

**Oregon State Bar  
Meeting of the Board of Governors  
June 26, 2015  
Ashland Hills, Ashland, OR  
Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 2:00pm on June 26, 2015.  
Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, June 26, 2015, 2:00pm**

- 1. Call to Order / Finalization of Agenda**
- 2. Selection of New Executive Director** Action
- 3. Report of Officers & Executive Staff**
  - A. President’s Report [Mr. Spier] Inform      Exhibit
  - B. President-elect’s Report [Mr. Heysell] Inform
  - C. Executive Director’s Report [Ms. Stevens] Inform      Exhibit
    - 1) 2014 Program Evaluations Inform      Exhibit
    - 2) Orientation Part II Inform
    - 3) Lactation Room Inform
    - 4) *The Relevant Lawyer* Inform
    - 5) President-elect Candidate Statements Inform
  - D. Director of Regulatory Services [Ms. Evans] Inform      Exhibit
    - 1) 2014 DCO Annual Report Inform      Exhibit
  - E. Director of Diversity & Inclusion Report [Ms. Hyland] Inform
  - F. MBA Liaison Report [Mr. Ross] Inform
  - G. Oregon New Lawyers Division Report [Ms. Clevering] Inform      Exhibit
- 4. Professional Liability Fund [Ms. Bernick]**
  - A. April 30, 2015 Financial Update Inform      Exhibit
  - B. Excess Committee Report Inform      Exhibit
- 5. OSB Committees, Sections and Councils**
  - A. Client Security Fund Committee [Ms. Stevens]
    - 1) Request for Review GERBER (Huntington) 2015-11 Action      Exhibit
    - 2) Award Recommendation WEBB (Godier) 2015-14 Action      Exhibit
  - B. Legal Services Program Committee
    - 1) Update on Process to Evaluate Oregon’s Legal Aid Delivery Model Inform

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

- A. Board Development Committee [Ms. Matsumonji]
  - 1) Commission on Judicial Fitness and Disability Appointment Action Handout
  - 2) Council on Court Procedures Appointments Action Handout
  - 3) OSB House of Delegates Appointments Action Handout
  - 4) ABA Young Lawyer House of Delegates Appointment Action Handout
  
- B. Budget & Finance Committee [Ms. Kohlhoff]
  - 1) Committee Update Inform
  
- C. Governance & Strategic Planning [Mr. Heysell]
  - 1) Immediate Past-President Action Exhibit
  - 2) Reinstatement Fees Action Exhibit
  - 3) Scholar in Residence/Legal Scholarship Award Action Exhibit
  
- D. Public Affairs Committee [Mr. Prestwich]
  - 1) Legislative Update Inform
  
- E. Task Force on International Trade in Legal Services Action Posted 6/18

## 7. Other Items

- A. Request for Contribution to District of Oregon Conference [Mr. Mansfield] Action Exhibit
- B. Appointments to Bar Committees, Boards, Councils [Ms. Edwards] Action Exhibit
- C. Legal Opportunities Report [Ms. Wright] Inform Exhibit

## 8. Consent Agenda

- A. Approve Minutes of Prior BOG Meetings
  - 1) Regular Session April 24, 2015 Action Exhibit
  - 2) Special Open and Closed Sessions May 15, 2015 Action Exhibit
  
- B. Section Name Change Request Action Exhibit

## 9. Default Agenda

- A. CSF Claims Financial Report and Awards Made Exhibit
- B. President's Correspondence 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

**Report of President  
Richard G. Spier**

**Board of Governors Meeting  
June 26, 2015**

April 28	Firm Lunch—Dunn Carney
May 4	NIKE, Inc., legal department
May 6	UBE Committee
May 7	Meeting with chief Justice, Salem
May 7	Admissions Ceremony—Speaker, Salem
May 7	MBA dinner
May 9	Executive Director Selection Special Committee—interviews
May 12-13	NW Bar Conference, Las Vegas
May 15	BOG Committees and special meeting
May 15	BOG Alumni dinner
May 19	Meet with Military and Veterans Law Section leadership re: Willamette clinic
May 26	Meet with Dean Johnson, Lewis & Clark Law School
June 3	Classroom Law Project major supporter breakfast
June 4	Legal opportunities meeting (Terry Wright)
June 4	Mentor program CLE
June 5	US Magistrate Judge investiture
June 23	Local Bar Tour (LBT)—Coffee: Corvallis
June 23	LBT—Lunch: Eugene
June 23	LBT—Dinner—Florence

June 24	LBT—Breakfast: Coos Bay
June 24	LBT—Lunch: Roseburg
June 24	LBT—Dinner: Grants Pass
June 25	LBT—Lunch: Klamath Falls
June 25-27	BOG and local bar, Ashland

Prepared June 11, 2015. Entries after that date are as scheduled.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Operations and Activities Report

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### OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> <li>▪ <b>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</b></li> </ul>	<p><i>Accounting</i> The department and HR transitioning staff payroll reporting from paper to online. Once complete, the new process will provide better management tools, eliminate some redundancy of record keeping, eliminate paper-shuffling, save accounting significant staff time in preparing the bi-weekly payroll (26/year), and reduce payroll costs.</p> <p><i>IT</i> We have completed the interviews and exchange of information need for Aptify to develop the Design Documents with the IT Manager. Over the next few weeks Aptify will determine the cost to configure the system to the bar's needs.</p> <p><i>Facilities</i></p> <ul style="list-style-type: none"> <li>▪ The parking lot owned by the bar and the other two owners of Fanno Creek Place (FCP) was seal coated and restriped in May. The seal coating prolongs the life of the lot as well as maintaining the desired appearance for the bar facility.</li> <li>▪ The bar will collaborate with the other owners of FCP to replace the parking lot lights with more energy efficient units. We have received five proposals; we anticipate selecting the preferred bidder and having the work completed within the next 2-3 months.</li> <li>▪ The bar is close to executing a lease with a new tenant for the remaining vacant space on the first floor (approximately 2,100 s.f., 3% of the total bar center). The status will be known by the June 26 meetings.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Communications &amp; Public Services (includes RIS and Creative)</b></li> </ul>	<p><i>Communications</i></p> <ul style="list-style-type: none"> <li>▪ The May edition of the Bulletin included feature stories on the Great Recession's impact on law firm culture and protecting your firm from embezzlement. The June edition featured articles on access to justice and the 800<sup>th</sup> anniversary of the Magna Carta. Both editions also included columns focused on bar priority issues as well as practice tips and legal ethics. Topics of note: retirement planning for lawyers, avoiding scams,</li> </ul>

<p><b>Services) (Kay Pulju)</b></p>	<p>crowdfunding and accessibility expert Bob Pike.</p> <ul style="list-style-type: none"> <li>▪ Communications staff also produced electronic Bar News and BOG Updates newsletters, conducted multiple surveys and provided communications and marketing support to numerous bar programs. Staff recorded and produced an online video of the Civil Rights Section’s community forum “Squeezed Out: The Experience of Diversity, Gentrification, and Growth in Portland,” which is available on the section’s website on osbar.org.</li> <li>▪ Nominations for the 2015 President’s Awards and Award of Merit are due July 15. The annual Awards Luncheon will take place on Thursday, December 10, at the Sentinel Hotel in Portland.</li> </ul> <p><i>Creative Services</i></p> <ul style="list-style-type: none"> <li>▪ Staff continue to work with bar sections to transition their websites to the OSB WordPress platform. Three new sites have been created and are out for review with the Business Law, Estate Planning &amp; Administration, Disability Law Sections. All new sites follow OSB guidelines for branding, accessibility and mobile responsiveness.</li> <li>▪ Julia Art has been hired to fill the production artist position, which has been vacant for more than a year. She will work closely with sections on newsletters and the WordPress websites.</li> <li>▪ The website team is laying the foundation for a new bar website, which will be launched with the new AMS software in 2016.</li> </ul> <p><i>Referral &amp; Information Services</i></p> <ul style="list-style-type: none"> <li>▪ RIS launched a new referral software program on April 22, 2015. The program was completely designed, created and implemented by OSB staff. Since the launch, RIS has made over 6,000 referrals in the new system with no issues. Member feedback has been uniformly positive, with the most popular new features being single sign-on with the bar’s website and improved reporting and payment functions.</li> <li>▪ LRS revenue is on track to exceed budget projections for the year. LRS has generated \$286,084 in revenue for the bar in the first 5 months of 2015, and \$1,500,000 since the percentage fee model started in October of 2012. This means LRS attorneys have billed and collected over \$10,000,000 in legal fees from LRS-referred cases over the past two years.</li> <li>▪ The current LRS program year will end on August 31. LRS staff is preparing for the new registration period and will be mailing approximately 600 renewal packets to our current panelists. Registration fees generally produce around \$115,000 in revenue for the bar.</li> <li>▪ RIS continues to monitor a one-year pilot program for several new Modest Means Program panels. At the end of the program year (September 1) RIS will report results to the PSAC and BOG.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>CLE Seminars</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The CLE Seminars video replay program is being phased out. The last video replays will take place by the end of July. The department has been</li> </ul>

<p><b>(Karen Lee)</b></p>	<p>rolling out limited online webcast replays during June.</p> <ul style="list-style-type: none"> <li>▪ The department plans to test different online seminar pricing during July and August. Topic and credit-specific discounted bundles and tiered pricing based upon the quantity of seminars purchased are being explored.</li> <li>▪ Programming staff are working with the Solo &amp; Small Firm Practice Section to organize a solo and small firm multi-day conference for summer 2016 or 2017, depending upon site availability. The section would like to hold the event in Bend.</li> </ul>
<p>▪ <b>Diversity &amp; Inclusion (Mariann Hyland)</b></p>	<ul style="list-style-type: none"> <li>▪ D&amp;I awarded 10 Scholarships to Oregon law students.</li> <li>▪ D&amp;I awarded six Bar Exam grants for the July 2015 Bar Exam.</li> <li>▪ D&amp;I awarded six LSAT preparation course scholarships, the first award cycle for this new program.</li> <li>▪ All Fellowship recipients started their summer fellowships, including the new Rural Opportunities Fellowship (in Klamath County) and Access to Justice Fellowship.</li> <li>▪ All Clerkship Stipend recipients started their summer employment.</li> <li>▪ D&amp;I hosted a Jim Bailey Bar Exam Review Study Skills workshop at the OSB center in Tigard on May 30<sup>th</sup>.</li> <li>▪ D&amp;I co-hosted a Legal Writing Workshop with Justice Baldwin &amp; Dave Bartz on June 19<sup>th</sup> at Schwabe.</li> <li>▪ The Explore The Law Program held its completion ceremony on May 28<sup>th</sup>.</li> <li>▪ D&amp;I has been planning and fundraising for the OLIO Orientation.</li> <li>▪ Mariann met with the Jefferson High School leaders, Portland Public Schools’ general counsel, and ACDI member David O’Brien on June 17<sup>th</sup> to discuss partnering to increase the diversity of students in Oregon’s legal pipeline.</li> <li>▪ The OLIO Orientation occurs in Hood River on August 7<sup>th</sup> -9<sup>th</sup>. BOG members interested in attending should contact Mariann Hyland.</li> </ul>
<p>▪ <b>General Counsel (includes CAO and MCLE) (Helen Hirschbiel)</b></p>	<ul style="list-style-type: none"> <li>▪ General Counsel and Deputy General Counsel attended the annual ABA Center for Professional Responsibility Conference in Denver on May 28-29. The conference was one of the best ever with fascinating and helpful information relating to behavioral ethics, confidentiality, conflicts and technology innovations.</li> <li>▪ Deputy General Counsel has presented several CLEs on lawyers’ obligation to report elder abuse.</li> <li>▪ General Counsel attended the first meeting of the Unbundled Legal Services UTCR Workgroup, which is exploring how to make the court more accessible to litigants who choose unbundled legal services.</li> <li>▪ Effective June 1, the Client Assistance Office and Unlawful Practice of Law Committee have gone paperless, processing all new matters electronically.</li> <li>▪ The Fee Mediation Pilot Project is nearing the end of its term. The</li> </ul>

	<p>mediation component of the OSB Fee Arbitration/Mediation Program is being utilized more and seems to be successful. We will be submitting a proposal for continuing the program before the end of the year.</p>
<ul style="list-style-type: none"> <li>▪ <b>Human Resources (Christine Kennedy)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Hired Brandi Norris as the new Public Records Coordinator, replacing the prior incumbent who resigned.</li> <li>▪ Hired Spencer Glantz to replace the .5 FTE Administrative Assistant – Communications. He will continue his .5 FTE position in Referral and Information Services.</li> <li>▪ Hired Tabitha McCampbell as the CLE Seminars Event Coordinator to replace the former incumbent who resigned.</li> <li>▪ Promoted Linn Davis from Assistant Disciplinary Counsel to Client Assistance Office Manager to replace Scott Morrill.</li> <li>▪ Attended the Say Hey! Partners in Diversity event.</li> <li>▪ Worked with Accounting to bring in the new payroll and timekeeping system.</li> <li>▪ Provided CPR and first aid training for staff.</li> <li>▪ Surveying the staff for developing wellness programs.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Publications (Linda Kruschke)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since my last report:                             <ul style="list-style-type: none"> <li>✓ Ten revised <i>Oregon Formal Ethics Opinions</i>.</li> <li>✓ Four reviewed or revised <i>Uniform Civil Jury Instructions</i>.</li> <li>✓ Eleven more chapters of <i>Oregon Real Estate Deskbook</i>.</li> </ul> </li> <li>▪ We started preorder marketing for the Oregon Real Estate Deskbook on June 9, although authors were previously sent a special offer. Sales are starting out great.                             <ul style="list-style-type: none"> <li>✓ Preorders, Standing orders, and Author orders to date = \$48,830</li> <li>✓ Budget = \$117,325 (I’m fairly certain we will exceed this)</li> </ul> </li> <li>▪ <i>Uniform Civil</i> and <i>Criminal Jury Instructions</i> were released in February and sales are tracking as expected.                             <ul style="list-style-type: none"> <li>✓ <i>Civil</i>: YTD revenue=\$31,516; 2015 budget=\$39,450</li> <li>✓ <i>Criminal</i>: YTD revenue=\$15,602; 2015 budget=\$18,750</li> </ul> </li> <li>▪ Under our Lexis licensing agreement, we earned royalties of \$457.37 for the first quarter of 2015.</li> <li>▪ We won the ACLEA’s Best Award of Outstanding Achievement for <i>Appeal &amp; Review: Beyond the Basics</i>. I will be accepting the award at the ACLEA meeting in Chicago in August, where I will also be presenting as part of a panel about digital book offerings.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Legal Services Program (Judith Baker) (includes LRAP, Pro)</b></li> </ul>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> <li>▪ The LSP Committee is starting a planning process to determine whether the current configuration of legal aid programs is the best structure for affording clients relatively equal access to high-quality legal services regardless of where they live or their status.</li> <li>▪ LSP staff are assessing the information received from the legal aid providers for the accountability process as mandated by the LSP Standards and Guidelines.</li> </ul>



<p><b>Bono and an OLF report)</b></p>	<ul style="list-style-type: none"> <li>▪ The LRAP advisory committee met and selected 14 new LRAP recipients.</li> <li>▪ 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.</li> </ul> <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> <li>▪ The OLF approved granting the \$439,000 Bank of America settlement funds to Legal Aid Services of Oregon’s mortgage foreclosure program.</li> <li>▪ The OLF is contemplating changing its organizational structure from a member-based to a non-member- based 501(c)(3). Board member term limits are also under discussion .</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Media Relations (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Serving as faculty at the New Judge Orientation for OJD Friday June 25 (hence absence from BOG meeting). Presenting on Media and Legislative Relations for the court.</li> <li>▪ Facilitating discussion between the <i>Oregonian</i> and several courts regarding public access issues.</li> <li>▪ Working with OPB’s Think out Loud program on getting some bar members booked as guests for several law-related programs they have coming up.</li> <li>▪ Working with courts to draft localized FAQs for each court to share with media about their local rules and practices regarding public and media access.</li> <li>▪ Assembling a subcommittee of the Bar Press Broadcasters Council to consider amendments the UTCR 3.180 on media/public access to court proceedings. Committee wants to update the rule to reflect the new world of cell phones, tweeting, etc.</li> <li>▪ Beginning planning for the 2016 Building a Culture of Dialogue event for Bar Press Broadcasters. For the first time, the Council will seek a grant for high-quality video production, so this extremely well-regarded dialogue can be shared more broadly, and used as a model in other states. There has been interest from the National Center for Courts and Media.</li> <li>▪ Planning for a Bar Press Broadcasters Council web site housed on the sites of all three member organizations.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Member Services (Dani Edwards)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Summer is recruitment season for the Member Services Department. Staff continue to work with the Board Development Committee on the recruitment of lawyer and non-member volunteers interested in serving on bar boards, committees, and councils. The deadline for non-lawyers to apply is July 10 while lawyer volunteers have until August 24.</li> <li>▪ This year the membership will elect two new region 5 BOG members and one region 6 member. The list of candidates who are running is available online at <a href="http://www.osbar.org/leadership/bog">http://www.osbar.org/leadership/bog</a>. In addition to these three seats we are also recruiting candidates for the new out-of-state BOG position. The deadline for candidates to apply for this position is</li> </ul>

	<p>August 10 and the election will be held in conjunction with the regular BOG election in October.</p> <ul style="list-style-type: none"> <li>▪ The 2014 Committee and Section Annual Reports are now available on the bar’s website at <a href="http://www.osbar.org/docs/leadership/committees/CommitteeAnnualReport.pdf">http://www.osbar.org/docs/leadership/committees/CommitteeAnnualReport.pdf</a>.</li> <li>▪ In late May we began scheduling meetings with section executive committees to discuss CLE programs, websites, and fund balance policies. If you receive questions please contact Dani Edwards for talking points.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>New Lawyer Mentoring (Kateri Walsh)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Hosted a successful CLE and social for mentors and new lawyers June 4. New Lawyers were extremely thankful for opportunity to meet and mingle, particularly with the many dignitaries that joined us for the reception, including Rich Spier, Chief Justice Balmer and several supreme and appellate court judges.</li> <li>▪ We have started the ball rolling to create a mentoring partnership with OWLS.</li> <li>▪ We just saw the end of a session with many New Lawyers completing the program by a 5/31/15 deadline. We are processing those completions and implementing our system to remedy those who did not meet that deadline.</li> <li>▪ Gearing up for some targeted mentor recruitment goals in advance of the Fall swearing-in.</li> <li>▪ Starting planning for our annual Movies &amp; Mentoring event at the Hollywood Theater in the Fall.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Public Affairs (Susan Grabe)</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>2015 Legislative Session:</i> With the 2015 Legislative Session starting to wind down, most of the bar sponsored bills have made it through both chambers. Of the 16, 13 have made it to the governor’s desk, 1 was withdrawn, 1 was tabled on the Senate floor, and one is still in the Senate Rules Committee and may make it through in the last hours of the session.</li> <li>▪ <i>End of Session Shenanigans.</i> Public Affairs is currently working with OSB sections to monitor legislation that affects their area of practice and any last minute bills and/or amendments that have a tendency to surface in a rules committee unexpectedly.</li> <li>▪ <i>Day at the Capitol:</i> The Public Affairs Department hosted a Day at the Capitol on Tuesday, May 5<sup>th</sup>. The event was a great success with 70 bar members and most lawyer legislator members in attendance. 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, including business leaders who are part of the Citizens’ Campaign for Court Funding.</li> <li>▪ <i>Oregon eCourt:</i> Public Affairs continues to work with the OSB/OJD eCourt</li> </ul>

	<p>Implementation Task Force to assist with the Oregon eCourt rollout and to develop new Uniform Trial Court Rules regarding Oregon eCourt, in particular. Public Affairs has also worked to ensure outreach to and training opportunities for OSB members.</p> <ul style="list-style-type: none"> <li>▪ <i>Interim legislative workgroups:</i> Public Affairs will be engaging in a number of interim workgroup projects. At this point, we have identified the following issues:                     <ul style="list-style-type: none"> <li>✓ Advance Directives,</li> <li>✓ Probate Modernization,</li> <li>✓ Power of Attorney,</li> <li>✓ Digital Assets,</li> <li>✓ Election Law,</li> <li>✓ Uniform Collateral Consequences of Conviction Act,</li> <li>✓ Guardianship, Due Process and cost shifting in contested case hearings, and</li> <li>✓ Definition for elder abuse reporting.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Regulatory Services (Dawn Evans)</b></li> </ul>	<p><i>Admissions</i></p> <ul style="list-style-type: none"> <li>▪ The Admissions Department is gearing up for the upcoming Bar examination, scheduled July 28<sup>th</sup> and 29<sup>th</sup> in Portland. More than 400 persons are expected to appear for the examination.</li> </ul> <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"> <li>▪ We are in the process of selecting an assistant disciplinary counsel to replace Linn Davis and second interviews will be completed prior to the BOG’s June meeting. Also vacant are a legal secretary position and a public recorders coordinator position.</li> <li>▪ Twenty-seven lawyers attended the Bar’s ethics school, “Legal Ethics – Best Practices,” a joint presentation of the Disciplinary Counsel’s Office and OSB CLE Seminars, on Friday, May 8. As is our practice, speakers included staff members from the Disciplinary Counsel’s Office, the Client Assistance Office, and the Oregon Attorney Assistance Program. Participants were invited to vote through an interactive live system on answers to ethics scenarios posed to illustrate principles set out in Oregon’s Rules of Professional Conduct.</li> <li>▪ In addition to her work coordinating speakers and materials and serving as a principal speaker at the Bar’s ethics school, Chief Assistant Disciplinary Counsel Amber Bevacqua-Lynott is an upcoming speaker at the June 20<sup>th</sup> Oregon Association of Defense Counsel conference at Sun River on ethical considerations in construction litigation.</li> <li>▪ On May 15<sup>th</sup>, Assistant Disciplinary Counsel Kellie Johnson participated as a panelist at an Oregon New Lawyers Division-sponsored event, discussing, “Regulation of Discrimination in Lawyer Ethics: Aspiration or Apathy?” Ms. Johnson was also a presenter at the American Bar</li> </ul>

	Association’s Conference on Professional Responsibility in May, on a panel discussing, “Off the Beaten Path in Lawyer Prosecution and Defense.”
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**Executive Director’s Activities April 24 to June 25, 2015**

<b>Date</b>	<b>Event</b>
4/28	Lunch @ Dunn Carney
4/29	Lunch @ Markewitz Herbold
5/1	Presentation to Nat’l Fed. of Paralegal Associations 2015 Regulation Conference
5/4	Meet with Nike General Counsel
5/7	Lunch w/Supreme Court & Swearing-In Ceremony
5/7	MBA Annual Dinner
5/12-13	Northwest Bars Conference – Las Vegas
5/15	BOG Committees & BOG Alumni Dinner
5/16	Client Security Fund Committee Meeting
5/18	Discipline System Review Committee
5/19	Meet w/representative of Military & Veterans Law Section re: Oregon Vets Clinic
5/20	ED’s Breakfast Group
5/27-29	ABA 41 <sup>st</sup> Nat’l. Professional Responsibility Conference – Denver
5/29-30	ABA 31 <sup>st</sup> Nat’l. Forum on Client Protection – Denver
6/4	Legal Opportunities Stakeholders Meeting
6/11-12	PLF Board Meeting – Ashland
6/17	ED’s Breakfast Group
6/22	Discipline System Review Committee
6/23-25	So. Oregon County Bars Tour - Benton, Lane, Douglas (x2), Coos, Josephine, Klamath

Oregon State Bar



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# 2014 Program Evaluations

# OREGON STATE BAR 2014 PROGRAM EVALUATIONS

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# CLIENT ASSISTANCE OFFICE (CAO)

## Program Goal Statement

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The primary goal of the Client Assistance Office (CAO) is the prompt review and proper processing of inquiries and complaints about the conduct of members of the Oregon State Bar. A secondary goal is to help members of the public with minor problems they may have with lawyers and to assist the public with access to general information and resources that may address their legal concerns.

## Program Description

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The CAO was established in 2003 so that the initial screening and evaluation of complaints about lawyer conduct takes place outside of Disciplinary Counsel's Office (DCO). If the initial screening indicates that a violation of the rules of professional conduct may have occurred, the matter is referred to DCO for further investigation. Otherwise, it is dismissed. As appropriate and as resources permit, the CAO also attempts to assist the public with simple problems, such as obtaining file materials from their lawyers, resolving communication issues between lawyers and clients and pointing them to other resources. CAO is a resource for the public about other agencies or programs that can address their legal concerns.

## Volunteers/Partnerships

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The CAO occasionally calls on members and others to provide training on specific practice areas, common problems and other resources available to the public and members. The CAO also works with other entities that play a role in maintaining high standards of ethics and professional conduct, including General Counsel's Office, Disciplinary Counsel's Office, the Professional Liability Fund and its Loss Prevention Program (the Oregon Attorney Assistance Program), and the State Lawyers' Assistance Program.

## Outcomes and Evaluation

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### **Outcome #1: Process high volume of complaints in a timely manner.**

CAO disposed of 1782 complaints in 2014, which is 6 more than in 2013. CAO staff resolved 14.69% (262) the same day; 17.04% (304) were resolved within two days; 23.26% (415) were resolved within three to six days; 7.57% (135) were resolved within one to two weeks; and 6.17% (110) were resolved in less than one month. The remaining 225 (12.61%) were resolved within 31 to 60 days. In sum, 81.34% of all complaints were resolved in less than 60 days, far exceeding CAO's goal of disposing of 65% of all new matters within 60 days of receipt. The average disposition time was 29 days. Inquiries that don't implicate lawyer misconduct are typically responded to within 3 days.

### **Outcome #2: Ensure proper disposition of complaints, particularly those that involve accusations of disciplinary violations by making the correct decision to refer or dismiss at least 90% of appeals.**

227 matters were referred to Disciplinary Counsel's Office in 2014, then fewer than were referred in 2013. There were 211 appeals to General Counsel of CAO dismissals. All but 17 were upheld, a 94% rate of affirmation.

**Outcome#3: Ensure a high level of competence among staff.**

CAO staff lawyers earn more than their required MCLE credits. In addition to local programs on ethics and professional responsibility, some staff lawyers attended the ABA National Conference of Professional Responsibility, the premier educational and networking event for lawyers who prosecute and defend disciplinary matters. Staff also attended selected programs to increase their understanding of the practice areas from which most complaints arise or that generally enhance their ability to deal with a diverse population of complainants and lawyers. CAO lawyers and staff met with practice management advisors at the PLF, other departments at the bar and with DHS managers and supervisors to exchange information and ideas for collaborating as appropriate.

Complex or unusual cases are discussed by the staff lawyers prior to any decision being made. Interesting cases are also discussed with support staff to help them understand how those decisions are made.

General Counsel and DCO meet regularly with CAO staff to make ensure consistency of analysis and approach.

**Outcome #4: Promote public awareness of CAO and its services.**

CAO accepts complaints electronically, which makes the system more accessible to the public. CAO also responds to email contacts from the public. The CAO manager met with field supervisors at DHS (adult and juvenile) to raise awareness about the program. CAO lawyers continue to give CLEs to members to explain our processes and to civic groups when asked. We continue to refine our template letters, forms and brochures.

**Outcome #5: Identify technological and process improvements to improve department efficiencies and make recommendations to the Executive Director.**

In addition to accepting electronically-filed complaints, CAO's paperless office project continues to evolve. Complaints received electronically outpaced the number of telephone calls recorded by staff. Staff conferred with IT to help identify AMS software that can track inquiries and complaints. Staff also continued to review CAO processes to ensure the most efficient handling of files and to refine the current data base.

CAO worked with DCO to refine the diversion program to allow CAO to refer a case to DCO with a recommendation that the lawyer be given the option to resolve a complaint through diversion. CAO is working with DCO and General Counsel's Office to develop a program to deal with advertising concerns brought to CAO's attention other than by a formal complaint.



# CLE SEMINARS DEPARTMENT

## Program Goal Statement

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The CLE Seminars Department advances the Bar's mission of improving the quality of legal services by providing high-quality seminars and seminar products that are cost-effective, relevant, and widely accessible.

## Program Description

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As a provider of CLE seminars, the OSB operates in a highly competitive market that includes a large number of CLE providers, multiple options for accessing CLE seminars, and fluctuations in the legal profession and the economy. To meet these challenges and provide a meaningful educational experience for bar members, the Seminars

Department provides a wide range of CLE topics in a variety of formats that acknowledge diverse learning styles and changing technologies for delivery of CLE content.

## Volunteers/Partnerships

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**Volunteers:** 381 attorneys and other professionals volunteered as planners and speakers in 2014, some more than once, to fill 458 opportunities.

**Partnerships:** The CLE Seminars Department cosponsored seminars with the following OSB groups: sections, the Professionalism Commission, and the Legal Heritage Committee. The Department cosponsored CLE events with the following non-OSB groups: WSBA-CLE, the WSBA Creditor Debtor Rights Section, the WSBA Administrative Law Section, and the American Immigration Lawyers Association, Oregon Chapter.

## Outcomes and Evaluation

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**Outcome #1: Meet the needs of members for high-quality, readily accessible CLE that recognizes different learning styles by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products.**

CLE Seminars produced 101 CLE events during 2014, with most of them available to the membership online in addition to the live presentations. Most live seminars were still available on hard media (CD and DVD), and the membership could access the following on-demand programming at any time (24/7): 747.75 hour of video, 105.50 hours of audio, and 428.75 hours of MP3 downloads. CLE Seminars also offered live and online CLE from almost a half dozen educational partners: Minnesota CLE, Georgetown Law, WebCredenza, Periakto Productions, and the Professional Education Group.

**Outcome #2: High member and section satisfaction with CLE curriculum, organization, and other CLE-related services.**

Member satisfaction with the live seminars remains high. 86.58% of those who returned seminar evaluations rated the overall quality of the department's seminars as "excellent" or "very good." The seminar check-in process was rated as "excellent" or "very good" by

94.90% of those returning evaluations, while 95.20% rated onsite staff as “excellent” or “very good.”

The department cosponsored seminars with 18 OSB sections. Of those seminars, eight generated sufficient revenue from the live seminar to participate in the department’s revenue-sharing programs (the current revenue sharing model does not require cosponsoring sections to share any net losses with the department).

The department offers registration and event planning services to sections. In 2014 CLE Seminars provided registration services for 22 sections and five ONLD programs. Two sections requested event planning services for multi-day events in addition to registration services. One section requested event planning services for a single-day event.

**Outcome #3: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.**

Since January 1, 2013, the default delivery method for seminar course materials is digital, with print copies available for purchase (\$15 for one-volume materials and \$25 for two-volume materials). Most members now opt to receive materials in electronic format: in 2014 only 544 were purchased (another 97 were provided at no cost to CLE speakers and planners).

The CLE Seminars Department has been able to maintain the existing registration rates for the past seven years by holding seminars at the OSB Center, purchasing food and beverage supplies at Costco, providing course materials in an electronic format, and relying on electronic marketing.

CLE Seminars has a number of local competitors, including the PLF, ONLD, and OSB Sections, that offer low to no-cost CLE courses. This creates a pricing challenge for the department, as it sets an expectation for the bar as a whole to provide low cost CLE for its members.

Online CLE is not the least expensive delivery platform but it offers a wide variety of topics on a 24/7 basis. The department is the front-runner among local providers in terms of online programming. Members are willing to pay for that convenience, as the number of those utilizing online OSB CLE courses remains strong.

However, national online CLE providers have made noticeable headway into the Oregon CLE market. These providers offer online CLE seminars, usually unlimited credits or 45 hours, for less than \$200. All the seminars have been approved for Oregon credit. While the speakers are not local and the quality of the seminar content varies widely, the credit and price offering are extremely attractive to unemployed and underemployed Oregon lawyers, as well as those who are simply looking for a bargain. Based upon reported hours for 2013, one of the national providers, Lawline, was in the top 20 of CLE providers to Oregon attorneys. When Lawline first entered the Oregon market approximately seven years ago it was in the bottom 20 providers for reported hours.

The bar’s almost 30-year old CLE membership plan (the “season ticket”) was officially retired in November, 2014. For the next two months, the department offered a 20% discount

“coupon” that can be used on any OSB CLE seminar or product for one year from the date of purchase. 57 of the discount coupons were sold at a price of \$119 each during the period.

The department also experimented with a “flash sale” promotion for an online child abuse reporting seminar replay in November. The results were very good, generating 90 registrations in less than two weeks. The department intends to experiment more in 2015 with “buy it now” registration periods. This type of marketing may mesh better with the younger market with what appear to be shorter attention spans.

The high level of cross-training among existing staff was never more evident than during 2014. The CLE Customer Service Specialist position was vacant for almost four months, and another staff member was on intermittent leave during the last two quarters of 2014. Existing CLE staff worked overtime hours to accomplish most of its seminar tasks for the year without hiring temporary staff.

A competitive bid process for video and audio recording services was begun in September 2014. A new contract with the existing vendor beginning in 2015 will result in considerable savings for duplicating CD and DVDs for sale and rental.

The video replay program was evaluated at the end of 2014, and the decision was made to shutter the remaining four replay sites in 2015. The replay sites were originally used to provide bar-sponsored CLE programs to members residing outside the Portland metro area or who belonged to the bar’s now defunct CLE membership plan. The absence of the plan, along with the increase of online CLE programming, appears to have contributed to the steep decline in attendance at video replay sites during the last three years.

**Outcome #4: Promote diversity of CLE speakers and planners.**

The following chart shows the demographics of the department’s 2014 speaker and planner faculty:

	<b>Speakers &amp; Planners</b>	<b>OSB Membership<sup>1</sup></b>
Male	57.49%	64.65%
Female	42.51%	35.35%
White	54.90%	59.87%
Asian	1.96%	2.59%
Black	0.94%	0.71%
Hispanic	1.83%	1.53%
Native American	0.53%	0.46%
“Multi or other”	0.67%	3.01%
Declined to state	39.17%	31.83%

1 A significant shift in identification data among those who previously declined to state their ethnicity was the result of the Diversity & Inclusion Department communicating to bar members the importance of reporting their ethnicity and working with bar staff to find a way to facilitate reporting. In 2013, 50.67% of the bar membership self-identified as White, while 42.63% “declined to state their ethnicity.” In 2014 those percentages shifted, resulting in a 9.2% increase in members identifying themselves as White and a 10.8% decrease in the number of members who “declined to state” an ethnicity.

The geographic diversity of CLE Seminars speakers continues to mirror the state's more populated regions. The majority of the department's 382 CLE speakers came from Multnomah County (54%), followed by out-of-state speakers (17%), Marion County (10%), Washington County (7%), Lane County (4%), Clackamas County (3%), and Deschutes County (1%). The remaining four percent of the CLE speakers came from Benton, Clatsop, Columbia, Hood River, Jackson, Klamath, Lincoln, Malheur, Umatilla, and Yamhill counties.

In December 2014 the CLE Seminars Department and the Diversity & Inclusion Department organized two CLE speaker workshops to be presented in early 2015. The purpose of the workshops is to help female and ethnic minority lawyers develop skills that will encourage participation in the bar's CLE program.

The CLE Seminars and Diversity & Inclusion Departments were represented by their respective directors at a community event recognizing the merger of two Portland-area organizations, Uniting to Understand Racism and Resolutions Northwest. Several well-known bar members attended the function, including former Oregon Supreme Court Chief Justice Ed Peterson, Justice Richard Baldwin, and past-bar president Ed Herndon. At this event there were opportunities to network with ethnic minority members from both legal and non-legal community groups.

# COMMUNICATIONS & PUBLIC SERVICES DEPARTMENT

## Program Goal Statement

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The OSB Communications Department advances the Bar's mission of promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice through consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits members in their practices and to increase member awareness of bar priorities and services. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice system.

