

Oregon State Bar
Meeting of the Board of Governors
April 24 2015
Oregon State Bar Center, Tigard, OR
Open Session Agenda

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00pm on April 24, 2015.
Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, April 24, 2015, 1:00pm

1. Call to Order / Finalization of Agenda

2. Report of Officers & Executive Staff

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|--|--------|---------|
| 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 | Exhibit |
| F. MBA Liaison Report [Mr. Whang] | Inform | |
| G. Oregon New Lawyers Division Report [Ms. Clevering] | Inform | Exhibit |

3. Professional Liability Fund [Ms. Bernick]

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| A. Request for Approval of Changes to PLF Policy 6.200(F) | Action | Exhibit |
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4. Multnomah Bar Association [Ms. Sullivan]

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| A. MBA Programs and Activities | Inform | |
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5. OSB Committees, Sections and Councils

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|--|--------|-------------|
| A. Legal Services Program Committee [Ms. Baker] | | |
| 1) Allocation of Unclaimed Client Fund Recommendation | Action | Exhibit |
| B. Legal Ethics Committee [Ms. Hirschbiel] | | |
| 1) Review EOP "Lawyer Indemnification of Third Party Payors" | Action | Exhibit |
| 2) Amend Various Ethics Opinions | Action | Exhibit |
| C. Military and Veterans Law Section [Mr. Crowe] | | |
| 1) Request to Establish Oregon Veterans Legal Clinic | Action | Posted 4/23 |
| D. Civil Rights Section Request to File Complaint with BOLI | Action | Exhibit |

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

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|--|--------|--|
| A. Budget & Finance Committee [Ms. Kohlhoff] | | |
| 1) Committee Update | Inform | |

B. Governance & Strategic Planning [Mr. Heysell]

- 1) Amend OSB Bylaws re: Changes to Bar Act related to BBX Action Exhibit
- 2) Amend OSB Bylaws re: Active Pro Bono Action GSP agenda

C. Public Affairs Committee [Mr. Prestwich]

- 1) Legislative Update Inform

D. Executive Director Selection Special Committee [Mr. Heysell]

- 1) Committee Update Inform

7. Other Items

- A. Appointments to Various Bar Committees and Boards [Ms. Edwards] Action Exhibit
- B. Establishment of A Scholar in Residence and a President's Legal Scholarship Award [Mr. Spier] Inform
- C. PSAC Report on Workers Compensation in LRS Inform Exhibit
- D. ABA Commission on Disability Rights Request to Sign Pledge [Ms. Hyland] Action Exhibit
- E. Legal Opportunities Report Inform Exhibit
- F. Lawyer Referral Service Communications Privilege Proposal Action Exhibit

8. Consent Agenda

- A. Approve Minutes of Prior BOG Meetings
 - 1) Special Closed Session February 12, 2015 Action Exhibit
 - 2) Regular Session February 13, 2015 Action Exhibit
 - 3) Special Session March 20, 2015 Action Exhibit

9. Default Agenda

- A. CSF Claims Financial Report and Awards Made Exhibit
- B. President's Correspondence Exhibit
- C. ABA HOD 2015 Mid-Year Meeting Report Exhibit

10. Closed Sessions – CLOSED Agenda

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

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

- A. Correspondence
- B. Articles of Interest

PRESIDENT'S REPORT

Richard G. Spier

Board of Governors Meeting

April 24, 2015

Retirement Event for Sylvia Stevens

December 10, 2015

Oral Report

Activities

- 2/17/15 Law firm lunch—Lindsay Hart
- 2/18/15 Campaign for Equal Justice Lunch—present award
- 2/19/15 Law firm lunch—Cosgrave
- 2/20/15 Meeting with Chief Justice re Board of Bar Examiners
- 2/20/15 Professionalism Commission meeting
- 2/20/15 Meeting with Theresa Wright, Sylvia Stevens, Kay Pulju
- 2/24/15 OMLA Board lunch—guest appearance
- 2/26/15 Law firm lunch—Farleigh Wada Witt
- 2/27/15 OHBA dinner
- 3/2/15 OAPABA Board—guest appearance
- 3/5/15 Testify before Joint Ways and Means Committee on funding of judicial branch
- 3/12/15 Meeting with Helen Hirschbiel and Rod Wegener
- 3/13/15 OWLS dinner
- 3/14/15 OWLS Board—guest appearance

3/18/15	CEJ Board meeting
3/19/15	Law firm lunch—Schwabe
3/19/15	Diversity & Inclusion program, et al., retreat
3/20/15	BOG Committees
3/20/15	ONLD dinner
3/25/15- 3/29/15	WSBC annual meeting, Hawaii
4/2/15	US Bankruptcy Judge McKittrick investiture—speaker
4/7/15	Law firm lunch—Bullivant
4/9/15	Law firm lunch—Black Helterline
4/10/15	Meeting with Sylvia Stevens and Theresa Wright re planning for justice gap meeting
4/14/15- 4/16/15	ABA Day, Washington, DC
4/21/15	OAAP Open House
4/23/15	Law firm lunch—Smith Freed
4/24/15	BOG Committees and BOG

Report prepared April 9, 2015; entries with later dates are expected activities.

PRESIDENT'S MESSAGE

Addressing the Needs of Underemployed Lawyers

The Justice Gap

By Rich Spier



Oregon State Bar

I have been engaged in bar circles long enough to know that one of our profession's most pressing problems is helping unemployed and underemployed lawyers. Another is the ever-widening "justice gap" — there are more people who need affordable legal help and fewer resources available to them. In January's edition of the *Bulletin* I offered a list of my goals as OSB president this year. My top two are: 1) continuing support of programs that facilitate the transition of recent law graduates to law practice, including assistance in locating and developing practice opportunities; and 2) expanding provision of legal services to middle-income and other underserved Oregonians.

I am pleased to offer an update. I believe the greatest opportunities lie at the intersection of those goals, and that we should focus our efforts on that intersection — developing mechanisms to help new lawyers find opportunities to build their careers by serving the unmet legal

needs of many Oregonians. That said, I am not interested in creating any new programs without a thorough review of the costs and benefits and without considering how we might modify or otherwise improve what we currently offer to make sure we are making the best use of member fees. So along with vetting new ideas, we will also carefully review our current efforts with a view to maximum impact. It's a daunting task, but we are fortunate to have identified a uniquely qualified local expert to help us tackle the job.

OSB Executive Director Sylvia Stevens recently decided, with my concurrence, to engage Professor Theresa Wright as a consultant and coordinator for this review. As a clinical law professor at the recently closed Lewis & Clark Legal Clinic in downtown Portland, Wright has a wealth of experience in what law students need to learn in order to actually practice law. As a former member of the OSB Board of Governors, she also understands how the bar balances its multiple priorities and programs. She is a member of the OSB House of Delegates and a past member of several bar committees, including: Judicial Administration, Client Security Fund, Unlawful Practice of Law, Pro Bono and Lawyer Referral Service. She has served on the Professionalism Commission and chaired the Litigation Section. In short, she has done it all for the bar, and until now always as a volunteer. I could not be more delighted to have her on board.

Bar Program Review

The task will proceed in stages, as we ask and find answers to the following questions: What are we and others in the legal community doing now in this area? What are our stakeholders' most pressing

needs? What would be our most effective and efficient means of addressing those needs?

Of course the OSB already provides a number of services to assist lawyers in their practices. Since the beginning of the Great Recession especially we have focused on the lack of employment and practice opportunities for new lawyers. We have sponsored numerous CLEs and published feature articles on rural practice opportunities, sales of law practices and other nontraditional options. Our CLE Seminars Department has sponsored a variety of introductory, "nuts and bolts" programs, and our Oregon New Lawyers Division has also stepped up its efforts to offer practical, affordable CLE, networking and internship opportunities. In 2011 we created the New Lawyer Mentoring Program to offer needed one-on-one guidance to new lawyers transitioning into practice. The Professional Liability Fund has increased its outreach and training options on a wide range of practice management and development topics and recently increased staffing for its invaluable practice management advisor program.

Next, we need to know more about what others are doing, and what new ideas are being tested. We are in ongoing discussions with local bars and other groups to hear their ideas and plans. Wherever I go — local bar meetings, law firm gatherings, section meetings and national conferences — I hear good ideas. Before we can decide which ideas are the best for Oregon, we need a clear and updated picture of what our stakeholders need.

For our members and future members, we know that although enrollment in Oregon and other law schools has recently declined, we still admit many members each year who struggle to find meaning-

ful paid work in the legal field. From discussions with law firms, we know that no one expects the “old days” of continuing growth and expansion are coming back. We know that recent graduates (and future ones) will likely practice in sole or small firms, possibly in a non-traditional practice setting. From recent new lawyers, we know they want jobs or practice development opportunities in the form of practical skills training, mentoring and networking.

Law Schools and Demographics

Last year, OSB President Tom Kravovich invited the deans of Oregon’s three law schools to meet with the Board of Governors in April. We had a frank discussion about the changes taking place in the profession and the impact the changes have had and will continue to have on the career prospects for Oregon’s law school graduates. We discussed the pressure for law schools to modify their curriculums to produce “practice ready” graduates, declining enrollment and other budget challenges, and the reality that solutions to the current employment drought are not so simple. Similarly, it’s been suggested we may need to make more radical changes to legal education, such as less-expensive night school, two-year law schools, and a broader range of legal education. It is important for us to remain in regular communication with the law schools and the court to monitor these issues and ideas.

We are also working to gather more quantifiable and objective data through participation in the Educating Tomorrow’s Lawyers Initiative® of the Institute for the Advancement of the American Legal System at the University of Denver, in a study on the skills, characteristics and competencies that the profession requires of new lawyers. We will also involve the Oregon New Lawyers Division in this stakeholder review.

Of course, another very important stakeholder is the public. We have an ever growing “justice gap,” in which not only low-income people but also moderate-income people are unable to afford — or believe they are unable to afford — professional legal counsel. Legal aid, due to a lack of funding, meets only 15 percent of the civil legal needs of the poor. At least

one party is unrepresented in approximately 75 percent of family court cases. Even potential clients who presumably could afford some level of professional legal assistance are increasingly turning to online and other do-it-yourself solutions.

Multi-pronged Approach

I understand that it will require a multi-pronged approach to close the justice gap. I am encouraged at recent progress from the Oregon Judicial Department, especially in the family law arena. Thanks to the restoration of funding lost when the recession began, important resources such as family law facilitators and specialists have been restored. Just recently the chief justice announced the expansion of an outstanding resource for Oregonians seeking restraining orders in domestic violence situations. Electronic interview-based forms are now available on all Oregon circuit court websites, which will make it easier for parties to fill out and file Family Abuse Prevention Act (FAPA) documents with the courts. Deschutes County is conducting a pilot project for informal domestic relations trials, designed to simplify the process for pro se litigants.

We will continue to seek increased funding for legal aid, promote pro bono opportunities and consider the upcoming recommendations of our Legal Technicians Task Force. This group, created by former bar president Mike Haglund, has studied recent developments in Washington and is charged with presenting a report with recommendations for how a similar scheme might work in Oregon. My personal opinion is that the public may be better served by our facilitating access to justice through lawyers at affordable rates but I am aware that others view legal technicians as addressing different market demands.

I have yet to hear of a software program that I would choose to handle a serious legal problem over a competent lawyer. At the same, I recognize that many people (and particularly many who choose not to use lawyers) have simple legal matters. They can still benefit from a lawyer's review of their own efforts or from a consultation about the issue and potential solutions. I think we can do more to address the justice gap by directing work to our underemployed lawyers, and I com-

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mit to keeping that goal at the forefront of our review. I know it is possible because I have met young lawyers who have found new ways to build a practice and are making it work. Some are tech-savvy entrepreneurs whose flexible and low-overhead approaches allow them to charge below-market rates and still earn a decent living. Others have done it by moving away from the lawyer-heavy cities of the Willamette Valley, finding a welcoming and supportive work environment in more rural areas. Others are buying practices or working with retirement-age solos on transitioning a client base. We need to encourage what's working.

My goal is to expand outreach to the public concerning the availability of legal services at reasonable cost from licensed, regulated and insured legal service providers, versus pro se and Internet options. The good news here is we have already started; not everything needs a comprehensive study. In December we launched new Google Ad Words and Craig's List campaigns, both of which succeeded in increasing traffic to our public-oriented web pages. These campaigns, which allow us to reach people actively searching for legal information, have the potential for great results at a very low cost.

I look forward to hearing from individual lawyers and bar groups as we move forward. We appreciate the support and encouragement in this effort from Chief Justice Tom Balmer and the hands-on help and enthusiasm of Supreme Court Justice Martha Walters and Chief U.S. District Judge Ann Aiken. Stay tuned for updates about OSB efforts to study and move toward solving the justice gap by providing more opportunities for lawyers.

OSB President Rich Spier is a mediator in Portland. Reach him at president@osbar.org.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Sylvia E. Stevens, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> ▪ Accounting & Finance/ Facilities/IT (Rod Wegener) 	<p><i>Accounting</i></p> <ul style="list-style-type: none"> ▪ The Accounting Department and IT have collaborated on developing an alternative system for the Lawyer Referral reporting system due to the apparent sale or closure of the software vendor Legal Interactive. ▪ Accounting also is integrating a new payroll system after the recently selected firm and project did not perform to expectations. The new system will allow more information, including time sheets, to be administered electronically. ▪ The next deadline for member fee payments is May 4. Any member not paid by then will be suspended for non-payment of the member fee. As of April 8, 409 members had not paid their 2015 fee. <p><i>IT</i></p> <p>The implementation of the new Association Management Software system began the week of April 13 with introductory training. The next steps involve staff getting to know the system, user training and technical training for IT staff, review and assessment of current bar operations, and developing the plans and systems to lead to live implementation in mid 2016. Here are the upcoming project milestones with the target date range:</p> <ul style="list-style-type: none"> ▪ April 13 -17: Subject Matter Experts (14 OSB staff) training at offsite training center; training for IT staff ▪ April 27-May 1: Aptify on-site visit all week to meet with staff and learn bar operations and expose staff to the Aptify system ▪ May 18-May 29: Solution Design Review; primarily with IT staff and Aptify specialists ▪ June 1-June 12: Implementation project plan and Statement of Work (SOW) review ▪ June 15-June 19: Solution Design Completion. In these last two steps the bar must provide a high level of input from approximately 30+ bar staff to ensure all necessary requirements are captured and as the bar learns the cost and configurations needed to implement the system for future bar operations. <p><i>Facilities</i></p> <ul style="list-style-type: none"> ▪ To address energy-efficient issues for the bar center, the CFO and Facilities Coordinator have met with three vendors to evaluate whether solar panels are practical and efficient for the roof of the bar center. Also under consideration

	<p>are replacing the existing parking lot lights with more efficient LED lights. Discussions with Energy Trust of Oregon have identified other energy saving possibilities.</p> <ul style="list-style-type: none"> ▪ All projects are in the early stages of review and the solar panels and parking lot light systems will be brought to the Budget & Finance Committee for financial assessment.
<ul style="list-style-type: none"> ▪ Communications & Public Services (includes RIS and Creative Services) (Kay Pulju) 	<p><i>Communications</i></p> <ul style="list-style-type: none"> ▪ The February/March edition of the Bulletin included feature stories on Oregon e-Court and mental health services for lawyers. Features for the April edition included recording of grand jury proceedings and the current state of pro se litigation in Oregon. Both editions also included columns focused on bar priority issues as well as practice tips, ethics notes and organizational updates from OSB President Rich Spier. ▪ Communications staff produced electronic Bar News and BOG Updates newsletters, conducted two surveys and provided communications support to numerous bar programs. ▪ The department now has a full-time multimedia specialist, who records and edits audio/video projects for other bar programs and services, as well as maintaining the bar’s social media platforms. ▪ The marketing and outreach campaigns for the OSB website and LRS services continue, with enhanced tracking of web visits and click-throughs. <p><i>Creative Services</i></p> <ul style="list-style-type: none"> ▪ Webmaster Michael Legleiter attended a 3-day training in standards-based web design that included a full-day workshop on accessibility. This training supports our efforts to develop a new website for the bar that will work in conjunction with the new AMS and membership database, as well as our efforts to ensure bar information is accessible to people with disabilities. ▪ Websites were created or redesigned for several sections on the new OSB Wordpress platform, with a focus on OSB branding and responsive design so that content is readable on a range of devices (cell phones, tablets and PCs). The site created for the Disability Section provided an opportunity to focus also on site accessibility, which will be another component of the new section website template. <p><i>Events</i></p> <ul style="list-style-type: none"> ▪ The 50-Year Member Luncheon took place March 20 at the Tualatin Country Club. The event was well attended and appreciated by our honorees. ▪ Recruitment for 2015 award nominations is underway. The annual Awards Luncheon will take place on Thursday, December 10, at the Sentinel Hotel in Portland. <p><i>Referral & Information Services (RIS)</i></p> <ul style="list-style-type: none"> ▪ The Lawyer Referral Service had its most financially successful month to date in March, bringing in \$88,000 in total revenue. This is likely an anomaly, however, as it reflects recent success in communicating with former panelists regarding their obligation to continue reporting on LRS-referred matters.

	<ul style="list-style-type: none"> ▪ Due to ongoing issues with our software vendor, bar staff opted to develop a new in-house program that will give us flexibility and control over future modifications. The new software, which will integrate with the bar’s new association management software, was launched on April 22.
<ul style="list-style-type: none"> ▪ CLE Seminars (Karen Lee) 	<ul style="list-style-type: none"> ▪ A free CLE materials library is now available to all members on the OSB CLE webpage. Integration into BarBooks has also commenced but that process takes longer due to formatting requirements. ▪ Developed and launched an educational partnership with Georgetown Law CLE. OSB members can participate in Georgetown Law live webcasts and also access on demand programs. ▪ Five public speaking training videos are now available on the CLE website. These were a joint venture between OSB CLE and a local Toastmasters International chapter. ▪ The department analyzed video replay attendance for 2013 and 2014. Due to extremely low attendance (attributable in part to the increase in webcasting and on demand offerings the remaining four sites will be discontinued effective August 1, 2015. In early March, notification of the closures was sent to the site hosts and to members who attended replays during the last two years.
<ul style="list-style-type: none"> ▪ Diversity & Inclusion (Mariann Hyland) 	<ul style="list-style-type: none"> ▪ We awarded 14 Clerkship Stipends. ▪ We awarded six Public Honors Fellowship Awards, two from each Oregon Law School. ▪ We awarded one Rural Opportunity and one Access to Justice Fellowship. ▪ We received eight applications for LSAT Scholarships, which will be awarded to six recipients. ▪ We received 15 applications for D&I Scholarships, which will be awarded to 10 students. ▪ We finalized the Diversity Action Plan Implementation Report.
<ul style="list-style-type: none"> ▪ General Counsel (includes CAO and MCLE) (Helen Hirschbiel) 	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> ▪ The Disciplinary Board Conference was held on April 3, 2015. We had great attendance and wonderful reviews. ▪ General Counsel has testified before the legislature on various bills related to the Bar Act. ▪ Deputy General Counsel attended the Immigration Forum for Community Service Providers on DACA and Notario Fraud and has been consulting on proposed legislation combat notario fraud. ▪ Deputy General Counsel has presented several CLEs on lawyers’ obligation to report elder abuse and continues to provide input on proposed legislative changes to refine the definition of elder financial abuse. ▪ With the UPL Committee’s investigative assistance, the Oregon Department of Justice secured an Assurance of Voluntary Compliance from Theodore Mahr, aka Tom Barr, a lawyer who has been disbarred from Oregon, Washington and Wisconsin, but who was still providing immigration services in Washington and Oregon after his disbarment. <p><i>MCLE</i></p> <ul style="list-style-type: none"> ▪ The final deadline for MCLE compliance reporting is May 5, 2015. ▪

	<p><i>CAO</i></p> <ul style="list-style-type: none"> ▪ Scott Morrill resigned as the Client Assistance Office Manager to pursue dreams of travelling and living abroad. We hired Linn Davis, former OSB Assistant Disciplinary Counsel, to replace him. Linn starts as the Client Assistance Office Manager on April 20, 2015.
<ul style="list-style-type: none"> ▪ Human Resources (Christine Kennedy) 	<ul style="list-style-type: none"> ▪ Brought in Clarence Belnavis to present harassment training for all staff with additional training for directors and managers. ▪ Brought in the bar’s employee assistance program provider to present “Working in a Changing Environment,” a training directed at helping staff manage change in their lives in preparation for the new AMS conversion. ▪ Participated as one of a team representing the bar at MBA WinterSmash, the fundraiser for Multnomah CourtCare. ▪ Coordinated the hiring of a new Client Assistance Office Manager (Linn Davis, previously a staff attorney in DCO) ▪ Recruiting Replacements for: Assistant Disciplinary Counsel, Executive Director, CLE Seminars Event Coordinator, Diversity & Inclusion Coordinator, Administrative Assistant – Communications, Referral and Information Services Assistant, and Design and Production Artist.
<ul style="list-style-type: none"> ▪ Legal Publications (Linda Kruschke) 	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since my last report: <ol style="list-style-type: none"> 1. Seven revised and one withdrawn <i>Oregon Formal Ethics Opinions</i>. 2. Four reviewed or revised <i>Uniform Civil Jury Instructions</i>. 3. Six more chapters of <i>Oregon Real Estate Deskbook</i>. 4. The 2014 <i>DB Reporter</i>. ▪ <i>Uniform Civil and Criminal Jury Instructions</i> were released in February and sales are tracking as expected. <ol style="list-style-type: none"> 1. <i>Civil</i>: YTD revenue=\$29,041; 2015 budget=\$39,450 2. <i>Criminal</i>: YTD revenue=\$12,647; 2015 budget=\$18,750 ▪ Under our Lexis licensing agreement, we earned royalties of over \$84.57 for December and \$271.13 for January. ▪ We received our first royalty payment under our Westlaw licensing agreement of \$76.94. Although this is a small amount, it is only for a short period right after they launched this database and had done no marketing of it yet. ▪ All Legal Pubs inventory has been moved in-house, saving \$80/month in warehouse storage and simplifying inventory control. Existing shelving was repurposed so there were no costs associated with relocating the inventory.
<ul style="list-style-type: none"> ▪ Legal Services Program (Judith Baker) (includes 	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> ▪ The LSP Committee has developed a recommendation for disbursing unclaimed client funds that is on the BOG’s April 24 agenda. ▪ LSP staff have begun the accountability process as mandated by the LSP Standards and Guidelines. The legal aid providers have been asked to submit a self evaluation. In addition, community partners, Oregon lawyers

<p>LRAP, Pro Bono and an OLF report)</p>	<p>and other stakeholders will be surveyed to find out about the quality of legal aid services provided to Oregonians.</p> <ul style="list-style-type: none"> ▪ The LRAP application process is underway. The LRAP Advisory Committee meets in May to select the recipients. ▪ The Events Subcommittee is hard at work on the Pro Bono Fair and other events for Pro Bono week. We hope to have an event again this year in Eugene, and hope to add an event in Central Oregon. The Pro Bono Fair is scheduled for October. <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> ▪ The OLF met with Banner bank on April 15 to discuss the Leadership Bank Program. ▪ The Bank of America settlement funds should arrive sometime in May. The funds are to be used for mortgage prevention and community redevelopment. A committee has been formed to review the OLF’s organizational structure.
<ul style="list-style-type: none"> ▪ Media Relations (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ We are working with media on approximately 12 discipline cases that are being regularly tracked. ▪ We have gotten two media outlets this month to pick up on the story of Notario Frauds for public education purposes.
<ul style="list-style-type: none"> ▪ Member Services (Dani Edwards) 	<ul style="list-style-type: none"> ▪ Section participation increased again this year with 16,670 total memberships. Just over 7,800 members joined one or more sections. ▪ The OSB and ABA House of Delegates election began on April 6. The two ABA delegate seats are contested this year as is the OSB HOD region 5 race. ▪ Public member volunteer recruitment will begin in late April. Interested non-lawyers are encouraged to complete the online application found at http://www.osbar.org/docs/forms/PublicMemberApp.pdf
<ul style="list-style-type: none"> ▪ New Lawyer Mentoring (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ NLMP Spring CLE & Social will be Thursday June 4, 2:45-5:00 p.m. at OSB Center. We would love to have a healthy BOG presence. You should have received invitations last week. ▪ We recently sent a letter to all Oregon lawyers from Justice Balmer, inviting members to sign on as mentors. The immediate result was 65 new mentors. ▪ We are considering a policy to help the orientation/training programs at some firms get accredited as “NLMP-equivalent” programs and be exempt from certain documentation requirements required for completion. ▪ The Committee would like to carve out an exception to Mentor Eligibility criteria to allow lawyers not admitted in Oregon, but practicing in federal arenas (immigration, social security) to serve as mentors). Kateri is drafting a policy for consideration. ▪ We are helping American Immigration Lawyers Association (AILA) develop a mentoring program which will dovetail with the requirements of the NLMP. ▪ We are collaborating with several organizations’ CLEs and other outreach to create stronger partnerships with the NLMP.
<ul style="list-style-type: none"> ▪ Public Affairs (Susan Grabe) 	<ul style="list-style-type: none"> ▪ <i>2015 Legislative Session:</i> Public Affairs is focused primarily on the bar’s legislative agenda, including the OSB package of 16 legislative proposals and the OSB three funding priorities: Court Funding, Legal Services, and Indigent Defense. Of the 16 OSB bills, 10 of them have passed through at

	<p>least the first chamber. 3 of the bills have been signed by the Governor. Public Affairs is currently working with OSB sections to monitor legislation that affects their area of practice and to prepare testimony for hearings that are scheduled.</p> <ul style="list-style-type: none">▪ <i>Day at the Capitol:</i> The Public Affairs Department is hosting a Day at the Capitol on Tuesday, May 5th. The day is an effort to put lawyers in touch with their Representatives and Senators to talk about justice system issues of importance to the bar, in particular funding for the bar’s three funding priorities. There are no better legislative advocates than constituents, and ideally we would like to arrange meetings with all legislators. We anticipate active involvement of business leaders who are part of the Citizens’ Campaign for Court Funding.▪ <i>ABA Lobby Day:</i> The OSB President, Rich Spier, BOG member, Ray Heysell and the Public Affairs Director, Susan Grabe, attendg ABA Lobby Day from April 14-16 in support of funding for the legal services corporation budget and the mandatory tax accrual.▪ <i>Oregon eCourt:</i> Public Affairs continues to work with the OSB/OJD eCourt Implementation Task Force to assist with the Oregon eCourt rollout and in the development new Uniform Trial Court Rules, particularly the document retention rules, in response to member concerns. Public Affairs has also collaborated with the PLF and other to develop training opportunities for OSB members.Th
<ul style="list-style-type: none">▪ Regulatory Services (Dawn Evans)	<p><i>Admissions</i></p> <ul style="list-style-type: none">▪ The results for the February 2015 bar exam were released on April 10th. Of the 250 people who took the exam 159 people passed the exam, which represented a passage rate of 64%.▪ The swearing-in ceremony for new admittees will be held on Thursday, May 7th, at 1:30 p.m. in Smith Auditorium on the Willamette University campus in Salem. <p><i>Discipline</i></p> <ul style="list-style-type: none">▪ The office is currently reviewing applicants for an assistant disciplinary counsel position created by the April 17th departure of 10+ year veteran, Linn Davis, who is the new Client Assistance Office manager. Linn has done terrific work during his tenure in the Disciplinary Counsel’s office and will be an asset in his new position.▪ The Bar’s twice-annual ethics school is just around the corner on Friday, May 8, from 8:30 to 5:00. Speakers will include staff members from the Disciplinary Counsel’s Office, the Client Assistance Office, and the Oregon Attorney Assistance Program.

Executive Director’s Activities February 13 to April 24, 2015

Date	Event
2/17	Lunch@Lindsay Hart
2/18	CEJ Luncheon
2/19	Lunch@Cosgrave Vergeer Kester
2/20	Judge Perris Retirement Dinner
2/23	Discipline System Review Committee
2/24	OMLA Lunch
2/25	ONLD Mixer
2/26	Lunch@Farleigh Wada Witt
2/27	Meet with Chinese High School Student Delegation
2/27	Oregon Hispanic Bar Association Dinner
3/11	NABE Chief Executives Retreat—Chicago
3/12-14	ABA Bar Leadership Institute—Chicago
3/17	Meeting with Barnes Ellis
3/19	Lunch@Schwabe Williamson
3/20	50-Year Member Luncheon/BOG Committees/BOG-ONLD Dinner
3/21	CSF Committee
3/25-28	Western States Bar Conference
3/30	Discipline System Review Committee
3/31	Meeting with Prof. Jones
4/2	Judge McKittrick Investiture/Tonkon Torp Litigation Department Party
4/7	Lunch@Bullivant Houser
4/9	Lunch@Black Helterline
4/10	AMS Training
4/15	EDs Breakfast Group
4/15	MBA Past Presidents’ Reception
4/21	OAAP Open House
4/22	CEJ Board
4/23	Lunch@Smith Freed
4/23	CLP Legal Citizen Dinner
4/24	BOG-PLF Lunch/BOG Committees

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 8, 2015
Memo Date: April 24, 2015
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors last met in January 2015, the Supreme Court took the following action in disciplinary matters:

- Issued an order in *In re Clifford I. Levenson*, reprimanding this Phoenix, Arizona lawyer in a reciprocal discipline proceeding following a reprimand and 2-year probation in Arizona for multiple trust account violations including overdrafts, failures to maintain adequate records, disbursing erroneous amounts to clients, disbursing funds on behalf of a client for whom he held no funds in trust, and failing to maintain adequate records of the receipt or disbursement of client funds.
- Issued an opinion in *In re Barnes H. Ellis and Lois O. Rosenbaum*, dismissing several conflict of interest violations. The opinion is included with this agenda.
- Issued an order in *In re Neil T. Jorgenson*, acknowledging receipt of the Oregon State Bar's Notice of Discipline in Another Jurisdiction and Recommendation and determining that it will impose no reciprocal discipline, consistent with the SPRB's recommendation.

b. Disciplinary Board

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

- *In re Joseph R. Sanchez* of Portland (1-year suspension) became final on March 31, 2015.

Two Disciplinary Board trial panel opinions have been issued since January 2015:

- A trial panel recently issued an opinion in *In re Robert H. Sheasby* of Bend (4-year suspension) for neglect of a legal matter, failure to keep a client reasonably informed of the status of a case, failure to hold client property separate from lawyer's, failure to deposit or maintain client funds in trust, and failure to respond to the Bar.

- A trial panel recently issued an opinion in *In re Justin E. Throne*, finding misconduct on all rule violations alleged (including neglect, failure to adequately communicate, excessive fee, advising an unrepresented person, failure to remit client property, failure to withdraw, and failure to respond to a disciplinary authority) and suspending his law license for a period of 2 years, commencing October 27, 2015, *consecutive to a 1-year suspension he is currently serving*.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulations for discipline in: *In re Susan E. Snell* of Tualatin (60-day suspension, all but 30 days stayed, 2-year probation) and *In re Vicki R. Vernon* of Portland (60-day suspension, all stayed, 2-year probation).

The Disciplinary Board Chairperson approved a BR 7.1 suspension in *In re Mary E. Landers* of Grants Pass.

2. Decisions Pending.

The following matters are pending before the Supreme Court:

In re Sally Leisure – reinstatement matter. In response to BOG recommendation of reinstatement, Court ordered that Leisure shall be conditionally reinstated contingent upon her successful participation in a financial planning and monitoring program, the terms and duration of which must be developed and implemented by the Bar subject to prior Court approval.

In re Rick Sanai – reciprocal discipline matter referred to Disciplinary Board for hearing on defensive issues, which was held in February. Briefs have been filed with the trial panel.

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

The following matter is under advisement before a trial panel of the Disciplinary Board:

In re Diamuid Yaphet Houston – February 20, 2015 (sanctions memo filed)

3. Trials.

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

In re Steven M. Cyr – May 4-7, 2015

In re William L. Tufts – August 7, 2015

4. Diversions.

The SPRB approved the following diversion agreements since January 2015:

In re Randall Vogt – effective February 1, 2015

In re Karen M. W. Knauerhase – effective March 15, 2015

5. Admonitions.

The SPRB issued 9 letters of admonition in January and February 2015. The outcome in these matters is as follows:

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

6. New Matters.

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

MONTH	2011	2012	2013	2014	2015
January	19/20	46/49	21/21	29/31	18/19
February	35/36	27/27	23/23	24/25	28/28
March	21/25	38/39	30/30	41/45	22/22
April	40/42	35/38	42/43	45/47	
May	143/146*	19/20	37/37	23/24	
June	20/20	39/40	31/31	23/24	
July	27/28	22/22	28/30	43/44	
August	22/23	35/35	33/36	19/21	
September	29/29	22/22	26/27	24/24	
October	22/23	23/23	26/26	25/25	
November	27/27	18/18	25/26	19/19	
December	39/40	26/26	19/19	21/23	
TOTALS	444/459	350/359	341/349	336/352	68/69

* = includes IOLTA compliance matters

As of April 1, 2015, there were 155 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 35% are less than three months old, 19% are three to six months old, and 46% are more than six months old. Twenty-nine of these matters are on the SPRB agenda in April. Staff continues its focus on disposing of oldest cases, with keeping abreast of new matters.

7. Reinstatements.

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

8. Staff Outreach.

Dawn Evans and Amber Bevacqua-Lynott spoke at the Disciplinary Board training held on Friday, April 3, at the Bar Center.

Kellie Johnson gave a presentation at the professionalism class of Willamette Law School Professor Robin Morris Collins, providing a general overview of the disciplinary process and discussing the regulation of discrimination in lawyer practice.

Dawn Evans and Amber Bevacqua-Lynott will give a presentation at the Inns of Court in Bend on Wednesday, April 15th.

DME/rjh

Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger. Diversity and Inclusion: Making us Stronger.



Celebrating Year One

Diversity Action Plan | 2014 Implementation Report



Diversity and Inclusion: Making Us Stronger

Messages from the Executive Director and BOG President



Sylvia E. Stevens
Executive Director

To fully achieve the Oregon State Bar’s mission, we must ensure that our programs, services, and activities are delivered in an inclusive and culturally responsive manner to our diverse bar and community. Our goals and strategies for achieving that objective are contained in the Diversity Action Plan 2014–2016 developed by the Diversity Action Council (comprised of senior staff and two members of the Board of Governors) and adopted by the Board of Governors in November 2013. In this report, we are pleased to celebrate the accomplishments of our first year of implementation and to affirm our commitment to continued progress in the coming years. The Diversity Action Plan is a living document and we will adjust our strategies based on our implementation results. I wish to thank the Diversity Action Council as well as all of the bar staff and volunteers for their hard work over the past year and their genuine commitment to our collective efforts. I welcome feedback from the bar and community about our progress to date and recommendations for the future.



Richard G. Spier
President, 2015

As a member of the Board of Governors, I was pleased to see this plan develop and proud to have a role in approving it. Now as OSB President I am delighted to see how much progress has been made over the past year. I am excited to pursue my goal of encouraging lawyers of all backgrounds to volunteer for OSB-related services and governance opportunities, including service on the Board of Governors. I also want to express my appreciation for fellow board members Josh Ross and Audrey Matsumonji, who serve on the Diversity Advisory Committee charged with implementing the plan. This is important work, and I thank them for their dedication.

Why Diversity and Inclusion Matters

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

GOAL #1 Increase the diversity of the Oregon bar and bench

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

GOAL #2 Increase engagement by bar leadership for community outreach

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

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

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

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

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

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

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

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

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

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

- Strategy 1 – Increase Access to Justice CLE seminar programs
- Strategy 2 – Increase outreach to diverse communities regarding OSB services to address the unlawful practice of law
- Strategy 3 – Enhance Client Assistance Office to meet the needs of a diverse community
- Strategy 4 – Enhance outreach and services provided to diverse constituents by Discipline and Regulatory Services
- Strategy 5 – Position the OSB to attract new members by adopting the Uniform Bar Exam
- Strategy 6 – Develop and sell e-books adapted for use by underserved individuals and communities
- Strategy 7 – Increase the diversity of the Bar/Press/Broadcasters Council and legal experts available to assist the media
- Strategy 8 – Enhance outreach to underserved communities regarding the modest means and lawyer referral programs
- Strategy 9 – Identify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities and premises

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

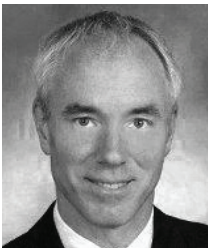
- Strategy 1 – Increase funding for The Oregon Law Foundation and the OSB Legal Services Program
- Strategy 2 – Increase pro bono representation of low income Oregonians
- Strategy 3 – Enhance legal services provider accountability for serving diverse clients

2014 Implementation Highlights



The OSB unveiled the Diversity Story Wall and received positive press concerning the bar's appreciation of our diverse pioneers and commitment to diversity and inclusion.

The Board of Governors Board Development Committee's outreach efforts led to historic increases in the diversity of the board membership, including the addition of a member from a large firm, as well as two former and one current specialty bar leaders:



Per Ramfjord
Partner, Stoel Rives



Simon Whang
Former President
OAPABA



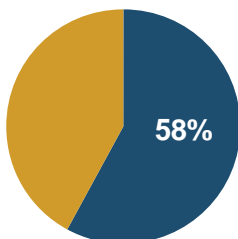
Kathleen Rastetter
Former President
OWLS



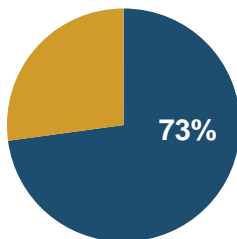
Ramon Pagon
President
OHBA

The OSB established an accessibility review team and provided two mandatory ADA training sessions for all bar staff.

The OSB enhanced its diversity demographic collection efforts. The rate at which members volunteer to share information about their race and ethnicity increased by 15%.



Jan 2014



Jan 2015



*I am conscious
of a soul-
sense that
lifts me above
the narrow,
cramping
circumstances
of my life.
My physical
limitations are
forgotten –
my world lies
upward, the
length and the
breadth and
the sweep of
the heavens are
mine.*

Helen Keller,
Author and advocate

When we have judges who are biologically different from men, or who have different cultural training and uniquely different live experiences, they will see the law from a different set of values. And that will make a difference in results, and how the courts are perceived.

Betty Roberts, Oregon Supreme Court Justice

Goal #1

Increase the diversity of the Oregon bar and bench

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

Accuracy of OSB Member Demographic Data Improved

The Oregon State Bar first created an online reporting tool and promoted participation through regular communication channels. Step two, implemented in November 2014, required members logging in to the bar’s website to either complete the form or decline to participate. After eight weeks, the percentage of bar members listed in our database as “declined to state” dropped significantly across all demographic categories. In addition, several categories achieved significant gains in member totals: sexual orientation other than heterosexual (+211); multiple ethnicities (+235); and disability of some type (+129).

Student Pipeline Outreach Efforts Enhanced and Yield Results

In 2014, the Opportunities for Law in Oregon (OLIO) Orientation program eligibility criteria was expanded to include multiple dimensions of diversity, which increased the diversity and number of 1L participants. The OSB wants to see at least 35% of OLIO Orientation participants who graduate from law school become Oregon bar members by April of the year after they graduate. Currently, 31% of OLIO Orientation participants who graduated from law school in 2014 have taken and passed the Oregon bar exam. We will know whether we reach our 35% goal after the February 2015 bar exam results are available. Regardless, we have made significant progress toward achieving our target measure.



Hon. Marco Hernandez
US District Court



Hon. Michael J. McShane
US District Court



Hon. Lynn R. Nakamoto
Oregon Court of Appeals



Hon. Adrienne C. Nelson
Multnomah Cnty Circuit Court



Hon. Darleen Ortega
Oregon Court of Appeals

GOAL #2

Increase engagement by bar leadership for community outreach

Strategy 1 – Increase participation in events hosted by diverse organizations

Bar Leaders Expand Engagement with Diverse Communities and Organizations

Members of the Board of Governors and bar staff have expanded their engagement with diverse communities by attending and supporting events hosted by diverse specialty bars and community-based organizations. In 2015, the board plans to meet with the leadership of selected community organizations to learn about and address access to justice concerns. These outreach efforts help the bar better understand the diversity, strengths, and needs of our membership and the community that we serve.

*As you discover
what strength
you can draw
from your
community
in this world
from which it
stands apart,
look outward as
well as inward.
Build bridges
instead of walls.*

Sonia Sotomayor, U.S.
Supreme Court Justice



We have become not a melting pot but a beautiful mosaic.

Different people, different beliefs, different yearnings, different hopes, different dreams.

President Jimmy Carter

GOAL #3

Increase the diversity of the pool of volunteer bar and community members engaged in OSB activities and leadership

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

Steps Taken Increase Diversity of CLE Speakers, Section Executive Committees, and OSB Volunteers

Data was gathered for all section sponsored CLE programs beginning in the spring. During the tracking period, 129 members presented one or more CLE programs. Of the speakers who provided their demographic information to the OSB, 7% of them self-identified as belonging to a historically underrepresented group.

In year one, the Member Services Department assisted five sections in open recruitment for diversifying their executive committees. Membership lists were made available to sections during creation of nomination committees and included demographic information. The department will continue to work with sections in subsequent years to encourage balanced executive committee membership.





Both lawyer and non-lawyer volunteer forms were modified to collect demographic information corresponding to the OSB demographic fields. Volunteers were also informed that the demographic information they choose to disclose could be used to update the OSB member data. Members of the Board Development Committee worked with several bar-affiliated

and community organizations to recruit diverse candidates for various bar volunteer positions. Eight non-lawyer volunteers applied in 2014; none of them self-identified as a minority from any of the five demographic categories. In 2014, 268 bar members applied to serve as a volunteer. Of those who provided their race and ethnicity, 9% are minority. In terms of gender, 43% self-identified as female and 57% self-identified as male. Of those who provided their sexual orientation, 6% identified as lesbian, gay, or bisexual. Of the members who provided their demographic information on the survey, 3% indicated they have a disability. Members of the Board Development Committee built relationships with a variety of minority and specialty bar associations to encourage candidates from underrepresented groups to run in the Board of Governors election. As a result of the outreach, the candidate diversity increased significantly. The election held in the fall of 2014 and a special BOG appointment made in early 2015 resulted in five new Board of Governors members, including one from a large law firm, one racial and ethnic minority, and two female lawyers.

The Oregon State Bar was successful this year in significantly diversifying the appointments to the New Lawyer Mentoring Committee, with the addition of three new members, including members of Asian, Indian and Native American descent. One new member in particular works closely with immigrant populations and is already proving to be a valuable resource in our outreach to a more diverse community. Additionally, as staff begin the planning for both New Lawyer Mentoring Program (NLMP) CLE seminars this year, we have discussed including a diverse pool of speakers and topics in both of those programs. An additional goal is to conduct some outreach to specialty bars to begin to establish greater partnerships to enhance the diversity and overall success of the NLMP.



We need every human gift and cannot afford to neglect any gift because of artificial barriers of sex or race or class or national origin.

Margaret Mead,
anthropologist

It is time for parents to teach young people early on that in diversity there is beauty and there is strength.

Maya Angelou, author

Treat all men alike. Give them all the same law. Give them all an even chance to live and grow

Chief Joseph,
Nez Perce leader

GOAL #4

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

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

OSB Expands Assessment and Staff Education

The bar engaged a consultant to review the diverse composition of current OSB staff. The overall results show that bar staff reflects the diverse composition of surrounding communities. Recruitment efforts continue outreach to reach out to diverse communities and continue tracking which outreach activities are most effective.

In May 2014, Figure 8 Consulting presented a seminar “The Power of Unveiling Unconscious Bias.” Evaluations show the seminar was very well received by staff. Amber Hollister presented a seminar reviewing the Americans with Disabilities Act and Denise Spielman was brought in to present “Creating a Welcoming Environment for People with Disabilities.” Attendance was required of all staff at each of these seminars and a DVD created so future staff are exposed to them as well.

GOAL #5

Increase the diversity of OSB contractors, suppliers, vendors, and renters

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

OSB Prepares to Begin Assessment in 2015

Plans are under way to fully assess the diversity of OSB contractors, suppliers, vendors and, renters in 2015. The OSB began advertising notice of room rental availability on the monitor on the first floor at the bar center in Tigard. Additional outreach is planned for 2015.

GOAL #6

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

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

Bar Expands Legislative Process Education, Outreach, and Focus on Access to Justice

The Public Affairs Department reaches out to every bar committee and group to provide an overview of the bar’s legislative process as well as to explain how to engage at whatever level is appropriate for the makeup of that particular bar group. Also, the Public Affairs Department has worked to include greater coverage of diversity-related issues in the Capitol Insider, including articles on the use of racial and ethnic impact statements for proposed legislation and the efforts to combat notario fraud.

Few will have the greatness to bend history, but each of us can work to change a small portion of events.

Senator Robert F. Kennedy



It takes no compromise to give people their rights...it takes no money to respect the individual. It takes no political deal to give people freedom. It takes no survey to remove repression.

Harvey Milk,
American politician

GOAL #7

Expand public and bar member education, outreach, and service

- Strategy 1 – Increase Access to Justice CLE seminar programs
- Strategy 2 – Increase outreach to diverse communities regarding OSB services to address the unlawful practice of law
- Strategy 3 – Enhance Client Assistance Office to meet the needs of a diverse community
- Strategy 4 – Enhance outreach and services provided to diverse constituents by Discipline and Regulatory Services
- Strategy 5 – Position the OSB to attract new members by adopting the Uniform Bar Exam
- Strategy 6 – Develop and sell e-books adapted for use by underserved individuals and communities
- Strategy 7 – Increase the diversity of the Bar Press Broadcasters Council and legal experts available to assist the media
- Strategy 8 – Enhance outreach to underserved communities regarding the modest means and lawyer referral programs
- Strategy 9 – Identify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities, and premises

Concerted Efforts Yield Notable Expansion of Education, Outreach, and Service

In 2013, the CLE Seminars Department created a new program, utilizing *Race: The Power of an Illusion* panel presentation on DVD and as an on demand seminar. As of December 31, 2014 there were 91 sales.

During 2014, the CLE Seminars Department sponsored or cosponsored the following seminars that qualified for access to justice credit:

- Sponsored Thurgood Marshall's Coming! a movie presentation and panel discussion to commemorate the 60th anniversary of *Brown v. Board of Education* (31 live attendees)
- Sponsored an encore presentation of *Race: Myths and Realities*, featuring the documentary *Race: The Power of an Illusion* and a panel discussion (172 live and webcast attendees)
- Cosponsored *Echoes of Inequality: Oregon's Exclusionary Laws from Past to Present* with the Legal Heritage Committee (91 live and webcast attendees; 61 on demand purchases)
- Sponsored a CLE seminar on notario fraud, which had an audience of both ethnic minority community members and leaders and OSB members (88 live and webcast attendees; 4 on demand purchases)
- Cosponsored *Special Topics in Disability Law* with the Disability Law Section (34 live and webcast attendees; 14 on demand purchases)

- Hosted an online video replay of Echoes of Inequality (25 attendees)

Focus on Notario Fraud in Spanish-Speaking Immigrant Communities

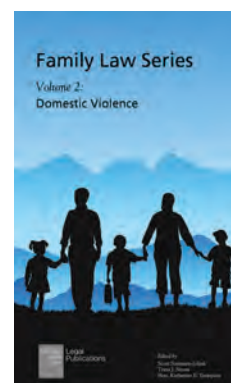
The bar identified Spanish-speaking immigrants as a vulnerable population that has been the target of exploitation by notarios publicos and other illegal immigration consultants. General Counsel's Office developed an outreach plan to combat notario fraud and began implementation of that plan in partnership with various bar departments and key stakeholders outside the bar. Together we:

- Developed and distributed 4,000 copies of a Stop Notario Fraud brochure in Spanish, with an electronic version posted on the OSB website.
- Coordinated an interview with Univision regarding notario fraud.
- Provided information to the Oregonian for publication of an article on notario fraud.
- Translated the UPL Advisory Opinion on notario fraud into Spanish and posted it on the OSB website.
- Sponsored the Notario Fraud Conference, bringing together key representatives from state and not-for-profit entities who either have substantial contact with notario fraud issues or are involved in the investigation and prosecution of notario fraud. There were 88 attendees, and evaluations were overwhelmingly positive.
- Attended and hosted a table with notario fraud prevention materials at the Oregon Attorney General's Open House on Consumer Fraud in Hillsboro, Oregon.
- Attended meetings with AILA Oregon Chapter representatives and with Oregon Crime Victim's Program Immigrant Subcommittee regarding problem solving around notario fraud.
- Sought appointment of persons with Spanish and Russian language skills to Unlawful Practice of Law Committee.
- Included representatives on the UPL Committee from the Oregon Department of Justice and Department of Consumer and Business Services to help better coordinate enforcement efforts.

Bar Launches E-Books for Consumers

In May 2014, the Legal Publications Department launched a Family Law Series, which is available for purchase on Amazon. Each e-book includes a Quick Resource Guide in the front with links to lawyer referral and legal services websites. A total of 25 e-books have been sold to date. However, there have been no reviews or ratings. We plan to enhance marketing of the availability of this resource in 2015, and we will develop a new target measure.

In November 2014, the Legal Publications Department expanded the e-book library to include six e-books in the Consumer Law Series. Each e-book again includes the Quick Resource Guide. To date, no e-books in this series have been sold. We will continue marketing the availability of this resource in 2015.



The Family Law Series is available on Amazon.com

Discipline and Regulatory Services Enhances Outreach to Diverse Constituents

In 2014, lawyers from the Disciplinary Counsel's Office reached out to both local and specialty bars, seeking to educate members about Oregon's attorney discipline system and foster communication about upcoming developments. Presentations took place in Portland, Pendleton, Medford, Grants Pass, Coos Bay, and Gold Beach, as well as before the Oregon Public Defenders, the Oregon Criminal Defense Lawyers Association, and the Oregon Women Lawyers.

Bar Expands Diversity in Relationships with Press and Media

The OSB was successful in recruiting participants with greater geographic diversity to the Bar Press Broadcasters Council (BPBC), adding members from Eugene and Central Oregon. We had somewhat less success increasing our racial and ethnic diversity, which will remain a focus in the coming year. We did, however, invite increased minority participation in the BPBC's biggest event of the year, the Building a Culture of Dialogue program, which will see an increase in minorities both in the bar member and the media participation. This was particularly important this year, as the discussion will be loosely based on the events of Ferguson, Missouri, which continue to reverberate throughout our own community. Another benefit of our expanded invitation pool to that event will be the identification of bar members who may be appropriate to use as expert sources for media throughout the state. Although this was not a stated action item, we also began what we hope will be a successful relationship with The Oregonian's new beat reporter assigned to coverage of diversity issues. This is a new focus area for her and the first time The Oregonian has had a reporter specifically assigned to seek out topics addressing diversity. We look forward to working with her to assure that issues impacting the health and vitality of the justice system, as that relates to diversity, are regularly included in her coverage.

OSB Diversity Story Wall, Unveiled on November 7, 2014, Receives Positive Press

The OSB's exhibit featuring our diverse pioneers received positive press and media attention. An online version of the exhibit is scheduled to launch in February 2015. For additional information about the exhibit go to: www.osbar.org/storywall. To see the Story Wall Unveiling Ceremony, go to: www.youtube.com/watch?v=97hoq0lic5w.



The Oregonian

Story Wall - www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_leaders_debut.html

Racial Bias Report

www.oregonlive.com/portland/index.ssf/2015/01/oregon_state_bar_diversity_rac.html#incart_river

Pioneers

www.oregonlive.com/portland/index.ssf/2015/01/pioneers_of_diversity_in_orego.html#0

The Skanner

Story Wall - www.theskanner.com/news/northwest/22120-oregon-bar-celebrates-progress-in-diversity

PQ Monthly

Story Wall - www.pqmonthly.com/oregon-state-bar-unveils-diversity-inclusion-story-wall/21088

Bar Enhances Public Outreach Efforts

Baseline data is gathered annually with ongoing assessment of the OSB's public outreach programs coordinated by the Communications and Public Services Department. Grassroots marketing efforts, including distribution of Referral Information Services posters and business cards, continued in 2014, with additional outreach to state court administrators and legal aid programs. The Legal Links cable series was revived, along with a new focus on shorter videos designed to be embedded into our website. Ongoing assessment has shown decreased effectiveness in yellow pages advertising (now largely discontinued) and the Tel-Law system as a means of delivering legal information (discontinued for 2015). Speakers' Bureau requests, while also on the decline, will continue based on its potential for high-quality information, positive interaction between lawyers, and the public and minimal expense. Social media and advertising, while offering limited benefit in existing circumstances, will continue to be explored.

OSB's current focus is promoting the public information and legal help pages of our website; the Communications and Public Services Department has begun testing new website promotions, including increased use of embedded video as mentioned above and online message board and advertising as discussed below. In 2014, the focus was to increase traffic to the bar's public-facing web page, www.oregonstatebar.org. In addition to regular promotional activities, we launched test ad campaigns through Craig's List and Google Ad Words. Both campaigns directed traffic to specified "landing" pages for general information on the bar's services to the public, the Lawyer Referral Service (LRS), and the online LRS request form. Over the course of the year, traffic to these specific pages increased by more than 50%. The campaigns will be continued and refined in 2015, with special attention to under-served communities and under-accessed areas of law.

Bar staff have developed, and members of the Public Service Advisory Committee have approved, a procedural change in lawyer referral practices to help members of the public identify lawyers they believe will better meet their needs. Beginning with the 2015–16 program year, LRS and Modest Means Program panelists will have the option of indicating whether they are a member of an Oregon-based specialty bar with a primary purpose of promoting diversity within the legal profession and in the provision of legal services. Membership in these groups would be a searchable referral criteria, similar to foreign language ability or special services, e.g., credit card acceptance. The organizations that currently qualify, all of which hold membership open to any Oregon lawyer, are: OWLS—Oregon Women Lawyers, OMLA—Oregon Minority Lawyers Association, OC-NBA—Oregon Chapter of the National Bar Association, OAPABA—Oregon Asian-Pacific American Bar Association, OGALLA—Oregon Gay & Lesbian Law Association, and OHBA—Oregon Hispanic Bar Association.

