession, the idea being that lawyers should “further the public’s understanding of and confidence in the rule of law and the justice system.”<sup>42</sup>

In the past, it was thought that direct solicitation was not necessary to acquire clients. The rationale was that lawyers would get clients based on their sterling reputation in the community. That rationale has been criticized as applying only to elite lawyers working in a large law firm setting.<sup>43</sup> And, we now live in a different era. Large

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law firms (and the secure jobs they used to provide) are on the wane and long-term client loyalty is a thing of the past. Daniel Pink's conclusion that "we are all in sales now" is absolutely true, especially in this context.<sup>44</sup>

Currently, Model Rule of Professional Conduct 7.3(a) prohibits the direct solicitations of strangers when a significant motive for the solicitation is the lawyer's pecuniary gain. Thus, directly soliciting a client in an effort to build a sustainable law practice and make a reasonable living would run contrary to this rule. A better approach for this rule would be to discard the prophylactic prohibition and target the specific unethical conduct that should be eliminated. For instance, if the rule prohibited direct solicitation in circumstances involving fraud, misleading information, over-reaching, or an intent to stir up frivolous litigation, a lawyer could still be disciplined for unethical solicitations.

### **Interdisciplinary Practice: Rule 5.4 and Progressive Law Business Forms**

Rule 5.4 of the Model Rules of Professional Responsibility prohibits non-lawyers from taking an ownership interest or management role in a law business.<sup>45</sup> If an indie lawyer wanted to partner with a children's therapist to form a business focused on education law and psychological counseling for children with disabilities and emotional problems, the rule would not allow this. Rule 5.4 also would not allow lawyers to structure their businesses in a non-hierarchical way and provide all participants (administrative and professional) with an ownership interest and a vote in how the business is run. For socially minded lawyers trying to build sustainable businesses that provide value to all stakeholders, there is demand for progressive innovations for structuring law businesses.<sup>46</sup>

Many have criticized Rule 5.4 for limiting the corporate practice of law and preventing law firms from utilizing private equity as a form of capital.<sup>47</sup> Beyond these economic issues, there is another reason we should consider reforming Rule 5.4. A liberalized rule 5.4 would enable the growth of community-centered and egalitarian law businesses grounded in both commerce and community. It would also allow different kinds of law businesses to emerge, which would bring value to clients in need. For instance, a hybrid law/counseling business would be useful in many different contexts – education law, family law, juvenile and criminal defense where substance abuse and mental health is an issue (as it often is).

**The Cost of Law School: Loan Forgiveness for Indie Lawyers**

In order for the indie lawyer model to truly get off the ground, we must consider the problem of law school cost. The high cost of law school and the student loan debt that flows from that cost will prevent many law graduates from considering this practice path. If one is burdened with over \$100,000.00 in student loan debt, there is very little incentive to become a progressive law entrepreneur. For this reason, states should consider adopting loan forgiveness programs, not linked to income, to incentivize lawyers to go and start solo practices in underserved areas – rural and urban.

This problem also reflects class and ethnic cultural differences. The progressive culture discussed in this essay – the sharing economy, buying local organic food at farmers markets, and drinking fair trade coffee from boutique coffee shops – is undeniably white, upper class culture. While elite individuals engage in feel-good (but expensive) consumption, many other people reside in “food deserts” where the only food available or affordable is fast food and junk food. The same critique could apply to lawyers who envision a new style of lawyering based on this culture. What other lawyers, besides those who are wealthy enough<sup>48</sup> to be able attend law school without taking out student loans, can undertake the risk of starting their own innovative practices? In order for the indie lawyer model to take off and for these new legal products to be adopted by clients across all socio-economic spectrums, we must have diversity in the indie lawyer bar. Otherwise, indie lawyering could remain a style of lawyering practiced by lawyers from privileged backgrounds, appealing only to upper class clients. It would not, for the most part, help solve the access to justice crisis among middle-income and low-income segments of the population.