## Program Description

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The Member Communications group publishes the OSB Bulletin, the electronic Bar News and the BOG Update, prepares editorial content for the bar's website and assists other bar programs develop marketing and outreach materials. This group also coordinates the annual Awards event, 50-Year Member Luncheon and other membership projects and events, including membership surveys and research.

Public Communications comprises programs and services designed to educate the public about laws, lawyers, and the legal system, and how to find help with legal problems (Referral & Information Service programs). Education efforts include: public legal education seminars and cable TV programs, pamphlets and specialty publications, public service announcements and website materials.

The Creative Services group provides art direction and production management of all collateral promoting the programs, services and organizational brand of the OSB. Creative Services also develops and maintains the bar's website and other electronic communications, and works closely with other department staff to coordinate marketing campaigns for the organization and assist bar programs in their individual marketing efforts.

## Volunteers/Partnerships

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**Volunteers:** Approximately 100 members annually serve as authors and sources for member communications and another 100 or so assist annually with updating public information materials.

**Partnerships:** Communications partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, social service agencies, schools, and community and business leaders.

## Outcomes and Evaluation

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**Outcome #1: OSB members are informed about OSB priorities, programs and events.**

Information on bar programs and services, including dates and deadlines, appeared in each issue of the Bulletin as well as timely coverage in the Bar News and BOG Update e-newsletters. Featured programs and events were also promoted on the bar's website

(home page carousel, news section, online calendar) and video display in the bar center lobby. High priority items, including regulatory notices and updates on e-filing, were sent as stand-alone emails delivered to all bar members.

A focus for 2014 was to measure the effectiveness of group email messaging. In March of 2014 we began using GroupMetrics, which works with our email software (GroupMail), to collect data on how many times our emails are opened and how many embedded links are clicked on. Bar News emails had an average open rate of 28% and an average click-through rate of 7%. BOG Updates had an open rate of 25% and a click-through rate of 2%. There was one email that lowered the open rate for BOG Updates significantly: the subject line for the May edition was changed from the standard “OSB Board of Governors Update – May 2014” to “BOG Update - Award Nominations Due July 15.” This resulted in an open rate of only 18%. We reverted to the original subject line for the rest of the year. The Bar News subject line was also changed and tracked, with the now standard “OSB Bar News – Month/Year” bringing open rates of 32%. For comparison, that is a higher open rate than any of the 38 industry averages tracked by e-marketing company Constant Contact.

For special and department-specific emails the open rates were more variable. The average open rate for emails sent to Lawyer Referral Service panelists was 60%. Out-of-country members who receive the Bulletin through email notices open those notices 37% of the time. An email about OSB Award Nominations was sent to 110 section chairs and liaisons. It had a good open rate at 39%, but only one person clicked on the link. An invitation to the Celebrate Pro Bono Social and Awards Fair in October was sent to 982 section leaders, resulting in an open rate of 27% but click-through rate of only 1%. We will continue to test and tailor email messages throughout 2015 to maximize their effectiveness.

The *Bulletin*, which presents a balanced mix of articles on substantive law/legal trends with articles featuring OSB priority issues, also offers regular columns on legal ethics, law practice management and legal writing. General interest features published in 2014 covered topics such as cyber security, the 100<sup>th</sup> anniversary of the Oregon Supreme Court, social media law and policies, a litigant’s view of small claims court, recent and proposed changes to state and federal marijuana laws, and the question of commercial bail in Oregon.

*Bulletin* features focused on bar priorities included articles on lawyer-legislators, sustainability, judicial independence, access to justice and professionalism. Multiple articles were devoted to two current board priorities:

#### Diversity & Inclusion

- Civil Rights at 50: Act’s Anniversary Creates Cause for Celebration, Examinations of Today’s Inequities
- Spreading Her Wings: OWLs Celebrates a Quarter Century, With Eyes on the Future
- ADA at 25 Americans with Disability Act Continues to Elevate Civil Rights, with Mental Health Now at the Forefront
- Indigenous Rights? Of Hiddenfolk and Native People

## New Lawyer Practice/Employment

- Adapting for a New Era in Legal Education: Oregon Law Schools Respond to the Demands of the New Economy
- Finding Their Place: Recession-Period Law Graduates Create Innovative Livelihoods

In addition, bar events and current issues were regularly presented through the Bar News and In Brief sections, along with a new President's Column authored by OSB President Tom Kranovich. The *Bulletin* also supports the outreach efforts of other bar programs and legal community partners by offering free ad space. In 2014, the retail value of ad space provided to OSB programs totaled \$58,785, and the value of space donated to affiliates, e.g., the PLF, OWLS, Campaign for Equal Justice, totaled \$33,919.

### **Outcome #2: OSB marketing efforts and other communications vehicles are consistent, timely and designed to reinforce the bar's visual brand.**

The Creative Service group maintains a comprehensive style guide and works with other bar programs and bar sections to design web pages, newsletters and marketing materials that support the bar's visual brand. Along with ongoing work, the team encouraged several sections to transition to bar-hosted web pages and consulted with the PLF on a new logo and website design.

Our main focus for 2014 was to support the marketing efforts of the CLE Seminars Department. On a policy level, staff worked with the Board of Governors to detail the current business environment for continuing legal education seminars generally, as well as a thorough analysis of the market strengths, weaknesses and opportunities for OSB CLE Seminars specifically. Ultimately the board adopted several policy changes that will reduce internal competition and improve the program's revenue potential.

Concurrent with the policy discussions, staff implemented a new CLE marketing campaign. A new CLE Seminars web page was launched in late January, completing the transition to an in-house platform. The InReach sales platform was rebranded to mirror the bar's brand, as were all collateral print and web materials. CLE staff have been provided templates to support this effort with efficient production methods and a consistent style.

Other CLE marketing developments for 2014 included:

- **Member dashboard ad space:** Ads for the Oregon Trial Advocacy College were placed on both the CLE and OSB home page image carousels and reinforced with a new ad spot created on the member login page. This outreach, along with postcard and brochure mailings and email messages to the target audience, resulted in a sell-out for this annual event that had seen declining attendance in recent years.
- **Bulletin center spread:** Designed as the "go to" spot in the *Bulletin* for everything related to OSB continuing legal education, the CLE spread was launched in the center of the October *Bulletin*. This collaborative marketing of CLE Seminars and Legal Publications products laid the foundation for the cross promotion efforts that will escalate in 2015.

- **Special offers:** Sales of the new 24/27 subscriptions began in November and by year-end, 57 were purchased bringing in \$6,400 from this new revenue source.

In addition to the OTAC and 24/7 results, the overall marketing campaign increased traffic to the new CLE web page. Monthly page views grew from an average of 1,324 in the first quarter to 4,797 during the last quarter—with 6,282 page views during the month of December alone. For the final quarter, which is the peak sales period for CLE, this represents a 44% increase in page views over the same period in 2013 for the old CLE site.

A second area of focus was development of a marketing campaign for the Lawyer Referral Service (LRS). Working with Referral & Information staff, we piloted ad campaigns on Craig’s List and Google. Over a period of 45 days staff posted a “Need Legal Help?” message at various times on Craig’s List. The posting included an embedded link to the “Legal Help” page on the bar’s website. At the same time we started two Google Ad Word campaigns. The first campaign, “OSB Website,” focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, “RIS,” focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. These campaigns resulted in a combined 1,211 clicks and 372,724 impressions as of January 15, 2015.

Traffic to the promoted pages increased considerably over the course of the year. Visits to the “legal help” page jumped from 1,152 in 2013 to 2,984 in 2014, a 159% increase. Most impressively, visits to the RIS home page grew from 22,136 in 2013 to 70,593 in 2014 – an increase of 219%.

**Outcome #3: OSB offers an array of practical, understandable legal information to help the public access the justice system.**

The OSB has a public-oriented web page as part of our main site, [www.oregonstatebar.org](http://www.oregonstatebar.org). The public pages include basic legal information on more than a hundred substantive legal topics, updated on an ongoing basis, with the most popular pages dedicated to landlord/tenant law and family law. In 2014 we focused on increasing traffic to three specific landing pages: Public Home, Getting Legal help and Legal information for the Public. New marketing efforts for LRS (see above) promoted the legal help page in particular. Over the course of the year traffic to the Public Home page increased by 8%, the Legal Information page by 2% and the Getting Legal Help page by 159%.

The Legal Links cable TV/video series returned in 2014, with new programs on Small Claims Court, Wills & Trusts and Hiring a Lawyer. In addition to distribution through cable access TV, the series is available on the bar’s website and short single-topic clips will be added to the legal information by topic pages.

**Outcome #4: OSB provides exceptional customer service to both members and the public.**

Our focus for 2014 was to continue improving and streamlining the annual regulatory compliance process. General notices were emailed on Dec. 4 directing members to the online dashboard to track and take action, with a consolidated reminder sent two weeks



before the deadline and specific (MCLE, IOLTA and fee) reminders sent a few days before the deadline. The total number of these specific reminders dropped by 19% in 2014, with fee reminders dropping 40%, MCLE remaining constant, and IOLTA increasing slightly at 7%.

The number of postcards mailed to members without a usable email in their bar records dropped by 29% from the 841 mailed in 2013, demonstrating an effective outreach to members for email addresses, which have been required since Jan. 2011.

With the PLF exemption and payments sharing space on the OSB member dashboard for their exemptions and payment links, staff in both organizations shared notice schedules to minimize traffic congestion on the member site and confusion to the members. Online fee payments have increased by 297% since 2011, when the new PCI charge system was launched. PLF online fee collections in 2014 were 32% higher than the previous year, a good indicator of successful integration into the OSB member dashboard.

A second area of focus was the accessibility of bar programs and services to people with disabilities. We identified and fixed online forms that were problematic for e-readers, and worked with the new Bar Accessibility Review team to identify areas for improvement. Completed actions include: posted electronic copies of ADA Notice & Grievance Procedures on the website and in the bar center lobby and conference rooms; raised awareness of accessibility issues among the bar through a November 2014 Bulletin article on the anniversary of the ADA, and a newsletter article to Lawyer Referral Service panelists on ADA compliance; drafted a survey to distribute to members and the public regarding accessibility that will be distributed in early 2015.

**Outcome 5: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.**

The department has continued to cut costs through reliance on electronic communications and streamlined processes. Staff is now fully trained in audio/video production and delivery, which has further reduced costs for production of public education materials and also special projects for other departments, including taping of all-staff trainings for Human Resources.

The department includes three program budgets: Communications, Creative Services and *Bulletin*. The Communications budget had good financial outcomes in 2014, with expenses overall below budget and revenue above. Our online career center through Job Target once again greatly exceeded expectations, bringing in more than \$24,000 against a projected \$11,000. The *Bulletin* performed very much as budgeted, finishing with a small net revenue of \$6,633. Creative Services expenses were significantly under budget due to a temporary FTE decrease that will be added back into the 2015 budget.

# DISCIPLINARY COUNSEL'S OFFICE

## Program Goal Statement

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Disciplinary Counsel's Office (DCO) is a critical component of the bar's regulatory function. The goal of DCO is to administer a fair, efficient, and cost-effective system for the regulation of lawyers; and to promote public and member confidence in the lawyer regulation system.

## Program Description

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As an instrumentality of the judicial department of the State of Oregon, the bar is responsible for regulating lawyer conduct for the protection of the public and the integrity of the legal profession. DCO administers most of the bar's regulatory programs that are mandated by statute or court rule. Responsibilities include: investigation and prosecution of disciplinary matters; probation and diversion monitoring and, where appropriate, enforcing compliance; conducting a twice-annual ethics school that is required attendance for all lawyers publicly sanctioned; administration of the Trust Account Overdraft Notice program; reviewing, investigating, and making recommendations on reinstatement applications; instituting and managing custodianships over a lawyer's practice; processing status changes; processing and screening pro hac vice applications; processing requests for and issuing certificates of good standing; and responding to public records requests concerning disciplinary matters.

## Volunteers/Partnerships

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**Volunteers:** The State Professional Responsibility Board, which is responsible for making charging decisions and overseeing the ensuing prosecution, is comprised of eight lawyers and two public members. The lawyer members are representative of the seven bar regions; the public members are at-large. The Disciplinary Board is comprised of 67 geographically-assigned lawyers and public members from whom trial panelists who serve as adjudicatory officers are selected. Additionally, there are 16 volunteers serving on geographically-based local professional responsibility committees who stand ready to receive investigation assignments from DCO. DCO also occasionally works with a volunteer bar member who serves as lead counsel in disciplinary trials.

**Partnerships:** Other groups and entities play a role in maintaining high standards of ethics and competency, including the bar's Client Assistance Office, which screens inquiries and complaints; state court judges who observe lawyer conduct; the Professional Liability Fund and its Oregon Attorney Assistance Program; the members of the State Lawyers Assistance Committee, who may be called upon to assist with the monitoring of lawyers on diversion or probation; the State Court Administrator's Office; and the Oregon Supreme Court.

## Outcomes and Evaluation

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### **Outcome #1: Meet or exceed timeline targets for investigation and prosecution of disciplinary matters.**

DCO met or exceed most of its timeline targets in 2014. In the areas where the targets were not met, the delay was typically a consequence of the complexity of the matter or challenges in obtaining the responding lawyer's response.

<b>Step</b>	<b>Target</b>	<b>2014 Average</b>
Initial Action	14 days from receipt	13 days
Probable cause decision	4 months from receipt	157 days
Recommendation to SPRB	9 months from receipt	8.1 months
SPRB review of staff dismissals	90% upheld	96%
File formal complaint	60 days from SPRB authorization	99 days
Request trial panel	120 days from formal complaint	233
Resolve 70% without trial		75%
Ready for first trial setting	Within 6 months of assignment to a trial panel	12 of 14
Prevail in 90% of formal cases		98%

### **Outcome #2: Increase bar and public contacts**

As 2014 was a year of transition in staffing within the DCO as well as a year in which much time and energy was spent preparing for and participating in an American Bar Association Center for Professional Responsibility study of Oregon's disciplinary system (discussed further below), the extent to which a focus was placed on outside speaking diminished in 2014. As in 2013, communication from the Executive Director's office solicited speaking opportunities for DCO, which resulted in presentations in locations as diverse as Pendleton, Portland, Grants Pass, Medford, and Gold Beach. Outreach to the larger legal community will continue as a priority.

### **Outcome #3: Increase the use of Diversion/Probation and alternatives to discipline in an effort to reduce recidivism**

Diversion under Oregon BR 2.10 continues to be an option considered by the SPRB in eligible cases. Both DCO and SPRB are mindful that the facts of a case and the circumstances of a respondent lawyer must be such that there is an identifiable condition or issue that can be impacted by remedial action in order for diversion to be a successful outcome. An administrative staff member monitors all diversions, probations, conditional admissions, and conditional reinstatements; in 2014 to assure consistency, a single staff attorney was designated to handle any enforcement measures that arise from failures to abide by diversionary or probationary terms. Refinement of diversion agreements and stipulated

probationary orders form has been a focus as well. As of the end of 2014, 28 different matters are being monitored.

**Outcome #4: Proposed and Implemented Changes in DCO Rules and Procedures**

In June of 2014, a team assembled by the American Bar Association Center for Professional Responsibility (the ABA CPR team) conducted an in-depth review of Oregon's attorney discipline system upon the invitation of the Oregon Supreme Court. DCO provided logistical support in furnishing the ABA CPR extensive documentation to educate the team about Oregon's existing disciplinary system, fielding follow-up questions and requests for information, and identifying and communicating with disciplinary system stakeholders to be interviewed by the team. While awaiting the ABA report, the BOG appointed a diverse array of stakeholders to the ad hoc Disciplinary System Review Committee. The committee is charged with studying whatever recommendations are made and, in turn, making recommendations to the Board of Governors regarding their adoption.

In addition to examining changes to the Bar Rules, DCO examined ways to streamline the processing of complaints without sacrificing due process, in response to and in recognition of concerns expressed by both complainants and respondents that the process takes too long. Acknowledging that many factors, not all of which are within the control of DCO, can impact the length of time it takes to fully investigate a matter, obtain SPRB review and direction, file a formal proceeding, complete discovery, and obtain either a negotiated resolution or a trial, DCO resolved during 2014 to be more consistent and circumspect in the extent to which extensions of time were granted during the investigatory phase; to focus on resolving the oldest pending investigatory matters, while working on appropriate steps in newer matters upon receipt; and to assure that complainants were apprised of progress and resolution of their complaints.

In July, the SPRB devoted a significant portion of its meeting to discussing proposed changes to its operations that could be accomplished without a rule change. To reduce the number of times a given case might be considered by it, the SPRB began giving some settlement authority to DCO when a case is initially presented. To reduce the overall time that elapses from receipt to outcome, the SPRB also began holding respondents to the existing time limits and reasons for asking the SPRB to reconsider a decision to file a formal complaint (that is, offering either new evidence or legal authority not previously known that would have affected the SPRB's decision).

**Outcome #5: Process regulatory work in timely manner**

In 2014, DCO timely processed 475 pro hac vice applications; 39 arbitration registrations; 717 status transfers, which included 260 resignations and 197 reinstatements; and 884 good standing certificates. Staff responded to 1,754 public records requests by providing more than 2,630 copies and 73 computer disks of records. Response time was generally within 24 hours.

**Outcome #6: Continue with technology improvements**

During 2014, DCO participated in assessment work undertaken bar wide to define criteria for the selection of new enterprise management software. DCO continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file. Again in 2014, DCO worked with IDT to make incremental refinements in the disciplinary database. As an increasing percentage of Oregon courts adopt e-court filing systems, investigation of court records has been made easier and more efficiently accomplished, which has positively impacted disciplinary investigations. Public records requests are increasingly responded to electronically as well.

**Outcome #7: Conduct a successful Ethics School**

Two sessions of “Ethics Best Practices” were presented, in May and November, through the combined efforts of lawyers from DCO and the Client Assistance Office. Although the programs are available to any member, the largest proportion of attendees is mandated to attend by reason of disciplinary sanctions. Written program materials and live presentation aids are continually reviewed and refined. Feedback from attendees is overwhelmingly favorable.

# GENERAL COUNSEL'S OFFICE

## Program Goals Statement

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The primary objective of General Counsel's Office is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interests of the Oregon State Bar.

Secondary objectives are to administer the Client Assistance Office (see CAO Program Measures), the Fee Arbitration Program and the MCLE Department effectively and efficiently. Additionally, General Counsel's Office supports the Unlawful Practice of Law Committee, the State Lawyers Assistance Committee and the Legal Ethics Committee, and is responsible for providing timely and accurate ethics assistance to members. General Counsel's Office also functions as the Disciplinary Board Clerk's Office. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.

## Program Description

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General Counsel's Office provides legal advice to the OSB on internal matters such as personnel, contracts, public meeting and public records compliance and non-disciplinary litigation. The Office also advises and assists the Board of Governors in the development of bar policy on a variety of issues. The Office is a resource to the public, the courts, and other branches of government regarding the role of lawyers and the legal profession, the regulation of lawyers and other issues.

General Counsel oversees the operation of the Client Assistance Office and the MCLE Department. Both programs develop and evaluate their own program measures and day-to-day functions are handled by the CAO Manager and the MCLE Administrator. Ultimate responsibility for personnel and program issues, however, rests with General Counsel. Additionally, upon request of the complainant, General Counsel reviews all complaints dismissed by the CAO and makes a final decision.

General Counsel's Office administers the Fee Arbitration Program, a voluntary mechanism for resolving fee disputes between bar members and their clients, or between bar members. Matters submitted are heard by a single arbitrator or a panel of three arbitrators, depending on the amount in dispute. All arbitrators are volunteers. Three-arbitrator panels are comprised of two lawyers and a public member. The party requesting arbitration pays a modest fee. Arbitration decisions are binding on the parties, subject to only limited court review. The Fee Arbitration Program added a mediation component on a three-year trial basis beginning mid-2012.

General Counsel's Office provides administrative support to the Unlawful Practice of Law Committee, which investigates complaints of unlawful practice by persons who are not members of the Oregon State Bar. With approval of the Board of Governors, the bar exercises its statutory authority to seek injunctive relief against unlawful practitioners. The Committee also enters into voluntary cease and desist agreements, issues cautionary and notice letters as appropriate, and engages in public education and outreach through, among other things, the issuance of advisory opinions.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 20 requests for advice letters each year. General Counsel's lawyer staff are regular contributors to the *Bulletin* and to continuing legal education programs of the bar and other organizations. General Counsel's Office is liaison to the OSB Legal Ethics Committee, assisting in the development of formal opinions that are issued by the Board of Governors, and in the development of proposed amendments to the Oregon Rules of Professional Conduct. General Counsel provides staff support to special task forces studying rules of professional conduct for lawyers and, occasionally, judges.

General Counsel's Office also supports the State Lawyers Assistance Committee, which is charged with reviewing and resolving complaints about lawyers whose conduct may impair their practice of law. When a lawyer is determined to be within the jurisdiction of SLAC, the Committee develops and monitors the lawyer's participation in a remedial program.

General Counsel's Office serves as the Disciplinary Board Clerk's Office, a central repository for all pleadings and official documents relating to formal disciplinary proceedings. The DB Clerk maintains the original record of pleadings and other documents in disciplinary cases, tracks the progress of the proceedings through final disposition, provides periodic notices when events do not occur within the time frame set out in the Bar Rules of Procedure, and assists with the logistics of arranging hearings. General Counsel's Office organizes and presents the annual Disciplinary Board Conference and advises Disciplinary Board members on procedural matters as needed.

### **Volunteers/Partnerships**

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General Counsel's Office partners with a variety of members and others in fulfilling its responsibilities. Many OSB members agree to represent the bar on a *pro bono* or reduced fee basis to help with the more complex non-disciplinary legal matters. Members of the Legal Ethics, State Lawyers Assistance and UPL Committees are all volunteers, including the public members; the same is true of the panelists for the Fee Arbitration Program and the public and lawyer members of the Disciplinary Board.

General Counsel's Office also frequently partners with Oregon lawyers and the Professional Liability Fund to provide continuing legal education programs.

### **Outcomes and Evaluation**

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#### **Outcome #1: Protect the legal interests of the Oregon State Bar.**

The Bar suffered no adverse outcomes in connection with its non-disciplinary and UPL litigation in 2014 and all such litigation was timely processed. An injunction was obtained against one individual who was engaging in unlawful practice. Two matters that had been dismissed were subsequently appealed by the plaintiffs and remain pending before the Ninth Circuit Court of Appeals. The bar is represented by insurance defense counsel on one of those two cases, and the other case is being handled in house. Bar staff was recently sued in the U.S. District Court of Colorado; General Counsel's Office filed a motion to dismiss, and we await the court's decision.

The renewal of trademark applications came due this year. We have been working for many years with outside counsel on a reduced rate basis to handle these matters.

Throughout the year, the Executive Director and the Board of Governors were provided with timely, clear and concise analysis and recommendations on various legal and policy issues. All indications are that the Executive Director and Board of Governors are satisfied with the level and quality of legal and policy assistance from General Counsel's Office.

Managers similarly received prompt and helpful assistance with issues throughout the year including personnel, contracts, public records and meetings, and other issues as they arose. The volume and complexity of contracts to review increases every year, particularly with respect to information technology, and staff is developing the expertise to handle these matters in house as much as possible. For negotiation and revision of the Association Management Software contract, we hired outside counsel with specialized expertise in this area.

**Outcome #2: Maintain an efficient and effective fee arbitration process for disputes covered by the rules.**

Fee arbitration activity continues at a somewhat reduced level with 84 cases in 2014, compared with 101 cases in 2013. General Counsel is unsure of the reason for this reduction, but has continued to receive positive feedback about the program. Of the cases opened, there were 43 requests for mediation, 3 of which resolved through mediation, and 1 of which went on to arbitration. In many cases although one party expressed a willingness to mediate, the respondent did not agree. This represents a two-fold increase from 2013 in mediation cases. Based on the sustained interest in fee mediation, General Counsel has drafted proposed amendments to the Fee Arbitration Program Rules to create a formal Mediation Program and will present these amendments to the Board of Governors in 2015.

In 2014, 18 fee arbitrations were held and seven cases resolved without a hearing. Because the fee arbitration program remains voluntary, approximately 40% of the petitions are closed without resolution, either because of no response or an open refusal to participate, usually from the lawyer. The program is served by a sufficient supply of volunteer arbitrators and mediators.

The range of amounts in controversy continues to be broad; more parties are willing to arbitrate very small claims (\$300) as well as very large and complex claims. Changes have been made to the Fee Arbitration and Mediation forms to accommodate some of the more complex claims and to improve administration of the program. In addition, the case management system that was built in 2012 to accommodate the new Fee Mediation Pilot Project is working well and has increased efficiency of the program as a whole both in terms of scheduling and monitoring the cases.

**Outcome #3: Provide timely, accurate and helpful ethics assistance to members.**

This service continues to be one of the most highly valued by members, at least based on the informal feedback received. Call volume continues at a high level (approximately 20-25 calls/day) and nearly every call is answered the day it is received. Written inquiries are



also nearly always addressed the day they are received, and no later than three business days from the date of receipt. GCO attorneys attended the ABA's National Conference on Professional Responsibility in 2014 and participated in other activities to keep them abreast of developments in the field. Members continue to compliment GCO's regular Bulletin articles and CLE presentations and the office is recognized as a valuable resource on issues of professional responsibility.

The Legal Ethics Committee did not present any new formal ethics opinions to the Board of Governors in 2014, but did update over two dozen existing formal ethics opinions based on the amendments to the rules of professional conduct adopted in 2012 and 2013. They will continue this project into 2015.

**Outcome #4: Assist the UPL Committee in appropriate resolution of UPL complaints.**

The UPL Committee received 57 complaints in 2014, which is slightly fewer than 2013. The Committee continues to resolve complaints in a timely manner, most within six months. The quality of investigations and reports remains good, and the Committee has been thoughtful and consistent in their decisions.

The Committee has begun to focus more time and energy on strengthening its relationships and coordinating enforcement efforts not only with the Oregon Department of Justice and local law enforcement, but also with the American Immigration Lawyers Association (AILA) and the U.S. Immigration and Customs Enforcement, with the goal of enhancing outreach to and protection of vulnerable populations.

On September 24, 2014 General Counsel's Office hosted a *Notario* Fraud Conference at the bar center. The Conference was co-sponsored by CLE Seminars and AILA and attended by 85 people. It was very well received. General Counsel's Office also worked with Communications and Creative Services to publish a Spanish-language brochure about the dangers of *notario* fraud. General Counsel's Office worked with Communications to place *notario* fraud pieces in *The Oregonian* and on the local *Univision* television channel.

The UPL Committee continues to work on advisory opinions as they have been an excellent addition to the committee and the scope of work done. In 2014, the Board of Governors approved publication of UPL Advisory Opinion No. 2014-3 on *Representation of Friends and Family*.

**Outcome #5: Maintain accurate records of Disciplinary Board proceedings and contribute to the timely disposition of matters.**

The Disciplinary Board Clerk function enhances the integrity of the disciplinary process by separating the DB's operations from Disciplinary Counsel's Office. There have been no significant errors or unfavorable incidents; on the contrary, the DB Clerk typically provides more service to DB members than is contemplated by the position and consistently receives high praise for the service provided. Timelines for opinions and other responses from trial panels and regional chairs are not always met, an undoubted (and perhaps unavoidable) consequence of relying on volunteers with full-time jobs. Records management is accurate and timely, and efforts continue toward an entirely electronic filing process. GC responds

to inquiries and provides procedural guidance to DB members as necessary. We had a DB Conference in 2014 for the public members of the DB only.

**Outcome #6: Ensure efficient and effective operation of the Client Assistance Office and timely disposition of appealed dismissals.**

The Client Assistance Office continues to meet its program measures for timely and accurate disposition of complaints. Details can be found in the CAO Program Evaluation. The number of appeals from CAO dismissals continues to be high, but the number of “reversals” is very small, indicating that CAO is conducting the appropriate analysis of complaints received. General Counsel’s Office received 226 referrals from CAO in 2014, for an average of 19 a month. General Counsel’s Office made decisions on 216 CAO referrals, for an average of 18 a month. In spite of this, the average number of days it takes for review continues to be high and exceed the goal for the office. Consequently, General Counsel has changed the measure on this item for 2015.

**Outcome #7: Assist the State Lawyers Assistance Committee in appropriate handling of referrals.**

In 2014, the Committee received twelve new referrals, similar to the prior year. These referrals come from other lawyers, members of the public, judges and the SPRB. The Committee promptly conducts its initial investigations and makes determinations about whether to assert jurisdiction and monitor lawyers. Typically, delay only occurs when the Oregon Attorney Assistance Program notifies the Committee that the referred lawyer is fragile, such that immediate contact by the Committee may result in physical harm to the lawyer. During the monitoring time, Committee members maintain close and regular contact with the referred lawyer.

In addition to these standard referrals, the Committee evaluates and monitors lawyers who are referred from Disciplinary Counsel’s Office as part of the conditional admission/ reinstatement and diversion/probation process. The Committee is currently monitoring twelve disciplinary cases. This marks a significant increase in referrals from 2013, when the Committee only had six open disciplinary cases.

In 2014, SLAC began to receive an increased number of referrals regarding lawyers who may be experiencing age-related cognitive impairments. General Counsel’s Office worked with SLAC to provide resources and information about evaluating and monitoring cognitively impaired lawyers.

# HUMAN RESOURCES DEPARTMENT

## Program Goal Statement

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The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels.

## Program Description

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The Human Resources Department provides coordination and support to all OSB directors in hiring and managing personnel; coordinates training and development programs that pertain to all staff; oversees the performance appraisal process; administers staff and member benefit programs; works with the Executive Director and General Counsel to develop personnel and related policies; and coordinates and monitors safety-related activities for all bar departments and personnel. The Department ensures compliance with federal and state human resources and safety requirements.

## Volunteers/Partnerships

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Outside resources are used for staff training and development. We work with professional insurance brokers to review current policies and advise on market conditions when securing workers' compensation, health, and employment practices coverage. The bar and PLF create a group, where practicable, for health insurance and employee assistance program contracts to ensure best rate premiums.

## Outcomes and Evaluation

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**Outcome #1: Fulfill employee placement needs for all regular and temporary vacancies within a reasonable and appropriate amount of time to meet or exceed the needs of the hiring director or manager, using diverse outreach and recruitment methods.**

There were 17 open positions in 2014. Eight were the result of employees leaving the bar; nine were new positions. By year end, it was decided not to fill one position and another position was placed on hold. The remaining 15 positions were filled in a timely manner that suited the hiring director. Internal candidates were selected for 3 of the positions; 12 were filled from the outside. Eleven of the external hires remain employed with the bar. One voluntarily terminated to return to school. Overall, bar staff increased by two employees.

The female employee population increased by three and the male population decreased by one. The 2013 turnover rate for males was 1.23% and 0.52% for females. Over the last 10 years, while the total number of employees has increased by only 3, the number of males has increased by 10 while the number of females has decreased by 7.

The bar continues to focus on increasing the diversity of the applicant pool through targeted outreach to the minority. The Hispanic employee cohort continues a gradual 10-year

increase, largely due to preference for Spanish-speaking LRS candidates. Overall, the bar staff is 85% Caucasian, 3% African-American, 2% Asian and 7% Hispanic.

The retention rate of employees remains high and stable. Over the past 10 years, 175 positions have been filled and 80 of those employees have left the bar. Only ten have left for the sole reason of taking another job. Twenty-one employees have been involuntarily terminated by the bar (three completed a limited duration assignment). The remaining left voluntarily due to geographic relocation, increased commuting expenses, full-time employment, family decisions, health issues, returning to college, internships, entering the military, retirement, and following their dreams, including starting their own businesses or changing career paths. Exempt position retention rates tend to be higher as more exempt employees are in chosen careers for which they have dedicated education and training.

There were no retirements in 2014. There are eleven employees eligible for full retirement. Three of those employees are directors or managers. At least one of those employees will retire in 2015.

**Outcome #2: Ensure training and development programs and opportunities are provided and in a cost-efficient manner. Ensure organizational strategy and compliance training needs are met as well as personal and professional growth opportunities.**

A good mix of staff-wide training and development opportunities were offered in 2014. A two-part ADA program and a diversity training were mandatory for all staff. Other presentations covered PERS changes and investment opportunities, first aid training, personal safety, enhancing working relationships, and a writing workshop. In addition to the in-house training, three staff attended Barran Liebman's annual employment law program.

The HR Director presented regular "HR Tips" throughout 2014 to managers and directors at their bi-monthly meetings. Topics included employment law updates and best practices for motivating and reviewing employee performance.

**Outcome #3: Ensure proper employee-related risk management exists by securing the most cost effective and comprehensive workers' compensation and employment practices liability insurance coverage. Ensure human and physical resources are prepared, protected, and trained in critical aspects of safety and management skills.**

All interested PLF and OSB staff were trained during the annual first aid/ CPR/automated external defibrillator/and blood borne pathogen seminar. We have twenty OSB employees trained for emergencies. With the CFO, several mini-presentations were made to staff covering sections of the Employee Security Handbook and other safety and security topics. All staff were offered training for non-physical self-defense options in a program provided through the Portland Police Bureau.

The 2014 workers' compensation policy was renewed for \$10,514; our 2014 dividend form SAIF was \$2,969.00. The 2014 Employment Practices Liability (EPL) policy was renewed with the same coverages, deductible and limits, for \$8,713 per year reflecting a 7.63% increase.

**Outcome #4: Ensure compliance with regulatory requirements through continual audits of current policies and practices; updating policies and practices when appropriate; managing a fully-functioning Safety Committee; and increasing efficiencies in departmental operations.**

This year staff asked to have their self-evaluations included in their personnel files along with their evaluations. This practice will begin with the 2014 evaluations written and given in early 2015.

The Safety Committee (which coordinates with the PLF) continues to be active with quarterly meetings. The most frequent issue is employees blocking the required exit way from their work areas. These issues are easily remedied.

# LEGAL PUBLICATIONS DEPARTMENT

## Program Goal Statement

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The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality research materials.

## Program Description

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Building on a history of service that began in the 1950s when OSB published its first legal handbook, Legal Publications provides Oregon attorneys with the basic reference tools they need to practice law in a variety of areas. In 2014, print publications were continued primarily on a pre-order basis. All publications, together with several PLF publications and the Disciplinary Board Reporter, are online as BarBooks™, available to all OSB active members as a benefit of membership.

The basic library contains 48 titles, ranging from brief “booklets” to five-volume treatises, from A (Administering Oregon Estates) to W (Workers’ Compensation). The publications are distinguished from those of national publishers because they are Oregon-specific and written by Oregon practitioners. The focus is on Oregon statutes, cases, administrative rules, forms, and legal traditions. The publications also provide practice tips, caveats, queries, and notes. Many titles include practice forms. Members consistently indicate that OSB Legal Publications products are very important to their practice.

## Volunteers/Partnerships

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**Volunteers:** A significant number (between 150 and 200) bar member volunteers serve as authors and editors of OSB publications in a typical year, either individually or in committees.

**Partnerships:** The Legal Publications Department is in partnership with the judiciary through preparation of Uniform Civil and Uniform Criminal Jury Instructions used by the courts. The department also occasionally works with sections both formally and informally to produce new publications and revisions.

## Outcomes and Evaluation

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**Outcome #1: Develop a budget with realistic projections for revenue and expense. Review staffing and other expenses and make recommendations to Executive Director regarding appropriate adjustments.**

Actual revenue for 2014 fell short of budget by approximately \$106,127 for print books, but exceeded budget by approximately \$5,313 for BarBooks™ and royalties.<sup>1</sup> The BarBooks™ revenue is from law libraries, the three Oregon law schools, and staff accounts for firms. The primary reason for the shortfall is that the 5-volume *Oregon Real Estate Deskbook*, which had a revenue budget of \$114,950, was not completed by year end.