*Our greatest
glory is not in
never falling,
but in getting
up every time
we do.*

Confucius

Just because a man lacks the use of his eyes doesn't mean he lack vision.

Stevie Wonder, musician and composer

Bar Launches Accessibility Review Team

The OSB established the Bar Accessibility Review Team (BART) to review and address accessibility issues reported by bar staff, bar members, and members of the public, and to raise awareness of accessibility issues within and around the bar. BART completed an initial self-assessment of bar programs, services, activities, and premises, but will continue its assessment in 2015 through one-on-one meetings with bar managers and a survey of bar members and the public. Highlights of BART efforts to raise awareness of accessibility issues include:

- Providing training to all OSB staff regarding identification of barriers and appropriate response to requests for accommodation;
- Creating an intranet page with accessibility resources;
- Posting the ADA Notice & Grievance Procedure on the bar's website, in the OSB Center lobby, and in the large conference rooms;
- Publishing an article about the ADA in the November 2014 OSB Bulletin; and
- Publishing a newsletter article for Lawyer Referral Service panelists regarding ADA compliance.

ADA25 at 25
Americans with Disabilities Act Continues to Elevate Civil Rights, with Mental Health Now at the Forefront
By Melody Finnemore

National preparations are underway for the 25th anniversary of the Americans with Disabilities Act, including a legacy project that provides multiple forums for people to talk about the act's history and its future.

Oregon attorneys who have worked with the ADA since its passage in 1990 say its impact has been overwhelmingly positive over the last quarter century. Its implementation got off to a rocky start, however, and while the public's understanding of it has grown, there are several improvements that need to be made over the next 25 years.

Portland attorneys Dano Sullivan and Dennis Steinman have litigated a host of ADA-related cases over the years. They agree that the goals originally intended for the act were sorely misinterpreted, largely due to the U.S. Supreme Court's early rulings. These rulings severely limited the act by focusing on what constituted a disability rather than how disabilities should be accommodated. Congress in 2008 effectively reversed the Supreme Court's approach with the ADA Amendments Act, which significantly broadened the definition of disability and focused on legal interpretations of what constitutes reasonable accommodation for people with disabilities.

"From a litigation standpoint, defendants were winning summary judgments the majority of the time before the ADA Amendments Act. The amendments act shifted it the other way, and the vast majority of cases were in the employment arena," says Steinman, a civil rights litigator with Kell, Altman & Runstein and one of the state's first lawyers to become fluent in American Sign Language.

"The amendments act alone, even if you disregard everything else in the ADA, has been a rollercoaster ride for disabled people in terms of employment and other aspects of their daily lives," Steinman says. "It took a very long time for the public and private sectors to grasp what they were responsible for and what they had to pay for. There has been a shift not only in how accommodation is perceived, but also about who pays for the accommodation."

Sullivan, a partner with Buchanan, Angeli, Abuchal & Sullivan and president of the Multnomah Bar Association, says she also witnessed a sea change in the focus of litigation once the amendments act was passed.

"The fight is where it should be, which is over what is being done to accommodate people with disabilities," she says.

Eric Fjelstad of Smith & Fjelstad in Gresham also began handling ADA cases shortly after the act's passage and has seen a definite evolution. "The changes in our cases have directly reflected the amendments. It used to be a drag-out fight about whether the client was disabled," he says, recalling a particular client who was diabetic and the ensuing argument about whether that qualified as a disability. "It was interesting because I had just been diagnosed as a diabetic and I learned a lot during that case."

Fjelstad says the battle now wages about how to provide accommodations and who is responsible. As he sees it, there is a lot of gray area surrounding these issues.

"There are very liberal standards that need to be fleshed out through case law as far as who is responsible for the breakdown in the conversation about reasonable accommodations and how they should occur," he says. "These are questions that are out there and need to be addressed in the relatively near future."

Litigation Common Despite Clearer Rules

Bob Joseph, executive director of Disability Rights Oregon, says a noticeable change regarding the ADA is the increased enforcement that has occurred under the Obama administration. This has generated more action and clarity for businesses and other private and public entities, which now face greater accountability after years of stagnation in meeting ADA requirements.

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

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

Strategy 2 – Increase pro bono representation of low income Oregonians

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

Efforts to Increase IOLTA Account Interest Rates for Legal Services Funding

The Oregon Law Foundation made a concerted effort to convince banks to increase the amount of interest offered for IOLTA Accounts, which goes directly to fund legal services for low-income Oregonians. US Bank holds approximately 30% of all IOLTA deposits in Oregon. When it decided to no longer pay a supportive interest rate on its IOLTA accounts starting in 2014, there was a large impact on the Oregon Law Foundation's revenue and ability to meet the metric of .7% to 1% interest. Accordingly the target metric of the total IOLTA deposits that earn .7% to 1% interest will be adjusted from 80% to 60%.

The Oregon State Bar, Oregon Law Foundation, and the Campaign for Equal Justice continue to explore funding options for legal aid. There are current options being explored in the 2015 Legislative session and through the Campaign for Equal Justice's Task Force on Legal Aid Funding that set goals to achieve minimally adequate funding for legal aid.



*Injustice
anywhere is a
threat to justice
everywhere*

Martin Luther King, Jr.,
U.S. clergyman and
civil rights leader

In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.

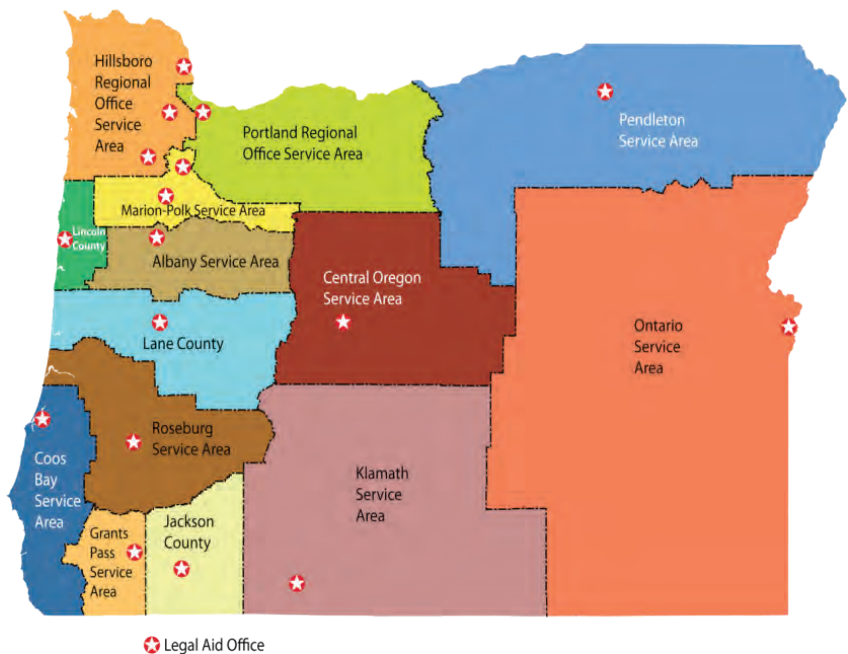
Thurgood Marshall,
U.S. Supreme Court Justice

Call to Action: Report Pro Bono Service Hours

Baseline data regarding pro bono participation gathered for approximately eight years shows a fairly steady but low reporting of pro bono hours by attorneys. Without mandatory pro bono reporting it is impossible to measure pro bono activity accurately. OSB staff will continue to encourage voluntary reporting and will work with new OSB data system to find more efficient ways to encourage pro bono reporting. Staff will continue to encourage new programs to become certified. Current programs, under-staffed due to shrinking budgets, do not have the staff support to increase pro bono participation by 10% annually for the foreseeable future.

Assessment of Legal Service Providers (LSP) Underway

Legal aid providers are currently assessed using the OSB LSP Standards, and Guidelines, which incorporate the American Bar Association's (ABA) Standards for the Provisions of Civil Legal Aid. The ABA standards already measure the cultural responsiveness of legal aid in the key areas of staff diversity, community outreach, and training. A better target measure for this strategy is to change the LSP Accountability Self-Assessment tool to better collect information in those key areas. The Self-Assessment tool will be revised in 2015 to better gather information and measure Strategy 3.



Legal Aid offices in 17 communities serving all 36 counties.

GLOSSARY

ACRONYMS

ACDI	Advisory Committee on Diversity and Inclusion
CAO	Client Assistance Office
CRA	Community Reinvestment Act
IOLTA	Interest on Lawyers Trust Accounts
LSP	Legal Services Program
MBE	Multistate Bar Exam
NLMP	New Lawyers Mentoring Program
OLF	The Oregon Law Foundation
OLIO	Opportunities for Law in Oregon
OSB	Oregon State Bar

TERMS AND CONCEPTS

Community Reinvestment Act

A United States federal law designed to encourage commercial banks and savings associations to help meet the needs of borrowers in all segments of their communities, including low and moderate income neighborhoods.

Culture:

The system of shared beliefs, values, customs, behaviors, and artifacts that the members of society use to cope with their world and with one another, and that are transmitted from generation to generation through learning.

Source: Cultural Proficiency, San José • Evergreen Community College, www.sjeccd.edu

All human beings are programmed by cultural "software" that determines our behavior and attitudes. Once we recognize what our programming teaches us, we have the capacity to control our choices.

Gardenswartz & Rowe, www.gardenswartzrowe.com

Cultural Proficiency

Cultural proficiency is the level of knowledge-based skills and understanding that is required to successfully interact with and understand people from a variety of cultures. Cultural proficiency requires holding cultural difference in high esteem; a continuing self-assessment of one's values, beliefs, and biases grounded in cultural humility; an ongoing vigilance toward the dynamics of diversity, difference, and power; and the expansion of knowledge of cultural practices of others. To provide culturally proficient services, both the individual and the institution must be culturally proficient. Five essential elements contribute to an institution's ability to become more culturally proficient:

1. Valuing diversity
2. Having the capacity for cultural self-assessment
3. Managing the dynamics of difference
4. Having institutionalized cultural knowledge
5. Having developed adaptations to services reflecting an understanding of cultural diversity

These five elements should be manifested at every level of an organization, including policy making, administration, and practice.

Source: Cultural Proficiency, San José • Evergreen Community College, www.sjeccd.edu

Cultural Responsiveness

The ability to respond to and interact with people from a variety of different cultures in a culturally proficient manner.

OSB Diversity Demographic Membership Data

The bar collects and tracks member diversity demographic data based on the following criteria: sex, gender, race/ethnicity, disability, sexual orientation, and gender identity.

Demonstrated Competency

Showing or presenting a combination of knowledge, skills, behaviors, and values that indicate a person is culturally proficient.

OSB Diversity and Inclusion

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

E-Books

Books available for purchase electronically for use on a digital reading device.

Low-income Oregonians

For the purpose of statewide legal aid services, low-income Oregonians are defined as households with incomes at or lower than 125% of the federal poverty level. This would be \$24,413 for a household of four in 2013. Another way to look at it is a single person household who makes minimum wage in Oregon would be ineligible for legal aid because they are over income.

Member Dashboard

Customized web page displayed for members logged into the OSB website. The dashboard includes regulatory notifications and provides tools to access and update member record information.

Underserved Populations

Low income and other populations who lack access to or the ability to afford legal services.

Vulnerable Populations

Communities and people who are disadvantaged and at risk due to socio-economic status, gender, age, disability, geography, language ability, race, ethnicity, or any marginalized status.

Thanks to the Diversity Advisory Council Members

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

Danielle Edwards – Director of Member Services

Dawn Evans – Disciplinary Counsel
/ Director of Regulatory Services

Susan Grabe – Director of Public Affairs

Helen Hierschbiel – General Counsel

Mariann Hyland – Director of Diversity & Inclusion

Christine Kennedy – Director of Human Resources

Linda Kruschke – Director of Legal Publications

Karen Lee – Director of CLE Seminars

Audrey Matsumonji – Board of Governors

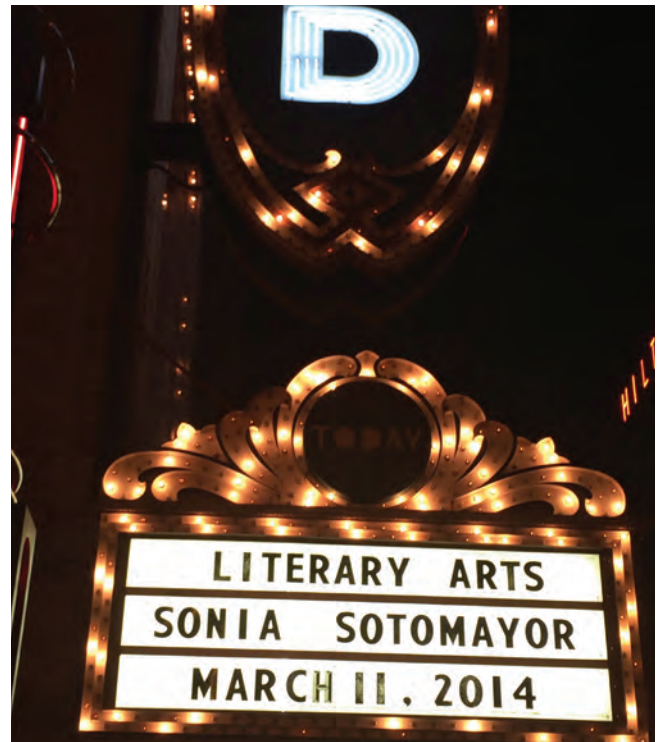
Kay Pulju – Director of Communications
& Public Services

Josh Ross – Board of Governors

Sylvia Stevens – OSB Executive Director

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

Rod Wegener – Chief Financial Officer



Mission

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

Functions of the Oregon State Bar

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

Values of the Oregon State Bar

Integrity

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

Fairness

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

Leadership

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

Diversity

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

Justice

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

Accountability

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

Excellence

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

Sustainability

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

Diversity & Inclusion Department

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

Mariann Hyland
Director of Diversity & Inclusion
phone: (503) 431-6337
fax: (503) 598-6937
mhyland@osbar.org

Benjamin James
Diversity & Inclusion Assistant
phone: (503) 431-6335 fax: (503) 598-6999
bjames@osbar.org

www.osbar.org/diversity



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: April 10, 2015
From: Karen Clevering, Oregon New Lawyers Division Chair
Re: ONLD Report


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

- In conjunction with the February Executive Committee meeting in Salem we hosted a structured social with a game of BINGO to get people mingling and help facilitate connections. Following the social local attorneys, judges and a few law student leaders were invited to join the Executive Committee for dinner. When in Eugene next week we will hold a two-track CLE program at the law school for students and local practitioners. In the evening a social event with a trivia competition is planned followed by a dinner with local bar leaders and students.
- Three law student liaisons have been chosen to participate in ONLD Executive Committee meetings: Derek Berry (U of O), Daniel Bugni (L&C), and Nina Nolen (Willamette). Daniel and Nina were able to attend the February events. Derek Berry attended all of the Eugene events.
- The Law Related Education Subcommittee launched this year's Art Contest, for middle school students, and Essay Contest, for high school students. The Art Contest challenges participants to submit a piece of art work highlighting the importance of the Magna Carta. The Essay Contest topic focuses on social media and at what point comments become a crime.
- Law School Outreach Subcommittee held panel discussions at each of the law schools to prepare students for taking the bar exam. Based on a request from students, on April 7 we also hosted a second panel at U of O focusing on managing client expectations and how to handle clients that cross the line.
- The CLE Subcommittee held three brown bag lunch CLE programs in Portland focusing on trial tips, workers' compensation, and representing disabled clients.
- The Member Services Subcommittee hosted two socials in Portland and co-sponsored a Campaign for Equal Justice social and trivia event in Salem.
- ONLD received a request for more information regarding the Practical Skills Through Public Service Program from law student, Meghan Williford at Elon University School of Law. Ms. Williford was conducting research for Elon Law School's Dean Bierman and the North Carolina Bar Association on successful programs implemented in other states focused on solving problems for new lawyers in the job market. This is welcome attention for the PSPS and suggests that our programming may assist new attorneys outside of Oregon.
- One representative, Mae Lee Browning, was sent to the ABA Young Lawyers Division midyear meeting. I also attended the Western States Bar Conference as ONLD Chair.
- After receiving approval from the BOG, the Executive Committee submitted their resolution idea to the ABA Young Lawyers Division. The proposal seeks to have the ABA Model Rules of Professional Conduct amended to ban intimidation or harassment based on a person's status.
- The Executive Committee continues to discuss the Limited License Legal Technicians Task Force report and hopes to provide feedback to the BOG later in April.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: February 10, 2015
From: Carol Bernick – PLF CEO
Re: PLF Policy 6.200(F)



Action Recommended

Please approve the recommended changes to PLF Policy 6.200(F). These revisions were approved by the PLF Board of Directors at its February 6, 2015 board meeting.

Background

In a recent review of PLF Policy 6.200, it was revealed that Policy 6.200(F) had not been updated when some other OAAP policies and protocols were changed. To bring it into alignment with our current OAAP practices and policies, we are requesting that the board amend the policy as follows:

Current policy reads:

(F) The OAAP will not maintain records of participant's names or the nature of participation. Statistical data will be maintained including the number of people utilizing the OAAP. Statistical reports will be produced periodically as requested by the program Director.

Proposed amendment is as follows:

(F) The OAAP will maintain statistical data, including the number of people accessing the OAAP and the type of services provided. Statistical reports will be produced periodically as requested by the OAAP executive director. The reports will not disclose the identity of any person who has received assistance from the OAAP.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: April 10, 2015
From: Legal Services Program Committee
Re: 2015 Disbursal of Unclaimed Client Funds

Action Recommended

1) Approve the LSP Committee's recommendation to not disburse any of the annual unclaimed client funds for 2015.

2) Approve disbursing the Strawn v Farmers class action unclaimed client funds as outlined below.

Background

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

In 2012 the BOG approved a disbursement and reserve policy for the unclaimed client funds. The policy was that \$100,000 be held in reserve to cover potential claims and distribute the revenue that arrives each year above that amount. The amount of funds disbursed changes from year to year depending on the unclaimed funds received and claims made each year. The OSB also entered into an agreement with the legal aid providers whereby the legal aid providers agree to reimburse the OSB if the reserve gets diminished or depleted. This disbursement and reserve policy was followed in 2013 and 2014.

Annual Unclaimed Fund

There is currently \$124,022 in the Annual Unclaimed Fund which is \$24,022 above the \$100,000 left in reserve to cover potential claims (see attached ULTA Report as of 2/28/15). There are two reasons not to follow the disbursement and reserve policy outlined above by disbursing the \$24,022. The two reasons are as follows:

- There have been several large claims made in 2014. It is becoming apparent that owners will eventually find the large outstanding claims. There are currently six claims outstanding each over \$10,000. (see attached Outstanding Unclaimed Funds)
- Since 2010, financial institutions have remitted to the Oregon State Bar \$40,851 from 63 lawyer trust accounts. Of this total, \$31,352 came from 26 lawyer trust accounts owned

by lawyers who are still active members of the Oregon State Bar. These lawyers have a professional obligation to safeguard funds belonging to others and to ensure that those funds are paid to persons entitled to receive them. RPC 1.15-1. The BOG is considering what steps if any need to be taken concerning the trust accounts forwarded by financial institutions.

Unclaimed Client Funds Strawn Farmers Class Action

2014

The LSP Program received approximately \$520,000 in one time unclaimed client funds from the Strawn v Farmers Class Action. On April 25, 2014 the BOG approved distributing the one-time funds in equal amounts over three years with 1/3 of the funds being disbursed in 2014 and the remainder of the funds held in reserve. The funds were allocated by poverty population with 6% going to the Center for Nonprofit Legal Services (CNPLS), 11% to Lane County Legal Aid and Advocacy Center (LCLAAC) and 1% to Columbia County Legal Aid (CCLA). The remaining 82% which is usually divided by Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC) for statewide services was allocated entirely to LASO. CNPLS received its full three year allocation in 2014 because it was experiencing severe funding decreases.

2015

The Oregon State Bar has held the Strawn Farmers Class Action funds for over a year. As of February 28, 2015, there have been 15 claims made totaling \$16,767 and there is \$310,786 left in the fund. (See attached ULTA Report as of 2/28/15).

The 2015 recommendation is to continue last year's approved distribution method which is to distribute 1/2 of the remaining funds or \$155,000 leaving approximately \$155,000 in reserve to cover future claims. The funds will be allocated by poverty population with 11% to LCLAAC and 1% to CCLA. Similar to last year the remaining 82% will go to Legal Aid Services of Oregon (LASO) to cover statewide services. CNPLS will not receive funding because they received their full three year allocation in 2014.

Each program will received the following amounts:

LCLAAC - \$17,050
CCLA - \$1,550
LASO - \$136,400

ULTA Report as of 2/28/15

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
Statistics since inception of program			
\$ 529,375	\$ 518,900	\$ 1,048,275	Total of all Submitted Unclaimed Property
\$ (49,758)	\$ (16,767)	\$ (66,525)	Total of all Claimed Property
\$ (32,493)		\$ (32,493)	Total of Property Returned/Forward to Other Jurisdictions
\$ (323,103)	\$ (191,347)	\$ (514,450)	Total Funds Distributed to Programs
\$ 124,022	\$ 310,786	\$ 434,807	Balance of Funds on Hand by Fund

Breakdowns by Year

2015			
\$ 1,219	\$ -	\$ 1,219	Funds Collected
\$ (150)	\$ (5,316)	\$ (5,466)	Funds Claimed
\$ (110)		\$ (110)	Funds Returned
\$ 959	\$ (5,316)	\$ (4,357)	Subtotal
\$ -	\$ (155,000)	\$ (155,000)	Funds Disbursed
\$ 123,063	\$ 316,101	\$ 439,164	Previous Year Fund Balance
\$ 124,022	\$ 155,786	\$ 279,807	Fund Balance

2014			
\$ 54,420	\$ 518,900	\$ 573,320	Funds Collected
\$ (45,649)	\$ (11,452)	\$ (57,100)	Funds Claimed
\$ (591)		\$ (591)	Funds Returned
\$ 8,180	\$ 507,448	\$ 515,629	Subtotal
\$ (61,103)	\$ (191,347)	\$ (252,450)	Funds Disbursed
\$ 175,986	\$ -	\$ 175,986	Previous Year Fund Balance
\$ 123,063	\$ 316,101	\$ 439,164	Fund Balance

2013			
\$ 106,952		\$ 106,952	Funds Collected
\$ (1,273)		\$ (1,273)	Funds Claimed
\$ (7,212)		\$ (7,212)	Funds Returned
\$ 98,467	\$ -	\$ 98,467	Subtotal
\$ (137,000)	\$ -	\$ (137,000)	Funds Disbursed
\$ 214,519	\$ -	\$ 214,519	Previous Year Fund Balance
\$ 175,986	\$ -	\$ 175,986	Fund Balance

2012			
\$ 127,537		\$ 127,537	Funds Collected
\$ (1,146)		\$ (1,146)	Funds Claimed
\$ (7,098)		\$ (7,098)	Funds Returned
\$ 119,292	\$ -	\$ 119,292	Subtotal
\$ (125,000)	\$ -	\$ (125,000)	Funds Disbursed
\$ 220,226	\$ -	\$ 220,226	Previous Year Fund Balance
\$ 214,519	\$ -	\$ 214,519	Fund Balance

2011			
\$ 141,092		\$ 141,092	Funds Collected
\$ (1,539)		\$ (1,539)	Funds Claimed
\$ (1,705)		\$ (1,705)	Funds Returned
\$ 137,847	\$ -	\$ 137,847	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 82,379	\$ -	\$ 82,379	Previous Year Fund Balance
\$ 220,226	\$ -	\$ 220,226	Fund Balance

2010			
\$ 98,156	\$ -	\$ 98,156	Funds Collected
\$ -	\$ -	\$ -	Funds Claimed
\$ (15,776)	\$ -	\$ (15,776)	Funds Returned
\$ 82,379	\$ -	\$ 82,379	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 82,379	\$ -	\$ 82,379	Fund Balance

Outstanding Unclaimed Funds

By Year Abandoned	Values	
	Sum of Amount	Number of Properties
1985	\$ 30.00	1
1986	\$ 4.48	1
1988	\$ 7.40	2
1989	\$ 115.75	2
1990	\$ 333.95	2
1991	\$ 258.22	1
1992	\$ 124.80	3
1993	\$ 1,596.38	2
1994	\$ 71.68	3
1995	\$ 2.20	2
1996	\$ 1,042.41	7
1997	\$ 1,967.54	9
1998	\$ 1,304.32	8
1999	\$ 4,939.48	13
2000	\$ 14,872.56	46
2001	\$ 6,864.86	34
2002	\$ 8,911.01	28
2003	\$ 9,998.66	39
2004	\$ 22,814.95	83
2005	\$ 45,006.38	68
2006	\$ 31,995.44	71
2007	\$ 43,739.97	116
2008	\$ 88,439.37	141
2009	\$ 40,393.74	96
2010	\$ 74,041.32	178
2011	\$ 16,748.88	123
2012	\$ 540,550.52	505
2013	\$ 913.40	7
2014	\$ 1,583.85	5
Grand Total	\$ 958,673.52	1596

Row Labels	Values	
	Number of Properties	Total Amount in Range
0.01-5000.01	1569	\$ 701,583.55
5000.01-10000.01	21	\$ 137,470.13
10000.01-15000.01	4	\$ 43,290.37
30000.01-35000.01	1	\$ 30,070.42
45000.01-50000.01	1	\$ 46,259.05
Grand Total	1596	\$ 958,673.52

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Helen M. Hirschbiel, General Counsel
Re: Proposed Formal Ethics Opinion on Indemnification of Third Party Payers

Issue

Consider the recommendation of the Legal Ethics Committee that the attached be issued as a Formal Ethics Opinion.

Options

1. Adopt the formal ethics opinion.
2. Decline to adopt the formal ethics opinion.

Discussion

The proposed opinion addresses what appears to be a growing issue for personal injury lawyers—the request that plaintiffs’ lawyers sign indemnification agreements as a condition of settlement of personal injury cases.

When a person is injured, Third Party Payers (read, Medicare) will advance funds to provide medical care for injuries related to the claims. Some funds are advanced prior to the personal injury settlement, but often Third Party Payers will also make payment in the future for accident-related medical care. Based on discussions with lawyers engaged in this area of practice, it is becoming common practice for defendants to demand an indemnification agreement from plaintiffs and their lawyers for failure to reimburse, or set aside funds to reimburse, for these medical expenses.

This opinion follows the lead of several other state ethics opinions in holding that a lawyer is prohibited under the rules of professional conduct from signing such an agreement. See, e.g., State Bar of Arizona Ethics Op No 03-05 (2003), Florida State Bar Staff Opinion 30310 (2011), Illinois State Bar Association Advisory Op 06-01 (2006), Supreme Court of Ohio Op 2011-1 (2011), Tennessee Formal Ethics Op 2010-F-154 (2010).

The LEC believes the opinion will provide helpful guidance to a wide range of practitioners. It is the result of many hours of discussion and debate and refining by the Legal Ethics Committee over the course of two years. It has undergone numerous revisions before being presented to the BOG.

Staff recommends adopting the proposed formal opinion.

Attachment

PROPOSED FORMAL ETHICS OPINION NO. 2014-XXX

**Lawyer Indemnification of Defendant for Failure to Reimburse,
or Set Aside Sufficient Funds to Reimburse Third Party Payer for
Medical Expenses Already Advanced, or for future Liability under
Medicare Secondary Payer Act**

Facts:

Lawyer A represents Party A against Party B in a personal injury case. Party A's Third Party Payers¹ have advanced funds to provide medical care for injuries related to the claims Party A asserts against Party B.

In order to settle Party A's case, Party B asks Lawyer A to join with Party A, as a condition of the disbursement and receipt of settlement proceeds, to agree to indemnify Party B, and his/her insurers, agents, and lawyers (collectively "representatives"), for any failure to reimburse, or set aside sufficient funds to reimburse, the Third Party Payer for medical expenses already advanced and for future liability under the Medicare Secondary Payer Act.

Questions:

1. As a condition of receipt and disbursement of settlement proceeds, may Lawyer A join with Party A in agreeing to indemnify Party B and her/his representatives for a failure to reimburse, or set aside sufficient funds to reimburse, Third Party Payers for medical expenses already advanced for Party A's care?²

2. As a condition of receipt and disbursement of settlement proceeds, may Lawyer A join with Party A in agreeing to indemnify Party B and her/his representatives for a failure to reimburse, or set aside sufficient funds to reimburse, Third Party Payers for future payment of Party A's care?³

¹ By "Third Party Payer" we mean Medicare under the current law. As mandatory insurance coverage expands, the definition of Third Party Payer may also change.

² Example of indemnification language: "I and my lawyer hereby agree to satisfy and hold defendant harmless from any and all bills, liens, subrogation claims, or other settlement rights or interests, whether known or unknown, including but not limited to any claims, demands, liens of Welfare, or conditional payment claims of Medicare or Medicaid, arising out of the above described incidents or events, the consequences thereof, or any medical care or treatment obtained as a result thereof or any expense incurred as a result."

³ Example of indemnification language: "I and my lawyer hereby agree to hold harmless, defend, and personally indemnify the settling party, as well as the settling party's corporations, hospital, clinics, officers, directors, shareholders, employees, agents, assigns, lawyers, and professional liability insurance companies, should the I and my lawyer fail to establish, obtain approval for, and/or fund a Medicare set-aside account."

Conclusions:

1. No.
2. No.

Discussion:

Question 1 involves a proposed indemnification for an amount hypothetically known, but not yet quantified or asserted by the Third Party Payer.⁴

Question 2 involves a proposed indemnification for an amount that is unknown and might never materialize. Under Question 2, a MSA may never be required because an amount may never materialize, in which case lawyer will never be liable for indemnification. If, however, the funds have been disbursed, and a MSA is then required, the client may be financially unable to deposit funds into the MSA when called upon to do so, making the lawyer squarely liable for indemnification.

Lawyer A's agreement to join with Party A to indemnify Party B as part of any settlement agreement is proscribed by Oregon RPC 1.7, which provides:

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

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

⁴ Assume that: (i) Medicare is Party A's primary third party payer; (ii) Party A suffers from a pre-existing condition, chronic fibromyalgia; and (iii) Medicare pays for the pain management treatment. Party A's "claim" is based upon an automobile accident. Before submitting its claim for "conditional payment," Medicare must determine which portion of the current round of pain management was for treatment of the pre-condition (fibromyalgia) and which portion was related to the automobile accident. This situation will result in a delay of Medicare's "claim" for reimbursement for an undetermined period of time.

(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.

By joining with Party A to indemnify Party B and his/her representatives, Lawyer A would become a surety for Party A and Party A's duty to pay present and future medical providers.⁵ As a surety, Lawyer A would have inchoate claims against Party A that could mature into claims against Party A if Party A fails to pay the third party payer or establish a required MSA.⁶ Those inchoate claims could include claims for reimbursement, restitution, and subrogation.⁷ As a result, there is a significant risk that Lawyer A's personal interest in avoiding such liability would materially limit Lawyer A's representation of Party A, the client. For example, lawyer may recommend that client reject an offer of settlement that is in the client's interest, but not in the lawyer's interest. Moreover, in advising client regarding whether to use settlement funds to pay Third Party Payer, lawyer's own interests in avoiding personal liability would likely interfere with lawyer's independent professional judgment in advising the client.

Notwithstanding the conflict, Oregon RPC 1.7(b) might allow Lawyer A to continue representation of Party A with Party A's informed consent, confirmed in writing.

⁵ *U.S. v. Frisk*, 675 F.2d 1079, 1083 (9th Cir,1982);

⁶ *South Trust Bank of Alabama, N.A. v. Webb-Stiles Co., Inc.*, 931 So.2d 706; 712 (2005)

⁷ Restatement (Third) of Surety and Guaranty §§ 22, 26, and 27 (1996)

Even if that were achieved, however, Oregon RPC 1.8(e) would still prevent Lawyer A from agreeing to indemnify Party B in either scenario. Oregon RPC 1.8(e) provides:

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Lawyer A's agreement to indemnify Party B and his/her representatives for not yet quantified conditional medical payments advanced by Third Party Payers for Party A's expenses would constitute "financial assistance" to Party A. The indemnification agreement in Question 1 would require Lawyer A to pay the pre-settlement medical expenses if Party A fails to do so. Correspondingly, the indemnification agreement presented in Question 2 would require Lawyer A to fund a MSA for future medical expenses if Party A fails to do so. In either case, Lawyer A would be providing financial assistance to Party A, the client.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-31, 2005-141, 2005-150, 2005-158, 2005-168, 2005-175, 2011-186, 2011-187, 2011-188

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 fourth batch of opinions that require amendments.

This fourth 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 2005-158, which the committee modified based on the Oregon Supreme Court's clarification of the term "aggregate settlement" in the case *In re Gatti*, 356 Or 32 (2014).

Staff recommends adopting the proposed amended opinions.

Attachments: Redline and Clean versions of OSB Formal Ethics Op Nos. 2005-31, 2005-141, 2005-150, 2005-158, 2005-103, 2005-168, 2005-175, 2011-186, 2011-187, and 2011-188.

FORMAL OPINION NO. 2005-141
Information Relating to the Representation of a Client:
Recycling of Documents

Facts:

Law Firm would like to contract with a recycling service to dispose of legal documents and other office paper that may contain information relating to the representation of clients.

Question:

May Law Firm recycle client documents using a recycling service?

Conclusion:

Yes.

Discussion:

Except under limited circumstances, a lawyer is prohibited from revealing information relating to the representation of a client. Oregon RPC 1.6.¹

¹ Oregon RPC 1.6 provides:

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

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

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

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

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

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

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

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment

Oregon RPC 5.3 provides:

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

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The reality of modern law practice requires disposal of a great deal of paper, some of which will contain information protected by Oregon RPC 1.6. Oregon RPC 1.6(c) requires lawyers to take reasonable efforts to prevent the inadvertent or unauthorized access. As long as Law Firm makes reasonable efforts to ensure that recycling company's conduct is compatible with Law Firm's

information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6. 2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.2–6.7 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§11, 59–60 (2003); and ABA Model Rule 5.3.

obligation to protect client information, the proposed contract is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately. *See also* OSB Formal Ethics [Op Nos 2005-129](#), [2005-44](#).

Approved by Board of Governors, August 2005.

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Question:

May Law Firm recycle client documents using a recycling service?

Conclusion:

Yes.

Discussion:

Except under limited circumstances, a lawyer is prohibited from revealing information relating to the representation of a client. Oregon RPC 1.6.¹

¹ Oregon RPC 1.6 provides:

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

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

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

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

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

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

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

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment

Oregon RPC 5.3 provides:

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

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person,

information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6. 2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

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

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.2–6.7 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§11, 59–60 (2003); and ABA Model Rule 5.3.

and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The reality of modern law practice requires disposal of a great deal of paper, some of which will contain information protected by Oregon RPC 1.6. Oregon RPC 1.6(c) requires lawyers to take reasonable efforts to prevent the inadvertent or unauthorized access. As long as Law Firm makes reasonable efforts to ensure that recycling company's conduct is compatible with Law Firm's obligation to protect client information, the proposed contract is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately. *See also* OSB Formal Ethics [Op Nos 2005-129, 2005-44](#).

Approved by Board of Governors, August 2005.

FORMAL OPINION NO. 2005-150

Competence and Diligence: Inadvertent Disclosure of Privileged Information

Facts:

Lawyer A inadvertently includes a privileged document in a set of documents provided to Lawyer B in response to a discovery request. Lawyer A discovers the mistake, calls Lawyer B, and asks Lawyer B to return the privileged document without examining it further.

Question:

Must Lawyer B return the document?

Conclusion:

No, qualified.

Discussion:

Oregon RPC 4.4(b) provides:

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

By its express terms, Oregon RPC 4.4(b) does not require the recipient of the document to return the original nor does it prohibit the recipient from openly claiming and litigating the right to retain the document if there is a nonfrivolous basis on which to do so. The purpose of the rule is to notify the sender and permit her to take adequate protective measures, such as seek return of the documents through court order. ABA Model Rule 4.4(b) cmt. 2. The obligation of a lawyer to do anything beyond notify the sender, such as return the document, is a legal matter beyond the scope of the Oregon RPCs. *Id.*; see *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or. 336, 343, 838 P.2d 1069, 1073 (1992) (establishing that the determination of waiver of privilege by inadvertent disclosure is a preliminary issue to be determined by the court under OEC 104). Comment [3] to ABA Model Rule 4.4(b), which Oregon RPC 4.4(b) follows, also suggests that a lawyer's decision on whether to return, destroy, or delete an inadvertently sent document unread is a matter of professional judgment ordinarily reserved to the lawyer.

RPC 4.4(b) does not distinguish between litigation and non-litigation situations. Further RPC 4.4(b) is not limited to documents containing information protected by Oregon RPC 1.6, and it is not limited to documents sent by another lawyer. Indeed, RPC 4.4(b) also applies to an electronic document's metadata that may be hidden within an electronic document. See OSB Formal Op. 2011-187 (2011). Moreover, the rule applies whether or not the recipient lawyer reads the document before learning that it was inadvertently sent.

However, if applicable court rules, stipulations or court orders, or substantive law require a lawyer to return documents or to cease reading documents as soon as the lawyer realizes that they were inadvertently produced, a lawyer who does not do so would be subject to discipline or disqualification on other grounds. *See, e.g.*, Oregon RPC 3.3(a)(5) (lawyer shall not “knowingly . . . engage in other illegal conduct”); Oregon RPC 3.4(c) (lawyer shall not “knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists”); Oregon RPC 8.4(a)(4) (prohibiting “conduct that is prejudicial to the administration of justice”); *Richards v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wa. 2001) (disqualifying counsel for retaining and using privileged materials). Further, when the delivery of privileged documents is the result of other circumstances aside from the sender’s inadvertence, Oregon RPC 4.4(b) does not apply. *See* OSB Formal Op. No. 2011-186 (2011); ABA Formal Op. No. 06-440.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §6.9 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§120, 105, 110 (2003); and ABA Model Rule 4.4.

Approved by Board of Governors, August 2005.

FORMAL OPINION NO. 2005-150

Competence and Diligence: Inadvertent Disclosure of Privileged Information

Facts:

Lawyer A inadvertently includes a privileged document in a set of documents provided to Lawyer B in response to a discovery request. Lawyer A discovers the mistake, calls Lawyer B, and asks Lawyer B to return the privileged document without examining it further.

Question:

Must Lawyer B return the document?

Conclusion:

No, qualified.

Discussion:

Oregon RPC 4.4(b) provides:

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

~~(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.~~

~~It may be helpful to begin with what the rule does not say. It does not distinguish between litigation and nonlitigation situations, it is not limited to documents containing information protected by Oregon RPC 1.6, and it is not limited to documents sent by another lawyer.¹ Moreover, the rule applies whether or not the recipient lawyer reads the document before learning that it was inadvertently sent.~~

~~By its express terms, Oregon RPC 4.4(b) does not require the recipient of the document to return the original nor does it prohibit the recipient from openly claiming and litigating the right to retain the document if there is a nonfrivolous basis on which to do so. The purpose of the rule is to notify the sender and permit her ~~permit the sender~~ to take adequate protective measures, such as seek return of the documents through court order. ABA Model Rule 4.4(b) cmt. 2. The obligation of a lawyer to do anything beyond notify the sender, such as return the document, is a legal matter beyond the scope of the Oregon RPCs. Id.; see *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or. 336, 343, 838 P.2d 1069, 1073 (1992) (establishing that the determination of waiver of privilege by inadvertent disclosure is a preliminary issue of fact to be determined~~

¹ Although Oregon RPC 4.4(b) requires notice to the “sender,” we assume that, pursuant to Oregon RPC 4.2, notice should be given to the sender’s counsel if the recipient knows that the sender has counsel.

~~by the trial court under OEC 104). ; whether the recipient lawyer is required to return the documents or take other measures is a matter of law beyond the scope of the Oregon RPC, as is the question of whether the privileged status of such documents has been waived. ABA Model Rule 4.4(b) comment [2].² Cf. ABA Formal Op Nos 94-382, 92-368. Cf. *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or 336, 838 P2d 1069 (1992) (waiver by disclosure in response to discovery request; no evidence of mistake, inadvertence, or lack of client authorization); *GPL Treatment, Ltd. v. Louisiana Pacific Corp.*, 133 Or App 633, 638-639, 894 P2d 470 (1995), *aff'd on other grounds*, 323 Or 116 (1996) (no error in trial court's exclusion of evidence on determination of no waiver by inadvertent disclosure, no awareness by sender of recipient's intent to offer as evidence until offered at trial). Comment [3] to the ABA Model Rule 4.4(b), which Oregon RPC 4.4(b) follows, also suggests that a lawyer's decision on whether to return, destroy, or delete an inadvertently sent document unread is a matter of professional judgment ordinarily reserved to the lawyer.³~~

~~RPC 4.4(b) does not distinguish between litigation and non-litigation situations.— Further RPC 4.4(b) is not limited to documents containing information protected by Oregon RPC 1.6, and it is not limited to documents sent by another lawyer.⁴ Indeed, RPC 4.4(b) also applies to an electronic document's metadata that may be hidden within an electronic document. See OSB Formal Op. 2011-187 (2011). Moreover, the rule applies whether or not the recipient lawyer reads the document before learning that it was inadvertently sent.~~

~~However, if applicable court rules, stipulations or court orders, or substantive law require a lawyer to return documents or to cease reading documents as soon as the lawyer realizes that they were inadvertently produced, a lawyer who does not do so would be subject to discipline or disqualification on other grounds. See, e.g., Oregon RPC 3.3(a)(5) (lawyer shall not “knowingly . . . engage in other illegal conduct”); Oregon RPC 3.4(c) (lawyer shall not “knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists”); Oregon RPC 8.4(a)(4) (prohibiting “conduct that is prejudicial to the administration of justice”); *Richards v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wa. 2001) (disqualifying counsel for retaining and using privileged materials). Further, when the delivery of privileged documents is the result of other circumstances aside from the sender's inadvertence, Oregon RPC 4.4(b) does not apply. See OSB Formal Op. No. 2011-186 (2011); ABA Formal Op. No. 06-440.~~

~~COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §6.9 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§120, 105, 110 (2003); and ABA Model Rule 4.4.~~

²~~—The comment to the ABA Model Rule also suggests that a lawyer's decision whether to return an inadvertently sent document unread is a matter of professional judgment ordinarily reserved to the lawyer in accordance with Oregon RPC 1.2 and 1.4.~~

~~—COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §6.9 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§120, 105, 110 (2003); and ABA Model Rule 4.4.~~

Approved by Board of Governors, August 2005.



FORMAL OPINION NO. 2005-158
Conflicts of Interest, Current Clients:
Representing Driver and Passengers in
Personal Injury/Property Damage Claims

Facts:

Lawyer is asked to represent both the driver and the passengers of the same motor vehicle in personal injury/property damage claims for negligence against the adverse driver.

Questions:

1. May Lawyer represent both the driver and the passengers if there is a question concerning the liability of the driver for any injury suffered by the passengers?
2. May Lawyer represent both the driver and the passengers if the passengers merely make claims against the driver's insurance for personal injury protection (PIP) benefits?
3. May Lawyer represent both the driver and the passengers if the aggregate available assets, including insurance, of the adverse driver are insufficient to cover all claims?

Conclusions:

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

Discussion:

This opinion deals only with multiple current-client conflicts of interest in the specific context of a driver and passengers who are in the same motor vehicle that collides with another motor vehicle and have suffered personal injuries or property damage as a result of that collision. Other multiple current-client conflicts-of-interest problems are dealt with in various other opinions. *See* OSB Formal Ethics Op Nos 2005-27 (representing trade association and member), 2005-30 (representing insurer and insured), 2005-46 (group legal assistance plans), 2005-82 (representing multiple defendants in a criminal matter), 2005-86 (representing husband and wife in bankruptcy, wills, and dissolution).

Oregon RPC 1.7 provides:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client;
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

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

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

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

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

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

....

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

Additionally, Oregon RPC 1.8(g) provides:

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

The analysis for determining the existence of conflicts between multiple current clients requires the following steps:

- (1) Determine who is or will be, and who is not and will not be, a client.
- (2) Determine whether there is direct adversity or other conflict within the meaning of Oregon RPC 1.7(a).
- (3) Determine whether any such conflict can or cannot be waived pursuant to Oregon RPC 1.7(b).

(4) Obtain any required waivers by informed consent and do not represent parties as to whom a nonwaivable conflict exists.

(5) Monitor the waivable conflicts of interest during the representation to determine whether additional disclosure or subsequent withdrawal is required.

Conflicts between multiple plaintiffs in motor vehicle cases can arise over both liability and damages issues.

1. *Simultaneous Representation When the Plaintiff Driver's Liability Is an Issue.*

If the driver has no liability for the injury of the passengers, there is no conflict that would limit or prohibit simultaneous representation of both the driver and the passengers. However, contributory fault is often asserted by the adverse driver or may be discovered during the course of the representation. This defense may create a nonwaivable conflict of interest that prohibits the simultaneous representation. If the nonwaivable conflict is discovered after the representation has commenced, it will require Lawyer to stop representing both the driver and the passengers unless either the driver or the passengers agree to become former clients and consent to Lawyer's continued representation of the other. *See Oregon RPC 1.9; OSB Formal Ethics Op Nos 2005-11, 2005-17.*

The mere fact that the defendant has alleged contributory fault by the driver does not necessarily create a nonwaivable conflict. The passengers may disagree with the adverse driver's factual contentions or, if the driver and the passengers are closely related, the passengers may not wish to pursue intrafamily claims. Assuming that these decisions not to pursue claims are made voluntarily and without influence arising from Lawyer's obligations to the driver, a nonwaivable conflict does not exist.

Nevertheless, and even in the limited situations in which the passengers do not wish to pursue a claim against the driver, the defendant's contributory fault claim may have a significant effect on the passengers' recovery. Although this possibility might not create a nonwaivable or even waivable conflict between the driver and the passengers, Lawyer should still consider the matter and, if appropriate, review it with the prospective clients and obtain any necessary consent.

2. *Simultaneous Representation and PIP Claims.*

There is no conflict of interest in this situation because personal injury protection (PIP) benefits are based on a per capita and not on an aggregate limit and are not based on the fault of the driver. ORS 742.520, 742.524. Lawyer may proceed to represent passengers in a claim against the driver's insurance carrier for PIP benefits.

3. *Simultaneous Representation When Resources Are Insufficient to Cover All Claims.*

There is no conflict of interest if Lawyer knows that the aggregate resources available to the driver and the passengers are adequate to cover all possible claims.¹ If, however, an

¹ Oregon RPC 1.0(h) provides:

aggregate settlement is offered, the special requirements of Oregon RPC 1.8(g), quoted above, must be met.²

If, over time, the client damages escalate and the aggregate resources become inadequate to cover all damages for all clients insofar as they can reasonably be estimated or assessed,³ Lawyer can continue the representation only if all clients consent after full disclosure to limit Lawyer's representation to collecting all possible resources from the adverse party or parties.⁴ This consent should be obtained no later than the time at which it is learned that the aggregate of defense resources is inadequate. The clients may agree, however, to accomplish any subsequent division of resources through mediation or arbitration. Lawyer can assist in establishing the mediation or arbitration process and in providing information to all affected clients but cannot actively represent one current client against another current client.

Approved by Board of Governors, August 2005.

“Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person’s knowledge may be inferred from circumstances.

² In *In re Gatti*, 356 Or 32 (2014), the Oregon Supreme Court adopted the following American Law Institute definition of “aggregate settlement,” as that term is used in RPC 1.8(g):

“Definition of a Non-Class Aggregate Settlement

‘(a) A non-class aggregate settlement is a settlement of the claims of two or more individual claimants in which the resolution of the claims is interdependent.

‘(b) The resolution of claims in a non-class aggregate settlement is interdependent if:

‘(1) the defendant’s acceptance of the settlement is contingent upon the acceptance by a number or specified percentage of claimants; or

‘(2) the value of each claim is not based solely on individual case-by-case facts and negotiations.’”

Gatti, *supra*, a 48 (quoting from PRINCIPALS OF LAW OF AGGREGATE LITIGATION § 3.16).

³ A lawyer is not required, for example, to value the cases on an unreasonably and unrealistically high basis.

⁴ See the discussion in THE ETHICAL OREGON LAWYER §§9.1, 9.9 (Oregon CLE 2003).

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER, *supra*, §§2.2, 3.5, 3.13, 9.14; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121, 128 (2003); and ABA Model Rules 1.7–1.8.

FORMAL OPINION NO. 2005-158
Conflicts of Interest, Current Clients:
Representing Driver and Passengers in
Personal Injury/Property Damage Claims

Facts:

Lawyer is asked to represent both the driver and the passengers of the same motor vehicle in personal injury/property damage claims for negligence against the adverse driver.

Questions:

1. May Lawyer represent both the driver and the passengers if there is a question concerning the liability of the driver for any injury suffered by the passengers?
2. May Lawyer represent both the driver and the passengers if the passengers merely make claims against the driver's insurance for personal injury protection (PIP) benefits?
3. May Lawyer represent both the driver and the passengers if the aggregate available assets, including insurance, of the adverse driver are insufficient to cover all claims?

Conclusions:

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

Discussion:

This opinion deals only with multiple current-client conflicts of interest in the specific context of a driver and passengers who are in the same motor vehicle that collides with another motor vehicle and have suffered personal injuries or property damage as a result of that collision. Other multiple current-client conflicts-of-interest problems are dealt with in various other opinions. *See* OSB Formal Ethics Op Nos 2005-27 (representing trade association and member), 2005-30 (representing insurer and insured), 2005-46 (group legal assistance plans), 2005-82 (representing multiple defendants in a criminal matter), 2005-86 (representing husband and wife in bankruptcy, wills, and dissolution).

Oregon RPC 1.7 provides:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client;
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

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

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

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

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

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

....

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

Additionally, Oregon RPC 1.8(g) provides:

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

The analysis for determining the existence of conflicts between multiple current clients requires the following steps:

- (1) Determine who is or will be, and who is not and will not be, a client.
- (2) Determine whether there is direct adversity or other conflict within the meaning of Oregon RPC 1.7(a).
- (3) Determine whether any such conflict can or cannot be waived pursuant to Oregon RPC 1.7(b).

(4) Obtain any required waivers by informed consent and do not represent parties as to whom a nonwaivable conflict exists.

(5) Monitor the waivable conflicts of interest during the representation to determine whether additional disclosure or subsequent withdrawal is required.

Conflicts between multiple plaintiffs in motor vehicle cases can arise over both liability and damages issues.

1. *Simultaneous Representation When the Plaintiff Driver's Liability Is an Issue.*

If the driver has no liability for the injury of the passengers, there is no conflict that would limit or prohibit simultaneous representation of both the driver and the passengers. However, contributory fault is often asserted by the adverse driver or may be discovered during the course of the representation. This defense may create a nonwaivable conflict of interest that prohibits the simultaneous representation. If the nonwaivable conflict is discovered after the representation has commenced, it will require Lawyer to stop representing both the driver and the passengers unless either the driver or the passengers agree to become former clients and consent to Lawyer's continued representation of the other. *See Oregon RPC 1.9; OSB Formal Ethics Op Nos 2005-11, 2005-17.*

The mere fact that the defendant has alleged contributory fault by the driver does not necessarily create a nonwaivable conflict. The passengers may disagree with the adverse driver's factual contentions or, if the driver and the passengers are closely related, the passengers may not wish to pursue intrafamily claims. Assuming that these decisions not to pursue claims are made voluntarily and without influence arising from Lawyer's obligations to the driver, a nonwaivable conflict does not exist.

Nevertheless, and even in the limited situations in which the passengers do not wish to pursue a claim against the driver, the defendant's contributory fault claim may have a significant effect on the passengers' recovery. Although this possibility might not create a nonwaivable or even waivable conflict between the driver and the passengers, Lawyer should still consider the matter and, if appropriate, review it with the prospective clients and obtain any necessary consent.

2. *Simultaneous Representation and PIP Claims.*

There is no conflict of interest in this situation because personal injury protection (PIP) benefits are based on a per capita and not on an aggregate limit and are not based on the fault of the driver. ORS 742.520, 742.524. Lawyer may proceed to represent passengers in a claim against the driver's insurance carrier for PIP benefits.

3. *Simultaneous Representation When Resources Are Insufficient to Cover All Claims.*

There is no conflict of interest if Lawyer knows that the aggregate resources available to the driver and the passengers are adequate to cover all possible claims.¹ If, however, an

¹ Oregon RPC 1.0(h) provides:

aggregate ~~or all or nothing~~ settlement is offered, the special requirements of Oregon RPC 1.8(g), quoted above, must be met.²

If, over time, the client damages escalate and the aggregate resources become inadequate to cover all damages for all clients insofar as they can reasonably be estimated or assessed,³ Lawyer can continue the representation only if all clients consent after full disclosure to limit Lawyer's representation to collecting all possible resources from the adverse party or parties.⁴ This consent should be obtained no later than the time at which it is learned that the aggregate of defense resources is inadequate. The clients may agree, however, to accomplish any subsequent division of resources through mediation or arbitration. Lawyer can assist in establishing the mediation or arbitration process and in providing information to all affected clients but cannot actively represent one current client against another current client.

Approved by Board of Governors, August 2005.

“Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person's knowledge may be inferred from circumstances.