In order to address this policy problem, states might consider adopting loan forgiveness programs that would incentivize lawyers to start individual law practices in underserved areas, such as rural or low-income urban areas. In order for the incentive to work, the program must be generous. Loan forgiveness should not be income-based; if loan forgiveness were contingent on a continuous low income, that would disincentivize innovation. Loan forgiveness programs might also include up-front pre-payment of law school tuition and expenses. On the other hand, the program does not have to be inordinately large – funding ten to twenty attorneys would be a good start. Generous loan forgiveness programs already exist for doctors and dentists who choose to practice in underserved areas,<sup>49</sup> so it would not be such a radical idea to expand this type of program to law. Although there is the cost of maintaining such a program, the cost would be small compared with large-scale programs like the Legal

Services Corporation.<sup>50</sup> Moreover, a loan forgiveness program would be more politically feasible than a large-scale collective solution such as a civil Gideon right, which is unlikely to ever get off the ground politically.

### **Conclusion**

We should want the indie lawyer model to thrive for three reasons. First, the indie lawyer's services are craft-oriented and client-centered, they rely on the lawyer's professional wisdom, and they bring a human face to legal counseling. As our legal services market becomes more reliant on one-size-fits-all algorithmic computer programs and formulaic codes, we should encourage lawyering styles that utilize technology in an innovative way but that also maintain a human connection.

Second, the indie lawyer is innovative and entrepreneurial, but she also maintains a strong social conscience and commitment to her community. In a sense, this style of lawyering resurrects the community-centered lawyer who enters the practice of law not just for financial gain and social status, but also to return value to his community and society. In these cynical times, when many bemoan the influence of business on the practice of law, the indie lawyer approach offers a refreshing return to the profession's highest values.

Third, by bringing novel legal services to a potentially new class of clients, the indie lawyer can help bridge the access gap between lawyers and middle- and low-income clients. Concrete benefits flow from the private law or litigation services that the future indie lawyer might provide. There is value in giving middle-income and low-income clients access to the certainty and security that stem from private law agreements (cooperative employment arrangements, property sharing, etc.). And, if indie lawyers can harness technology to provide low-cost but individualized litigation assistance, this will alleviate the inefficiencies created by unrepresented individuals bumping into the corners of the legal system. For these reasons, we should celebrate the emergence of indie lawyering and study how we might modify our professional regulations and advocate for legislative initiatives that would ensure that the trend takes root and grows.<sup>51</sup>

### **Endnotes**

1. Zeitgeist refers to "the spirit of the time." Zeitgeist definition, [DICTIONARY.COM](http://dictionary.reference.com/browse/zeitgeist?s=t), <http://dictionary.reference.com/browse/zeitgeist?s=t>.

2. See Deborah Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531 (2013) (“More than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”)
3. Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Firm Practitioners*, 70 FORDHAM L. REV. 847, 847-848 (2001).
4. Jerome Carlin, *Introduction to the 1994 Edition of JEROME E. CARLIN, LAWYERS ON THEIR OWN* xi (Quid Pro Press 2011) (1962).
5. BREAKING BAD (AMC 2008).
6. “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.” MODEL RULES OF PROF’L CONDUCT, Preamble [6] (2014).
7. See ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).
8. Tomio Geron, *Airbnb and the Unstoppable Rise of the Share Economy*, FORBES (Jan. 23, 2013), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/>.
9. See generally, CHARLOTTE HESS AND ELINOR OSTROM, *UNDERSTANDING KNOWLEDGE AS COMMONS* 4 (MIT Press 2006).
10. See Janelle Orsi, *The Sharing Economy Just Got Real*, SHARABLE (Sept. 16, 2013), <http://www.shareable.net/blog/the-sharing-economy-just-got-real>.
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14. DANIEL H. PINK, *TO SELL IS HUMAN: THE SURPRISING TRUTH ABOUT MOVING OTHERS* 31 (2012).
15. Susan Luckman, *The Aura of the Analogue in a Digital Age*, 19 CULTURAL STUD. REV. 249, 255 (2013) (internal citation omitted).
16. SUSPIRIA (International Classics 1977).
17. *Suspiria*, AMAZON.COM, <http://www.amazon.com/Suspiria-Jessica-Harper/dp/B00005ASOI>.