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1 Final 2014 financial statements were not available when this evaluation was prepared, so this is a preliminary evaluation based on estimates from November 2014 financial statements and other internal reports.

Actual direct expenses were well below budget in almost every category. Items warranting special note are as follows:

- Printing and indexing expenses were 58% and 38% of budget, respectively, primarily because there were no printing and indexing costs for *Oregon Real Estate Deskbook*.
- Contract Copyediting Services expenses were 21% of budget because of the decision to discontinue outsourcing any copyediting. This will also translate to a savings in future years.
- Binder expenses were 0% of budget because no new binders were needed in 2014.

Overall, the net expense of the department was 108% of the budgeted net expense.

The total page count of books completed in 2014 was 6,100. An additional 1,564 pages of *Oregon Real Estate Deskbook* and 277 pages of *Health Law in Oregon* were posted to the BarBooks™ online library, for a total of 7,941 published pages. This continues the upward trend of pages published that began in 2012.

### **Outcome #2: Produce high quality legal resources that meet members' needs.**

In 2014, the Legal Publications Department released a complete revision of one existing title; three new books titled *Appeal and Review: Beyond the Basics*, *Oregon Attorney Fee Codebook*, and *Oregon Attorney Fee Compilation*; supplements for *Uniform Civil and Uniform Criminal Jury Instructions* and *Oregon Formal Ethics Opinions*; several chapters and the final PDF of the online-only title *Health Law in Oregon*; the *Disciplinary Board Reporter*; and the Professional Liability Fund co-sponsored *Oregon Statutory Time Limitations* revision.

We launched a new e-Books project as part of the Diversity Action Plan. The department published fourteen e-Books on Amazon.com, in the *Family Law Series* and six in the *Consumer Law Series*. Each book which includes a Quick Resource Guide on how to find an attorney.

2014 saw continued improvement in shortening the time between submission of materials by authors and final publication. Authors and editorial board members alike have expressed satisfaction with the new processes.

No major changes were made to BarBooks™ during 2014. The BarBooks™ wiki project remains in the queue of IT projects but has not yet been prioritized among the other IT projects. Work was completed, however, towards posting CLE Seminars handbooks to the BarBooks™ library within the existing programming framework.

We presented five BarBooks™ webinar tutorials in 2014. The feedback from attendees was almost exclusively positive. Numerous members expressed their appreciation that BarBooks™ is now available to them as a member benefit. One member's comment was typical: "Thank you for the good seminar today and for all the work you and your staff do on BarBooks. It really is a great resource." No formal surveys were conducted in 2014.

The planned transition from a book-to-online model to an online-to-book model is contingent on implementation of the BarBooks™ wiki project, and so no further work has been done on this objective.

**Outcome #3: Protect OSB’s intellectual property rights.**

Legal Publications has obtained a signed Volunteer Copyright Agreement from every author for all books published in 2014. These agreements are maintained electronically organized by book so that they can be easily accessed if needed.

Legal Publications has also filed a copyright registration for each book published in 2014. Although our authors retain their copyright in their individual chapters, OSB claims a copyright in the collected work.

To protect our copyright, each portion of our publications posted to BarBooks™ includes a copyright notice. In addition, all PDFs that were posted to BarBooks™ for the first time in 2012 were embedded with a copyright notice in the file properties.

**Outcome #4: Ensure diversity of Legal Publications authors and editors.**

The 2014 author and editor group was smaller than usual. The demographics again mirrored the OSB racial demographics in most categories, though there is still room for increased participation of most racial minorities in this important volunteer role. Efforts have continued to increase participation by racial minorities by soliciting assistance from the Diversity & Inclusion Department.

<b>Racial Demographics for 2014</b>	<b>Authors &amp; Editors</b>	<b>Active Members</b>
Asian	2.2%	2.6%
Black	1.1%	0.7%
Hispanic	1.1%	1.5%
Native Americans	0.0%	0.5%
Other	4.3%	3.0%
White	64.5%	59.9%
Declined to state	26.9%	31.8%



The gender breakdown of Legal Publications authors and editors showed a return to tracking with the membership breakdown following an increase in female authors that we experienced in 2013.

<b>Gender Demographics for 2014</b>	<b>Authors &amp; Editors</b>	<b>Active Members</b>
Female	35%	35%
Male	65%	65%

The Legal Publications Department has supported the bar’s commitment to diversity and inclusion in other ways. In particular, every attempt has been made to ensure that diversity issues are considered in the selection of our marketing graphics. In particular, when selecting graphics for the *Criminal Law* brochure, the department rejected numerous available graphics because of their portrayal of minorities in criminal situations. Ultimately, a set of neutral icons was chosen.

In addition, the department was instrumental in the editing the text of the Diversity Story Wall produced by the Diversity & Inclusion Department.

# LEGAL SERVICES PROGRAM

## Program Goal Statement

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The goal of the Legal Services Program is to oversee and distribute filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to assure an integrated, statewide system of free civil legal services for the poor centered on the needs of the client community. The Program works with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program goals also include advancing access to civil legal services by encouraging and coordinating the provision of pro bono services by Oregon lawyers and by providing modest financial assistance to legal services lawyers through the Loan Repayment Assistance Program (LRAP).

## Program Description

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The Legal Services Program began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal services to the poor and designating the OSB to receive and manage the funds. The legislation also mandated the development of Standards and Guidelines for providers, and the creation of a Legal Services Program Committee to provide ongoing oversight, evaluation and support to legal services providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the compliance process, the Director of the LSP conducts peer reviews and facilitates integration of services between the various legal services providers. The Director also works with other funders, the private bar and other organizations in a statewide collaboration to improve access to civil justice in Oregon.<sup>1</sup> The LSP also manages the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2).

Under the general supervision of the Director, a part-time Pro Bono Coordinator works with the OSB Pro Bono Committee to develop and implement strategies that will create a statewide culture of pro bono and greater participation by the private bar.

The Loan Repayment Assistance Program was created in 2007 in recognition that substantial educational debt can create a financial barrier for lawyers who wish to pursue a career in public service law. LRAP awards loan to qualified public service lawyers to enable them to practice in their chosen career.

## Volunteers/Partnerships

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The Legal Services Program Committee is comprised of seven attorney and two public member volunteers. As described above, the LSP works closely with other groups, including the Campaign for Equal Justice, to promote and coordinate funding for legal services. The LRAP Advisory committee is comprised on nine attorney volunteers.

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<sup>1</sup> The Director also serves as Executive Director of the Oregon Law Foundation. The dual role enhances the collaboration between the OLF, the LSP and other legal services funding sources.

## Outcomes and Evaluation

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### **Outcome #1: Develop and coordinate statewide policies that improve and expand access to legal services for low-income Oregonians.**

HB 4143 was introduced in the 2014 Legislative Session to establish a *cy pres* funds for unclaimed damage awards from class actions brought in Oregon. The bill allocated the *cy pres* funds to legal aid programs through the LSP. The Director of Legal Services and LSP Committee worked closely with the OSB Public Affairs Department and legal aid providers on the bill but it eventually failed.

LSP staff continued to work with General Counsel to monitor, evaluate and further develop policies and procedures for the unclaimed lawyer trust account (ULTA) funds that are delivered to the LSP. In addition to the \$106,000 collected in the regular cycle, the LSP received almost \$520,000 of unclaimed awards from one large case (the *Strawn Farmers* case) handled by a Portland law firm. The LSP Committee disbursed \$123,000 from the general ULTA receipts and developed a plan to disburse the *Strawn Farmers* funds over a three-year period. The remainder of unclaimed funds on hand were retained pursuant to the reserve policy established the BOG in 2012.

The LSP became aware of a significant ULTA fund consisting of the unused balance of a litigation fund established by shareholders of the now-defunct Benj. Franklin Savings and Loan. The lead lawyer, who was responsible for reimbursing the shareholders, was unable to complete the process before his death. LSP staff worked with General Counsel to develop a strategy to identify and recover the funds that should be turned over pursuant the ULTA act. The BOG authorized the filing of a petition for the OSB to be appointed as custodian of the deceased lawyer's practice, including the undistributed litigation fund.

The Director of Legal Services participated in the Task Force on Legal Aid Funding that was established to address Oregon's legal aid funding crisis. The Task Force was charged with setting goals to achieve minimally adequate funding for legal aid.

The Director of Legal Services worked with the Campaign for Equal Justice, legal aid and the Chief Justice to present at a session at the Equal Justice Conference about Oregon's Access to Justice Coalition.

### **Outcome #2: Assure that standards are met and quality services are being delivered efficiently and cost effectively.**

The Legal Service Program Accountability Process is conducted in odd-numbered years, so the next one will be in 2015. An additional outcome measure was developed in 2014 to further assure the standards are met and quality services are being delivered. The new outcome measure looks at the impact to the client as the result of legal aid's representation.

Comprehensive web content was developed and put online to enhance the transparency of the LSP and as a tool to educate stakeholders about legal aid and legal aid funding. The BOG approved revisions to the LSP Standards and Guidelines to reflect statutory authority, provider structure and additional national standards. The LSP Committee developed a process to address complaints that may be made against legal aid, and information about

the process is included on the LSP website. The LSP Committee received and investigated only one complaint in 2014. Lastly, the LSP gathered case closing and revenue statistics from legal aid to use as educational pieces during the 2015 legislative process.

**Outcome #3: Increase the amount of pro bono services by Oregon lawyers by assisting members in understanding their responsibility to provide pro bono legal services.**

Staff continues to work with organizations to help them through the process for becoming a Certified Program, through which Active Pro Bono status lawyers, government lawyers, and house counsel can engage in pro bono work. There are currently 18 certified programs; one new program was certified, but that was offset by the closure of the Lewis and Clark Legal Clinic at the end of 2014. Based recent inquiries, staff expects one or two new programs to become certified in 2015.

The annual Pro Bono Fair was very well-attended in 2014. It featured three free CLEs, 18 pro bono providers or support organizations, and the Pro Bono Challenge Awards Ceremony, hosted by OSB President Tom Kranovich. The Awards Ceremony portion of the evening was the best-attended Awards Ceremony since the inception of the Fair.

Staff worked with the Pro Bono Committee to host a social media summit to help Certified Pro Bono Programs explore how to use social media to promote their programs. Staff continues to work with the ONLD and the MBA on promoting and supporting pro bono work. Staff serves on the Legal Aid Services of Oregon Pro Bono Committee and helps select the LASO/OLC pro bono award winners.

The OSB Pro Bono Committee was instrumental in creating panels for the law schools about pro bono work, in supporting the Pro Bono Fair, and in starting the process to have a social media presence. One Subcommittee worked with the CLE Committee to gain support for the award of CLE credits for pro bono work. The Committee nominated a pro bono attorney for an OSB President's award.

**Outcome #4: Maximize the number of LRAP loans that are awarded; ensure that policies and guidelines facilitate the program goals.**

Staff worked with the LRAP Advisory Committee in successfully requesting that the BOG increase the LRAP budget for 2015. In addition, the Advisory Committee reviewed the policies and guidelines with a view to making the program more successful. For 2014, the changes made to policy and the approach taken by the LRAP Advisory Committee were minor and designed to accommodate the increase in budget approved by the BOG. The BOG approved the Advisory Committee's recommendation to raise the salary cap for participating loan recipients to \$65,000.

# MINIMUM CONTINUING LEGAL EDUCATION

## Program Goal Statement

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Maintain and improve the competence of Oregon lawyers by ensuring their compliance with the minimum continuing legal education requirements established by the Oregon Supreme Court.

## Program Description

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The MCLE Rules promulgated by the Supreme Court delegate oversight and administration of the MCLE program to the OSB Board of Governors. The BOG is charged with formulating new or amended MCLE Rules for the Court's approval; the BOG is also authorized to adopt regulations to implement the Rules. The MCLE Rules generally require all active members of the bar to complete 45 hours of continuing legal education every three years. Six of the hours must be in legal ethics or professionalism, including one hour of training in mandatory child abuse reporting. Members are also required to complete three access to justice credits in alternate reporting periods. New admittees are generally required to include 10 hours of practical skills training during their first reporting period. They must also complete a three credit hour introductory course in access to justice.

An MCLE Committee appointed by the BOG serves as program advisor to the BOG by reviewing and recommending changes to the MCLE Rules and Regulations as appropriate to meet program goals. The MCLE Committee also reviews decisions of the MCLE Program Manager regarding program and sponsor accreditation, eligible credits, and waivers or exemptions, upon request by a member or sponsor. The MCLE Program Manager supervises the day-to-day activities and flow of work, accredits programs, and makes decisions about compliance and waivers.

## Volunteers/Partnerships

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The MCLE program is established by the Board of Governors, subject to the review of the Supreme Court (ORS 9.112). Oversight of the program is delegated by the BOG to the MCLE Committee, which consists of six attorneys and one public member, all volunteers.

## Outcomes and Evaluation

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### **Outcome #1: Assure prompt and efficient processing of compliance reports.**

In 2014, staff processed 4,950 compliance reports for the period ending 12/31/2013. 90% of the reports were reviewed by staff within ten business days of receipt.

Notices of Noncompliance were sent to 399 members on March 4, 2014, which was 30 days after the filing deadline.

The audit of 2013 reports was completed by the end of May 2014. Notices of Noncompliance were sent to two members as a result of the audit. In June 2014, seventeen members (.003% of the reporting group) were suspended for failure to meet their MCLE obligations. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

For the 2014 reporting period, 5043 compliance reports were sent via email or regular mail in October 2014.

**Outcome #2: Assure prompt and accurate processing of accreditation applications.**

All applications for accreditation were processed within 30 days of receipt of the completed application. For the majority of the year, applications were processed within 2-3 weeks of receipt in our office. During the peak months of January, November and December, applications were processed within 25-27 days of receipt.

**Outcome #3: Assure that MCLE Rules, Regulations and procedures facilitate compliance by members.**

OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. In 2014 alone, 7,349 programs were accredited. Many members complete their entire requirement by screening online programs.

Staff continues to refine the compliance report, instructions and other informational materials to assist members in meeting their requirements. There is almost always a staff member available to answer in-person, telephone or e-mail inquiries from members and sponsors. Members are nearly universally complimentary about the helpful and courteous assistance provided by staff. There is increasing member interest in being able to update their compliance reports online and file them electronically, and staff is excited about new association management software that we will begin using in 2016.

Several MCLE Rules were amended in 2014 pursuant to member request or legislative changes such as the elder abuse reporting credit requirement.

Several MCLE reminders about upcoming deadlines were posted in the electronic Bar News or *Bulletin* in 2014. In early 2014, an FAQ about 2014 reporting requirements and deadlines was posted on the website. In July, email reminder notices were sent to members about their upcoming reporting period deadline. In March and December, email reminders were sent to new admittees about their introductory access to justice credit requirement. A listing of programs that qualify as an introductory course in access to justice was posted on the website. In August, an FAQ about the new elder abuse reporting credit requirement was posted to the website.

# MEDIA RELATIONS

## Program Goal Statement

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The OSB Media Relations Program advances the bar's mission of serving justice through long-term partnerships with statewide media to enhance public understanding of the law, the courts, the legal profession, and the rule of law the Oregon State Bar's regulatory functions. Additionally, the program advances the priorities of Oregon State Bar leadership through ongoing and effective outreach to media outlets throughout Oregon.

## Program Description

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Media Relations works with statewide news outlets in a variety of ways:

- **Expert sources.** The bar is a relied-upon source of subject-matter experts who can provide explanation and analysis of any story with a law-related element.
- **Spokesperson on bar policies.** Staff is the key point of contact for news outlets on stories relating directly to the OSB. This may include promotion of stories regarding OSB policies or priorities; support of the OSB's legislative agenda; explanation of OSB's performance of its regulatory function; and direct management of any high-profile OSB-related news stories.
- **Media Consulting/Training.** OSB staff frequently consults with bar members and courts on working effectively with media, either in seeking positive press or handling negative press.
- **Story Development.** Staff develops outreach plans to pitch specific stories to news outlets. Stories might relate directly to an OSB initiative (example: the diversity wall), or to a law-related issue of import to the bar and the community (example: notario fraud).
- **Support of the Judicial Branch.** The bar has a policy of responding to unjust criticism of the courts, particularly when the judicial rules restrict a judge's ability to offer an explanation to the public. Staff frequently consults with individual judges on managing high-profile cases, and on how judges can play a role in the public outreach and education objectives shared by the OSB and the OJD.
- **Advise leadership on media issues.** Media relations staff serves as the primary advisor to staff and leadership on media-related issues.
- **Liaison to the Bar Press Broadcasters Council.** Staff plays a key leadership role on this joint council between the OSB, and Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters.
- **Facilitating.** Inherent tensions will always exist as the bar and media try to balance the fair-trial objective with the public access objective in the legal system. Occasionally, disputes develop around these tensions. The OSB media relations program provides guidance and expertise to local communities as they sort through this balancing act.

## Volunteers/Partnerships

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**Volunteers:** Approximately 200 members serve on our list of media sources in specific areas of law. The annual Building a Culture of Dialogue event each May involves direct participation from roughly 50 individuals. And the Bar Press Broadcasters Council has 12 lawyer volunteers, working closely with the 12 media volunteers.

**Partnerships:** Media Relations staff partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, bar leadership, and media outlets statewide to advance goals of enhanced coverage of law-related issues.

## Outcomes and Evaluation

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**Outcome #1: The OSB is a trusted source of information and expertise for statewide media.**

Media relations staff makes contact with every major media outlet annually, offering the OSB as a resource in coverage of all law-related stories. Staff recruits and maintains a list of bar members with expertise in multiple areas of law who are skilled and comfortable serving as sources for media. Staff offers ongoing training and/or consultation with our media volunteers.

**Outcome #2: Bar members are actively engaged in OSB media and public education efforts.**

Media relations staff regularly reaches out to bar members who are willing to partner with media in educating the public about the law and the judicial system. The program continues to offer ongoing training and/or consultation with our media volunteers.

Staff identifies important trend and issue stories that may be of value to the community, and works closely with media in getting those stories covered in substantive fashion. One example in 2014 was getting media coverage of the Notario Fraud issue in both mainstream and Hispanic press.

**Outcome #3: Media is aware of and engaged in OSB priorities during the legislative session.**

Staff works in partnership with the Board of Governors and the Public Affairs staff in advocating with local and statewide media on priority issues for the OSB. This includes pushing for timely and accurate reporting of priorities with news staff, as well as seeking support from editorial boards and other opinion leaders in statewide media.



**Outcome #4: OSB provides exceptional customer service to media partners.**

The media relations program is one of the key players in assuring the public that the OSB is diligently pursuing its public protection role. This requires maintaining an open and transparent relationship with our media partners, and efficient response to time-sensitive inquiries. Additionally, we provide to them the added service of quickly responding to requests for expert analysis on law-related stories. This customer service serves dual goals: it enhances the quality of coverage by having qualified bar members inform the news reporting statewide; it is a foundation of strong, trusting relationships with the media, which is useful in getting fair coverage of OSB-related topics.

# MEMBER SERVICES

## Program Goal Statement

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Provide professional networking and leadership development opportunities for bar members through support to bar groups including sections, committees, local and specialty bars and the Oregon New Lawyers Division.

## Program Description

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The Member Services Department provides administrative support services to the bar's 42 sections and 20 committees. These services include the scheduling of meeting rooms, maintenance of rosters, recruitment and appointment of volunteers, distribution of meeting and membership notices, bar leadership training, and compiling annual reports. The department provides similar services to county and specialty bars and the Oregon New Lawyers Division.

The department is responsible for administers the bar's elections and judicial preference polls, manages the associate membership program, and maintains the list of Volunteer Defense Counsel members. The director of the department serves as administrative staff to the Board Development Committee of the Board of Governors.

## Outcomes and Measures

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### **Outcome #1: Provide members with professional networking and leadership opportunities that advance the mission and goals of the OSB.**

The department dedicates .8 FTE to assist the ONLD with administration, event planning, and administrative support. This year the ONLD continued to focus a significant amount of resources on practical skills training for new lawyers by holding full-day programs at each of the law schools and offering two intensive CLE programs on family law and litigation. Evaluations from the programs were positive with an overall 89% of attorneys and 94% of law students rating the program as 'very good' or 'excellent.' In the fall, the ONLD launched the Student Loan Repayment Resource webpage to assist bar members as they navigate and weigh loan repayment options. The launch of the new resource page was followed by a free seminar presentation by Lewis & Clark Law School Career Center Director Bill Penn discussing various options and things to consider when developing a repayment plan. The program was recorded and made available for free through the PLF website.

In recent years sections have seen a noticeable decline in membership rates. In 2014 however, only 1/4 of sections had a decrease in overall membership from the prior year. This improvement in slowing the section membership decline may be due in part to the department's use of conference call programs to inform incoming section leaders about the numerous services offered by the bar to provide member benefits and help combat the membership decline. The department also began marketing section memberships online and is exploring options for displays in other bar publications.

**Outcome #2: Maintain an effective volunteer recruitment and retention program for the organization.**

The lawyer and non-lawyer volunteer applications were modified in 2014 to collect demographic information corresponding to the OSB demographic fields. By continuing outreach with a variety of county and specialty bar associations, this year's volunteer recruitment cycle resulted in a sufficient number of interested candidates to fill the available seats. Ensuring a diverse pool of candidates is a top priority. In 2014, 268 bar members applied to serve in a volunteer capacity. Of those who provided their race and ethnicity, 9% were minority. 43% were female and 57% were 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.

The appointments process continues to evolve under the Board Development Committee's guidance. This year each committee officer was asked to provide details on their recommendations for new appointments. This allowed the Board Development Committee to evaluate each recommendation and determine if another volunteer with different qualifications might also be utilized on a particular board or committee.

**Outcome #3: Provide excellent customer service to the membership, bar groups, and staff.**

Feedback from the committee and section officers about department services remains positive. On a scale of 1 to 5, where 1 means poor and 5 means excellent, officers rated the department at 4.7 for providing accurate information, 4.8 for timely distribution of meeting notices, and 4.9 for courtesy of staff. Committee chairs rated the department at 4.5 for assistance with the appointment of new members.

There were several changes in bar staff liaison support to committees and sections over the course of the year. The department provided individual training for new liaisons and continued to provide monthly updates for section liaisons through an emailed checklist format.

**Outcome #4: Frequently review department budgets to ensure events and services are conducted using the most financially responsible approach.**

The department was able to cut over \$16,000 from the direct program and general and administrative budget by reducing printing and postage costs. Further reductions were made based on the use of conference call and webcasting options for the volunteer training sessions rather than holding a live event with higher costs.

# NEW LAWYER MENTORING PROGRAM

## Program Goal Statement

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The OSB New Lawyer Mentoring Program advances the OSB's mission to serve justice by improving the quality of legal services, promoting professionalism, and assisting new lawyers in quickly transitioning from students into to competent, ethical and professional lawyers.

## Program Description

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The New Lawyer Mentoring Program launched in 2011 pursuant to Supreme Court rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession and serve as a resource during their transition from student to practitioner.

Soon after admission, new lawyers are matched to volunteer mentors for a one-year program. The program includes a six-part curriculum focusing on introduction to the legal community; ethics and professionalism; law office management; working with clients; career satisfaction; and practical skills. Although this does provide some structure, the requirements within each curriculum area are flexible, allowing participants to shape the program to the specific needs of each new lawyer.

At the completion of the program year, mentors and new lawyers receive eight and six MCLE credits respectively, including two ethics credits.

## Volunteers/Partnerships

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**Volunteers:** Since its inception, approximately 1000 mentors have volunteered, and approximately 1400 new lawyers have completed their mentoring year. Each year sees roughly 500 matched pairs moving through the program.

**Partnerships:** The NLMP partners primarily with OSB Sections and committee leadership, county and specialty bars, Inns of Court, and the Oregon Judicial Department.

## Outcomes and Evaluation

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**Outcome #1: Bar members are actively engaged in the mentoring program.**

Bar members are engaged with the New Lawyer Mentoring Program as committee members, CLE speakers, and active program participants (mentors and new lawyers). In 2014, approximately 1100 people were actively engaged in the program.

**Outcome #2: New lawyers who are actively practicing in Oregon are matched with a mentor within two months of enrolling in the program.**

From its inception, two months has been the aspirational goal for connecting new lawyers with their mentor. We have not achieved full compliance with this goal, and a big focus of

the year has been moving us closer to this outcome. Currently, match times vary between two weeks and six months, and average roughly three months. The wait times depend heavily on geographic location and practice areas, and are encumbered by a dearth of mentors in certain areas.

**Outcome #3: The New Lawyer Mentoring Program is creating partnerships throughout the legal community.**

With this program now in its fourth year, we have successfully launched the operational elements, and are poised to increase focus on creating a greater presence throughout the statewide bar. This movement will come from increasing our focus on partnerships with local and specialty bars, sections, Inns of Court, law firms, and other law-related organizations.

# PUBLIC AFFAIRS DEPARTMENT

## Program Goal Statement

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Apply the public policy knowledge and experience of the legal profession and program staff to the public good.

## Program Description

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The Public Affairs Department provides information and assistance to bar groups, bar members and government bodies on a wide variety of bar related legislation and public policy issues facing the profession, with special emphasis on access to justice and preserving the independence of the judiciary. The department works closely with OSB sections and committees on law improvement legislation and to identify responses to significant legal trends that affect the practice of law and the bar. The Board of Governors Public Affairs Committee develops the policies that guide the department's work and recommends positions the bar should take on public policy issues affecting the bar and the legal profession.

The focus of the Public Affairs Department (PAD) during 2014 has been legislative advocacy in the short session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming long legislative session in 2015, and continued monitoring and support of the Oregon eCourt implementation and judicial funding.

## Volunteers/Partnerships

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**Volunteers:** In addition to the members of the BOG Public Affairs Committee, the department collaborates with several hundred lawyer volunteers, the vast majority from bar sections and committees working on law improvement projects.

**Partnerships:** The department has working relationships with most other OSB departments. Outside coalition building is an ongoing activity, which currently emphasizes government leaders, business interest groups, political candidates and local legal communities.

## Outcomes and Evaluation

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**Outcome #1: Ensure successful and high quality work on law-related public policy projects and problems, including law improvement.**

The focus of the Public Affairs Department (PAD) during 2014 has been legislative advocacy in the short session of the Oregon Legislature; outreach to the bar membership, legislators, and advocates in preparation for the 2015 long legislative session; and continued monitoring and support of the Oregon eCourt implementation and of judicial funding efforts.

On recommendation of the Public Affairs Committee, the BOG designated adequate funding for the legal services, indigent defense and the judicial department as the bar's highest legislative priorities. During the 2014 legislative session, the department was involved in the following activities in connection with these priorities:

- In collaboration with the judicial department, continued outreach and coalition building through the Citizens' Campaign for Court Funding to mobilize the bar and the business community to advocate for adequate court funding.
- Advocated for an increase in legal aid funding through HB 4143, the *cy pres* bill.
- Recruited bar members to testify at judiciary committee meetings regarding the critical services that legal aid programs provide throughout Oregon.
- Coordinated with stakeholders and supporters throughout the state to ensure legislators have a comprehensive understanding of the services legal aid programs provide to the most vulnerable Oregonians.
- Worked with stakeholders to develop and implement a statewide media campaign in support of civil legal services.
- Supported the Oregon Judicial Department in their request for additional funding for the Oregon eCourt program.
- Developed and negotiated new Uniform Trial Court Rules regarding Oregon eCourt document retention in response to members concerns.
- Coordinated outreach to OSB members regarding the move to mandatory eFiling for Oregon eCourt on December 1, 2014.

**Outcome #2: Inform customer groups while encouraging participation in the governmental process.**

PAD staff worked closely with sections to keep their members informed about legislation that could affect their practices. For the 2014 legislative session, the PAD implemented a new internal bill tracking software system. The system, developed in partnership with the bar's information technology department, allowed PAD staff to track bills as they moved through the legislative process. This system also provides bar sections and groups with the ability to identify, track, and review proposed legislation. Staff helped sections navigate the process by which sections receive authority to take positions on legislation.

After the short session, PAD staff worked with volunteer authors and editors to produce *2014 Legislation Highlights*, a comprehensive review of the 2014 session to apprise practitioners of legislative changes, arranged by practice area. To prepare for the 2015 regular session, public affairs staff met with section executive committees and other bar groups to explain and offer assistance with the process for submitting legislative proposals for bar sponsorship.

In April, the Public Affairs Committee hosted the Oregon State Bar's Legislative Forum where 17 sections and groups submitted 23 legislative proposals for the 2015 Legislative Session. The department worked with sections and general counsel to develop legislative concepts, draft bill language, and build consensus within the bar's membership and external stakeholders. The BOG and 17 sections will be sponsoring 16 law improvement bills during the 2015 legislative session.

The BOG hosted a very successful reception in Salem during the February legislative session with an impressive turnout of legislative leaders and bar members. In addition, PAD staff supported a Citizens' Campaign for Court Funding breakfast which drew together business leaders, legislators, and the Chief Justice to discuss the need for increased court funding. The PAD director accompanied the Oregon delegation to the ABA lobby day in Washington, DC in April.

Public Affairs published 12 issues of the Capitol Insider this year, a newsletter on legislative and public affairs issues of interest to bar members. Approximately one third of the active bar membership has chosen to receive this monthly newsletter. In addition, PAD staff collaborated with the *Bulletin* on an article about the implementation of Oregon eCourt.

Public affairs staff continued to be the liaison between the bar and the Council on Court Procedures (COCP) and between the bar and the Oregon Law Commission (OLC). The COCP is a statutorily created group charged with maintaining the Oregon Rules of Civil Procedure in good working order and proposing suggested improvements which go into effect unless changed by the legislature. The OLC is also a statutory group, but with a broader charge of general law reform, simplification, modernization and consolidation when appropriate.

**Outcome #3: Assure operational efficiency.**

Improvements in program operations continued through the use of technology, e-mail and the bar's website, as well as other record retention and electronic data management tools. Further modifications to the OSB bill tracking database and early alert system have continued to improve and will continue to achieve cost and program efficiencies for the bar.



# REFERRAL AND INFORMATION SERVICES

## Program Goal Statement

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Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

## Program Description

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The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest RIS program and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other RIS programs. Approximately 550 OSB members participate as LRS panel attorneys. The department also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) offering reduced-fee legal assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

## Outcomes and Evaluation

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### **Outcome #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.**

Total call volume from the public is now back to pre-recession 2008 levels, with a total of 70,582 calls in 2014. Even with increased volume, RIS was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. By maintaining adequate FTE devoted to the phones, only 2.3% of callers abandoned an RIS call queue in 2014. In 2008, the most recent year with a comparable overall call volume, 10.11% of callers abandoned the intake queue.

Due to increased staff turnover, including the RIS Department Manager, a focus for 2014 was to recruit and train department staff to maintain current customer service levels. A new RIS Manager started in April, and over the course of the year four other employees left the department and four new employees were hired to replace them. A new training schedule was implemented for staff, with every staff meeting now including a substantive law overview for a different area of law to ensure staff is making accurate referrals. Enhanced training has reduced errors among staff, and use of instant messaging software has helped staff assist each other with referral questions without interrupting active client calls. Finally, the phone tree is being revised to simplify the process for callers, which should further reduce queue time and the abandoned-call ratio.

**Outcome #2: Increase member and public awareness of RIS programs.**

The public-oriented focus for 2014 was to increase traffic to the OSB website, including the Legal Help page, to inform callers about available resources. In December, RIS instituted pilot project Craig’s List and Google Ad Words campaigns. Over a period of 45 days staff posted a “Need Legal Help?” message at various times on Craig’s List. The posting included an embedded link to the “Legal Help” page on the bar’s website. At the same time RIS began two Google Ad Word campaigns. The first campaign, “OSB Website,” focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, “RIS,” focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. These campaigns have resulted in a combined 1,211 clicks and 372,724 impressions as of January 15, 2015. Plans are underway to expand the “RIS” campaign into additional areas of law after further analysis of the campaigns’ effectiveness.

The increased call volume in 2014 resulted in 41,835 total referrals. The totals by program area are:

LRS .....	38,593
Modest Means.....	2,993
Problem Solvers.....	152
Military Assistance.....	97

Outreach to members remained focused on current panelists; with total registration remaining stable in 2014, no active recruitment of new panelists was warranted.

**Outcome #3: Adapt services to meet both public and members’ needs.**

In 2012 and 2013, following up on the BOG’s directive to explore Modest Means Program expansion, including possible methods to address concerns about percentage fees expressed by the Workers’ Compensation Section, PSAC members and bar staff met with the executive committees of the following sections over eighteen months: Elder Law, Estate Planning and Administration, Criminal Law, Disability Law, and Workers’ Compensation. Based on the recommendations resulting from those meetings, the BOG approved a pilot project establishing new MMP panels for disability (SSI/SSD and VA benefits) and Workers’ Compensation cases. LRS panelists can designate referrals on these matters as modest means if the client meets the financial eligibility and subject matter criteria. RIS staff and the PSAC will report to the BOG at the conclusion of the 2014-2015 program year (September 1, 2015) with a recommendation whether to continue the program or make different adjustments to the LRS program.

RIS staff made improvements to the MMP application used by family law, criminal and landlord/tenant applicants in order to increase referral accuracy and reduce the need for staff follow-up. Working with general counsel, RIS staff also changed the manner in which applications are processed in order to further protect confidential information provided by applicants.

Several changes were made to the RIS software in order to enhance functionality for panelists. RIS staff worked with the accounting department to design and implement an online payment feature for payment of remittance fees through the attorney portal. The portal was further upgraded by: the addition of a search bar that allows panelists to search for past referrals by client name; a tab for panelists to track referrals from other RIS programs; and a new field that displays the MMP rate tier for which the client initially qualified.

Also in 2014, RIS implemented a software feature that automatically removes attorneys from rotation if they are past due on reporting or paying percentage fee remittances. Panelists who are removed receive a system-generated email notice with details and instructions. Once the records are updated or payment is made, the software automatically returns the panelist into rotation. These features have increased panelist responsiveness and greatly reduced accounts receivable. Throughout the year, all-panelists emails were sent to introduce software upgrades and program updates to ensure panelist awareness and to solicit feedback.

**Outcome #4: Implement break even budget based upon adoption of percentage fees revenue model.**

In 2014 LRS collected \$526,690 in percentage fee revenue, which represents \$4,389,083 in business generated for panelists. 2014 LRS registration revenue was \$123,403. Therefore, total LRS revenue for 2014 was \$650,093. Due to the typical delay between referral and case resolution in contingency fee matters, budget projections will increase in accuracy and begin to stabilize within the next 12-24 months. Based on recommendations of staff and the PSAC, the BOG elected to make no changes to the LRS fee structure for the 2014-2015 program year. Consideration of a threshold amount that would trigger application of percentage fees (with the effect of keeping brief service matters exempt from percentage fees) will be considered again in 2015.

The combination of registration and percentage fee revenue resulted in a net revenue for the first time in the program's history, far exceeding budget projections and resulting in the program's best financial year *ever*. Total revenue since percentage fee implementation is \$1,223,929, which represents \$7,997,008 in business generated for LRS panelists.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**Memo Date:** June 12, 2015  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

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

- Issued an order in *In re Samantha N. Dang*, accepting this Garden Grove, California lawyer's stipulation to a 3-year suspension; and
- Issued an order in *In re Kelly E. Ireland*, accepting this Richfield, Minnesota lawyer's stipulation to an 8-month suspension; and
- Issued an opinion in *In re James C. Jagger* suspending this Eugene lawyer for 90 days. The court affirmed the trial panel opinion finding violations of RPC 1.1 and RPC 1.2(c); and
- Issued an opinion in *In re David Herman* disbaring this Denio, Nevada lawyer. The court affirmed the trial panel opinion finding a violation of RPC 8.4(a)(3); and
- Accepted the Form B resignation from Beaverton lawyer *Steven M. Cyr*.