² In *In re Gatti*, 356 Or 32 (2014), the Oregon Supreme Court adopted the following American Law Institute definition of “aggregate settlement,” as that term is used in RPC 1.8(g):

“Definition of a Non-Class Aggregate Settlement

‘(a) A non-class aggregate settlement is a settlement of the claims of two or more individual claimants in which the resolution of the claims is interdependent.

‘(b) The resolution of claims in a non-class aggregate settlement is interdependent if:

‘(1) the defendant's acceptance of the settlement is contingent upon the acceptance by a number or specified percentage of claimants; or

‘(2) the value of each claim is not based solely on individual case-by-case facts and negotiations.’”

Gatti, supra, a 48 (quoting from PRINCIPALS OF LAW OF AGGREGATE LITIGATION § 3.16).

³ A lawyer is not required, for example, to value the cases on an unreasonably and unrealistically high basis.

⁴ See the discussion in THE ETHICAL OREGON LAWYER §§9.1, 9.9 (Oregon CLE 2003).

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER, *supra*, §§2.2, 3.5, 3.13, 9.14; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121, 128 (2003); and ABA Model Rules 1.7–1.8.

FORMAL OPINION NO. 2005-168
Lawyer-Owned Lawyer Referral Service

Facts:

Lawyer wishes to open a for-profit lawyer referral service available to the public. The service will be called “XYZ Lawyer Referral Service.” Lawyer will be the sole owner of XYZ, which Lawyer plans to incorporate as an independent entity. Lawyer plans to advertise the service in the local media.

Lawyer intends to operate XYZ Lawyer Referral Service out of Lawyer’s own law office. Lawyer and Lawyer’s legal secretary will screen incoming calls to determine the issues raised by the callers. Lawyer has established several “panels” by substantive area to handle the matters referred. On occasion, however, Lawyer may provide legal advice directly to callers as well as through XYZ Lawyer Referral Service. Lawyers to whom work is referred are expected to remit 15% of the fees generated on referred work to XYZ Lawyer Referral Service, up to a maximum of \$5,000 per referral.

Questions:

1. May Lawyer have an ownership interest in a for-profit lawyer referral service?
2. May Lawyer participate in the management of a for-profit lawyer referral service?
3. May a lawyer referral service provide legal advice to callers in the course of “screening” their inquiries?
4. May a lawyer referral service split fees with the lawyers to whom it refers work?

Conclusions:

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

Discussion:

1. *Lawyer Ownership of For-Profit Lawyer Referral Service.*

The rules of professional conduct do not prohibit for-profit lawyer referral services. Nevertheless, the referral service must not practice law and must not otherwise assist the lawyer-owner in violations of the Oregon RPCs. *See, e.g.*, OSB Formal Ethics [Op Nos 2005-10](#) (lawyer permitted to operate real estate firm and title insurance company), [2005-101](#) (lawyer and psychologist could form domestic relations mediation service), [2005-107](#) (lawyer may join nonlawyer in preparing and marketing audiotapes and videotapes on law-related subjects), [2005-137](#) (lawyer could participate in joint venture with nonlawyer to offer interactive, online legal information service). *But see* OSB Formal Ethics [Op Nos 2005-10](#), [2005-106](#), [2005-108](#) (lawyer cannot use other businesses for improper in-person solicitation of legal work or misrepresent nature of services provided).

2. *Lawyer Management of For-Profit Lawyer Referral Service.*

A lawyer-owner may provide general management and administration of a referral service. *See* OSB Formal Ethics [Op No 2005-138](#) (legal aid service could provide general administration over associated referral service). This would include, for example, hiring and supervising operations management for the referral service. Similarly, the lawyer-owner may operate the referral service at the same physical premises as the lawyer's law practice. *See* OSB Formal Ethics [Op No 2005-2](#) (lawyer may share office space with other businesses).

Even in these circumstances, however, a lawyer-owner should take precautions to avoid participating in the actual "screening" of incoming inquiries in light of the risk that a caller (1) might impart confidential information to the lawyer and thereby create potential conflicts with the lawyer's other clients or (2) would form the reasonable belief that the lawyer had become the caller's lawyer. *See* OEC 503(1)(a) (*client* means a person "who consults a lawyer with a view to obtaining professional legal services from the lawyer" for purposes of the lawyer-client privilege); OSB Formal Ethics [Op Nos 2005-100](#) (preliminary discussions with an eye toward potential employment of a lawyer are protected by the lawyer-client privilege), [2005-138](#); *In re Weidner*, 310 Or 757, 770–771, 801 P2d 828 (1990) (outlining "reasonable expectations of the client" test for determining whether lawyer-client relationship has been formed).

At the other end of the spectrum is *In re Fellows*, 9 DB Rptr 197, 199–200 (1995). The disciplined lawyer in *Fellows* operated a referral service called "Case Evaluation & Referral Service" that was not an independent business but was merely an assumed business name for the lawyer. Such conduct violates both Oregon RPC 7.1 and Oregon RPC 8.4(a)(3). In addition, the operation of a lawyer-owned referral service in this manner would constitute doing business with a client within the meaning of Oregon RPC 1.8(a).

3. *Legal Advice by the Referral Service to Callers.*

Because a referral service itself is not licensed to practice law, it may not provide legal advice to the public. ORS 9.160 (only those licensed to practice law may provide legal advice to third parties). Similarly, a lawyer may not assist a nonlawyer in the unlawful practice of law.

Oregon RPC 5.5(a). Consequently, a lawyer may not assist a referral service in its delivering legal advice to the public either. OSB Formal Ethics [Op No 2005-87](#).

4. *Fee-Splitting Between the For-Profit Referral Service and Participating Lawyers.*

Oregon RPC 5.4(a) prohibits lawyers from sharing fees with nonlawyers outside very narrowly defined exceptions not relevant to the question presented here. Because a referral service itself is not licensed to practice law, lawyers participating in such a service may not split their fees with the service. RPC 5.4(a)(5) does allow for the splitting of fees with a bar-sponsored or not-for profit lawyer referral service, but not with a for-profit referral service such as the one here.

Oregon RPC 7.2(b) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

Lawyers may therefore pay the marketing charges associated with participating in lawyer referral services. *See also* OSB Formal Ethics [Op No 2005-73](#) (acceptance of referrals). Payments made to a lawyer referral service, therefore, must be limited to marketing charges only and must not include a fee-split.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.28 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§3, 10 (2003); and ABA Model Rule 7.3(d).

FORMAL OPINION NO. 2005-168
Lawyer-Owned Lawyer Referral Service

Facts:

Lawyer wishes to open a for-profit lawyer referral service available to the public. The service will be called “XYZ Lawyer Referral Service.” Lawyer will be the sole owner of XYZ, which Lawyer plans to incorporate as an independent entity. Lawyer plans to advertise the service in the local media.

Lawyer intends to operate XYZ Lawyer Referral Service out of Lawyer’s own law office. Lawyer and Lawyer’s legal secretary will screen incoming calls to determine the issues raised by the callers. Lawyer has established several “panels” by substantive area to handle the matters referred. On occasion, however, Lawyer may provide legal advice directly to callers as well as through XYZ Lawyer Referral Service. Lawyers to whom work is referred are expected to remit 15% of the fees generated on referred work to XYZ Lawyer Referral Service, up to a maximum of \$5,000 per referral.

Questions:

1. May Lawyer have an ownership interest in a for-profit lawyer referral service?
2. May Lawyer participate in the management of a for-profit lawyer referral service?
3. May a lawyer referral service provide legal advice to callers in the course of “screening” their inquiries?
4. May a lawyer referral service split fees with the lawyers to whom it refers work?

Conclusions:

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

Discussion:

1. *Lawyer Ownership of For-Profit Lawyer Referral Service.*

The rules of professional conduct do not prohibit Oregon permits for-profit lawyer referral services. Oregon RPC 7.2(c) provides:

~~————(c)—— A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~————(1)—— the operation of such plan, service or organization does not result in the lawyer or the lawyer’s firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;~~

~~————(2)—— the recipient of legal services, and not the plan, service or organization, is recognized as the client;~~

~~————(3)—— no condition or restriction on the exercise of any participating lawyer’s professional judgment on behalf of a client is imposed by the plan, service or organization; and~~

~~————(4)—— such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

Nevertheless, the referral service must not practice law and must not otherwise assist the lawyer-owner in violations of the Oregon RPCs. *See, e.g.*, OSB Formal Ethics [Op Nos 2005-10](#) (lawyer permitted to operate real estate firm and title insurance company), [2005-101](#) (lawyer and psychologist could form domestic relations mediation service), [2005-107](#) (lawyer may join nonlawyer in preparing and marketing audiotapes and videotapes on law-related subjects), [2005-137](#) (lawyer could participate in joint venture with nonlawyer to offer interactive, online legal information service). *But see* OSB Formal Ethics [Op Nos 2005-10](#), [2005-106](#), [2005-108](#) (lawyer cannot use other businesses for improper in-person solicitation of legal work or misrepresent nature of services provided).

2. *Lawyer Management of For-Profit Lawyer Referral Service.*

A lawyer-owner may provide general management and administration of a referral service. *See* OSB Formal Ethics [Op No 2005-138](#) (legal aid service could provide general administration over associated referral service). This would include, for example, hiring and supervising operations management for the referral service. Similarly, the lawyer-owner may operate the referral service at the same physical premises as the lawyer’s law practice. *See* OSB Formal Ethics [Op No 2005-2](#) (lawyer may share office space with other businesses).

Even in these circumstances, however, a lawyer-owner should take precautions to avoid participating in the actual “screening” of incoming inquiries in light of the risk that a caller (1) might impart confidential information to the lawyer and thereby create potential conflicts with the lawyer’s other clients or (2) would form the reasonable belief that the lawyer had become the caller’s lawyer. *See* OEC 503(1)(a) (*client* means a person “who consults a lawyer with a view to obtaining professional legal services from the lawyer” for purposes of the lawyer-client privilege); OSB Formal Ethics [Op Nos 2005-100](#) (preliminary discussions with an eye

toward potential employment of a lawyer are protected by the lawyer-client privilege), [2005-138](#); *In re Weidner*, 310 Or 757, 770–771, 801 P2d 828 (1990) (outlining “reasonable expectations of the client” test for determining whether lawyer-client relationship has been formed).

At the other end of the spectrum is *In re Fellows*, 9 DB Rptr 197, 199–200 (1995). The disciplined lawyer in *Fellows* operated a referral service called “Case Evaluation & Referral Service” that was not an independent business but was merely an assumed business name for the lawyer. Such conduct violates both Oregon RPC 7.1 and Oregon RPC 8.4(a)(3). In addition, the operation of a lawyer-owned referral service in this manner would constitute doing business with a client within the meaning of Oregon RPC 1.8(a).

3. *Legal Advice by the Referral Service to Callers.*

Because a referral service itself is not licensed to practice law, it may not provide legal advice to the public. ORS 9.160 (only those licensed to practice law may provide legal advice to third parties). Similarly, a lawyer may not assist a nonlawyer in the unlawful practice of law. Oregon RPC 5.5(a). Consequently, a lawyer may not assist a referral service in its delivering legal advice to the public either. OSB Formal Ethics [Op No 2005-87](#).

4. *Fee-Splitting Between the [For-Profit Referral Service](#) and Participating Lawyers.*

Oregon RPC 5.4(a) prohibits lawyers from sharing fees with nonlawyers outside very narrowly defined exceptions not relevant to the question presented here. Because a referral service itself is not licensed to practice law, lawyers participating in such a service may not split their fees with the service. [RPC 5.4\(a\)\(5\) does allow for the splitting of fees with a bar-sponsored or not-for profit lawyer referral service, but not with a for-profit referral service such as the one here.](#)

Oregon RPC 7.2(~~ab~~) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.~~(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

Lawyers may therefore pay the marketing charges associated with participating in lawyer referral services. *See also* OSB Formal Ethics [Op No 2005-73](#) (acceptance of referrals). Payments made to a lawyer referral service, therefore, must be limited to marketing charges only and must not include a fee-split.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.28 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§3, 10 (2003); and ABA Model Rule 7.3(d).

FORMAL OPINION NO. 2005-175
Information About Legal Services:
Lawyer Membership in Business Referral Clubs

Facts:

Lawyer has been asked to join the local chapter of a business and professional “networking association” (the Association). According to its published policies, the purpose of the Association is to facilitate the referral of business between members. Attendance at monthly meetings is emphasized and making referrals is a condition of maintaining membership. Members must follow up on referrals received through the Association, although the Association’s rules acknowledge that the formal standards of ethics of a profession supersede any Association rules.

Question:

May Lawyer participate in the activities of the Association?

Conclusion:

No.

Discussion:

Oregon RPC 7.2(b) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

Similarly, Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Participation in the activities of the Association in accordance with its stated policies would violate both of those rules. The stated purpose of the Association is the exchange of

business referrals between members. A business referral is a thing of value. If Lawyer refers Lawyer's clients to Association members, then in making the referrals Lawyer is giving something of value in exchange for the other member to promote, recommend, or secure Lawyer's employment. This exchange violates Oregon RPC 7.2(b). OSB Formal Ethics [Op No 2005-2](#) similarly concludes that a lawyer cannot ethically enter into an agreement for reciprocal referrals between a lawyer and a trust company because the quid pro quo nature of the arrangement would violate this rule.

Further, if other Association members promise to refer clients to Lawyer, then Lawyer will receive something of value in exchange for making referrals of Lawyer's clients to other nonlawyer members of the Association. This exchange violates Oregon RPC 5.4(e).¹

Business development is a fact of life for modern professionals and the rules of professional conduct do not prohibit participation in groups at which lawyers can network and learn about business opportunities. The problem with participation in the Association described here is not that it, like many civic groups, limits membership to one person in an occupation or profession. The ethical prohibition is against giving or receiving reciprocal referrals. Moreover, substance must rule over form and a lawyer cannot join a group such as the Association on the premise that the rules are suspended for lawyers if, in fact, the referral requirements are a condition of membership.

Even in a group that does not require reciprocal referrals, lawyers must be careful that their follow-up on any referrals received is consistent with the rules of professional conduct. Oregon RPC 7.3(a) 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.

The Association's activities do not fall within any of the exceptions set forth in this rule. Accordingly, even if the networking group does not require reciprocal referrals, Lawyer cannot initiate any personal follow-up on a referral except in writing, unless Lawyer knows that the person making the referral has been expressly authorized by the prospective client to have the

¹ This exchange of referrals is generally distinguishable from legal service organizations and similar plans. Oregon RPC 7.2(b)(2) expressly allows a lawyer or law firm to pay the usual charges of a legal services plan or not-for-profit lawyer referral service. *See, e.g.*, OSB Formal Ethics [Op Nos 2005-79, 2005-168](#). The Association is not one of those allowed plans or services because the Association's referrals are not limited solely to referrals to lawyers.

lawyer make the personal contact. *See* OSB Formal Ethics [Op No 2005-100](#); *In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer did not initiate contact with prospective client when he acted on good-faith belief that third party was conveying prospective client's request for contact). With regard to potential clients who are known to be in need of legal services in a particular matter, see also Oregon RPC 7.3(c) and OSB Formal Ethics [Op No 2005-127](#).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 3.39 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §9 (2003); and ABA Model Rules 5.4, 7.2.

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Lawyer Membership in Business Referral Clubs

Facts:

Lawyer has been asked to join the local chapter of a business and professional “networking association” (the Association). According to its published policies, the purpose of the Association is to facilitate the referral of business between members. Attendance at monthly meetings is emphasized and making referrals is a condition of maintaining membership. Members must follow up on referrals received through the Association, although the Association’s rules acknowledge that the formal standards of ethics of a profession supersede any Association rules.

Question:

May Lawyer participate in the activities of the Association?

Conclusion:

No.

Discussion:

Oregon RPC 7.2(~~ba~~) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

~~(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as~~

~~a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.1~~

Similarly, Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Participation in the activities of the Association in accordance with its stated policies would violate both of those rules. The stated purpose of the Association is the exchange of business referrals between members. A business referral is a thing of value. If Lawyer ~~commits to refer~~refers Lawyer's clients to Association members, then in making the referrals Lawyer is giving something of value in exchange for the other member to promote, recommend, or secure Lawyer's employment. This exchange violates Oregon RPC 7.2(~~ba~~). OSB Formal Ethics [Op No 2005-2](#) similarly concludes that a lawyer cannot ethically enter into an agreement for reciprocal referrals between a lawyer and a trust company because the quid pro quo nature of the arrangement would violate this rule.

~~Moreover~~Further, if other Association members promise to refer clients to Lawyer, then Lawyer will receive something of value in exchange for making referrals of Lawyer's ~~own clients~~clients to other nonlawyer members of the Association. This exchange violates Oregon RPC 5.4(e).²

Business development is a fact of life for modern professionals and the rules of professional conduct do not prohibit participation in groups at which lawyers can network and learn about business opportunities. The problem with participation in the Association described here is not that it, like many civic groups, limits membership to one person in an occupation or profession. The ethical prohibition is against giving or receiving reciprocal referrals. Moreover, substance must rule over form and a lawyer cannot join a group such as the Association on the

¹ ~~Oregon RPC 7.2(c) governs the circumstances under which a lawyer may accept referrals from a prepaid legal services plan, lawyer referral service, legal service organization, or other similar plan, service, or organization. Oregon RPC 1.17(c) governs the sale of a law practice and allows the selling lawyer to recommend the purchasing lawyer if the selling lawyer "has made a reasonable effort to arrive at an informed opinion."~~

² This exchange of referrals is generally distinguishable from legal service organizations and similar plans. ~~As noted in footnote 1,~~ Oregon RPC 7.2(~~be~~)(2) expressly allows a lawyer or law firm to take part in a prepaid pay the usual charges of a legal services plan, or not-for-profit lawyer referral service, legal service organization, or other similar plan, service, or organization. See, e.g., OSB Formal Ethics [Op Nos 2005-79, 2005-168](#). The Association is not one of those allowed plans or services because the Association's referrals are not limited solely to referrals to lawyers.

premise that the rules are suspended for lawyers if, in fact, the referral requirements are a condition of membership.

Even in a group that does not require reciprocal referrals, lawyers must be careful that their follow-up on any referrals received is consistent with the rules of professional conduct. Oregon RPC 7.3(a) 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.

The Association's activities do not fall within any of the exceptions set forth in this rule. Accordingly, even if the networking group does not require reciprocal referrals, Lawyer cannot initiate any personal follow-up on a referral except in writing, unless Lawyer knows that the person making the referral has been expressly authorized by the prospective client to have the lawyer make the personal contact. *See* OSB Formal Ethics [Op No 2005-100](#); *In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer did not initiate contact with prospective client when he acted on good-faith belief that third party was conveying prospective client's request for contact). With regard to potential clients who are known to be in need of legal services in a particular matter, see also Oregon RPC 7.3(c) and OSB Formal Ethics [Op No 2005-127](#).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 3.39 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §9 (2003); and ABA Model Rules 5.4, 7.2.

FORMAL OPINION NO. 2005-31
Information About Legal Services:
Improper Use of Titles

Facts:

Lawyer *A* is a part-time judge. Lawyer *B* is a member of the state legislature.

Questions:

1. Is it ethical for Lawyer *A*'s office receptionist to answer the telephone at Lawyer *A*'s legal office by stating "Judge _____'s office"?
2. Is it ethical for Lawyer *B*'s office receptionist to answer the telephone at Lawyer *B*'s legal office by stating "Senator _____'s office"?

Conclusions:

1. No.
2. No.

Discussion:

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Similarly, Oregon RPC 8.4(a)(5) makes it professional misconduct for a lawyer to "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, . . ."

Although the name of a lawyer holding public office may be used as part of a law firm's name during the period in which the lawyer is actively and regularly practicing at the law firm, *cf.* Oregon RPC 7.5(c)¹, answering the public reception telephone at a private law office by referring to a lawyer's judicial or legislative position would violate both Oregon RPC 7.1 and 8.4(a)(5). *Cf.* OSB Formal Ethics Op No 2005-7.²

¹ Oregon RPC 7.5(c) provides:

The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

² As a part-time judge, Lawyer *A*'s conduct may also be governed by the Oregon Code of Judicial Conduct. Lawyer *A* should be careful to not misuse the prestige of judicial office by attempting to gain personal advantage at a private law practice. *See* Oregon Code of Judicial Conduct Rule 2.2.

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.9, 14.5 (Oregon CLE 2006); and ABA Model Rule 7.1. *Cf.* OSB Formal Ethics Op Nos 2005-169 (law firm may continue to use in firm's name the name of former partner who has retired from active practice of law, but continues to practice as mediator, if use of lawyer's name is not misleading), 2005-109 (Oregon law firm that contracts with Washington law firm to represent Washington law firm's clients in Oregon, whenever clients consent and RPCs permit, may identify Washington law firm on its letterhead as "associated office" and may permit itself to be advertised on Washington law firm's letterhead as associated office), 2005-12 (Lawyers *A*, *B*, and *C*, who maintain separate practices but share office space, may not hold themselves out as "associates" or "of counsel" and may not practice under name "*A, B & C, Lawyers*").

FORMAL OPINION NO. 2005-31
Information About Legal Services:
Improper Use of Titles

Facts:

Lawyer A is a part-time ~~justice of the peace~~ judge. Lawyer B is a member of the state legislature.

Questions:

1. Is it ethical for Lawyer A's ~~office secretary-receptionist~~ to answer the telephone at Lawyer A's legal office by stating "Judge _____'s office"?
2. Is it ethical for Lawyer B's ~~office secretary-receptionist~~ to answer the telephone at Lawyer B's legal office by stating "Senator _____'s office"?

Conclusions:

1. No.
2. No.

Discussion:

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.~~

~~Similarly, Oregon RPC 8.4(a)(5) makes it professional misconduct for a lawyer to "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, . . ."~~

~~Although the name of a lawyer holding public office may be used as part of a law firm's name during the period in which the lawyer is actively and regularly practicing at the law firm, cf. Oregon RPC 7.5(c)¹, 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 Oregon RPC 7.5(c) provides:

~~The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

_____ (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]

_____ (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.

Answering the public reception telephone at a private law office by referring to a lawyer's judicial or legislative position would violate both Oregon RPC 7.1(a)(1) and 8.4(a)(5). Cf. OSB Formal Ethics Op No 2005-7.²

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.9, 14.5 (Oregon CLE 2006~~3~~); and ABA Model Rule 7.1 (substantially shorter than Oregon's version). Cf. OSB Formal Ethics Op Nos 2005-169 (law firm may continue to use in firm's name the name of former partner who has retired from active practice of law, but continues to practice as mediator, if use of lawyer's name is not misleading), 2005-109 (Oregon law firm that contracts with Washington law firm to represent Washington law firm's clients in Oregon, whenever clients consent and RPCs permit, may identify Washington law firm on its letterhead as "associated office" and may permit itself to be advertised on Washington law firm's letterhead as associated office), 2005-12 (Lawyers A, B, and C, who maintain separate practices but share office space, may not hold themselves out as "associates" or "of counsel" and may not practice under name "A, B & C, Lawyers").

² As a part-time judge, Lawyer A's conduct may also be governed by the Oregon Code of Judicial Conduct. Lawyer A should be careful to not misuse the prestige of judicial office by attempting to gain personal advantage at a private law practice. See Oregon Code of Judicial Conduct Rule 2.2.

FORMAL OPINION NO. 2011-186

Receipt of Documents Sent without Authority

Facts:

Lawyer in an adversary proceeding receives documents or electronically stored information from a third party that may have been stolen or otherwise taken without authorization from opposing party.¹

Questions:

1. Must Lawyer notify the opposing party of the receipt of the documents?
2. Must Lawyer return the documents to the opposing party?

Conclusions:

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

Discussion:

Oregon RPC 4.4(b) provides that “A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.”

By its express terms, Oregon RPC 4.4(b) only applies in instances where documents or electronically stored information is sent to Lawyer inadvertently. In instances where the delivery of materials is not the result of the sender’s inadvertence, Oregon RPC 4.4(b) does not apply. *See* ABA Formal Op. No. 06-440. Oregon RPC 4.4(b) does not require Lawyer to take or refrain from taking any particular actions with respect to documents that were sent purposely, albeit without authority.

¹ For purposes of this opinion, it is assumed that Lawyer did not advise Client to, or otherwise participate in, obtaining the documents. *See* Oregon RPC 1.2(c) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent) and Oregon RPC 8.4(2)(4) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

See OSB Formal Op. No. 2005-150. Other rules, however, limit Lawyer's options or direct Lawyer's actions.

First, the circumstances in which the documents were obtained by the sender may involve criminal conduct. If so, Oregon RPC 1.6² prohibits Lawyer from disclosing the receipt of the documents, as explained in OSB Formal Ethics Op No [2005-105](#):

A lawyer who comes into possession of information linking a client to a crime ordinarily is barred by the lawyer's duty of confidentiality from voluntarily disclosing that information to others. See, e.g., ORS 9.460(3) and Oregon RPC 1.6, discussed in OSB Formal Ethics Op No 2005-34.

This is true even if the documents came from a source other than Lawyer's own client, as the disclosure could nevertheless work to the detriment of the client in the matter.

OSB Formal Ethics Op No [2005-105](#) also warns that Oregon RPC 8.4(a)(4), prohibiting conduct prejudicial to the administration of justice, prevents a lawyer from accepting "evidence of a crime" unless the lawyer makes the evidence available to the prosecution. Further, to the extent that receiving stolen documents constitutes tampering with evidence, the lawyer may also be exposed to criminal or civil liability. Comment [m] of the Restatement (Third) of the Law Governing Lawyers §60 (2000) specifically notes "Where deceitful or illegal means were used to obtain the information, the receiving lawyer and that lawyer's client may be liable, among other remedies, for damages for harm caused or for injunctive relief against use or disclosure."

Second, the documents may be entitled to protection under substantive law of privilege or otherwise. See *Burt Hill, Inc.*, 2010 US Dist Lexis 7492 at 2-4, n 6. The scope and application of those substantive law protections are not questions of professional responsibility. However, a lawyer who reviews, retains, or attempts to use privileged documents may be subject to disqualification or other sanctions under applicable court rules or substantive law.³

² Oregon RPC 1.6(a): "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."

³ *Richards v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wa. 2001) (disqualifying counsel for retaining and using privileged materials); *In re Shell Oil Refinery*, 143 F.R.D. 105 (E.D. La. 1992) (lawyer may not use confidential documents supplied to him by opponent's employee), *amended and reconsidered on other grounds*, 144 FRD 73 (E.D. La. 1992); *Maldonado v. New Jersey*, 225 F.R.D. 120 (D.N.J. 2004) (plaintiff's counsel who reviewed privileged letter, received from unknown

COMMENT: For additional information on this general topic, see Fla. Ethics Op. 07-1 (Fla. State Bar Ass'n Comm. Of Prof'l Ethics Sept. 7, 2007); D.C. Bar Legal Ethics Comm. Ethics Op. 3118 (2002); Va. State Bar Ethics Comm. Legal Ethics Op. 1141 (1988); Helen Hirschbiel, *Bar Counsel: Ill-Gotten Gains: Rules for Privileged or Purloined Documents*, Oregon State Bar Bulliten, July 2012; Mark J. Fucile, *Smoking Gun: Receiving Property Stolen by a Client*, Multnomah Lawyer, December 2012.

Approved by Board of Governors, November 2011.

source, and without permission incorporated it by reference in amendment to complaint disqualified); Smallman, *The Purloined Communications Exception to Inadvertent Waiver; Publication and Preservation of Lawyer-Client Privilege*, 32 TORT & INS LJ 715. See also OSB Formal Ethics Op No [2005-150](#).

FORMAL OPINION NO. 2011-186

Receipt of Documents Sent without Authority

Facts:

Lawyer in an adversary proceeding receives documents or electronically stored information from a third party that may have been stolen or otherwise taken without authorization from opposing party.¹

Questions:

1. Must Lawyer notify the opposing party of the receipt of the documents?
2. Must Lawyer return the documents to the opposing party?

Conclusions:

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

Discussion:

Oregon RPC 4.4(b) provides that “A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.”²

By its express terms ~~then~~, Oregon RPC 4.4(b) only applies in instances where documents or electronically stored information is sent to Lawyer inadvertently. In instances where the delivery of materials is not the result of the sender’s inadvertence, Oregon RPC 4.4(b) does not apply. See ABA

¹ For purposes of this opinion, it is assumed that Lawyer did not advise Client to, or otherwise participate in, obtaining the documents. *See* Oregon RPC 1.2(c) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent) and Oregon RPC 8.4(2)(4) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

~~² For purposes of the rule, *document* includes e-mail or other electronic communications subject to being read or put into readable form. ABA Model Rule 4.4(b), Comment [2].~~

Formal Op. No. 06-440. Oregon RPC 4.4(b) ~~does not~~does not require Lawyer to take or refrain from taking any particular actions with respect to documents that were sent purposely, albeit without authority. See OSB Formal Op. No. 2005-150. O³ ~~However, other rules,~~ however, may limit Lawyer's options or direct Lawyer's actions.

First, the circumstances in which the documents were obtained by the sender may involve criminal conduct. If so, Oregon RPC 1.6⁴ prohibits Lawyer from disclosing the receipt of the documents, as explained in OSB Formal Ethics Op No [2005-105](#):

A lawyer who comes into possession of information linking a client to a crime ordinarily is barred by the lawyer's duty of confidentiality from voluntarily disclosing that information to others. See, e.g., ORS 9.460(3) and Oregon RPC 1.6, discussed in OSB Formal Ethics Op No 2005-34.

This is true even if the documents came from a source other than Lawyer's own client, as the disclosure could nevertheless work to the detriment of the client in the matter.

~~OSB Formal Ethics Op No [2005-105](#) also warns that Oregon RPC 8.4(a)(4), prohibiting conduct prejudicial to the administration of justice, prevents a lawyer from accepting "evidence of a crime" unless the lawyer makes the evidence available to the prosecution. Further, to the extent that receiving stolen documents constitutes tampering with evidence, the lawyer may also be exposed to criminal or civil liability. Comment [m] of the Restatement (Third) of the Law Governing Lawyers §60 (2000) specifically notes "Where deceitful or illegal means were used to obtain the information, the receiving lawyer and that lawyer's client may be liable, among other remedies, for damages for harm caused or for injunctive relief against use or disclosure."~~

Second, the documents may be entitled to protection under substantive law of privilege or otherwise. *See Burt Hill, Inc.*, 2010 US Dist Lexis 7492 at 2–4, n 6. The scope and application of those substantive law protections are not questions of professional responsibility.

~~³ Following the promulgation of ABA Model Rule 4.4(b), the ABA withdrew its Formal Opinion 94-382 which suggested that documents sent by anyone without authorization were, from the opposing party's perspective, an "inadvertent disclosure." ABA Formal Op. No. 06-440 disavows the prior opinion and expressly holds that where the delivery of the materials is not the result of the sender's inadvertence, Rule 4.4(b) does not apply.~~

⁴ Oregon RPC 1.6(a): "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."

However, a lawyer who reviews, retains, or attempts to use privileged documents may be subject to disqualification or other sanctions under applicable court rules or substantive law.⁵

COMMENT: For additional information on this general topic, see Fla. Ethics Op. 07-1 (Fla. State Bar Ass'n Comm. Of Prof'l Ethics Sept. 7, 2007); D.C. Bar Legal Ethics Comm. Ethics Op. 3118 (2002); Va. State Bar Ethics Comm. Legal Ethics Op. 1141 (1988); Helen Hirschbiel, *Bar Counsel: Ill-Gotten Gains: Rules for Privileged or Purloined Documents*, Oregon State Bar Bulliten, July 2012; Mark J. Fucile, *Smoking Gun: Receiving Property Stolen by a Client*, Multnomah Lawyer, December 2012.

Approved by Board of Governors, November 2011.

⁵ *Richards v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wa. 2001) (disqualifying counsel for retaining and using privileged materials); *In re Shell Oil Refinery*, 143 F.R.D. 105 (E.D. La. 1992) (lawyer may not use confidential documents supplied to him by opponent's employee), *amended and reconsidered on other grounds*, 144 FRD 73 (E.D. La. 1992); *Maldonado v. New Jersey*, 225 F.R.D. 120 (D.N.J. 2004) (plaintiff's counsel who reviewed privileged letter, received from unknown source, and without permission incorporated it by reference in amendment to complaint disqualified); Smallman, *The Purloined Communications Exception to Inadvertent Waiver; Publication and Preservation of Lawyer-Client Privilege*, 32 TORT & INS LJ 715. See also OSB Formal Ethics Op No [2005-150](#).

FORMAL OPINION NO. 2011-187

Competency: Disclosure of Metadata

Facts:

Lawyer *A* e-mails to Lawyer *B* a draft of an Agreement they are negotiating on behalf of their respective clients. Lawyer *B* is able to use a standard word processing feature to reveal the changes made to an earlier draft ("metadata"). The changes reveal that Lawyer *A* had made multiple revisions to the draft, and then subsequently deleted some of them.

Same facts as above except that shortly after opening the document and displaying the changes, Lawyer *B* receives an urgent request from Lawyer *A* asking that the document be deleted without reading it because Lawyer *A* had mistakenly not removed the metadata.

Same facts as the first scenario except that Lawyer *B* has software designed to thwart the metadata removal tools of common word processing software and wishes to use it to see if there is any helpful metadata in the Agreement.

Questions:

1. Does Lawyer *A* have a duty to remove or protect metadata when transmitting documents electronically?
2. May Lawyer *B* use the metadata information that is readily accessible with standard word processing software?
3. Must Lawyer *B* inform Lawyer *A* that the document contains readily accessible metadata?
4. Must Lawyer *B* acquiesce to Lawyer *A*'s request to delete the document without reading it?
5. May Lawyer *B* use special software to reveal the metadata in the document?

Conclusions:

1. See discussion.
2. Yes, qualified.
3. No.
4. No, qualified.
5. No.

Discussion:

Metadata generally means “data about data.” As used here, metadata means the embedded data in electronic files that may include information such as who authored a document, when it was created, what software was used, any comments embedded within the content, and even a record of changes made to the document.¹

Lawyer’s Duty in Transmitting Metadata

Oregon RPC 1.1 requires a lawyer to provide competent representation to a client, which includes possessing the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Oregon RPC 1.6(a) requires a lawyer to “not reveal information relating to the representation of a client” except where the client has expressly or impliedly authorized the disclosure.² Information relating to the representation of a client may include metadata in a document. Taken together, the two rules indicate that a lawyer is responsible for acting competently to safeguard information relating to the representation of a client contained in communications with others. Competency in relation to metadata requires a lawyer utilizing electronic media for communication to maintain

¹ Joshua J. Poje, *Metadata Ethics Opinions Around the U.S.*, AMERICAN BAR ASSOCIATION, May 3, 2010, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/chartsfyis/metadachart.html.

² There are several exceptions to the duty of confidentiality in Oregon RPC 1.6, none of which are relevant here.

at least a basic understanding of the technology and the risks of revealing metadata or to obtain and utilize adequate technology support.³

Oregon RPC 1.6(c) requires that a lawyer must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client.⁴ With respect to metadata in documents, reasonable care includes taking steps to prevent the inadvertent disclosure of metadata, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent.⁵ What constitutes reasonable care will change as technology evolves.

The duty to use reasonable care so as not to reveal confidential information through metadata may be best illustrated by way of analogy to paper documents. For instance, a lawyer may send a draft of a document to opposing counsel through regular mail and inadvertently include a sheet of notes torn from a yellow legal pad identifying the revisions to the document. Another lawyer may print out a draft of the document marked up with the same changes as described on the yellow notepad instead of a “clean” copy and mail it to opposing counsel. In both situations, the lawyer has a duty to exercise reasonable care not to include notes

³ The duty of competence with regard to metadata also requires a lawyer to understand the implications of metadata in regard to documentary evidence. A discussion of whether removal of metadata constitutes illegal tampering is beyond the scope of this opinion, but Oregon RPC 3.4(a) prohibits a lawyer from assisting a client to “alter, destroy or conceal a document or other material having potential evidentiary value.”

⁴ Jurisdictions that have addressed this issue are unanimous in holding lawyers to a duty of “reasonable care.” *See, e.g.*, State Bar of Arizona Ethics Opinion 07-03. By contrast, ABA Formal Opinion 06-442 does not address whether the sending lawyer has any duty, but suggests various methods for eliminating metadata before sending a document. *Id.* But see ABA Model Rule 1.6, comment [17], which provides that “[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”

⁵ Such steps may include utilizing available methods of transforming the document into a nonmalleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

about the revisions (the metadata) if it could prejudice the lawyer's client in the matter.

Lawyer's Use of Received Metadata

If a lawyer who receives a document knows or should have known it was inadvertently sent, the lawyer must notify the sender promptly. Oregon RPC 4.4(b). Using the examples above, in the first instance the receiving lawyer may reasonably conclude that the yellow pad notes were inadvertently sent, as it is not common practice to include such notes with document drafts. In the second instance, however, it is not so clear that the "redline" draft was inadvertently sent, as it is not uncommon for lawyers to share marked-up drafts. Given the sending lawyer's duty to exercise reasonable care in regards to metadata, the receiving lawyer could reasonably conclude that the metadata was intentionally left in.⁶ In that situation, there is no duty under Oregon RPC 4.4(b) to notify the sender of the presence of metadata.

If, however, the receiving lawyer knows or reasonably should know that metadata was inadvertently included in the document, Oregon RPC 4.4(b) requires only notice to the sender; it does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.⁷ OSB Formal Ethics Op No [2005-150](#). Comment [3] to ABA Model Rule 4.4(b) notes that a lawyer may voluntarily choose to return a document unread and that such a decision is a matter of professional judgment reserved to the lawyer. At the same time, the Comment directs the lawyer to Model Rules 1.2 and 1.4. Model Rule 1.2(a) is identical to Oregon RPC 1.2(a) and requires the lawyer to "abide by a client's decisions concerning the objectives of the representation" and to "consult

⁶ See *Goldsborough v. Eagle Crest Partners*, 314 Or 336 (1992) (in the absence of evidence to the contrary, an inference may be drawn that a lawyer who voluntarily turns over privileged material during discovery acts within the scope of the lawyer's authority from the client and with the client's consent).

⁷ Comment [2] to ABA Model Rule 4.4(b) explains that the rule "requires the lawyer to promptly notify the sender in order to permit that person to take protective measures." It further notes that "[w]hether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived."

with the client as to the means by which the objectives are pursued.”⁸ Oregon RPC 1.4(a)(2), like its counterpart Model Rule, requires a lawyer to “reasonably consult about the means by which the client’s objectives are to be accomplished.” Thus, before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

Regardless of the reasonable efforts undertaken by the sending lawyer to remove or screen metadata from the receiving lawyer, it may be possible for the receiving lawyer to thwart the sender’s efforts through software designed for that purpose. It is not clear whether uncovering metadata in that manner would trigger an obligation under Oregon RPC 4.4(b) to notify the sender that metadata had been inadvertently sent. Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer’s office to obtain client information and may constitute “conduct involving dishonesty, fraud, deceit or misrepresentation” in violation of Oregon RPC 8.4(a)(3).

Approved by Board of Governors, November 2011.

⁸ Although not required by the Oregon RPCs, parties could agree, at the beginning of a transaction, not to review metadata as a condition of conducting negotiations.

FORMAL OPINION NO. 2011-187

Competency: Disclosure of Metadata

Facts:

Lawyer *A* e-mails to Lawyer *B* a draft of an Agreement they are negotiating on behalf of their respective clients. Lawyer *B* is able to use a standard word processing feature to reveal the changes made to an earlier draft ("metadata"). The changes reveal that Lawyer *A* had made multiple revisions to the draft, and then subsequently deleted some of them.

Same facts as above except that shortly after opening the document and displaying the changes, Lawyer *B* receives an urgent request from Lawyer *A* asking that the document be deleted without reading it because Lawyer *A* had mistakenly not removed the metadata.

Same facts as the first scenario except that Lawyer *B* has software designed to thwart the metadata removal tools of common word processing software and wishes to use it to see if there is any helpful metadata in the Agreement.

Questions:

1. Does Lawyer *A* have a duty to remove or protect metadata when transmitting documents electronically?
2. May Lawyer *B* use the metadata information that is readily accessible with standard word processing software?
3. Must Lawyer *B* inform Lawyer *A* that the document contains readily accessible metadata?
4. Must Lawyer *B* acquiesce to Lawyer *A*'s request to delete the document without reading it?
5. May Lawyer *B* use special software to reveal the metadata in the document?

Conclusions:

1. See discussion.
2. Yes, qualified.
3. No.
4. No, qualified.
5. No.

Discussion:

Metadata generally means “data about data.” As used here, metadata means the embedded data in electronic files that may include information such as who authored a document, when it was created, what software was used, any comments embedded within the content, and even a record of changes made to the document.¹

Lawyer’s Duty in Transmitting Metadata

Oregon RPC 1.1 requires a lawyer to provide competent representation to a client, which includes possessing the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Oregon RPC 1.6(a) requires a lawyer to “not reveal information relating to the representation of a client” except where the client has expressly or impliedly authorized the disclosure.² Information relating to the representation of a client may include metadata in a document. Taken together, the two rules indicate that a lawyer is responsible for acting competently to safeguard information relating to the representation of a client contained in communications with others. Competency in relation to metadata requires a lawyer utilizing electronic media for communication to maintain

¹ Joshua J. Poje, *Metadata Ethics Opinions Around the U.S.*, AMERICAN BAR ASSOCIATION, May 3, 2010, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/chartsfyis/metadachart.html.

² There are several exceptions to the duty of confidentiality in Oregon RPC 1.6, none of which are relevant here.

at least a basic understanding of the technology and the risks of revealing metadata or to obtain and utilize adequate technology support.³

Oregon RPC 1.6(c) requires that Aa lawyer must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client.⁴ With respect to metadata in documents, reasonable care includes taking steps to prevent the inadvertent disclosure of metadata, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent.⁵ What constitutes reasonable care will change as technology evolves.

The duty to use reasonable care so as not to reveal confidential information through metadata may be best illustrated by way of analogy to paper documents. For instance, a lawyer may send a draft of a document to opposing counsel through regular mail and inadvertently include a sheet of notes torn from a yellow legal pad identifying the revisions to the document. Another lawyer may print out a draft of the document marked up with the same changes as described on the yellow notepad instead of a “clean” copy and mail it to opposing counsel. In both situations, the lawyer has a duty to exercise reasonable care not to include notes

³ The duty of competence with regard to metadata also requires a lawyer to understand the implications of metadata in regard to documentary evidence. A discussion of whether removal of metadata constitutes illegal tampering is beyond the scope of this opinion, but Oregon RPC 3.4(a) prohibits a lawyer from assisting a client to “alter, destroy or conceal a document or other material having potential evidentiary value.”

⁴ Jurisdictions that have addressed this issue are unanimous in holding lawyers to a duty of “reasonable care.” *See, e.g.,* State Bar of Arizona Ethics Opinion 07-03. By contrast, ABA Formal Opinion 06-442 does not address whether the sending lawyer has any duty, but suggests various methods for eliminating metadata before sending a document. *Id.* But see ABA Model Rule 1.6, comment [17], which provides that “[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”

⁵ Such steps may include utilizing available methods of transforming the document into a nonmalleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

about the revisions (the metadata) if it could prejudice the lawyer's client in the matter.

Lawyer's Use of Received Metadata

If a lawyer who receives a document knows or should have known it was inadvertently sent, the lawyer must notify the sender promptly. Oregon RPC 4.4(b). Using the examples above, in the first instance the receiving lawyer may reasonably conclude that the yellow pad notes were inadvertently sent, as it is not common practice to include such notes with document drafts. In the second instance, however, it is not so clear that the "redline" draft was inadvertently sent, as it is not uncommon for lawyers to share marked-up drafts. Given the sending lawyer's duty to exercise reasonable care in regards to metadata, the receiving lawyer could reasonably conclude that the metadata was intentionally left in.⁶ In that situation, there is no duty under Oregon RPC 4.4(b) to notify the sender of the presence of metadata.

If, however, the receiving lawyer knows or reasonably should know that metadata was inadvertently included in the document, Oregon RPC 4.4(b) requires only notice to the sender; it does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.⁷ OSB Formal Ethics Op No [2005-150](#). Comment [3] to ABA Model Rule 4.4(b) notes that a lawyer may voluntarily choose to return a document unread and that such a decision is a matter of professional judgment reserved to the lawyer. At the same time, the Comment directs the lawyer to Model Rules 1.2 and 1.4. Model Rule 1.2(a) is identical to Oregon RPC 1.2(a) and requires the lawyer to "abide by a client's decisions concerning the objectives of the representation" and to "consult

⁶ See *Goldsborough v. Eagle Crest Partners*, 314 Or 336 (1992) (in the absence of evidence to the contrary, an inference may be drawn that a lawyer who voluntarily turns over privileged material during discovery acts within the scope of the lawyer's authority from the client and with the client's consent).

⁷ Comment [2] to ABA Model Rule 4.4(b) explains that the rule "requires the lawyer to promptly notify the sender in order to permit that person to take protective measures." It further notes that "[w]hether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived."

with the client as to the means by which the objectives are pursued.”⁸ Oregon RPC 1.4(a)(2), like its counterpart Model Rule, requires a lawyer to “reasonably consult about the means by which the client’s objectives are to be accomplished.” Thus, before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

Regardless of the reasonable efforts undertaken by the sending lawyer to remove or screen metadata from the receiving lawyer, it may be possible for the receiving lawyer to thwart the sender’s efforts through software designed for that purpose. It is not clear whether uncovering metadata in that manner would trigger an obligation under Oregon RPC 4.4(b) to notify the sender that metadata had been inadvertently sent. Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer’s office to obtain client information and may constitute “conduct involving dishonesty, fraud, deceit or misrepresentation” in violation of Oregon RPC 8.4(a)(3).

Approved by Board of Governors, November 2011.

⁸ Although not required by the Oregon RPCs, parties could agree, at the beginning of a transaction, not to review metadata as a condition of conducting negotiations.

FORMAL OPINION NO. 2011-188

**Information Relating to the Representation of a Client:
Third-Party Electronic Storage of Client Materials**

Facts:

Law Firm contracts with third-party vendor to store client files and documents online on remote server so that Lawyer and/or Client could access the documents over the Internet from any remote location.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

With certain limited exceptions, the Oregon Rules of Professional Responsibility require a lawyer to keep client information confidential. See Oregon RPC 1.6.¹ In addition, Oregon RPC 5.3 provides:

¹ Oregon RPC 1.6 provides:

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

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

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

involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

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

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

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6. 2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

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

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

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

Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client's information secure within a given situation.² To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential.³ See Oregon RPC 1.6(c). Under certain circumstances, this may be satisfied though a third-party vendor's compliance with industry standards relating to confidentiality and security, provided that those industry standards meet the minimum requirements imposed on the Lawyer by the Oregon RPCs. This may include, among other things, ensuring the service agreement requires the vendor to preserve the confidentiality and security of the materials. It may also require that vendor notify Lawyer of any nonauthorized third-party access to the materials. Lawyer should also investigate how the vendor backs

² Some call the factual scenario presented above "cloud computing." See Richard Acello, *Get Your Head in the Cloud*, ABA Journal, April 2010, at 28–29 (providing that "cloud computing" is a "sophisticated form of remote electronic data storage on the internet" and "[u]nlike traditional methods that maintain data on a computer or server at a law office or other place of business, data stored 'in the cloud' is kept on large servers located elsewhere and maintained by a vendor").

³ In 2014, leaked documents indicated that several intelligence agencies had the capability of obtaining electronic data and monitoring electronic communications between, among others, attorneys and clients through highly sophisticated methods beyond the capabilities of the general public. Oregon RPC 1.6(c) would not require an attorney to protect a client's data against this type of advanced interception, as it only requires an attorney to take reasonable steps to secure client data. Nevertheless, an attorney may want to take additional security precautions if she handles clients or matters that involve national security interests.

up and stores its data and metadata to ensure compliance with the Lawyer's duties.⁴

Although the third-party vendor may have reasonable protective measures in place to safeguard the client materials, the reasonableness of the steps taken will be measured against the technology "available at the time to secure data against unintentional disclosure."⁵ As technology advances, the third-party vendor's protective measures may become less secure or obsolete over time.⁶ Accordingly, Lawyer may be required to reevaluate the protective measures used by the third-party vendor to safeguard the client materials.⁷

Approved by Board of Governors, November 2011.

⁴ See OSB Formal Ethics Op No [2005-141](#), which provides: "As long as Law Firm makes reasonable efforts to ensure that recycling company's conduct is compatible with Law Firm's obligation to protect client information, the proposed conduct is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately." See also OSB Formal Ethics Op Nos [2005-129](#), [2005-44](#).

⁵ See NJ Ethics Op 701 (discussing electronic storage and access to files).

⁶ See Arizona Ethics Op 09-04 (discussing confidentiality, maintaining client files, electronic storage, and the Internet).

⁷ A lawyer's obligation in the event of a breach of security of confidential materials is outside the scope of this opinion.

FORMAL OPINION NO. 2011-188

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 - (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
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 - (3) to secure legal advice about the lawyer's compliance with these Rules;
 - (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was

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

involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

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

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

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6. 2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

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

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

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

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

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

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

Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client's information secure within a given situation.² To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential.³ See Oregon RPC 1.6(c). Under certain circumstances, this may be satisfied through a third-party vendor's compliance with industry standards relating to confidentiality and security, provided that those industry standards meet the minimum requirements imposed on the Lawyer by the Oregon RPCs. This may include, among other things, ensuring the service

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agreement requires the vendor to preserve the confidentiality and security of the materials. It may also require that vendor notify Lawyer of any nonauthorized third-party access to the materials. Lawyer should also investigate how the vendor backs up and stores its data and metadata to ensure compliance with the Lawyer's duties.⁴

Although the third-party vendor may have reasonable protective measures in place to safeguard the client materials, the reasonableness of the steps taken will be measured against the technology "available at the time to secure data against unintentional disclosure."⁵ As technology advances, the third-party vendor's protective measures may become less secure or obsolete over time.⁶ Accordingly, Lawyer may be required to reevaluate the protective measures used by the third-party vendor to safeguard the client materials.⁷

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: April 22, 2015
From: Thomas Flaherty, Military and Veterans Law Section Chair
Re: Creation of a Veterans Law Clinic

Action Recommended

Approve a request from the Military and Veterans Law Section (MVLS) to work alongside several other stakeholders in establishing an Oregon Veterans Legal Clinic (OVLC) based at Willamette University College of Law, to associate the MVLS with the Clinic in promotional materials, and for MVLS Members to engage in soliciting funds on behalf the MVLS in order to ensure the OVLC is adequately resourced.

Background

Over the past several decades, law schools have made significant strides in pairing law students with a number of communities in need. Yet the Veteran community—a community in crisis—has been underserved. Throughout our Country, more and more Veterans Legal Clinics, in various forms, have been created¹; but the growth of Veterans Legal Clinics has not kept pace with the more than 2 million veterans who have returned or are returning from the wars in Iraq and Afghanistan.

Most importantly, Oregon currently has neither a Veterans Legal Clinic nor an active duty military presence. Consequently, the 331,632 military Veterans living in Oregon have very few ready legal resources to assist them in resolving legal challenges. Consequently, Oregon Veterans, Servicemembers, and their Families continue to struggle with civil legal barriers to stable and permanent family housing, often stemming from their military service. The Military and Veterans Law Section of the Oregon State Bar (OSB) considered this challenge and formed a committee to explore creation of an Oregon Veterans Legal Clinic. This engagement has already given the MVLS a direct say in the structure

¹ including at Chapman University School of Law (AMVETS Legal Clinic), Duquesne University School of Law (Veterans Clinic), Emory University School of Law (Emory Law Volunteer Clinic for Veterans), George Mason University School of Law (Mason Veterans & Servicemembers Legal Clinic), Harvard Law School (The WilmerHale Legal Services Center), John Marshall Law School (John Marshall Veterans Legal Support Center & Clinic), Marquette University Law School (Volunteer Legal Clinic for Veterans), North Carolina Central University Law School (Veterans Law Clinic), Ohio State University/Moritz College of Law (Captain Jonathan D. Grassbaugh Veterans Project), Stetson University College of Law (Veterans Law Institute), UC Davis School of Law (Smedley Butler Veterans Justice Project), University of Arizona/James E. Rogers College of Law (Veterans' Advocacy Law Clinic), University of Detroit Mercy School of Law (UDM Law Veterans Clinic), University of Missouri School of Law (Veterans Clinic), University of Pittsburgh School of Law (Veterans Legal Clinic Practicum), University of San Diego (Veterans Legal Clinic), University of Virginia School of Law (Veterans Medical Disability Appeals Pro Bono Program), University of Wisconsin Madison Law School (Veterans Law Center), Widener University School of Law (Veterans Law Clinic), William and Mary Law School (Lewis B. Puller, Jr. Veterans Benefits Clinic), and Yale University Law School (Veterans Legal Services Clinic)

and mission set of the nascent OVLC. Approval of this request will continue to ensure the OSB, through its subordinate organization (the MVLS), remains engaged in addressing civil legal challenges to Veteran housing stability. We believe the MVLS is the OSB's natural agent for this engagement, and that the depth and breadth of the need argues persuasively for OSB Permission for us to continue.

The need is obvious. We know that:

- approximately 33% of homeless males in the U.S. are Veterans;
- Every single night almost 58,000 Veterans in America are homeless, which equals the number of service members who died in the Vietnam War;
- Veterans are twice as likely as other Americans to become chronically homeless;
- Veterans represent 11% of the adult civilian population, but 26% of the homeless population;
- unemployment among male Iraq and Afghanistan Veterans rose from 5% in March 2007 to 15% in March 2010;
- one in ten Veterans is disabled, oftentimes by injuries sustained in combat;
- more than 20,000 Veterans were wounded during service in Iraq and Afghanistan;
- about 70% of homeless Veterans suffer from substance abuse problems, many because of drug use that commenced during treatment of combat injuries;
- 45% of homeless Veterans suffer from mental illness, including Post-Traumatic Stress Disorder (PTSD);
- 19% of Iraq Veterans report a mental health problem, and more than 11% of Afghanistan Veterans;
- the incidence of PTSD and suicide rates among Veterans is high and climbing: Veterans represent about 8% of the Oregon population, but account for 27% of all suicides;
- the risk of women Veterans becoming homeless is four times greater than for male Veterans; and
- one of every five female Veterans has been the victim of military sexual trauma, and about 26% of female Veterans seeking VA medical care report experiences of sexual assault.