18. JANELLE ORSI, *PRACTICING LAW IN THE SHARING ECONOMY* (2012) [hereinafter ORSI, *PRACTICING LAW IN THE SHARING ECONOMY*].

19. LAW OFFICE OF JANELLE ORSI, <http://www.janelleorsi.com/> (last visited Sept. 19, 2014).

20. SUSTAINABLE COMMUNITIES LAW CENTER, <http://www.theseic.org/> (last visited Sept. 19, 2014).

21. ORSI, *supra* note 16, at 13-20.

22. *See id.* at 1-13.

23. *Id.* at 22-24.

24. *Id.* at 22.

25. *Id.*

26. *Id.* at 22-24.

27. *Id.* at 24.

28. *Id.* at 25.

29. *Id.* at 36.

30. ORSI, *supra* note 6, at 37.

31. *Id.* at 25 (quoting MODEL RULES OF PROF'L CONDUCT, Preamble [13]).

32. *See* KRONMAN, *supra* note 5. Obviously, as I argue below, the indie lawyer is unlikely to thrive if she is overly burdened with an excessive amount of student debt from attending law school. It would be naïve to tout this altruistic style of law practice without also seeking a solution to the excessively high cost law school. As I set forth below, reducing the cost of law school is one option. But states might also consider loan forgiveness programs, similar to what has been done for doctors and dentists who choose to practice in areas where medical and dental care is scarce. Such a program would incentivize lawyers to start a law practice in underserved areas or for underserved clients.

33. *See* Karen Francis-McWhite, BUILDING MIHOMESTEAD, <http://www.gofundme.com/BuildingMiHomestead>.

34. *See* MARK H. TUOHEY II ET AL., MODEST MEANS TASK FORCE OF THE ABA SECTION OF LITIGATION, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE (2003), available at <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>.

35. Stephanie Francis Ward, *Richard Granat: Internet Obsessive*, A.B.A. J. LEGAL REBELS (Aug. 24, 2009), available at [http://www.abajournal.com/legalrebels/article/internet\\_obsessive](http://www.abajournal.com/legalrebels/article/internet_obsessive).

36. *See* KRONMAN, *supra* note 5, at 41-44 (Aristotle conceived practical wisdom as being a “virtue of character” and the “excellence of the person who deliberates well about personal or political affairs”); R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About A Prosecutor’s Ethical Duty to Seek Justice*, 82 NOTRE

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38. See MARY CHAYKO, PORTABLE COMMUNITIES: THE SOCIAL DYNAMICS OF ONLINE AND MOBILE CONNECTEDNESS (2008).

39. RICHARD SUSSKIND, THE END OF LAWYERS 29-32, 237, 247 (2008) (arguing that the craft oriented approach to law is ending); Gillian K. Hadfield, *Legal Infrastructure and the New Economy*, 8 I/S JOURNAL OF LAW & POLICY 1, 39-40 (2012) (arguing that the craft oriented approach to law is too cumbersome and expensive).

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41. Tristan Swanwick, *Brisbane Cult Movie Store Trash Video Reborn as On Demand Internet Service*, COURIER MAIL (Nov. 21, 2011), <http://www.couriermail.com.au/business/virtual-rerun-for-cult-video-icon/story-fn7kjcme-1226200606970?nk=b70a3658fe17d298091ad6f85efc3d81>.

42. MODEL RULES OF PROF’L CONDUCT, *supra* note 4.

43. JEROLD S. AUERBACH, UNEQUAL JUSTICE, LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 41-42 (1976).

44. PINK, *supra* note 12, at 9, 19.

45. MODEL RULES OF PROF’L CONDUCT R. 5.4 (2014). Rule 5.4 prohibits lawyers from sharing legal fees with a nonlawyer [5.4(a)]; giving nonlawyers an ownership interest in a law business [5.4(d)]; and forming partnerships with non-lawyers [5.4(b)].