#### b. Disciplinary Board

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

- *In re Robert H. Sheasby* of Bend (4-year suspension) became final on April 21, 2015.

One Disciplinary Board trial panel opinion has been issued since April 2015:

- A trial panel recently issued an opinion in *In re W. Blake Simms* of Tempe, Arizona (120-day suspension) for failing to account for or return a client's costs and for not timely accounting for or remitting a client's portion of a settlement for six months.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulations for discipline in: *In re Rosemary Foster* of Springfield (30-day suspension), *In re David P. Meyer*

of Portland (reprimand), *In re John C. Moore* of Lake Oswego (reprimand), and *In re Mark O. Cottle* of Sherwood (60-day suspension, all stayed, 2-year probation).

The Disciplinary Board Chairperson approved a BR 7.1 suspension in *In re Timothy J. Vanagas* of Portland.

## **2. Decisions Pending.**

The following matters are pending before the Supreme Court:

*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 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)

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

## **3. Trials.**

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

*In re William L. Tufts* – August 7, 2015

*In re G. Jefferson Campbell* – August 10-11, 2015

*In re Gerald Noble* – August 18-19, 2015

*In re M. Christian Bottoms* – September 15-16, 2015

*In re Andy Millar* – September 21, 2015

*In re Paul H. Krueger* – October 19-21, 2015

## **4. Diversions.**

The SPRB approved the following diversion agreements since January 2015:

*In re Craig Wymetalek* – effective May 1, 2015

*In re Kittee Custer* – effective June 15, 2015

**5. Admonitions.**

The SPRB issued 11 letters of admonition in April 2015. The outcome in these matters is as follows:

- 11 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 2015, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

<b>MONTH</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
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	17/17
May	143/146*	19/20	37/37	23/24	24/24
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	
<b>TOTALS</b>	<b>444/459</b>	<b>350/359</b>	<b>341/349</b>	<b>336/352</b>	<b>109/110</b>

\* = includes IOLTA compliance matters

As of June 1, 2015, there were 128 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 39% are less than three months old, 23% are three to six months old, and 38% are more than six months old. Twenty-five of these matters were on the SPRB agenda in late May. 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.**

Kellie Johnson gave a presentation on May 15<sup>th</sup>, entitled, “Regulation of Discrimination in Lawyers Ethics: Aspiration or Apathy?” in seminar sponsored by the Oregon New Lawyers Division. Ms. Johnson also served as a panelist at the 41<sup>st</sup> ABA National Conference on Professional Responsibility, held May 28-29 in Denver, in a program entitled, “Off the Beaten Path in Lawyer Prosecution and Defense.”

DME/rh

Oregon  State Bar

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**2014** **Disciplinary  
Counsel's Office**

Annual Report

April 2015

Dawn M. Evans  
**Disciplinary Counsel**





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## **I. INTRODUCTION**

This is the Annual Report of the Oregon State Bar Disciplinary Counsel's Office for 2014. The report provides an overview of Oregon's lawyer discipline system, an analysis of the caseload and dispositions in 2014, and a discussion of significant developments over the last year.

## **II. DISCIPLINARY COUNSEL'S OFFICE**

The Disciplinary Counsel's Office (DCO, a term hereafter referring to either the office as a whole or a lawyer employed within the office) provides professional staffing for Oregon's lawyer discipline system with 8 lawyers, an office manager, an investigator/litigation assistant, a paralegal, 2 legal secretaries, a diversion and probation coordinator/legal secretary, a public records coordinator, and a regulatory services coordinator. In addition to its work in support of the State Professional Responsibility Board (SPRB), DCO has involvement in both contested reinstatement and admission applications, and responds to public records requests pertaining to records maintained within the discipline system.

## **III. STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)**

The DCO's principal responsibility is to serve as counsel to the State Professional Responsibility Board (SPRB), the body to which the investigative and prosecutorial functions within the discipline system are delegated by statute and court rule. The SPRB seeks to determine whether misconduct has occurred, while operating within the procedural framework of the Bar Rules of Procedure (the BRs). The SPRB is a ten-member board of unpaid volunteers, consisting of one lawyer each from Board of Governors (BOG) Regions 1 through 4, 6, and 7, two lawyers from Region 5, and two public members.

The SPRB met 12 times in 2014. Combining in-person and teleconference meetings, the SPRB considered approximately 244 case-specific agenda items during the year. In addition, the SPRB has, upon occasion, discussed policy matters pertaining to its functioning and interaction with participants in Oregon's lawyer discipline system.

The Bar was fortunate to have the following individuals on the SPRB in 2014:

Whitney Patrick Boise (Portland)—Chairperson  
Chelsea Dawn Armstrong (Salem)  
Danna Fogarty (Eugene)  
Nathaline J. Frener (Eugene)—Public Member  
Michael G. Gentry (Lake Oswego)  
Blair Henningsgaard (Astoria)  
E. Bradley Litchfield (Eugene)  
Justin N. Rosas (Medford)  
Dr. S. Michael Sasser (Medford)—Public Member  
Valerie Wright (Bend)

The terms of Michael J. Gentry, Chelsea Dawn Armstrong, Danna C. Fogarty, and Dr. S. Michael Sasser expired at the end of 2014. The new appointments for 2015 are Ankur Has Mukh Doshi (Portland), Dr. Randall Green (Salem)—Public Member, Elaine D. Smith-Koop (Salem), and Richard A. Weill (Troutdale) (for a 1 year term only). Whitney Patrick Boise is the SPRB Chairperson for 2015.

## IV. SYSTEM OVERVIEW

### A. Complaints Received

The Bar’s Client Assistance Office (CAO) handles the intake of all oral and written inquiries and complaints about lawyer conduct. Only when the CAO finds that there is sufficient evidence to support a reasonable belief that misconduct may have occurred is a matter referred to DCO for investigation. See BR 2.5.

The table below reflects the number of files opened by DCO in recent years, including the 352 files opened in 2014.

Files Opened by Disciplinary Counsel					
Month	2010	2011	2012	2013	2014
January	29	20	49	21	31
February	25	36	27	23	25
March	26	25	39	30	45
April	30	42	38	43	47
May	119*	146*	20	37	24
June	26	20	40	31	24
July	34	28	22	30	44
August	25	23	35	36	21
September	36	29	22	27	24
October	33	23	23	26	25
November	21	27	18	26	19
December	24	40	26	19	23
<b>TOTAL</b>	<b>428</b>	<b>459</b>	<b>359<sup>†</sup></b>	<b>349</b>	<b>352</b>

\*includes IOLTA compliance matters.

<sup>†</sup>Effective in 2012, failing to file an annual IOLTA compliance report is a statutory, not disciplinary, requirement. This accounts for the reduction in files opened beginning in 2012.

Of the 352 files opened in 2014, 227 were referrals from the Client Assistance Office and 112 were trust account overdraft notices from financial institutions that came directly to DCO. Another 13 matters were opened by DCO on its own initiative.

For 2014, statistical information regarding complainant type and complaint subject matter is found in Appendix A to this report. Similar information for 2013 is found in Appendix B for comparison purposes.

Every complaint DCO received in 2014 was acknowledged in writing by staff, analyzed and investigated to varying degrees depending on the nature of the allegations. As warranted, staff corresponded with the complainant and the responding attorney and obtained relevant information from other sources in order to garner sufficient information upon which to base a decision to dismiss or recommend further action to the SPRB.

Effective in November 2013, DCO may seek the administrative suspension of any lawyer who fails without good cause to timely respond to requests for information or records. BR 7.1. Fifteen (15) lawyers were administratively suspended in 2014 pursuant to this rule.

If, after investigation, staff determines that probable cause does not exist to believe that misconduct occurred, the matter is dismissed by DCO. BR 2.6(b). Complainants may appeal a DCO dismissal to the SPRB. The SPRB considered 24 such appeals in 2014.

When DCO determines from an investigation that there is probable cause of misconduct by a lawyer, the matter is referred to the SPRB for review and action. Each matter is presented to the SPRB by means of a complaint summary (factual review, ethics analysis and recommendation) prepared by staff. Each file also is made available to the SPRB. In 2014, the SPRB reviewed 157 of these probable cause investigations. The following section describes that process of review in more detail.

## **B. SPRB**

The SPRB acts as a grand jury in the disciplinary process, determining in each matter referred to it by DCO whether probable cause of an ethics violation exists. Options available to the SPRB include dismissal if there is no probable cause of misconduct; referral of a matter back to DCO for additional investigation; issuing a letter of admonition if a violation has occurred but is not of a serious nature; offering a remedial diversion program to the lawyer; or authorizing a formal disciplinary proceeding in which allegations of professional misconduct are litigated. A lawyer who is offered a letter of admonition may reject the letter, in which case the Rules of Procedure require the matter to proceed to a formal disciplinary proceeding. Rejections are rare.

A lawyer who is notified that a formal disciplinary proceeding will be instituted against him or her may request that the SPRB reconsider that decision. Such a request must be supported by new evidence not previously available that would have clearly affected the SPRB's decision, or legal authority not previously known to the SPRB which establishes that the decision to prosecute is incorrect.

In 2014, the SPRB made probable cause decisions on 157 matters investigated by DCO. Action taken by the SPRB in recent years and in 2014 is summarized in the following table:

<b>Action Taken by SPRB</b>					
Year	Pros.	Admon. Offered	Admon. Accepted	Dismissed	Diversion
2010	72	34	34	38	5
2011	98	34	34	46	4
2012	90	47	46†	73	7
2013	86	20	20	43	13
2014	105	19	19	40	17

† One admonition letter offered was later reconsidered by the SPRB and the matter was dismissed.

Note that the figures for prosecutions reflect the number of complaints that were authorized for prosecution, not necessarily the number of lawyers being prosecuted. One lawyer may be the subject of numerous complaints that are consolidated into one disciplinary proceeding.

In addition to the normal complaint review process, the SPRB also is responsible for making recommendations to the Supreme Court on matters of urgency including temporary and immediate suspensions of lawyers who have abandoned their practices, are suffering under some disability, have been convicted of certain crimes, or have been disciplined in another jurisdiction subjecting them to reciprocal discipline in Oregon. The SPRB reviewed 10 such matters in 2014.

### **C. Special Local Investigators**

During 2014, all complaints were investigated in-house by DCO. Historically, such investigation was conducted by Local Professional Responsibility Committees (LPRCs), geographically-based committees of volunteer lawyers. More recently LPRCs were assigned to investigate when respondent attorneys were unresponsive to DCO inquiries. Since the inception of BR 7.1 (discussed above), usage of LPRCs for nonresponding respondent attorneys has curtailed. In the event there is DCO recognition that a locally-available special expertise would assist an in-depth field investigation, a local investigator from an LPRC can be appointed on an individual, as needed, basis.

Under the applicable rules of procedure, when an individual investigator is assigned, the special investigator is requested to investigate and report back his or her findings within 90 days, with one extension of 60 days available. No matters were referred to special local investigators in 2014.

### **D. Formal Proceedings**

#### (1) Prosecution Function

After the SPRB authorizes formal proceedings in a given matter, DCO drafts a formal complaint that is filed with the Disciplinary Board Clerk and served upon the respondent attorney. On occasion, a volunteer bar counsel selected from a panel of lawyers appointed by the Board of Governors is asked to serve as co-counsel.

Discovery methods in disciplinary proceedings are similar to those in civil litigation. Requests for admission, requests for production, and depositions are common. Disputes over discovery are resolved by the trial panel chairperson assigned to a particular case. Mediation is available but voluntary.

Pre-hearing conferences to narrow the issues and to explore settlement are available at the request of either party. Such conferences are held before a member of the Disciplinary Board who is not a member of the trial panel in that case.

## (2) Adjudicative Function

Members of the Disciplinary Board, appointed by the Supreme Court, sit in panels of three (two lawyers, one non-lawyer) and are selected for each disciplinary case by a regional chairperson. The panel chair rules on all pretrial matters and is responsible for bringing each case to hearing within a specific time frame established by the rules.

After hearing, the panel is required to render its decision within 28 days (subject to time extensions), making findings of fact, conclusions of law and a disposition. Panels rely on the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law in determining appropriate sanctions when misconduct has been found.

Five (5) disciplinary cases were tried in 2014. Some were single-day hearings; others were multi-day hearings extending over several weeks; still others went by default and did not require a full evidentiary hearing at all.

## **E. Dispositions Short of Trial**

Most disciplinary proceedings authorized by the SPRB are resolved short of trial with a negotiated outcome in the form of a stipulation or by the respondent attorney's resignation.

In circumstances in which there is no dispute over material fact and the DCO and the respondent attorney agree on the violations committed and appropriate sanction, a stipulation setting forth the terms of the agreement, including factual recitations, rule violations, and the agreed-upon sanction is drafted. Stipulations are approved by the SPRB or its chairperson on behalf of the Bar. Once that approval is obtained, judicial approval is required from the state and regional chair of the Disciplinary Board in cases where sanctions do not exceed a 6-month suspension, or from the Supreme Court for cases involving greater sanctions. Judicial approval is not always given, in which case the parties must provide additional information to support the stipulated resolution, negotiate further, or proceed to trial.

Form B resignation (a resignation that takes place while disciplinary matters are under investigation) does not require an admission of guilt by an accused lawyer but, because charges are pending, is treated like a disbarment such that the lawyer is not eligible for reinstatement in the future. Five (5) lawyers submitted



Form B resignations in 2014, thereby eliminating the need for further prosecution in those cases. While a resignation ends a formal proceeding, it is often obtained only after a substantial amount of investigation, discovery and trial preparation.

## **F. Appellate Review**

The Supreme Court does not automatically review discipline cases in Oregon. Trial panel decisions, even those imposing disbarment, are final unless either the Bar or the accused lawyer seeks Supreme Court review. The SPRB on behalf of the Bar decides whether to seek Supreme Court review.

Appellate review by the court is mandatory if timely requested by a party.

When there is an appeal, DCO prepares the record for submission to the court, drafts and files the Bar's briefs, and presents oral argument before the Court. In 2014, the Supreme Court rendered 3 discipline opinions in contested cases. The Court also approved 6 stipulations for discipline, imposed reciprocal discipline in 3 cases, suspended 1 lawyer following notice of a felony conviction, suspended 1 lawyer on an interim basis while disciplinary proceedings were pending, and transferred 2 lawyers to involuntary inactive status.

A noteworthy opinion in 2014 was *In re Gatti*, 356 Or 32 (2014), in which the Court states that RPC 1.8(g) is intended to address conflicts of interest that may arise when an attorney conducts settlement negotiations on behalf of multiple clients. Under those circumstances, when the value of one client's claim depends on the value of the other clients' claims, the interests of the clients conflict and a settlement obtained is an aggregate settlement. The court specifically rejects that the rule only covers "all-or-nothing" agreements, concluding that the lump-sum settlement that exceeded the plaintiffs' total individual minimum settlement offers and was to be divided among the plaintiffs was an aggregate settlement. Concluding that the lawyer did not obtain his clients' informed consent, in writing, to the method to be applied in dividing the settlement, the Court found that Gatti violated RPC 1.8(g). The Court also found that Gatti had violated 1.4(b) and 1.7(a)(1) in connection with the same matter.

Regarding the disciplinary system overall, 52 disciplinary proceedings were concluded in 2014: 12 by decision in a contested case; 30 by stipulation; 5 by Form B resignation; 3 by reciprocal discipline order; and 2 by transfers to involuntary inactive status.

## **G. Contested Admissions/Contested Reinstatements**

DCO represents the Board of Bar Examiners (BBX) in briefing and arguing before the Supreme Court those cases in which the BBX has made an adverse admissions recommendation regarding an applicant and the applicant pursues Supreme Court review. The investigation and hearing that precede an admissions recommendation is handled by the BBX with the support and assistance of Bar admissions staff under a procedure different from that applicable to lawyer discipline cases.

When a lawyer seeks reinstatement from either an administrative or a disciplinary suspension, DCO is responsible for processing and investigating all applications. Recommendations are then made to either the Bar’s Executive Director or the Board of Governors, at the request of the Executive Director. Many reinstatements are approved without any further level of review. For reinstatement applicants who have had significant, prior disciplinary problems or have been away from active membership status for more than five years, the Board of Governors makes a recommendation to the Supreme Court. In cases when the board recommends against reinstatement of an applicant, the Supreme Court may refer the matter to the Disciplinary Board for a hearing before a three member panel (much like a lawyer discipline matter), or may direct that a hearing take place before a special master appointed by the Court. DCO has the same responsibilities for prosecuting these contested cases as with disciplinary matters and handles the appeal of these cases, which is automatic, before the Supreme Court. One formal reinstatement case resulted in a Board of Governors recommendation favoring reinstatement that was submitted to the Court but unresolved by the end of 2014.

## V. DISPOSITIONS

Attached as Appendix C is a list of disciplinary dispositions from 2014. The following table summarizes dispositions in recent years:

<b>SANCTION TYPE</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Disbarment	2	5	2	6	3
Form B Resignation	7	7	13	4	5
Suspension	23	19	20	21	19
Suspension stayed/probation	5	1	3	3	12
Reprimand	16	15	17	14	7
Involuntary inactive Transfer	0	0	0	0	2
<b>TOTAL Lawyer Sanctions</b>	<b>53</b>	<b>47</b>	<b>55</b>	<b>48</b>	<b>48</b>
Dismissals after Adjudication	2	4	2	2	1
Dismissed as moot	0	0	0	2	0
Diversion	4	4	6	4	17
Admonitions	34	34	46	20	19

In conjunction with a stayed suspension or as a condition of admission or reinstatement, it is common for a period of probation to be imposed upon a lawyer. DCO was monitoring 16 lawyers on probation at the end of 2014, along with 22 lawyers in diversion. Most probations and diversions require some periodic reporting by the lawyer. Some require more active monitoring by a probation supervisor, typically another lawyer in the probationer’s community or a member of the State Lawyers Assistance Committee. During 2014, DCO established a position assigned to monitoring diversion and probation matters.

The types of conduct for which a disciplinary sanction was imposed in 2014, or a Form B resignation was submitted, varied widely. The following table identifies the misconduct most often implicated in those proceedings that were concluded by decision, stipulation, order, or resignation in 2014:

<b>Type of misconduct</b>	<b>% of cases in which type of misconduct was present</b>
Inadequate client communication	58%
Neglect of legal matter	39%
Failure to return property or funds	39%
Failure to respond to OSB	33%
Dishonesty or misrepresentation	29%
Conduct prejudicial to justice	31%
Trust account violation	25%
Improper withdrawal	21%
Criminal conduct	17%
Incompetence	15%
Multiple client conflicts	13%
Excessive or illegal fees	8%
Self-interest conflicts	8%
Unauthorized practice	4%
Inadequate accounting records	4%
Disregarding a court rule or ruling	4%
Improper communication	4%
Advertising	2%
Disclosing confidential information	2%
Other	21%

## **VI. SUMMARY OF CASELOAD**

A summary of the pending caseload in Disciplinary Counsel's Office at the end of 2014 follows:

New complaints pending.....	154
Pending special local investigations.....	0
Pending formal proceedings.....	52*
Probation/diversion matters.....	38
Contested admission/contested reinstatement matters.....	0
TOTAL.....	244

\*Reflects no. of lawyers; no. of complaints is greater.

In addition to disciplinary matters, Disciplinary Counsel's Office processed and investigated 197 reinstatement applications in 2014; processed approximately 840 membership status changes (inactive and active pro bono transfers and voluntary resignations); issued 884 certificates of good standing; and responded to 1,754 public record requests during the year.

## **VII. STAFFING/FUNDING**

In 2014, Disciplinary Counsel's Office employed sixteen staff members (15.9 FTE), with the inclusion of a recently-hired lawyer whose responsibilities include pursuing enforcement actions flowing from probationary judgments. The lawyers work in two-person teams, with one lawyer reviewing and investigating complaints, determining to dismiss or recommend further action and, where possible, seeking a negotiated resolution. The other lawyer handles formal proceedings from filing through settlement or trial. The investigator, the paralegal, and the diversion and probation coordinator/legal secretary work for all lawyers, as needed. The secretarial support staff each work with several lawyers. The office manager oversees the support staff, coordinates SPRB agendas and meetings, manages all aspects of recordkeeping and statistical reporting, monitors office expenditures, and provides support to the Disciplinary Counsel. The regulatory services coordinator interfaces primarily with members seeking reinstatement. The public records coordinator responds to records requests from lawyers and members of the public pertaining to disciplinary records. Staff members at the end of 2014 included:

Dawn M. Evans, *Disciplinary Counsel and Director of Regulatory Services*

Amber Bevacqua-Lynott, *Chief Assistant Disciplinary Counsel and Deputy Director of Regulatory Services*

R. Lynn Haynes, *Discipline and Regulatory Services Office Manager*

Angela W. Bennett, *Assistant Disciplinary Counsel*

Lynn Bey-Roode, *Discipline Investigator/Litigation Assistant*

Jennifer Brand, *Regulatory Services Coordinator*

W. Matthew Campbell, *Public Records Coordinator*

Mary A. Cooper, *Assistant Disciplinary Counsel*

Susan R. Cournoyer, *Assistant Disciplinary Counsel*

Linn D. Davis, *Assistant Disciplinary Counsel*

Karen L. Duncan, *Diversion and Probation Coordinator/Discipline Legal Secretary*

Martha M. Hicks, *Assistant Disciplinary Counsel*

Kellie F. Johnson, *Assistant Disciplinary Counsel*

Christopher Ouellette, *Discipline Legal Secretary*

Emily Schwartz, *Discipline Paralegal*

DCO is funded out of the Bar's general fund. Revenue is limited (roughly \$ 120,000 for 2014) and comes from cost bill collections, reinstatement fees, fees paid for good standing certificates and *pro hac vice* admissions, and photocopying charges for public records.

Expenses for 2014 were \$1,677,000 with an additional \$372,000 assessed as a support services (overhead) charge. Of the actual program expenses, 93.7% consisted of salaries and benefits. An additional 2.9% of the expense budget went to out-of-pocket expenses for court reporters, witness fees, investigative expenses, and related items. General and administrative expenses such as copying charges, postage, telephone and staff travel expense accounted for 3.5% of the expense budget.

## VIII. OTHER DEVELOPMENTS

### A. Ethics School

Lawyers who have been reprimanded or suspended are required to attend a one day course of study presented by the Bar on topics of legal ethics, professional responsibility, and law office management. Two such programs were offered in 2014, one in May and one in November. Presenters included CAO and DCO staff, as well as staff from the Oregon Attorney Assistance Program.

### B. Trust Account Overdraft Notification Program

The Oregon State Bar has a Trust Account Overdraft Notification Program, pursuant to ORS 9.132 and RPC 1.15 2. Under the program, lawyers are required to maintain their trust accounts in financial institutions that have agreed to notify the Bar of any overdraft on such accounts. Approximately 65 banks have entered into notification agreements with the Bar.

For each overdraft notice received, DCO requests a written explanation and supporting documentation from the lawyer and makes follow-up inquiries as necessary. Many overdrafts are the result of bank or isolated lawyer error and, once confirmed as such, are dismissed by staff. If circumstances causing an overdraft suggested an ethics violation, the matter is referred to the SPRB. A minor violation leading to an overdraft with no prior similar conduct typically results in a letter of admonition issued to the lawyer. More serious or ongoing violations may result in formal disciplinary action. In 2014, the Bar received notice of 112 trust account overdrafts. A summary of the disposition of trust account overdrafts received in 2014 is as follows:

<b>2014 Trust Account Overdrafts</b>	
Dismissed by staff	72
Dismissed by SPRB	5
Referred to LPRC for further investigation	0
Closed by admonition letter	5
Closed by diversion	0
Formal charges authorized	4
Closed by Form B resignation	0
Pending (as of 1/2015)	26
<b>Total Received</b>	<b>112</b>

### **C. Public Records**

In Oregon, lawyer discipline files are public records with very limited exceptions. DCO responds to (on average) more than 150 public records requests each month. These requests come from members of the public who inquire into a lawyer's background or from other Bar members who have a need to examine these records.

Disciplinary history data is stored electronically such that many disciplinary record inquiries can be answered without a manual review of a lawyer's file. A significant number of requests, however, require the scheduling of appointments for file review.

DCO has document management and retention policies. Ethics complaints dismissed for lack of probable cause more than ten (10) years ago are destroyed. Retained records have been scanned and are maintained in electronic format, thereby reducing the physical file storage needs of the Bar.

### **D. *Pro Hac Vice* Admission and Arbitration Registration**

Uniform Trial Court Rule 3.170 (UTCR) provides that all applications by out-of-state lawyers for admission in a single case in Oregon (*pro hac vice* admission) must first be filed with the Oregon State Bar, along with a fee of \$500 (in 2014). DCO is responsible for reviewing each application and supporting documents (good standing certificate, evidence of professional liability coverage, etc.) for compliance with the UTCR. The filing fees collected, after a nominal administrative fee is deducted, are used to help fund legal service programs in Oregon.

In 2014, the Bar received and processed 475 *pro hac vice* applications, collecting \$174,000 for legal services.

In addition, RPC 5.5(e) requires out of state lawyers who intend to participate in an Oregon arbitration to pay a fee and file a certificate with the Bar similar to that required for *pro hac vice* admission. Disciplinary Counsel's Office administers this process, as well.

### **E. Custodianships**

ORS 9.705, *et seq.*, provides a mechanism by which the Bar may petition a circuit court for the appointment of a custodian to take over the law practice of a lawyer who has abandoned the practice or otherwise is incapable of carrying on. It was not necessary in 2014 for the Bar to utilize this process

### **F. Continuing Legal Education Programs**

Throughout 2014, DCO participated in numerous CLE programs dealing with ethics and professional responsibility issues. Staff spoke to law school classes, local bar associations, Oregon State Bar section meetings, specialty bar organizations, and general CLE audiences.

## **IX. CONCLUSION**

In 2014, the Oregon State Bar remained committed to maintaining a system of lawyer regulation that fairly but effectively enforces the disciplinary rules governing Oregon lawyers. Many dedicated individuals, both volunteers and staff, contributed significantly toward that goal throughout the year.

Respectfully submitted,

Dawn M. Evans  
Disciplinary Counsel

## APPENDIX A - 2014

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	11	3.1%
Client	103	29.3%
Judge	19	5.4%
Opposing Counsel	27	7.7%
Opposing Party	16	4.5%
Third Party	55	15.6%
Unknown	1	0.3%
OSB	120	34.1%
TOTAL	352	100.0%
COMPLAINT SUBJECT MATTER		
Adoption	1	0.3%
Advertisement	0	0.0%
Arbitration	2	0.6%
Bankruptcy	5	1.4%
Business	4	1.1%
Civil dispute (general)	43	12.2%
Conservatorship	4	1.1%
Criminal	57	16.2%
Domestic Relations	36	10.2%
Estate Planning	8	2.3%
Guardianship	1	0.3%
Immigration	3	0.85%
Juvenile	3	0.85%
Labor Law	2	0.6%
Litigation (general)	9	2.6%
Land Use	0	0.0%
Other	32	9.1%
Paternity	0	0.0%
Personal injury	7	2.0%
Probate	10	2.8%
Real Estate	3	0.85%
Social Security	0	0.0%
Tenant/landlord	3	0.85%
Tax	0	0.0%
Trust Account Overdraft	113	32.1%
Workers Comp.	2	0.6%
Unknown	4	1.1%
TOTAL	352	100.0%



## APPENDIX B - 2013

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	14	4.0%
Client	120	34.2%
Judge	13	3.7%
Opposing Counsel	25	7.1%
Opposing Party	34	9.7%
Third Party	41	11.7%
Unknown	0	0.0%
OSB	104	29.6%
TOTAL	351	100.0%
COMPLAINT SUBJECT MATTER		
Adoption	4	1.1%
Advertisement	4	1.1%
Arbitration	1	0.3%
Bankruptcy	2	0.6%
Business	1	0.3%
Civil dispute (general)	48	13.7%
Conservatorship	3	0.9%
Criminal	70	20.0%
Domestic Relations	46	13.1%
Estate Planning	1	0.3%
Guardianship	1	0.3%
Immigration	2	0.6%
Juvenile	3	0.8%
Labor Law	4	1.1%
Litigation (general)	10	2.9%
Land Use	1	0.3%
Other	29	8.2%
Paternity	0	0%
Personal injury	13	3.7%
Probate	8	2.3%
Real Estate	1	0.3%
Social Security	3	0.8%
Tenant/landlord	5	1.4%
Tax	2	0.6%
Trust Account Overdraft	82	23.4%
Workers Comp.	3	0.8%
Unknown	4	1.1%
TOTAL	351	100.0%

**OSB DISPOSITION LIST  
2014**

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
1	11-17 Steven M. McCARTHY 354 Or 697, 318 P3d 747 (2014) SC S060882 28 DB Rptr 1	90-day suspension	CC	S Ct	1/16/2014	3/17/2014	1.1, 1.4(a), 1.4(b), 1.15-1(c)	April 2014
2	13-44 Timothy O'ROURKE 28 DB Rptr 3	Reprimand	Stip	DB	1/20/2014	1/20/2014	1.9(a)	April 2014
3	13-21 Ivan S. ZACKHEIM 28 DB Rptr 9	Reprimand	Stip	DB	1/23/2014	1/23/2014	1.15-1(d), 1.16(d)	April 2014
4	14-03 Sara Lynn ALLEN	BR 7.1 suspension	--	DB	1/30/2014	1/30/2014		NA
5	12-52 12-53 13-06 Mary E. LANDERS 28 DB Rptr 15	30-day suspension, all stayed, 2-year probation	Stip	DB	2/10/2014	2/10/2014	1.3, 1.4(a), 1.4(b), 8.1(a)(2)	April 2014
6	12-139 John L. BALLARD 28 DB Rptr 22	Dismissed	CC	DB	12/11/2013	2/11/2014	NG—1.2(c), 3.4(c), 8.4(a)(4)	April 2014
7	13-134 Gregg A. McDONALD 28 DB Rptr 30	Reprimand	Stip	DB	2/19/2014	2/19/2014	3.4(c)	May 2014
8	12-61 Katherine C. TANK 28 DB Rptr 35	90-day suspension	Stip	DB	3/3/2014	4/1/2014	3.3(a), 8.4(a)(3), 8.4(a)(4)	May 2014
9	12-168 Montgomery W. COBB 28 DB Rptr 41	30-day suspension	Stip	DB	3/5/2014	3/24/2014	8.4(a)(2)	May 2014
10	13-45 13-46 13-47 13-48 Susan C. STEVES 28 DB Rptr 47	Disbarment	CC	DB	2/4/2014	4/8/2014	1.3, 1.4(a), 1.4(b), 1.16(c), 3.3(a)(1), 8.4(a)(3), 8.4(a)(4)	May 2014
11	11-84 11-85 Marc T. ANDERSEN SC S061681 28 DB Rptr 52	6-month plus 1-day suspension	Stip	S Ct	4/17/2014	4/17/2014	1.3, 1.4(a), 1.16(a)(2), 1.16(d), 8.1(a)(2)	June 2014
12	13-114 Kevin J. KINNEY SC S062103 28 DB Rptr 59	1-year suspension, all but 60 days stayed, 1-year probation	Stip	S Ct	4/22/2014	6/1/2014	8.4(a)(3), 8.4(a)(4)	June 2014
13	11-133 11-134 Francisco C. SEGARRA 28 DB Rptr 69	90-day suspension, all but 30 days stayed, 2-year probation	Stip	DB	4/17/2014	6/1/2014	1.3, 1.4(a), 1.4(b), 1.16(a)(2), 1.16(d), 8.1(a)(2), 8.4(a)(3)	May 2014
14	13-30 13-62 John P. ECKREM 28 DB Rptr 77	90-day suspension, all but 30 days stayed, 2-year probation	Stip	DB	4/25/2014	7/1/2014	1.5(a), 1.5(c)(3), 1.16(d)	July 2014

**OSB DISPOSITION LIST  
2014**

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
15	Theodore M. ROE SC S062140 28 DB Rptr 87	2-year suspension, all but 6 months stayed, 2-year probation	Stip	Sct	5/8/2014	6/7/2014	1.5(a), 3.1. 3.3(a), 3.3(d), 8.4(a)(3), 8.4(a)(4)	June 2014
16	Peter M. SCHANNAUER 28 DB Rptr 100	Disbarment w/restitution	CC	DB	3/12/2014	5/13/2014	1.1, 1.3, 1.4(a), 1.4(b), 1.15-1(d), 8.1(a)(2)	June 2014
17	Justin E. THRONE 28 DB Rptr 105	1-year suspension, all stayed, 2-year probation	CC	DB	3/25/2014	5/28/2014	8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	Aug/Sept 2014
18	Paige Alina DE MUNIZ 28 DB Rptr 113	30-day suspension	Stip	DB	5/28/2014	6/7/2014	8.4(a)(3)	July 2014
19	Mitchell R. BARKER SC S062139 28 DB Rptr 119	1-year suspension	Stip	Sct	5/29/2014	5/29/2014	1.3, 1.4(a), 1.4(b), 1.7(a)(2), 5.5(a), ORS 9.160	July 2014
20	John P. SALISBURY 28 DB Rptr 128	60-day suspension, all stayed, 1-year probation, upon successful completion of probation, sanction will be reduced to reprimand	Stip	DB	5/29/2014	6/1/2014	1.7(a)	
21	Theodore F. SUMNER	BR 7.1 suspension	--	DB	5/30/2014	5/30/2014		NA
22	Peter M. SCHANNAUER SC S061343 28 DB Rptr 137	Request for review dismissed as moot, TPO final 1-year suspension	CC	Sct	6/12/2014	6/12/2014	1.1, 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 8.1(a)(2), 8.4(a)(3)	December 2014
23	Robert A. BROWNING SC S062293	Form B Resignation	--	Sct	6/12/2014	6/12/2014	1.3, 1.3(a), 1.4(a), 1.4(b), 1.5(a), 1.6(a), 1.7(a), 1.7(a)(2), 1.8(a), 1.15-1(a), 1.15-1(c), 1.16(a)(1), 1.16(c), 1.16(d), 3.3(a)(1), 4.2, 8.1(a)(1), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3), 8.4(a)(4)	Aug/Sept 2014
24	Julie D. SIONE SC S061766	BR 3.5 Reciprocal Discipline Reprimand	RD	Sct	6/12/2014	6/12/2014	8.1(a)(2), 8.4(a)(4)	Aug/Sept 2014
25	Alan K. WOOD	BR 7.1 suspension	--	DB	6/18/2014	6/18/2014		NA
26	W. Blake SIMMS	BR 7.1 suspension	--	DB	6/25/2014	6/25/2014		NA