Conversely, we know that Veterans:

- 65% of Veterans abstain from drug and alcohol use for at least six months while in a Housing Program;
- are more likely to successfully complete educational and vocational programs;
- are less likely to be fired or dismissed from a job once employed;
- make more, on average, than their non-Veteran counterparts (by \$6,642 for males and \$12,517 for females);
- are less likely to live in poverty than non-Veterans;
- are less likely to be incarcerated (and less likely to recidivate if incarcerated); and
- vote and participate civically at higher rates than non-Veterans.

In other words, we know that Veterans are at significant risk of getting trapped in downward spirals precipitated by civil legal challenges, and that supporting Veterans in avoiding or managing civil legal challenges results in highly productive, successful, value-adding citizens. There is an inarguable business case to be made that supporting Veterans has a positive rate of return on investment, a fact which few other charitable endeavors can claim.

In Oregon, outside of the Portland Metro Area, Veterans confronted with civil legal challenges usually go completely unrepresented. For many of them, their service has rendered them vulnerable to accelerating downward spirals of homelessness, loss of employment, hopelessness, substance abuse, and ultimately suicide. Tragically, many of the civil legal challenges that begin those downward spirals are easily resolved. Often, even the slightest legal intervention can transform those downward spirals into self-sustaining upward spirals, resulting in productive and law-abiding citizens.

By creating the Oregon Veterans Legal Clinic, Willamette University College of Law intends to introduce students to the practice of law while serving an at-risk, underserved population present in every community in Oregon. There are many formats and structures for Veterans Clinics: some Veterans Clinics operate as general legal aid clinics focused on the unique needs of veterans; others specialize in VA disability appeals, discharge upgrades, Merit Systems Protection Board cases, or impact litigation; and others operate as hybrid clinics, training both students and local practitioners in veterans law and pairing at-risk veterans with law students and volunteer attorneys on a case-by-case basis. In Oregon, the effort must begin with basic civil legal services which are tailored to the at-risk population. This means addressing civil legal barriers to stable housing, without which we know that most other interventions will fail.

The law has always been a vehicle to help those in need. Veterans Clinics offer law schools a pedagogical pathway to engage law students in skills-based learning while connecting them to local legal practitioners and clients truly in need.

Placing a Veterans Legal Clinic within the Willamette University College of Law Program would enable the OVLC to:

- leverage an already-established and well-respected clinical program; provide meaningful clinical training opportunities for future Oregon lawyers;
- be more cost-effective than creating a stand-alone Center, thus allowing more resources to be devoted directly to the client population;
- facilitate the delivery of legal services to Oregon Veterans and their families to whom we owe a profound debt;
- elevate the legal challenges Veterans are currently facing to wider awareness; allow currently-available legal services to be more efficiently publicized and delivered; and
- provide a center in Salem to raise awareness of the overall issue of Veterans unique challenges *vis-à-vis* civil law.

The Military and Veterans Law Section's Oregon Veterans Legal Clinic subcommittee therefore entered into consultations with Willamette University College of Law to host this Clinic earlier this year in response to underserving of Veterans, Servicemembers, and their Families confronting civil legal challenges throughout Oregon. These consultations have progressed sufficiently far that it is now

suitable that the MVLS begin to publicize the Clinic amongst our members and begin to encourage donations to the Clinic.

Having reached this point, we concluded that it was prudent to solicit the *imprimatur* of the OSB Board of Governors (BOG) for our efforts, since those efforts are now moving past the planning stage and into operationalizing this capability. We believe it is especially important to obtain BOG permission for our intended fundraising, which we envision will be directed by members of the section toward currently-serving Judge Advocates who are receiving OSB fee waivers by virtue of their military service, as well as other lawyers, citizens, and organizations which are supportive of Oregon Veterans, Servicemembers, and Military Families.²

The timeline upon which we are currently working is that we envision beginning limited operations in June of 2015. We are exploring whether or not broader universal legal screening is suitable under the auspices of the Supportive Services for Veteran Families (SSVF) Program, which manages eight grantees throughout Oregon assisting homeless Veterans in reducing and overcoming barriers to stable and permanent housing. In the meantime, following the model initially developed with the Oregon Department of Justice, Metro Public Defenders (which manages the legal portion of the SSVF Program in the Portland Metro Grant) will be seconding the Clinic Director and funding that position. We envision being fully functional in time for the Second Semester of the Law School year, beginning in January 2016.

The Clinic's Client Coordinator³ – a paralegal position – will serve to centrally collect requests for assistance from contractors already working under a contract with the National Guard Bureau and currently operating throughout Oregon in National Guard Armories. These positions are called Family Assistance Specialists (FAS), and they are contractually obligated to screen Veterans, Servicemembers, and Military Family Members in six crisis areas, to include self-identified legal challenges. The FAS screener will confirm that the applicant is indeed affiliated with the military and then refer to the OVLC Client Coordinator. At that time, the OVLC Client Coordinator will screen the referred candidate and determine whether the candidate is well-suited for direct representation by the law students currently participating in the Clinic, including determination of need. If yes, then the student will be assigned the case and work under the supervision of the Clinic Director. If not, then the Client Coordinator will screen the applicant and make an appropriate referral to either (a) the OSB Modest Means or Military Assistance Panel, (b) a suitable legal aid provider in the geographical area in the geographical area wherein the candidate resides, (c) a suitable attorney in the geographical area in the geographical area wherein the candidate resides who is willing to take the case on a pro bono or "low-bono" basis, who is willing to take the case on a *pro bono* or "low-bono" basis, or (d) a Veteran-assistance organization like the local SSVF Grantee.

² The MVLS's vision is that the OVLC will be resourced through an OVLC Fund into which all donations will flow. This OVLC Fund will be managed by a dedicated nonprofit which has on its board representatives of the MVLS, the Clinical Legal Community, and other stakeholders. The Innocent Warrior Project, which is an already-established Oregon Non-profit dedicated to assisting Oregon's Veterans, has agreed to alter its board structure to allow contributing stakeholders to continue to have directorial authority over funds which are raised for this purpose.

³ The original MVLS OVLC Prospectus tasked MVLS with securing funding for the OVLC Client Coordinator Position. We consider this obligation to be a moral, rather than a fiduciary, one. Our committee envisions MVLS's obligations to be encouraging contributions to the funding, and eventual endowment, of the OVLC. The MVLS cannot – and will not – commit either itself or the OSB to any legally binding provisions concerning the set-up or maintenance of the OVLC. These limitations have been clearly and consistently articulated to all other stakeholders.

The goal of the OVLC is to provide legal coverage for the entire state so that no impoverished Oregon Servicemember, Veteran, or Military Family Member is made homeless or remains homeless because of a civil legal barrier which could be reduced or overcome through adequate representation.

OVLC Mission Statement is as follows:

The Oregon Veterans Legal Clinic at Willamette University College of Law provides legal screening and no-cost advocacy to unrepresented, low-income Veterans (including currently-serving Servicemembers) and their Family Members throughout Oregon in order to reduce or overcome civil legal barriers to stable and permanent housing while also providing law students hands-on experience representing real clients and an opportunity to learn about, interact with, and give back to Oregon's military community.

The Oregon Veterans Legal Clinic also serves as a Center of Excellence to coordinate and rally Oregon's Legal Community around the principles of Legal Service to Veterans.

OVLC Purpose Statement is as follows:

The Oregon Veterans Legal Clinic is a student-centered teaching clinic where students gain real-world experience in client representation, case file management, and law office operations as they represent Veterans, Servicemembers, and their families confronting civil legal challenges. In addition to direct client representation, students will work cooperatively with community, state, and federal actors to identify solutions for legal issues that impact Veterans.

By engaging in careful client management, including referral to outside counsel when appropriate, the Oregon Veterans Legal Clinic will strive to ensure that no unstably-housed Oregon Veteran is made homeless – and that no currently homeless Oregon Veteran remains so – because of a lack of representation.

For those Veterans whom the Oregon Veterans Legal Clinic takes on: By providing skillful, zealous advocacy, the Oregon Veterans Legal Clinic seeks to increase access to justice and lower barriers to opportunity for those who served us—our country's Veterans.

Committee to Establish an Oregon Veterans Legal Clinic

Military and Veterans Law Section, Oregon State Bar

Daniel Zene Crowe, Chair

Thomas Flaherty

David Kramer

Oregon Veterans Legal Clinic

W I L L A M E T T E U N I V E R S I T Y C O L L E G E O F L A W

A Pro Bono Clinic Serving Servicemembers, Veterans, and Their Families

"SERVING THOSE WHO HAVE SERVED"



Oregon Veterans Legal Clinic (OVLC)



2015

Oregon Veterans Legal Clinic
Willamette University College of Law
790 State Street
Salem, OR 97301
(503) 370-6973

"Serving Those Who Served Oregon"

Real Experience in Veteran Advocacy

The Oregon Veterans Legal Clinic at Willamette University’s College of Law introduces students to the practice of law by serving an underrepresented population in great need — our country’s veterans. Clinical students gain first-hand experience in interviewing and counseling, case file management, and client advocacy ... all while serving those who first served us.

“Serving Those Who
Served Oregon”

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INTRODUCTION

Over the past few decades, law schools have made significant strides in pairing law students with a number of communities in need. Yet the veterans community—a community in crisis—has been underserved. Throughout our Country, more and more Veterans Legal Clinics, in various forms, have been created; but the growth of Veterans Legal Clinics has not kept pace with the more than 2 million veterans who have returned or are returning from the wars in Iraq and Afghanistan. In addition, Veterans from the first Gulf War, Vietnam, Korea, and even World War II continue to struggle with civil legal barriers to stable and permanent family housing, often stemming from their prior military service.

The need is obvious. We know that:

- approximately 33% of homeless males in the U.S. are Veterans;
- Veterans are twice as likely as other Americans to become chronically homeless;
- Veterans represent 11% of the adult civilian population, but 26% of the homeless population;
- the number of homeless Vietnam-era Veterans, male and female, is greater than the number of soldiers who died during the war;
- unemployment among male Iraq and Afghanistan Veterans rose from 5% in March 2007 to 15% in March 2010;
- one in ten Veterans is disabled, oftentimes by injuries sustained in combat;
- more than 20,000 Veterans were wounded during service in Iraq and Afghanistan; that about 70% of homeless Veterans suffer from substance abuse problems;
- 45% of homeless Veterans suffer from mental illness, including Post-Traumatic Stress Disorder (PTSD);

- 19% of Iraq Veterans report a mental health problem, and more than 11% of Afghanistan Veterans;
- the incidence of PTSD and suicide rates among Veterans is climbing;
- 65% of Veterans abstain from drug and alcohol use for at least six months while in a Housing Program;
- the risk of women Veterans becoming homeless is four times greater than for male Veterans; and
- 23–29% of female Veterans seeking VA medical care reported experiences of sexual assault.

Conversely, we know that Veterans:

- are more likely to successfully complete educational and vocational programs;
- are less likely to be fired or dismissed from a job once employed;
- make more, on average, than their non-Veteran counterparts (by \$6,642 for males and \$12,517 for females);
- are less likely to live in poverty than non-Veterans;
- are less likely to be incarcerated (and less likely to recidivate if incarcerated); and
- vote and participate civically at higher rates than non-Veterans.

In other words, we know that Veterans are more at risk of getting trapped in downward spirals, but those Veterans who don't get trapped in a downward spiral (or are helped to escape one in which they find themselves) are productive, successful, value-adding citizens. There is an inarguable business case to be made that supporting Veterans has a positive rate of return on investment, a fact which few other charitable endeavors can claim.

In Oregon, outside of the Portland Metro Area, Veterans confronted with civil legal challenges usually go completely unrepresented. For many of them, their service has rendered them vulnerable to accelerating downward spirals of

homelessness, loss of employment, hopelessness, substance abuse, and ultimately suicide. Tragically, many of the civil legal challenges that begin those downward spirals are easily resolved. Often, even the slightest legal intervention can transform those downward spirals into self-sustaining upward spirals, resulting in productive and law-abiding citizens.

By creating the Oregon Veterans Legal Clinic, Willamette University College of Law can introduce students to the practice of law while serving an at-risk, underserved population present in every community in Oregon. There are many formats and structures for Veterans Clinics: some Veterans Clinics operate as general legal aid clinics focused on the unique needs of veterans; others specialize in VA disability appeals, discharge upgrades, Merit Systems Protection Board cases, or impact litigation; and others operate as hybrid clinics, training both students and local practitioners in veterans law and pairing at-risk veterans with law students and volunteer attorneys on a case-by-case basis. In Oregon, the effort must begin with basic civil legal services, tailored to the at-risk population. This means addressing civil legal barriers to stable housing, without which we know that most other interventions will fail.

The law has always been a vehicle to help those in need. Veterans Clinics offer law schools a pedagogical pathway to engage law students in skills-based learning while connecting them to local legal practitioners and clients truly in need.

Placing a Veterans Legal Clinic within the Willamette University College of Law Program enables us to:

- leverage an already-established and well-respected clinical program; provide meaningful clinical training opportunities for future Oregon lawyers;
- be more cost-effective than creating a stand-alone Center, thus allowing more resources to be devoted directly to the client population;

- facilitate the delivery of legal services to Oregon Veterans and their families to whom we owe a profound debt;
- elevate the legal challenges Veterans are currently facing to wider awareness; allow currently-available legal services to be more efficiently publicized and delivered; and
- provide a center in Salem to raise awareness of the overall issue of Veterans unique challenges vis-à-vis civil law.

Our committee would be remiss if we didn't thank the efforts of Prof. Warren Binford, the Director of Willamette University's College of Law Clinical Program, for the help and guidance she has provided. Similarly, this project would never have gotten off the ground without the assistance of Prof. Susan Saidel, Director of Widener University School of Law's Veterans Law Clinic. Lastly, we would like to acknowledge our budding partnership with Mr. Rayme Nuckles, the Supportive Services for Veteran Families (SSVF) Regional Coordinator for the SSVF Regional, which includes Oregon. Oregon has a well-deserved reputation for excellence in the care of Veterans. Rayme has been instrumental in establishing the Pilot Project "Providing Uniform and Universal Legal Screening to All Oregon SSVF Participants," which is discussed herein and coordinating this Pilot Project with the National Leadership of the SSVF Program. With strong allies like Warren, Susan, and Rayme, Oregon Veterans continue to go from strength to strength.

Committee to Establish an Oregon Veterans Legal Clinic
Military and Veterans Law Section, Oregon State Bar
Daniel Zene Crowe, Chair
Thomas Flaherty
Dave Kramer

GETTING STARTED

According to the Carnegie Report, the “signature pedagogy” of law schools involves a connection between cognition, skills, and values. This connection primarily finds expression through doctrinal learning, skills learning, doctrine + skills assessment, and client interaction and confidence. In starting a new clinical program, law schools should place primary emphasis on their own signature pedagogical objectives. (*Educating Lawyers*, Carnegie Foundation, 2007).

This section provides a jumping off point for development of the Oregon Veterans Legal Clinic at Willamette University College of Law and addresses topics that will need to be explored in designing and opening the Oregon Veterans Legal Clinic. Foundationally, these topics include the clinic mission, the needs of local Veterans who will form the clinic’s clientele, student interest and instruction, programmatic funding, and community involvement.

This report is intended as a “work in progress” for creation of the Oregon Veterans Legal Clinic, but it also represents an iterative step on the way to establishing this much-needed capability for Oregon’s Veterans.

“To care for him who shall
have borne the battle,
and for his widow, and his
orphan.”

~ Abraham Lincoln

Mission

Mission Statement—Oregon Veterans Legal Clinic

The Oregon Veterans Legal Clinic at Willamette University College of Law provides legal screening and no-cost advocacy to unrepresented, low-income Veterans (including currently-serving Servicemembers) and their Family Members throughout Oregon in order to reduce or overcome civil legal barriers to stable and permanent housing while also providing law students hands-on experience representing real clients and an opportunity to learn about, interact with, and give back to Oregon’s military community.

The Oregon Veterans Legal Clinic also serves as a Center of Excellence to coordinate and rally Oregon's Legal Community around the principles of Legal Service to Veterans.

Purpose

Purpose Statement—Oregon Veterans Legal Clinic

The Oregon Veterans Legal Clinic is a student-centered teaching clinic where students gain real-world experience in client representation, case file management, and law office operations as they represent Veterans, Servicemembers, and their families confronting civil legal challenges. In addition to direct client representation, students will work cooperatively with community, state, and federal actors to identify solutions for legal issues that impact Veterans.

By engaging in careful client management, including referral to outside counsel when appropriate, the Oregon Veterans Legal Clinic will strive to ensure that no unstably-housed Oregon Veteran is made homeless – and that no currently homeless Oregon Veteran remains so – because of a lack of representation.

For those Veterans whom the Oregon Veterans Legal Clinic takes on: By providing skillful, zealous advocacy, the Oregon Veterans Legal Clinic seeks to increase access to justice and lower barriers to opportunity for those who served us—our country's Veterans.

Placement within Veteran Advocacy Community

From a community perspective, the Oregon Veterans Legal Clinic works cooperatively with the Military and Veterans Law Section of the Oregon State Bar, the Oregon Family Assistance Program, the eight Grantees of the

Supportive Services for Veteran Families (SSVF) Program throughout Oregon, the Veterans Affairs Administration, the Oregon Department of Veterans Affairs and its county Veterans Services Offices, the Veterans' Justice Project, Military OneSource, Army OneSource, the Innocent Warrior Project, the Office of the Staff Judge Advocate of the Oregon National Guard/Air National Guard, the Oregon State Bar's Modest Means and Veterans Assistance Panels, and the U.S. Army Reserve 6th Legal Operations Detachment.

In order to provide a deeper learning experience to our students and to address the absence of comprehensive legal screening for Participants in Oregon's Supportive Services for Veteran Families (SSVF) Grants, we will partner with the SSVF Grantees throughout Oregon to initiate the SSVF Pilot Project: "Providing Uniform and Universal Legal Screening to All Oregon SSVF Participants." This Pilot Project will involve student-centered screening – to include deconfliction under Oregon Rule of Professional Conduct 1.10 – of every new enrollee in the SSVF Program in order to identify civil legal barriers to stable and permanent housing and to identify a legal solution plan for each Participant for whom civil legal barriers are identified.

Because we are not a "mini law firm," our pedagogical function must take precedence. Meritorious cases that are commensurate with the students' current level of clinical training, which do not present any impermissible conflict, and are efficacious to our underlying instruction plan will be handpicked for in-clinic representation.

As part of our pedagogical function and our underlying mission to coordinate and rally Oregon's Legal Community around the principles of Legal Service to Veterans, we will act as a "clearinghouse" for the remainder of the screened Veterans whom we are unable to handle in-clinic and refer those cases out, when possible, to practicing *pro-bono* and "*low-bono*" attorneys throughout Oregon who are interested in representing Veterans with meritorious cases. In addition, students will lead in efforts to develop courses of instruction in-clinic

to train Oregon lawyers to better understand and serve the unique legal needs of Oregon's Veterans and their Families; students will be involved in advocating for reform of laws and regulations that impact Veterans and their families; and students and clinic staff will be encouraged to speak at local and national conferences.

Students will partner with other Veterans Clinics and law firms, when appropriate, to file amicus briefs on key Veterans issues, as well as cooperate with other Veterans Clinics to expand the range of clinical service throughout the United States.

Lastly, when appropriate, students will be given the opportunity to partner with Veterans Treatment Courts, a growing trend within the treatment court community designed to rehabilitate rather than simply punish veterans who commit criminal offenses.



Our Key Partner

Our Key Partner: [Oregon National Guard Service Member and Family Support](#) (SMFS)

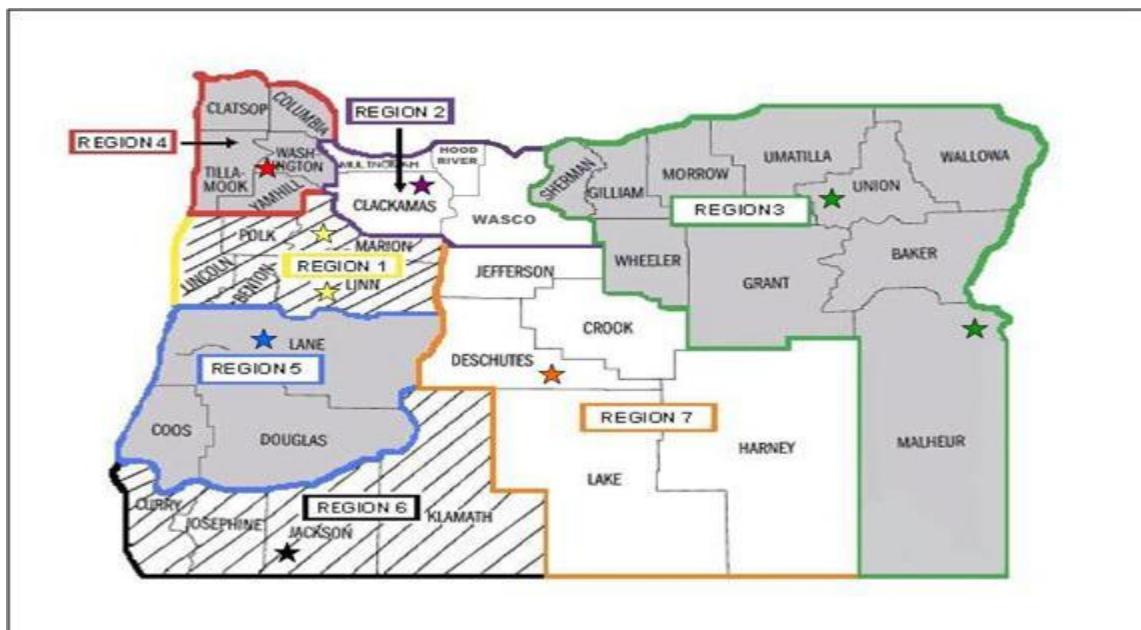
In Oregon, the National Guard Bureau has contracted to emplace ten Family Assistance Specialists (FAS) throughout Oregon, managed by the Oregon Family Assistance Coordinator. The FASs assist all Veterans, Servicemembers, and their Families, regardless of branch or service. They are available 24/7 and cover every part of Oregon.

The FASs serve as a conduit for referral to Service Providers, and are also equipped to follow up with each contact in order to ensure that the referred Service Provider was suitable and adequately addressed the challenge the Veteran, Servicemember, or Family Member was facing.

FASs serve the needs of Service Members and their Families by providing Six Essential Services. The Six Essential Services are provided by a team of Family Assistance Specialist in 6 regions across the state and include:

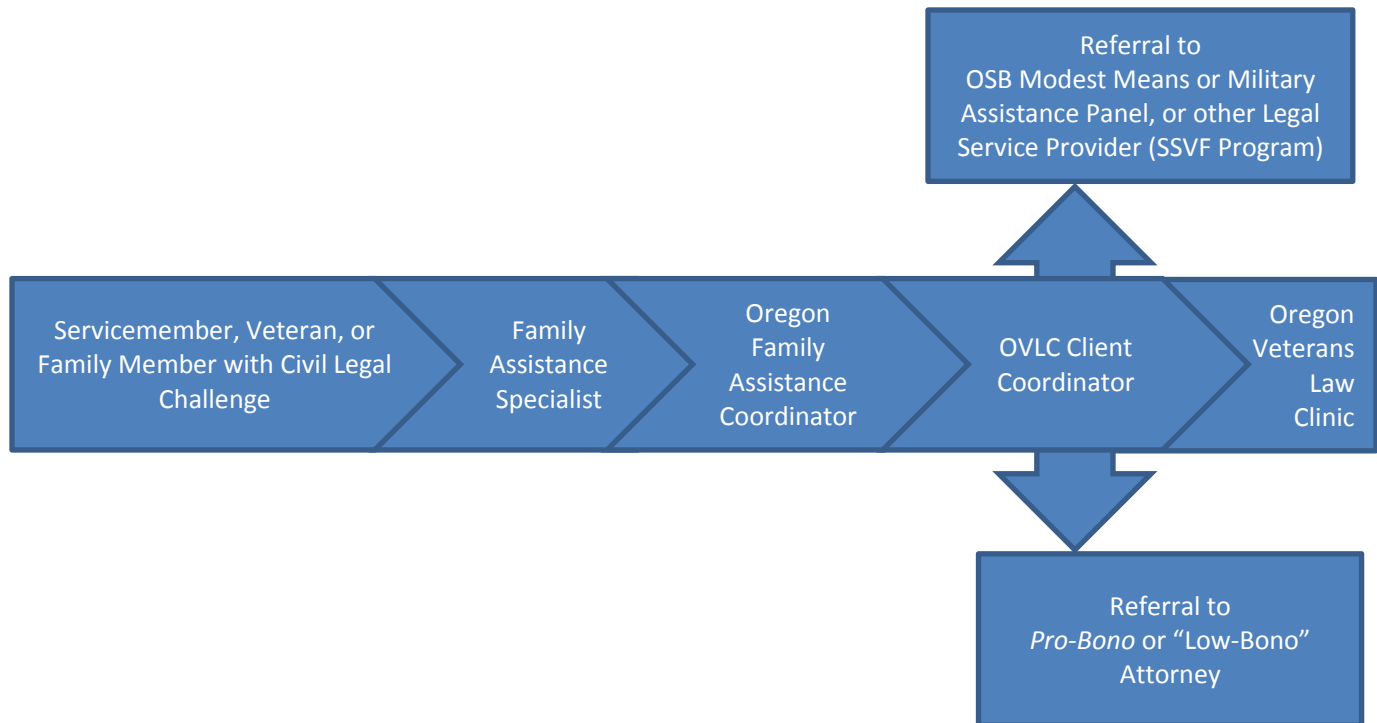
- Legal Resources and Referral
- ID and DEERS
- Financial Resources, Relief Fund Support (for active members of the Oregon National Guard who encounter financial emergencies), and Referral
- Tricare Resource and Referral
- Crisis Intervention and Referral
- Community Information and Outreach

FASs are tasked with Monthly Outreach to families during times of separation due to Military Service. If a service member is separated from his or her family for more than 30 days, the family member will receive a call by the FAS for the duration of the separation and at least 180 days after their return.



Proposed Map of Work Flow

Work Flow and Client Management



The initial entry point for all referrals to the Oregon Veterans Legal Clinic will flow through the FASs working for the SMFS. This is done to ensure that every referral has been pre-screened and validated as a Servicemember, Veteran, or their Family Member, as well as to ensure that FAS follow-up can occur.

At pre-screening, the FAS will verify military status and identify the Legal Issue which has precipitated the call. The FAS will pass this material to the Oregon Family Assistance Coordinator, who will consolidate the information and pass the consolidated list to the Paralegal Client Coordinator at the Oregon Veterans Law Clinic. (In emergent cases, the FAS will email the Paralegal Client Coordinator, cc'ing the Oregon Family Assistance Coordinator.)

Upon receipt of the daily consolidated list, the Paralegal Client Coordinator will follow-up with the Potential Client (if possible) and interview each Potential Client to sharpen the identified legal issue and ensure there are no others.

The Paralegal Client Coordinator will obtain income data from the Potential Client to ensure that the Potential Client’s income is less than or equal to 200% of the poverty line for the locality in which the Potential Client resides. For those above the 200% level or otherwise inappropriate for further representation (*e.g.*, not a legal problem, non-civil legal challenge, non-Oregon legal problem), the Paralegal Client Coordinator will refer that Potential Client to the Oregon State Bar Modest Means Program, the Oregon State Bar Military Assistance Panel, or other (Legal) Service Provider, as appropriate.

2015 Federal Poverty Guidelines

# OF FAMILY	GROSS AMOUNT	200% OF GROSS ANNUAL	MONTH	WEEK
1	\$11,770	\$23,540	\$1,962	\$453
2	\$15,930	\$31,860	\$2,655	\$613
3	\$20,090	\$40,180	\$3,348	\$773
4	\$24,250	\$48,500	\$4,042	\$933
5	\$28,410	\$56,820	\$4,735	\$1,093
6	\$32,570	\$65,140	\$5,428	\$1,253
7	\$36,730	\$73,460	\$6,122	\$1,413
8	\$40,890	\$81,780	\$6,815	\$1,573
Over 8 child, ADD	+\$4,160	+\$8,320	+\$693	+\$160

If the Potential Client is within income limits, the Paralegal Client Coordinator will evaluate the facts of the case for acceptance into the Oregon Veterans Legal Clinic, in light of the available student(s), their current level of proficiency, the subject-matter of the legal challenge(s), the location of the client, and the urgency/scheduling of the legal matter. This evaluation will be done in conjunction with the Clinical Director.

If the matter is not suitable for handling in the Oregon Veterans Legal Clinic, then it will be referred out to an attorney in the same geographical area as the Potential Client—ideally on a *pro bono*, or at least “low-bono,” basis.

If the matter is suitable for handling in the Oregon Veterans Legal Clinic, the case file will be forwarded to the appropriate student for setting up the Initial Client Meeting.



Clients

Identifying/Reaching Our Client Population

One of the significant challenges in coordinating Veteran Assistance in Oregon is the various ways in which a “Veteran” is defined. Oftentimes, otherwise-eligible persons confronting legal challenges are excluded because of insufficient time in service, level of discharge, wrong component, or various other technicalities. Our definition of eligible Client is a person who has reported to Basic Training, or a family member thereof, who is confronting a civil legal challenge. Veterans and Veteran Family Members may be prioritized for civil legal challenges which are directly caused or exacerbated by military Service, but no one will be excluded because of “inadequate” military service.

The purpose of our Clinic is to ensure representation is provided to Servicemembers, Veterans and their Families. We do not desire to put conscientious legal practitioners out of business or “underbid” them. For civil legal challenges for which legal representation is readily available in the same geographical area as the Potential Client, including representation available on a contingency fee basis, Potential Clients will be redirected back to their current representation. Potential Clients may be counseled, on a case-by-case basis, by the Clinic Director only, concerning their rights to counsel; but no further interventions will be undertaken.



Rightsizing Our Client Base

In building our client base, an important consideration is assessing how the number of cases we accept will impact our ability to model best-in-practice attorney skills for our students. Too few cases will limit our students' ability to experience the full scope of legal challenges typically encountered, while too many cases will impair the Clinic Director's ability to provide one-on-one, quality guidance to individual students. ABA Standards 302(b) requires that clinical experiences be "appropriately supervised" and "designed to encourage reflection by students":

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence[.]

ABA Standards for Approval of Law Schools (2012–2013), Rule 302(b). Clearly, pedagogical values and objectives will drive us in rightsizing our particular client base. Other factors, however, may at least partially influence this decision. These include the adequacy of existing community resources to meet veterans' legal and non-legal needs, the number of students or volunteer attorneys associated with our clinic, and the resources and long-term mission of the law school.

The Oregon Veterans Legal Clinic at Willamette University College of Law is first and foremost a student-centered teaching clinic. We will judge the number and types of cases we accept with reference to the teaching value those cases have for our students. Part of our pedagogical approach, however, is oriented toward introducing our students to the importance of lawyering as a community service. Therefore, we also view ourselves as part of a larger legal and non-legal community committed to caring for our country's Veterans. To that end, we will be active participants in community programs designed to help at-risk Veterans and their families.

In that capacity, we will partner with the Office of the Staff Judge Advocate of the Oregon National Guard and the U.S. Army Reserve 6th Legal Operations Detachment to establish in-clinic opportunities for drafting wills and advanced medical directives for eligible Veterans.

The intent of maintaining a robust *pro bono*/"low-bono" attorney referral capability is to allow us to screen far more cases, of greater variety, than we

could with only the Oregon Veteran Legal Clinic's limited resources, thereby exposing our students to a wider range of factual issues and legal challenges. For those cases that are simply unsuitable for our pedagogical requirements – either vis-à-vis the subject matter, the timing of the case, or the geographical location of the client – a *pro bono*/low-bono referral capability can ensure the Potential Client is not left with no representation at all.



Students

Approach to Instruction

For students, the highlight of a clinical experience is the opportunity to engage in live-client interactions under the direction of a supervising attorney. In criminal or environmental or civil law clinics, students often come to their clinical experience with at least some knowledge of the law they will be practicing. In Veterans Legal Clinics, students may come to the clinic with no knowledge of the areas of the law that impact Veteran housing stability or military culture.

In order to rapidly insert enrolled students in opportunities for advocacy, we will incorporate substantive areas of the applicable law and instruction on military culture into the classroom component of the clinic itself, teaching students both doctrine and skills during the course of a student's clinical experience.

At the Oregon Veterans Legal Clinic, we will incorporate the substance of the applicable law into the clinical experience without requiring students to first take a substantive course in the particular areas of the law in which we will be practicing. This combined approach to doctrinal and clinical instruction will allow us to offer a truly outstanding clinical experience to students who are interested in helping veterans but are unsure if they want to commit a significant portion of their law school career to a single clinic.



Funding/Staffing

A Multi-Part Solution

A substantial portion of the resources required to launch the Oregon Veterans Legal Clinic can be provided by the Clinical Program at Willamette University College of Law. We ask that office space, computers, telephones, *etc.*, be provided as Willamette's contribution to the creation of the Clinic, as well as malpractice coverage for participating students.

The Innocent Warrior Project is willing to modify its charter and board composition to make it suitable to support the project. As an already-established 501(c)(3) non-profit dedicated to Veterans Advocacy in Oregon, the Innocent Warrior Project is an ideal supporting/organizing entity in partnership with Willamette. In conjunction with the Metro Public Defender's Veterans' Justice Project, the Innocent Warrior Project is prepared to provide a director of the Oregon Veterans Legal Clinic (compensated at the level of \$110,000 per year, including salary and benefits), who would be employed by the Metro Public Defender and work as a volunteer adjunct professor at Willamette University College of Law to supervise students in the Oregon Veterans Legal Clinic.

The remaining requirement for creation of the Oregon Veterans Legal Clinic is funding for a Paralegal Client Coordinator. Our partnership with the Supportive Services for Veteran Families (SSVF) Program is intended to allow us to devote adequate resources to Client Coordination and Screening. We have identified Alisha Firestone as an ideal Designated Client Coordinator. Alisha is a graduate of Willamette Law and is well-respected there, in the bar, and within Oregon's community of Veterans. The position would be funded by a grant provided through the Innocent Warrior Project from SSVF Funding, and the person would

be to serve as a Supervisory Attorney within the Clinic on a volunteer basis, in addition to her role as Designated Client Coordinator.

The selection of both the Clinic Director and the Designated Client Coordinator would require approval from the appropriate authorities at Willamette University College of Law, and they would be supervised and their performance evaluated by the appropriate persons at Willamette with regard to their clinical responsibilities.

Over and above uniform and universal screening, the SSVF Program may be able to provide SSVF Participants with identified legal challenges support via the General Housing Stability Assistance Fund available to SSVF Case Managers. Establishing a habitual relationship with the eight SSVF Grantees in Oregon will allow counseling and occasional representation of SSVF Participants on a reduced-fee basis in order to facilitate the process by which the Oregon Veterans Legal Clinic becomes self-sustaining.

If the Clinic is successful, we will attempt to consolidate adequate resources to independently endow the Clinic in perpetuity. However, this step should wait until the Oregon Veterans Legal Clinic is established and can demonstrate a track record of efficient and effective Veteran Advocacy.



Outreach

The Veterans Community

Like many legal aid interests, Veterans Law revolves around a community of legal stakeholders, governmental and non-governmental organizations, non-attorney advocates, and academic spectators. An early task for the Oregon Veterans Legal Clinic is developing a plan for how our Clinic will integrate into

the local and national Veterans law community. Cooperative coordination with the Veterans community will, in large measure, facilitate the success of the Clinic, both as a helping community partner and as a center for student-focused, experiential learning.



Conclusion

An Underserved Community; An Unmatched Opportunity

At present, Oregon Veterans and Veteran Family Members who are confronted with civil legal challenges that jeopardize their ability to retain stable, permanent housing are largely left completely unrepresented. Those who have served us are expected to fend for themselves, which is a profound failure of the bar and of all Oregonians. The Oregon Veterans Legal Clinic aims to act as a resource to train future Oregon attorneys in advocating for this underserved community and to strive to ensure that no Veteran is made homeless because of his or her service to our Country.



Civil Rights
Section

March 4, 2015

Office Services
Kaiser Permanente
500 NE Multnomah Street, Suite 100
Portland, OR 97232-2099
Attn: Conference Room Coordinator

To Whom It May Concern:

I am the Chair of a group which was denied the use of the North Interstate Kaiser Permanente Town Hall. We would like to better understand how Kaiser evaluates requests for use of the Town Hall and your decision on our request in particular.

Attached is a copy of the Community Group Request Form submitted to Kaiser Permanente by the Executive Committee of the Civil Rights Section of the Oregon State Bar Association on May 16, 2014. Our group wanted to use the Kaiser Town Hall as a venue for our annual spring public forum.

In our request, the Committee described the forum's purpose as providing a "free community conversation . . . to bring the public together to both educate and provide a forum to discuss ongoing civil rights issues relevant to Oregonians. The goal of this meeting is to initiate a dialogue about race in Oregon. It also corresponds with the 50th anniversary of the Civil Rights Act of 1964 and we hope to tie that into the talk."

We provided the name of the presenter (author and history professor Walidah Imarisha); the title of the presentation ("*Why Aren't There More Black People in Oregon: A Hidden History*"); and the primary target audience (members of the community or general public). We indicated that Professor Imarisha would "lead participants through an interactive timeline of Black history in Oregon that speaks to the history of race, identity, and power in this state and the nation. Participants will discuss how history, politics, and culture have shaped-and will continue to shape-the landscape not only for Black Oregonians but all Oregonians."

Kaiser has historically allowed diverse groups to use the Town Hall regardless of whether they have ties to healthcare. For example, in 2012 Kaiser allowed the United Finnish Kaleva Brothers & Sisters to use the facility to host their Bi-Annual Membership Convention. The Town Hall has also historically been used to host discussions of political issues. For example, in April of 2014, Kaiser allowed the City of Portland to host a town hall discussion regarding a controversial Street Fee under consideration by the City Council.

On or about May 28, 2014 we received a response from Kaiser Permanente rejecting our Community Group Request. We were informed our request had been denied because the topic was "too political" and "not healthcare related."

Although this rejection occurred almost nine months ago, our Committee is still interested in understanding what happened. We would like to give you an opportunity to give us more context about Kaiser's decision-making process regarding requests for use of the Town Hall. In particular, we would like to understand what about our proposal triggered the concern that it was "too political." Any information you can provide about the criteria Kaiser uses in evaluating requests as well as information about other rejections where Kaiser determined a topic to be "too political" or "not healthcare related" would be helpful.

Please send anything you wish us to consider via email to Executive Committee Chair Ellen Osoinach at Ellen.Osoinach@gmail.com. We would appreciate receiving a response no later than March 25, 2015. Thank you for your consideration of this matter.

Very Truly Yours,



Ellen Osoinach, Chair
Executive Committee
Civil Rights Section
Oregon State Bar

cc. Helen Hirschbiel, OSB General Counsel
Encl.



KAISER PERMANENTE®

Community Group request form

Today's date: _____ May 16, 2014 _____

Name: **Julia Olsen, Legal Aid Services of Oregon** _____

Phone: **(503) 471-1160** _____

E-mail: **Julia.olsen@lasoregon.org** _____

Organization's name: **Civil Rights Committee of the Oregon State Bar** _____

Organization's address: **Oregon State Bar,** _____

Type of organization: Please attach a copy of the organization's 501(c)(3) tax-exempt paperwork.

- 501(c)(3) nonprofit
- Government agency
- School
- Other _____

***NEW* INSURANCE:** Licensee will provide evidence that Licensor has been named as an additional insured on a policy of general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit with an insurance company acceptable to Licensor. Such insurance may not be cancelled without at least thirty (30) days prior written notice to Licensor.

Room(s) will not be booked until this information is received, fax - 503-813-2247
E-mail - NW.Room.Scheduler@kp.org

Facility/Location requested: Kaiser Town Hall on North Interstate

Meeting name: Public Forum - Civil Rights Committee of the Oregon State Bar (title to be announced) _____

Meeting date and time requested: July 10, 2014 – 5:30 -7:30 _____

Number of estimated attendees: 50 _____

Room set up/AV requirements: We can provide our own power point. We would love a screen to show it on though.

Please describe the goal of the meeting: The is a free community conversation. The Civil Rights Section of the Oregon State Bar puts on an annual Public Forum to bring the public together to both educate and provide a forum to discuss ongoing civil rights issues relevant to Oregonians. The goal of this meeting is to initiate a dialogue about race in Oregon. It also corresponds with the 50th anniversary of the Civil Rights Act of 1964 and we hope to tie that into the talk.

Please describe what will take place during the meeting:

A free community conversation, "Why Aren't There More Black People in Oregon: A Hidden History." Author and educator Walidah Imarisha will lead participants through an interactive timeline of Black history in Oregon that speaks to the history of race, identity, and power in this state and the nation. Participants will discuss how history, politics, and culture have shaped-and will continue to shape-the landscape not only for Black Oregonians but all Oregonians.

Walidah Imarisha is a professor at Portland State University's Black Studies department.

Who is the primary audience for this event (members, non-members, employees, businesses)?

Members of the community.

Are Kaiser Permanente employees involved? If yes, how many?

No, but the forum is open to the community.

Please describe how your organization serves or is involved with improving the health or wellbeing of the community or a vulnerable population.

The members of the Civil Rights Section of the Oregon State bar are comprised of attorneys who work on civil rights issues for Oregonians. The Oregon State Bar Civil Rights Section provides bar members interested in civil rights issues with opportunities to develop and improve their skills and with a forum to communicate and take action on matters of mutual interest. The section publishes an eight-page newsletter four times a year, hosts a full-day CLE seminar each year and usually a shorter CLE as well, contributes to the Campaign for Equal Justice, and monitors legislation that affects civil rights.

Please complete and send to:

E-mail: nw.room.scheduler@kp.org
Fax: 503-813-2247
Mail: Office Services
 Kaiser Permanente
 500 NE Multnomah Street, Suite 100
 Portland, OR 97232-2099
 Attn: Conference Room Coordinator

Date received:	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Reason:		
Date/Who responded to requestor:		

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Ray Heysell, Chair, Governance & Strategic Planning Committee
Re: Amendments to OSB Bylaws re: Board of Bar Examiners

Action Recommended

Adopt amendments to the bylaws relating to the bar's admissions function and the role of the Board of Bar Examiners.

Discussion

For the past 2+ years, representatives of the BOG and bar staff worked with the Chief Justice and the Board of Bar Examiners to clarify the nature and role of the BBX. The objective was to confirm that admissions is a core function of the Bar and that the BBX, although appointed by the Supreme Court, oversees a bar program.

In February, the discussions resulted in agreement to the terms of a revision to the relevant Bar Act section and to the adoption of OSB Bylaws to replace the "Operating Principles" agreed to last spring.

Bar Act Amendment

The Bar Act amendment (SB 381) passed the Senate without controversy and is pending before the House Judiciary Committee. An emergency clause was added so that the amendments will be effective upon signing by the governor:

9.210 Board of bar examiners; fees of applicants for admission to bar. (1) The Supreme Court shall appoint ~~12 members of the Oregon State Bar to~~ a board of bar examiners to carry out the admissions functions of the Oregon State Bar as set forth in the bar bylaws and the rules of the Supreme Court. ~~The Supreme Court shall also appoint two public members to the board who are not active or inactive members of the Oregon State Bar.~~ The board shall examine applicants, investigate applicants' character and fitness, and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar. The composition of the board of bar examiners shall be as provided in the rules, but shall include at least two public members.

(2) Applicants for admission and any other material pertaining to individual applicants are confidential and may be disclosed only as provided in the rules described in subsection (1) of this section. The board's consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law.

New Bylaws

The proposed bylaws changes are designed to address much of what is in the current “Operating Principles”¹ and involve minor changes to existing sections and the addition of an entirely new Article 28:

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

* * *

Subsection 2.106 Indemnification

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term "officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar or the Supreme Court to perform one or more of its the Bar’s authorized functions, including the Board of Bar Examiners, the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, the Local Professional Responsibility Committees and bar counsel and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

* * *

Article 7 Financial Matters

* * *

Section 7.2 Annual Budget

* * *

Subsection 7.202 Approval by Supreme Court

The Board will establish each year the budget of the Bar’s admissions, discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The admissions, discipline and Minimum Continuing Legal Education components of the Board’s preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar’s admissions, discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board. Additional provisions pertaining to the development and approval of the budget for the admissions component are set out in Article 28.

¹ The Operating Principles replaced a 1989 “Agreement” between the OSB and the BBX.

* * *

Article 8 Public Records/Meetings

* * *

Section 8.2 Public Meetings

All regular and special meetings of the Board of Governors, [Board of Bar Examiners](#), committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

Subsection 8.201 Judicial Proceedings

(a) Disciplinary and contested reinstatement hearings and hearings conducted pursuant to Title 3 of the Rules of Procedure, are open to the public, subject to the authority of the presiding official to maintain proper decorum and to exclude witnesses at the request of the Bar, an accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of Local Professional Responsibility Committees and the SPRB, and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(l) for judicial proceedings.

(c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660.

(d) The Board of Bar Examiners' consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law.

* * *

Article 28 ~~Amendment of Bylaws~~ Admissions

Section 28.1 Board of Bar Examiners

Pursuant to ORS 9.210, the Supreme Court appoints a Board of Bar Examiners (BBX) to carry out the admissions function of the Oregon State Bar. The BBX recommends to the Supreme Court for admission to practice those who fulfill the requirements prescribed by law and the rules of the Court. The BBX's responsibilities include: investigating applicants' character and fitness, developing a bar examination, determining the manner of examination, determining appropriate accommodations for applicants, grading the bar examinations and setting standards for bar examination passage. The BBX may appoint co-graders to assist with the grading of examinations. The BBX may also recommend to the Court rules governing the qualifications, requirements and procedures for admission to the bar, by examination or otherwise, for law student appearance, and other subjects relevant to the responsibilities of the BBX.

Section 28.2 Nominations

The bar and the BBX will recruit candidates for appointment to the BBX and for appointment as co-graders. The BBX will solicit input from the Board of Governors before selecting co-graders and nominating candidates for appointment to the BBX.

Section 28.3 Liaisons

The Board of Governors shall appoint one of its members as a liaison to the BBX. The BBX may appoint one of its members as a liaison to the Board of Governors. The liaisons shall be entitled to attend all portions of the BBX and Board of Governor meetings, including executive and judicial sessions.

Section 28.4 Admissions Director

The Admissions Director shall report to and be supervised by the Director of Regulatory Services, under the overall authority of the Executive Director. The Executive Director and Director of Regulatory Services will make the hiring, discipline and termination decisions regarding the Admissions Director. The Executive Director and Director of Regulatory Services will solicit BBX's input into these decisions and give due consideration to the recommendations and input of the BBX. If the BBX objects to the final hiring decision for the Admission Director, recruitment will be reopened.

Section 28.5 Budget

With the approval of the Oregon Supreme Court, the BBX may fix and collect fees to be paid by applicants for admission. A preliminary annual budget for admissions will be prepared by the Admissions Director and Director of Regulatory Services in consultation with the BBX. Upon approval by the BBX, the budget will be submitted to the Board of Governors. The final budget presented to the Board of Governors will be provided to the BBX. Upon adoption by the Board of Governors, the budget will be submitted to the Supreme Court in accordance with Bylaw 7.202, and the BBX may make a recommendation to the Supreme Court regarding adoption of the budget. The budget will align with bar policy generally after consideration of the policy goals and objectives of the BBX.

Section 28.6 Amendments

Any proposed amendment to Article 28 shall be submitted to the BBX and Supreme Court for consideration and the BBX shall make its recommendation to the Supreme Court regarding adoption of the proposed amendment. Upon Supreme Court approval, the Board of Governors may adopt such amendments in accordance with Article 29.

Article ~~28~~ 29 Amendment of Bylaws

Any amendment of the Bar's Bylaws requires notice at a prior Board meeting unless two-thirds of the entire Board waives the notice requirement. The Bar's Bylaws may be amended by affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: April 10, 2015
From: Danielle Edwards, Director of Member Services
Re: Appointments to committees and board

Action Recommended

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

Background

Legal Ethics Committee

Three members resigned from the Legal Ethics Committee. In addition to these vacancies the officers also request the addition of two member seats which would result in a total of 17 voting members. The committee officers and staff liaison recommend **Jay D. Brody** (100519) based on his experience practicing in other states. **Daniel L. Keppler** (923537) and **Jonathan W. Monson** (102650), and **Corey B. Tolliver** (075500) offer practice area experience not represented on the committee. **Michelle M. Sweet** (060015) brings federal practice experience and gender balance.

Recommendation: Jay D. Brody, member, term expires 12/31/2016

Recommendation: Daniel L. Kepper, member, term expires 12/31/2017

Recommendation: Jonathan W. Monson, member, term expires 12/31/2016

Recommendation: Michelle M. Sweet, member, term expires 12/31/2017

Recommendation: Corey B. Tolliver, member, term expires 12/31/2016

Public Service Advisory Committee

The committee officers and staff liaison recommend the appointment of **Richard H. Rizk** (901105) to the vacant member seat on the committee. Mr. Rizk indicated the PSAC as his first choice when applying through the OSB volunteer survey. He also offers balance to existing committee members with respect to practice areas and ethnicity.

Recommendation: Richard H. Rizk, member, term expires 12/31/2016

Uniform Civil Jury Instructions Committee

Three member seats are vacant. The committee officers recommend **Kenneth C. Crowley** (883554) who is a trial attorney at the DOJ, **Benjamin P. Kean** (141354) who brings experience from another state bar, and **William "Chad" Stavley** (034656). All three candidates have agreed to serve and will ensure a balance between plaintiff and defense sides.

Recommendation: Kenneth C. Crowley, member, term expires 12/31/2015

Recommendation: Benjamin P. Keane, member, term expires 12/31/2016

Recommendation: William "Chad" Stavley, member, term expires 12/31/2017

Uniform Criminal Jury Instructions Committee

One member resignation requires a new committee appointment. The officers and staff liaison recommend **Erik M. Blumenthal** (073240) for appointment. Mr. Blumenthal is a public defender in Salem, he offers geographic and ethnic diversity and balances the committee between prosecution and defense sides.

Recommendation: Erik M. Blumenthal, member, term expires 12/31/2017

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
Memo Date: April 16, 2015
From: Eric McClendon, Public Service Advisory Committee Staff Liaison
Re: Workers' Compensation Section Proposal Regarding Percentage Fees

Action Recommended

Take no action until the completion of the Modest Means pilot program.

Background

At its April 11, 2015 meeting the Public Service Advisory Committee (PSAC) discussed percentage fee concerns raised by the Workers' Compensation Section at the last BOG meeting. Members of the section were invited to the PSAC meeting but did not attend. The committee decided to defer making a recommendation to the BOG until the current Modest Means pilot program concludes on August 31, 2015, and the committee has a chance to evaluate its results. The committee requested bar staff to provide some additional statistics on workers' compensation cases and panelist experience in order to assist in making a recommendation to the BOG. Attached to this document is a memorandum prepared by bar staff regarding the background history of this issue.

OREGON STATE BAR

Public Service Advisory Committee

Meeting Date: April 11, 2015
From: Eric McClendon, Referral & Information Services Manager
Kay Pulju, Communications & Public Services Director
Re: Workers' Compensation Section Proposal Regarding Percentage Fees

Background

The Lawyer Referral Service (LRS) is a not-for-profit legal service funded by collecting percentage fees from LRS-referred cases. Prior to the implementation of the percentage fee funding model, the Board of Governors (BOG) and the Public Service Advisory Committee (PSAC) spent a significant amount of time - several years - studying national models and interviewing stakeholders to determine whether to adopt percentage fees and, if so, what percentage fees model to implement. During its evaluation, the BOG balanced access to justice mission/needs against OSB budget and financial goals. After 43 years of drawing on the bar's General Fund, the BOG voted on June 22, 2011 and February 10, 2012 to implement a percentage fees model in an effort to have LRS become self-sustaining.

Since October of 2012, LRS has collected a 12% remittance fee from attorney fees earned and collected on LRS-referred cases. To date, percentage fees have generated \$1.3 million in revenue for the bar, which represents \$8.6 million in business generated for LRS panelists. In 2014, LRS had a net profit for the first time in the program's 45-year history. The PSAC and staff are currently following the BOG's priorities – monitoring and fine-tuning percentage fees and evaluating expansion of the Modest Means Program.

When the BOG voted to adopt a percentage fees model it adopted the following PSAC recommendation: "Expansion of the Modest Means Program should occur after the LRS percentage fee model is in place. The expansion should occur at a measured pace with the advice and counsel of substantive law sections' executive committees. This process should begin with the Workers Compensation Section, which has expressed particular concern about the impact of percentage fees on workers comp practitioners." (1/31/12 PSAC memo to BOG re: Lawyer Referral Service -- Percentage Fee Funding, Exhibit B to BOG's February 10, 2012 Open Session Minutes.)

On November 13, 2013, the BOG approved expansion of the Modest Means Program into the following areas of law: SSI/SSD, VA Benefits and Workers' Compensation. This action was the result of several months of research and communication with practitioners concerned that the adoption of percentage fees for LRS resulted in a disproportionate impact on certain areas of law, and as a result could impede access to justice for potential clients. The BOG declined to give a complete exemption to the percentage fee requirement, instead directing staff and PSAC to create subject matter and means-testing criteria. This decision was to preserve the spirit of

the Modest Means Program wherein participating attorneys reduce their fees in order to provide access to justice for low-income individuals.