46. See, e.g., ORSI, *supra* note 16, at 38-51 (describing various attempts to create law office collectives, low-profit law businesses, and law offices run on a cooperative model).


47. Hadfield, *supra* note 37, at 55-57; Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law*, 38 INT’L REV. OF LAW & ECON. 43, 54-55 (2014); Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749, 788-789, 803-804 (2010); Larry E. Ribstein, *Lawyers as Lawmakers: A Theory of Lawyer Licensing*, 68 MO. L. REV. 299, 314 (2004); Stephen Gillers, *What We Talked About When We Talked About Ethics: A Critical View of the Model Rules*, 46 OHIO ST. L. J. 243, 268 (1985); Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS L. J. 953, 1007 (2012).

48. Or, a student might be credentialed enough to receive a generous scholarship to a law school. These credentials also correlate strongly with wealth. See Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631, 663, 667 (2011).

49. See *Loan Forgiveness Programs*, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, [https://services.aamc.org/fed\\_loan\\_pub/index.cfm?fuseaction=public.program&program\\_id=40](https://services.aamc.org/fed_loan_pub/index.cfm?fuseaction=public.program&program_id=40).

50. See Mauricio Vivero, *From "Renegade" Agency to Institution of Justice: The Transformation of Legal Services Corporation*, 29 FORDHAM URB. L.J. 1323 (2002) (describing the budgetary issues impacting the Legal Services Corporation, conceived in the 1970s as an institution that would help ameliorate access to justice problems for low-income individuals).

51. The issues in this essay are addressed at greater length in an article to be published by the Southern Methodist University Science and Technology Law Review.

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## Law Departments Look at the Future, Like What They See

Rebekah Mintzer, Corporate Counsel

November 18, 2014

Feeling a little more optimistic lately? You're not alone. A recent survey of in-house legal departments shows that most—70 percent—think 2014 has been an overall improvement from 2013.

[The legal department operations survey](#) conducted by LexisNexis provides evidence of cautious optimism, which is a big change from where many corporate counsel were just a few years ago in the wake of the financial crisis. However, despite the improved outlook, legal departments still face challenges as they try to build efficiency and better support corporate clients.

Mike Haysley, director of strategic consulting for LexisNexis CounselLink, told CorpCounsel.com that having 70 percent of legal departments seeing an improvement year over year is “good news,” but cautions that although the business environment has gotten better, there is also a “new normal” for legal professionals. In other words, the more freewheeling days of the prefinancial crisis legal industry—when law departments were less focused on the bottom line—are over. “I think you're going to see, as legal departments moving forward describe their priorities, reducing cost and being efficient are always going to be part of that response,” Haysley said.

Out of nearly 100 in-house legal professionals who responded to the survey, 61 percent said that reducing spending on outside counsel was one of their most important department goals, followed by 59 percent who said it was important for them to prove the value of legal services to the company. The survey explains that this goes to show that it's no longer just enough to be a good corporate counsel: in-house attorneys also have to be able to tightly manage legal spending and communicate the department's worth to the business functions.

The survey also speaks to a legal in-sourcing trend. When asked how they would manage outside counsel spending, 54 percent of respondents said they plan to move more legal work in-house. Haysley explained that he has seen in-sourcing legal work have a positive impact, as it makes it easier for business units to get the legal support they need, allowing for early response to problems before they become full-fledged legal issues. It's also a great way, he added, for law departments to demonstrate value.

The survey looked at legal budgets and found that in more than half the cases, they are expected to remain flat in the coming year. The same applies to staffing. It might sound a bit baffling, said Haysley, that there is more legal in-sourcing and yet no big jump in hiring, but there are some reasonable explanations. Maybe each legal department staff member is doing more work, or perhaps they are eliminating some of the more menial tasks from their workload. “The other possibility is using technology to be more efficient,” he said.

Around 37 percent of legal departments surveyed indicated that they expect to increase their technology spending over the next year. Haysley reported that he is seeing many legal departments catch on to the importance of technology, including e-billing and e-discovery.