**OSB DISPOSITION LIST  
2014**

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
27	11-52 Michael L. SPENCER 355 Or 679, 330 P3d 538 (2014) SC S060977 28 DB Rptr 143	30-day suspension	CC	Sct	6/26/2014	8/25/2014	1.8(a)	Aug/Sept 2014
28	14-01 Karl W. KIME SC S062241	BR 3.5 Reciprocal Discipline 1-year suspension	RD	Sct	6/26/2014	6/26/2014	8.4(a)(2), ORS 9.527(2)	Aug/Sept 2014
29	14-51 14-52 14-53 14-54 14-55 14-59 14-60 Steven M. MCCARTHY	BR 7.1 suspension	--	DB	6/27/2014	6/27/2014		NA
30	14-56 14-57 14-58 Justin E. THRONE	BR 7.1 suspension	--	DB	6/30/2014	6/30/2014		NA
31	14-37 Philip A. HINGSON 28 DB Rptr 144	60-day suspension, all stayed, 2-year probation	Stip	DB	7/1/2014	7/1/2014	1.5(a), 8.4(a)(4)	Aug/Sept 2014
32	14-62 Diarmuid Yaphet HOUSTON	BR 7.1 suspension	--	DB	7/3/2014	7/3/2014		NA
33	14-63 David Stanley AMAN	BR 7.1 suspension	--	DB	7/23/2014	7/23/2014		NA
34	14-64 Matthew A. WILSON	BR 7.1 suspension	--	DB	7/23/2014	7/23/2014		NA
35	14-18 B. Todd BAILEY SC S062430	Form B Resignation	--	Sct	8/7/2014	8/7/2014	1.1, 8.4(a)(4)	October 2014
36	14-80 Andrew J. LOPATA	BR 7.1 suspension	--	DB	8/12/2014	8/12/2014		NA
37	12-78 Jeff Wilson RICHARDS 28 DB Rptr 152	90-day suspension	CC	DB	6/20/2014	8/20/2014	1.4(a), 1.16(c), 1.16(d)	October 2014
38	13-119 Brandon G. W. CALHEIM 28 DB Rptr 157	90-day suspension, all but 30 days stayed, 2-year probation	Stip	DB	8/19/2014	8/19/2014	1.8(j), 1.16(a)(1)	November 2014
39	10-60 Daniel J. GATTI SC S061105 356 Or 32, 333 P3d 994 (2014) 28 DB Rptr 164	90-day suspension	CC	Sct	8/21/2014	10/20/2014	1.4(b), 1.7(a)(1), 1.8(g) NG – 8.4(a)(3)	November 2014

**OSB DISPOSITION LIST  
2014**

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
40	13-109 13-110 13-111 13-112 13-113 13-106 Debbe J. VON BLUMENSTEIN SC N004698	BR 3.1 suspension	--	S Ct	8/25/2014	8/25/2014	1.3, 1.4(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(2), 8.4(a)(3), 1.3, 1.4(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(2), 8.4(a)(3), 8.4(a)(4)	NA
41	Jennifer L. PEREZ 26 DB Rptr 166	1-year suspension	CC	DB	6/24/2014	8/26/2014	1.1, 1.3, 1.4(a), 8.1(a)(2), 8.4(a)(3)	November 2014
42	Justin E. THRONE	BR 7.1 suspension	--	DB	9/2/2014	9/2/2014		NA
43	Eric M. BOSSE	BR 7.1 suspension	--	DB	9/2/2014	9/2/2014		NA
44	12-118 12-119 12-120 Eric KAUFMAN 28 DB Rptr 174	Disbarment	CC	DB	7/8/2014	9/9/2014	1.3, 1.4(a), 1.15-1(d), 1.16(d), 8.1(a)(2)	December 2014
45	13-70 Nathan D. SANDERS 28 DB Rptr 183	120-day suspension, w/BR 8.1 reinstatement	Stip	DB	9/5/2014	9/15/2014	3.4(c), 8.4(a)(4)	November 2014
46	13-17 13-18 13-19 13-27 13-28 13-29 13-57 Gary B. BERTONI 28 DB Rptr 196	6-month suspension	Stip	DB	9/9/2014	11/21/2014	1.4(a), 1.4(b), 1.5(c)(3), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(d), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	November 2014
47	14-85 Brett Corey JASPERS 28 DB Rptr 211	Reprimand	Stip	DB	9/10/2014	9/10/2014	3.3(d), 3.5(b), 8.4(a)(4)	October 2014
48	14-01 Karl W. KIME SC S062550	Form B resignation	--	S Ct	9/11/2014	9/11/2014	8.1(a)(1)	November 2014
49	13-04 13-05 13-72 Debbe J. von BLUMENSTEIN 28 DB Rptr 217	2-year suspension	CC	DB	7/17/2014	9/16/2014	1.1, 1.3, 1.4(a), 1.4(b), 1.15-1(a), 1.15-1(c), 1.16(a)(2), 8.1(a)(2), 8.4(a)(4)	November 2014
50	14-94 Jeffrey DICKEY	BR 7.1 suspension	--	DB	9/24/2014	9/24/2014		NA
51	12-143 12-144 Justin E. THRONE 28 DB Rptr 226	Probation revoked-- 1-year suspension	--	DB	10/17/2014	10/27/2014	8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	NA
52	14-95 C. Michael McLEAN SC S062584	BR 3.2 transfer to involuntary inactive status	--	S Ct	10/23/2014	10/23/2014		NA

**OSB DISPOSITION LIST  
2014**

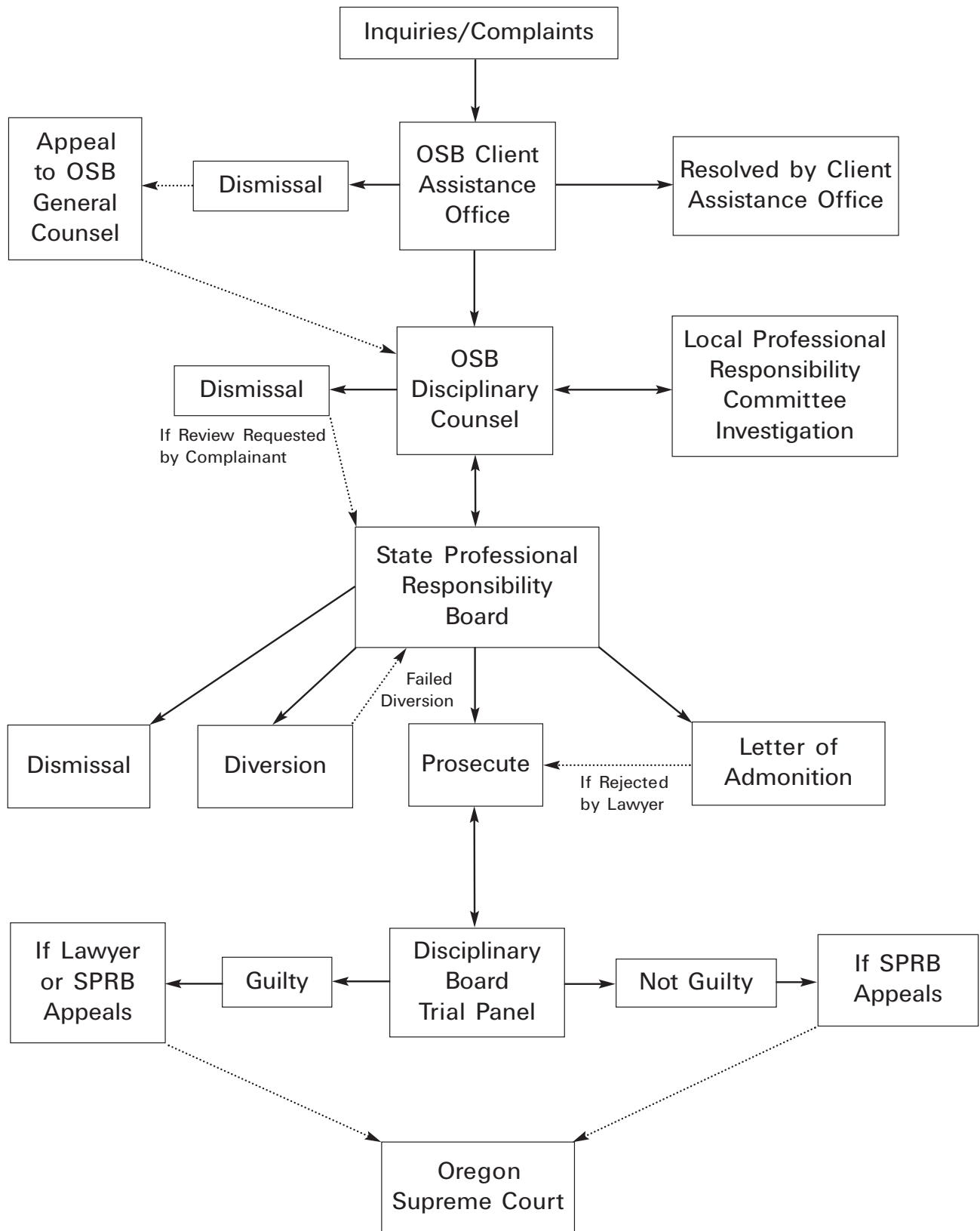
Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
53	14-115 Travis W. HUISMAN	BR 7.1 suspension	--	DB	10/27/2014	10/27/2014		NA
54	14-02 Donald R. SLAYTON 28 DB Rptr 227	120-day suspension, all stayed, 2-year probation	Stip	DB	11/3/2014	11/10/2014	1.4(a), 8.1(a)(2)	December 2014
55	13-49 Jeffrey G. ROBERTSON 28 DB Rptr 237	120-day suspension	Stip	DB	11/4/2014	11/7/2014	1.7(a)(2), 8.4(a)(4)	Feb/Mar 2015
56	14-87 James L. McGEHEE 28 DB Rptr 245	Reprimand	Stip	DB	11/4/2014	11/4/2014	1.3, 1.4(a)	January 2015
57	14-120 Larry WRIGHT	BR 7.1 suspension	--	DB	11/5/2014	11/5/2014		NA
58	12-142 13-98 13-99 Eric EINHORN SC S062307 28 DB Rptr 251	1-year suspension	Stip	S Ct	11/6/2014	12/6/2014	1.1, 1.3, 1.4(a), 1.7(a)(2), 1.15-1(d), 8.1(a)(2)	Feb/Mar 2015
59	14-05 Melissa N. KENNEY 28 DB Rptr 269	30-day suspension	Stip	DB	11/17/2014	1/16/2015	5.5(a), 5.5(b)(2), 7.1	Feb/Mar 2015
60	14-03 14-68 14-69 14-70 14-71 14-72 Sara Lynn ALLEN 28 DB Rptr 275	6-month suspension, all stayed, 3-year probation	Stip	DB	11/17/2014 amended 12/29/2014	11/24/2014	1.3, 1.4(a), 1.4(b), 1.16(c), 1.16(d), 8.1(a)(2)	January 2015
61	14-67 John J. KOLEGO 28 DB Rptr 289	90-day suspension	Stip	DB	11/17/2014	2/1/2015	1-102(A)(2), 8.4(a)(2)	January 2015
62	14-09 14-10 Matthew R. AYLWORTH SC S062572	BR 3.5 Reciprocal Discipline Reprimand	Stip	S Ct	11/20/2014	11/20/2014	1.3, 3.3(a)(3), 5.3(b), 7.1	Feb/Mar 2015
63	14-96 14-97 14-98 14-99 14-100 14-101 Susan R. GERBER SC S062656	BR 3.2 transfer to involuntary inactive status	--	S Ct	11/20/2014	11/20/2014		NA
64	14-74 Foster A. GLASS 28 DB Rptr 295	30-day suspension	Stip	DB	12/1/2014	12/15/2014	8.4(a)(4)	Feb/Mar 2015
65	14-35 14-112 Steven M. CYR SC S062687	BR 3.4 suspension	--	S Ct	12/3/2014	12/3/2014		NA

OSB DISPOSITION LIST  
2014

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
66 13-95 13-96 13-97 14-51 14-52 14-53 14-54 14-55 14-60 14-102 14-135	Steven M. McCarthy SC S062641	Form B resignation	--	Sct	12/11/2014	12/11/2014	1.1, 1.3, 1.4(a), 1.8(a), 1.15-1(a), 1.15-1(d), 1.16(d), 3.3(a)(1), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4), ORS 9.160	Feb/Mar 2015
67 13-20	Daniel H. KOENIG 28 DB Rptr 301	Reprimand	Stip	DB	12/22/2014	12/22/2014	1.3, 1.4(a), 1.4(b), 1.16(a)(1)	Feb/Mar 2015
68 14-73	Scott P. BOWMAN 28 DB Rptr 308	180-day suspension, all but 30 days stayed, 2-year probation	Stip	DB	12/23/2014	2/21/2015	8.4(a)(2)	Feb/Mar 2015
69 13-109 13-110 13-111 13-112 13-113	Debbe J. von BLUMENSTEIN SC S062773	Form B resignation	--	Sct	12/24/2014	12/24/2014	1.3, 1.4(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(2), 8.4(a)(3), 8.4(a)(4)	Feb/Mar 2015
70 14-125	Robert ROSENTHAL 28 DB Rptr 317	Reprimand	Stip	DB	12/30/2014	12/30/2014	8.4(a)(2)	Feb/Mar 2015

# APPENDIX D

## OREGON STATE BAR DISCIPLINARY PROCESS







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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**Memo Date:** June 11, 2015  
**From:** Karen Clevering, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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The following is a list of the activities and events the ONLD conducted since the last BOG meeting:

- The Law Related Education Subcommittee conducted two successful programs, an art contest with a focus on the importance of the Magna Carta for middle school aged students, and an essay contest with a topic of social media and comments becoming criminal activity for high school aged students. These contests encourage young students to learn about the law but also allow for participation state-wide. Although we had contestants from several rural areas in Oregon, our winners were selected from Clackamas, Lane, Marion, Multnomah, and Yamhill Counties. Next time you visit the OSB Center look for the winning art piece located near the reception area.
- The CLE Subcommittee held four brown bag CLE programs in Portland focusing on ethics, eliminating racial bias, bike law, and commercial litigation.
- The Member Services Subcommittee sponsored a social at Mother's Bistro in May and a June social at the Jackknife in Portland.
- Four executive committee members, Ben Eder, Kaori Eder, Joel Sturm, and Andrew Weiner, represented Oregon during the ABA Young Lawyers Division Spring meeting.
- This fall the ONLD will expand our participation in OLIO Orientation by presenting a CLE to lawyer participants. The ONLD is excited to be given an opportunity to strengthen its relationship with the Diversity and Inclusion Department and the Advisory Committee on Diversity and Inclusion.
- The ONLD submitted a self-nomination for the ABA Young Lawyers Section Member Services Award. The nomination highlighted phase one of the ONLD's Financial Literacy Project. The project involved the creation of our "Student Loan Repayment" website and hosting a seminar with a noted local student loan repayment expert.
- The ONLD submitted their ABA Young Lawyers Division resolution for debate at the Annual Meeting this fall. We continue to solicit feedback and reach out for support from other ABA organizations who are interested in co-sponsoring the resolution.
- Colin Andries, ONLD Chair-Elect, and myself participated in the new lawyer stakeholder meeting coordinated by Terry Wright. The discussion provided a good opportunity for an exchange of ideas and we appreciate the opportunity to participate.

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
4/30/2015**

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4	Primary Program Operating Expenses
5	Excess Program Statement of Revenues, Expenses and Changes in Net Position
6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Statement of Net Position  
4/30/2015**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$3,452,235.03	\$2,060,405.41
Investments at Fair Value	54,371,714.88	52,210,174.85
Assessment Installment Receivable	6,001,503.25	6,058,529.08
Due from Reinsurers	826,463.83	51,421.37
Other Current Assets	98,609.22	78,279.11
Net Fixed Assets	841,610.53	861,880.81
Claim Receivables	70,385.36	35,426.75
Other Long Term Assets	<u>7,089.44</u>	<u>9,825.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$65,669,611.54</u></b>	<b><u>\$61,365,942.38</u></b>
 <u>LIABILITIES AND FUND POSITION</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$213,331.81	\$150,991.40
Due to Reinsurers	\$696,914.24	\$966,220.95
Liability for Compensated Absences	354,702.17	370,817.99
Liability for Indemnity	12,864,460.03	11,341,313.23
Liability for Claim Expense	15,298,278.20	14,720,589.62
Liability for Future ERC Claims	2,700,000.00	2,400,000.00
Liability for Suspense Files	1,500,000.00	1,500,000.00
Liability for Future Claims Administration (AOE)	2,500,000.00	2,300,000.00
Excess Ceding Commission Allocated for Rest of Year	507,511.95	538,236.90
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,296,302.45</u>	<u>16,517,621.78</u>
<b>Total Liabilities</b>	<b><u>\$52,931,500.85</u></b>	<b><u>\$50,805,791.87</u></b>
<b>Change in Net Position:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$10,928,972.39	\$9,270,287.61
Year to Date Net Income (Loss)	<u>1,809,138.30</u>	<u>1,289,862.90</u>
<b>Net Position</b>	<b><u>\$12,738,110.69</u></b>	<b><u>\$10,560,150.51</u></b>
<b>TOTAL LIABILITIES AND FUND POSITION</b>	<b><u>\$65,669,611.54</u></b>	<b><u>\$61,365,942.38</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
4 Months Ended 4/30/2015**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$8,037,026.89	\$8,289,166.68	\$252,139.79	\$8,148,014.56	\$24,867,500.00
Installment Service Charge	111,156.33	111,666.68	510.35	110,796.33	335,000.00
Other Income	22,050.00	0.00	(22,050.00)	30,100.00	0.00
Investment Return	<u>1,558,026.68</u>	<u>824,294.00</u>	<u>(733,732.68)</u>	<u>1,058,838.40</u>	<u>2,472,882.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$9,728,259.90</u></b>	<b><u>\$9,225,127.36</u></b>	<b><u>(\$503,132.54)</u></b>	<b><u>\$9,347,749.29</u></b>	<b><u>\$27,675,382.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$5,691,000.00			\$5,964,000.00	
Coverage Opinions	17,354.52			25,767.21	
General Expense	38,018.76			7,922.08	
Less Recoveries & Contributions	(44.17)			(68.71)	
Budget for Claims Expense	<u>        </u>	<u>\$6,820,800.00</u>	<u>        </u>	<u>        </u>	<u>\$20,462,400.00</u>
<b>Total Provision For Claims</b>	<b><u>\$5,746,329.11</u></b>	<b><u>\$6,820,800.00</u></b>	<b><u>\$1,074,470.89</u></b>	<b><u>\$5,997,620.58</u></b>	<b><u>\$20,462,400.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$786,924.43	\$855,138.00	\$68,213.57	\$776,008.46	\$2,565,413.93
Accounting Department	246,954.32	267,329.64	20,375.32	207,872.66	801,988.75
Loss Prevention Department	642,281.93	735,787.64	93,505.71	569,620.18	2,207,362.28
Claims Department	782,940.27	894,479.64	111,539.37	860,264.82	2,683,438.19
Allocated to Excess Program	<u>(316,138.60)</u>	<u>(316,138.60)</u>	<u>0.00</u>	<u>(373,596.32)</u>	<u>(948,416.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$2,142,962.35</u></b>	<b><u>\$2,436,596.32</u></b>	<b><u>\$293,633.97</u></b>	<b><u>\$2,040,169.80</u></b>	<b><u>\$7,309,787.15</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$81,712.32	\$81,712.32	\$0.00	\$245,137.00
Depreciation and Amortization	\$54,168.94	\$56,600.00	\$2,431.06	\$54,238.08	\$169,800.00
Allocated Depreciation	<u>(5,660.00)</u>	<u>(5,660.00)</u>	<u>0.00</u>	<u>(8,122.00)</u>	<u>(16,980.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$7,937,800.40</u></b>	<b><u>\$9,390,048.64</u></b>	<b><u>\$1,452,248.24</u></b>	<b><u>\$8,083,906.46</u></b>	<b><u>\$28,170,144.15</u></b>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$1,791,229.50</u></b>	<b><u>(\$165,587.96)</u></b>	<b><u>(\$1,956,817.46)</u></b>	<b><u>\$1,263,842.83</u></b>	<b><u>(\$496,762.15)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
4 Months Ended 4/30/2015**

<u>EXPENSE:</u>	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$324,434.80	\$1,295,201.12	\$1,462,605.96	\$167,404.84	\$1,368,044.42	\$4,387,817.84
Benefits and Payroll Taxes	119,861.25	523,365.08	551,202.08	27,837.00	505,001.95	1,653,606.07
Investment Services	0.00	9,560.00	13,333.32	3,773.32	6,753.75	40,000.00
Legal Services	3,351.23	10,194.92	3,333.32	(6,861.60)	0.00	10,000.00
Financial Audit Services	15,000.00	15,000.00	8,666.68	(6,333.32)	13,000.00	26,000.00
Actuarial Services	0.00	11,262.50	9,766.68	(1,495.82)	11,340.00	29,300.00
Information Services	4,524.00	14,519.50	37,000.00	22,480.50	11,656.67	111,000.00
Document Scanning Services	1,282.09	1,595.81	21,666.68	20,070.87	0.00	65,000.00
Other Professional Services	19,431.37	49,418.59	33,497.16	(15,921.43)	31,884.62	100,491.50
Staff Travel	594.72	3,271.71	10,216.72	6,945.01	3,093.93	30,650.00
Board Travel	2,151.53	10,290.07	15,383.32	5,093.25	4,370.38	46,150.00
NABRICO	250.00	677.75	6,216.68	5,538.93	0.00	18,650.00
Training	3,045.59	5,918.38	7,333.36	1,414.98	9,927.36	22,000.00
Rent	43,418.92	172,713.18	173,355.00	641.82	170,160.74	520,065.00
Printing and Supplies	5,585.85	23,070.01	26,666.64	3,596.63	27,820.86	80,000.00
Postage and Delivery	1,940.79	9,617.62	9,450.00	(167.62)	8,029.14	28,350.00
Equipment Rent & Maintenance	2,024.51	15,331.65	16,500.00	1,168.35	14,666.38	49,500.00
Telephone	4,687.03	16,122.76	16,520.00	397.24	14,863.35	49,560.00
L P Programs (less Salary & Benefits)	34,686.98	119,374.92	153,831.52	34,456.60	101,583.12	461,494.00
Defense Panel Training	1,029.52	1,029.52	21,640.84	20,611.32	0.00	64,922.30
Bar Books Grant	16,666.67	66,666.68	66,666.68	0.00	66,666.68	200,000.00
Insurance	4,763.75	14,251.79	13,964.80	(286.99)	8,221.00	41,894.44
Library	185.00	6,329.45	13,000.00	6,670.55	7,834.52	39,000.00
Subscriptions, Memberships & Other	5,954.46	60,717.04	53,584.00	(7,133.04)	20,437.56	160,752.00
Allocated to Excess Program	<u>(79,034.65)</u>	<u>(316,138.60)</u>	<u>(316,138.60)</u>	<u>0.00</u>	<u>(373,596.32)</u>	<u>(948,416.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$535,835.41</u></b>	<b><u>\$2,139,361.45</u></b>	<b><u>\$2,429,262.84</u></b>	<b><u>\$289,901.39</u></b>	<b><u>\$2,031,760.11</u></b>	<b><u>\$7,287,787.15</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
4 Months Ended 4/30/2015**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$253,755.98	\$253,333.32	(\$422.66)	\$269,118.45	\$760,000.00
Prior Year Adj. (Net of Reins.)	887.07	0.00	(887.07)	3,446.70	0.00
Installment Service Charge	40,447.00	14,000.00	(26,447.00)	39,808.00	42,000.00
Investment Return	<u>62,657.85</u>	<u>62,043.68</u>	<u>(614.17)</u>	<u>135,357.42</u>	<u>186,131.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$357,747.90</u></b>	<b><u>\$329,377.00</u></b>	<b><u>(\$28,370.90)</u></b>	<b><u>\$447,730.57</u></b>	<b><u>\$988,131.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$334,179.10	\$332,971.96	(\$1,207.14)	\$413,588.50	\$998,916.00
Allocated Depreciation	<u>\$5,660.00</u>	<u>\$5,660.00</u>	<u>\$0.00</u>	<u>\$8,122.00</u>	<u>\$16,980.00</u>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$17,908.80</u></b>	<b><u>(\$9,254.96)</u></b>	<b><u>(\$27,163.76)</u></b>	<b><u>\$26,020.07</u></b>	<b><u>(\$27,765.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
4 Months Ended 4/30/2015**

	<u>CURRENT</u> <u>MONTH</u>	YEAR <u>TO DATE</u> <u>ACTUAL</u>	YEAR <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	YEAR <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$44,559.08	\$178,236.32	\$178,236.32	\$0.00	\$232,764.40	\$534,709.00
Benefits and Payroll Taxes	15,961.66	63,846.64	63,846.68	0.04	86,209.56	191,540.00
Investment Services	0.00	440.00	833.32	393.32	746.25	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	18,513.91	74,055.64	74,055.64	0.00	90,135.36	222,167.00
Reinsurance Placement & Travel	1,411.47	2,103.55	8,333.32	6,229.77	1,432.93	25,000.00
Training	0.00	0.00	166.68	166.68	0.00	500.00
Printing and Mailing	491.33	3,713.65	1,833.32	(1,880.33)	0.00	5,500.00
Program Promotion	795.00	11,484.00	5,000.00	(6,484.00)	2,300.00	15,000.00
Other Professional Services	0.00	299.30	666.68	367.38	0.00	2,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>TOTAL EXPENSE</b>	<b><u>\$81,732.45</u></b>	<b><u>\$334,179.10</u></b>	<b><u>\$332,971.96</u></b>	<b><u>(\$1,207.14)</u></b>	<b><u>\$413,588.50</u></b>	<b><u>\$998,916.00</u></b>



**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
4 Months Ended 4/30/2015**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$13,188.65	\$45,494.88	\$13,367.38	\$50,551.95
Intermediate Term Bond Funds	36,660.07	131,998.35	8,204.44	75,279.68
Domestic Common Stock Funds	0.00	49,593.20	4,226.00	118,321.97
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	42,662.42	0.00	38,384.18
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>33,385.03</u>	<u>0.00</u>	<u>97,934.18</u>
<b>Total Dividends and Interest</b>	<b><u>\$49,848.72</u></b>	<b><u>\$303,133.88</u></b>	<b><u>\$25,797.82</u></b>	<b><u>\$380,471.96</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	(\$7,158.95)	(\$7,734.74)	\$19,262.41	\$44,056.43
Intermediate Term Bond Funds	(35,161.99)	56,072.64	41,930.03	154,584.37
Domestic Common Stock Funds	62,336.12	198,388.88	(18,893.99)	62,407.50
International Equity Fund	282,541.75	733,813.85	45,358.03	198,008.05
Real Estate	0.00	123,392.54	0.00	58,342.79
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>223,571.98</u>	<u>213,617.48</u>	<u>89,324.01</u>	<u>296,324.72</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$526,128.91</u></b>	<b><u>\$1,317,550.65</u></b>	<b><u>\$176,980.49</u></b>	<b><u>\$813,723.86</u></b>
<b>TOTAL RETURN</b>	<b><u>\$575,977.63</u></b>	<b><u>\$1,620,684.53</u></b>	<b><u>\$202,778.31</u></b>	<b><u>\$1,194,195.82</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$2,278.09	\$12,487.04	\$1,929.68	\$37,523.84
Gain (Loss) in Fair Value	<u>24,044.09</u>	<u>50,170.81</u>	<u>13,238.14</u>	<u>97,833.58</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$26,322.18</u></b>	<b><u>\$62,657.85</u></b>	<b><u>\$15,167.82</u></b>	<b><u>\$135,357.42</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
4/30/2015**

**ASSETS**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$373,414.25	\$1,125,134.34
Assessment Installment Receivable	555,661.25	631,391.20
Due from Reinsurers	826,463.83	51,421.37
Investments at Fair Value	<u>1,949,016.02</u>	<u>2,451,732.64</u>
<b>TOTAL ASSETS</b>	<b><u>\$3,704,555.35</u></b>	<b><u>\$4,259,679.55</u></b>

**LIABILITIES AND FUND EQUITY**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable & Refunds Payable	\$1,408.07	\$40.60
Due to Primary Fund	\$0.00	\$20,589.56
Due to Reinsurers	696,914.24	966,220.95
Ceding Commission Allocated for Remainder of Year	<u>507,511.95</u>	<u>538,236.90</u>
<b>Total Liabilities</b>	<b><u>\$1,205,834.26</u></b>	<b><u>\$1,525,088.01</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of Year	\$2,708,571.47	\$2,708,571.47
Year to Date Net Income (Loss)	<u>17,908.80</u>	<u>26,020.07</u>
<b>Total Fund Equity</b>	<b><u>\$2,726,480.27</u></b>	<b><u>\$2,734,591.54</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$3,932,314.53</u></b>	<b><u>\$4,259,679.55</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Balance Sheet  
4/30/2015**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$3,078,820.78	\$935,271.07
Investments at Fair Value	52,422,698.86	49,758,442.21
Assessment Installment Receivable	5,445,842.00	5,427,137.88
Due From Excess Fund	0.00	20,589.56
Other Current Assets	98,609.22	57,689.55
Net Fixed Assets	841,610.53	861,880.81
Claim Receivables	70,385.36	35,426.75
Other Long Term Assets	<u>7,089.44</u>	<u>9,825.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$61,965,056.19</u></b>	<b><u>\$57,106,262.83</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$211,923.74	\$130,361.24
Liability for Compensated Absences	354,702.17	370,817.99
Liability for Indemnity	12,864,460.03	11,341,313.23
Liability for Claim Expense	15,298,278.20	14,720,589.62
Liability for Future ERC Claims	2,700,000.00	2,400,000.00
Liability for Suspense Files	1,500,000.00	1,500,000.00
Liability for Future Claims Administration (ULAE)	2,500,000.00	2,300,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>16,296,302.45</u>	<u>16,517,621.78</u>
<b>Total Liabilities</b>	<b><u>\$51,725,666.59</u></b>	<b><u>\$49,280,703.86</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$8,220,400.92	\$6,561,716.14
Year to Date Net Income (Loss)	<u>1,791,229.50</u>	<u>1,263,842.83</u>
<b>Total Fund Equity</b>	<b><u>\$10,011,630.42</u></b>	<b><u>\$7,825,558.97</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$61,737,297.01</u></b>	<b><u>\$57,106,262.83</u></b>

## MEMORANDUM

To: PLF Board of Directors  
From: Emilee Preble  
Date: May 29, 2015  
Re: Excess Committee Report

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### I. Introduction

Over the past four years the PLF Excess Program has lost a steady number of firms/attorneys to the commercial insurance market. Many of these firms present excellent risk profiles – ones that were a benefit to our overall book of business. The chief reason given for a firm's decision to move to a commercial carrier is a more competitive price. To address the issue of attrition, PLF staff are working to develop a better rating and pricing scheme for the Excess Program for 2016. This new rating scheme will more closely mimic the way the commercial insurance market prices firms for excess coverage.

Since its inception in 1992, the Excess Program has approached cost of premium in much the same way as the Primary Program - one-size-fits-all. The only difference is that the Excess Program used a Class 1 price per attorney for typical risks, and a Class 2 price per attorney for greater risks (typically due to practice area and claims experience). Over the past five years, a significant number of small and mid-sized firms have left PLF Excess coverage for insurers in the commercial market – primarily due to cost. In short, the PLF Excess Program is not competitive on price for small and midsized firms using only our historic Class 1 and Class 2 rates.

### II. Approach

#### *a. Determine Underwriting & Rating Criteria*

Over the past several months, PLF staff worked to develop new rating and underwriting criteria that would generate premiums more tailored to a firm's risk profile. This process began with detailed research and review of our competitor's rating schemes made public on RateFilings.com (commercial insurers are required to make public their rating documents in order to operate in the state).

Sample rate calculations and applications from our top competitors were reviewed and their underwriting criteria compared against our own application. What we found was that our current application is quite comprehensive and fairly standard in the marketplace, but all of our competitors were using a much more robust underwriting criteria and rating to determine price. We reviewed each of the rating schemes in detail and ultimately elected to model our new system after another NABRICO (National Association of Bar Related Insurance Companies) carrier, ALPS.

Using the ALPS formula as a guide, we have developed the following rating criteria:

**To Calculate Premium for Each Attorney in Firm:**

- (1) Base Premium per Attorney<sup>1</sup>
- (2) CLE Factor
- (3) (1) x {1 + (2)}
- (4) Part-time Factor
- (5) Attorney's Individual Premium = (3) x {1+(4)}

**To Calculate Premium for Firm:**

- (6) (a) Sum of all Attorneys' Individual Premiums
- (b) Practice Area Factor
- (7) Firm Claim Profile
- (1) x Applicable Claims Surcharge
- (8) Initial Firm Premium
- (6) + (7)
- (9) Firm Size Factor
- (10) Ratio of Non-Attorneys to Attorneys Factor
- (11) *RISC Visit Factor*<sup>2</sup>
- (12) Scheduled Risk Rating
- (13) Base Firm Premium @ \$700k limits
- (8) x {1.00 + (9) + (10) + (11) + (12)}
- (14) Increased Limit Factor for Coverage Limit up to \$9.7M
- (15) *Deductible Factor*<sup>3</sup>
- (16) Scheduled Risk Rating and Continuity Credit
- (17) Firm Premium @ Insured Limits = (13) x {1+(14) + (15)}

To see a complete list of the proposed weighting ascribed to the above factors, see Appendix A.

*b. Run 2015 Book Through Rating Concept Model*

In order to adequately test the new rating model, to be sure that it would do what we hoped, we knew that we needed to run our entire book of business through the proposed new system. The AON Benfield team in London was able to lend us a hand in creating a comprehensive and robust Excel spreadsheet from which we could run rough premium calculations for our current covered firms under the new system. Though this process is not yet complete (we anticipate having full data in June), we are encouraged by the early results. It appears that most solo and small firms will see little to positive change in their premiums, while some of our midsize and larger firms with low risk profiles will see a decrease in overall premium. Since this is the group of firms who were impacted the hardest by our former Class 1/Class 2 premium structure, we are optimistic that our efforts will be successful. We will continue to keep the Board informed as we refine and finish this analysis.

*c. Build New Database Program for 2016 Coverage Year*

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<sup>1</sup> Base rate is calculated using the cost of claims and operations in a given year allocated across the number of covered attorneys in the same year.

<sup>2</sup> Factor was included in ALPS rating model, we are contemplating not using for 2016, but may discuss use in the future.

<sup>3</sup> Factor was included in ALPS rating model, we are contemplating not using for 2016, but may discuss use in the future.

Implementing a new underwriting and rating scheme requires a complete overhaul of our current underwriting database program. Over the past few months, our in house database developer and a consultant have been working to build a new program to house the framework for the anticipated ratings changes for 2016. The application piece is nearly complete, and next steps will include new underwriting reports, quote/declarations program, billing system, and general reports. We are on target to have these programming changes complete by late summer 2015.

To see a draft of the 2016 Excess Application, including new questions and cross references to the rating formula detailed in Section II.a (above), please see Appendix B.

A copy of PLF Policies Section 7 is included as Appendix C.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2015-11 GERBER (Huntington)—Request for BOG Review

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### Action Recommended

Consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim.

### Discussion

Claimant Huntington retained Susan Gerber in October 2013 to pursue post-conviction relief from his criminal conviction. Huntington's mother gave Gerber \$5,000 as an "earned on receipt" fixed fee for Gerber's services and \$2,000 for the services of an investigator.

Huntington signed Gerber's fee agreement<sup>1</sup> on October 15, 2013. On November 15, Huntington filed a *pro se* petition for post-conviction relief, accompanied by his Affidavit of Indigency. On the same day, Gerber filed a notice of representation; the court then issued a limited judgment noting that Gerber was retained counsel and giving judgment to the state for the filing fee of \$252.

Shortly after she was retained by Huntington, Gerber left the Rader firm. Staff has confirmed that the firm disbursed to Gerber an amount equal to the unearned fees on her pending cases; in the newer cases, the entire amount of the prepaid fee was distributed to Gerber.

The state moved for an extension of time to respond to the *pro se* petition so that it could respond to the amended petition that would be filed by Gerber. When Gerber failed to timely file the amended petition, the court dismissed the *pro se* petition on January 29, 2014. On February 3, Gerber moved to vacate the dismissal, arguing that the local court rules allowed her 180 days to file her amended petition. The court granted the motion and Gerber filed an amended petition in early March.