LRS staff and the PSAC worked with current panelists and experienced attorneys in these specific practice areas to develop criteria for the new panel. The SSI/SSD subpanel is based on information provided by practitioner Cheryl Coon on behalf of the bar's Disability Law Section; the VA Benefits subpanel was developed with guidance from the Military and Veterans Law Section; the Workers Compensation subpanel was discussed with the Workers' Compensation Section and developed through a focus-group discussion of LRS Workers' Compensation panelists.

LRS staff and the PSAC presented the [proposal](#) for the new panel to the BOG on June 26, 2014. The BOG approved the proposal and instructed LRS staff to implement the pilot program during the 2014-2015 LRS program year. Policies and procedures for the Disability Benefits and Injured Workers panel can be found [here](#). The policies include both subject matter and means-testing criteria as described below. **The pilot program is currently underway and will conclude at the end of the current LRS program year on August 31, 2015.**

Income eligibility for clients of the new panel is set at the top MMP tier of 225% of the federal poverty guidelines. Unlike other MMP panels, the initial client screening is conducted by panel attorneys, who are in a better position than staff to determine which clients and claims meet the MMP criteria.

For administrative simplicity and to allow for tracking of results during the pilot period, the new panel is open only to active LRS panelists, who are already subject to reporting requirements. Potential clients continue to be referred through LRS, with no additional application required. Any LRS panelist working in these areas of law will have the option, after consulting with a potential client, to determine that the client and case are MMP-eligible, at which point the panelist will self-report that the matter has been designated modest means. Reporting requirements continue but no percentage fee remittances are assessed. The reporting requirement allows staff to gather the data necessary to review the effectiveness of the panel throughout the pilot period for review by the PSAC and BOG.

On February 15, 2015, members of the Workers' Compensation Section approached the BOG to readdress concerns about the impact of LRS percentage fees on workers' compensation practitioners as well as concerns about access to justice for injured workers. The section submitted two documents outlining these concerns and suggesting changes to LRS [here](#). The section proposes:

- a) No percentage fees remitted on workers' comp cases unless the attorney earns more than \$5000 on the case, in which case only amounts earned and collected in excess of \$5000 will be subject to percentage fees;
- b) No percentage fees remitted on workers' comp cases if the case takes over two years to resolve from the date of the referral;

- c) No percentage fees on costs advanced and recovered (this is already LRS policy and therefore a moot point);
- d) Reduction of percentage fees from 12% to 10% for workers' comp cases.

The BOG referred this issue back to the PSAC for consideration at its next scheduled meeting, which occurs April 11, 2015. In anticipation of the PSAC meeting, LRS Staff compiled [statistics](#) on Workers' Compensation, SSI/SSD, and VA Benefits cases in order to demonstrate the differences between these areas of law. Some [key points](#) demonstrated by the data:

1. There are currently 44 Workers' Comp panelists, 37 SSI/SSD panelists and 3 Veterans Benefits panelists.
2. Since the percentage fee model was implemented, these three areas of law have produced the following revenue.
 - a. Workers' Compensation: \$479,076 for panelists, \$57,489 for the bar.*
 - b. SSI/SSD: \$30,436 for panelists, \$3,652 for the bar.
 - c. VA Benefits: \$1,130 for panelists, \$135 for the bar.
3. If a \$5,000 floor (no reduction in % fee) for Workers' Comp cases was adopted at the time of percentage fee implementation, the total LRS revenue from Workers' Comp cases since the start of percentage fees would be \$24,500 (as opposed to \$57,489) - a 50% loss of revenue.
4. If a 10% percentage fee (No \$5000 floor) for Workers' Comp cases was adopted at the time of percentage fee implementation, the total LRS revenue from Workers' Comp cases since the start of percentage fees would be \$47,907 (instead of \$57,489).

Action Recommended

Staff recommends that the PSAC wait for the conclusion of the Modest Means pilot program prior to proposing any further changes to the Modest Means Program or the LRS percentage fee model. This will allow the PSAC to evaluate the data and make an informed recommendation to the BOG. It will also allow time for further discussion of possible across-the-board changes to percentage fees, including any recommendations on a threshold/trigger amount that was part of the initial percentage fee proposal and deferred for further review this year.

***Note:**

After this memo was drafted but prior to the PSAC meeting, LRS received its largest ever remittance fee from a workers' compensation case. A panelist earned and collected \$83,000 on a workers' comp 3rd party litigation referral, resulting in a \$9,999 remittance fee for the bar.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Sylvia E. Stevens, Executive Director
Re: Support for ABA Commission on Disability Rights “Pledge for Change”

Action Recommended

Consider whether to sign on to the ABA Commission on Disability Rights “Pledge for Change.”

Discussion

The ABA Commission on Disability Rights promotes full and equal participation of lawyers with disabilities throughout the profession. The Pledge for Change was introduced at the ABA’s National Conference on the Employment of Lawyers in 2009; it was amended in 2012 to include judges as signatories. Since 2009, over 150 legal employers and organizations of all kinds have signed on, including the state bars of California, Nevada and Washington.

The CDR invites the Oregon State Bar to demonstrate its commitment to recruitment, retention and advancement of lawyers with disabilities by becoming a signatory on the Pledge.



Commission on Disability Rights

DISABILITY DIVERSITY IN THE LEGAL PROFESSION: A PLEDGE FOR CHANGE

As Legal Employers, Chief Legal Officers, Law Schools, State and Local Bar Associations, Judges, Court Administrators, Hiring Partners, and Hiring Personnel in the Legal Profession, we hereby affirm our commitment to diversity in the legal profession, including diversity with respect to individuals with mental, physical, and sensory disabilities. Our pledge is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients and the populations we serve require legal representation that reflects the diversity of our employees, customers and the communities where we operate. In furtherance of this commitment, this is intended to be a Pledge for Change for the profession generally and in particular for our law departments, firms, agencies, law schools, state and local bar associations, courthouses, and organizations. We further pledge that we will encourage other law departments, firms, agencies, law schools, state and local bar associations, court systems, and/or organizations that we do business with to make a similar diversity commitment.

Organization: _____

Printed Name & Title :

_____ Date: _____

Signature: _____

Email Address & Phone Number: _____

You can return a signed copy via either e-mail
(cdr@americanbar.org) or fax (202-442-3439).

Amended February 07, 2014.

This Pledge was inspired by "A Call to Action," a diversity pledge for the legal profession, created by Rick Palmore, Esq.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Theresa L. (Terry) Wright, Legal Opportunities Coordinator
Re: Interim Report to the Board

Issue

The Oregon State Bar has retained me on a short term basis to review programming offered in Oregon that is particularly relevant to new, unemployed lawyers, in order to assist them in finding/creating employment, and finding legal representation for low- to moderate-income clients at the same time. I have also been reviewing creative programs offered by other jurisdictions with an eye toward introducing Oregon lawyers and the Bar to the various programs that could be implemented in Oregon.

Discussion

I have been working at the Bar on a part time basis for approximately the last two months. During this time, I have met with Bar and PLF staff, law school representatives, and others. I have attended meeting of Bar groups who are working on new member programming. I have spoken with individuals involved in other state Bar and law school access to justice programs focusing on new lawyers. I have attended a number of relevant CLE's and webinars, and the kick-off reception to the Multnomah Bar Association's Solo and Small Practitioner program. In late February, I attended a conference in San Diego focusing on incubator and other creative programming offered in other jurisdictions for new lawyers.¹ I have reviewed written material and on-line information regarding both Oregon and other jurisdictions programs and offerings, including written manuals and the like.

I have not completed my information collection, but have begun to compile information gathered into a useful format, although I am far from done with this project. Nor am I done with information gathering portion of my task, but believe I have made significant progress in understanding the issue, the overlaps of services, and the gaps in programming. I still have a number of interviews to conduct, and more websites and on-line resources to explore, not to mention review of significant written material I have been collecting.

Proposed Stakeholder Meeting

Although there is much more work to do, we are probably at a place where a stakeholder meeting would help move us forward. I am in the process of organizing such a meeting for June

¹ I arranged for outside non-Bar funding to attend this conference.

4, 2015. This is the same day as the New Lawyer Mentorship Program kick off meeting, so seemed to be a natural fit. I hope to engage participants in discussions around consolidating some programs, while hoping to begin to implement new programming with the resources freed by consolidation. It is also my hope that some creative ideas can be developed to help move this project forward.

I anticipate the meeting starting before the New Lawyer Mentorship Program kick off meeting, with the hope that at least some participants will attend the opening session with the Chief Justice and the one-hour Ethics/Professionalism CLE to follow. Follow that, since the mentorship participants will be in breakout sessions, I would hope to reconvene the stakeholder meeting with those who want to further discuss issues raised at the earlier meeting. I hope to have this meeting result in some concrete plans rather than “pie in the sky” ideas. Lastly, I hope that participants will attend the New Lawyer Mentorship Program-sponsored reception at the end of the day.

Preliminary Findings

While being nowhere close to being fully inclusive, the following are thoughts/findings that come out of my work thus far:

1. CLE programming appropriate for new lawyers in Oregon is abundant, and duplicative among all of the various groups offering programming.
2. There are few organized activities in Oregon that allow new lawyers to develop skills through “hands on” work.
3. The Bar, its sections, committees, and specialty programming offer many opportunities for new lawyers.
4. There are many creative ideas (including “incubator” programs) being developed in other jurisdictions that may be able to be duplicated in Oregon to increase access to justice utilizing new lawyers, while insuring they are able to make a living doing this work.
5. Technology is one method to increase access to justice, and should be further explored.
6. There are numerous resources available for lawyers, both Oregon and nationally based, but there does not seem to be an organized plan to let lawyers know what those resources are and how to access them.
7. New lawyers desire more opportunities to network with other lawyers.

8. Given all of the programming for new lawyers currently available in Oregon, there is a noticeable lack of coordination of this programming both within the Bar and outside. The programming currently offered by the Bar is spread among many departments and staff, and a centralized approach would probably enhance the programming that already exists, not to mention increasing the opportunities of develop other resources for new lawyers.²

Conclusion

I have been thoroughly enjoying this opportunity to assist the Bar and new lawyers, and look forward to assisting the Bar in providing a rich and useful program to new lawyers and to Oregon's underserved communities. Thank you for this opportunity.

² By way of example, one intriguing, but relatively simple, idea incorporated into the Colorado Bar's access to justice/new member programming is an interactive program on disc that allows lawyers to plug in information summarizing overhead and other costs of running a solo or small practice, which allows them to determine how much (or how little) they can charge to maintain a viable practice while providing legal services to underserved communities.

REPORT

I. Introduction

This resolution urges state and territorial legislative bodies and courts, including federal courts, to establish a privilege for confidential communications between a client and a lawyer referral service, similar to the privilege that currently exists for confidential communications between attorneys and their clients. Such a privilege should provide that a person who consults a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice may legally refuse to disclose the substance of that consultation and may prevent the lawyer referral service from disclosing that information as well. As with other privileges, the client would have the authority to waive confidentiality, and any recognized exceptions to the attorney-client privilege should also apply to this new privilege, such as to prevent imminent death or harm to another person.

II. Background on Lawyer Referral Services

Lawyer referral services (“LRSs”) help connect people seeking legal advice or representation with attorneys who are qualified to assist the individual client with their specific legal needs. In addition to providing an important service to the public LRSs provide an important service for attorneys by helping them to get new clients and grow their practices.

LRSs are usually non-profit organizations affiliated with a bar association, local or state. There are hundreds of these organizations nationwide, and they assist hundreds of thousands of clients every year. Some state governments and/or bar associations regulate and certify local LRSs, such as in California. In addition, the ABA offers its own accreditation to LRSs nationwide. While some LRSs are directed by attorneys, most of the staff who do “intake” (answering phone calls from prospective clients or speaking with people who walk-in) are not attorneys.

The lawyer referral process begins when the prospective client contacts the lawyer referral service, usually by phone, to explain a problem, and ends when the LRS either provides the client with contact information for one or more attorneys whose expertise is appropriate to the problem, or directs the client to a legal services program, government agency, or other potential solution. In the course of this interaction, confidential information is often provided by the client to the LRS to ensure that the client is routed to the appropriate attorney or other service provider.

III. Background on the Attorney-Client Privilege

Any information communicated in a conversation between a client and their attorney is protected by the attorney-client privilege. This evidentiary rule, originally established through the common law and now codified in many state evidence codes, allows the client and attorney to refuse to disclose such communications in a legal proceeding. It is distinct from the duty of confidentiality owed by the attorney to the client, which is a rule of professional responsibility and not a rule of evidence. The attorney-client privilege ensures that a client can speak freely to

their attorney without risk that anything said can be used against the client later. The client is always free to waive the privilege, and there are usually certain exceptions to the privilege, such as if disclosure is necessary to prevent death or substantial bodily harm to a person. The attorney-client privilege usually extends to communications between a *prospective client* and an attorney (even if the attorney is not ultimately retained) because the communications are for the purpose of obtaining legal advice and representation.

IV. The Problem and the Solution

If a prospective client reveals confidential information to a LRS in an effort to obtain legal advice or counsel, there is no statutory or common law privilege to protect that communication (except in California, which passed a statute creating such a privilege in 2013). As noted above, most LRS staff are not attorneys. Moreover, the LRS client seeks to obtain a referral to an attorney, not legal advice or representation from the LRS itself. Thus, the attorney-client privilege would not apply to communications between prospective clients and LRSs (though it should be noted that we have found no published case where a court made a finding on this issue).

This is a problem for at least two reasons. First, it has hampered communications between some prospective clients and LRSs, making it difficult for the LRS to gather the information necessary to make a referral to the appropriate lawyer. Prospective clients sometimes ask LRSs whether their communications are privileged, and, in most states, the current answer is “we don’t know, but probably not.” It is crucial that prospective clients feel comfortable sharing as much information as possible with a LRS in order to facilitate a referral to the best possible attorney (or agency) for their particular legal issue. Second, at least one litigant has sought discovery from a LRS with respect to communications with a prospective client, and it is likely this will continue to occur.

This Resolution urges states and territorial legislative bodies and state, territorial and federal courts to recognize a privilege for communications between a prospective client and a LRS that would fill the current gap in the protection of communications from a client seeking legal counsel. It would enable LRSs to reassure prospective clients and thereby maintain the kind of honest and open communication required to make a good referral. It would eliminate the possibility that an opposing lawyer might attempt to subpoena documents and/or seek testimony from a LRS concerning its communications with the other party.

It should also be noted that the ABA expressed support for this policy in the ABA Model Supreme Court Rules Governing Lawyer Referral & Information Service, which state:

Rule XIV

-- A disclosure of information to a lawyer referral service for the purpose of seeking legal assistance shall be deemed a privileged lawyer-client communication.”

Commentary

Since a client discloses information to a lawyer referral service for the sole purpose of seeking the assistance of a lawyer, the client's communication for that purpose should be protected by lawyer-client privilege.

However, the model rules were passed in August 1993, and since that time, only one state (California) has taken action on this issue. It is time for the ABA to renew its support for this policy.

DRAFT

GENERAL INFORMATION FORM

1. Summary of Resolution

This resolution urges state legislatures and federal and state courts to establish a privilege for confidential communications between a client and a lawyer referral service, similar to the privilege that currently exists for confidential communications between attorneys and clients.

2. Approval by Submitting Entity

Standing Committee on Lawyer Referral Services, by email on April 17, 2015

3. Has this or a similar resolution been submitted to the House or Board previously?

This provision was incorporated into the ABA Model Supreme Court Rules for Operating a Lawyer Referral Service, previously adopted by the ABA House of Delegates as policy in August 1993. This provision from the Rules is being offered separately to encourage specific adoption of the lawyer-client privilege provision.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

This resolution supports ABA Model Supreme Court Rules Governing Lawyer Referral & Information Service Rule XIV which provides as follows:

“A disclosure of information to a lawyer referral service for the purpose of seeking legal assistance shall be deemed a privileged lawyer-client communication.

Commentary

Since a client discloses information to a lawyer referral service for the sole purpose of seeking the assistance of a lawyer, the client's communication for that purpose should be protected by lawyer-client privilege.”

5. What urgency exists which requires action at this meeting of the House?

Lawyer referral services get questions from clients about this issue on a regular basis, such as, “Before I tell you about my case, is this conversation privileged and confidential?” Lawyer referral services need the certainty of a codified or court-recognized privilege in order to reassure such clients and facilitate the kind of open communication required to make the right referral to the right lawyer. Anecdotal reports are that at least one litigant has sought discovery from a lawyer referral service on its communications with a client.

6. Status of Legislation.

The California legislature codified a lawyer referral service-client privilege in 2013. \See Cal. Evid. Code §§ 965-968.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Lawyer referral services around the country would hopefully urge their respective state legislatures to pass laws recognizing this privilege.

8. Cost to the Association.

None

9. Disclosure of Interest.

None

10. Referrals.

11. Contact Person. (Prior to the meeting.)

C. Elisia Frazier
114 Grand View Drive
Pooler, GA 31322-4042
Cef1938@haregray.com
9112-450-3695

12. Contact Person. (Who will present the report to the House.)

C. Elisia Frazier
114 Grand View Drive
Pooler, GA 31322-4042
Cef1938@haregray.com
9112-450-3695

EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution would urge state legislatures and federal and state courts to establish a privilege for confidential communications between a client and a lawyer referral service, similar to the privilege that currently exists for confidential communications between attorneys and clients.

2. Summary of the Issue that the Resolution Addresses

Lawyer referral services provide a public service in helping clients to find legal representation (and attorneys find clients). In order to provide this service, lawyer referral services must first obtain information from each client about their case or issue, to ensure that they are referred to the appropriate attorney for their specific legal needs. In most states, there is currently no recognized privilege applicable to communications between a client and a lawyer referral service, meaning that they are potentially subject to discovery. Lawyer referral services are regularly questioned by clients about this issue, and most are unable to reassure clients that their communications are privileged. This can hamper the kind of open communication required to make the right referral. Moreover, at least one litigant has sought discovery into such communications.

3. Explanation of How the Proposed Policy Position Will Address the Issue

This Resolution would urge states legislatures and state and federal courts to recognize a privilege for communications between a prospective client and a lawyer referral service. It would enable lawyer referral services to reassure their prospective clients and thereby maintain the kind of open communications required to make a good referral. It would eliminate any risk that an opposing lawyer might subpoena documents and/or seek testimony from a lawyer referral service concerning its communications with the other party.

4. Summary of Minority Views

None as of this writing.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LAWYER REFERRAL AND INFORMATION SERVICE

CO-SPONSORS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges state and territorial legislative bodies
2 and courts, including federal courts, to adopt rules to establish a privilege for confidential
3 communications between a client and a lawyer referral service, similar to the privilege that
4 currently exists for confidential communications between attorneys and clients, ensuring that a
5 client consulting a lawyer referral service for the purpose of retaining a lawyer or obtaining legal
6 advice from a lawyer may refuse to disclose, or prevent lawyer referral service staff from
7 disclosing, the substance of that consultation. Such a privilege should mirror the attorney-client
8 privilege applicable in that jurisdiction as closely as possible, including incorporating any
9 exceptions to the privilege, e.g. to prevent death or substantial bodily harm to someone.

**Oregon State Bar
Board of Governors Meeting
February 12, 2015
Special 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.

President Richard Spier called the meeting to order at 1:20pm. The meeting adjourned at 2:00pm.

Board members present were James Chaney, Guy Greco, Ray Heysell Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon Pagan, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Tim Williams and Elisabeth Zinser. Not present was Charles Wilhoite. OSB employees present were Sylvia Stevens, Rod Wegener, Helen Hirschbiel, Susan Grabe, Dawn Evans, Kateri Walsh and Camille Greene. Also present was Carol Bernick, PLF CEO.

A. Consideration of 2015 Oregon House Bill 2565

Ms. Hirschbiel asked the board to decide whether to support, oppose or take no position on HB 2565. **[Exhibit A]**

Motion: Mr. Ramfjord moved that the bar not object to the legislature considering OSB employees to be public employees for the purpose of this bill, but the bar is not a public employer and our employees are not public employees.

The motion died due to lack of a second.

Motion: Mr. Pagan moved, Ms. Kohlhoff seconded, that the board not take a position on the bill. The board voted. Ms. Kohlhoff and Mr. Pagan were in favor. All other board members were opposed.

The motion failed.

Motion: Mr. Mansfield moved, Mr. Whang seconded, that the board not oppose the bill. The board voted. Mr. Prestwich and Mr. Greco were opposed. All other board members were in favor.

The motion passed.

House Bill 2565

Sponsored by Representative WILLIAMSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes Oregon State Bar subject to public employees collective bargaining law.

A BILL FOR AN ACT

1
2 Relating to the Oregon State Bar; amending ORS 9.010.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 9.010 is amended to read:

5 9.010. (1) An attorney, admitted to practice in this state, is an officer of the court.

6 (2) The Oregon State Bar is a public corporation and an instrumentality of the Judicial De-
7 partment of the government of the State of Oregon. The bar is authorized to carry out the provisions
8 of ORS 9.005 to 9.755.

9 (3) The bar is subject to the following statutes applicable to public bodies:

10 (a) ORS 30.210 to 30.250.

11 (b) ORS 30.260 to 30.300.

12 (c) ORS 30.310, 30.312, 30.390 and 30.400.

13 (d) The Oregon Rules of Civil Procedure.

14 (e) ORS 192.410 to 192.505.

15 (f) ORS 192.610 to 192.690.

16 (g) ORS 243.401 to 243.507.

17 (h) ORS 244.010 to 244.040.

18 (i) ORS 297.110 to 297.230.

19 (j) ORS chapters 307, 308 and 311.

20 (k) ORS 731.036 and 737.600.

21 **(L) ORS 243.650 to 243.782.**

22 (4) Except as provided in subsection (3) of this section, the bar is not subject to any statute
23 applicable to a state agency, department, board or commission or public body unless the statute
24 expressly provides that it is applicable to the Oregon State Bar.

25 (5) The Oregon State Bar has perpetual succession and a seal, and may sue and be sued.
26 Notwithstanding the provisions of ORS 270.020 and 279.835 to 279.855 and ORS chapters 278, 279A,
27 279B and 279C, the bar may, in its own name, for the purpose of carrying into effect and promoting
28 its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal
29 in and with and dispose of real and personal property.

30 (6) No obligation of any kind incurred or created under this section shall be, or be considered,
31 an indebtedness or obligation of the State of Oregon.

32

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

Oregon State Bar
Meeting of the Board of Governors
February 13, 2015
Open Session Minutes

The meeting was called to order by President Rich Spier at 8:58 a.m. on February 13, 2015. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were James Chaney, Guy Greco, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon A. Pagan, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Simon Whang, Timothy Williams and Elisabeth Zinser. Not present was Charles Wilhoite. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Kay Pulju, Susan Grabe, Dawn Evans, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Carol Bernick, PLF CEO, and Tim Martinez, PLF Board of Directors, and Julia Manela, PLF BOG Chair; Karen Clevering, ONLD Chair; and Keith Semple (Chair), Hon. Jenny Ogawa (Secretary) and Kate Caldwell, OSB Workers Compensation Section.

1. Call to Order/Adoption of the Agenda

The board accepted the agenda, as presented, by consensus.

2. Report of Officers & Executive Staff

A. Report of the President

Mr. Spier reported that Theresa Wright will be temporarily joining the OSB staff to work on the coordination of existing programs to assist young lawyers in their professional development, with a focus on meeting the needs of the underserved.

B. Report of the President-elect

Mr. Heysell reported that he will be attending the CEJ lunch where Jackson County will be awarded, for the second year, the Justice Cup for the most donations to CEJ.

C. Report of the Executive Director

In writing. Ms. Stevens also mentioned that the Discipline System Review Committee has met twice to address the recommendations in the ABA's report on the OSB Disciplinary System. She acknowledged Carol Bernick for the innovations and progress to promote relationships between the PLF staff and the OSB staff.

D. Director of Regulatory Services

In writing. Ms. Stevens reported that Ms. Evans received the National Organization of Bar Counsel's 2015 President's Award.

E. Director of Diversity & Inclusion

In writing. Ms. Stevens introduced the draft report of 2014 progress on the Diversity Action Plan goals adopted by the BOG in November 2012. The final report is expected in a few weeks.

F. MBA Liaison Reports

Mr. Spier reported on the January 7, 2014 meeting and the enthusiasm of the MBA towards the BOG's efforts. Mr. Whang reported on the February 4, 2015 meeting and the increase in diversity on the MBA board.

G. Oregon New Lawyers Division Report

In addition to the written report, Ms. Clevering reported on the ONLD's CLEs and their new liaisons from OLIO, ACDI and LRAP. They are in the process of selecting law school liaisons. They are reaching out to local bar members too.

3. Professional Liability Fund

Ms. Bernick provided a general update on the PLF's November 2014 financial statements and reported on the 2014 claims attorney and defense counsel evaluations. She introduced the new BOD Chair, Julia Manela. The PLF board will be reevaluating its reserve target, together with the best method for establishing this target, and its effect on the PLF rates.

4. OSB Committees, Sections and Councils

A. Client Security Fund Committee

Ms. Stevens reported that Mr. Mantell has asked the board to delay the consideration of his claim until he can present more evidence to the CSF committee.

B. Workers Compensation Section

Keith Semple, Judge Jenny Ogawa and Kate Caldwell presented the section's concerns with Lawyer Referral Service percentage fee structure, especially considering that the decreasing number of workers compensation attorneys participating in the LRS creates a lack of access to justice for clients. The section is asking for a reduction in record keeping requirements and no fee split on any fees under \$5,000, no fee split on attorney fees earned 2 years after the initial referral, reduction in the fee split for unreimbursed litigation costs incurred by the attorney, and reduction in the LRS portion of the fee split from 12% to 10%. **[Exhibit A]**

Motion: Mr. Greco moved, Ms. Kohlhoff seconded, that the board send this to the Public Service Advisory Committee for further study and recommendation to the board. Mr. Ross amended the motion and asked the PSA Committee to look at this as its own standing issue, not a part of the pilot project, and report to the board by its April meeting. Ms. Nordyke seconded the amended motion. Both motions passed unanimously.

C. Elder Law Section

Ms. Stevens asked the board for guidance on the section's request for board approval of a donation to the City of Beaverton Dispute Resolution Center to sponsor a Probate Mediation Training. **[Exhibit B]**

The board asked Ms. Stevens to draft amendments to the standard section bylaws regarding section donations for the board to consider at the April board meeting.

D. Legal Ethics Committee

Ms. Hirschbiel presented the committee's request for board approval of proposed amendments to formal ethics opinions, with the exception of Formal Opinion No. 2005-49 which has been withdrawn. **[Exhibit C]**

Motion: Mr. Heysell moved, Mr. Greco seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

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

A. Board Development Committee

Mr. Whang presented the committee's motion to reappoint Ms. Judy Snyder to the Commission on Judicial Fitness and Disability.

Motion: The board unanimously approved the committee motion.

B. Budget and Finance Committee

Ms. Kohlhoff gave a general committee update.

C. Governance and Strategic Planning Committee

Mr. Heysell gave a general committee.

Mr. Heysell presented the committee's proposed amendments to LRAP policies and guidelines **[Exhibit D]**.

Motion: The board unanimously approved the committee motion.

Mr. Heysell asked the board to consider the committee's recommended section website policies. **[Exhibit E]**

Motion: The board unanimously approved the committee motion.

D. Public Affairs Committee

Mr. Prestwich updated the board on the latest legislative activity and the status of the bar's law improvement proposals.

E. Executive Director Selection Special Committee

Mr. Heysell discussed the Executive Director recruitment/selection procedures.

F. Legal Technicians Task Force

Ms. Stevens presented the task force's report and recommendations. **[Exhibit F]** Mr. Ross pointed out that the task force isn't recommending going forward, but merely asking if this is an idea the board wants to pursue. Mr. Greco stressed that licensing legal technicians is only one aspect of solving the needs of the public and that it is important for the bar to press very hard for funding for family court facilitators.

Motion: Mr. Heysell moved, Mr. Greco seconded, and the board voted unanimously to send this report to the Governance & Strategic Planning Committee to study further and make a recommendation to the board for further action.

6. Other Action Items

Ms. Edwards presented various appointments to the board for approval with an additional recommendation of appointing Richard Braun to the Client Security Fund to fill a recently-vacated seat. **[Exhibit G]**

Motion: Mr. Whang moved, Ms. Nordyke seconded, and the board voted unanimously to approve the appointments.

7. Consent Agenda

Motion: Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

8. Closed Sessions – see CLOSED Minutes

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

Motion: Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to decline Lauren Paulson’s request for mediation regarding his pending class action complaint.

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

None.

DRAFT

**Oregon State Bar
Board of Governors Meeting
February 13, 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. Pending or Threatened Non-Disciplinary Litigation

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

Motion: Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to decline mediation with Mr. Paulson.

B. Other Matters

None.

DRAFT

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

SCHMIDT & YEE, PC

Attorneys at Law
18525 S.W. Vincent St.
Aloha, Oregon 97078

Michael A. Schmidt

Pamela E. Yee

PHONE: (503) 642-7641
FAX: (503) 649-1823

e-mail: mike@schmidtandyee.com
Website: 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 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.	Understanding Diminished Capacity	TBD
10:15 – 10:30 a.m.	Break	
10:30 – 12:00 p.m.	Working with People with Disabilities in Mediation	Meg Nightingale
12:00 – 1:00 p.m.	Lunch	
1:00 – 2:30 p.m.	Family Dynamics	TBD
2:30 – 2:45 p.m.	Break	
2:45 – 4:15 p.m.	Issues in Guardianships/ Conservatorships	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.	Panel Perspectives from the Bench	Judges TBD
10:30 – 10:45 a.m.	Break	
10:45 – 12:30 p.m.	Roleplays of Guardianship/ Conservatorship Disputes	Steve Owen
12:30 – 1:30 p.m.	Lunch	
1:30 – 2:30 p.m.	Issues in Probate (Will Contests, Administration Disputes, Trust Disputes, etc.)	Josh Kadish
2:30 – 2:45 p.m.	Break	
2:45 – 4:30 p.m.	Roleplays of Probate Disputes	Josh Kadish and Roleplay Coaches
4:30 – 5:00 p.m.	Debrief; Certificates; Adjourn	

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.¹

Oregon RPC 1.7 provides:

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

¹ 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.

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.¹

Oregon RPC 1.7 provides:

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

¹ 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.

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 2003⁶); 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).¹ The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

¹ 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).² 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),³ 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

² 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.

³ 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).¹ The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

¹ 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).² 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:~~

² 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;~~

~~...~~

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~~-(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),³ 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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³ 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).

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
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.

~~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).

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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).

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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.

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

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 ~~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.

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. *Shapero 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) — 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.

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).¹

¹ 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).² 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.

(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).

² 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).¹

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).² 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.

¹ Oregon RPC 7.12(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).

² 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 20036); 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. 2005-65
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.

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.

DRAFT

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).

*Loan Repayment
Assistance Program*

Policies and Guidelines

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

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

Meeting Date: February 13, 2015
From: Ray Heysell, Chair, Governance & Strategic Planning Committee
Re: Section Web Policies

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.

DRAFT

LEGAL TECHNICIANS TASK FORCE

FINAL REPORT TO THE BOARD OF GOVERNORS

February 13, 2015

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 promoting the concept of licensing Legal Technicians¹ 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

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

¹ 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

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

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

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;²
- There have long been unlicensed “paralegals” in various communities providing various quality of assistance, sometimes to the significant detriment of the public;³ 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-represented⁴. 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

² 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.

³ This is an unlawful practice of law issue which the Bar has been working to remedy for years.

⁴ 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

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

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.

LLLT Program

About the Program and the
Licensing Process

Impetus Behind the LLLT Rule

2003 Civil Legal Needs Study

- Revealed glaring unmet need for legal services in WA low-income population (defined as families with incomes below 125% of the Federal Poverty Level)

GR 25

- Instructed the Practice of Law Board to make recommendations re authorizing non-lawyers to “engage in certain defined activities that would otherwise constitute the practice of law as defined in GR 24.” GR 25(c)(4).

Supreme Court Order

June 15, 2012: Supreme Court issues order adopting LLLT Rule, stating “[w]e have a duty to ensure the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”
Order at 5-6.



**Admission
to Practice
Rule
(APR) 28**

**Created LLLT Program &
LLLT Board**

**Authorizes limited
practice of law by
nonlawyers in approved
practice areas**

**Specifies requirements for
licensure**

Legal Technicians may:

Inform clients of procedures and course of legal proceedings

Provide approved and lawyer prepared self-help materials

Review documents and exhibits from opposing party and explain them

Select, complete, file, and serve approved and lawyer prepared forms and advise of their relevance

Advise clients of necessary documents and explain their relevance

Assist client in obtaining necessary documents



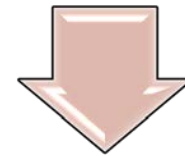
LLTs may not (unless permitted by GR 24):



Initial Practice Area



Family law
chosen as first
practice area



Approved by
Supreme Court
in March 2013

Defining the Family Law Scope of Practice

Family law shall include (subject to limitations):

- **Child support modification actions**
- **Dissolution and legal separation actions**
- **Domestic violence actions**
- **Committed intimate relationship actions**
- **Parenting and support actions**
- **Parenting plan modifications**
- **Paternity actions**
- **Relocation actions**

Legal Technicians shall:

Be at least 18 years of age

Have a minimum associate level degree

Meet education, examination, and
experience requirements

Show proof of financial responsibility

Show proof of continuing legal
education courses

Abide by a code of ethical conduct
(LLLT RPC)

Be subject to discipline

Pathway to Admission

STEP 1: COMPLETE EDUCATION

- **Minimum associate level degree**
- **Core Education:** 45 credit hours at an ABA approved program
- **Practice Area Education**

STEP 2: PASS EXAMINATIONS

- **Core education exam**
- **Practice area exam**
- Exams include multiple choice, essay, and practice exercise sections

STEP 3: ESTABLISH EXPERIENCE

- **3,000 hours of substantive law-related experience**
- Supervised by a licensed lawyer
- Within 3 years before or after passing examination

Step 1: Core Education, 45 Credit Hours

Intro to Law and Legal Process, 3 credits

Civil Procedure, 8 credits

Legal Research, Writing, and Analysis, 8 credits

Contracts, 3 credits

Professional Responsibility/Ethics, 3 credits

Law Office Procedures and Technology, 3 credits

Interviewing and Investigation Techniques, 3 credits

ELECTIVES: Applicant may take remaining credits as legal studies elective courses



Limited Time Waiver

The Board will waive the **associate degree** and **core education** requirements, if you have:

1. Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS)

2. Active certification as a NALA Certified Paralegal **OR** NFPA Registered Paralegal **OR** NALS Professional Paralegal

3. 10 years of substantive law-related experience supervised by a licensed lawyer

Limited Time Waiver Applications

How to Apply

- Meet all 3 requirements
- Provide original certification documents
- Obtain Declaration(s) of Supervising Lawyer(s)
- Pay \$150 application fee

Restrictions

- Is *not* a license to practice as an LLLT
- Does *not* waive practice area education
- Must apply for waiver by December 31, 2016
- Apply for licensure by December 31, 2018 or waiver will expire

Step 1 continued

Practice Area Education

Must be taken in each practice area

Must be developed by or in conjunction with an ABA approved law school

Should include WA law specific topics



Family Law Courses

Developed by all 3 WA law schools

Offered by UW in Winter 2014, with all law schools providing instruction

To be offered by live webcast and in person

Family Law Courses

Course Description

- 5 credits of basic domestic relations subjects
- 10 credits in advanced and WA specific domestic relations subjects

Core Prerequisites

- Intro to Law & Legal Process
- Civil Procedure
- Legal Research, Writing, & Analysis
- Professional Responsibility
- Interviewing & Investigation

How to Enroll for Winter 2014

- Complete prerequisites **OR**
- Have a paralegal degree from an ABA approved program with $\frac{1}{2}$ of 45 core credits completed, **OR**
- Have an approved waiver
- Submit enrollment form **OR** waiver application by December 16, 2013

Step 2: Examination

When can I apply?

- Early Fall 2014
- After completing the core and practice area education

Do I have to pass both exams to be licensed?

- Yes, for initial licensure
- For new practice areas, LLLTs take only the practice area exam

When is the 1st exam?

- Approx. mid-late Fall 2014

Step 3: Experience

“Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

“Supervised”

- Lawyer personally directs, approves, and has responsibility for work performed

3,000 Hours of Experience

- Approx. 18 months full time
- Within 3 years before or after notification of passing exams

Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer



Learn More

Visit our website at
www.wsba.org/llt

Contact Thea Jennings at (206)
727-8289 or theaj@wsba.org

Draft Bill

LICENSED LEGAL TECHNICIANS

1. Subject to the approval of the Supreme Court, the board of governors may adopt a plan to license legal technicians to provide a limited scope of legal services to the public independent of supervision by licensed attorneys. The board may create a Legal Technicians Licensing Board (LTLT Board) which, subject to approval of the Supreme Court, shall have authority to:

(a) establish the education, experience and examination requirements for licensure of legal technicians;

(b) define areas of law for licensed legal technician practice and establish the special requirements for certification in each practice area;

(c) establish continuing education requirements;

(d) promulgate and enforce rules of professional conduct and disciplinary procedures for licensed legal technicians;

(e) require licensed legal technicians to contribute to the OSB Client Security Fund;

(f) establishing financial responsibility requirements; and

(g) establish application, annual licensure, special certification, and any other fees necessary to carry out the duties and responsibilities of the LTLT Board.

2. An applicant for licensure must satisfy all of the requirements of ORS 9.220 (1)-(2) and all other requirements that may be established by the LTLT Board.

3. Oregon law of attorney-client privilege and the law of a lawyer's fiduciary responsibility to the client shall apply to the Licensed Legal Technician-client relationship to the same extent as to the attorney-client relationship.

Formulation of Rules of Professional Conduct; Formulation of Rules of Procedure.

(1) The LLLT Board shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, they shall be binding upon all LLLTs.

(2) The board, subject to the approval of the Supreme Court, may also adopt rules of procedure relating to the investigation of the conduct of LLLTs and applicants for a LLLT license, the reinstatement of such a license, and relating to the conduct of licensing, reinstatement, and disciplinary proceedings.

Comment:

Subsection (1) is based on ORS 9.490(1). Subsection (2) is based on ORS 9.542(1). It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Limited Licensed Legal Technician Client Security Fund.

(1) As used in this section “client security fund” means a fund created under subsection (2) of this section.

(2) The board may adopt a plan to relieve or mitigate pecuniary losses to the clients of LLLTs caused by dishonest conduct of those LLLTs in their work as LLLTs. 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 the fund.

(3) A client security fund may include:

- (a) Transfers by the board from other available funds;
- (b) Voluntary contributions and payment by licensees under subsection (4) of this section;
- (c) Claims recovered under subsection (7) of this section; and
- (d) Income from investments of the fund.

(4) To establish and maintain a client security fund, the board may require an annual payment by each active LLLT. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual license fee.

(5) (a) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss under subsection (2) of this section, the board or its designated representatives shall determine if the person named in the

claim as the LLLT whose dishonest conduct caused the loss maintained an office in the State of Oregon at the time of the transaction out of which the claim arose; and

(1) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused the loss;

(2) In the case of a claim of loss of \$5,000 or less, has had his or has resigned his or her license due to circumstances arising out of the claimed dishonest conduct which caused the loss; or

(3) Has been the object of a judgment entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment, and execution issued on the judgment has been returned uncollected or that issuance of execution would be a useless act.

(b) After complying with subsection (a) of this section, if the board or its representatives require additional information to determine the claim, the board or its representatives may compel by subpoena the person named in the claim as the LLLT whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records, documents and other things pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in circuit court for the county in which the person was served or in the county in which the principal office of the board is located.

(6) (a) Any person who has made a claim with the Board of LLLTs concerning a loss allegedly caused by the dishonest conduct of the person's LLLT, or who has given information to the board relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(b) The Board of LLLTs, its officers, the members of any client security fund committee, investigators, agents, and employees shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims.

(7) Reimbursement from the client security fund is discretionary; however, the board shall not authorize payment unless the conditions of subsection (5)(a) of this section have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of subsection (5)(a) of this section in cases of extreme hardship or special and unusual circumstances. The LLLT Board is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and

remedies of that client against the LLLT whose dishonest conduct caused the loss, or against the estate of the LLLT, or against any other person liable for the loss.

Comment:

This language is taken verbatim from ORS 9.615 through ORS 9.665 which created the Oregon State Bar Client Security Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Most client security fund claims arise from the misappropriation of lawyer trust account funds. While this writer is not in favor of authorizing trust accounts for LLLTs, misappropriation of funds could still occur when clients prepay for LLLT services which are not rendered by the practitioner. Therefore, a client security fund is still a necessary regulatory component.

Professional Liability Coverage

(1) The board shall require LLLTs to carry professional liability coverage or to secure and provide some other proof of financial responsibility, of a type and amount deemed appropriate by the board, prior to practicing LLLT activities. The board shall be empowered, either itself or in conjunction with other organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization under the laws of the State of Oregon and to establish a LLLT professional liability fund.

(2) This fund, if established, shall pay, on behalf of LLLTs whose principal offices are in Oregon, all sums as may be provided under such plan which any such LLLT shall become legally obligated to pay as money damages because of any claim made against such LLLT as a result of any act or omission of such LLLT in rendering or failing to render services for others in the person's capacity as a LLLT or caused by any other person for whose acts or omissions the LLLT is legally responsible. The board shall have the authority to assess each LLLT whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and defend and control the defense against any covered claim made against such LLLT. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(3) For the purposes of subsection (2) of this section, the principal office of a LLLT is considered to be the location where the LLLT engages in LLLT activities more than 50 percent of the time. If a LLLT performs LLLT services in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the LLLT is not considered to be in Oregon unless the LLLT engages in LLLT activities in Oregon more than 50 percent of the time engaged in LLLT activities.

Comment:

This language is taken from ORS 9.080(2) authorizing the Board of Governors to create the Professional Liability Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

This language authorizes the governing board to determine what type of financial responsibility is most appropriate for LLLTs.

DRAFT

The Subcommittee on Education and Experience Requirements recommends:

Both a Voluntary Oregon Registered Paralegal program and Limited License Legal Technician program

Preliminary Statement: The availability of affordable legal services to the public is a goal to which the Oregon State Bar is committed and which is supported by the longstanding commitment of Oregon lawyers and the Code of Professional Responsibility. The employment of Paralegals is a longstanding practice of some law firms, government agencies, and in-house counsel which reduces the cost of legal services to their clients. Utilization of and reliance upon Paralegals by Attorneys in the delivery of legal services is supported and encouraged by the Bar.

Voluntary registration of Paralegals would provide a standard for the utilization of this valuable profession and provide appropriate recognition for the advancements this paraprofession has made in the legal industry. The creation of a separate professional status of Limited License Legal Technicians to serve the public would further enhance the opportunities available to the public for utilization of alternative legal resources at a reduced cost.

For purposes of this Rule, a **Voluntary Oregon Registered Paralegal** is a person who meets the State's requirements for this profession and who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible, such as: apply substantive knowledge of the law and legal procedures in rendering direct assistance to lawyers engaged in legal research, preparing or interpreting legal documents, drafting procedures, meeting clients and witnesses and other aspects of the operation of a law office, government agency, or in-house counsel.

For purposes of this Rule, a **Limited License Legal Technician** will be someone who meets the State's requirements for this profession and who is permitted to provide limited legal assistance to clients without being under the supervision of a lawyer as defined under these Rules.

Voluntary Oregon Registered Paralegal

- A Voluntary Oregon Registered Paralegal is defined as a person who:
 1. Is at least 18 years of age; and
 2. Has a minimum Associates level Degree in Paralegal or Legal Studies or related program from an ABA Approved Institution or other college or institution approved by the Oregon State Bar, with:
 - a) 45 quarter credits (or equivalent) in Paralegal Core Curriculum, as part of an AA or BA/BS;
 1. Paralegal Core Curriculum shall be 45 quarter credits (or equivalent) in Paralegal or Legal Studies; as defined in the LLLT Core Education Requirements, including: introductory law, civil procedure, legal research, professional responsibility, law office management, interviewing skills and legal technology; or
 - b) A law school degree from an ABA Approved institution provided; however, that the person:
 - 1) is not licensed as a lawyer; or

- 2) a lawyer who has been disbarred or suspended; and
3. Show proof of continuing learning education courses; and
4. Abides by the Oregon Code of Professional Responsibility; registers and pays required fees; is subject to discipline; and complies with other such regulation as enacted by the Oregon State Bar; and
5. Works under the *supervision and direction* of a licensed lawyer or government agency.

- **Exception to Education Requirements/Grandfather Clause.**

An applicant for Voluntary Oregon Registered Paralegal may request waiver of the Education requirements within 2 years of the effective date of the Voluntary Oregon Registered Paralegal program. The Bar will waive the Education requirement if the applicant has:

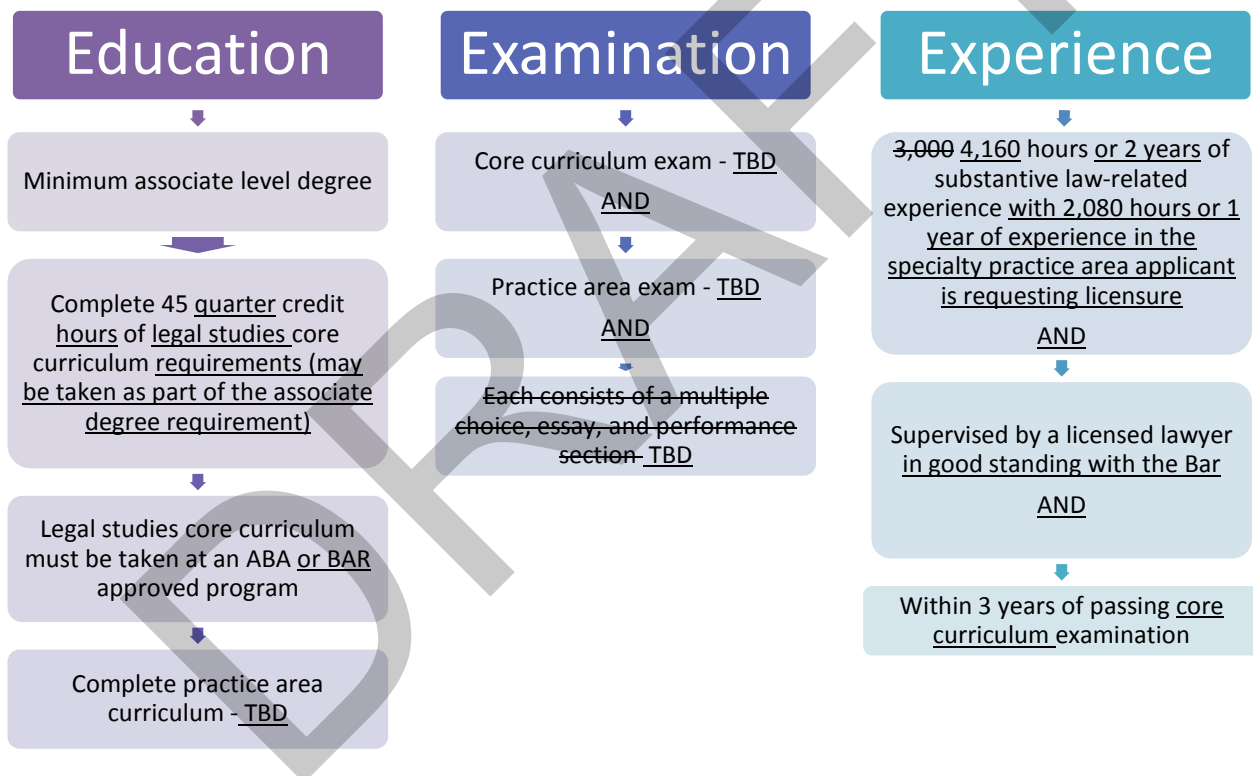
- a) Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS) **OR** the Paralegal CORE Competency Exam (NFPA); and
- b) Active certification as a Certified Paralegal **OR** PACE Registered Paralegal **OR** Professional Paralegal **OR** CORE Registered Paralegal ; or
- c) Has 10 years of substantive law related experience as a paralegal, supervised by a licensed lawyer in good standing with the Bar, as evidenced by a supervising attorney declaration of same.

*Note: Leslie Harris is abstaining from the Voluntary Oregon Registered Paralegal portion of the subcommittee's recommendations.

1. Limited License Legal Technicians shall:

- Be at least 18 years of age;
- Have a minimum associate level degree;
- Meet education, examination, and experience requirements;
- Show proof of financial responsibility;
- Show proof of continuing learning education courses – TBD;
- Abide by a code of ethical conduct – TBD;
- Not be a lawyer who has been disbarred or suspended in any state; and
- Be subject to discipline - TBD.

2. To be eligible for licensure, candidate shall complete the following:



3. Associate Degree and Core Curriculum Requirement Waiver; Grandfather Clause. The applicant may request a waiver of the associate degree and core curriculum requirements within 2 years of the LLLT program effective date (TBD), if:

Until 2 years after the effective date of the program - TBD, the Board will waive the associate degree and *core curriculum requirements*, if the applicant has:

1. Passed the Certified Paralegal Exam (NALA) OR the Paralegal Advanced Competency Exam (NFPA) OR the <u>Professional Paralegal Exam (NALS)</u>	2. Active certification as a Certified Paralegal OR PACE Registered Paralegal OR <u>Professional Paralegal</u>	3. 10 years of substantive law-related experience supervised by a licensed lawyer <u>in good standing with the Bar</u>
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4. Legal Studies Core Curriculum; the subcommittee recommends 45 Quarter Credits (or equivalent) to include the following topics:

Intro to Law and Legal Process

Ethics and Professional Responsibility

Legal Research and Library Use

Computer Assisted Legal Research

Applied Legal Research and Legal Writing

Interviewing and Investigation Techniques

Law Office Procedures and Technology /Software

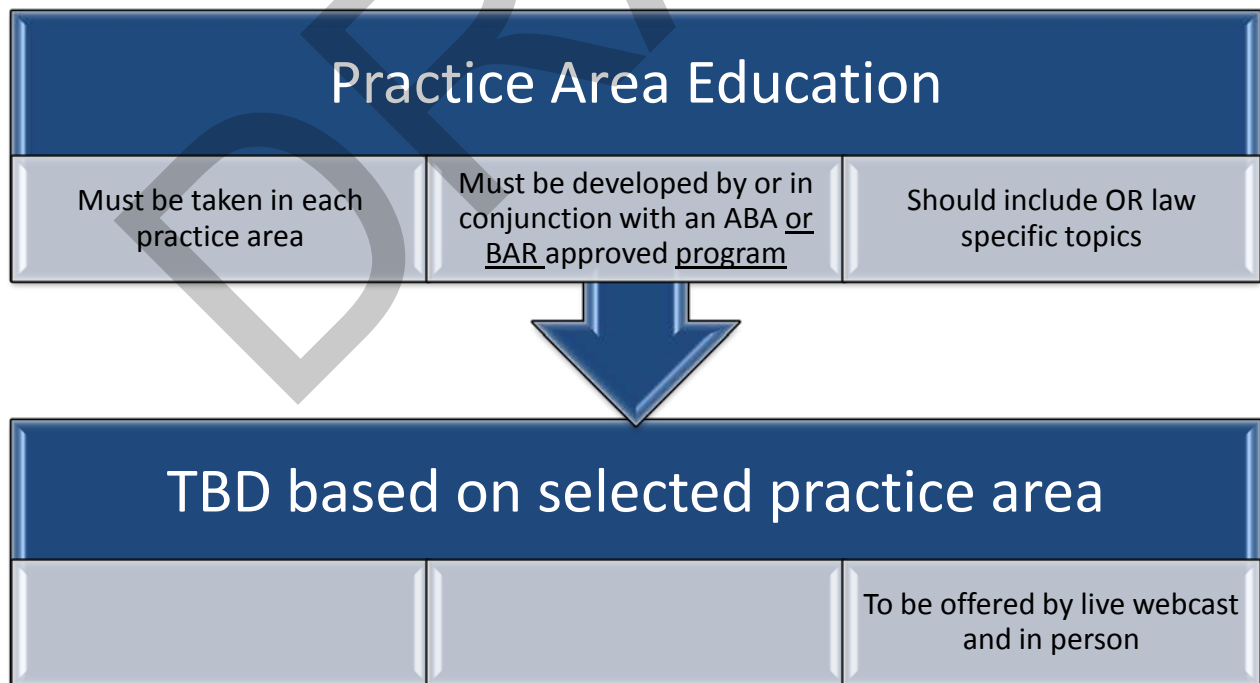
Law Office Management/Administration

Civil Procedure/Litigation

ELECTIVES: Applicant may take remaining credits as paralegal studies or legal elective courses

*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

4a. Practice Area Education, recommend requirements:



5. Examination. The subcommittee recommends the use of an existing National Certification Exam to satisfy the legal studies core curriculum requirement of the Examination. Further, we recommend that the practice area portion of the Exam be created based upon the specific practice area selected for licensure.

6. Experience Requirements, recommend to include:

“Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

“Supervised”

- Lawyer in good standing with the Bar personally directs, approves, and has responsibility for work performed

4,160 Hours of Experience

- Approx. 2 years full time
- With 2,080 hours or 1 year of experience in the specialty practice area applicant is requesting licensure
- Within 3 years before or after notification of passing core curriculum and practice area exams

Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer

7. Continuing Education Requirements: Subcommittee recommends a two-prong CLE requirement, similar to the OSB Attorney CLE Requirement. We recommend a 45 CLE hour requirement every 3 years with a 3 year rotating reporting cycle. One prong of the CLE component would cover the core CLEs including: ethics (6 hours), mandatory reporting (3 hours), access to justice (3 hours) and practical skills - legal technology (3 hours), office administration, etc...) and the other prong would be specific to the specialty license - TBD.