Another important question the survey asked was: How are in-house departments measuring their own performances? Part of achieving efficiencies, after all, is knowing how well the department is doing on important metrics. “Legal departments still really struggle with what they should be measuring,” said Haysley. The most common key performance indicator reported in the survey was legal budget forecast versus spending, which 56 percent of respondents said they used. This was followed by year-to-date outside legal spending versus the previous year at 47 percent.

Haysley noted he was a bit disappointed that law departments weren't zeroing in on other more specific and telling metrics, such as spending and matter counts by litigation type. “I think that's measuring something that's actionable,” he said.

# Corporate legal optimistic but remain focused on value

Legal departments say this year has been better than last year.



# 2014

# 2013

A LexisNexis survey of corporate legal departments across the US found that **70% of legal professionals responding said that this year has been better** than the previous year. Anecdotal responses suggest the cause may be improvements to the overall business climate, the settlement of more large cases this year and businesses seeking out legal counsel before matters become problems.

This improving outlook comes despite the challenges facing many legal departments for the coming year including flat legal budgets and staffing. Respondents report readiness to tackle what they see as the top three legal department goals: reducing outside counsel spend, proving the value of their own services and predicting legal outcomes accurately. Following closely behind those top three is the goal to automate and streamline internal processes—a goal closely aligned with goal #2 of increasing the value of the legal department to the business.



1 reducing outside counsel spend



2 proving the value of their own services



3 predicting legal outcomes accurately



# 54%

bringing more work in-house



## OSB Website Use

Top pages (member and public) with change from previous year noted:

Site activity on <a href="http://www.osbar.org">www.osbar.org</a>			
Top pages visited in 2014	2014	2013	% Change
Home	1,289,730	952,716	35.4%
Directory display	771,939	774,524	-0.3%
Member dashboard/logins	371,222	370,219	0.3%
BarBooks entry	217,493	215,238	1.0%
Landlord and Tenant Law <i>Public pages: Legal topic index for this practice area</i>	97,405	95,380	2.1%
Fastcase entry	92,990	97,736	-4.9%
RIS home page <i>Public pages: RIS Programs to Help You Find the Right Lawyer</i>	70,593	22,136	218.9%
LRS form			
Public Home	50,931	46,668	9.1%
CLE home ( <i>Sep-Dec season</i> )	17,677	12,309	43.6%

Top 10 pages on the public side:

Top 20 public pages in 2014:	Visits	URL
Landlord and Tenant Law	97,405	<a href="http://www.osbar.org/public/legalinfo/tenant.html">www.osbar.org/public/legalinfo/tenant.html</a>
RIS home	70,593	<a href="http://www.osbar.org/public/ris/">www.osbar.org/public/ris/</a>
Public home	50,931	<a href="http://www.osbar.org/public/">www.osbar.org/public/</a>
Rights and Duties Tenants	43,457	<a href="http://www.osbar.org/public/legalinfo/1246_rightsdutiestenants.htm">www.osbar.org/public/legalinfo/1246_rightsdutiestenants.htm</a>
Eviction	38,795	<a href="http://www.osbar.org/public/legalinfo/1253_residentialevictionnotices.htm">www.osbar.org/public/legalinfo/1253_residentialevictionnotices.htm</a>
Rights and Duties Landlords	35,997	<a href="http://www.osbar.org/public/legalinfo/1247_rightsdutieslandlords.htm">www.osbar.org/public/legalinfo/1247_rightsdutieslandlords.htm</a>
Fee Deposits	26,541	<a href="http://www.osbar.org/public/legalinfo/1260_feedevelopments.htm">www.osbar.org/public/legalinfo/1260_feedevelopments.htm</a>
LRS form	21,352	<a href="http://www.osbar.org/public/ris/lrsform.html">www.osbar.org/public/ris/lrsform.html</a>
Marijuana law	23,122	<a href="http://www.osbar.org/public/legalinfo/1079_marijuanalaw.htm">www.osbar.org/public/legalinfo/1079_marijuanalaw.htm</a>
Small Claims	23,254	<a href="http://www.osbar.org/public/legalinfo/1061_smallclaims.htm">www.osbar.org/public/legalinfo/1061_smallclaims.htm</a>
Legal Info	21,139	<a href="http://www.osbar.org/public/legalinfo.html">www.osbar.org/public/legalinfo.html</a>
Child Custody	20,194	<a href="http://www.osbar.org/public/legalinfo/1133_childcustody.htm">www.osbar.org/public/legalinfo/1133_childcustody.htm</a>
If you have a problem with a Lawyer <i>also the CAO link from public side</i>	17,043	<a href="http://www.osbar.org/public/legalinfo/1174.htm">www.osbar.org/public/legalinfo/1174.htm</a>
Habitability	18,151	<a href="http://www.osbar.org/public/legalinfo/1259_habitability.htm">www.osbar.org/public/legalinfo/1259_habitability.htm</a>
Rights of Mobile Home Owner Threatened with Eviction	18,476	<a href="http://www.osbar.org/public/legalinfo/1249_rightsmobilehome.htm">www.osbar.org/public/legalinfo/1249_rightsmobilehome.htm</a>
Rent Increases	17,766	<a href="http://www.osbar.org/public/legalinfo/1250_rentincreases.htm">www.osbar.org/public/legalinfo/1250_rentincreases.htm</a>
Child Support	18,251	<a href="http://www.osbar.org/public/legalinfo/1134_childsupportdivorce.htm">www.osbar.org/public/legalinfo/1134_childsupportdivorce.htm</a>
Legal Aid	16,969	<a href="http://www.osbar.org/public/ris/lowcostlegalhelp/legalaid.html">www.osbar.org/public/ris/lowcostlegalhelp/legalaid.html</a>
Divorce	17,770	<a href="http://www.osbar.orgpublic/legalinfo/1132_divorce.htm">www.osbar.orgpublic/legalinfo/1132_divorce.htm</a>
Marriage	17,769	<a href="http://www.osbar.orgpublic/legalinfo/1131_marriage.htm">www.osbar.orgpublic/legalinfo/1131_marriage.htm</a>

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# The left's changing personality: How progressives are changing from professionals to populists

Elizabeth Warren, hero of the left, may be a professor. But her rhetoric is not what you'd hear in a faculty lounge

MICHAEL LIND



Elizabeth Warren (Credit: Reuters/Adam Hunger)

Nobody is talking about it, but the professions are collapsing. And as they collapse, they will take a certain kind of center-left progressivism with them. There will be some sort of liberal left



in the future, but it probably will not resemble the school of progressivism familiar from Woodrow Wilson to Barack Obama, a school rooted in the professional class.

For more than a century, the American upper middle class has been divided between “professionals” and “managers.” The elite professions—doctors, lawyers and professors—have shared several characteristics. Although professionals may choose to specialize, they are essentially generalists. The ideal professional is self-employed or works with partners, instead of working in a corporate or public bureaucracy. Doctors and lawyers, though not professors, are paid fees for specific services to specific clients, not wages. Membership of the profession is limited, both by requirements that practitioners obtain expensive credentials and by politically influential cartels—the American Medical Association (AMA), the American Bar Association (ABA). The credentials and the cartels artificially restrict the supply of practitioners, driving up their fees.

Contrast the managers. While some are self-employed, most work in corporate hierarchies. They have far less control over their schedules and jobs than independent professionals. Within the firm, they usually specialize in finance or human resources or marketing. They are paid wages and sometimes stock options, tying their remuneration to the success of the firm and the industry. The educational requirements of managers are lower than those of professionals. Many do well with B.A.s, and the MBA program takes only two years. There is no cartel for managers like the AMA or ABA, and nothing like state bar or medical licensing exams.

The differences in working conditions are reflected in different worldviews. American academics and lawyers, and to some degree doctors, tend to see themselves as having special professional responsibilities to the public as a whole, rather like civil servants, in a way that American business executives do not. This claim to the exercise of a public trust justifies the privilege of self-regulation by professional associations.