The state moved to dismiss on April 2, 2014. Gerber did not respond, and on May 1, the court again dismissed the petition. The court also wrote to the bar expressing "grave concerns" about Gerber's performance. Huntington had no further contact with Gerber. She has not accounted for nor returned any of the money paid on Huntington's behalf.

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<sup>1</sup> The agreement was with the firm of Rader, Stoddard and Perez, where Gerber was employed at the time.





RECEIVED

5-27-2015  
Wed

JUN 02 2015

Oregon State Bar  
Executive Director

Lawyer Susan R. Gerber

Claim # 2015-11

Sylvia E. Stevens

I am Requesting a BOARD Review on my claim against Susan R. Gerber, SHE HAS Barely PROVIDED any Service For me and THE work SHE did START was never Finished when SHE went on leave, as For passing IT To another lawyer, Vickie Vernon, SHE didnt do any work Towards my case before SHE walked OFF my case in March of 2015, MRS Gerber and MRS. Vernon Had an LLC Together when my case was Handed over To Her.

They BOTH lead me on with what They were going To do in THE courts with my case with no Results To Show me, MRS. Gerber got my case delayed From March 2014 Till October 2014 For not Tracking and Forwarding Her mail when SHE moved and started a new Firm, SHE Took what SHE could get out of my Family, Has lied and lead us on For over a year, Has not Progressed my case in any way Towards any sort of completion, SO please Reconsider This claim, SHE Took THE money From a Fixed income Family That is still paying IT OFF with nothing To Show For, MRS Gerber passed IT To a lawyer That Had no Business To Be working on PEN cases, and most clients That got Handed over To MRS Vernon Have Fired Her For not doing anything, in my case SHE was going To concede most of my case To THE DA without even Telling me of Her plans.

WILLIAM ELLIOTT  
General Counsel

OREGON STATE BAR  
CLIENT SECURITY FUND

REPORT TO CSF COMMITTEE RE:

APPLICATION OF  
ANTHONY HUNTINGTON, EVANGELYN HUNTINGTON

May 12, 2015

**Background**

Anthony Huntington is currently incarcerated at the Snake River Correctional Institution serving a 100 month sentence for Sodomy I. His conviction was affirmed by the Court of Appeals, and review was denied by the Supreme Court. Further details concerning Mr. Huntington's case are immaterial here. His earliest release date is February 23, 2018.

Anthony Huntington and his mother, Evangelyn Huntington retained attorney Susan R. Gerber for representation in a post-conviction relief proceeding. On October 9, 2013 Evangelyn paid attorney Gerber a total of \$7,000.00 by credit card. Exhibit 1. This sum was for two purposes, (1) \$5,000.00 non refundable, earned upon receipt flat fee for attorney services, and (2) \$2,000.00 for the services of investigator Brian Holmes. Gerber signed the retainer agreement October 10, Anthony signed it October 15. Exhibit 2. That same day, Mr. Huntington signed an Affidavit of Indigency.

On November 5, 2013 Anthony Huntington file a *pro se* Petition for Post Conviction Relief and his Affidavit of Indigency. The same day, Gerber filed a notice of representation for Mr. Huntington. On November 6 the court signed a form limited judgment noting that Susan Gerber was *retained* counsel for Mr. Huntington, and giving judgment to the state for Mr. Huntington's \$252 filing fee.

The state moved for extension of time to respond to Mr. Huntington's *pro se* petition on the grounds that since he was represented by Ms. Gerber, and his petition was fatally defective, Ms. Gerber would be filing an amended petition. Ms. Gerber did not timely file an amended petition. The state moved to dismiss Mr. Huntington's *pro se* petition to which Ms. Gerber failed to respond. The court dismissed the petition by order dated January 29, 2014. On February 3 Gerber filed a motion to vacate the dismissal citing a local rule, and conversation with the court clerk confirming that Malheur County local rule 4.101(1), permitting *appointed* counsel 180 days to file an amended petition, applied to *retained* counsel as well. On February 5, the court granted the motion to vacate the dismissal and granted Gerber 30 days to file an amended petition. Gerber filed an amended petition March 10.

On April 2 the state moved to dismiss six claims for relief in the petition. Gerber did not respond. The court dismissed the petition on May 1. The same day, the court sent a letter to OSB disciplinary counsel Susan Cournoyer briefly noting Ms. Gerber's failures to meet deadlines and expressing "grave concerns regarding her performance". Thereafter, Ms. Gerber essentially

disappeared. She has not accounted for, nor returned any of the Huntington money. Email traffic between Evangelyn Huntington and investigator Brian Holmes confirms that Mr. Holmes was never paid. Exhibit 3.

Disciplinary counsel investigated several complaints about Ms. Gerber. Her counsel responded to the Bar's questions on July 3 advising that Ms. Gerber suffered from a complex of mental health problems that impinged on her ability to practice law in late 2013 and early 2014. She also offered various exculpatory excuses for her conduct in the Huntington matter stating (1) she relied on the clerk's reading of local rule 4.101(1) for not timely filing an amended petition, and (2) that she never received the state's motion to dismiss the amended petition.

According to Evangelyn, Mr. Huntington's post conviction relief case is alive and being handled by appointed counsel.

### Discussion and recommendation.

This claim should be analyzed in two parts. First, the claim for return of \$5,000 fees paid to Gerber for legal service, and second, the advanced cost of \$2,000 payed to Gerber for investigative services.

#### The fee claim.

Client Security Fund Rule 2.2.3 provides (with emphasis added):

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

Rule 2.2.4 provides:

In the event that a *client is provided equivalent legal services* by another lawyer *without cost* to the client, the legal fee paid to the predecessor lawyer *will not be eligible for reimbursement*, except in extraordinary circumstances.

These rules preclude reimbursement of the attorney fee portion of the Huntington claim. First, Ms. Graber did, in fact, provide legal services. She got the court to vacate its dismissal of Mr. Huntington's *pro se* petition. Ultimately, she filed a "formal" post conviction relief petition with exhibits including a 700+ page trial transcript. Clearly, she did sufficient investigation/review to be able to draft the petition. This writer cannot say that the work was "minimal or insignificant".

Second, Mr. Huntington is now prosecuting his post conviction relief proceeding with appointed counsel. He is receiving "equivalent legal services" (probably much better quality) "without cost". Rule 2.2.4 bars reimbursement of Gerber's fee.


**The advanced cost for investigator's fee.**

Ms. Gerber took \$2,000 to pay an investigator. She did not pay any investigator, has not accounted for the money and refuses to refund it. Investigator Brian Holmes's April 6, 2015 email to Evangelyn states, "She [Gerber] got the retainer and had the state pay the investigative fees." True or not, failure to account for or return the investigator fee qualifies as "dishonest conduct" pursuant to Rule 1.8.

**Recommendation.**

The committee should pay \$2,000 to Evangelyn Huntington, and deny reimbursement for the attorney fees. The Bar should take assignments of claims from both Anthony and Evangelyn Huntington.

Respectfully submitted,



Richard H. Braun

Payments

Orders

Deposits

Items

Business Settings

3817

\$7,000.00

**\$6,754.85**

\$7,000.00 original  
- \$245.15 fees (3.50% + \$0.15)  
(keyed in)

The following receipt was sent to:  
V\*\*\*\*@aol.com

Resend receipt

Issue refund

### Gerber

1229 E. Lone Shore Drive, Eagle, ID 83616  
503-830-7360

Oct 9, 2013 at 10:36am

Receipt #9VCz

Custom Amount

**\$7,000.00**

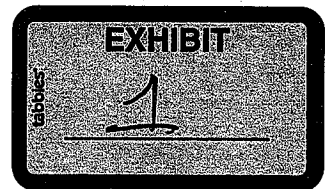
**Total**

**\$7,000.00**



3817

**\$7,000.00**



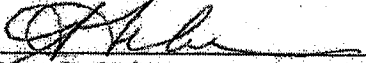
# RADER, TODDARD & PLREZ, P.C.

Attorneys at Law

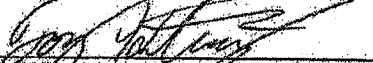
## EARNED ON RECEIPT RETAINER AGREEMENT

THIS RETAINER AGREEMENT ("Agreement") is made this 10<sup>th</sup> day of October, 2013, between Anthony Huntington, "Client" and Vangie Huntington, "Client's Representative and Susan R. Gerber, Attorney at Law, hereinafter referred to as "Attorney."

1. Client agrees to employ Attorney for representation in a legal matter in connection with a Malheur County Post-Conviction case.
2. Attorney has consented to accept such employment and agrees to render the services required of her as Attorney by this Agreement on the terms and conditions herein stated. Client agrees to cooperate fully with Attorney and others working on Client's case by keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments. Client also agrees to keep Attorney informed of any change of address or telephone number within five (5) days of the change.
3. The fee for legal services on behalf of Client shall be Client's sole responsibility and shall be a flat fee of \$5000.00, earned upon receipt and non-refundable, plus any expenses and costs incurred on Client's behalf. The earned upon receipt fee will not be deposited into the Attorney's trust account. The client may discharge the lawyer at any time. In the event the client discharges the Attorney, the client may be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed. The fee for the complete services of investigator Brian Holmes is \$2000.00 and client has paid that amount in full.
4. Client has deposited with Attorney the sum of \$7000.00 and has paid the earned upon receipt attorney retainer in full and the investigator's flat fee in full. Attorney will provide Client with a monthly statement of fees, costs, and expenses. Client is responsible for paying all fees, costs, and expenses in excess of the flat fee. Examples of these types of expenses include fees for deposition transcript copies and the filing fee associated with the filing of a petition for post-conviction relief. The flat fee retainer will and does cover all attorney time and also covers completely the services of the attorney's investigator.
5. Attorney reserves the right to withdraw from further representation of Client at any time only upon reasonable written notice to Client at Client's last known mailing address and only if a reasonable basis to do so exists.
6. Attorney may appoint another attorney to assist with the closure of Attorney's law office in the event of Attorney's death, disability, impairment, or incapacity. In such event, Client agrees that the assisting attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law office.
7. Attorney will send Client information and correspondence throughout the case. These copies will be Client's file copies. Attorney will also keep the information in Attorney's file. When Attorney has completed all the legal work necessary for Client's case, Attorney will close Attorney's file and return original documents to Client. Attorney will then store the file for approximately 10 years. Attorney will destroy the file after that period of time.
8. Client acknowledges reading a copy of this Agreement and consents to its terms.

  
Susan R. Gerber  
Attorney at Law

Date: 10-10-13

  
Vangie Huntington  
Anthony Huntington  
Client/Client's representative

Date: 10-15-13

EXHIBIT

2

From: 5033121445 <5033121445@vzwpix.com>

To: vangieh898 <vangieh898@aol.com>

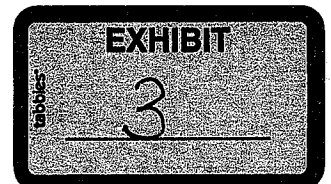
Subject: Brian Holmes retainer

Date: Mon, Apr 6, 2015 7:41 pm

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Fwd: Brian did Susan pay you 2k out of the money I gave her?

Holmes Text



**From:** 5033121445 <5033121445@vtext.com>  
**To:** vangieh898 <vangieh898@aol.com>  
**Subject:** Fwd:Nope not a dime  
**Date:** Mon, Apr 6, 2015 7:46 pm

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Fwd:Nope not a dime



**From:** 5033121445 <5033121445@vtext.com>

**To:** vangieh898 <vangieh898@aol.com>

**Subject:** Fwd:I am filing the bar complaint and noticed & re...

**Date:** Mon, Apr 6, 2015 7:47 pm

---

Fwd:I am filing the bar complaint and noticed & remembered that in the retainer agreement she specifically states that you received 2k.

**From:** 5033121445 <5033121445@vtext.com>

**To:** vangieh898 <vangieh898@aol.com>

**Subject:** Fwd:She got the retainer and had the state pay in...

**Date:** Mon, Apr 6, 2015 7:40 pm

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Fwd:She got the retainer and had the state pay investigative fees

**From:** 5033121445 <5033121445@vtext.com>

**To:** vangieh898 <vangieh898@aol.com>

**Subject:** Fwd:How can she say in the retainer that you Brian...

**Date:** Mon, Apr 6, 2015 7:40 pm

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Fwd:How can she say in the retainer that you Brian Holmes got the 2k and not give it to you? Wonder how many others she did that too...

**From:** 5033121445 <5033121445@vtext.com>  
**To:** vangieh898 <vangieh898@aol.com>  
**Subject:** Fwd:I never seen the retainer but with her nothing...  
**Date:** Mon, Apr 6, 2015 7:50 pm

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Fwd:I never seen the retainer but with her nothing surprises me anymore

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. 2015-14 WEBB (Godier)

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### Action Recommended

Review the CSF Committee's recommendation to award \$45,000 to the Godier.

### Discussion

Godier hired West Linn attorney Sandy Webb in November 2014 to represent him in a medical malpractice claim on a contingent fee basis. Godier and Webb agreed that, in addition to reimbursement of expenses, Webb would receive 33% of any pre-trial settlement, or 40% of a trial award.

In December 2014, Webb negotiated a settlement with one of the defendants for \$100,000. She deposited the settlement funds into her trust account and immediately transferred \$6,000 to Godier. Approximately 10 days later, Webb sent Godier a check for \$46,000 as the balance of his share of the settlement proceeds, but it bounced.

Based on emails between Godier and Webb about the bounced check, it appears Webb calculated Godier's share as follows:

Settlement	100,000
Webb's fees & costs	<u>(48,000)</u>
Godier's share	52,000
Initial distribution	<u>(6,000)</u>
Balance	46,000

Webb never provided Godier with a breakdown of the costs.<sup>1</sup> When the first \$46,000 check bounced, Webb told Godier she had inadvertently paid trial fees from trust rather than her business account, leaving it \$675 short. She promised to cover the shortfall in her trust account and send another check; that one too was returned NSF.<sup>2</sup> By the end of January, Webb was no longer communicating with Godier.

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<sup>1</sup> Webb's 33% fee was \$33,333, indicating she collected \$14,457 in unidentified costs.

<sup>2</sup> Trust account records obtained by DCO reflect that on the same day that she deposited Godier's settlement proceeds, she withdrew a total of \$94,550. Five days later she wrote a check for \$6,000 (first payment to Godier). Two other checks were also written within a few days totaling \$8,000. We have no information as to what they were for. The net result is that Webb sent the \$46,000 check when she had only a little more than \$1200 in the account.

In response to Godier's continuing demands for his funds, Webb's husband sent Godier \$1000. Godier states he is unsure of what he is really owed, but has not offered any evidence that the costs claimed by Webb were not legitimate.

There are currently four matters pending against Webb in DCO. In addition to a complaint based on this CSF matter, there are three trust account overdraft matters.

The CSF Committee found this claim eligible for an award of \$45,000. The Committee also voted to waive the requirement that Godier obtain a judgment against Webb on the ground that Godier is of limited means and a judgment against Webb is likely uncollectible at this time. It is not uncommon in these situations for OSB staff to pursue a civil judgment; two members of the CSF Committee also volunteered to do it for the Bar. Note, too, that if Webb is disciplined in connection with her handling of Godier's funds (as is fully expected), reimbursement of the CSF will be a condition of reinstatement.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 27, 2015  
**From:** Ray Heysell, Chair, Governance and Strategic Planning Committee  
**Re:** Creation of the Position of Immediate Past President

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### Action Recommended

Create the position of Immediate Past President as a non-voting *ex officio* member of the BOG as set forth below.

### Discussion

#### *Immediate Past President*

The GSP Committee unanimously supports the establishment of an informal position of Immediate Past President (IPP). Many organizations have such a position, with the objective of retaining the experience of the past president for the benefit of the next years' board.

There is no provision for this position in the Bar Act,<sup>1</sup> which designates the officers as "president, president-elect and two vice presidents."<sup>2</sup> The proposal as approved by the Committee is to make the IPP an informal position, to be occupied as agreed between the IPP and the BOG from year to year. The duties of the IPP would also be as agreed between the IPP and the BOG.

The most logical place to incorporate the new position is in the bylaws dealing with officers:

#### ***Section 2.2 Officers***

##### *Subsection 2.200 Duties*

##### (a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the

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<sup>1</sup> 9.060 Officers; election; vacancies. A president, president-elect and two vice presidents shall be elected by the governors each year immediately following the annual election of governors and before the newly elected governors have qualified. The president, president-elect and vice presidents shall be elected from among the attorney board members. All officers shall continue in office until their successors are elected and qualify. Vacancies in any of the offices shall be filled by the board by appointment for the remainder of the term. All officers shall take office as provided by the bar bylaws.

<sup>2</sup> The Committee will recall a discussion earlier this year regarding the disconnect between the statute and the bylaws, the former having not been amended when the BOG eliminated the position of vice-president. Moreover, under the historical practice that the vice-presidents were the senior class members not chosen as president or president-elect, we occasionally have three, not two. In January 2015, the Committee recommended seeking a change in the Bar Act in 2017 and in the meantime just ignoring the inconsistency with current practice.

President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect

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

(c) Immediate Past President

The Immediate Past President is a non-voting ex officio member of the Board. The duties of the Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the BOG.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 27, 2015  
**From:** Ray Heysell, Chair, Governance & Strategic Planning Committee  
**Re:** Reinstatement Fees

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### Action Recommended

Recommend that the Supreme Court amend Bar Rule of Procedure 8.6 regarding a lawyer's financial obligations upon application for reinstatement.

### Discussion

As it begins working with the new AMS provider, staff is examining processes and looking for ways to streamline them so they can be automated to the extent possible without complex (and expensive) programming or configuration. One such area that staff has identified is reinstatements.

Lawyers who seek reinstatement must pay a reinstatement fee (the amount varies from \$100 to \$500). In addition, lawyers seeking reinstatement must pay fees and assessments for the current year, together with any outstanding disciplinary cost bills or obligations to the Client Security Fund.

Staff's concern is with the additional requirement of BR 8.6,<sup>1</sup> which mandates that some lawyers seeking reinstatement also pay the inactive membership fees for each year the applicant was suspended or resigned. This obligation applies to lawyers who, prior to the date of application for reinstatement, have:

1. resigned under Form A for more than five years;
2. been suspended for any reason and have remained in that status for more than 5 years;
3. been suspended for failure to pay the annual fees and assessments (including the PLF assessment) or to file an IOLTA compliance report, and have

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#### <sup>1</sup> Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. *Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i), BR 8.2(a)(iii) or BR 8.2(a)(iv) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid.* Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

remained in that status for more than six months but fewer than five years prior to applying for reinstatement.

The rationale for this requirement is lost to history, but anecdotal information suggests it was designed to discourage lawyers from changing their status frequently. Not surprisingly, there is a fair amount of resistance from reinstating lawyers about why they must pay membership fees for years in which they were either not members or received few of the benefits of membership. The amount collected annually in “past years’ inactive membership fees” averages around \$6,000 per year.<sup>2</sup>

While the inactive fee doesn’t change often, it does change. Moreover, the bar doesn’t have the history of the inactive fees in any kind of database. Accordingly, when processing an application for reinstatement from someone who has been suspended or resigned for a lengthy period, looking up and calculating the total fees due is done by hand. It is time-consuming and prone to error.

Programming the new management software to do the job is potentially possible, but it will be complex and costly. In the overall scheme of things, the cost to automate the process doesn’t seem worthwhile; at the same time, being able to automate routine reinstatement applications would save considerable staff time. One way to do that is to eliminate the requirement that reinstating lawyers pay inactive fees for the years of suspension or resignation.

The Bar Rules of Procedure are adopted by the Supreme Court, so if the BOG supports this idea, a rule revision could be presented to the Supreme Court with the suggestion that it be effective on January 1, 2016.

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<sup>2</sup> The total collected from 2008 through the present is \$41,794.

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# OREGON STATE BAR

## Governance & Strategic Planning Committee

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**Meeting Date:** May 15, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Scholar in Residence/Legal Scholarship Award

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### Action Recommended

Consider whether to recommend establishing a Scholar in Residence or a Legal Scholarship award to promote meaningful legal scholarship with a focus on practical analysis and solutions to issues facing the legal profession.

### Discussion

A professor at one of Oregon's law schools has approached the OSB with the idea of incorporating a scholarly dimension to the Bar while advancing a practical focus . Two specific (alternate) proposals were offered.

A Scholar in Residence program would offer a law professor the Bar's "sponsorship" for a finite period (1-2 years) during which the professor would write a scholarly article relevant to legal issues facing the legal profession and particularly Oregon's legal community. The main appeal of the program would be the opportunity for publication and distribution by the OSB of a scholarly article on a topic that currently is not sought by traditional law review publications. Ideally, the sponsorship would include a modest stipend, provided that contributions could be obtained from law firms or other sources.

The Legal Scholar award would be a discretionary award given by the OSB in recognition of a scholarly work with the same focus. Rather than designating a Scholar in Residence, however, the OSB would solicit already-written articles from law professors, select the one that best suits the objectives of the award, and publish it. As with other OSB awards, this one need not involve anything more than a framed certificate, although a modest financial component would make the competition more appealing. The BOG would likely need to articulate the general topic area well in advance (1-2 years) to assure that the submissions are pertinent.

Oregon State Bar  
International Trade in Legal Services  
Task Force Report  
Part II

## EXECUTIVE SUMMARY

The Oregon State Bar International Trade in Legal Services Task Force (“ITLS Task Force”) was tasked with reviewing regulations relating to the practice of law in Oregon to determine whether any “unnecessary barriers to trade” exist in contravention of free trade agreements to which the United States is a party.

The ITLS Task Force concludes as follows:

1. The current Admission Rule for House Counsel arguably stands as an unnecessary barrier to trade. It severely restricts the ability of foreign-licensed lawyers from being admitted to practice as house counsel in Oregon without any apparent consumer protection reasons.
2. Oregon RPC 8.5 determines when the Oregon RPCs should apply, as opposed to the rules of another jurisdiction, when the conduct at issue involves lawyers, clients or legal matters from multiple jurisdictions. Its application in the context of assessing conflicts of interests is particularly complicated and problematic in transnational practice.
3. The foreign legal consultant rule appears to be under-utilized, but the reasons are unclear. More information on this issue is needed.

The ITLS Task Force recommends:

1. Amend Oregon Supreme Court Admission Rule for House Counsel. Rules relating to admission may be formulated by either the Board of Governors or the Board of Bar Examiners, but ultimately must be adopted by the Oregon Supreme Court. See ORS 9.542. Prior to proposing this amendment, the Board may want to solicit comments from the membership, the Board of Bar Examiners, the Professional Liability Fund and any other stakeholders identified by the Board.
2. Direct the Legal Ethics Committee to formulate a formal ethics opinion that provides guidance in interpreting RPC 8.5, specifically, to make it clear that for conflict of interest purposes, when determining the “predominant effect” of transactional work under ABA Model Rule 8.5(b)(2), a lawyer can reasonably take into account an agreement entered into with the client’s “informed consent.”
3. Collect and monitor information about utilization of the foreign legal consultant rule and the barriers that exist to its utilization.

## OSB TASK FORCE ESTABLISHMENT AND MISSION

In a Memorandum dated April 24, 2013, Michael E. Haglund, President of the Oregon State Bar, recommended to the OSB Board of Governors (“**OSB Board**” or “**Board**”) that it establish a Task Force on International Trade in Legal Services. Mr. Haglund explained that, as of 2010, Oregon ranked 22nd in the United States in foreign exports with \$17.6 billion in goods and services and that Oregon businesses and their lawyers are regularly involved in international trade and dealings with foreign lawyers, particularly in the Pacific Rim. Despite this, Oregon has not specifically studied or addressed the issues of lawyer regulation arising from globalization, cross-border practice and lawyer mobility. Mr. Haglund noted that the State Bar of Georgia and the Georgia Supreme Court adopted what appear to be fairly progressive and forward-looking regulations in this area and referenced a recent memorandum from the ABA Task Force on International Trade in Legal Services as a guide for pursuing a similar process here in Oregon.

At its meeting on May 13, 2013, the OSB Board unanimously voted to establish the OSB Task Force on International Trade in Legal Services (“**OSB ITLS Task Force**”) with the following mission:

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

Mr. Haglund appointed the following individuals to the OSB ITLS Task Force: Allan R. Abravanel (Perkins Coie LLP), John R. Bachofner (Jordan Ramis PC), Frederic E. Cann (Cann Lawyers PC), Kristie L. Gibson (Garland Nelson McCleery Wade), Dorothy E. Gilbert (K&L Gates LLP), Rene G. Gonzalez (Gonzalezlc), Michael L. Goodman (Nike, Inc.), M Christie Helmer (Miller Nash LLP), Sharlei Hsu (Smith Freed & Eberhard PC), Akana K. J. Ma (Ater Wynne LLP), Brendan R. McDonnell (K&L Gates LLP), Tim Myers (IPinfonomics LLC), Stuart Patterson (Hewlett-Packard Co.), and Alexander James Wall (Discover-e Legal LLC).

## BACKGROUND

The OSB ITLS Task Force began its discussions with the premise underlying its formation, that is, free trade agreements have an effect on the delivery of legal services in Oregon and should be considered in developing lawyer regulation.

Data recently compiled by the Business Roundtable<sup>1</sup> shows the increasing importance of international trade to Oregon. International trade — exports and imports — supports nearly 490,000 Oregon jobs. Oregon exports tens of billions of dollars in goods and services annually. Customers in 203 countries around the world buy Oregon-grown and manufactured goods and services. Foreign-owned companies invest in Oregon and employ more than 40,000 Oregonians. Free trade agreements in particular have led to rapid export growth to partner countries. See [www.brt.org/trade](http://www.brt.org/trade).

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

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

## SCOPE OF PROJECT

Given the complexity and scope of the issues presented, the OSB ITLS Task Force concluded that the scope of its report and recommendations should be limited to the following six potential areas of practice by foreign lawyers physically present in Oregon (sometimes referred to herein collectively as the “**Foreign Practice Areas**” and individually as a “**Foreign Practice Area**”):

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<sup>1</sup> Business Roundtable is an association of chief executive officers of leading U. S. companies working to promote sound public policy and a thriving U.S. economy through research and advocacy.

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

Over the course of several meetings during the summer and fall of 2013, the OSB ITLS Task Force determined that its report and recommendations to the Board should address the following issues for each of the Foreign Practice Areas:

- A. What are the existing rules or law in Oregon that pertain to the specific Foreign Practice Area?
- B. In light of the impact of international developments on the legal profession, are there any issues or problems with the existing Oregon rules/law in light of the proposed ABA model rules?
- C. How have other states addressed the issues or problems?
- D. What are the recommendations of the OSB Task Force?
- E. If the recommendations involve a rule change or law change, what procedural steps are necessary to implement the change?
- F. Who may be impacted by the proposed rule or law change and how, including a description of any impact on consumer protection?

The OSB Task Force submitted the first installment of its report and its first recommendation relating to Temporary Transactional Practice by Foreign-Licensed Lawyers at the September 2014 Board of Governors meeting. The BOG adopted the Task Force recommendation to amend RPC 5.5(c) and presented the proposed amendment to the House of Delegates in November 2014. The House of Delegates approved the proposed amendment, and the Oregon Supreme Court adopted the RPC 5.5(c) as amended on February 10, 2015.

A summary of the OSB Task Force findings and recommendations related to the remaining foreign practice areas follows.



## FOREIGN-LICENSED IN-HOUSE COUNSEL

### A. Existing Rules

ORS 9.160 requires active membership in the Oregon State Bar to practice law in Oregon. Oregon Supreme Court Rules for Admission (“RFA”) 1.05(1)(a)(vi) defines the active practice of law as including “service as a house counsel to a corporation or other business entity.” Oregon RPC 5.5(b)(1) provides that a lawyer not admitted in Oregon may not establish an office or other systematic and continuous presence in Oregon for the practice of law. Thus, a lawyer licensed outside of the United States whose office is located in Oregon or who provides legal services to its employer in Oregon on a “systematic and continuous” basis must be admitted to practice in Oregon.

RFA 16.05 provides a process for obtaining a limited license to practice law in Oregon as “house counsel.” The applicant is not required to take the bar exam and need not have practiced law for a minimum period of time (as is required under the reciprocity admissions rule). In order to qualify for admission under this rule, however, the applicant must: 1) be admitted to practice law in another state, federal territory or commonwealth, or the District of Columbia; 2) present proof of graduation from an ABA-approved law school or a “satisfactory equivalent” as set forth in RFA 3.05; 3) provide proof of passage of a bar exam in a jurisdiction in which the applicant is admitted to practice; 4) provide proof of employment by a business entity authorized to do business in Oregon; 5) take and pass the Professional Responsibility Exam, and; 6) pass character and fitness to practice law requirements.

House counsel admission provides a limited license; a person so admitted must be employed by a business entity authorized to do business in Oregon and may only provide legal services to its employer. If employment with the business ends, the license is suspended. House counsel may not appear before a court or tribunal in Oregon, including any court-annexed arbitration.

### B. Potential Problems with Current Rule

Notably, RFA 16.05 does not allow admission as house counsel to a lawyer who is only admitted in a jurisdiction outside of the United States. Thus, even if a foreign-licensed lawyer could show graduation from an ABA-approved law school or its substantial equivalent, that lawyer could not be admitted as house counsel in Oregon unless the lawyer was licensed in another United States jurisdiction. In effect, the house counsel admission rule is of no benefit whatsoever for a foreign-licensed lawyer. In order to provide legal services to its employer as house counsel in Oregon, a foreign-licensed lawyer would need to apply for full licensure in Oregon or become licensed in another United States jurisdiction before applying for the House Counsel License.

Requiring full licensure for foreign-licensed attorneys to serve as house counsel arguably creates an unnecessary barrier to trade. A foreign-licensed attorney may not have graduated

from an ABA approved law school or its substantial equivalent. Even if she did, she may not be admitted to practice in a jurisdiction where the Common Law of England exists as the basis of its jurisprudence. These requirements are intended to give lawyers a common base and level of knowledge of the laws of the United States in order to ensure that lawyers who practice in Oregon are competent to do so. Sophisticated business consumers of legal services who hire foreign-licensed lawyers, however, are not looking for someone knowledgeable about the laws of the United States. Instead, they are looking for lawyers who are knowledgeable about the laws of other countries. In-house foreign-licensed lawyers are usually part of a team of other in-house lawyers, some of whom are licensed in Oregon or other U.S. jurisdictions, and their expertise in foreign laws helps the business understand how the laws of multiple jurisdictions intersect. Consequently, such consumers are not likely to be concerned about or harmed as a result of foreign-licensed lawyers not having graduated from ABA accredited schools or not being admitted to practice in a common law country.

Oregon-based and multi-national companies are already hiring foreign-licensed lawyers to help solve complex international issues in commerce. In addition, foreign companies are relocating their lawyers from other countries to Oregon for a myriad of reasons including convenience, on-site expertise and cultural considerations. In other words, there is a business need for foreign-licensed in-house counsel to be located and practice out of Oregon-based corporate offices. Some businesses may not be aware of or following the current Oregon requirements for licensure of their foreign-licensed in-house counsel who are located in Oregon. Failure to do so not only implicates unlawful practice of law concerns, but could have unintended and dire consequences for a company's privileged communications. If a client has communications with a foreign-licensed lawyer who is required to be licensed in Oregon, but has not been, then such communications may not be considered privileged.

### **C. Other Approaches**

ABA Model Rule 5.5(d) and (e) provide that foreign-licensed lawyers may provide legal services to their employers without obtaining a license to practice law in a United States jurisdiction, as long as the advice is based on the law of the jurisdiction in which they are licensed. The ABA also adopted a Model Rule for Registration of In-House Counsel who is providing services pursuant to these rules. The registration rule requires an application and registration fee along with documents proving admission to practice law and current good standing in all jurisdictions in which the lawyer is admitted and an affidavit from an authorized representative of the employing entity attesting to the lawyer's employment.

Washington liberally amended its In-House Limited Practice Exception (WA APR 8(f)) to allow lawyers admitted to practice in any United States or foreign jurisdiction to apply for a limited license to practice law as in-house counsel exclusively for a business entity. There are no CLE or MPRE requirements. Similar to the ABA Model Rule for Registration of In-House Counsel (and unlike Oregon's rule), there is no requirement that the foreign lawyer be licensed in the United States or have attended an ABA-accredited law school. Lawyers licensed as in-house

counsel cannot appear before a court or tribunal or offer legal services or advice to the public. The limited license is terminated at the end of employment with the employer.

Wisconsin chose a path similar to the ABA approach, providing for simple registration of Foreign In-House Counsel within 60 days of employment. They do not require passage of a general bar or ethics exam but such attorneys are subject to discipline. Georgia decided to only allow Foreign In-House Counsel to provide services only on a temporary basis unless licensed as a Foreign Licensed Consultant (FLC). Virginia and Texas both allow for admittance of foreign-licensed in-house counsel but Virginia does not require the residence, CLE requirements, or liability insurance as Texas requires.

#### **D. ITLS Task Force Recommendations**

The ITLS Task Force recommends that RFA 16.05 (Admission of House Counsel) be amended, in the manner provided in Appendix A, to provide a limited license for foreign attorneys admitted in another jurisdiction to practice, as house counsel for a business entity in Oregon. The proposed amendments to RFA 16.05 are similar to those enacted by the State of Washington.

The annual dues requirement would be the same for the limited house counsel license as it is for regular active members of the OSB. The ITLS Task Force recommends that house counsel license requirements include passage of the Professional Responsibility Exam and completion of a minimum number of continuing legal education credits, including an ethics component.

#### **E. Possible Impacts**

1. Effect on judicial administration.

The Board of Examiners would be impacted as they would need to administer its implementation and review and possibly revise RFA 3.05(3) entrance requirements as graduation from an ABA law school would no longer be required for House Counsel admission.

2. Effect on Oregon lawyers

A limited license for House Counsel will ensure that Oregon lawyers within a corporation are not assisting with the unlawful practice of law by employing foreign-licensed lawyers in-house. In addition, it would likely motivate foreign-licensed lawyers currently providing house counsel services in Oregon to become licensed. Foreign-licensed lawyers who obtain the Oregon House Counsel license would be considered a “lawyer” for the purposes of Oregon RPC 5.1 and 5.2. Foreign-licensed lawyers who do not obtain the House Counsel license, on the other hand, would not be considered a lawyer, but a “non-lawyer assistant” and would therefore need to be closely supervised as provided by Oregon RPC 5.3.

### 3. Effect on Oregon consumers

Businesses that are likely to hire foreign-licensed house counsel are typically large, sophisticated consumers of legal services. Consequently, the risk of harm to the employers of lawyers licensed as house counsel is small. For the individual consumer who may be confused by the house counsel limited license, it is important to note that a lawyer licensed as house counsel must identify the limited nature of his license; he may not hold himself out to the public as being authorized to provide legal services to anyone other than the business for which he works. This requirement provides some protection to the Oregon legal consumer.

In addition, a proposed amendment to RFA 16.05(7)(f) would ensure that only U.S. licensed lawyers admitted as House Counsel are authorized to provide pro bono legal services through a certified pro bono program. Certified pro bono programs typically provide training and supervision as well as professional liability insurance for their volunteers. Moreover, consumers could not be represented by foreign-licensed lawyers who may know little about Oregon law or courts.