*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

Should the LLLT proposal be approved by the BOG, the Education and Experience Subcommittee members; Shari Bynum, Gerry Brask, Jill Tanner, Leslie Harris, and Linda Odermott, have committed to seeing this project through to final resolution.

Outline of Possible Tasks to be Performed by Licensed Legal Technicians in Oregon

Discussion Draft - LLLT Task Force, Family Law Subcommittee, 1/21/14

1. Provide state forms (such as those on the OJD web site), help them choose which ones to use, and assist in completing these forms, in a ministerial capacity and without giving legal advice about the case.
2. Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern. Explain legal options without offering legal opinions. For example:
 - Options for children include joint or separate custody.
 - Define terms such as "joint custody", "sole custody," "separate property," maintenance vs. transitional vs. compensatory spousal support, "custody" vs. "parenting time."
 - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. "The rules are complex, you will need a lawyer to advise you on how the rules apply to your case."
3. Review documents completed by litigants to determine if they are completely and correctly completed.
4. Review and interpret necessary background documents (for example, review discovery and client's materials) documents and offer limited explanations.
5. Provide or suggest 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*)
 - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad's rights groups and religious organizations?
6. Explain 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).
7. Filing and serving legal documents at the client's request.
8. Allow attendance at court proceedings?

ADDITIONAL QUESTIONS:

- Can the LLLT's work with both parties to the case?
- Any conflict with the PLF if paralegals in firms do this type of work?

Use of Limited License Legal Technicians in Landlord / Tenant Law & Small Claims Advising

Landlord-tenant legal work is likely suitable as an initial area of practice for Limited Legal License Technicians (LLLTs) for several reasons. First, it is a discrete area of the law with discrete tasks. All remedies are statutory and statutes are strictly construed. In an FED, a prevailing landlord is limited to recovery of possession of the property (plus fees and costs). If a tenant prevails her recovery is limited to her fees and costs. There is little overlap with other areas of the law such as business law, torts, family law, bankruptcy, etc.

Generally both parties are self-represented. Parties to these cases are often inexperienced, lack business skills, or are landlords with few units. All parties are potential clients who could benefit by some direction or assistance in navigating the legal process. Simply explaining the process, timeline, potential for technical errors (avoiding them or identifying them), and the likely results at trial would help inform the parties' as to their options, negotiating strategy, and need to emotionally and financially prepare for what will come next.

Few attorneys are interested in these cases because they usually involve a small amount of billable time and there are relatively small dollar amounts at stake.

There are lots of forms and information available from the various circuit courts, and it would be fairly simple to standardize the forms for uniform, state-wide practice. Many of the notices required by statute are also already formalized by legal form publishing companies and could be standardized by updates to statutes or the UTCR.

The complexities in landlord-tenant cases come in collateral issues such as tenant rights when domestic violence is part of the landlord's reason for eviction, personal injury claims arising out of tenancy, Fair Housing Act issues and reasonable accommodation requests, violations of local building codes, and the removal of squatters and non-tenants. Training on identifying and appropriately handling these issues would require a modest amount of time, making it an attractive option for LLLTs.

There are some limitations to the value of LLLT for these cases. Most of an attorney's work in this field often relies on communications with the other party—either settlement negotiations by email, letter, or phone, or by drafting and sending written notice required by the statute. If they are forbidden by ethical rules from this communication, their value to their client may be substantially limited.

Another concern is that eviction cases are designed to progress quickly. If a client needs a letter written, communication to an opposing party, or representation at trial, the time to get a lawyer is very brief. By the time a client has called and set up an appointment with an LLLT, they may not have time to call and set up a separate appointment with an attorney.

A companion set of cases that may be suitable for LLLT work are small claims matters. Many of these cases are a result of landlord-tenant relationships arising as complaints for damages caused by tenant or tenants claiming the return of deposits or the value of personal property. These cases are limited in scope because of the

statutory limit on the amount of damages and the one-year statute of limitations for landlord-tenant claims. Lawyers are generally barred from appearing in small claims matters and because of the small amount at controversy lawyers are usually not hired in these cases. Potential clients often need help with filling out the forms, understanding the substantive rules involved, understanding the presentation of evidence, and preparing their cases for trial or mediation.

The numbers of cases filed show that there is a substantial demand for affordable legal services in these fields of law. In 2011 (the latest numbers available on the OJD website) there were 47,918 family law type cases filed in Oregon Circuit Courts. Of that number about 10,800 were Family Abuse Prevention Restraining Order cases leaving about 37,118 other family law cases. By comparison there were about 23,700 FED cases filed and over 73,600 small claims cases. The FED cases and small claims cases do not include cases that were filed in the various municipal and justice courts across the state. There are more than twice the number of landlord-tenant and small-claims cases filed in Oregon courts than there are family law cases, implying a larger pool of potential clients for LLLTs in this field than in others. However, it should be noted that entity owners and property managers are already allowed to file FEDs without representation and regularly do so. Entities are also permitted to file in small-claims court without an attorney. Because non-attorneys are already sanctioned to “practice law” in these arenas, there may not be much paid demand for advise-only consultations.

On balance, the demand for affordable help in the fields of landlord-tenant law and small-claims cases certainly exists and may well be a good entry point for a limited-license legal technician program to operate.

LLLT Task Force, Estate Planning Sub-Committee 01/23/2014

For a variety of reasons, estate planning is not a suitable area of practice for Limited Legal License Technicians (“LLLTs”) because there is no demonstrated need for lower cost legal services and no access to justice argument. There is no shortage of low cost attorneys in Oregon willing to handle wills and estate planning matters. Many new and solo attorneys practice in this area in particular and rates already tend to be very low and competitive. There is also no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford to hire lawyers to prepare will or estate planning documents for them. For estates that end up in probate, most courts compel the heirs to engage legal counsel. The cost of legal fees are controlled and managed by the probate court and the legal fees are paid from the proceeds of the estate. Unlike other areas of the law, consumers do not go without counsel because they can’t afford to pay a lawyer upfront.

Oregon’s intestate succession laws protect the heirs of decedents who die intestate. Simple estate planning template forms are readily available online and from Stevens Ness and many consumers use them. However, people who self-represent tend to cause problems for themselves. Their estates and heirs typically pay out far more in legal fees to resolve disputes caused by poorly drafted wills and related documents than if they had died intestate or paid even a nominal fee to get succession planning advice. The problem with a la carte estate planning documents is that they easily (though usually unintentionally) harm the intended heirs. Will forms are deceptively simple. Common message is that “stakes are high, there is no such thing as a simple will, and the devil is in the details.” Having an LLLT assist with form preparation does not solve this problem. Only sound legal analysis and strategic advice can address and resolve complex issues in the tax and estate planning arena.

Assuming LLLTs become authorized to practice in the estate planning arena, it is unlikely that consumers who die intestate or choose to rely on templates or online forms rather pay even nominal fees for legal services would pay for the advice and assistance of an LLLT. Further, consumers with any wealth at stake, concern about guardianship of their children, or in need of bulletproof advance directives will continue to engage the services of lawyers who specialize in the field. In short, “there is no value added to the consumer by creating a class of non lawyers authorized to prepare estate planning documents.”

Consulted with:

1. Two local practitioners (one small firm, one big firm).
2. Multnomah County Circuit Court Judge who regularly handles probate matters (as well as family law).
3. Chair of OSB Estate Planning Section.
4. Members of Executive Committee of OSB Estate Planning Section.

Concerns:

1. No access to justice argument.
2. People who die intestate or who rely on online forms will do so anyhow (no value added to the consumer).
3. No such thing as a “simple will.”
4. There’s a critical role for paralegals to play in the practice (and they do) but not solo.
5. Lawyers already handle these matters at very low rates.
6. High value clients will pay for lawyers.
7. Concern about whether and how privilege will attach.
8. Who will cover malpractice?
9. How get relevant and necessary experience in drafting without court litigation?
10. Issue of dual representation.
11. Online and template forms without analysis and a plan are useless and do more harm than good.
12. LTTT’s won’t be able to make any money without charging lawyers rates.
13. High risk with too much at stake.
14. Concern about potential for increased elder abuse due to lack of due diligence, legal analysis.
15. Can only work with fiduciary relationship.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 13, 2015
Memo Date: January 28, 2015
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

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

Background

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
Special Open Session of the Board of Governors
March 20, 2015
Minutes**

President Richard Spier called the meeting to order at 1:30 p.m. on March 20, 2015. The meeting adjourned at 1:45 p.m. Members present from the Board of Governors were Jim Chaney, Guy Greco, Ray Heysell, Theresa Kohlhoff, John Mansfield, Vanessa Nordyke, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Charles Wilhoite and Tim Williams. Not present was Audrey Matsumonji, Ramón A. Pagán, Travis Prestwich and Elisabeth Zinser. Staff present were Sylvia Stevens, Susan Grabe, Kateri Walsh, Dani Edwards and Camille Greene. Also present was ONLD Chair, Karen Clevering.

1. Call to Order

Mr. Spier called the meeting to order.

2. ABA Young Lawyers Division Request

Ms. Clevering presented the Oregon New Lawyers Division (ONLD) request for authorization to propose a resolution to the ABA Young Lawyers Division (ABA YLD) Assembly at the 2015 Annual Meeting. **[Exhibit A]**

The proposed resolution would request that the ABA YLD support an amendment to the Model Rules of Professional Conduct to mirror the language in Oregon RPC 8.4(a) (7) defining professional misconduct to include:

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.

In response to an inquiry from Mr. Spier, Ms. Clevering confirmed that the proposal will also include the "legitimate advocacy" exception in RPC 8.4(c).

Motion: Mr. Whang moved, Mr. Chaney seconded, and the board voted unanimously to approve the ONLD's request.



YLD Assembly Resolution Idea Form (2014-2015)

I. PERSON SUBMITTING IDEA			
Clevering	Karen		
Last Name	First Name	Middle Initial	
Oregon New Lawyer's Division			
Firm/Organization	City	State	Zip
Oregon New Lawyer's Division			
Name of ABA YLD Affiliate, Committee, Board or Team			
Email	Karen.clevering@doj.state.or.us	Phone	503-947-4530
(required for contact purposes)			

II. RESOLUTION INFORMATION	
Resolution Title	Amending the Model Rules of Professional Conduct to ban intimidation or harassment based on a person's status
Has this been presented before?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes: when, where, and by whom?	
Resolution Supporters – list supporters or those to be targeted as potential co-sponsors	
Center for Professional Responsibility ABA Diversity Center ABA YLD Diversity and Outreach Committees, including Minorities in the Profession, Sexual Orientation and Gender Identity and Women in the Profession ABA YLD Ethics and Professionalism Committee	
Resolution Summary, Purpose & Desired Outcome	
The resolution asks the assembly to propose to the ABA to amend Rule 8.4 of the ABA Model Rules of Professional Conduct to add the following section 7 to Rule 8.4(a) "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."	
Any additional information to help us consider your resolution?	
The Oregon Supreme Court recently amended the Oregon Rules of Professional Conduct to include the above language, making it misconduct for an attorney to harass or intimidate individuals (which includes other attorneys and non-attorneys) solely based on that person's status. The goal is to expand this rule nation wide and the ABA Model Rules are the best way to do so.	

Please submit form to Assembly Speaker Dave Scriven-Young (dscriven-young@pecklaw.com) and Tara Blasingame (tara.blasingame@americanbar.org) **no later than September 15, 2014 for the ABA Midyear Meeting and no later than March 31, 2015 for the ABA Annual Meeting**. Resolution ideas are considered and confirmed on a rolling basis. However, you must meet the above deadlines if you wish to have your proposal considered at a particular meeting of the ABA YLD Assembly. Please go to ambar.org/yldassembly for more information on resolutions.

OREGON STATE BAR
Client Security - 113
For the Three Months Ending March 31, 2015

Description	March 2015	YTD 2015	Budget 2015	% of Budget	March Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$537	\$1,020			\$49	\$131	680.6%
Judgments	50	200	1,000	20.0%	150	300	-33.3%
Membership Fees	877	649,916	693,500	93.7%	1,125	649,837	0.0%
TOTAL REVENUE	1,464	651,136	694,500	93.8%	1,324	650,268	0.1%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	2,544	8,162	32,600	25.0%	2,273	7,956	2.6%
Employee Taxes & Benefits - Reg	939	2,617	11,900	22.0%	1,169	2,822	-7.3%
TOTAL SALARIES & BENEFITS	3,483	10,779	44,500	24.2%	3,442	10,778	0.0%
DIRECT PROGRAM							
Claims	14,300	15,467	250,000	6.2%	1,346	8,741	77.0%
Collection Fees		93	1,500	6.2%	66	66	42.0%
Committees			250				
Travel & Expense	225	225	1,400	16.1%		608	-63.0%
TOTAL DIRECT PROGRAM EXPENSE	14,525	15,785	253,150	6.2%	1,411	9,414	67.7%
GENERAL & ADMINISTRATIVE							
Office Supplies			150				
Photocopying			50		34	34	-100.0%
Postage	16	39	300	13.0%	19	107	-63.6%
Professional Dues			200				
Telephone		15	150	10.1%	10	25	-38.4%
Training & Education			600				
Staff Travel & Expense		221	974	22.7%			
TOTAL G & A	16	275	2,424	11.3%	63	166	66.0%
TOTAL EXPENSE	18,024	26,839	300,074	8.9%	4,917	20,358	31.8%
NET REVENUE (EXPENSE)	(16,560)	624,296	394,426		(3,593)	629,910	-0.9%
Indirect Cost Allocation	2,527	7,581	30,319		1,357	4,071	86.2%
NET REV (EXP) AFTER ICA	(19,087)	616,715	364,107		(4,950)	625,839	-1.5%
Fund Balance beginning of year		619,965					
Ending Fund Balance		1,236,680					

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 24, 2015
From: Sylvia E. Stevens, Executive Director
Re: Client Security Fund Awards Less than \$5,000

The Client Security Fund made the following award at its March 21, 2015 meeting:

No. 2014-15 McBRIDE (Soto-Santos)	\$3,500.00
No. 2014-23 McBRIDE (Perez-Paredes)	\$2,500.00
No. 2014-25 McBRIDE (Valdez-Flores)	\$4,120.00
No. 2015-5 LANDERS (Foster)	\$4,180.00
No. 2014-27 SCHANNAUER (Gowan)	\$940.00
TOTAL	\$15,240.00

Each of these awards was for unearned fees paid to an attorney who abandoned the client's matter without completing the agreed upon services.

Karen Sjogren
521 Taybin Rd. NW
Salem, OR 97304-3055

Oregon State Bar
16037 SW Upper Boones Ferry Road
Tigard, OR 97224
Attn: OSB President Rich Spier

Dear Rich,

2/13/2015

Congratulations on your ascendancy to Stat Bar President. I hope you enjoy your year of dealing with the broad range of individuals which comprise the Oregon Bar. I have a special high regard for mediators, having myself worked in that capacity both within and outside the legal profession.

I am a "low maintenance" member of both the California (inactive) and Oregon (active) state bars. Each year I pay my dues on time, and every three years I complete MCLE requirements, also on time. Last December, I received a bill from the California State Bar, which I promptly paid. In due time, I received a receipt for my payment and a credit card size proof of my membership.

Last December, I also submitted my MCLE compliance report. I did not receive any acknowledgment that my report had been received, or that my efforts to comply had been sufficient. I also did not receive a bill for my annual membership dues, as I have in years past. I finally called the Bar and received a paper bill, which I paid on time.

When I questioned the lack of "snail mail" correspondence, the response was that the Oregon Supreme Court required me to have an email address. Therefore, I would find my billing notice as well as MCLE compliance report if I were just to go online...

One of my earliest memories as a legal secretary (at age 15) was typing out end of the month statements for my father to send to his clients. In this digital age, I still receive paper statements from my medical/dental providers, car insurance agent, credit card companies, and so forth. They don't inquire first if I have an email address. The bills are sent as a courtesy, a reminder, and because the service providers want to get paid.

The Oregon State Bar and its members have mutual responsibilities to each other. As an active bar member, I adhere to the standards of the profession complete MCLE requirements, and pay annual bar dues of (this year) \$537, a not inconsequential sum for me or probably others. In turn, the Bar sends me a monthly magazine, sponsors some MCLE courses, and advocates for the legal profession in state government. It is my understanding that policing the profession is actually done by the Professional Liability Fund, which is paid for separately.

It is my opinion that one of the Bars duties should be sending out by mail the annual dues statement, followed by a receipt and proof of current membership. Likewise, the Bar should

continue to send out MCLE compliance report forms, and acknowledge by mail the completion of these requirements, as they have in years past. Both of these should be done as a matter of courtesy, but also to protect the Bar and encourage prompt payment. (I'll bet that if I hadn't paid my dues as early as I did, I would have gotten a "friendly" reminder in the mail).

The PLF still sends out paper bills, with a carbon copy for my records. I would imagine they also send out receipts to those who pay. As a Bar member, I also receive rather slick mailings from the Campaign for Equal Justice, who could contact me by email for much less money. They know, as do other charitable entities, that a mail solicitation is much more likely to get my attention.

Members who do not want to receive this information by mail can certainly opt out. Or, in the alternative, those of us who want to can opt in. At any rate, the Bar would do well to be flexible on these issues to ensure compliance with its regulations.

Thanks for considering my views and good luck to you as Bar President.

Sincerely,

Karen Sjogren #981666

Transcribed by Camille Greene 02/19/2015



Karen J. Sjogren
521 Taybin Rd. NW
Salem, OR 97304-3055

PORTLAND, OR 972
FEB 19 2015 PM 2 L



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FEB 19 2015

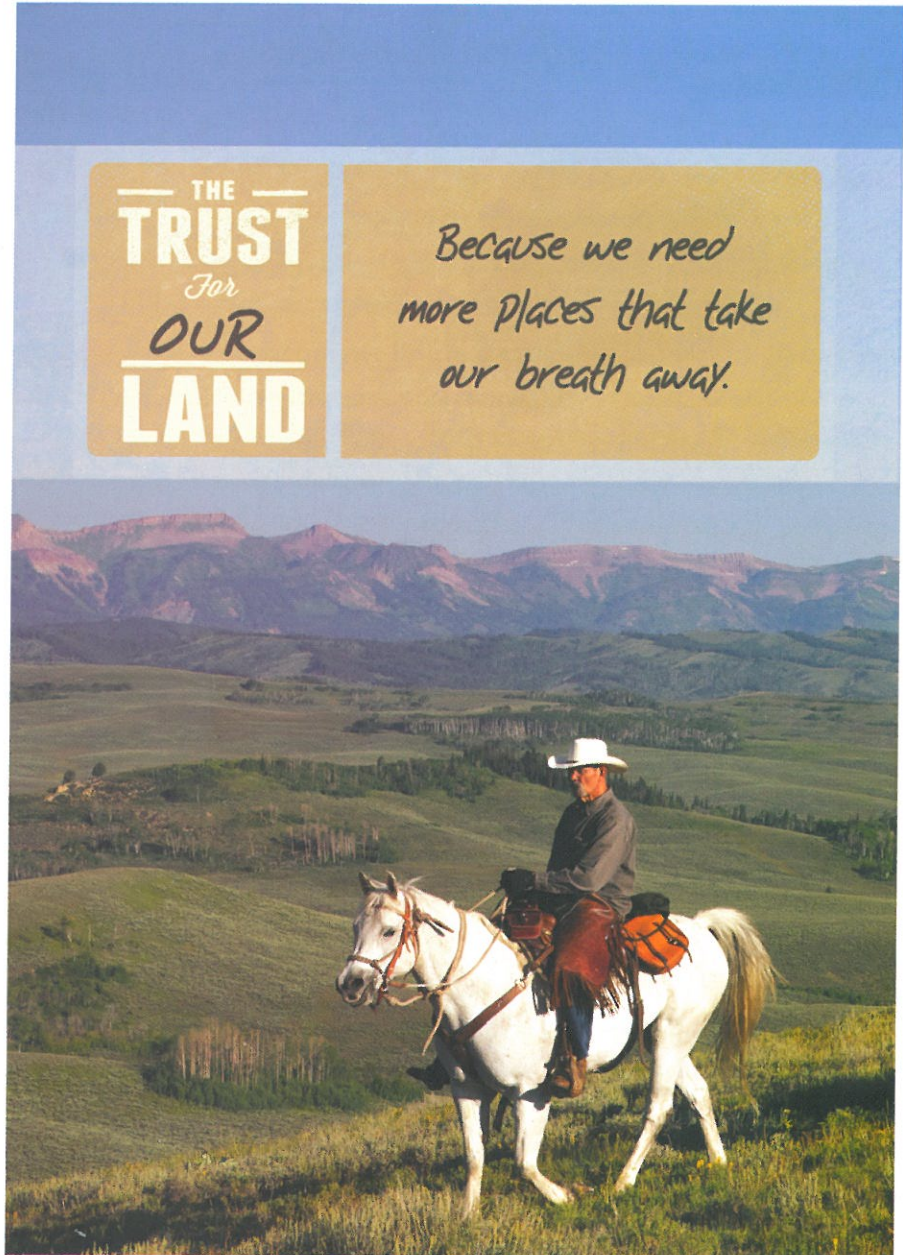
Oregon State Bar
Executive Director

Oregon State Bar
16037 SW Upper Boones Ferry Road
Tigard, OR 97224

Attn: OSB President Rich Spier

THE
TRUST
For
OUR
LAND

Because we need
more places that take
our breath away.



February 27, 2015

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
Joshua L. Ross, Portland
Richard G. Spier, Portland
Simon Whang, Portland

Region 6

Vanessa A. Nordyke, Salem
Travis S. Prestwich, Salem

Region 7

Kathleen J. Rastetter, Oregon City

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Kerry L. Sharp, Lake Oswego
Charles A. Wilhoite, Portland
Elisabeth Zinser, Ashland

Executive Director

Sylvia Stevens, Tigard

Karen J. Sjogren
521 Taybin Road NW
Salem, OR 97304-3055

Re: Email Notices

Dear Ms. Sjogren:

Thanks for your thoughtful letter concerning email notices and billings sent by the Oregon State Bar.

I started law practice in an earlier technological age (67 years old; admitted in 1976), and used carbon paper, non-memory typewriters, and legal research in actual law books. Fax came into regular use long after 1976, as I recall. Now, it is a rare month in which I receive a fax.

I personally find expanding technology to be convenient and efficient. Most of my tangible business communications are by email. My business banking and bill-paying is done almost entirely online. The advantages of modern technology that I see in my mediation practice are the same advantages that the OSB enjoys by transmitting most notices and billings by email: sustainability, timeliness, and substantial cost savings in labor, materials, and postage expense.

Our Chief Financial Officer estimates roughly that the OSB saves about \$22,000 each year by emailing license fee statements (which include IOLTA certifications) and MCLE statements, subject to a rough guess of about a \$2,000 annual cost for mailing reminders. The \$22,000 figure does not include attributed staff time that would be necessary to run the printers, stuff envelopes, and apply postage. The rate of response-without-reminder is very high.

Your concerns are appreciated and noted, but I cannot recommend to the Board of Governors that it direct a change of policy on this procedure.

Thanks again for taking the time to comment.

Respectfully yours,



Richard G. Spier
President

February 19, 2015

Board of Governors

President

Richard G. Spier, Portland

President-elect

R. Ray Heysell, Medford

Region 1

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Region 2

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Charles A. Wilhoite, Portland
Elisabeth Zinser, Ashland

Executive Director

Sylvia Stevens, Tigard

Hon. Kate Brown
Governor, State of Oregon
State Capitol Building
900 Court Street NE, Suite 254
Salem, OR 97301

Re: Oregon State Bar

Dear Governor Brown:

As one of your fellow members of the Oregon State Bar, and as President of the OSB, may I welcome you to your new office?

The OSB stands ready to work with you and your staff in serving the people of Oregon, and by pursuing the Oregon State Bar Mission “to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.”

The OSB looks forward to cooperating with you (and seeking your cooperation) in carrying out the Oregon State Bar Functions:

- We are a regulatory agency providing protection to the public.
- We are a partner with the judicial system.
- We are a professional organization.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

Your staff should feel free to contact our Executive Director, Sylvia Stevens, at any time that the OSB might be of help to you.

Respectfully yours,

Richard G. Spier

KATE BROWN
GOVERNOR



Richard,

Thanks so much for your thoughtful note. Your support is much appreciated.

I hope we can work together to move Oregon forward.

I have not had an opportunity to congratulate

you on your new role.
Thanks for your service.
Please don't hesitate to call if we can assist you!

Best, Kate B.

MEMORANDUM

TO: Oregon State Board of Governors and Sylvia Stevens, OSB Executive Director

FROM: Hon. Adrienne Nelson, Marilyn Harbur, Christine Meadows and Andrew Schpak

SUBJECT: 2015 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

DATE: March 10, 2015

REPORT ON THE ABA MIDYEAR MEETING

The 76th Midyear Meeting of the American Bar Association (the “ABA”) was held February 5-9, 2015, at the Hilton Americas Houston Hotel and the George R. Brown Convention Center, in Houston, Texas. A wide variety of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for one day. The Nominating Committee also met.

The Nominating Committee sponsored a “Coffee with the Candidates” Forum on Sunday, February 8, 2015. The following candidates seeking nomination at the 2016 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: Hilarie Bass of Florida, candidate for President-Elect for 2016-2017 term; Deborah Enix-Ross of New York, candidate for Chair of the House of Delegates for 2016-2018 term; Mary L. Smith of Illinois, candidate for Secretary for 2017-2020 term (to serve as Secretary-Elect in 2016-2017); and James Dimos of Indiana, candidate for Treasurer for 2017-2020 term (to serve as Treasurer-Elect in 2016-2017).

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, February 9, 2015. Patricia Lee Refo of Arizona, presided as Chair of the House. The Houston Police Department presented the colors. The invocation for the House was delivered by Kim Askew of Texas. The Chair of the House Committee on Credentials and Admissions, Leslie Miller of Arizona, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for the meeting of the House. The motion was **approved**.

Chair Refo welcomed new members of the House and recognized all the lawyers who had served in the House of Delegates for more than 25 years.

Reginald M. Turner Jr., of Michigan, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House. He moved to consider

the late-filed report, adopt the final calendar and approve the list of individuals who sought privileges of the floor. Both motions were **approved**. Mr. Turner noted that the deadline for submission of Resolutions with Reports for the 2015 Annual Meeting is Tuesday, May 5, 2015, while the deadline for Informational Reports is Friday, June 5, 2015. He also referred to the consent calendar, noting the deadline for removing an item from the consent calendar. Mr. Turner also moved the items remaining on the consent calendar. The motion was **approved**.

Deceased members of the House were named and remembered by a moment of silence. Chair Refo recognized Gibson Gayle of Texas to speak in honor of Blake Tartt of Texas, former Board of Governors member. Chair Refo also recognized John L. McDonnell Jr. and Pauline A. Weaver of California to speak in honor of Joanne Garvey, former member of the House of Delegates.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House

Patricia Lee Refo of Arizona, Chair of the House, discussed the procedures for addressing the business and calendar of the House and reminded members where they could find the House Rules of Procedure. She recognized and thanked members of the various House Committees. Chair Refo also recognized the Committee on Rules and Calendar, chaired by Reginald M. Turner Jr. of Michigan and comprised of members Kelly-Ann F. Clarke of Texas, Joseph D. O'Connor of Indiana, Christina Plum of Wisconsin, and Charles J. Vigil of New Mexico, and Committee staff members, Marina Jacks, Alpha Brady and Rochelle Evans. She introduced the Tellers Committee and reviewed procedures for speaking. Chair Refo announced that key speeches and debates would be publicized and that the ABA Communications and Media Relations Division would be providing updates and reporting on the proceedings of the House via Twitter @ABAesq.

Chair Refo announced that at the 2015 Annual Meeting, the House will elect one member to the Committee on Scope and Correlation of Work. The position will be for a five-year term. In addition, the House will elect one additional member to Scope to fill a vacancy for a two-year term. She encouraged those interested in the position to contact members of the Scope Nominating Committee and to submit an application by March 13, 2015.

She noted that the appointments process for President-Elect Brown is currently underway. The deadline for submission of applications is February 27, 2015.

Chair Refo recognized the Fund for Justice and Education as the ABA's charitable arm and urged member support of FJE. She also recognized the importance of the ABA Legal Opportunity Scholarship Fund, which is an FJE project.

Chair Refo spoke in support of Law Day 2015. This year's theme "Magna Carta: Symbol of Freedom Under Law", recognizes the significance of Magna Carta as we commemorate its 800th anniversary. Postcards were distributed to members of the House with the theme and website address. Chair Refo encouraged state and local bar associations across the country to participate in Law Day activities and hopes that all members of the House will encourage this important participation.

Chair Refo took a personal point of privilege to recognize Gibson Gayle, Jr. from Texas and his 58th year of service in the House of Delegates.

Statement by the Secretary

Mary T. Torres of New Mexico, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2014 Annual Meeting, which was **approved** by the House. On behalf of the Board of Governors, Secretary Torres presented and referred to the House, Report Nos. 177, 177A and 177B, the Board's Informational, Transmittal and Legislative Priorities reports.

Remarks by The Mayor of Houston

The Honorable Annise D. Parker, Mayor of Houston, welcomed the members of the House of Delegates to Houston. Mayor Parker proclaimed lawyers have an opportunity and obligation to uphold the highest principles of honor, integrity and justice in the administration of law. Mayor Parker encouraged lawyers to perform their work in a way that those around them can clearly see that without faithful adherence to law, democracy begins to unravel.

Statement by the ABA President

In his remarks to the House, President William C. Hubbard of South Carolina thanked the ABA officers, Board of Governors, and House of Delegates members for the incredible time and energy voluntarily given to the ABA's mission of defending liberty and delivering justice. President Hubbard expressed gratitude for the ABA's strong and committed executive director and the ABA staff who support, enhance, and expand ABA members' efforts.

President Hubbard stated it is a privilege to see the countless threads of the tapestry of the American legal system being woven in new and vibrant ways and observed the value of the ABA's work and ABA policies that encourage pro bono advocacy as an important strategy to pursue justice for all.

President Hubbard stressed the ABA's commitment and sustained dedication and effort to address the root causes of injustice and to promote sustainable solutions built on diversity of perspective. To illustrate this point, he related an African parable told in a trial by his law partner, Steve Morrison, about a young villager who found babies floating down a river. As he pulled the babies out of the river, he complained that an elder villager was leaving the scene. The elder replied that he was going upriver to stop those who were throwing the babies into the river.

President Hubbard noted that identifying the types of "upriver" strategies necessary to serve society requires nurturing and expanding efforts involving racial and ethnic diversity, gender, sexual orientation, gender identity and disability. President Hubbard cited the ABA's policies on criminal justice system reform, immigration system reform, domestic violence and sexual violence prevention, cybersecurity, legal assistance to veterans and military personnel, and international rule of law programs as shining examples of the importance of diversity of perspective in crafting and maintaining sustainable solutions to critical issues of justice.

Building on the ABA's long legacy of sustained effort, diverse problem-solving, and action on these and many other critical issues of justice, President Hubbard encouraged members to refocus their attention to solving the longtime, intractable challenge of the civil justice gap. President Hubbard stated 80 percent of the poor and more and more people of moderate means do not have access to justice in America. He described the work of the new ABA Commission on the Future of Legal Services, which will help identify and develop new platforms that meet the legal needs of the public and more effectively deliver legal services to existing and future clients.

While directing attention to the future, President Hubbard also stressed the importance of looking back 800 years to the sealing of Magna Carta, citing Magna Carta as a forward-looking document that endures as the seminal, foundational document that defines and shapes the American concept of the rule of law. President Hubbard described the ongoing, yearlong celebration of the 800th anniversary of the Magna Carta that will culminate on June 15, 2015, with the rededication of the ABA's Magna Carta Memorial at Runnymede. In the spirit of inclusion, President Hubbard encouraged all lawyers to attend the many activities throughout the year celebrating the 800th anniversary, including Law Day, the historic sites in London, and the rededication ceremony at Runnymede.

Remarks on Behalf of The President of the Conference of Chief Justices

The Honorable Gerald W. VandeWalle, Chief Justice of the North Dakota Supreme Court and delegate representing the Conference of Chief Justices, delivered remarks on behalf of the Honorable James R. Hannah, Chief Justice of the Arkansas Supreme Court and President of the Conference of Chief Justices.

Honorable VandeWalle observed the strong alliance between the ABA and the State Courts, stressing the organized bar is the backbone of the American Justice System. He stated attorneys play a unique role in supporting fair and impartial courts by providing personal representation in the courtroom, by protecting courts and judges from unwanted political attacks, by educating citizens about how the justice system is supposed to work and by protecting access for all.

Honorable VandeWalle praised the ABA Task Force on Preservation of the Justice System, which drew national attention to critical issues that threaten access to justice, most notably, inadequate funding of the justice system. He remarked the bench and bar must continue to work together to bring afforded justice to every person's

doorstep.

Honorable VandeWalle referenced a special commission of the Conference of Chief Justices: the Civil Justice Initiative. This commission is charged with examining every aspect of the Civil Justice System and making determinations about factors that contribute to cost and delay. He reported this dynamic group of two dozen judges, corporate counsel, distinguished attorneys and academics meet monthly and reportedly are on track to complete and to deliver a series of recommendations in early 2016.

Honorable VandeWalle stressed the American courts' unprecedented level of dedication to accountability, efficiency and transparency in the delivery of justice.

He thanked the Association Officers and all members of the House of Delegates for the opportunity to continue the custom of the Conference of Chief Justices informing the House of Delegates on the health of the nation's state courts.

Statement by the Treasurer

The Treasurer, G. Nicholas Casey, Jr., of West Virginia, referred members of the House of Delegates to his written report which reflected the performance of the Association for FY14 and outlined the Association's finances for FY15 through December 31, 2014.

Treasurer Casey stated the finances of the ABA are strong, but not without continuing challenges in dues revenue and pension expense that are being proactively managed by the Association Officers, Board of Governors, Executive Director and Financial Services team.

Mr. Casey reported the ABA's consolidated results for FY14, which ended August 31, 2014, reflect operating revenue of \$204.4 million, which is \$1.6 million unfavorable to FY13's operating revenue of \$206 million. The revenue unfavorability is mostly attributable to Gifts and Grants (\$3.1 million) and Sections (\$1.4 million) and is offset by General Operations favorability (\$3.6 million).

Mr. Casey reported the operating expenses for FY14 of \$204.2 million is \$0.5 million favorable to FY13 operating expense of \$204.7 million. The favorable expense variance is primarily due to Gifts and Grants (\$1.9 million), but offset by unfavorability in Sections (\$2.3 million).

The final result for FY14 is operating income (or revenues over/(under) operating expense) of \$0.2 million.

Mr. Casey reported the Association's consolidated FY15 results through December 31, 2014 reflect operating revenue of \$60.3 million which is \$3.9 million below budget and \$3.1 million below the prior year. Revenue budget variances are primarily due to General Operations (\$2.3 million) and Sections (\$1.6 million) while prior year variances are mostly attributable to General Operations (\$2.7 million). This variability between years for the Sections is primarily due to timing of when Section revenue and expense-generating activities occur, and when Sections transfer funds

from its reserves to meet budgeted operating expenses.

Mr. Casey explained the net consolidated result during the first four months of FY15 produced an operating loss (or revenues under operating expenses) of \$3.8 million. Mr. Casey stated that although consolidated revenue did not meet budget during this period, it is worth noting that consolidated expenses were below budget by \$4.3 million.

Mr. Casey stated Association total assets are \$370.7 million and net assets (assets over liabilities) are \$212 million. The ABA's net assets of \$212 million decreased by \$8.7 million in the first four months of this fiscal year between August 31, 2014 and December 31, 2014.

As you know, the House of Delegates previously approved increased dues rates for FY15, the first increase in eight years and also approved a mechanism for annual cost-of-living adjustments for FY16. Mr. Casey reported overall membership has not been materially impacted and dues revenue has increased, but not to the extent budgeted. The FY15 budget contemplates a 10 percent increase in dues revenue over FY14. Through December 31, 2014, Association dues collections are up only 7 percent, running behind the budgeted increase. Mr. Casey stated the overall results to the Association of the dues increase will be clearer at the end of the second quarter of the fiscal year.

Mr. Casey observed that one continuing challenge to the Association is its pension obligation. He indicated the "gross" pension obligation as of August 31, 2014 was \$184.0 million, up \$7.1 million from \$166.9 million at August 31, 2013. Mr. Casey reported the increase in the obligation is due to the actuarial impact of the drop in interest rates which occurred in fiscal year 2014. Historically low interest rates, that are remaining low, increase the present value of the pension obligation and thus increase the Association's liability.

Statement by the Executive Director

In an inspirational address, Jack L. Rives of Illinois, Executive Director and Chief Operating Officer of the American Bar Association, reflected on many of the big achievements of the American Bar Association in an on-going effort to achieve the Association's primary four goals: (1) to serve its members; (2) to improve the legal profession; (3) to eliminate bias and enhance diversity; and (4) to advance the rule of law.

Mr. Rives observed that in addition to these accomplishments are a remarkable number of major successes by ABA members. These achievements have touched lives and made a meaningful and lasting, positive, difference for the administration of justice and the advancement of the rule of law.

Mr. Rives reported that over the past 25 years, the ABA's Rule of Law Initiative has had grant programs in more than 100 nations and noted that at present, it has 80 distinct active programs in over 50 countries worldwide.

Mr. Rives invited House of Delegate members to consider the magnitude of the ABA's impact upon: (1) how prospective federal judiciary nominees are vetted; (2) how ethical standards are set and refreshed for the legal profession; (3) how law schools are accredited; (4) how critical issues are effectively lobbied in Congress and addressed within the Executive Branch and through amicus curiae briefs in the Judiciary; (4) how thousands of unaccompanied children receive pro bono legal representation in immigration hearings; (5) how low-income victims of disaster gain access to critical legal services at times of crisis; (6) how veterans' pending disability claims are expedited; along with many other examples of the difference the ABA makes.

Mr. Rives noted: if not for the ABA's recruitment of pro bono lawyers, the ABA Death Penalty Representation Project estimates that at least 73 unconstitutional death sentences would have been carried out since 1998. In each of those cases, volunteer lawyers proved constitutional errors had occurred at trial. The Project is currently working approximately 165 cases.

While inviting members to be proud of the ABA's on-going successes, Mr. Rives also recognized the challenges facing our legal profession, including: (1) declining enrollments in law schools; (2) under-employed and unemployed attorneys; (3) global competition; (4) access to justice concerns; and (5) ever-changing technology.

Mr. Rives also acknowledged challenges facing the Association: (1) dues revenue of more than \$70 million dollars in 2007 was down to \$58 million in 2014; (2) membership dropped by 6 percent to 386,000 between 2007 and 2010; (3) expenses are too high; (4) revenues are too low; (5) the number of dues paying members has decreased every year since 2005; (6) the Association is too dependent on dues for revenues.

Mr. Rives stated the ABA is working on solutions to these problems, including carefully limiting expenses, reallocation of resources, and development and implementation of business plans through the "ABAAction!" initiatives. For example, staff has recently: (1) developed new sources of non-dues revenue and programs to attract and retain members; (2) distributed monthly technology resource guides and 370 digital e-books to law firm libraries; (3) launched a Legal Career Development Expo which featured career and business development sessions, practical skills training, and networking opportunities for new minority lawyers; (4) enhanced the ABA Job Board; (5) offered more than 60 professional development programs to new and transitioning lawyers in 2014; and (6) connected members with programs centered on shared lifestyle interests through "ABA Leisure."

Mr. Rives closed his remarks by assuring members that the ABA understands the challenges faced by lawyers and the legal profession and is committed to having a continued positive impact on the practice of law, the system of justice, and the betterment of society.

Report of the Nominating Committee

The Nominating Committee met on Sunday, February 8, 2015. On behalf of the committee, Randall D. Noel of Tennessee, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

Members of the Board of Governors for the 2015-2018 Term

District Members

District 3: Penina Lieber of Pennsylvania
District 5: E. Fitzgerald Parnell III of North Carolina
District 9: Joe B. Whisler of Missouri
District 14: John L. McDonnell, Jr. of California
District 15: A Vincent Buzard of New York
District 16: Harvey B. Rubenstein of Delaware
District 17: Alan Van Etten of Hawaii

Section Members-at-Large

Section of Antitrust Law

Ilene Knable Gotts of New York

Section of Labor and Employment Law

Bernard T. King of New York

Minority Member-at-Large

Orlando Lucero of New Mexico

Judicial Member-at-Large

Honorable Ramona G. See of California

Young Lawyer Member-at-Large

Erica R. Grinde of Montana

Officers of the Association

President-Elect for 2015-2016

Linda A. Klein of Georgia

Remarks by President-Elect Nominee

In her remarks to the House, Linda A. Klein of Georgia, President-Elect Nominee, enthusiastically thanked all in attendance and outlined the extraordinary value of ABA membership. She highlighted the need to demonstrate the value of ABA membership to young lawyers, judges and lawyers in small towns and large cities. She reminded members

about the importance of listening to the lawyers who the ABA seeks to help and about the need to focus Association resources on developing the solutions and programs these lawyers tell the ABA they need.

President-Elect Nominee Klein stressed the importance of the legal profession being visibly diverse and committed to inclusion. She stressed the essential need to work together in creating and delivering the additional resources and education needed to help lawyers.

II. RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets.

ANIMAL RIGHTS

[105] On behalf of the Tort Trial and Insurance Practice Section, Holly M. Polglase of Massachusetts moved Revised Resolution 105 urging legislative bodies and governmental agencies to enact comprehensive laws that prohibit, unless otherwise exempted, the possession, sale, breeding, import, or transfer of dangerous wild animals, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals. The resolution was **approved as revised**.

CONSUMER RIGHTS

[111B] On behalf of the Section of Individual Rights and Responsibilities, Mark I. Schickman of California **withdrew** Resolution 111B urging Congress to enact legislation that supports the principles regarding consumer data privacy set forth in the Consumer Privacy Bill of Rights contained in the 2012 White House Report *Consumer Data Privacy In a Networked World*, and urging governments to enact legislation, regulations and practices that are consistent with and supportive of these principles.

[111C] On behalf of the Section of Individual Rights and Responsibilities, Estelle H. Rogers of the District of Columbia moved Resolution 111C urging governments to continue to enforce and to enact rules or legislation that strengthen consumer protections regarding deceptive or fraudulent loan foreclosure rescue practices. Robert L. Weinberg of the District of Columbia spoke in support of the resolution. The resolution was **approved**.

CRIMINAL JUSTICE

[107A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Resolution 107A urging governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others. Neal R. Sonnett of Florida and Jay Elliott of South Carolina spoke in support of the resolution. Lee Bussart of Tennessee spoke in opposition to the resolution. The resolution was **approved as revised**.

[107B] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Revised Resolution 107B urging governments to protect the integrity of criminal proceedings, in its truth seeking function, by seeking to hold accountable those who unlawfully intimidate or tamper with victims and by examining practices, procedures and training, and revising them as needed to assure that victims and witnesses are not improperly intimidated or tampered with. Estelle H. Rogers of the District of Columbia spoke in support of the resolution. The resolution was **approved as revised**.

[107C] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Revised Resolution 107C urging governments to adopt sentencing laws and procedures that both protect public safety and appropriately recognize the mitigating considerations of age and maturity of youthful offenders by enacting sentencing laws and rules of procedure. The resolution was **approved as revised**.

[107D] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Resolution 107D adopting the black letter of the *ABA Standards for Criminal Justice: Prosecution Function and Defense Function*, dated February 2015, to supplant the Third Edition (1993) of the *ABA Standards for Criminal Justice: Prosecution Function and Defense Function*. Robert Weeks of California spoke in support of the resolution. The resolution was **approved**.

[112] On behalf of the Coalition on Racial and Ethnic Justice, Leigh-Ann Buchanan of Florida presented and Secretary Mary T. Torres of New Mexico moved Resolution 112 urging legislative bodies and governmental agencies to refrain from enacting Stand Your Ground Laws that eliminate the duty to retreat before using force in self-defense in public spaces, or repeal existing Stand Your Ground Laws. Mark I. Schickman of California, Carlos A. Rodriguez-Vidal of Puerto Rico and Monte Frank of Connecticut spoke in support of the resolution. It was announced that the Board of Governors recommended approval of the resolution. The resolution was **approved**.

DEATH PENALTY DUE PROCESS

[108A] On behalf of the Death Penalty Due Process Review Project, Walter H. White, Jr. of the United Kingdom moved Resolution 108A urging all governments that impose capital punishment, and the military, to require that before a court can impose a sentence of death, a jury must unanimously recommend or vote to impose that sentence, and the jury in such cases must also unanimously agree on the existence of any fact that is a prerequisite for eligibility for the death penalty. Robert L. Weinberg of the District of Columbia spoke in support of the resolution. The resolution was **approved**.

[108B] On behalf of the Death Penalty Due Process Review Project, Walter H. White, Jr. of the United Kingdom moved Resolution 108B urging each jurisdiction that imposes capital punishment to promulgate execution protocols in an open and transparent manner and require public review and comment prior to final adoption of any execution protocol, and require disclosure to the public by all relevant agencies of all relevant information regarding execution procedures. Robert L. Weinberg of the District of Columbia spoke in support of the resolution. The resolution was **approved**.

DISASTER RESPONSE AND PREPAREDNESS

[110] On behalf of the Standing Committee on Disaster Response and Preparedness, Anthony H. Barash of Illinois moved Revised Resolution 110 urging authorities to identify and address the special needs of vulnerable populations, including but not limited to individuals with disabilities, children, the frail, the elderly, homeless persons, domestic violence victims, undocumented persons, the impoverished, and persons with language barriers, when planning for and responding to disasters. The resolution was **approved as revised**.

DOMESTIC AND SEXUAL VIOLENCE

[109A] On behalf of the Commission on Domestic and Sexual Violence, Angela C. Vigil of Florida moved Resolution 109A urging governments to enact civil protection order statutes that extend protection to minor and adult victims of sexual assault, rape, and stalking, outside of the context of an intimate partner relationship, and without the requirement of any relationship between the parties. Hon. Pamila J. Brown of Maryland spoke in support of the resolution. The resolution was **approved**.

[109B] On behalf of the Commission on Domestic and Sexual Violence, Angela C. Vigil of Florida moved Resolution 109B urging governments and regulators to amend existing laws and regulations, or to enact new laws or regulations to expand housing protections for victims of domestic and sexual violence. Mark I. Schickman of California and David English of Missouri spoke in support of the resolution. The resolution was **approved**.

IMMIGRATION

[113] On behalf of the Working Group on Unaccompanied Minor Immigrants, Mary K. Ryan of Massachusetts moved Resolution 113 supporting government appointed counsel for unaccompanied children in immigration proceedings and urging that immigration courts should not conduct any hearings, including final hearings, involving the taking of pleadings or presentation of evidence before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. The resolution was **approved**.

LAW AND AGING

[100] On behalf of the Commission on Law and Aging, David M. English of Missouri moved Revised Resolution 100 urging governments to enact legislation and regulation that will promote specific components in the provision of care to persons with advanced illness. The resolution was **approved as revised**.

LEGAL EDUCATION

[106] On behalf of the Young Lawyers Division, Christopher A. Rogers of Texas moved Resolution 106 encouraging law schools to offer comprehensive debt counseling and debt management education to all currently admitted and enrolled law students, and encouraging

bar associations to offer similar debt counseling and debt management education to young lawyers and newly admitted lawyers. The resolution was **approved**.

NATIVE AMERICAN RIGHTS

[111A] On behalf of the Section of Individual Rights and Responsibilities, Mary L. Smith of Illinois moved Revised Resolution 111A adopting the recommendations contained in the Indian Law and Order Commission's November 2013 Report to the President and Congress of the United States, entitled "*A Roadmap for Making Native America Safer*" ("Commission's Report"), and urging the Administration, Congress, and state and tribal governments to promptly implement the recommendations of the Commission's Report. David M. Schraver of New York moved to amend the resolution. Troy Eid of Colorado and Neal R. Sonnett of Florida spoke in opposition to the amendment. The motion to amend failed. Walter H. White, Jr. of the United Kingdom and Loren Kieve of California spoke in support of the resolution. The resolution was **approved as revised**.

PARALEGAL EDUCATION

[101] The House **approved by consent** Resolution 101 as submitted by the Standing Committee on Paralegals granting reapproval to several paralegal education programs, withdrawing the approval of one program at the request of the institution, and extending the term of approval to several paralegal education programs.

SPECIALIZATION

[102] The House **approved by consent** Resolution 102 as submitted by the Standing Committee on Specialization reaccrediting the Civil Trial Advocacy and the Social Security Disability Law programs of the National Board of Trial Advocacy as designated specialty certification programs for lawyers for additional five-year terms.

TAXATION

[104] On behalf of the Section of Taxation, Susan P. Serota of New York **withdrew** Resolution 104 urging Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney "tax return preparers," as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder.

UNIFORM ACTS

[103A] The House **approved by consent** Resolution 103A as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Fiduciary Access to Digital Assets Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.

[103B] The House **approved by consent** Resolution 103B as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Recognition of Substitute Decision-Making Documents Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.

[103C] The House **approved by consent** Resolution 103C as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Voidable Transactions Act (as amended in 2014), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.

Closing Business

At the conclusion of the meeting of the House on Monday, February 9, after various thank-yous and recognitions, the Illinois delegation was recognized to make a presentation to delegates regarding the 2015 Annual Meeting in Chicago.

Charles J. Vigil of New Mexico, member of the Committee on Rules and Calendar moved a resolution in appreciation of the Houston and Texas Bar Associations and Special Advisors for their efforts in hosting the meeting. The motion was **approved**.

Chair Patricia Lee Refo recognized Reginald M. Turner Jr. of Michigan who then moved that the House adjourn *sine die*. The motion was **approved**.

Sylvia,
Thank you for inviting me & including me on the WSBC. It was a great conference presenting much to think about.
Your leadership at OSB will be missed next year. Thank you for setting a good example.
Karen Clevering

PORTLAND OR 970

APR 2015 PM 5 L

RECEIVED
APR 06 2015
Oregon State
Executive Director

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



The brilliant rainbow is an example of the beauty to be found in Hawaii's rainforests, even if the sun is not out!
Photo: Boynton

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Oregon Hispanic Bar Association | PO BOX 3986 | Portland, OR 97208 | www.oregonhispanicbar.org

April 3, 2015

RECEIVED

APR 06 2015

Oregon State Bar
Executive Director

Ms. Camille Greene
Executive Assistant
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
Tigard, OR 97281

Dear Camille:

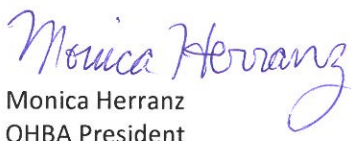
On behalf of the OHBA Board of Directors, I wanted to thank you for sponsoring the OHBA's annual dinner this past February. Thanks to the help of our sponsors, the 2015 OHBA Annual Dinner was one of our most successful. With your support, we were able to raise more funds to support the OHBA's mission to encourage Latinos to become attorneys, retain Latino legal professionals, raise the awareness of Latino legal issues, and support Latino law students and legal professionals.

With the money that we raised at the Dinner, we are providing scholarships to Latino law students in Oregon, and we plan to provide the financing to send several law students to the Hispanic National Bar Association's annual conference in Washington, D.C. It is due in significant part to contributions from organizations like Oregon State Bar that we are able to support these students and promote our mission.

We are also engaging in outreach activities for Latino attorneys in Oregon, organizing with other specialty bars to ensure that the voices of our diverse community are heard on a broad range of issues. With the support of our sponsors, we are able to engage fully on behalf of our community.

Once again, thank you so much for your support. We look forward to continuing our work with you in the future.

Sincerely,


Monica Herranz
OHBA President

Oregon Hispanic Bar Association | PO BOX 3986 | Portland, OR 97208 | www.oregonhispanicbar.org

March 6, 2015

THANK YOU

Richard,

On behalf of the Oregon Asian Pacific American bar association, thank you for taking the time to attend our board meeting and discussing the bar's priorities. As you know, retention of good talent from diverse backgrounds is a priority for us and the bar's initiatives around helping young lawyers find meaningful employment and →

experience is definitely in line with OAPABA's interests. Please do not hesitate to reach out if you ever think OAPABA can be of assistance to you during your tenure as President.

Sincerely,
Frank Heve
OAPABA President elect

March 31, 2015

RECEIVED

MAR 31 2015

Oregon State Bar
Executive Director

Jonathan Bartov
Attorney at Law
Law Ofc of Robert Raschio PC
206 S. Humbolt Street
Canyon City, OR 97820

Re: **Subject: SRO 1500361**
Mr. Kirkpatrick, Sr.'s March 16, 2015 letter to the Oregon State Bar

Dear Mr. Bartov:

Enclosed is correspondence that the Oregon State Bar received from Ren M. Kirkpatrick, Sr. Mr. Kirkpatrick is quite complimentary of the legal services that you provided to him. As you can see, he truly appreciates your diligence, competence, and intelligence.

It is rare for a client to take the time to write to the bar to commend an attorney for his or her exemplary professional services. When a client sends the bar a letter that reflects well on a lawyer's professionalism, ethical standards, or quality work, we place that letter in the lawyer's bar file.

The bar greatly appreciates lawyers whose actions and services demonstrate the highest level of professionalism. Most clients only meet a few lawyers during their lives and their impressions from those encounters color their view of the profession as a whole. We thank you for the services that you provided to Mr. Kirkpatrick.

We are forwarding this letter to Regulatory Services where it will be maintained as part of your permanent membership file. We will share this with our Executive Director, Sylvia Stevens, and she will bring this communication to the attention of the Board of Governors at their next meeting. Thank you for your continued professionalism.