In the 20th century, some services like goods production and entertainment came to be industrialized and provided by corporations, while others like medicine and law and higher education continued to be supplied by generalist professionals working alone or in partnerships. Many doctors would use the same hospital, or as many professors would inhabit the same campus, without being employees in the sense that someone who works for IBM is an IBM employee.

All of this is changing, as a result of technology and new business models.

The Internet combined with advanced software is eliminating one traditional role of doctors and lawyers: accessing information buried in medical treatises or rows of legal volumes. The need for informed interpretation remains. Even so, anyone with access to WebMD and similar websites is pretty well equipped for self-diagnosis for many simple maladies. And LegalZoom and similar firms have software that can help people write their own wills and other documents.

What remains are legally enforced cartels and monopolies in medicine and the law, governing who can authorize prescription drugs and who can argue cases in court. But sooner or later these guild monopolies may come to be viewed as anachronistic and eradicated by legislation.

The professions will be replaced, not by universal amateurism, but by the extension of the corporate model to the fields of medicine, law and perhaps higher education. Doctors will be replaced by medical services corporations, lawyers by legal services firms. There will continue to be legal standards and regulations, but the subject of regulation, as in other industries, will be the firm as a whole, not the independent practitioner.

In American medicine, the transition is already well underway. American physicians are rapidly abandoning private practice for salaried jobs with hospitals and other employers. In 2014, [according to the AMA](#), 60 percent of family doctors and pediatricians and 50 percent of surgeons were salaried employees.

The professoriate is in an advanced state of decay. The tenured university professor may soon go the way of the medieval knight and the 18th century dancing master. The number of nontenured faculty teaching at accredited colleges and universities has risen from fewer than half in 1975 to [nearly two-thirds today](#). Many of these teachers are poorly paid adjuncts without benefits. The class division (no pun intended) between academic sweatshop workers and privileged tenured faculty is not likely to last. Whether higher education is nominally public, nonprofit or for-profit, its transition from a service provided by largely independent professionals to an industrialized sector seems inevitable.

For the most part, consumers will probably benefit from the industrialization of the former professions, in the same way that they benefited from the replacement of village blacksmiths by more efficient industrial enterprises. But one consequence may be the annihilation of the social elite that has underpinned capital-P Progressivism in the U.S. since the late 19th century.

Early 20th century Progressives tended to have backgrounds in the mainline Protestant clergy, the professoriate and the law. Woodrow Wilson, a professor who was the son of a Protestant pastor, was typical. From Professor Wilson to Professor Obama, academics and also lawyers have provided much of the leadership and support for left-of-center causes. The expansion of the progressive professoriate compensated for the decline of the liberal Protestant clergy.

Elite professionals have long been associated with a distinct kind of technocratic progressivism—believing in research-informed nonpartisan problem-solving, carried out by administrators or judges shielded from politics and invested with considerable discretion. It is no accident that the ideal public servant of this kind of progressivism—the highly educated, apolitical expert—is a kind of idealized self-image of the professional.

The disinterested, technocratic progressivism of the American professional elite has always had to share the left-of-center part of the American political spectrum with other, less upscale political traditions, like social democratic labor unionism and Jeffersonian and Jacksonian populism. In the late 20th century, the New Democrats associated with Bill Clinton and Al Gore

represented, among other things, a rebellion of the expanded professional class created by the GI Bill and student loans against the “Old Democrats” of the farmer-labor alliance, led by less-educated union bosses and rural and small-town populist politicians. By reviving the dusty old term “progressive” and styling themselves as “Wilsonians” rather than “Rooseveltians,” the New Democrats signaled their identification with early-1900s elite Progressives rather than with mid-century New Deal “liberals” identified with organized labor and Southern and Western populism.

As the social base of elite progressivism is wiped out by technology and corporatization, it is safe to predict that these rival traditions of labor liberalism and populism will become more powerful on the center-left, if only by default. The next American center-left will probably speak in the emotional, streetwise accents of populism rather than in the measured tones of technocratic, professional-class expert progressivism. Even if the populist, like Elizabeth Warren, is a professor.

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