One area of potential effect on Oregon consumers remains. While a lawyer employed by an organization represents the organization as such, she necessarily must communicate with its duly authorized constituents (e.g. officer, directors, employees) who act for the organization. See Oregon RPC 1.13(a). It is not uncommon for these constituents to seek advice from house counsel on personal matters. House counsel must be vigilant about reminding their employer's constituents of the restriction of their licensure in order to avoid inadvertently creating a lawyer-client relationship with those individuals and thereby violating their license restrictions.<sup>2</sup>

## **PERMANENT PRACTICE AS FOREIGN LEGAL CONSULTANT**

### **A. Existing Rules**

Pursuant to ORS 9.242 the Oregon Supreme Court has authority to adopt rules "permitting a person licensed to practice law in a foreign jurisdiction to advise on the law of that foreign jurisdiction in Oregon" without becoming an active member of the Oregon State Bar as required by ORS 9.160. The Supreme Court adopted RFA 12.05 pursuant to this authority, which allows a person licensed to practice law in a foreign jurisdiction to "advise on the law of that foreign jurisdiction in the state of Oregon" under certain circumstances.

RFA 12.05(2) allows licensure for those intending to practice as a foreign law consultant ("FLC") if the following qualifications are met: Licensure and activity as a lawyer for 5 of the last 7 years in a foreign jurisdiction and possessing the fitness and good moral character required

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<sup>2</sup> Generally, an attorney-client relationship may be formed whenever it is reasonable under the circumstances for the potential client to look to the lawyer for advice. *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

for admission to practice as an attorney in the State of Oregon. In order to demonstrate they have satisfied these substantive qualifications, applicants are required to submit substantial background materials, in many cases similar to materials required of an Oregon Bar applicant. See RFA 12.05(3). In addition, FLCs must agree to be bound by the Oregon Rules of Professional Conduct and provide evidence of professional liability insurance in an amount either equivalent to that required for Oregon lawyers or as approved by the Board of Bar Examiners.

RFA 12.05(5) authorizes a licensed FLC to provide legal advice on the law of his or her foreign jurisdiction in the State of Oregon, subject to several limitations, including against: appearing in Oregon Court (with some exceptions); advising on United States real estate, trust & estate, or domestic relations issues, and; advising on United States law (including Oregon, Federal, or the laws of another state).

### **B. Potential Problems with Current Rule**

While 60% of states license or register foreign legal consultants, actual utilization is quite limited to only a few states. The National Conference on Bar Examiners (NCBE) 2013 Statistics Guide lists 128 newly registered FLCs in the United States, with 60 in Florida, 26 in New York, 13 in California and the District of Columbia, and 8 in Texas.

Oregon is not included in the NCBE statistics. The Oregon Rule for Admission of Foreign Legal Consultants is very similar to the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants. The one notable difference is the requirement for professional liability insurance similar to the PLF. The ITLS Task Force is aware of no complaints regarding the Oregon requirements; however, only one applicant has completed the process in the last 15 years and there is speculation that the requirement for PLF-like insurance may be unrealistic.

The Texas Report identified several potential concerns with requirements similar to Oregon's (discussed in more detail below), including: (i) poor utilization by foreign lawyers, (ii) lack of clarity on privileges and immunities, particularly by in-house counsel, and (iii) cumbersome and expensive application processes.

### **C. Other Approaches**

As noted above, 60% of states have FLC regulatory regimes. Oregon and Washington have based theirs on the ABA Model Rule; California declined to adopt the ABA's model rule and rely on a preexisting approach. The Texas Report is the most recent study of the subject we were able to identify and the history of FLC regulation that state is instructive.

In 2005, Texas modernized its approach to FLCs, by (i) modernizing and basing on the ABA Model Rule on Foreign Legal Consultants (albeit with some relatively minor changes); (ii) update the foreign practice requirements, including where such services have been provided and shortening the length of service requirements; (iii) giving greater certainty as to the eligibility of FLCs to have their communications treated as subject to applicable privileges; and

(iv) subjecting FLCS to the CLE regime and Texas professional rules and regulations. The Texas Report concluded that while these reforms “succeeded in raising awareness in the state of cross-border licensing issues, and the number of registered FLCs increased to some degree” due to “the burdensome nature of the current application and renewal process, as well as the limited scope the current rule provides to address the needs of in-house counsel, there is potential to increase the use of the FLC Rule in Texas.”

Therefore, the Texas report recommended 3 enhancements:

- Simplification application process by removal of foreign practice requirement and modification of proof required in support of the application for certification;
- Simplification of renewal process by removal of need for de novo application and review, instead, renewal is based on sworn compliance statements more akin to the process for renewal of a law license; and
- Clarification of scope and applicability to in-house counsel.

#### **D. ITLS Task Force Recommendations**

The Task Force is recommending no changes to the admission rule for foreign legal consultants at this time. The Task Force does recommend, however, monitoring the applications for admission under this rule and collecting information about what provisions appear to pose the greatest burden. Armed with this information, the Board of Governors may want to consider revisiting this rule in 3-5 years to determine whether revisions should be made at that time that are similar to those adopted in Texas and as described below.

#### **E. Possible Impacts**

Were the Board to decide to revise the admission rule for foreign legal consultants to align more closely with Texas, the Task Force sees a low probability of negatively impacting Oregon residents.

Most of the changes would merely simplify the application process and provide clarity about the status of a foreign legal consultant for privilege purposes. The one exception would be the malpractice insurance requirement. If this requirement were removed entirely, it could have a negative impact on consumers. On the other hand, if the requirement were simply changed to reflect the market availability of professional liability insurance, the burden on FLCs would be reduced while still providing protection to the public.

Additionally, in reviewing the analysis performed by other states, the Task Force found no evidence that foreign lawyers are inclined to face higher rates of bar complaints or sanctions. Whether the Oregon State Bar wishes to take as open an approach as proposed in the Texas Report, the Task Force could not identify any material consumer protection concerns arising from clarifying these rules.

## PRO HAC VICE ADMISSION FOR FOREIGN-LICENSED LAWYERS

### A. Existing Rules

Pro hac vice admission in Oregon is generally governed by rules promulgated by the Oregon Supreme Court, as authorized by ORS 9.241, which states that, “[s]ubject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court... if the attorney is associated with an active member of the Oregon State Bar.” UTCR 3.170 further provides the logistical requirements for obtaining pro hac vice admission of a foreign lawyer. It requires the lawyer to:

- (1) Show that the lawyer is in good standing in another state or country;
- (2) Certify that the lawyer is not subject to pending disciplinary proceedings in any other jurisdiction or provide a description of the nature and status of any pending disciplinary proceedings;
- (3) Associate with an active member in good standing of the Oregon State Bar ("local attorney") who must participate meaningfully in the matter;
- (4) Certify that the lawyer will: comply with applicable statutes, law, and procedural rules of the state of Oregon; be familiar with and comply with the disciplinary rules of the Oregon State Bar; and submit to the jurisdiction of the Oregon courts and the Oregon State Bar with respect to acts and omissions occurring during the out-of-state attorney's admission under this rule;
- (5) Be insured for his/her practice of law in Oregon;
- (6) Agree, as a continuing obligation, to notify the court or administrative body promptly of any changes in the out-of-state attorney's insurance or status;
- (7) Pay any fees required

Thus, the rule for pro hac vice admission of a foreign lawyer is already well-defined, and subject to oversight by the court in which that lawyer will be appearing. “[A]pppearance in Oregon Courts as pro hac vice counsel is a privilege not a right.” *Tahvili v. Washington Mut. Bank*, 224 Or App 96, 109 (2008) (citing ORS 9.241 and *Leis v. Flynt*, 439 U.S. 438, 442-443 (1979)).

## **B. Potential Problems**

The Task Force sought records to determine the prevalence of pro hac vice admission in Oregon, whether the requirements for admission pose any unnecessary barriers to foreign lawyer, and whether there were any problems for consumers of services provided by lawyers admitted pro hac vice. While the number and originating jurisdiction of pro hac vice admissions are not currently tracked by the Oregon State Bar, the oversight of such admissions by judges, the meaningful participation of local counsel, and the requirement of insurance, appear to maintain proper consumer protection and quality control. In addition, because the current rule allows pro hac vice admission by lawyers from other countries, the rule does not appear to impose an unnecessary barrier to trade in legal services. Little anecdotal history could be located to suggest issues or problems to be corrected.

## **C. Other Approaches**

Other states surveyed by the sub-committee had similar regulations or rules requiring application to a court for pro hac vice admission. All require local counsel participation, although the participation specified varies from state to state. Washington, like Oregon, imposes a requirement for meaningful participation by the local counsel. Some states limit the number of pro hac vice admissions that may be obtained by an attorney before they must apply for regular admission to practice in that state. As of August 2012, only fifteen states allowed lawyers from outside the United States to appear pro hac vice in their courts. Oregon is unique in its requirement for malpractice insurance.

## **D. ITLS Task Force Recommendations**

The Task Force considered a number of possible changes, including minimum language proficiency, some educational equivalency certification, or greater specificity on “meaningful participation” in the rule. Ultimately, however, the Task Force concluded that no changes should be made to the current rules in place. The possible issues are well-served and flexible given the direct judicial oversight that presently exists. Judges ultimately have the discretion to determine the level of participation by the local attorney, and will naturally limit participation if problems develop.

Accordingly, the Task Force does not recommend any changes to the pro hac vice rules at this time.

## **E. Possible Impacts**

None anticipated.



## FULL LICENSURE OF FOREIGN-LICENSED LAWYERS

### A. Existing Rules

ORS 9.220 provides the minimum requirements for an applicant for admission to practice law in Oregon. An applicant must be at least 18 years old, of good moral character and fit to practice law, and have the requisite learning and ability to practice law.

Oregon Rule for Admission 3.05 puts forth more detailed qualifications for applicants to be eligible to sit for the bar exam. Specifically, an applicant must meet the requirements of one of the following:

- 1) Be a graduate of an ABA-accredited law school, with either a JD or LLB degree; or
- 2) Be a graduate of any law school in the United States, and
  - a. Be admitted to practice in another state where the requirements of admission are substantially equivalent to those in Oregon, and
  - b. Have been actively, substantially and continuously engaged in the practice of law for at least three of the last five years; or
- 3) Be a graduate of a law school in a foreign jurisdiction that is equivalent to an ABA-certified law school, and

Be admitted to practice law in a foreign jurisdiction where the Common Law of England exists as a basis of its jurisprudence and where the requirements for admission to practice are substantially equivalent to those in Oregon.

### B. Potential Problems

Applicants who attended law school in a foreign jurisdiction have the burden of showing that the school they attended is equivalent to an ABA-accredited school and that the admission requirements in their home jurisdiction are substantially equivalent to those in Oregon. Further, jurisprudence in their home jurisdiction must be based upon English Common Law, and they must be licensed in their home jurisdiction. These requirements might be considered unduly burdensome on attorneys from non-Common Law countries, effectively being a bias toward former English colonies being admitted. The Task Force believes, however, that this requirement is directly related to the required legal skill of interpreting cases; non-Common Law countries do not generally follow case precedents. Therefore, the Task Force believes that requirements that ensure adequate education in Common Law precepts are important. On the other hand, the purpose of the requirements of licensure in the jurisdiction where the applicant attended school and that licensing requirements in that jurisdiction be the same as in Oregon,

is unclear. Without a clear consumer protection purpose for these requirements, they may stand as an unnecessary burden to licensure in the United States by applicants who received their legal education outside of the United States.

### **C. Other Approaches**

Only a small minority of States: Alabama, Alaska, Colorado, Hawaii, Nevada, New Hampshire, Utah, Vermont, Washington, West Virginia, and Wisconsin share Oregon's requirement of admission to a common law-based foreign jurisdiction.

### **D. ITLS Task Force Recommendations**

The Task Force determined that the aforementioned requirements are all clearly supportive of the legislative intent to maintain the quality of licensed legal practitioners in Oregon. The second requirement bore some discussion, but ultimately the Task Force determined there was no compelling reason to change it as there does not appear to be a huge demand for full licensure in Oregon by foreign-licensed lawyers given the other options available for limited licensure and temporary practice.

### **E. Possible Impacts**

None anticipated.

## **MULTIJURISDICTIONAL DELIVERY OF LEGAL SERVICES AND CHOICE OF LAW**

### **A. Existing Rules**

Oregon RPC 8.5 was adopted in 2005 in connection with the approval of certain amendments to Oregon RPC 5.5 ("Unauthorized Practice of Law; Multijurisdictional Practice") that relate to the multijurisdictional practice of law. It is modeled after ABA Model Rule 8.5. The comments to ABA Model Rule 8.5 affirm that many lawyers face severe conflict dilemmas by practicing in a global world. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

Oregon RPC 8.5 sets forth the disciplinary authority of the Bar, and includes a group of guidelines to determine which laws and regulations will apply in exercising that disciplinary authority. A copy of Oregon RPC 8.5 is attached to this memorandum as Appendix B.

Oregon RPC 8.5(a) sets forth the disciplinary authority of the Oregon State Bar in several situations; the Oregon State Bar may seek to discipline:

- A lawyer admitted to practice in Oregon, regardless of where the conduct occurs; and
- A lawyer not admitted to practice in Oregon, if the lawyer provides or offers to provide legal services in Oregon.

In addition, Oregon RPC 8.5(a) notes that a lawyer may be subject to disciplinary authority in Oregon and another jurisdiction for the same conduct.

Oregon RPC 8.5(b) sets forth several guidelines for the choice of law in these circumstances, by seeking to resolve potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession) and clarifies the disciplinary measures that the Bar may impose:

#### 1. Conduct Before a Tribunal.

For a lawyer's conduct before a "tribunal," Oregon RPC 8.5(b)(1) provides that the law of the jurisdiction where the tribunal sits will apply (unless that law of that jurisdiction provides otherwise).

If appearing before a foreign tribunal, an Oregon lawyer must become knowledgeable about the ethics rules of the foreign jurisdiction in which the tribunal is located. Under this rule, therefore, if an arbitration tribunal seeking to resolve a dispute between two parties from the United States happens to be sitting in London or The Hague, an Oregon attorney appearing before that tribunal will be required to conform his or her behavior with the ethical norms of Great Britain and The Netherlands, unless rules of the tribunal provide otherwise. This compliance may be particularly difficult when the ethics rules are in a foreign language, when the lawyer's appearance is for only a brief period, or when the lawyer may be relying on local counsel to guide him or her in the proceeding.

The Commission considered a more sweeping proposal to change ABA Model Rule 8.5(b)(1) to make United States law the default choice of law for all international tribunals, but that proposal, and others that might have provided different automatic default choice of law rules, were rejected by the Commission and not considered by the ABA House of Delegates. The Task Force has not addressed any changes to the "tribunal rule," therefore, in our considerations.

#### 2. Other Conduct.

For other conduct, Oregon RPC 8.5(b)(2) provides that the disciplinary rules of the jurisdiction in which the conduct occurred, or, if the "predominant effect" of the conduct is in a different jurisdiction, the rules of that jurisdiction, shall be applied to the conduct. A lawyer will not be subject to discipline, however, if the lawyer's conduct conforms to the rules of a

jurisdiction in which the lawyer reasonably believes the “predominant effect” of the lawyer’s conduct will occur. Determining the jurisdiction in which the “predominant effect” of an Oregon lawyer’s conduct occurs, and assessing whether the lawyer “reasonably believes” the accuracy of that choice, are challenging, since there is little guidance as to the meaning of those terms in the Oregon Rules of Professional Conduct.

## **B. Potential Problems with Current Rules**

Pursuant to Comment [7] to ABA Model Rule 8.5, the Model Rule is intended to apply not only to the multistate practice of law, but also to transnational legal activity, unless international law, treaties or other agreements provide otherwise. Although Oregon has not adopted the comments to the ABA Model Rules, it is generally assumed that Oregon RPC 8.5 will apply to the transnational practice of law as well.

The ABA Commission proposed only one change impacting Rule 8.5. That proposed change, which was set forth in Resolution 107D presented to the ABA House of Delegates, called for the amendment of a comment to ABA Model Rule 8.5 to clarify the meaning of the term “predominant effect.” Resolution 107D was approved by the ABA House of Delegates on February 11, 2013.

Resolution 107D added a new sentence to comment [5] on the choice of law provisions of ABA Model Rule 8.5 to make it clear that for conflicts of interest purposes, when determining the “predominant effect” of transactional work under ABA Model Rule 8.5(b)(2), a lawyer can reasonably take into account an agreement entered into with the client’s “informed consent.” The amended version of comment [5] reads as follows (with the newly added text marked with underscoring):

[5] When a lawyer’s conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer’s conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer’s reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client’s informed consent confirmed in the agreement.

The new sentence that was added to comment [5] indicates, in essence, that for conflict of interests purposes only, if a lawyer and a client have reached an agreement on the governing conflicts rules, then the lawyer may take that agreement into account when evaluating whether he or she has a reasonable belief that the predominant effect of the conduct will be in a particular jurisdiction.

### **C. Other Approaches**

In their original consideration of the ABA Model Rules, some states approved the rules (with or without modifications) and the related comments, while other states, like Oregon, adopted only the text of the Rules without the related comments. The ABA is now reporting that a number of states are considering changes, either to their rules or, if applicable, to the comments to their rules, following the approval by the ABA House of Delegates of the Commission proposals.

Only one state appears to have taken action on the comment change to ABA Model Rule 8.5 proposed by the Commission. On August 26, 2013, the Supreme Court of Delaware approved a change to the comment to Rule 8.5 of the Delaware Lawyers' Rules of Professional Conduct to incorporate the language. See: [http://courts.delaware.gov/rules/DLRPC\\_rule%208-5.pdf](http://courts.delaware.gov/rules/DLRPC_rule%208-5.pdf).

### **D. ITLS Task Force Recommendations**

The Task Force recommends that with respect to conflict of interest issues in the multijurisdictional practice of law, and the determination of the lawyer's reasonable belief under Oregon RPC 8.5(b) as to the jurisdiction in which the lawyer reasonably believes the predominant effect of his or her conduct to have occurred, a written agreement between the lawyer and the client that reasonably specifies the jurisdiction should be considered, if the agreement has been obtained with the client's informed consent confirmed in the agreement. This recommendation is consistent with the recent change recommended by the Commission and approved by the ABA House of Delegates with respect to ABA Model Rule 8.5.

The Task Force endorses the change approved by the ABA House of Delegates, although the change finally submitted by the Commission and approved by the ABA House of Delegates accomplished far fewer clarifications than what several legal commentators were advocating. We see a good deal of merit in some of these alternative proposals, but we have limited our recommendation to the one change approved by the ABA House of Delegates.

This recommendation is a preliminary, conservative response to a much broader problem arising from the provision of legal services by Oregon attorneys in foreign jurisdictions, and from similar activities by non-U.S. attorneys in Oregon. A jurisdiction outside of the United States, for example, may not have a conflicts of interest rule that relies on an analysis of the lawyer's "reasonable belief" of the "predominant effect" of the conduct taken, and may resort to entirely different rules to determine whether its ethical norms should govern the lawyer's behavior. Moreover, the proposed change only relates to conflicts of interest issues, and does not attempt to resolve other lawyer ethical duties, such as the duty of confidentiality, which may differ in foreign jurisdictions from the duty as it is interpreted in Oregon and elsewhere in the United States.

The Commission could have proposed to make a written agreement, delivered with the client's "informed consent," binding on the client with respect to issues of conflicts of interest. Instead, the Commission limited the impact of the agreement to be relevant in a determination of the lawyer's reasonable belief in paragraph (b)(2) of ABA Model Rule 8.5. While the Task Force might have favored a more forceful proposal that gave binding effect to a choice of law agreed to in a written agreement entered into by the client, the Task force is prepared to endorse the more restrained solution devised by the Commission, and approved by the ABA House of Delegates, that makes the written agreement relevant to a determination of the lawyer's reasonable belief.

The Task Force nonetheless submits this recommendation with the understanding that it is a step in a longer process of clarification and revision of the Oregon Rules of Professional Conduct that will be required to address changing patterns of practice in an increasingly globalized profession.

### **E. Possible Impacts**

The primary purpose of this proposed change is to bring more certainty to the relationship between lawyer and client by defining more clearly the meaning of "predominant effect" under Oregon RPC 8.5(b)(2).

As the Commission noted in its report on this proposed change, one question is whether agreements on choice of law benefit lawyers at the expense of clients. The Commission concluded, and the Task Force concurs, that the proposal change has significant benefits for both parties. Under Oregon RPC 8.5(b)(2), if a conflict issue arises and the rules of two or more jurisdictions could reasonably apply, a lawyer can simply choose the jurisdiction that favors the lawyer without ever consulting the client. As long as that choice is "reasonable," the lawyer will face no disciplinary consequences, even if the lawyer's choice is ultimately deemed to be incorrect and even though the client was never consulted. Thus, an agreement not only provides the lawyer with greater confidence of the jurisdiction whose conflict rules will apply, but it also enables the client to participate in the choice.

The proposed change would also require the agreement to be entered into with the "informed consent" of the client, as defined under Oregon RPC 1.0(g):

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

The agreement will not bind third parties (such as other clients of the firm). For this reason, the proposed language makes clear that the agreement is only intended to provide guidance in determining a lawyer's reasonable belief under Oregon RPC 8.5(b)(2) in connection with the representation of the client entering into the agreement.

While the referral to this agreement might result in the application of non-U.S. conflict rules, which are sometimes more permissive than the conflict rules in the United States, this possibility already exists under Oregon RPC 8.5(b). For example, if the London office of a law firm is handling a transactional matter that is heavily centered in the United Kingdom, Oregon RPC 8.5(b)(2) suggests that the United Kingdom rules might apply to the firm's representation of that client.

In sum, the Task Force recommends the issuance of a formal ethics opinion by the Bar to put in place the proposed change to the comment to ABA Model Rule 8.5(b)(2) regarding the effect of agreements on choice of law in multijurisdictional transactions. We believe this change will bring more certainty and clarity to the representation of clients in multijurisdictional transactions, without sacrificing the interests of clients, the Bar or the public.

## Appendix A

### OREGON SUPREME COURT RULES OF ADMISSION

#### RULE 16.05

##### LIMITED ADMISSION OF HOUSE COUNSEL

An attorney employed by a business entity authorized to do business in Oregon, who has been admitted to practice law in another state, federal territory or commonwealth or the District of Columbia, or in any foreign jurisdiction, may be admitted to practice law as house counsel in this state, subject to the provisions, conditions and limitations in this rule, by the following procedure:

- (1) The attorney, if at least 18 years of age, may apply for admission to practice law as house counsel by:
  - (a) Filing an application as prescribed in Rule 4.15; and
  - ~~(b) Presenting satisfactory proof of graduation from an ABA approved law school with either a (1) Juris Doctor (J.D.) or (2) Bachelor of Law (LL.B.) degree; or satisfaction of the requirements of rule 3.05(3);~~
  - ~~(c)~~ Presenting satisfactory proof of ~~passage of a bar examination or~~ (i) admission to the practice of law in a jurisdiction in which the applicant is admitted to the practice of law and current good standing in any jurisdiction; and (ii) good moral character and fitness to practice; and
  - ~~(d)~~ Providing verification by affidavit signed by both the applicant and the business entity that the applicant is employed as house counsel and has disclosed to the business entity the limitations on the attorney to practice law as house counsel as provided by this rule.
- (2) The applicant shall pay the application fees prescribed in Rule 4.10.
- (3) The applicant shall be investigated as prescribed in Rule 6.05 to 6.15.
- (4) The applicant shall take and pass the Professional Responsibility Examination prescribed in Rule 7.05.
- (5) If a majority of the non-recused members of the Board considers the applicant to be qualified as to the requisite moral character and fitness to practice law, the Board shall recommend the applicant to the Court for admission to practice law as house counsel in Oregon.



(6) If the Court considers the applicant qualified for admission, it shall admit the applicant to practice law as house counsel in Oregon. The applicant's date of admission as a house counsel member of the Oregon State Bar shall be the date the applicant files the oath of office with the State Court Administrator as provided in Rule 8.10(2).

(7) In order to qualify for and retain admission to the limited practice of law as house counsel, an attorney admitted under this rule must satisfy the following conditions, requirements and limitations:

(a) The attorney shall be limited to practice exclusively for the business entity identified in the affidavit required by section (1)(d) of this rule, and except as provided in subsection 7(f) below regarding pro bono legal services, is not authorized by this rule to appear before a court or tribunal, or offer legal services to the public; Participating as an attorney in any arbitration or mediation that is court-mandated or is conducted in connection with a pending adjudication shall be considered an appearance before a court or tribunal under this rule.

(b) All business cards, letterhead and directory listings, whether in print or electronic form, used in Oregon by the attorney shall clearly identify the attorney's employer and that the attorney is admitted to practice in Oregon only as house counsel or the equivalent;

(c) The attorney shall pay the Oregon State Bar all annual and other fees required of active members admitted to practice for two years or more;

(d) The attorney shall be subject to ORS Chapter 9, these rules, the Oregon Rules of Professional Conduct, the Oregon State Bar's Rules of Procedure, the Oregon Minimum Continuing Legal Education Rules and Regulations, and to all other laws and rules governing attorneys admitted to active practice of law in this state;

(e) The attorney shall promptly report to the Oregon State Bar: a change in employment; a change in membership status, good standing or authorization to practice law in any jurisdiction where the attorney has been admitted to the practice of law; or the commencement of a formal disciplinary proceeding in any such jurisdiction.

(f) ~~The An~~ attorney admitted in another United States jurisdiction may provide pro bono legal services through a pro bono program certified by the Oregon State Bar under Oregon State Bar Bylaw 13.2, provided that the attorney has professional liability coverage for such services through the pro bono program or otherwise, which coverage shall be substantially equivalent to the Oregon State Bar Professional Liability Fund coverage plan.

(8) The attorney shall report immediately to the Oregon State Bar, and the admission granted under this section shall be automatically suspended, when:

(a) Employment by the business entity is terminated; or

(b) The attorney fails to maintain active status or good standing as an attorney in at least one jurisdiction; or

(c) The attorney is suspended or disbarred for discipline, or resigns while disciplinary complaints or charges are pending, in any jurisdiction.

(9) An attorney suspended pursuant to section (8)(a) of this rule shall be reinstated to practice law as house counsel when able to demonstrate to the Oregon State Bar that, within six months from the termination of the attorney's previous employment, the attorney is again employed as house counsel by a qualifying business entity, and upon verification of such employment as provided in section (1)(d) of this rule.

(10) An attorney suspended pursuant to section (8)(b) of this rule shall be reinstated to practice law as house counsel when able to demonstrate to the Oregon State Bar that, within six months from the attorney's failure to maintain active status or good standing in at least one other jurisdiction, the attorney has been reinstated to active status or good standing in such jurisdiction.

(11) Except as provided in sections (9) and (10) of this rule, an attorney whose admission as house counsel in Oregon has been suspended pursuant to section (8) of this rule, and who again seeks admission to practice in this state as house counsel, must file a new application with the Board under this rule.

(12) The admission granted under this section shall be terminated automatically when the attorney has been otherwise admitted to the practice of law in Oregon as an active member of the Oregon State Bar.

(13) For the purposes of this Rule 16.05, the term "business entity" means a corporation, partnership, association or other legal entity, excluding governmental bodies, (together with its parents, subsidiaries, and affiliates) that is not itself engaged in the practice of law or the rendering of legal services, for a fee or otherwise.

(14) For the purposes of this Rule 16.05, "tribunal" means all courts and all other adjudicatory bodies, including arbitrations and mediations described in Rule 16.05(7)(a), but does not include any body when engaged in the promulgation, amendment or repeal of administrative or other rules.

## Appendix B

### OREGON RULES OF PROFESSIONAL CONDUCT

#### RULE 8.5

##### DISCIPLINARY AUTHORITY; CHOICE OF LAW

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

(b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Memo Re: Request for OSB Sponsorship of District of Oregon Conference 2015

For June 2015 BOG Meeting, Ashland

Presented by John Mansfield, D. Or. Ninth Circuit Representative

**Background:**

The US District Court for the District of Oregon is hosting its bi-annual District Conference on October 2, 2015 at OMSI. As a Ninth Circuit representative for the District, I am helping to organize this conference, entitled: "Navigating Complex Problems in Oregon & Beyond."

The District Conference is a statewide event with topics of interest to a wide variety of OSB members, as seen in the overview and tentative agenda attached to this memo. The majority of the speakers at the conference are from Oregon, but there is significant national presence as well. The 2013 Conference had an active twitter feed that was picked up worldwide. The 2013 Conference had approximately 300 attendees, and we expect the same turnout this year.

**Proposed Action:**

I propose that the OSB be a silver sponsor of the District Conference, at the \$1000 level. A chart setting out the various sponsorship levels and benefits for each level is attached.

Such a sponsorship is appropriate for the OSB, and will benefit the OSB and its members. The conference is a premiere statewide event, put on by the District Court for all members of the OSB, including practitioners and judges. Although the annual tradition of OSB Conferences was discontinued before I joined the OSB, I am told that this District Conference is the closest thing to a statewide meeting of Oregon lawyers that we now have. It is an excellent opportunity for the OSB to show its connection to its membership, and its interest in the topics that will be discussed during the Conference.

I will be happy to answer any questions BOG or staff members have at our Ashland open session.

## ATTACHMENT: OVERVIEW AND AGENDA

### 1. Conference Theme:

“Navigating Complex Problems in Oregon & Beyond”

### 2. Keynote Speaker: Garret Epps

### 3. Topics/Speakers:

#### a. **Understanding Our Hardwiring** (110 min. Presentation)

- **Kimberly Papillon**—TheBetterMind.com (expert on implications of neuroscience, psychology and implicit association in medical, legal and judicial decision-making)

#### b. **Drought in the American West** (20 min. Pop Talk)

- **Adele Amos**—University of Oregon

#### c. **Things Are A Changin': What you need to know about where the law and legal profession are headed** (10-12 min. Pop Talks)

- **Lucy Bassli**—Microsoft (“The Role of In-House Counsel in Transforming the Delivery of Legal Services”)
- **Dan Lear**—AVVO (How Consumers Are Using the Internet to Find Legal Services)
- **Judy Perry Martinez**—ABA Commission on Future of Legal Services

#### d. **Rollout of New Reentry Technology** (20-30 min. Pop Talk)

- **Law By Design / Startline**

#### e. **Current Issues in Sports Litigation** (55 min. Panel)

Building off the exciting sports moment that Oregon is having with the successes of U of O, the Blazers, and the rise of professional soccer for both men and women, we are presenting a panel about timely sports issues.

- **Ben Laurites**—GM. Trailblazers (moderator)
- **John Casey**—KILL Gates (concussion litigation)
- **Maureen Weston**—Pepperdine Prof. (*O'Bannon* and student athlete likeness, IP issues)
- **Carol Pratt**—KILL Gates (Title IX)
- **Paul Loving**—The Consul Group (Branding issues)
- **Matt Levin**—Markowitz

f. **Law in the New Economy** (Pop Talks—no more than 30 min total)

Adapting to a world of crowd-sourced and virtual services.

- Curb--Bethany
- Umber--Chris
- Virtual Currency—Kristen
- Car-2-Go—Bethany
- Airing, etc.—Gosia, Reilly

h. **Judicial Game Show**

- A panel to get to know the judges better and address some substantive practice issues in a lighthearted, entertaining way.

**4. Potential Agenda**

8:00-8:30	Registration
8:30-8:35	Welcome by J. Aiken
8:35-9:10	Our Changing Profession pop talks
9:10-9:40	Re-Entry App Rollout
9:40-10:10	Addiction Topic
10:10-10:20	BREAK
10:20-10:40	Drought in the American West
10:40-11:30	Law & the New Economy / Crim Law Topic (maybe do break-out sessions)
11:30-12:00	Garret Epps
12:00-1:00	LUNCH
1:00-1:55	Sports Law Panel
1:55-3:00	Kimberly Papillon
3:00-3:10	BREAK
3:10-4:00	Kimberly Papillon
4:00-4:55	Judicial Game Show

4:55-5:00 Closing Remarks by J. Aiken

5:00-6:30 Cocktail Reception

# 2015 District Conference For the U.S. District Court of Oregon

Thursday, October 1, 2015

5:00 to 6:30 p.m.

Speakers and Honored Guests Reception

Mark O. Hatfield U.S. Courthouse

Friday, October 2, 2015

9:00 a.m. to 5:00 p.m.

Navigating Complex Problems in Oregon & Beyond

OMSI – Oregon Museum of Science and Industry

### SPONSORSHIP OPPORTUNITY

You are invited to join the Oregon Federal Bar Association (FBA) in sponsoring this wonderful event.

	Cuisine Sponsor \$2000 (limit 1)	Beverage Sponsor \$2000 (limit 1)	Gold Sponsor \$1500	Silver Sponsor \$1000	Bronze Sponsor \$500
Pre-Event Promotions					
Recognition in FBA On-Line Media (Including website, Twitter, Listserve, and newsletter)	✓	✓	✓	✓	✓
Event Recognition					
Guest tickets	15	15	10	8	5
Placard Recognition	✓	✓			
Presence in Looping Media Presentation	✓	✓	✓	✓	✓
Recognition from Podium	✓	✓	✓		
Post-Event Promotions					
Recognition in FBA On-Line Media	✓	✓	✓	✓	✓

Please make payment by check payable to

"Oregon FBA" Attn Nadine Gartner, Stoll Berne, 209 SW Oak St Ste 500, Portland OR 97204.



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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**Memo Date:** June 12, 2015  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Appointments to committees and boards

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### Action Recommended

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

### Background

#### Advisory Committee on Diversity and Inclusion

One member resigned from the ACDI and the officers and staff recommend the appointment of **Yazmin Wadia** (141244). Ms. Wadia was an OLIO student and offers the perspective of a newly licensed practitioner to the committee.

**Recommendation:** Yazmin Wadia, member, term expires 12/31/2017

#### Judicial Advisory Committee

The committee has three vacant seats but wishes to only recommend one candidate for appointment at this time. **Phillip Aaron Spicerkuhn** (106750) has agreed to serve if appointed and brings geographic diversity to the committee based on his practice in Hermiston.

**Recommendation:** Phillip Aaron Spicerkuhn, member, term expires 12/31/2016

#### Disciplinary Board

Due to a resignation, one additional non-lawyer member is needed on the region 5 board. Staff recommends the appointment of **Janet L. Fiel**. The experience Ms. Fiel brings as a certified mediator and prior community service make her a qualified candidate to serve on the board.

**Recommendation:** Janet L. Fiel, public member, term expires 12/31/2017

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 26, 2015  
**From:** Theresa L. (Terry) Wright, Legal Opportunities Coordinator  
**Re:** Second Interim Report

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### **Issue**

This is my second interim report regarding my work and on-going projects as the Bar's Legal Opportunities Coordinator.

There is no request for Board action at this time.

### **Discussion**

Since my last report, I have continued to gather and classify information about the topics I was asked to review.

I have attended a number of CLE's, get togethers, and meetings regarding issues related to my charge. In addition, I recently spoke at an OLI CLE regarding the Limited License Legal Technician Task Force report and recommendations. While not directly within the purview of my responsibilities, I can envision a possible alternative delivery structure in the future utilizing LLLT's and new lawyers, which would further the goals of the Bar to ensure employment opportunities for new lawyers while increasing access to justice.

The highlight of the last month was a "stakeholder" meeting held on June 4. Although I had hoped for a larger turnout, those that came helped brainstorm a number of very good ideas, which I am pursuing. Chief among the ideas was beefing up programming to get new lawyers to work in rural areas. A number of specific ideas came to light, involving law schools, legal aid programs, local bars, technology, and individual lawyers. Notes of the meeting are available for anyone interested.

I have attached the agenda for the stakeholder meeting and summary of issues to be reviewed or currently under review/consideration.

I have not done much review of work being done to develop statewide forms, but anticipate that their increased development and work will find their way into any program developed by the Bar.

Recently, I have been contacted by individuals with ideas for promoting access to justice through the use of new lawyers, which I am following up on.