Sincerely,

Stacy R. Owen
Assistant General Counsel
Ext. 351

SRO/jmm
Enclosure

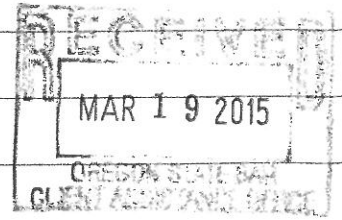
cc: Ren M. Kirkpatrick, Sr.

cc w/encl: Regulatory Services
Executive Director, Sylvia Stevens

Email submissions to: cao@osbar.org Use subject line: **SRO 1500361**

Rev Kirkpatrick, SR
c/o - Grant County Jail
325 S. Humboldt Street
Canyon City, OR 97720

Oregon State Bar
16037 SW Upper Boores Ferry Rd.
P.O. Box 231935
Tigard, OR 97281-1939



RE: Jonathan Bartov, OSB 141434

Monday, March 16, 2015

To Whom It May Concern:

The purpose of this letter is to bring notice to my Public Defender, Mr. Jonathan Bartov esq. Mr. Bartov represented me in a manner that can only be described as Dilligent, Competent, and Intelligent.

Although I was convicted by Jury Trial, this in no way should reflect on Mr. Bartov's excellence in representation.

Respectfully Submitted,

REV M. KIRKPATRICK, SR.

HORNECKER COWLING LLP

Attorneys at Law

John Blackhurst
Joseph E. Kellerman, LL.M.
James A. Wallan
Charles E. Bolen
Ryan J. Vanderhoof
Stefanie L. Burke*
Mark S. Bartholomew
Eric B. Mitton
Michael J. Mayerle
Melisa A. Button*
Shane J. Antholz, LL.M. **
Ryan Kulback

717 Murphy Road
Medford, OR 97504
(541) 779-8900
Fax: (541) 773-2635
www.roguelaw.com

OF COUNSEL

John R. Hassen
R. Ray Heysell

RETIRED

Robert L. Cowling
H. Scott Plouse
P. David Ingalls

March 25, 2015

Gregory T. Hornecker 1933-2009
B. Kent Blackhurst 1922-2007
Ervin B. Hogan 1927-2000

*Also admitted in California
**Also admitted in Washington

Richard G. Spier
President, Oregon State Bar
16037 S.W. Upper Boones Ferry Road
P. O. Box 231935
Tigard, OR 97281-1935

RECEIVED

MAR 30 2015

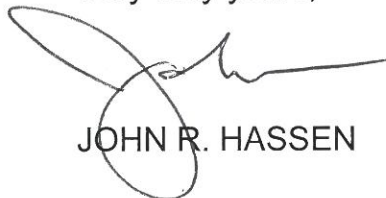
Oregon State Bar
Executive Director

Dear Richard:

I would like to thank you and the Board of Governors for the nice 50-Year member recognition luncheon last week at the Tualatin Hills Country Club. It was a nice luncheon and a nice setting. My family enjoyed the day.

I would like to give you a special thanks for coming by our table and saying hello and wishing me well.

Very truly yours,



JOHN R. HASSEN

JRH:lw

H:\USER\JRH\Richard Spier.docx

From: [Sylvia Stevens](#)
To: [Camille Greene](#)
Subject: FW: 50 Year Member Event
Date: Monday, March 30, 2015 8:04:45 AM

Please add to default agenda for April BOG.

Sylvia Stevens

Executive Director

503-431-6359

sstevens@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • www.osbar.org

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

From: wilcar@aol.com [mailto:wilcar@aol.com]
Sent: Sunday, March 22, 2015 9:30 AM
To: Richard Spier; Sylvia Stevens; OSB Events
Cc: wilcar@aol.com
Subject: 50 Year Member Event

Rich, Sylvia and Leone,

I felt that the 50-year Member event at the Tualatin Country Club last Friday was extremely well done. President Spier's remarks were welcoming and appropriate, and I was gratified to see that some BOG members attended as well, including President-Elect Ray Heysell and Guy Greco. I had a chance to discuss some of the issues with them that will be confronting the bar, and they promise to be interesting and challenging. The social event prior to the luncheon was very well attended, the exhibits were fun, and the luncheon itself was very enjoyable. I had a number of attendees comment on how pleased they were that they had attended. This could have been a pro forma event, but it was obvious that a great deal of planning and effort went into making it successful. Thank you very much.

Bill Carter

wilcar@aol.com

The New Normal

Welcome to the future: A travel guide to tomorrow's legal careers

Posted Apr 1, 2015 9:00 AM CDT

By Jordan Furlong



The current state of the legal market probably feels unsettling, disorienting, and downright irritating to you. If so, then it might help to know that that's exactly how the whole process is supposed to feel.

We're now several years into a period of fundamental change in the legal services market, but we're only now starting to really experience the impact. We're still in the breakdown period of the old order, descending into the dreaded valley of disruption before we can climb up and out towards that distant shining plateau of the new marketplace.

If you're a lawyer whose career has already taken you the first several steps into this valley, or a law firm whose path to the future runs unavoidably down through it, you can be forgiven some trepidation: this is a journey you've got no choice but to make, and it doesn't exactly look attractive at this point. But if it's any consolation, you won't have to make the trip alone, or without any assistance.

This week, in conjunction with innovative British legal services provider [Lawyers On Demand](#), I wrote a report called "[Visit Legal: Your Travel Guide to the New Legal Landscape](#)" (PDF). It's kind of a *Lonely Planet* for the legal market of the future, a traveler's guidebook to the legal providers and lawyer careers of the post-disruption legal world many of us will inhabit. It's meant to help you figure out where you want to stay in this new landscape and what you want to do there.

Here, for example, under "Accommodations," are a few legal providers of the future for your consideration.

1. Professional Legal Firms

Yes, in the future, we'll still have law firms. It's not a stretch to suggest that the dominant legal service construct of the last two centuries will still be with us a decade or two down the line. They'll be much more disciplined and businesslike than their ancestors, with great improvements in workflow and operations. But their market share will have long since peaked. If you're in staying a luxury destination that serves up five-star, bet-the-world legal work, you'll definitely enjoy your trip. But there are only so many rooms available in those places, and the more modest Commodity Inns down the street will be more numerous.

Pros: For those who like to spend their vacations hanging out by the pool and dining in the hotel restaurant, this is the known quantity you're looking for.

Cons: There's an exciting cityscape just beyond the lobby; it seems a shame to travel all the way here just to spend your days watching TV and ordering room service.

Tip: Most of these places used to offer ownership stakes to their most favored guests. We wouldn't count on seeing many of those opportunities in future.

2. Managed Legal Service Providers

Emerging from the fusion of law firms and legal process outsourcers, managed legal service providers will take on routine, repeatable, or straightforward legal tasks, as well as segments of more complex matters. They will employ lawyers in highly disciplined structures, supplementing them with advanced technology. Some travelers are drawn to predictable days and systematically planned excursions; they'll find those qualities and more at these affordable destinations.

Pros: A welcoming hostel for brand-new arrivals, as well as for veteran wanderers who know what they like and want a place to keep on doing it.

Cons: Maybe not the best destination for the creative legal artist who chafes at the rigors of routine and repetition.

Tip: There's a risk that management might one day rent out your room to a robot who can deliver a higher return on their investment of space.

3. Legal Education and Training Institutions

Was law school the best three years of your life? Then look into this burgeoning type of legal destination. A natural outgrowth of demands on law schools to provide more "practical training" and career assistance will be the development of legal service provision within the schools themselves. "Teaching law firms" will see academic instruction integrated with hands-on experience in serving everyday clients and running profitable businesses. Serving both the needy and the next generation of lawyers will prove a dream destination for select travelers.

Pros: Perfect for the Habitat for Humanity builder or the ecological tourist: a chance to do good while also doing reasonably (though not outstandingly) well.

Cons: These will not be luxury accommodations. You'll be expected to do community outreach beyond the front desk. Some legal travelers will find this unattractive.

Tip: Most of these locations are still only in the blueprint stage. You might want to secure other accommodations when you first arrive, then check regularly at the building site.

4. Independent Legal Technology Companies

Future segment of the legal market will be served largely if not entirely by machine. Coding the steps and programming the numerous options available to individuals and businesses facing a legal situation will become easier and more cost-effective, as both the technology and the legal profession's interest in these opportunities advance. These types of career destinations will flourish as legal visitors become better trained in technology and the market becomes more comfortable with their offerings. If you want to prevent the rise of Skynet (or be the one to bring it about, for that matter), check these places out.

Pros: If Apple stores thrill you and the Googleplex is your fantasy workspace, you might be just the kind of guest these emerging providers are seeking.

Cons: High risk, high reward. You might be with the next Amazon or with the next Pets.com. Nobody, including management and its investors, knows for certain.

Tip: Technology moves fast—really fast. You might come back at day's end to find the lobby unrecognizable and your room key changed. Be prepared for an unpredictable stay.

How can lawyers and law firms prepare for their tour of an undiscovered country? It's difficult to know what to pack when you don't know what the climate and landscape will be, and when you're not entirely sure how welcoming the locals will prove. Additional uncertainty surrounds the nature of other travelers: rumors persist that in this new landscape, a valid passport from the legal profession will not be required of all visitors, meaning the crowds could be even bigger than anticipated.

At this stage, what we can offer is four pieces of advice that should stand you in good stead when you first step onto this foreign ground:

- **Broaden your horizons.**

Think beyond lawyers and law firms as the primary or sole providers of legal services. Professionals outside the law, skilled technicians from different industries, and your future clients themselves will be both your future competitors and your collaborators.

- **Skill up.**

Entering this new region as a "smart, hard-working lawyer" won't be enough. Equip yourself better by learning about process improvement, technological capacity, entrepreneurial insights, and the needs of those the legal profession does not serve today.

- **Be flexible.**

Remain on top of market developments, stay actively tuned to your clients and other system users, and keep Plan B (and maybe Plans C and D) close at hand. Keep an eye out for those who would like to disrupt you—and for those whom you could disrupt yourself.

- **Be a lawyer.**

Not everyone who will succeed in the future legal market will be a lawyer, and not every lawyer will act like one. It's imperative you maintain your professional bearings and keep close the fundamental principles of good lawyering—integrity, professionalism, care, insight, counsel, and service.

For more future legal destinations and potential lawyer activities, download "[Visit Legal: Your Travel Guide to the New Legal Landscape](#)" from Lawyers On Demand today.

Jordan Furlong is a lawyer, consultant, and legal industry analyst who forecasts the impact of the changing legal market on lawyers, clients, and legal organizations. A principal with global consulting firm Edge International and a Fellow of the College of Law Practice Management, Jordan is the author of Evolutionary Road: A Strategic Guide to Your Law Firm's Future, and serves as Legal Strategist in Residence at Suffolk University Law School in Boston. He lives in Ottawa, Canada, and writes at [Law21](#).

The New York Times | <http://nyti.ms/1CTjCso>

Sunday Review | OP-ED COLUMNIST

The Unsinkable R.B.G.

Ruth Bader Ginsburg Has No Interest in Retiring

FEB. 20, 2015

Gail Collins

RUTH BADER GINSBURG isn't planning on going anywhere any time soon.

"Now I happen to be the oldest," the 81-year-old justice said in the tone of a person who has answered a whole lot of questions about her possible retirement plans. Sitting in her Supreme Court chambers on a dreary afternoon in late January, she added, "But John Paul Stevens didn't step down until he was 90."

Until recently, when Ginsburg was asked about retiring, she would note that Justice Louis Brandeis had served until he was 82.

"That's getting a little uncomfortable," she admitted.

Over the past few years, she's been getting unprecedented public nagging about retirement while simultaneously developing a massive popular fan base. You can buy T-shirts and coffee mugs with her picture on them. You can dress your baby up like Ruth Bader Ginsburg for Halloween. A blog called Notorious R.B.G. posts everything cool about the justice's life, from celebrity meet-ups ("Sheryl Crow is a Ruth Bader Ginsburg fangirl") to Twitter-size legal theory ("Justice Ginsburg Explains Everything You Need to Know About Religious Liberty in Two Sentences"). You can even get an R.B.G. portrait tattooed on your arm, should the inclination ever arise.

Supreme Court justices used to be known only through their opinions, but in the

21st century they can be celebrities, too. In court, Ginsburg makes headlines with her ferocious dissents against conservative decisions. Outside, the public is reading about her admission that she dozed off at a State of the Union address because she was a little tipsy from wine at dinner. (Plus, she told MSNBC's Irin Carmon, she had been up all the night before, writing: "My pen was hot.") This summer, Ginsburg will attend the premiere of "Scalia/Ginsburg," a one-act opera that the composer Derrick Wang describes as a comedy in which two justices "must pass through three cosmic trials to secure their freedom." Pieces of it have already been performed, and both Ginsburg and the über-conservative justice Antonin Scalia, a fellow opera lover, are apparently really, really pleased.

Hard to imagine any of that happening to John Roberts.

The retirement talk started around 2011, when the Harvard Law School professor Randall Kennedy wrote an essay in *The New Republic* arguing that both Ginsburg and Justice Stephen Breyer should quit while there was still a Democratic president to nominate replacements. "What's more, both are, well, old," he added uncharitably.

As time moved on, the focus shifted almost exclusively to Ginsburg ("Justice Ginsburg: Resign Already!"). Perhaps that's simply because she is older than Breyer, who is now 76. Or perhaps there's still an expectation that women are supposed to be good sports, and volunteer to take one for the team.

From the beginning, Ginsburg waved off the whole idea. ("And who do you think Obama could have nominated and got confirmed that you'd rather see on a court?") Anyway, since Republicans took control of the Senate in January, it's become pretty clear that ship has sailed.

"People aren't saying it as much now," she said with what sounded like some satisfaction.

Obviously, a time will come. But as far as clarity on the bench, productivity and overall energy go, that time doesn't at all seem to be at hand. Her medical history is studded with near disasters — colon cancer in 1999, and pancreatic cancer 10 years later. Both times she returned to the bench quickly. (In the latter case, Senator Jim Bunning of Kentucky apologized for predicting she'd probably be dead within nine months.) Last year she had a stent placed in one of her coronary arteries. That happened on a Wednesday, and the court's public information officer quickly told reporters that Ginsburg "expects to be on the bench on Monday."

HER physical fierceness is legend. Scalia, her improbable good friend, once recounted a summer when he and Ginsburg had both snagged a gig teaching on the French Riviera. “She went off parasailing!” he told *The Washington Post*. “This little skinny thing, you’d think she’d never come down.” She has since given up that sort of recreation, but she still works out twice a week in the Supreme Court gym with her personal trainer. Plus there are the daily stretching exercises at home. At night. After work.

It’s the combination of Ginsburg’s woman-hear-me-roar history, her frail-little-old-lady appearance and her role as the leader of the Supreme Court’s dissident liberals that have rallied her new fan base, particularly young women.

The second woman to be appointed to the Supreme Court, she’s part of the generation who came of age after World War II and led a revolution that transformed women’s legal rights, as well as their role in the public world. There’s a famous story about the dean at Harvard Law inviting Ginsburg and her tiny group of fellow female law students to dinner, then asking them how they’d justify having taken a place that could have gone to a man. Ginsburg was so flustered she answered that her husband, Marty, was a law student and that it was very important for a wife to understand her husband’s work.

“That’s what I said,” she nodded.

The dean, Ginsburg said, told her later that he had asked only because “there were still doubting Thomases on the faculty and he wanted the women to arm him with stories.” You have to wonder if the dean was trying to rewrite history. Or maybe joking. But Ginsburg believed the explanation: “He was a wonderful man, but he had no sense of humor.”

During law school Marty Ginsburg developed testicular cancer. Ruth helped him keep up with his work by bringing him notes from his classes and typing up his papers, while also taking care of their toddler, Jane. Plus, she made the *Harvard Law Review*. This is the kind of story that defines a certain type of New Woman of Ginsburg’s generation — people whose gift for overachievement and overcoming adversity is so immense, you can see how even a nation of men bent on maintaining the old patriarchal order were simply run over by the force of their determination. (Ginsburg herself isn’t given to romanticizing. Asked why the women’s rights revolution happened so quickly, she simply said: “Well, the tide was in our favor. We were riding with winners.”)

Ginsburg was married for 56 years — Marty died in 2010. She has a son, a daughter and four grandchildren, one of whom called and said “Bubbe, you were sleeping at the State of the Union!” after the cameras caught her famous nap. She travels constantly. The day we talked, she was preparing to go off to a meeting of the New York City Bar, where she would introduce Gloria Steinem, who would deliver the Justice Ruth Bader Ginsburg Distinguished Lecture on Women and the Law. A few weeks earlier, at a gathering of the Association of American Law Schools, Ginsburg had introduced her old friend Professor Herma Hill Kay, recipient of the Ruth Bader Ginsburg Lifetime Achievement Award. When you reach this kind of stature, there are lots of echoes.

She’s spent much of her life being the first woman doing one thing or another, and when it comes to the retirement question, she has only one predecessor to contemplate — her friend Sandra Day O’Connor, the first female Supreme Court justice, who left the bench at 75 to spend more time with her husband, John, who was suffering from Alzheimer’s disease.

“She and John were going to do all the outdoorsy things they liked to do,” Ginsburg recalled. But John O’Connor’s condition deteriorated so swiftly that her plans never worked out. Soon, Ginsburg said, “John was in such bad shape that she couldn’t keep him at home.”

O’Connor has kept busy — speaking, writing, hearing cases on a court of appeals and pursuing a project to expand civics education. But it’s not the same as being the swing vote on the United States Supreme Court. “I think she knows that when she left that term, every 5-4 decision when I was in the minority, I would have been in the majority if she’d stayed,” Ginsburg said.

Besides not retiring, another thing Ginsburg is planning not to do is write her memoirs. “There are too many people writing about me already,” she said. There’s an authorized biography in the works, along with several other projects to which she has definitely not given a blessing.

“But now — this is something I like,” she said, picking up a collection of essays, “The Legacy of Ruth Bader Ginsburg.” The justice also seems to be looking forward to an upcoming “Notorious R.B.G.” book, written by Shana Knizhnik, who created the blog, and Irin Carmon of MSNBC. The name started as a play on the name of the Brooklyn gangsta rapper Notorious B.I.G., but it’s taken on a life of its own as a younger-generation tribute to Ginsburg.

“The kind of raw excitement that surrounds her is palpable,” Carmon said. “There’s a counterintuitiveness. We have a particular vision of someone who’s a badass — a 350-pound rapper. And she’s this tiny Jewish grandmother. She doesn’t look like our vision of power, but she’s so formidable, so unapologetic, and a survivor in every sense of the word.”

So Ginsburg is planning to be on the bench when the Supreme Court decides mammoth issues like the future of the Affordable Care Act and a national right for gay couples to marry. She says she doesn’t know how the health care case will turn out. But like practically every court observer in the country, she has a strong hunch about which way gay marriage will go: “I would be very surprised if the Supreme Court retreats from what it has said about same-sex unions.”

The speed with which the country has already accepted gay rights was, she theorized, just a matter of gay people coming out, and the rest of the country realizing that “we all knew and liked and loved people who were gay.” She recalled Justice Lewis Powell, who told his colleagues he had never met a gay person, unaware that he’d had several gay law clerks. “But they never broadcast it.”

The National Organization for Marriage, a conservative group, recently demanded that Ginsburg recuse herself from the case since she had said that it would not be difficult for the American public to accept a ruling in favor of a national right to gay marriage.

Don’t hold your breath.

A version of this op-ed appears in print on February 22, 2015, on page SR1 of the New York edition with the headline: The Unsinkable R.B.G..

PostEverything

Law school is way too expensive. And only the federal government can fix that.

We need to re-think how we lend to students.



By David Lat April 8

David Lat is the founder and managing editor of Above the Law, a Web site covering the legal profession, and the author of *Supreme Ambitions: A Novel*.

There's no shortage of lawyers in this country. Only [57 percent](#) of 2013 law school graduates obtained full-time legal jobs nine months after graduation. Yet the federal government subsidizes the production of even more lawyers by lending the cost of attendance to basically anyone who decides to enroll in law school, without regard for the quality of the school or the job prospects of its graduates. A student going to Harvard Law School, where [86.9 percent of 2013 grads](#) had full-time legal jobs, has the same access to federal funds as a student going to Thomas M. Cooley Law School, where just [22.9 percent](#) of 2013 grads work as lawyers.

This policy is hurting students. Federally subsidized loans have enabled law school tuition to spiral out of control. As noted by Professor [Paul Campos](#), “[i]n real, inflation-adjusted terms, tuition at private American law schools has doubled over the past 20 years, tripled over the past 30, and quadrupled over the past 40,” and resident tuition at public law schools has climbed even faster. So long as the federal loans keep coming, tuition is unlikely to stop rising. In the words of Professor [Brian Tamanaha](#), author of “[Failing Law Schools](#),” “Federal loans are an irresistible (and life-sustaining) drug for revenue addicted law schools ... law schools have been ramping up tuition and enrollment without restraint thanks to an obliging federal loan program.”

If the government were to stop lending for law school or even just impose [per-student or per-school caps](#) on loan amounts (perhaps combined with making it easier to [discharge student loans in bankruptcy](#)), law schools would have to dramatically lower tuition, in order to attract students. There would be no other way for most students to finance their education. (And many law schools are already struggling to fill their seats.) Private lenders might step into the breach – but carefully, because banks have a stronger interest than the government in actually getting repaid. Private lenders would focus on borrowers going to law schools with strong job placement records. And if banks are unwilling to lend to all law students, that's further proof that the market produces too many lawyers.

Of course, the nation does have a significant “[justice gap](#),” or a [severe shortage](#) of lawyers willing or able to serve the poor (or even middle class), to practice in certain (often rural) communities, or to work in public-interest careers. To

address this problem, the federal government could dramatically curtail general law-school lending but set aside some money to lend without restriction (or even award as scholarships) to law students who commit to working in an under-served community or sector for several years after graduation. In 2013, South Dakota did just this, [passing a law](#) establishing a [program](#) that subsidizes lawyers who work in underserved rural areas for five years. The program took effect in July 2013, so it's too early to render a verdict on its success, but according to South Dakota Chief Justice David Gilbertson, response to the program [has been](#) "beyond, quite frankly, our expectations."

Law school administrators often respond to calls for reform by pointing the finger elsewhere. For example, why not crack down on federal loans for other types of education? Uncontrolled federal lending plagues a wide range of fields, to be sure – but if we have to pick one field in which to experiment, law school is a good place to start. According to a [New America study](#), law school graduates have the second-highest debt burden among graduate and professional students, behind only graduates of medical school and other health-science programs. But given that our nation faces a [shortage of doctors](#) (which may explain why unemployed doctors are rare compared to unemployed lawyers), now is not the time to discourage people from pursuing medical education. Student loan reform should logically start with law school and then expand to other sectors, applying any lessons learned from the legal-education pilot program.

Lawyer jokes and "Better Call Saul" notwithstanding, the law is a noble profession – but it's also an oversubscribed one, due in large part to excessive federal lending. To paraphrase Shakespeare, the first thing we do, let's defund all the lawyers.

The logo consists of the letters 'L', 'O', and 'D' in a bold, sans-serif font. The 'O' is white and set within a dark blue circle. The letters are white and set against a dark blue rectangular background.

LOD

lawyers
on
demand

The background features a stylized landscape with a white sun setting behind blue hills. The sky and water areas are filled with a light blue halftone dot pattern. The foreground is a solid light blue.

VISIT LEGAL

YOUR TRAVEL GUIDE TO THE
NEW LEGAL LANDSCAPE

BY JORDAN FURLONG

JORDAN FURLONG

*Jordan Furlong is a leading legal industry analyst and consultant who forecasts the impact of the changing legal market on lawyers, clients, and legal organisations. He advises law firms, law societies, state bars, judges, law schools, bar executives and many others on strategies for adapting to the new legal market. A principal with global consulting firm Edge International and a Senior Consultant with Stem Legal Web Enterprises, Jordan is a Fellow of the College of Law Practice Management and Advisory Board Co-Chair of the Institute for Law Practice Management and Innovation at Suffolk University Law School in Boston, where he also teaches and serves as the Legal Strategist in Residence. More than 450 articles and posts by Jordan can be accessed through his website, Law21. In 2014, he authored The New World of Legal Work for **LOD**, which can be downloaded at www.LOD.co.uk. He lives in Ottawa, Canada.*

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Foreword

When answering the big and difficult questions in life, pop culture can be much underrated. And when thinking about the new legal landscape, what better place to start than Back To The Future - a favourite from my teens. When Marty McFly travelled far, far into the future (erm, to 2015), he found a new world of CCTV, biometrics and video conferencing. So far, so accurate. He also found that lawyers had been abolished.

So, we already know that the profession is in a period of intense change, but what will be the outcome? Is the end point a Back To The Future legal apocalypse or can we be a bit more hopeful? It's not easy to navigate or to see where it's heading, even for those of us that are somewhere within it.

However, at **LOD** we're always interested in what tomorrow holds. You may remember that last year we asked Jordan Furlong, one of our favourite legal future-gazers, to offer his thoughts on the opportunities that have arisen for lawyers across the board out of all this on-going upheaval. This time, we've asked him to provide some insight into the post-disruption legal world, examining what its shape, services, new highways and dead-ends might look like. Jordan was one of the first people to spot the changes coming to the profession and is well placed to be our guide to what the new scenery might look like. We hope you find his thinking interesting, or at least that it prompts you to consider how it might affect your slice of the profession.

What follows is just one possible way to see the new lay of the land. One of the most interesting questions is, perhaps, what have we missed? Classic film as it was, Back to the Future failed to see the coming of the mobile phone and the internet. Quite important omissions. I wonder what the equivalent is in the legal landscape. What have we missed? Maybe you're designing it already...

Happy reading.

Simon Harper
Co-Founder
LOD

Marty McFly:


“HEY, DOC, WE BETTER BACK UP. WE DON'T HAVE ENOUGH ROAD TO GET UP TO 88.”

Dr. Emmett Brown:

“ROADS? WHERE WE'RE GOING, WE DON'T NEED ROADS.”

Back To the Future Part 2 (1989)

Disruption



TIME	DESTINATION	FLIGHT
09:10	DISRUPTION	T4 9461
09:15	DISRUPTION	55 0256
09:20	DISRUPTION	03 0350
09:25	DISRUPTION	16 2300
09:30	DISRUPTION	29 3001
09:35	DISRUPTION	10 4000

We feel reasonably confident that this picture does not describe your dream vacation. If this destination suddenly showed up on your travels, in fact, you'd immediately check your ticket or your map to find out where you went off course. Many people in the legal profession, who've been hearing about "disruption" for some time now, probably know this feeling well.

But whatever else can be said about disruption in the law, one thing is undoubtedly true. The point of disruption — what makes us uneasy about it — is that it, well, disrupts. It mucks things up. It makes kind of a mess.

Disruption can ruin a perfectly nice profession and leave everyone standing around awkwardly, smartphones in hand, unsure what to do next. Old assumptions suddenly give way, longstanding platforms quickly collapse. Strategic plans and careers that seemed sensible years or even months earlier are laid waste. Countless experimental platforms flourish, but many of them fail, only a few succeed, and no one can safely predict which ones or why.

From a distance, it's a fascinating real-time socio-economic experiment. Up close, it's brutalising.

The current age of legal disruption feels unsettling, disorienting, and irritating — but we need to remember that that's exactly how it's supposed to feel. We're now several years into a period of fundamental change in the legal services market, and we're only now starting to really experience the impact. We're still in the breakdown period, descending into the valley of disruption before we can climb up and out towards the shining plateau of the new marketplace.

If you're a lawyer whose career has already taken you the first several steps into this valley, or a law firm whose path to the future runs unavoidably down through it, you can be forgiven for feeling some trepidation. But if you're committed to the practice of law, then we must advise you that this is a journey you have no choice but to make.

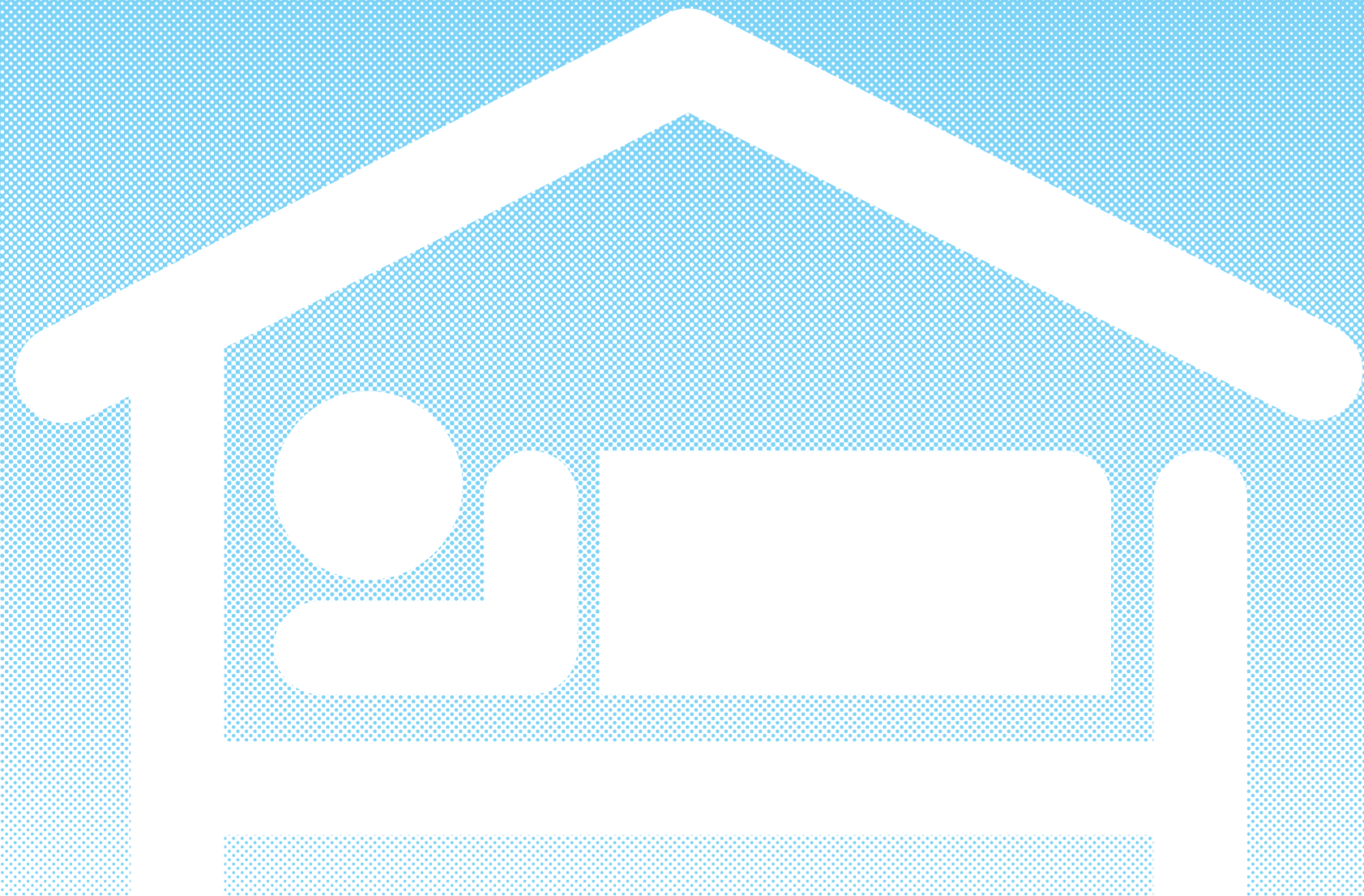
If it's any consolation, however, you won't be going alone. You'll have the company of thousands of fellow travellers on this journey. And you won't have to make the trip without any guidance.

We can't give you a detailed map of the valley below, unfortunately — that would be like trying to describe an explosion in progress. But we can give you a pretty clear vision of what the high plateau on the other side will look like. We can picture the likely post-disruption environment for lawyers and law firms, so that you can pack your bags properly and prepare for working and living in that new world. That's what this report intends to do.

Caveats abound, of course: there is still tremendous dynamism in this market, and what seems probable in 2015 might be risible by 2025 or 2030. But for those who must plan their trip today, you can consider this a guidebook to what the new legal landscape should look like when you get there. With this guide in hand, you should be able to make reservations for where you're going to stay and to start planning your activities for when you arrive. At some point, you might even be able to prepare your own travel planner for those who will follow you, equally unsure of the road ahead of them.

There are two dimensions in which to envision the post-disruption legal market: legal providers (the vehicles for service delivery) and lawyer functions (the contributions that lawyers will make). For present purposes, to further our theme, we'll call these "Accommodation" and "Activities."

Here are several examples of each — not an exhaustive inventory of every bed-and-breakfast or sight-seeing opportunity in the future legal market, but instead, a highlight reel of "how to spend your time here." We strongly recommend that you start planning now.



ACCOMMODATION

**LEGAL PROVIDERS
OF THE FUTURE**

Professional Legal Firms

Pros:

For those who like to spend their vacations hanging out by the pool and dining in the hotel restaurant, this is the known quantity you're looking for.

Cons:

There's an exciting cityscape just beyond the lobby; it seems a shame to travel all the way here just to spend your days watching TV and ordering room service.

Yes, even in the future, we'll have law firms. It's not a stretch to suggest that the dominant legal service vehicle of the last two centuries will still be with us a decade or two hence. Whether privately or publicly held, whether owned and operated by lawyers, accountants, or others, these firms will still be recognisable to a visitor from 2015 — albeit they'll be more disciplined and businesslike than their ancestors, with great improvements in workflow and operations. But their market share will have long since peaked. If you're staying in a luxury destination that serves up five-star, bet-the-world legal work, you'll definitely enjoy your trip. But there are only so many rooms available in those places, and the more modest Commodity Inns down the street will be rather more numerous.

Tip:

Most of these places actually used to offer ownership stakes to their most favoured guests. We wouldn't count on seeing many of those opportunities in future.

“YES, EVEN IN THE FUTURE,
WE'LL HAVE LAW FIRMS.”

Multi-disciplinary Service Firms

Pros:

Ideal for the traveller who likes a diverse and collegial setting, with quieter, down-to-earth visitors and a gentler pace of life.

Cons:

Your fellow guests are great, but their professional requirements can sometimes vary from those of lawyers; just be sure you're all on the same page.

Although full-scale multi-disciplinary partnerships at the global level will be few, smaller professional combinations that serve individuals and small businesses should grow steadily. Family practices that combine lawyers, financial advisors, and child psychologists; SME advisories that draw upon legal, accounting, HR, marketing, and outsourcing experts; and elder services firms that offer estate lawyers, tax planners, physiotherapists and pharmacists are all reasonable possibilities. The walls between adjoining rooms are thinner here than in other locations, but in this case, that's a good thing: it encourages learning, cross-training, and the development of more nuanced perspectives amongst visitors.

Tip:

If you're the kind of guest who believes lawyers are the smartest people in any given conversation, you might want to book your stay elsewhere.

“IDEAL FOR THE TRAVELLER
WHO LIKES A DIVERSE AND
COLLEGIAL SETTING.”

Managed Legal Service Providers

Pros:

A welcoming hostel for brand-new arrivals, as well as for veteran wanderers who know what they like and want a place to keep on doing it.

Cons:

Maybe not the best destination for the creative legal artist who chafes at the rigours of routine and repetition.

Emerging from the fusion of law firms and legal process outsourcers, managed legal service providers will take on routine, repeatable, or straightforward legal tasks, as well as segments of more complex matters. Operating either as independent entities or as divisions of larger enterprises, they will employ lawyers in highly disciplined structures, supplementing them with advanced technology. The mid-level legal work performed by these companies will be especially attractive to new lawyers looking to gain experience and build systems expertise. Some travellers are drawn to predictable days and systematically planned excursions; they'll find those qualities and more at these affordable destinations.

Tip:

There's a risk that management might one day let your room out to a robot who can deliver a higher return on the space.

“NOT THE BEST
DESTINATION FOR THE
CREATIVE LEGAL ARTIST.”

Flexible Legal Talent

Pros:

Primed for adventure? Don't like to be tied down? Always ready for a spontaneous road trip to someplace new? Have we got the destination for you.

Cons:

If you've never picked up a rucksack, crashed on a friend's couch, or used a sleeping bag other than for emergencies, this might not be the best fit.

“Lawyers On Demand” (**LOD**) not only is the name of this paper's sponsor, but also brings to mind a new type of legal service provider: the as-needed lawyer. Whether they join an existing agile provider such as **LOD** or maintain an entirely independent existence as project and contract lawyers, these itinerant legal professionals will benefit from flexibility and ongoing skill acquisition while providing services at advantageous rates. Many of the legal service models previously described here will engage these lawyers, in order to price their services more competitively and reduce their exposure to cyclical changes in activity. These are vibrant, high-energy places, but note: you won't run into your fellow guests in the hallways very often. Make sure you gather in the main ballroom for regularly scheduled social events.

Tip:

These places are growing fast, and accommodation is almost always available. But we wouldn't count on room service coming to make your bed every day.

“THESE ITINERANT LEGAL
PROFESSIONALS WILL
PROVIDE SERVICES AT
ADVANTAGEOUS RATES.”

Legal Education and Training Institutions

Pros:

Perfect for the Habitat for Humanity builder or the ecological tourist: a chance to do good while also doing reasonably (but not outstandingly) well.

Cons:

These will not be luxury accommodation. You'll be expected to do community outreach beyond the front desk. Some legal travellers will find this unattractive.

Were your collegiate years the best of your life? Then look into this burgeoning type of legal destination. A natural outgrowth of demands on law schools to provide more "practical training" and career assistance will be the development of legal service provision within the schools themselves. "Teaching law firms" will see academic instruction integrated with hands-on experience in serving clients and running profitable businesses. Most of these hybrid educational/private providers will gear their offerings towards low- and middle-income individuals. Serving both the needy and the next generation of lawyers will prove a dream destination for select travellers.

Tip:

Most of these locations are still only in the blueprint stage. You might want to secure other accommodation when you first arrive, then check regularly at the building site.

"YOU'LL BE EXPECTED TO DO
COMMUNITY OUTREACH BEYOND
THE FRONT DESK."

Independent Legal Technology Providers

Pros:

If Apple stores thrill you and the Googleplex is your fantasy workspace, you might be just the kind of guest these emerging providers are seeking.

Cons:

High risk, high reward. You might be with the next Amazon or with the next boo.com. Nobody, including management and its investors, knows for certain.

An App Store for legal services? It's a realistic proposition for a future segment of the legal market that will be served largely if not entirely by machine. Coding the steps and programming the numerous options available to individuals and businesses facing a legal situation will become easier and more cost-effective, as both the technology and the legal profession's interest in these opportunities advance. Legal technology will be widely accessed by users who wish to independently navigate through legal challenges. These types of career destinations will flourish as legal visitors become better trained in technology and the market becomes more comfortable with their offerings. If you want to prevent the dawn of the Cybermen (or be the one to bring it about, for that matter), check these places out.

Tip:

Technology moves fast — really fast. You might come back at day's end to find the lobby unrecognisable and your room key changed. Be prepared for an unpredictable stay.

"HIGH RISK, HIGH REWARD."



ACTIVITIES

LAWYER FUNCTIONS
OF THE FUTURE

Execute Legal Tasks

Pros:

The ultimate guided bus tour: a safe excursion through streets so familiar you could probably narrate the sightseeing yourself. A panacea for those who prefer the predictable.

Cons:

Really, you didn't come all this distance just to see and do what you could've accomplished as easily by staying home, did you? Where's your spirit of adventure?

It might seem obvious, but substantial numbers of lawyers in the future will still be doing many of the things that lawyers do today. Not every legal task is yet reducible to a series of steps or procedures — or, at least, not without a degree of effort that will still prove disproportionate to the value of the outcome to the client. Legal diagnosis, assessment, analysis, solution, and execution by human agents will remain vital responses for many legal needs, for a while anyway. It's a reasonably reliable short-term activity for travellers who don't like the novel or the unfamiliar. But we also expect fewer operators will be able to turn much of a profit on this particular tour in future.

Tip:

This sightseeing opportunity is expected to be offered less and less frequently as the years go by. You might want to wear a GoPro to record it for posterity.

“NOT EVERY LEGAL TASK IS YET REDUCIBLE TO A SERIES OF STEPS OR PROCEDURES - OR, AT LEAST, NOT WITHOUT A DEGREE OF EFFORT THAT WILL STILL PROVE DISPROPORTIONATE TO THE VALUE OF THE OUTCOME TO THE CLIENT.”

Design Legal Tools, Processes and Regimens

Pros:

Soon to be the hottest ticket in town, this trio of activities boasts the dual attraction of combining legal and operational skills and providing many opportunities for gainful participation. Everyone's talking about it today; they'll be doing it tomorrow.

Cons:

This rapidly emerging activity is expected to draw huge crowds as more people hear about it and acquire the wherewithal to take the trip. We recommend starting early to avoid waiting; lineups could be severe, and while seats are plentiful, they aren't unlimited.

This trio of excursions will define the contours of many future legal careers and perhaps eventually form the foundation of an entirely new type of industry in this area.

Tools: Legal machines will require legal programmers and developers to bring them into the world, monitor their effectiveness, and continuously enhance their productivity. Richard Susskind's "legal engineers" and other future legal careers fall into this category, to be joined by legal information architects who will identify, capture, and analyse the data patterns and resources upon which these tools will be based. Technically-minded legal travellers might find this spot so attractive that they settle down here.

Processes: Process mapping and enhancement will become one of the most significant and sought-after roles in the law, because we cannot streamline or automate any legal service until we first understand how it is carried out, and then how to carry it out more effectively. The goal is to identify what's actually involved in the process of answering questions or delivering legal outcomes, and then make it better. Travellers with an eye for detail and an inclination for improvement will be enthralled by the possibilities.

Regimens: The culmination of this trip will be the creation of client-facing legal systems that monitor and improve the "legal health" of families and businesses. Tailoring solutions to individual clients for maximum effectiveness, lawyers will soon find they can start to anticipate future client concerns, managed by the informed legal analyst and worked into long-term legal relationship models. This will be the "designer drug" of the future market, and many legal travellers will be drawn irresistibly into its laboratories.

Tip:

Smart travellers will start training themselves now for what figures to be a rigorous but rewarding expedition. The good news is that you don't need to be a programming Ph.D. to get the hang of this: intelligence, intuition and innovation are the key talents you'll need starting out.

“PROCESS MAPPING AND
ENHANCEMENT WILL BECOME
ONE OF THE MOST SIGNIFICANT
ROLES IN THE LAW.”

Serve the Public Interest

Pros:

Some travellers are more interested in giving than in glamour. If you want to take a sustainable excursion that can leave everyone better off, the line forms here.

Cons:

The financial rewards are less, and this tour's viability depends heavily on social support. If you're seeking the Disney World experience, best look elsewhere.

When plotting the future course of the legal profession, many people incorrectly assume that all viable careers will be directed towards private clients. Lawyers in the future will still be needed to develop more just and effective public policy, to properly draft laws and regulations that reflect the social interest, to support and speak out for the least influential members of the community, and to ensure the primacy of the rule of law above every political, economic, or popular sentiment. This is exactly the kind of activity that was originally envisioned by many law school applicants, and it will be the first tour they book when they arrive in this new market.

Tip:

Don't think that the new-market skills and sentiments discussed elsewhere in this guide aren't applicable here. You'll still need technical know-how and innovative inclinations.

“IF YOU'RE SEEKING THE DISNEY WORLD EXPERIENCE, BEST LOOK ELSEWHERE.”

Facilitate Conflict Resolution

Pros:

Disputes far outnumber the means to resolve them, which makes this emerging excursion ideal for legal visitors who want to do something both new and worthwhile.

Cons:

Let's face it: some lawyers are better at igniting and conducting disputes than at settling them. If you're in the former group, you should book a different activity.

Today's court system lethargically renders civil justice for the one percent, supplemented by a muddle of private half-measures trying to fill the gaps. In future, along with online dispute resolution advances, lawyers with sophisticated settlement training will establish a niche for resolving personal and corporate disputes — not as private practitioners, but as trusted public figures. “Community arbiter” and “honest broker” will become viable career options for lawyers with wisdom, emotional intelligence, and a strong moral compass. This grassroots destination is still under the radar today, but it won't be for long: book your tickets now to be among the first to participate in what should be a great expedition.

Tip:

To get the most out of this trip, you really need to know the neighbourhood you'll be inhabiting. Invest time and effort to learn the locals and their customs.

“SOME LAWYERS ARE BETTER AT IGNITING DISPUTES THAN SETTLING THEM.”

Personally Advocate for Clients

Pros:

A throwback from the old days that will prove highly resilient, the classic lawyer-advocate is a difficult ticket to acquire but is worth the effort required to get it.

Cons:

The level of competition is high and the stakes are even higher. This ride is not for everyone: make sure you have the stomach for it before you climb aboard.

The representation of a client in matters of great personal importance will become even more highly regarded in future. The settings will change, from traditional public tribunals to parallel “quasi-courts” or even online webcasts witnessed by millions. But there will continue to be a critical role for the advocate who stands with her client and delivers a life-changing argument, defence, or exhortation to a trier of fact and a court of opinion when the stakes are highest. Many people booked their passage to the legal landscape years ago with this activity in mind, but when they saw the dizzying heights and drops up close, many backed off. If it’s the right ride for you, however, you’ll know it.

Tip:

Look for the grizzled ride operators, the ones who’ve seen it all go by, and learn everything you can from them. Their wisdom will prove invaluable when it’s your turn.

“THE LEVEL OF COMPETITION
IS HIGH AND THE STAKES
ARE EVEN HIGHER.”

Strategically Advise Clients

Pros:

This is the most challenging, most sustainable, and most rewarding expedition for visitors to the future legal market.

Cons:

We haven’t found any yet.

And so we come to what we consider the Ultimate Expedition for future lawyers. The title of David Maister’s 2001 book *The Trusted Advisor* captured the essence of what many lawyers still aspire to become: the wise counsellor, the voice of reason, the right-hand expert relied upon to supply solid judgment in important circumstances. From small-town solicitors to office-tower partners, the most highly regarded lawyers frequently are those whom their clients call for advice about what they should do now, and the answers they supply seldom are grounded solely in the letter of the law.

As systems, sourcing, and software continue to capture many of the tasks upon which lawyers have traditionally built their practices, opportunities to move higher up the value ladder and provide wisdom, judgment and counsel to clients as part of an ongoing retainer relationship will increase. It’s not easy to book a ticket on this excursion, partly because seats are still very limited, and partly because not everyone meets the stringent qualifications. But if you can manage it, we think this would be the high point of your visit to the future legal market.

Tip:

A useful prerequisite for this excursion is experience in some type of business or social endeavour before joining the legal profession.



TRAVEL ADVISORY

Travel Advisory

How can lawyers and law firms prepare for their tour of this undiscovered country? It's difficult to know what to pack when you don't know what the climate and landscape will be, and when you're not entirely sure how welcoming the locals will prove. An additional uncertainty surrounds the nature of other travellers: rumours persist that in this new landscape, a valid passport from the legal profession will not be required of all visitors, meaning the crowds could be even bigger than anticipated.

At this stage, what we can offer is four pieces of advice that should stand you in good stead when you first step onto this foreign ground.

“LET GO OF BINARY CONCEPTS LIKE “NON-LAWYERS” AND FALSE DICHOTOMIES LIKE “CLIENT OR COMPETITOR”.”

Broaden Your horizons

Think beyond lawyers and law firms as the primary or sole providers of legal services. Your immediate future competitors will include professionals outside the law, skilled technicians from entirely different industries, and (let's not forget) your future clients themselves, who will learn to self-navigate the legal system with ever-greater ease and success.

But from the ranks of these competitors, you will also be able to draw collaborators, allies, and fellow travellers as well. Let go of binary concepts like “non-lawyers” and false dichotomies like “client or competitor.” Do your best to shake off the standing assumptions and conventional wisdom you've collected in your visitors' guides up to this point. Your most valuable travel asset now might just be your imagination.

Skill up

Entering this new region as a “smart, hard-working lawyer” simply will not be enough: the bar (so to speak) will have been raised considerably by the time you arrive. The wealth of coming “lawyer-and” functions will require talents and experience beyond what previously has been asked of prospective law students and what has been heretofore supplied to traditional law graduates.

The multi-dimensional nature of future client demands will rapidly outstrip and sideline law firms that only provide “lawyer” services and only deliver them in traditional, one-to-one, real-time fashion. Before you even begin packing for this journey, equip yourself by learning about process improvement, technological capacity, entrepreneurial insights, and the needs and perspectives of those the legal profession does not serve today.

“IF YOU KEEP CLOSE THE
FUNDAMENTAL PRINCIPLES
OF GOOD LAWYERING -
INTEGRITY, PROFESSIONALISM,
CARE, INSIGHT, COUNSEL,
AND SERVICE, YOU’LL BE
READY WHEN THE LANDSCAPE
EMERGES MORE CLEARLY.”

Be flexible

This might be difficult advice for the new lawyer who has invested several years and thousands of pounds into lawyer qualifications, and for the law firm that has to coordinate hundreds of continuously moving parts and make long-range strategic plans right now. But no one said this would be easy. If the legal market ever was a luxury cruise, it isn't anymore.

So remain on top of market developments, stay actively tuned to your clients and other system users, and keep Plan B (and maybe Plans C and D) close at hand, along with a little hammer for that “Break In Case Of Emergency” glass. Keep an eye out for those who would like to disrupt you — and for those whom you could disrupt yourself. You should even revisit this guide in 2020 to see what we got right and where we missed, in order to undertake the same evaluation yourself.

Be a lawyer

We can think of no better parting advice with which to see you on your way. Not everyone who can or will succeed in the future legal market will be a member of the legal profession. And not every member of the legal profession will act like it. In such a crowded and challenging environment, with unprecedented pressures, it's easy to take the wrong turn and lose your way down some blind alley.

We urge you instead to maintain your professional bearings. If you keep close the fundamental principles of good lawyering — integrity, professionalism, care, insight, counsel, and service — while paying careful attention to what's happening around you, then you'll be ready when at last the clouds dissipate, the sun breaks through, and the landscape emerges more clearly. The view that reveals itself to you at that point, we promise, will be spectacular. Safe travels.



lawyers
on
demand

Presented by

LAWYERS ON DEMAND (LOD)

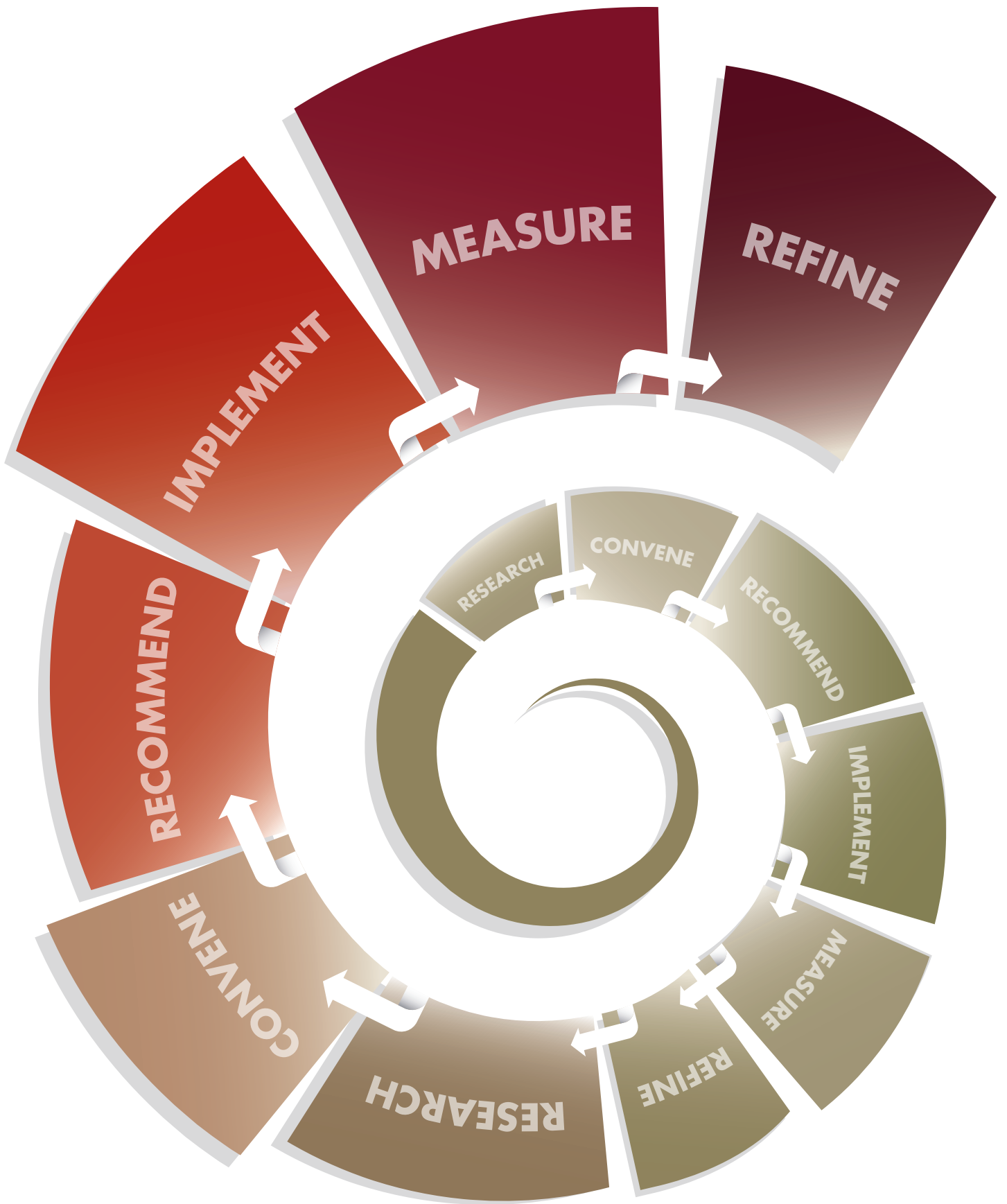
LOD is the original alternative legal services provider, offering lawyers and legal teams different and better ways of working. With our carefully selected flexible lawyers, we help in-house counsel and law firms to boost their teams and get more done. Our straightforward services reduce the usual cost of engaging lawyers by offering expertise without the overhead.

LOD was founded in 2007 to help legal teams manage changing workloads more efficiently and to offer talented lawyers more autonomy. We work with many of the world's top companies and law firms, have built a large team of highly experienced and motivated lawyers and have won numerous awards for innovation and client service. **LOD** Co-Founder, Simon Harper, was recently named as one of the The American Lawyer's "Top 50 Innovators of the Last 50 Years".

Twitter: @LOD_Law

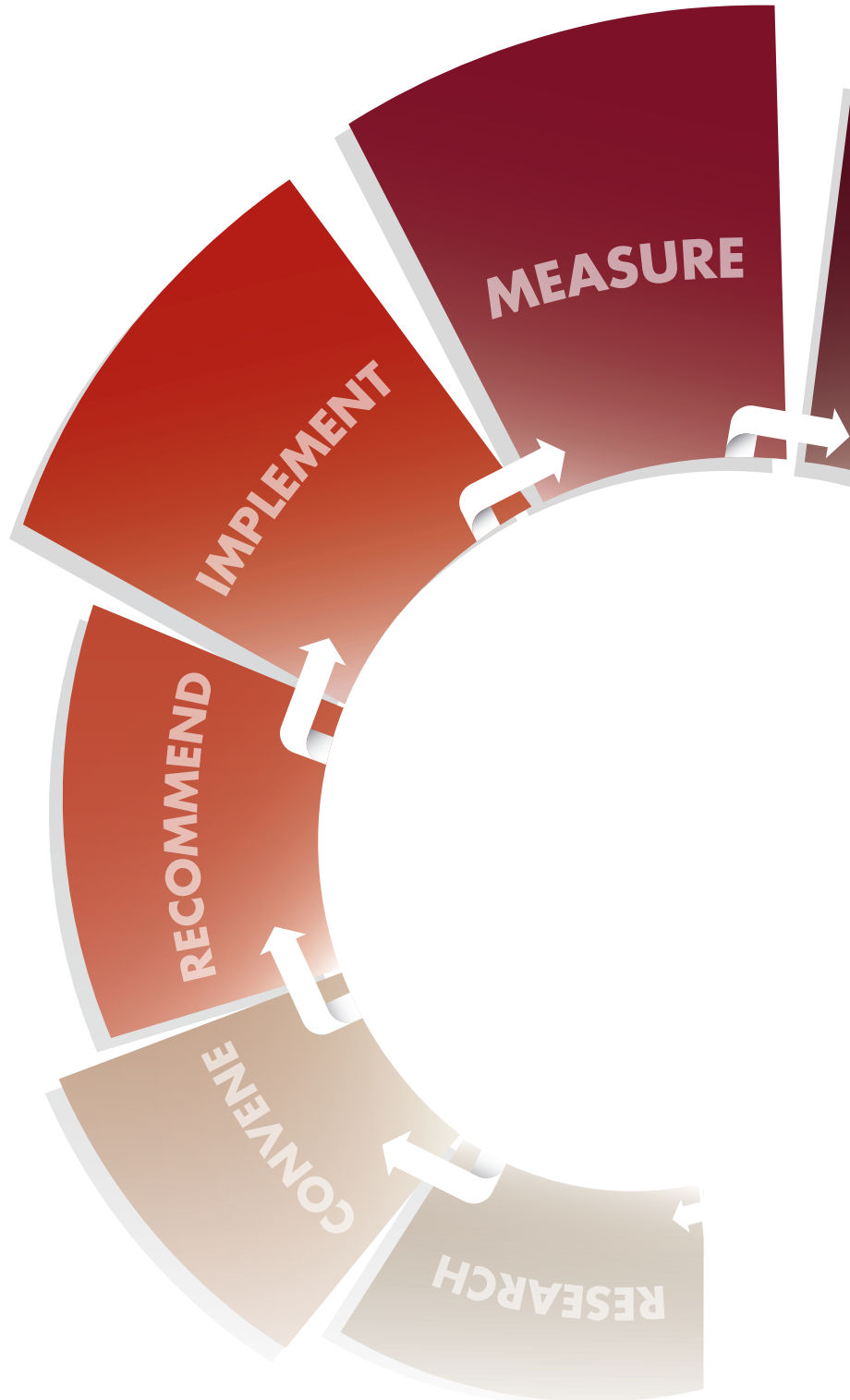
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FROM THE EXECUTIVE DIRECTOR

Over the last eight years, IAALS has grown in ways I never could have imagined. Our impacts are felt across the entire nation and we've charted a course to build upon and continue that success in the coming years.

A critical component to that success lies in our process. It is our foundation. It has guided our work from the beginning and distinguishes IAALS as unique in the field of legal reform. It informs every issue we tackle, every project we undertake, every recommendation we make.

This six-step process, the IAALS Process, will also guide you through this report. The continuous improvement cycle is an upward spiral of research, collaboration, innovation, and action. Our projects are at different stages of this cycle, but all are moving toward an ultimate goal, aligned with our overall mission: advancing excellence in the American legal system.



Every year is busy for IAALS, and 2014 was no different. Together with U.S. Supreme Court Justice Sandra Day O'Connor (Ret.), *Quality Judges* publicly launched the O'Connor Judicial Selection Plan, which lays out best practices for states on how to select, evaluate, and retain judges. *Rule One* shared superior caseload management strategies for judges and released its final evaluation of the Colorado Civil Access Pilot Project. In *Honoring Families*, early evaluation results told us that the Resource Center for Separating and Divorcing Families is successfully helping families, and we kicked off a national research study of self-represented litigants in family court, with the hope of helping courts better serve those who don't have lawyers. Finally, *Educating Tomorrow's Lawyers* launched the multi-year Foundations for Practice project, which will identify the foundations that entry-level lawyers need to launch successful careers in the legal profession and how legal education can help get them there.

Coming up in 2015, the IAALS Process will be hard at work. *Quality Judges* is convening supreme court justices, fair courts advocates, political strategists, and scholars to work toward easing the increased politicization of judicial retention elections. *Rule One* will conclude its work with the ACTL Task Force on Discovery and Civil Justice with a follow-up to our 29 proposed Principles for civil justice reform. *Honoring Families* will host a convening of Family Bar leaders that looks to the future of the practice area. And, *Educating Tomorrow's Lawyers* will unveil the results of the Foundations for Practice national survey at its fourth annual conference.

Process is important. Progress is more important. We could never have come this far without the people who support our work through their generosity, expertise, and passion. Thank you for helping IAALS succeed in identifying issues, developing solutions, and leading positive and lasting change on a national scale.

Rebecca Hale Kowalski



QUALITY JUDGES INITIATIVE

MISSION

The *Quality Judges Initiative* is dedicated to advancing empirically informed models for choosing, evaluating, and retaining judges that preserve impartiality and accountability. Through comprehensive analysis of existing practices and the collaborative development of recommended models, the *Quality Judges Initiative* empowers, encourages, and enables continuous improvement in processes for choosing, evaluating, and retaining judges.



“THE O’CONNOR JUDICIAL SELECTION PLAN, DEVELOPED WITH JUSTICE O’CONNOR HERE AT IAALS, IS A TRIED AND TRUE METHOD OF SELECTING JUDGES THAT BOTH PRESERVES IMPARTIALITY AND PROVIDES A MEASURE OF ACCOUNTABILITY. WHILE NO METHOD IS PERFECT, IT IS FAR BETTER THAN CONTESTED, PARTISAN ELECTIONS THAT DEMEAN THE JUDICIARY AND THE COURTS THEY SERVE.”

REBECCA LOVE KOURLIS, IAALS Executive Director

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New Jersey, 1994–2001

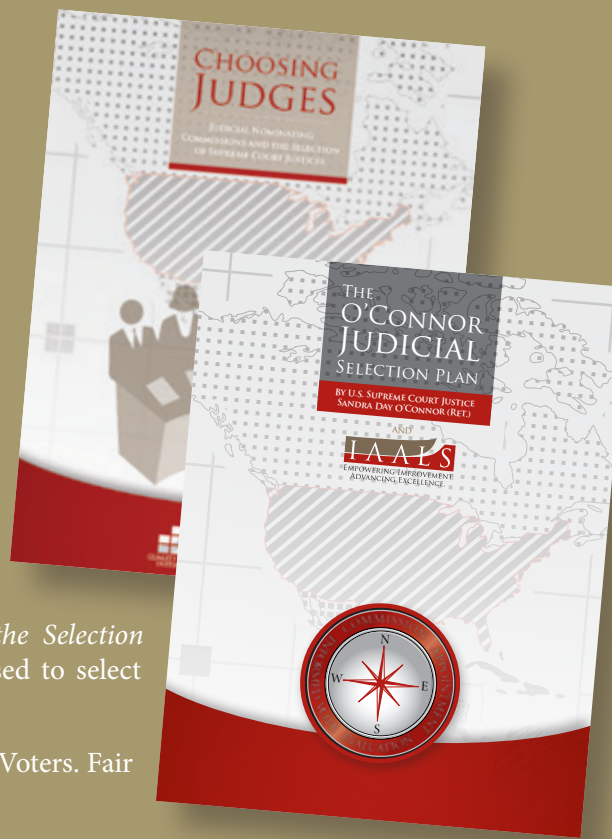
MARY G. WILSON
Past President, League of Women Voters of the United States

2014 WORK & PLANS

2014

DELIVERABLES

- Published *The O'Connor Judicial Selection Plan*—a four-part plan for selecting, evaluating, and retaining judges, with recommendations for structuring each part.
- Released a comprehensive set of FAQs on state and federal courts and their judges.
- Published *Choosing Judges: Judicial Nominating Commissions and the Selection of Supreme Court Justices*—a research report on the commissions used to select supreme court justices around the country.
- Participated in the National Association of Women Judges' "Informed Voters. Fair Judges." project for the 2014 elections.
- Authored chapter on judicial performance evaluation for the 8th edition of the American Bar Association's *Improving the Administration of Justice*.
- Led and supported our national JPE Working Group.
- Presented a training program for members of Missouri's judicial nominating commissions.
- Provided resources and testimony for the New Jersey State Bar Association's Task Force on Judicial Independence.



2015

PROJECTS UNDERWAY

- Convening supreme court justices, fair courts advocates, political strategists, and scholars to consider solutions to the increasing politicization of judicial retention elections. Producing a report on the outcomes and solutions.
- Developing and pilot testing a certification program for judicial aspirants.
- Maintaining our JPE Working Group. In consultation with working group members, beginning to develop training materials for judicial performance evaluation commission members, with a particular focus on reviewing written opinions of appellate judges.

“THE WORKING GROUP IS HELPFUL IN THAT IT KEEPS ME ABREAST OF WHAT ELSE IS GOING ON IN THE COUNTRY RELATIVE TO JPE. IT ALSO GIVES ME CONTACT WITH OTHERS WHO ARE INVESTED IN THIS WORK.”

JOANNE SLOTNIK
Executive Director, Utah Judicial
Performance Evaluation Commission



PROJECT IN FOCUS

JUDICIAL PERFORMANCE EVALUATION (JPE) WORKING GROUP

DEFINING THE ISSUES

When it opened its doors in 2006, IAALS was the only national organization to prioritize the improvement and expansion of programs for evaluating the performance of state and federal judges. IAALS' first two publications—*Shared Expectations: Accountability in Context* and *Transparent Courthouse: A Blueprint for Judicial Performance Evaluation*—provided essential research and resources in this under-explored area, and they are still two of our most requested reports.

CONVENING THE EXPERTS, SHARING RECOMMENDATIONS

IAALS remains the primary organization that is currently working in the field of judicial performance evaluation (JPE), and we have earned a reputation as the “go to” group for research, recommendations, and practical assistance. We have accomplished this by serving, in a number of contexts, as a convener of JPE program administrators, judges, lawmakers, scholars, and fair courts advocates who are committed to promoting and ensuring effective judicial performance evaluation in states around the country.

We have convened two national conferences on the topic of judicial performance evaluation. Attended by attorneys, scholars, judges, and JPE program coordinators from 17 states, our first conference in 2008 focused on the development, structure, and improvement of JPE programs across the nation. In 2011, our second national conference focused on performance evaluation for appellate judges, in response to the heightened profile of appellate judicial retention elections and the need for more tailored means of evaluating appellate judges and justices. Eighteen states were represented.

Our JPE Working Group provides an ongoing and essential forum for this type of convening. Founded in 2007 with JPE program administrators and scholars from seven states, the group now benefits from the participation of representatives from 15 states. The Working Group facilitates the sharing of ideas and information, as well as the identification of problem areas and potential solutions.

“WHEN I WAS HIRED TO DESIGN A JPE PROGRAM FOR MASSACHUSETTS IN 2000, IT WAS A GREAT DEAL OF LEGWORK TO DISCOVER WHICH STATES HAD PROGRAMS AND WHO I SHOULD CALL FOR INFORMATION. ANY STATE NOW STARTING A PROGRAM WILL HAVE IT SO MUCH EASIER THANKS TO IAALS AND THE WORKING GROUP — A ONE STOP SERVICE FOR NATION-WIDE INFORMATION.”

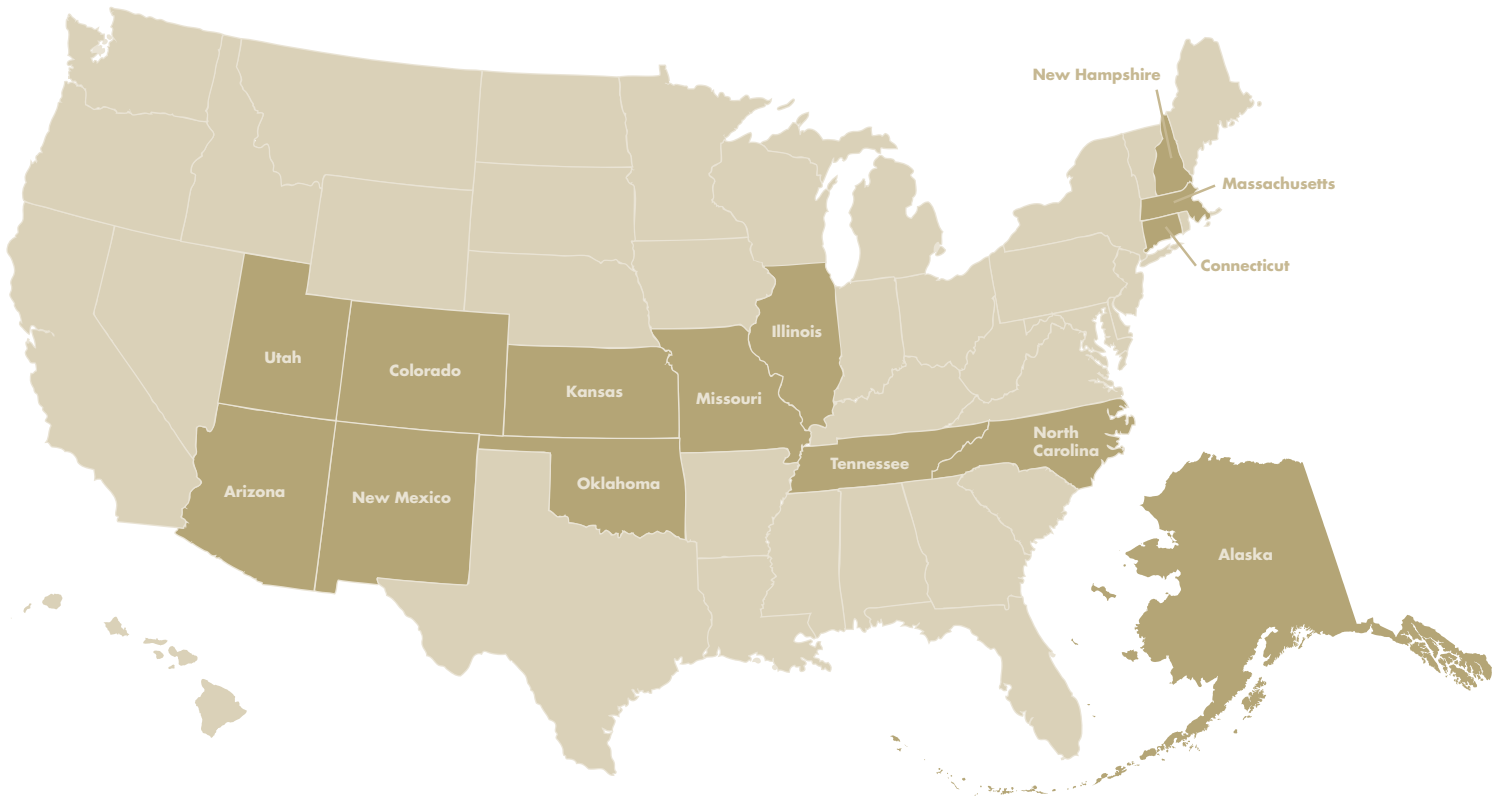
MONA HOCHBERG
Judicial Performance Evaluation
Coordinator, Massachusetts

IAALS' JPE Working Group provides the following tools to its participants:

- ➔ *Listserv*: Our listserv allows sharing of information and resources among Working Group participants.
- ➔ *Expert assistance*: We have periodically identified consultants to assist Working Group members in areas that require special expertise. For example, in advance of the 2014 judicial retention elections, we provided a webinar on using social media and other inexpensive tools to share JPE results.
- ➔ *Online repository of JPE resources*: We offer Working Group participants access to an online trove of JPE resources, including questionnaires, rules of procedure, and relevant research.
- ➔ *Quarterly calls*: We convene quarterly calls of Working Group participants to discuss recent developments in the states, share new research, and address questions and concerns.



NATIONWIDE REACH OF THE JPE WORKING GROUP



RESEARCH

CONVENE

Our JPE Working Group and our national JPE conferences, in addition to our ongoing research and information gathering in this area, position us well to serve as an advisor to states like Minnesota, Oklahoma, and Oregon that are considering the adoption of robust JPE programs.

We will continue in our role as a convener, providing the research and resources that JPE programs need to address new issues that arise, introducing and sharing innovations in JPE, and facilitating large- and small-scale conversations about how best to use JPE to improve individual performance, inform those who reselect judges, and promote public trust and confidence in our courts.



RULE ONE INITIATIVE

MISSION

The *Rule One Initiative* serves to advance empirically informed models for court processes and procedures that provide greater accessibility, efficiency, and accountability in the civil justice system. Through comprehensive analysis of existing practices and the collaborative development of recommended models, the *Rule One Initiative* empowers, encourages, and enables continuous improvement in the civil justice process.



“WE HAVE SEEN EXPERIMENTATION COME FULL CIRCLE IN 2014, WITH LESSONS LEARNED FROM REFORM EFFORTS AROUND THE COUNTRY AND THE BEGINNINGS OF CHANGE ON A MUCH BROADER SCALE—AT THE FEDERAL AND STATE LEVELS. THE *RULE ONE INITIATIVE* HAS PLAYED A KEY ROLE, AND WILL CONTINUE TO BE AN IMPORTANT VOICE IN THE YEARS TO COME.”

BRITTANY K.T. KAUFFMAN Director, *Rule One*

AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND CIVIL JUSTICE

PAUL C. SAUNDERS
New York, New York – Chair

JUDGE ANN B. FRICK
Denver, Colorado – Vice-Chair

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GORDON W. NETZORG
Denver, Colorado

WILLIAM USHER NORWOOD, III
Atlanta, Georgia

MICHAEL L. O'DONNELL
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R. JOSEPH PARKER
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COLLINS J. SEITZ, JR.
Wilmington, Delaware

MICHAEL W. SMITH
Richmond, Virginia

ALAN L. SULLIVAN
Salt Lake City, Utah

FRANCIS M. WIKSTROM
Salt Lake City, Utah

WILLIAM N. WITHROW
Atlanta, Georgia

W. FOSTER WOLLEN
San Francisco, California

JUDGE JACK ZOUHARY
Toledo, Ohio

2014 WORK & PLANS

2014

DELIVERABLES

PROJECTS:

- Continued work with the ACTL Task Force, including reevaluation of the Proposed Principles and a joint IAALS/ACTL Task Force comment on the proposed federal rule amendments.
- Participated in and provided staffing in support of the Conference of Chief Justices Civil Justice Improvements Committee.
- Continued monitoring and sharing information regarding pilot projects and rule reform jurisdictions, as well as national committees.

PUBLICATIONS:

- *Report on “A Forum for Understanding and Comment on the Proposed Federal Rules Amendments”*—submitted in the form of a comment on the proposed federal rule amendments.
- *Working Smarter, Not Harder: How Excellent Judges Manage Cases*—a study in collaboration with the American College of Trial Lawyers.
- *Summary of Empirical Research on the Civil Justice Process: 2008-2013*—a summary of empirical research on the civil justice system over the last five years.
- *Allocating the Costs of Discovery: Lessons Learned at Home and Abroad*—a report on cost allocation in discovery.
- *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project*—an evaluation of the Colorado Civil Access Pilot Project.
- *Short, Summary, and Expedited Civil Action Programs Around the Country*—an updated chart summarizing programs in state and federal courts to supplement our work on *A Return to Trials: Implementing Effective Short, Summary, and Expedited Civil Action Programs*.

EVENTS:

- Cohosted “Fundamentals of E-Discovery for State Court Judges: A Webcast” in collaboration with the National Judicial College.
- Held “Preservation in Practice: A Corporate Convening on Rule 37(e) and Beyond.”

2015

PROJECTS UNDERWAY

- Continuing work with the ACTL Task Force and finalizing *Reforming Our Civil Justice System: A Report on Progress and Promise*, to be published in 2015.
- Continuing participation with and support of the Conference of Chief Justices Civil Justice Improvements Committee.
- Ongoing monitoring of and information sharing regarding pilot project and rules reform jurisdictions, as well as national committees.
- Continuing collaboration with the National Judicial College in the area of education for state court judges on electronic discovery, including cohosting a webcast for state court judges.
- Hosting a Plaintiff’s Forum in Summer 2015.
- Researching and drafting of an article on implementing change and achieving impact based on research and discussions with diverse focus groups and individuals on how best to implement the new rules/recommendations.
- Preparing for IAALS’ Fourth Civil Justice Reform Summit, to be held in February 2016.
- Collaborating with Professor Scott Moss on jury and social media empirical research.



PROJECT IN FOCUS

THE COLORADO CIVIL ACCESS PILOT PROJECT

DEFINING THE ISSUES

In 2007, IAALS and the American College of Trial Lawyers (ACTL) Task Force on Discovery and Civil Justice partnered to look into the heart of the issues plaguing our legal system.

That joint effort began with a survey of the Fellows of the ACTL, which made clear that there are serious issues with the civil justice process in the United States. The survey confirmed that major changes were necessary to ensure that our system meets its promise of providing a “just, speedy, and inexpensive determination” to everyone who comes to our courts for resolution of their disputes.

From there, and after a great deal of additional research, discussion, and deliberation, we jointly published a *Final Report*, which included broad recommendations, in the form of 29 proposed Principles, for improvement of the civil justice system. This was followed by a model set of *Pilot Project Rules* that could be implemented and evaluated in pilot projects around the country.

The *Final Report* and model *Pilot Project Rules* were inspiring, and pilot projects and rule reforms have been implemented nationwide. Several of those projects have now come full circle, in states like New Hampshire, Utah, and Colorado.

CONVENING THE EXPERTS, MAKING RECOMMENDATIONS

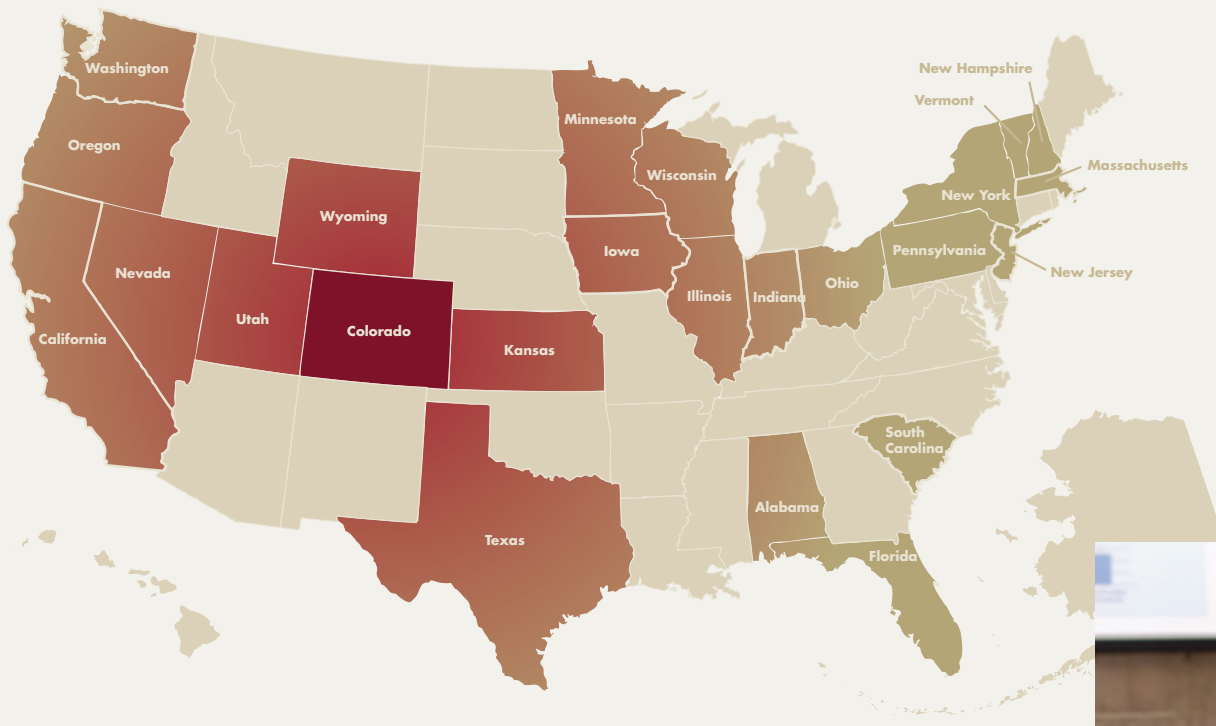
IAALS played a critical role in the inception, execution, and completion of the Colorado Civil Access Pilot Project (CAPP). The Colorado members of the ACTL Task Force and IAALS convened a diverse committee that developed a proposed set of pilot project rules. The state supreme court authorized the pilot project for business cases in five Denver-area courts and designated IAALS to study its effects. IAALS also played an instrumental role in implementing the project and educating the bench and bar.

IAALS’ research team undertook a robust study of CAPP, combining quantitative and qualitative research to measure the project’s impact. In 2014, IAALS published its final evaluation of the project, *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project*. On the whole, CAPP succeeded in achieving many of its intended effects, including a reduced time to disposition, early and appropriate case management, proportional discovery and costs, and a lower level of motions practice.



“ INSTEAD OF TINKERING AROUND THE EDGES OF THE CURRENT SYSTEM, CAPP PRESENTS A DIFFERENT WAY TO LITIGATE—BY GETTING THE JUDGE AND THE PARTIES FOCUSED ON THE CORE ISSUES AT AN EARLY POINT. UNDER CAPP, THE PROCESS IS TAILORED PROPORTIONATELY TO THE SPECIFIC DISPUTE, CHANGING THE DISCOVERY DEFAULT FROM ‘ALL YOU CAN EAT’ TO ‘YOU GET WHAT YOU NEED.’ ”

GORDON “SKIP” W. NETZORG
Sherman & Howard, Denver, Colorado



“ IN CONDUCTING A ROBUST EVALUATION OF CAPP, OUR GOAL WAS TO CAPTURE RELIABLE INFORMATION ON HOW THESE IDEAS WORK IN PRACTICE— INFORMATION THAT CAN HELP GUIDE DECISION-MAKERS AROUND THE COUNTRY IN MOVING TOWARD PERMANENT IMPROVEMENTS. ”

CORINA D. GERETY
IAALS Research Director

MEASURE

REFINE

The CAPP rules implement many of IAALS and the Task Force’s proposed Principles. They were designed to bring the disputed issues to light at the earliest possible point, tailor the process proportionally to the needs of the case, provide early and ongoing case management by a single judge, and move the case quickly toward trial or other appropriate resolution.

IAALS’ evaluation revealed that CAPP cases resolved sooner, one of the main goals of the project, and the time to resolution is considered proportionate and sufficient. All else being equal, applying the CAPP rules increased the probability of an earlier resolution by 69% over Colorado’s standard procedure.

We also found that CAPP cases saw a judge earlier and more often. CAPP’s focus on early, active, and ongoing judicial management of cases received more positive feedback than any other aspect of the project, with many calling to make it a permanent feature of the rules.

A subcommittee of the Colorado Civil Rules Committee has reviewed the results of this evaluation and has submitted proposed statewide rule changes to the Colorado Supreme Court that would incorporate several aspects of the project into Colorado’s rules for all civil cases. Thus, Colorado represents one jurisdiction where changes have been implemented, and where the focus has moved from measurement to refinement in order to achieve even greater impact.





HONORING FAMILIES INITIATIVE

MISSION

The *Honoring Families Initiative* is dedicated to developing and promulgating evidence-informed processes and options for families involved in divorce, separation, or parental responsibility cases that promote better outcomes for children and that provide greater accessibility, efficiency, and fairness for all parties, including those without counsel.



“HONORING FAMILIES IS PROUD TO BE LEADING THE CONVERSATION ON BETTER WAYS TO SERVE FAMILIES GOING THROUGH SEPARATION AND DIVORCE. BY LISTENING TO THE EXPERIENCES AND PERSPECTIVES OF ALL THOSE INVOLVED IN THE FAMILY JUSTICE SYSTEM AND COLLABORATING WITH THE BEST MINDS IN THE COUNTRY, WE ARE FORGING NEW, INNOVATIVE SOLUTIONS TO BENEFIT OUR NATION’S FAMILIES.”

NATALIE KNOWLTON
Director, *Honoring Families*

ADVISORY COMMITTEE

CHIEF JUSTICE PAUL DE MUNIZ (RET.)

Distinguished Jurist in Residence, Willamette University
College of Law, Chair

BARBARA BABB

Director, Sayra and Neil Meyerhoff Center for Families, Children
and the Courts, University of Baltimore School of Law

ROBERTA S. BATLEY

Shareholder, Little, Gilman-Tepper & Batley, P.A.

GABRIELLE DAVIS

Legal & Policy Advisor, Battered Women’s Justice Project

SYLVIA GOLDSCHMIDT

Senior Partner, Goldschmidt & Genovese, LLP

JOHN GREACEN

Principal, Greacen Associates, LLC

WILLIAM J. HOWE, III

Shareholder, Gevurtz, Menashe, Larson & Howe, P.C.

HOWARD MARKMAN

Co-Director, Center for Marital and Family Studies,
University of Denver

STACEY PLATT

Professor, ChildLaw Clinic, Loyola University Chicago
School of Law

MARSHA KLINE PRUETT

Maconda Brown O’Connor Professor,
Smith College School for Social Work

JUSTICE JANICE M. ROSA (RET.)

Former Supervising Judge of Family Courts, Buffalo and
Western New York

EMILY RUBEN

Attorney-in-Charge, Brooklyn Neighborhood Office of
the Legal Aid Society

PETER SALEM

Executive Director, Association of Family and
Conciliation Courts

ANDREW SCHEPARD

Director, Center for Children, Families and the Law,
Hofstra University School of Law

ARNIE SHIENVOLD

Founding Partner, Riegler, Shienvold and Associates

MELINDA TAYLOR

Executive Director, Resource Center for Separating and
Divorcing Families at the University of Denver

NANCY VER STEEGH

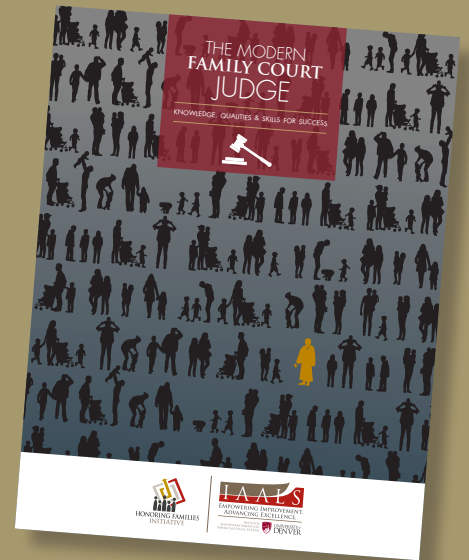
Vice Dean, William Mitchell College of Law

2014 WORK & PLANS

2014

DELIVERABLES

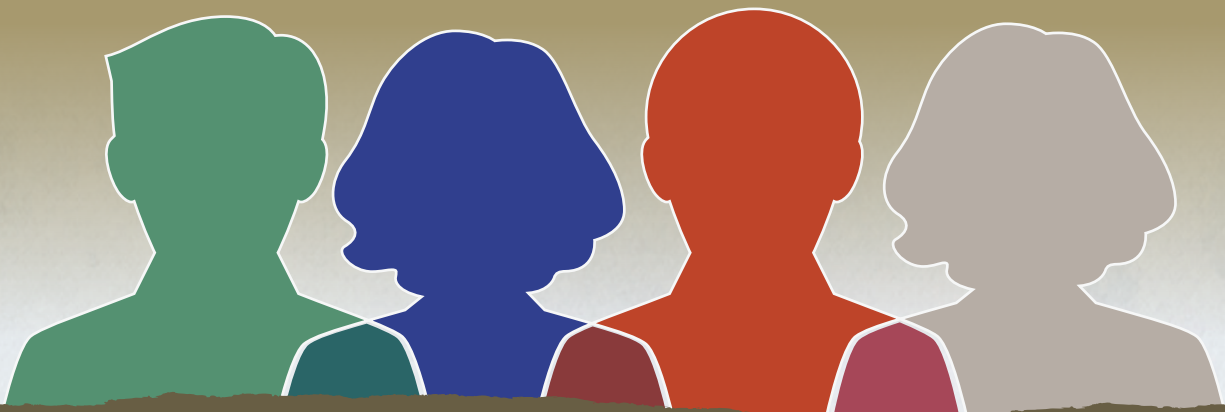
- Received numerous responses from stakeholders regarding the HFI white paper, which were published in the October 2014 *Family Court Review*. The HFI white paper describes the rationale for the initiative's mission and sets forth a set of principles that frame an action plan.
- Published *The Modern Family Court Judge: Knowledge, Qualities & Skills for Success*—a position paper detailing the necessities for an effective family court judge, based on feedback from a diverse working group. The Association of Family and Conciliation Courts (AFCC) formally endorsed the publication and the National Council of Juvenile and Family Court Judges is considering endorsement. The paper will be republished in the April 2015 edition of the *Family Court Review*.



2015

PROJECTS UNDERWAY

- Serving as a resource to and monitoring state domestic relations projects, including the Oregon Informal Domestic Relations Trial, Wyoming Expedited Marriage Dissolution Case Pilot Project, Alaska Informal Trials program and Early Resolution Project, and others around the country.
- Pursuing a joint project with AFCC on unbundled legal services consisting of four components: 1) a consumer-oriented toolkit; 2) a compilation of existing resources on unbundling for attorneys; 3) a toolkit for the courts; and 4) a package for other professionals, such as mediators and custody evaluators. Select components will be completed in Summer 2015.
- Planning a November 2015 summit of the family bar. The summit will leverage the perspectives of diverse family lawyers toward a common goal: identifying improvements to the system that would allow family practitioners to serve clients in a timely, efficient, and affordable manner, and facilitate a process that enables better outcomes for children.
- Moving forward on replication of our out-of-court model for separation and divorce, developing business plans for both a university and a community model, as well as a strategic plan for the replication process.
- Undertaking a qualitative empirical research study of self-represented litigants in family court. *Cases Without Counsel: Experiences of Self-Representation in U.S. Family Court* is exploring the issue of self-representation from the litigants' perspective, through detailed one-on-one interviews with individuals who have represented themselves in family court. HFI will convene stakeholders in August 2015 for purposes of developing recommendations from the study findings.



PROJECT IN FOCUS

RESOURCE CENTER FOR SEPARATING AND DIVORCING FAMILIES



“THE LEGAL ASPECT, THE MEDIATION ASPECT, THE CHILD AND COUNSELING CARE AND MENTAL HEALTH ASPECTS ARE ALL INTEGRATED. . . . I THINK THAT IS THE GENIUS OF THE PROGRAM.”

PARENT & CLIENT
RCSDF

RESOURCE CENTER FOR
SEPARATING AND
DIVORCING FAMILIES



DEFINING THE ISSUES

Since launching in 2012, the *Honoring Families Initiative* has been dedicated to exploring innovative, less adversarial ways to help divorcing and separating families. Programs in Australia and Canada that operate outside the courts served as a foundation for HFI's research into similar programs that create a more family- and child-responsive environment during these difficult times.

CONVENING THE EXPERTS, RECOMMENDING A MODEL

In partnership with the diverse, interdisciplinary group of national consultants and experts that serves as its Advisory Committee, HFI developed a first-of-its-kind, out-of-court model for divorcing and separating families in the United States.

At the core of the HFI model is a dedication to positive outcomes for children, who can experience long-lasting, detrimental effects from parental conflict. The model brings together all of the services and professionals that families need—therapeutic, legal education, dispute resolution, financial planning—and guides them through the process in a holistic manner. While the HFI model envisions a cooperative environment in which families can work together to resolve disputed issues without having to go to court, it also advocates for maintaining a collaborative relationship with the formal justice system. Furthermore, the model is versatile, with the potential to thrive in both community and university settings—the latter offering the added benefit of providing budding practitioners with real-world, experiential education.

IMPLEMENTING A PILOT PROGRAM

In 2013, IAALS established a pilot site for the model, to test and collect data on its processes and impacts. Support from the University of Denver community facilitated implementation on the DU campus, as a partnership among IAALS and the graduate schools of law, social work, and psychology. Together, the project Steering Committee, HFI Advisory Committee, and IAALS laid the foundation necessary to launch the Resource Center for Separating and Divorcing Families (RCSDF).

IAALS is undertaking a comprehensive evaluation, designed to collect data on the model's processes and outcomes for families and children. While the IAALS evaluation is underway, anecdotal evidence from families suggests this out-of-court process is helping them put their children first during their divorce or separation. Informed by the evaluation results and lessons learned from the RCSDF demonstration project, HFI has plans to refine and replicate the model at universities and in communities around the country.



“ [I]T IS UNLIKELY THAT WE WOULD HAVE COME TO AN AGREEMENT WE WERE BOTH COMFORTABLE WITH WITHOUT THE SERVICES WE RECEIVED IN A WAY THAT WAS AFFORDABLE TO US.”

PARENT & CLIENT
RCSDF



MEASURE

REFINE

The Resource Center served 45 families with children during its first year in operation, with an additional 100 families seeking services to date. Most families complete services in fewer than 120 days, after which they can participate in a final orders hearing held on-site with Denver Judge Robert Hyatt (Ret.). Preliminary data on the impact of the model show initial successes.

- Parents who completed the program reported that the out-of-court process protected their rights as well as their children's interests. Most families achieved agreement on all issues, and all parents expressed a strong sense that the agreements reached will hold until, and if, they decide to change them.
- Participating parents showed gains in the following areas: better collaborative communication skills with the other parent, lower levels of acrimony with the other parent, lower levels of parental distress, lower levels of parent-child dysfunctional interactions, an increase in appropriate emotional expectations for their children, and more positive parenting behaviors and attitudes.
- Reports of child behaviors by parents showed lower levels of aggression and anxiety/depression than were present prior to the family's participation in the program. More than four out of five participating parents indicated a positive effect on their children and the family as a whole (and no parent reported a negative effect).



EDUCATING TOMORROW'S LAWYERS®

MISSION

Educating Tomorrow's Lawyers is dedicated to aligning legal education with the needs of an evolving profession. Working with a Consortium of law schools and a network of leaders from both law schools and the legal profession, *Educating Tomorrow's Lawyers* develops solutions to support effective models of legal education.



“THIS WAS A TRANSFORMATIVE YEAR—BOTH FOR EDUCATING TOMORROW'S LAWYERS AND FOR THE BROADER MOVEMENT IN LEGAL EDUCATION. COLLABORATIONS BETWEEN THE PROFESSION AND LEGAL EDUCATORS ARE HELPING US IDENTIFY WAYS TO PUSH BEYOND 'WHAT IS' AND GET TO 'WHAT COULD BE.'”

ALLI GERKMAN
Director, *Educating Tomorrow's Lawyers*®

2014 CONSORTIUM SCHOOLS

Educating Tomorrow's Lawyers partners with a consortium of law schools committed to innovation. Each member of the Consortium makes an annual contribution to the initiative, to support the mission and goals of Educating Tomorrow's Lawyers.

Albany Law School
American University Washington College of Law
Benjamin N. Cardozo School of Law
Cornell University Law School
University of Denver Sturm College of Law
Georgetown University Law Center
Georgia State University College of Law
Golden Gate University School of Law
Hamline University School of Law
Hofstra University Maurice A. Deane School of Law
Indiana University Maurer School of Law
Loyola University Chicago School of Law
Loyola University New Orleans College of Law
Mercer University Walter F. George School of Law
University of Miami School of Law
University of New Hampshire School of Law
University of New Mexico School of Law

New York University School of Law
Northeastern University School of Law
University of Oklahoma College of Law
University of the Pacific McGeorge School of Law
Pepperdine University School of Law
University of Pittsburgh School of Law
Regent University School of Law
Seattle University School of Law
University of Southern California Gould School of Law
Southwestern Law School
University of St. Thomas School of Law
Stanford Law School
Suffolk University Law School
Thurgood Marshall School of Law
Touro College Jacob D. Fuchsberg Law Center
Washington and Lee University School of Law

2014 WORK & PLANS

2014

DELIVERABLES

- Hosted the 3rd Annual Educating Tomorrow's Lawyers Conference, with a focus on assessment in legal education. More than 75 legal educators convened in Denver, sharing innovative ideas and techniques from around the country—and the world.
- Launched a new, national project, Foundations for Practice, to identify the foundations entry-level lawyers need for practice.
- Built an improved user interface for Law Jobs: By the Numbers™, an interactive online tool that gives prospective law students the most transparent and complete law school employment rate information available.



2015

PROJECTS UNDERWAY

- Continuing the first phase of the Foundations for Practice project, which includes a national survey of lawyers followed by a series of stakeholder roundtables to discuss survey results.
- Holding the 4th Annual Educating Tomorrow's Lawyers Conference, where we will unveil and explore the results of the Foundations for Practice study with our law school Consortium.
- Publishing *Ahead of the Curve: Turning Law Students into Lawyers*, a report evaluating the University of New Hampshire's Daniel Webster Scholar Honors Program. The program, a collaborative effort with the New Hampshire bench and bar, places students in experience-based learning environments and provides substantial opportunities for formative and reflective assessment.
- Building on the success of Law Jobs: By the Numbers™, we are developing the plan for a new data-fueled tool that will give prospective students access to meaningful, individualized information about the law school options available to them.
- Monitoring, informing, and influencing proposals for change in legal education from the academy, bar associations, state bars, the courts, and other stakeholders.
- Serving as a resource for legal educators, administrators, bar leaders, and others seeking information and research related to legal education.
- Monitoring existing law school experimentation and building our Consortium and network of ETL Fellows to include key schools and educators that are leading the nation in their approach to legal education.

“ETL’S MISSION ALIGNS WITH THE WORK WE ARE DOING AT GEORGIA STATE UNIVERSITY COLLEGE OF LAW TO DEVELOP CUTTING EDGE EXPERIENTIAL LEARNING PROGRAMS THAT INTEGRATE OUR STUDENTS INTO THE LEGAL COMMUNITY. ETL’S WORK TO BRING TOGETHER LAWYERS, JUDGES, AND LEGAL EDUCATORS SERVES AS A RESOURCE AND PROVIDES A WAY TO SHOWCASE OUR FACULTY’S NUMEROUS PEDAGOGICAL INNOVATIONS.”

STEVEN KAMINSHINE
Dean, Georgia State University College of Law

DEFINING THE ISSUES

Lawyers, judges, and clients have been consistent in their call for new lawyers who can hit the ground running. Call it what you like—practice-ready, client-ready, or just plain ready—the charge is clear. But what are the competencies, skills, characteristics, and qualities that new lawyers need to be ready? Launched by *Educating Tomorrow's Lawyers* in 2014, Foundations for Practice is a first-of-its-kind effort to answer that question, and achieve the following objectives:

1. Identify the foundations entry-level lawyers need to succeed in the practice of law
2. Develop measurable models of legal education that support those foundations
3. Align market needs with hiring practices to incentivize positive improvements

CONVENING THE EXPERTS

Foundations for Practice began with a meeting of our Project Advisory Group—leaders in the legal profession, diverse in geography, practice, and perspective. Incorporating insight and expertise collected from that group, we crystallized project objectives and finalized our approach.

Using existing research, knowledge, and feedback from many stakeholder groups, we crafted a survey for national distribution.

“THERE ARE MANY CROSS-CURRENTS AFFECTING THE LEGAL PROFESSION TODAY, AND EFFORTS SUCH AS FOUNDATIONS FOR PRACTICE OFFER THE OPPORTUNITY TO GRAPPLE WITH THE ISSUES IN A CONSTRUCTIVE MANNER.”

ERICA MOESER
President, National Conference of Bar Examiners



“I LOOK FORWARD TO LEARNING THROUGH FOUNDATIONS FOR PRACTICE WHAT CURRICULAR EMPHASIS IN LAW SCHOOL WILL BE NEEDED TO TRAIN OUR FUTURE LAWYERS TO TAKE THEIR ISSUE-SPOTTING SKILLS AND BECOME ADEPT PROBLEM SOLVERS FOR THEIR CLIENTS.”

PAULA LITTLEWOOD
Executive Director,
Washington State Bar Association



“ I AM EXCITED TO BE PART OF [FOUNDATIONS FOR PRACTICE] BECAUSE IT HAS BROUGHT TOGETHER A DIVERSE AND DISTINGUISHED SET OF LEGAL ADVISORS WHO ARE PASSIONATE ABOUT IMPROVING THE PREPAREDNESS OF YOUNG LAWYERS FOR THIS NOBLE AND EVOLVING PROFESSION.”

ALON ROTEM
General Counsel,
Rocket Lawyer

FOUNDATIONS FOR PRACTICE ADVISORY GROUP

JUSTICE REBECCA BERCH
Arizona Supreme Court

HEATHER BOCK
Chief Professional
Development Officer,
Hogan Lovells US LLP

JUDGE NICK CATANZARITE
Grand County Court, Fourteenth
Judicial District of Colorado

STANTON DODGE
Executive Vice President and
General Counsel,
DISH Network LLC

CAROLYN ELEFANT
The Law Offices of Carolyn Elefant

REW GOODENOW
Parsons Behle & Latimer

HUGH GOTTSCHALK
President, Wheeler Trigg O'Donnell

LINDA KLEIN
Baker Donelson

KEITH LEE
Hamer Law Group

PAULA LITTLEWOOD
Executive Director,
Washington State Bar Association

GUILLERMO MAYER
President & CEO, Public Advocates

ERICA MOESER
President, NCBE

ANN ROAN
Training Director,
Colorado State Public Defender

ALON ROTEM
General Counsel, Rocket Lawyer

JOHN SUTHERS
Former Colorado Attorney General

RESEARCH

CONVENE

In late 2014, we began distributing the survey through state bars nationwide. Survey distribution will continue through the first quarter of 2015.

Once the results are in, we will follow up with a series of roundtables with stakeholder groups nationwide to gain even richer insight into the survey results.

Later this year, at the 4th Annual Educating Tomorrow's Lawyers Conference, we will host numerous law schools and members of the legal profession to present our findings and to map a new way forward. The conference will be designed to engage the groups in defining recommendations for new models of legal education that will ensure new lawyers have the foundations identified by the study. We will publish study results and recommendations in a report in 2016, with continued work to make the recommendations a reality in law schools nationwide.

2014 REBUILDING JUSTICE AWARD



AT OUR 7TH ANNUAL
REBUILDING JUSTICE
AWARD DINNER,
WE HONORED TWO
CHAMPIONS OF IAALS.



CHANCELLOR ROBERT D. COOMBE

Chancellor Coombe, the 17th Chancellor of the University of Denver, was a pillar of leadership for IAALS from the very beginning.

As a member of the Executive Committee, Chancellor Coombe helped to forge the initial vision for IAALS. He integrated IAALS into the richness of the University community, and also supported our national outreach.



CHIEF JUSTICE MICHAEL L. BENDER (RET.)

Chief Justice Bender served on the Colorado Supreme Court for 17 years and was the Chief Justice from 2010 until January 2014.

He was on IAALS' Board of Advisors during our first four years. We learned from him as we shaped our approach and our mission, and were then able in turn to provide materials and ideas for some of his many successful initiatives as Chief Justice.

REBUILDING JUSTICE

IAALS' Rebuilding Justice Award recognizes individuals who exemplify the spirit of innovation and leadership that we champion as we work toward building a legal system that is fair, accessible, reliable, efficient, and accountable.

Congratulations and thank you for your unwavering support of IAALS and our mission to facilitate continuous improvement and advance excellence in the American legal system.



SUPPORT & PARTNERSHIPS

A critical component of the IAALS Process is the support—financial and intellectual—that allows us to flourish. IAALS has an annual budget of roughly \$2.5 million. This supports our staff of 18, our original research, our multiple convenings and meetings throughout the year, as well as our robust list of open-source print and online publications. We simply could not do what we do at the level of professionalism, expertise, and care that is necessary, without significant support.

The Gates Frontiers Fund is our most generous donor. Continuing the legacy of Charlie Gates, one of IAALS' original four founders, the Gates Frontiers Fund understands our mission, endorses our practical, results-oriented approach, supports our desire and need to be ideologically neutral, and provides generous unrestricted support.

Likewise, we continue to be indebted to the University of Denver for their support of infrastructure. From our beautiful building to back-office support, DU is front and center in our ability to function efficiently.

It is with profound gratitude that we recognize and thank these two unique and powerful supporters.

WITHOUT THE PEOPLE, THERE WOULD BE NO PROCESS

In 2014, IAALS strengthened its partnerships throughout the broader legal community. Broad-based support and engagement provides IAALS with diverse perspectives and relevant insight into the issues facing today's legal system. These are essential to the quality and impact of our work.

We acknowledge our many partners and thank them for their generosity of time, talent, and treasure. Support for IAALS generally comes in three different ways:

1) MEMBERSHIPS

We have three formal membership programs:

Our **Law School Consortium** provides an opportunity for law schools that are leaders in innovation to support IAALS' work in improving legal education. The Consortium members gather annually to exchange ideas and learn more about legal education reform efforts around the country. (See more on page 16)

Our **Business Leadership Network** is a group of Corporate Counsel who gather semi-annually and who help us to identify the relevant issues of the day, stay informed about developments outside the courts, and develop practical and creative solutions.

Finally, in 2014 we formed our **Law Firm Council**. Through this group, law firms that see the importance of IAALS' work are able not only to support the work financially, but also to participate in the reform efforts underway. Determined to have a voice in the changes facing the legal profession, these firms are leaders with us in developing thoughtful responses to the many challenges facing the legal system today.

2) INDIVIDUAL GIFTS

A wide variety of individuals support our work both financially and intellectually. We have a Board of Advisors, several initiative-specific advisory groups, as well as donors who understand the impact of our work and want to ensure that it continues.

Outright gifts, as well as estate plans, bequests, and gifts-in-kind, are all central to IAALS' success. While the University of Denver provides essential infrastructure to us, our operating budget is entirely supported by gifts and grants. Every gift to IAALS—whether \$100 or \$100,000—is needed as we work together to achieve lasting, positive change within the American legal system.

3) PROJECT-SPECIFIC GRANTS

Lastly, a significant portion of our operating budget comes from grants restricted to specific projects underway at IAALS in any given year. These grants come primarily from foundations, but also from individuals who underwrite activity in one initiative area. We welcome this type of support and can work with individual donors—whether foundation boards or individual family members—to create an opportunity that meets the needs of IAALS and fulfills the philanthropic mission and goals of the donor.

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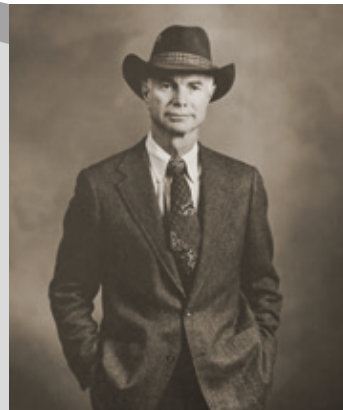
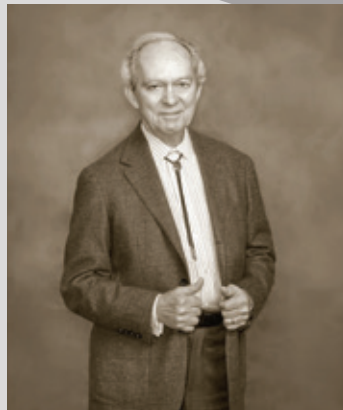
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By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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Located on the campus of the University of Denver, IAALS opened its doors on January 17, 2006. Founded by the University’s Chancellor Emeritus Daniel Ritchie, Denver attorney and bar leader John Moye, business leader and philanthropist Charles C. Gates, and IAALS Executive Director Rebecca Love Kourlis, IAALS had a clear vision: a fair, accessible, reliable, efficient, and accountable legal system that inspires trust.

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