### **Follow Up**

The next steps I anticipate taking include finishing my background work, to the extent possible, and beginning to prepare a final report. I anticipate including in that report some suggestions for reducing overlapping services, surveying national models, and creating new programs in Oregon. I also intend to begin to create a webpage on the OSB website designed specifically for new lawyers to assist them in finding as many resources as possible in one place.

As in my first report, I would like to thank Rich Spier, Sylvia Stevens and the Board of Governors for giving me the opportunity to pursue the topics of new lawyer employment and access to justice. I have been thoroughly enjoying the work and look forward to developing a comprehensive, useful report in the future.

NEW LAWYER EMPLOYMENT AND ACCESS TO JUSTICE

Stakeholder Meeting

June 4, 2015

Welcome

Rich Spier, OSB President

Terry Wright, OSB Legal Opportunities Coordinator

Introductions – Participants

Name

Affiliation

BRIEF summary:

Programming for new lawyers

Programming for access to justice

Summary of current resources for new lawyers, with focus on access to justice

Discussion//brainstorming//coordinating services/programs//questions//other?

Issues of note:

rural practice

retiring lawyers

advertising already existing resources

mentoring/networking

“on-the-job” training

private firm involvement

funding issues

Putting it all together – developing work plan and concrete ways to move forward

Conclusion

Adjournment no later than 2:15

NEW LAWYER PROGRAMMING IN OREGON/ACCESS TO JUSTICE

June 4, 2015

CLE Programming

OSB CLE Department

OSB New Lawyers Division

MBA

MBA Young Lawyer Division

PLF

Sections

Local Bars

Other specialty groups (OWLS, AILA)

Mentoring

OSB New Lawyer Mentoring Program

MBA Professionalism Mentorship Program

Law School mentoring programs

Others

"Job Boards"

Law schools

OSB

OWLS contract lawyers

OSB Sections

New lawyers divisions

Mentoring events in connection with CLE's

Scholarships for new lawyers at section-sponsored CLE's

Reduced/free membership for first year

#### Other Bar Programs

Diversity and Inclusion

Lawyer referral

#### PLF and Bar Resources

PLF

Law Practice Management program

forms library

checklists

publications, including how to set up a law practice

OSB

Bar Books

Section publications

other CLE materials

Lawyer Referral/Modest Means

#### Law Schools

ABA

Substantial on-line resources

## Miscellaneous

rural practice

## Program Models

OLF/LASO

St. Andrew Legal Clinic

court sponsored programs

ONLD programs

Portland Law Collective

private firms loosely following St Andrew model

## Other States

“setting up law practice” manual focusing on access to justice (includes interactive program for lawyers to figure out overhead costs, and extrapolate from that minimum hours/hourly rate)

Incubator programs

private firms collaborating to fund law clinics for new lawyers

law school programs

non-profit firm operating as a private firm, and on a state-wide basis, focused on access to justice

other private firm involvement

**Oregon State Bar**  
**Meeting of the Board of Governors**  
April 24, 2015  
**Open Session Minutes**

The meeting was called to order by President Richard Spier at 1:08 p.m. on April 24, 2015. The meeting adjourned at 3:45 p.m. Members present from the Board of Governors were James Chaney, Guy Greco, R. Ray Heysell, Theresa Kohlhoff, Vanessa Nordyke, Ramon A. Pagan, Travis Prestwich, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Simon Whang, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Not present were Per Ramfjord, Audrey Matsumonji, and John Mansfield. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Susan Grabe, Dawn Evans, Kay Pulju, Mariann Hyland, Judith Baker, Dani Edwards, Terry Wright and Camille Greene. Also present was Carol Bernick, PLF CEO; Julia Manela, PLF Chair; Karen Clevering, ONLD Chair; Dana Sullivan, MBA President; Daniel Zene Crowe and Thomas Flaherty, OSB Military and Veterans Law Section; and Matthew Ellis, OSB Civil Rights 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**

As written. Mr. Spier announced the retirement party for Ms. Stevens will take place on December 10, 2015.

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

Mr. Heysell reported on the BLI leadership conference in Chicago and the value of connecting with other states' bar members who share similar concerns.

**C. Report of the Executive Director**

As written. Ms. Stevens also gave an update on the status of the AMS system, BOG reimbursements, and that there are 19 employees who have worked at OSB for 20 years or more.

**D. Director of Regulatory Services**

As written.

**E. Director of Diversity & Inclusion**

In addition to her written report, Ms. Hyland reported on the new Access to Justice Fellowship, and the Diversity Action Plan first year implementation report. Mr. Whang encouraged board members to attend the OLIO event in Bend this summer.

**F. MBA Liaison Reports**

Mr. Whang reported on the March 4, 2015 and April 2, 2015 MBA board meetings and the effectiveness of the good relationship between the MBA leadership and the BOG.



## G. Oregon New Lawyers Division Report

In addition to the written report, Ms. Clevering reported on the success of the ONLD CLEs in Eugene and the Bingo social in Salem. The ONLD started a new law school outreach program with liaisons at each school. It has received a request for more information about the Practical Skills through Public Service program from the North Carolina bar association.

### 3. Professional Liability Fund

Ms. Bernick presented the PLF's request for approval of the changes to the PLF Policy 6.200(F).

**Motion:** Ms. Zinser moved, Ms. Nordyke seconded, that the board voted unanimously to approve the changes as requested. **[Exhibit A]**

### 4. Multnomah Bar Association

Ms. Sullivan updated the board on MBA activities, and facts about its members. The MBA conducted a survey on its 4200 members and found the majority are solo practitioners or in smaller firms. The MBA board is considering forming a section for this strata of the membership. The work of the MBA Courthouse Committee is coming to fruition: the Multnomah County Board of Commissioners has selected the site for the new courthouse near the Hawthorne Bridge. The MBA's Young Lawyer Section is active and offering several programs for new lawyers, veterans and mentors. The MBA is committed to diversity and supports the Explore the Law Program at PSU. Mr. Pagan agreed that the MBA is active with the specialty bars in Oregon.

### 5. OSB Committees, Sections and Councils

#### A. Legal Services Program Committee

Ms. Baker presented the committee's recommendation to not disburse any of the annual unclaimed client funds for 2015, so as to safeguard funds belonging to others and to ensure that those funds are available to return to the persons entitled.

**Motion:** Mr. Greco moved, Mr. Sharp seconded, and the board voted unanimously to approve the committee's recommendation. **[Exhibit B]**

#### B. Legal Ethics Committee

Ms Hirschbiel asked the board to consider the recommendation of the Legal Ethics Committee to adopt the Formal Ethics Opinion re: Third Party Payors. **[Exhibit C]**

**Motion:** Ms. Kohlhoff moved, Mr. Williams seconded, and the board voted unanimously to approve the committee's recommendation.

Ms Hirschbiel asked the board to consider the LEC's recommendation to adopt the proposed "housekeeping" amendments to the following formal ethics opinions: 2005-31, 2005-141, 2005-150, 2005-158, 2005-168, 2005-175, 2011-186, 2011-187, 2011-188. **[Exhibit D]**

**Motion:** Mr. Pagan moved, Mr. Greco seconded, and the board voted unanimously to approve the EOP updates as recommended by the committee.

**C. OSB Military and Veterans Law Section**

Mr. Flaherty and Mr. Crowe presented the section's request that it be allowed to solicit funds to establish the Oregon Veterans Legal Clinic at Willamette Law School with a view toward creating an endowment that would support the salary of a clinic administrator. Willamette would supply the space at no cost. Students would work in the clinic under the supervision of one or more adjunct professors who would be paid by a third party. **[Exhibit E]** Mr. Spier requested that Ms. Stevens arrange a future meeting to hear a further proposal from Mr. Crowe and Mr. Flaherty as to how this project fits in with the mission of bar sections.

**D. OSB Civil Rights Section**

Mr. Ellis presented background for the section's request to file a complaint with BOLI against Kaiser Permanente for the denial of the use of meeting space at the North Interstate Kaiser Permanente Town Hall. Mr. Wilhoite recommended the section try again to make contact with Kaiser to give them a chance to make amends. Mr. Chaney questioned the section's delay in bringing this to the board's attention. Mr. Ellis said the section was delayed as they gave Kaiser time to respond to the section's letter. Mr. Wilhoite offered to contact Kaiser on the section's behalf. The matter failed for lack of motion. Mr. Wilhoite will report back to the board after he is in contact with Kaiser.

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

**A. Budget and Finance Committee**

Ms. Kohlhoff gave a general committee update. In October the staff will present their 2016 draft budgets and the board will vote on the final budget in November.

**B. Governance and Strategic Planning Committee**

Mr. Heysell presented the committee's proposed amendments to OSB Bylaws regarding the Board of Bar Examiners. **[Exhibit F]**

**Motion:** Mr. Heysell moved, Mr. Greco seconded, and the board voted unanimously to waive the one meeting notice requirement for amending the bylaws.

**Motion:** The board unanimously approved the committee motion to amend the various bylaws. Mr. Heysell briefly reviewed other issues under consideration by the Committee.

**C. Public Affairs Committee**

Mr. Prestwich and Ms. Grabe updated the board on the latest legislative activity and the status of the bar's law improvement proposals.

**D. Executive Director Selection Special Committee**

Mr. Heysell gave an update on the committee's progress.

**7. Other Action Items**

Ms. Edwards presented various appointments to the board for approval calling the board's attention to the two additional positions on the Legal Ethics Committee. **[Exhibit G]**

**Motion:** Mr. Greco moved, Ms. Nordyke seconded, and the board voted unanimously to approve the appointments.

Mr. Spier discussed the establishment of an annual Scholar in Residence and a President's Legal Scholarship Award and requested an OSB staff person study the issue and report back to the board.

Ms. Pulju presented the Public Service Advisory Committee's report on Workers Compensation in Lawyer Referral Service. The committee recommended that the BOG take no action until the completion of the Modest Means pilot program.

Ms. Hyland asked the board to consider whether to sign on to the ABA Commission on Disability Rights "Pledge for Change," designed to increase awareness of disability diversity in the legal profession. **[Exhibit H]**

**Motion:** Mr. Greco moved, Ms. Kohlhoff seconded, and the board voted unanimously to have the bar sign on the pledge.

Ms. Wright, OSB Legal Opportunities Coordinator, reported on the encouraging progress of her work.

Mr. Spier asked the board to consider whether to support the proposed ABA resolution to establish a privilege for confidential communications between a client and a lawyer referral service. **[Exhibit I]**

**Motion:** Mr. Chaney moved, Mr. Pagan seconded, and the board voted unanimously to support the proposed ABA resolution.

## **8. Consent Agenda**

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

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

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

**Motion:** Mr. Greco moved, Mr. Whang seconded, and the board voted unanimously to enter into a cease and desist agreement with Mr. Bolton

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

None.

**Oregon State Bar  
Board of Governors Meeting  
April 24, 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. Unlawful Practice of Law Litigation**

The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Mr. Bolton.

**Motion:** Mr. Greco moved, Ms. Nordyke seconded, and the board voted unanimously to approve the cease and desist agreement as negotiated with Mr. Bolton.

**B. Pending or Threatened Non-Disciplinary Litigation**

Ms. Pulju reported on the five-year contract with Legal Interactive. We are three years into the contract and the company is non-responsive and our payment was returned. OSB sent a notice of intent to end the contract with Legal Interactive.

**C. Other Action Items**


Executive Session agenda item C1 was withdrawn.

# OREGON STATE BAR

## Board of Governors Agenda

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**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.

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# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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

[PROJECT 12-04]

**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 Payers<sup>1</sup> 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?<sup>2</sup>

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?<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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."

<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Those inchoate claims could include claims for reimbursement, restitution, and subrogation.<sup>7</sup> 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.

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

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

<sup>7</sup> 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.

**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)<sup>1</sup>, A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

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<sup>1</sup> 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](#).<sup>2</sup>

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

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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").

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

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

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

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

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

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

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

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

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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.

~~(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.<sup>1</sup> 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~~

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

~~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.<sup>4</sup> 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.~~

<sup>2</sup> ~~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.

DRAFT

**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.<sup>1</sup> If, however, an

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

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,<sup>3</sup> 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.<sup>4</sup> 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.**

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“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.

<sup>2</sup> 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).

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

<sup>4</sup> 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 Oregon permits for-profit lawyer referral services. Oregon RPC 7.2(c) provides:

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

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

~~— (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.

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

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2,13, 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(~~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).<sup>2</sup>

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

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<sup>1</sup> ~~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."~~

<sup>2</sup> 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.**

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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.

DRAFT

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.<sup>1</sup>

**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.”<sup>2</sup>

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

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<sup>1</sup> 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).

~~<sup>2</sup> 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. O<sup>3</sup> ~~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 1.6<sup>4</sup> 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.

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<sup>3</sup> ~~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.~~

<sup>4</sup> 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.<sup>5</sup>

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.

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<sup>5</sup> *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.<sup>1</sup>

### 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.<sup>2</sup> 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

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<sup>1</sup> 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](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/chartsfyis/metadachart.html).

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

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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>3</sup> 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.”

<sup>4</sup> 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.”

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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

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<sup>6</sup> 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).

<sup>7</sup> 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.”<sup>8</sup> 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.**

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<sup>8</sup> 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.<sup>1</sup> In addition, Oregon RPC 5.3 provides:

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

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



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

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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.<sup>2</sup> To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential.<sup>3</sup> 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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<sup>2</sup> 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").

<sup>3</sup> 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.

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.<sup>4</sup>

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."<sup>5</sup> As technology advances, the third-party vendor's protective measures may become less secure or obsolete over time.<sup>6</sup> Accordingly, Lawyer may be required to reevaluate the protective measures used by the third-party vendor to safeguard the client materials.<sup>7</sup>

**Approved by Board of Governors, November 2011.**

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<sup>4</sup> 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](#).

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

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

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

# OREGON STATE BAR

## Board of Governors Agenda

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**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

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### 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 created<sup>1</sup>; 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

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<sup>1</sup> 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)

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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.

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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

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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.<sup>2</sup>

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 Coordinator<sup>3</sup> – 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.

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<sup>2</sup> 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.

<sup>3</sup> 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.

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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

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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

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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

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### 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

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### 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

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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 6<sup>th</sup> 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

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

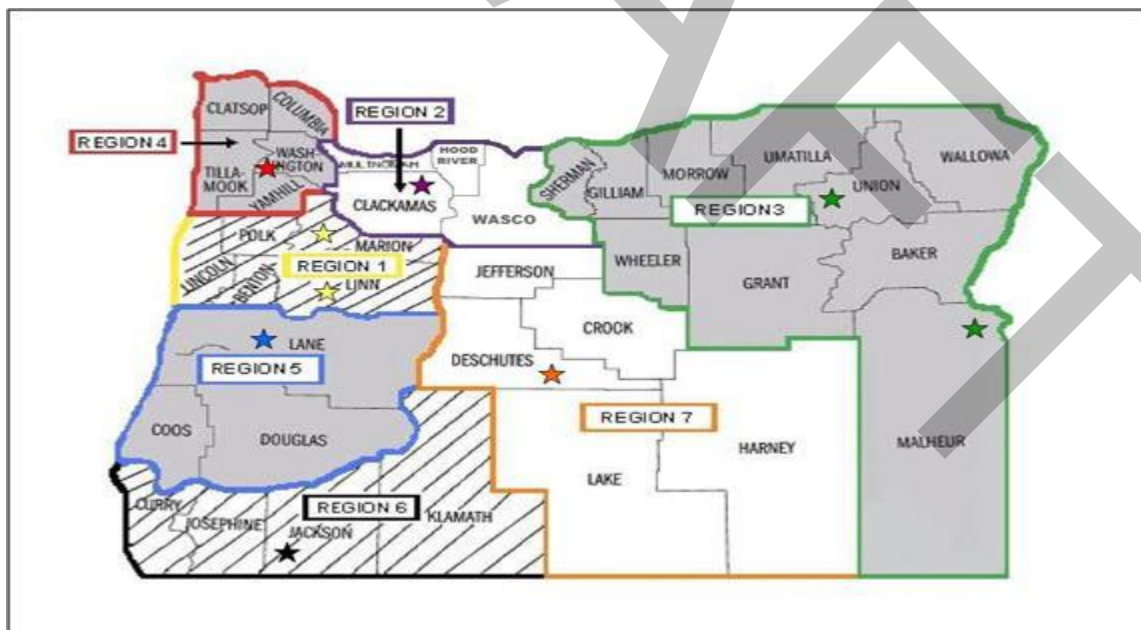
In Oregon, the National Guard Bureau has contracted to emplace ten Family Assistance Specialists (FAS) throughout Oregon, managed by the Oregon Family Assistance Coordinator. The FASs assist all Veterans, Servicemembers, and their Families, regardless of branch or service. They are available 24/7 and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

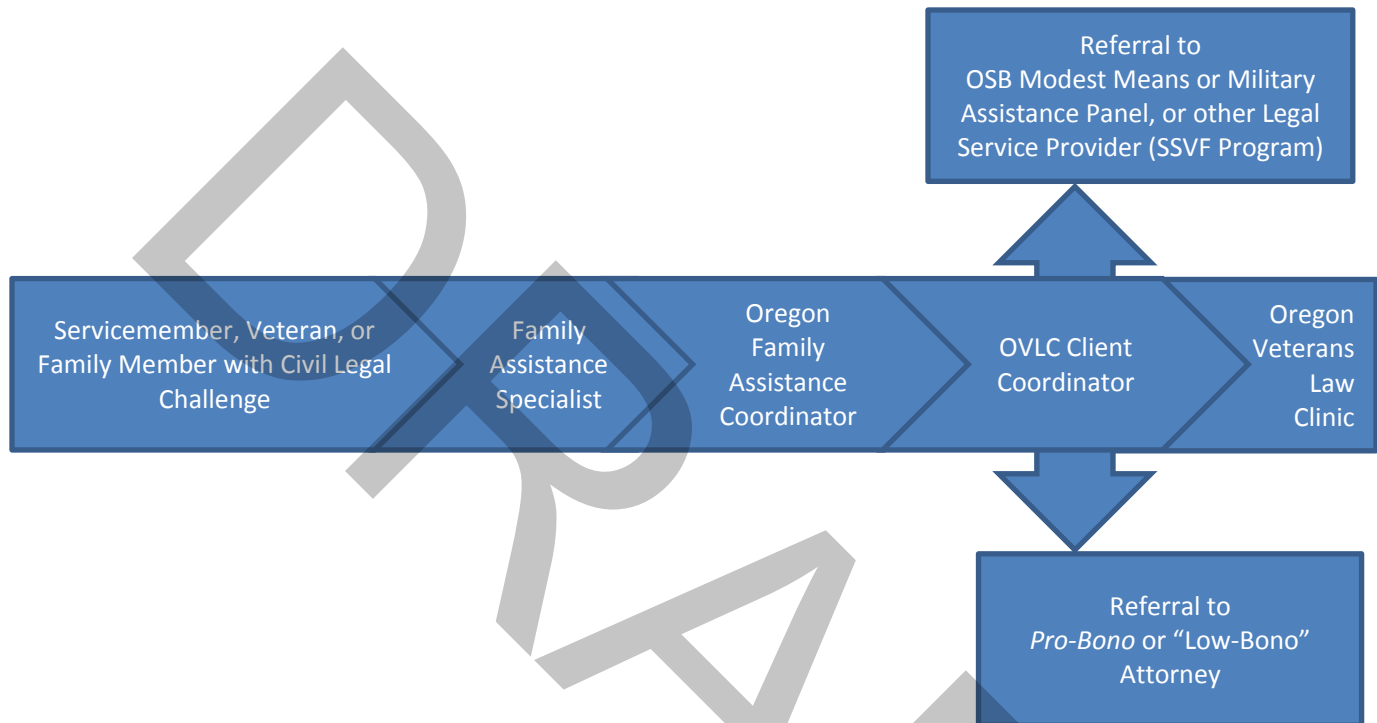
- Legal Resources and Referral
- ID and DEERS
- Financial Resources, Relief Fund Support (for active members of the Oregon National Guard who encounter financial emergencies), and Referral
- Tricare Resource and Referral
- Crisis Intervention and Referral
- Community Information and Outreach

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

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### 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 6<sup>th</sup> 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

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### 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

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### 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

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### 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

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### 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.

# OREGON STATE BAR

## Board of Governors Agenda

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

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### 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”<sup>1</sup> 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.

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<sup>1</sup> 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

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

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### Action Recommended

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

### Background

#### 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

DRAFT



## Commission on Disability Rights

### **DISABILITY DIVERSITY IN THE LEGAL PROFESSION: A PLEDGE FOR CHANGE**

**A**s 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](mailto: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.*

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**  
**Special Open Session of the Board of Governors**  
**May 15, 2015**  
**Minutes**

President Richard Spier called the meeting to order at 9:15.a.m. on May 15, 2015. The meeting adjourned at 9:30 a.m. Board members present were James Chaney, Guy Greco, Ray Heysell Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon Pagan, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Charles Wilhoite, and Elisabeth Zinser. Not present were Travis Prestwich, Per Ramfjord and Tim Williams. OSB employees present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener and Camille Greene.

**1. Call to Order**

Mr. Spier called the meeting to order.

**2. Sole & Small Firm Section Name Change Request**

Ms. Stevens asked the board to consider the request of the Sole and Small Firm Practitioners Section to change its name to the Sole and Small Firm Section for simplification purposes only. There was some discussion about whether the proposed change is grammatically correct.

**Motion:** Mr. Pagan moved, seconded by Ms. Rastetter, to amend the section's name to the "Solo and Small Firm Section." Mr. Mansfield cautioned against changing the name to something the section had not requested, the BOG should inquire if the proposed name is acceptable. Mr. Pagan withdrew his motion.

**Motion:** Mr. Mansfield moved, seconded by Ms. Rastetter, to solicit the section's reaction to the name "Solo and Small Firm Section." Mr. Greco voted no, all others voted yes.

**Oregon State Bar  
Board of Governors Meeting  
May 15, 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 11:30 a.m. The meeting adjourned at 12:15 p.m.

Board members present were James Chaney, Guy Greco, Ray Heysell Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon Pagan, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Simon Whang, Charles Wilhoite, Tim Williams and Elisabeth Zinser. Not present was Travis Prestwich. OSB employees present were Rod Wegener and Christine Kennedy. Also present was Mitzi Naucler, E.D. Selection Special Committee member.

A. Discussion re: Final E.D. Candidates

The board members found both candidates to have excellent skills, recognizing that no single person will have all the attributes desired. The board discussed the relative merits of bringing in someone from outside the organization and whether both candidates had the ability to lead the bar into the future. After discussion, there was a consensus that references of both finalists should be contacted using a set of specific questions. Each board member contacting references will summarize their findings in writing; the interview notes and the summaries will be provided to the board in preparation for a telephone conference to be scheduled sometime within the next two to three weeks.

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# OREGON STATE BAR

## Board of Governors Consent Agenda

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**Meeting Date:** June 26, 2015  
**From:** Ray Heysell, Chair, Governance & Strategic Planning Committee  
**Re:** Sole and Small Firm Practitioners Section Name Change

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### **Action Requested**

Approve the Governance & Strategic Planning Committee's recommendation to approve the Sole and Small Firm Practitioners Section to change its name to the Solo and Small Firm Section.

### **Discussion**

A few months ago, the Sole and Small Firm Practitioners Section asked to change its name. Unfortunately, when the request was brought to the Governance & Strategic Planning Committee for consideration, the proposed new name was inaccurately represented as the "Sole and Small Firm Section."

Some GSP members questioned whether the name was grammatically correct. When it was suggested that the new name be the "Solo and Small Firm Section," the committee was reluctant to change the name to something other than what the section had requested. Staff was instructed to inquire of the section whether it agreed to the suggested name.

Before that could be accomplished, the section's staff liaison noted that the SSFP Section's minutes as well as the Chair's request to change the name showed the new name as the "Solo and Small Firm Section." Thus, the concern of the GSP was moot.

With the approval of President Spier, staff has notified the section that its requested name change has been approved and we have begun the process of reflecting the new name on the OSB web site and various materials.

The BOG's vote will ratify the president's decision to move forward with the name change without further delay.



**OREGON STATE BAR**  
**Client Security - 113**  
**For the Five Months Ending May 31, 2015**

Description	May 2015	YTD 2015	Budget 2015	% of Budget	May Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$490	\$1,998			\$284	\$701	185.1%
Judgments	100	400	1,000	40.0%	50	400	
Membership Fees	5,400	656,261	693,500	94.6%	4,755	655,664	0.1%
<b>TOTAL REVENUE</b>	<b>5,990</b>	<b>658,659</b>	<b>694,500</b>	<b>94.8%</b>	<b>5,089</b>	<b>656,765</b>	<b>0.3%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,620	13,289	32,600	40.8%	2,189	12,408	7.1%
Employee Taxes & Benefits - Reg	891	4,414	11,900	37.1%	741	4,608	-4.2%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,511</b>	<b>17,703</b>	<b>44,500</b>	<b>39.8%</b>	<b>2,930</b>	<b>17,016</b>	<b>4.0%</b>
<b>DIRECT PROGRAM</b>							
Claims	1,465	19,532	250,000	7.8%	6,203	14,944	30.7%
Collection Fees		93	1,500	6.2%	32	97	-4.1%
Committees			250				
Travel & Expense	365	590	1,400	42.1%		608	-3.0%
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>1,830</b>	<b>20,215</b>	<b>253,150</b>	<b>8.0%</b>	<b>6,235</b>	<b>15,649</b>	<b>29.2%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Office Supplies			150				
Photocopying		5	50	9.6%		34	-86.0%
Postage	20	81	300	26.9%	15	122	-33.6%
Professional Dues		200	200	100.0%	200	200	
Telephone	29	81	150	54.1%		25	230.9%
Training & Education			600				
Staff Travel & Expense	65	286	974	29.3%			
<b>TOTAL G &amp; A</b>	<b>114</b>	<b>652</b>	<b>2,424</b>	<b>26.9%</b>	<b>215</b>	<b>380</b>	<b>71.5%</b>
<b>TOTAL EXPENSE</b>	<b>5,455</b>	<b>38,571</b>	<b>300,074</b>	<b>12.9%</b>	<b>9,379</b>	<b>33,045</b>	<b>16.7%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>535</b>	<b>620,088</b>	<b>394,426</b>		<b>(4,290)</b>	<b>623,720</b>	<b>-0.6%</b>
Indirect Cost Allocation	2,527	12,635	30,319		1,357	6,785	86.2%
<b>NET REV (EXP) AFTER ICA</b>	<b>(1,992)</b>	<b>607,453</b>	<b>364,107</b>		<b>(5,647)</b>	<b>616,935</b>	<b>-1.5%</b>
Fund Balance beginning of year		619,965					
<b>Ending Fund Balance</b>		<b>1,227,419</b>					

CLAIM year	CLAIM No.	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2013	24	Mantell, Elliott J	Goff, Daniel	\$ 47,609.00	\$ 47,609.00	Davis	CSF Denied 11/16/13 Appealed May 2015. Pending.
2013	36	Chaves Ramirez, Aquilino	McBride, Jason	\$ 2,600.00		Angus	\$2600 ck mailed 04/09/15 see 2013-37
2013	37	Martinez, Maria	McBride, Jason	\$ -		Angus	\$0 ck mailed 04/09/15 see 2013-36
2013	42	Meier-Smith, Mary	Hall, C. David	\$ 27,500.00	\$ 27,500.00	Brown	
2014	2	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Raher	copies of claim to Raher 1/27/15
2014	14	Plancarte, Gladys for Pedro Lagunas Dor	McBride, Jason	\$ 1,300.00	\$ 1,300.00	not assigned	wait for info from claimant 04/11/14
2014	15	Soto-Santos, Armando	McBride, Jason	\$ 5,000.00		Atwood	\$3500 check mailed 4/3/15
2014	16	Dickinson, Bruce	Stevens, Randolph J.	\$ 1,500.00		Timmons	\$1167.46 check mailed 1/29/15
2014	18	Crocker, Suzanne	McCarthy, Steven M.	\$ 1,500.00	\$ 1,500.00	Butterfield	CSF Denied 05/16/15
2014	20	Pettingill, Lori Lynn	Wood, Alan K.	\$ 4,000.00	\$ 4,000.00	Naucler	
2014	23	Perez-Paredes, Javier	McBride, Jason	\$ 2,500.00		Atwood	\$2500 check mailed 4/3/15
2014	24	Valdez-Flores, Maria	McBride, Jason	\$ 5,000.00		Atwood	\$4120 check mailed 4/3/15
2014	25	Hassel, Stacey Lee	Wood, Alan K.	\$ 1,000.00	\$ 1,000.00	Naucler	\$1000 ck mailed 06/11/15
2014	26	Waller, Tiffany M	Wood, Alan K.	\$ 525.00		Naucler	\$525 ck mailed 06/04/15
2014	27	Gowan, Valerie	Schannauer, Peter M	\$ 1,240.00		Davis	\$940 ck mailed 5/7/15
2014	28	Marquardt, Christina Louise	Segarra, Francisco	\$ 1,449.14	\$ 1,449.14	Raher	CSF Denied 05/16/15
2014	29	Madera, Benjamin and Irene	Roller, Dale Maximiliano	\$ 1,500.00	\$ 1,500.00	Reinecke	CSF Denied 05/16/15
2014	31	Games, Gary Raymond	Roller, Dale Maximiliano	\$ 17,000.00	\$ 17,000.00	Reinecke	
2014	32	Scott, Andrew L.	Allen, Sara Lynn	\$ 5,000.00	\$ 5,000.00	Bennett	
2014	33	Henry, Jennifer Lynn	Connall, Des & Shannon	\$ 20,000.00	\$ 20,000.00	Davis	CSF Denied 05/16/15
2015	1	Smith, Steven Lee	Ettinger, Mariel	\$ 868.50	\$ -	Park	Lawyer paid client. Claim w/drawn 2/9/15.
2015	2	Miranda, Francisco	Bertoni, Gary B	\$ 1,500.00	\$ 1,500.00	Bennett	
2015	3	Smith, Devin	Eckrem, John P	\$ 1,000.00	\$ -	Miller	Lawyer paid client. Claim w/drawn 5/21/15.
2015	4	Godier, John	Webb, Sandy N	\$ 46,000.00	\$ 45,000.00	Thompson	\$45,000 CSF approved 5/16 to BOG 6/26/15
2015	5	Foster, Sandra Jean	Landers, Mary	\$ 4,012.49		Malcolm	\$4180 check mailed 4/3/15
2015	6	Hernandez, Jose Prado	Bertoni, Gary B	\$ 6,591.00	\$ 6,591.00	Bennett	
2015	7	Koutsopoulos, Stephanie Kay	Gruetter, Bryan W	\$ 5,489.50	\$ 5,489.50	Miller	
2015	8	Husel, Richard C	Stedman, Michael	\$ 11,500.00	\$ 11,500.00	Braun	
2015	9	Moore, Kenneth Wayne	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	
2015	10	Patapoff, John Paul	Dickey, Jeffrey Scott	\$ 7,500.00	\$ 7,500.00	Malcolm	
2015	11	Huntington, Anthony D.	Gerber, Susan R.	\$ 7,000.00	\$ 7,000.00	Braun	CSF Denied 05/16/15
2015	12	Avery, James Ray	Carolan, Kevin	\$ 3,886.00	\$ 3,886.00	Park	
2015	13	Hallam, Deborah Lynne	Cyr, Steven M.	\$ 20,207.24	\$ 20,207.24	Butterfield	
2015	14	Lawson, Richard	Gerber, Susan R.	\$ 10,000.00	\$ 10,000.00	Atwood	
2015	15	Roelle, Brian D.	Gerber, Susan R.	\$ 9,740.00	\$ 9,740.00	Atwood	
2015	16	Lyons, Derrick Lee	Bertoni, Gary B	\$ 3,000.00	\$ 3,000.00	Bennett	
					\$ 267,271.88		
		Funds available for claims and indirect costs allocation as of May 2015	Total in CSF Account	\$ 1,227,419.00			
			Fund Excess	\$ 960,147.12			

May 6, 2015

John Gear  
John Gear Law Office  
161 High Street SE  
Ste 208B  
Salem, Or 97301

Re: Oregon State Bar Loan Repayment Assistance Program

Dear John:

Thank you very much for your recent correspondence expressing concerns about the Oregon State Bar Loan Repayment Assistance Program (LRAP). As is often the case, you bring a perspective about issues that helps the Board of Governors in its ongoing review of programs and ensures that we continue to keep members' views in mind. Your continued interest in fairness and justice is very much appreciated.

At its April 24 meeting, the Governance and Strategic Planning Committee of the BOG reviewed your concerns about the LRAP and had a healthy discussion about the program. While the BOG remains committed to the program, the GSP members asked some probing and substantive questions. At the conclusion of the discussion, the Committee asked the LRAP Advisory Committee to review the Policies and Guidelines again, in light of your concerns. Of most interest to the GSP Committee was the absence of questions about household income on the LRAP Application. The LRAP Advisory Committee will report back to the GSP about that issue. In addition, General Counsel Helen Hirschbiel will review whether there are any legal issues restricting the ability to ask about household income.

As you probably know, the LRAP was first conceived in 2005 and funded in 2006. The first loans under the program were provided in 2007. Every year the LRAP Advisory Committee (appointed by the BOG), reviews the program and, as appropriate, recommends changes to the Policies and Guidelines. Following the enactment of the College Cost Reduction and Access Act of 2007 (CCRAA), the LRAP Advisory Committee recommended some fairly significant changes. At the Advisory Committee's suggestion, the BOG made changes to ensure that more senior public service attorneys (who earn substantially less than their counterparts in private practice) would remain committed to public service work.

John Gear  
May 6, 2015  
Page 2

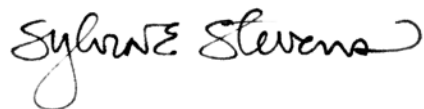
The CCRAA is the legislation that created, among many other things, the 10-year public service debt forgiveness that you mentioned in your communications with Rich Spier and me. In addition, that legislation created 25-year debt forgiveness for all student debt. It also created the Income Based Repayment option that is available to all student debt holders who incurred their debt in 2008 and later. You'll be gratified to know that any newer lawyers in this state who find themselves making little money have the ability to make payments as low as \$0 on their student debt. That is, of course, only a temporary solution, but it has proved helpful to many newer lawyers. I am not an expert on the CCRAA by any means but am sure you can find complete information about the federal program online if you wish to know more.

Remember that LRAP was established before the 2008 economic downturn. Additionally, the program was not designed to assist brand new attorneys. Its focus was and remains on *retention* of attorneys in public service. That is not to say the Bar is not sensitive to the challenges facing new lawyers in today's legal market. Recently, the Bar hired Terry Wright (a former clinical professor at Lewis & Clark Law School) to inventory all of the programs offered by the OSB and other groups, identify overlaps, and help the Bar determine what we can do most effectively to assist the newer members of the Bar.

If you have specific questions about either the LRAP or the CCRAA I'd recommend that you speak with Catherine Petrecca, the LRAP Coordinator here at the Bar. She is much more conversant on the details of each than I am, and I know she'd be happy to speak with you. She can be reached at 503-431-6355.

Again, thank you for your continued interest in justice for Oregonians, including newer members of the Oregon State Bar. We are all grateful for your compassion and perspective.

Sincerely,

A handwritten signature in black ink that reads "Sylvia Stevens". The signature is written in a cursive style with a large, looping initial "S" and a trailing flourish at the end.

Sylvia Stevens  
Executive Director  
503-431-6359  
Email [sstevens@osbar.org](mailto:sstevens@osbar.org)

cc: Richard Spier, OSB President  
Ray Heysell, President-elect and  
Chair, Governance and Strategic  
Planning Committee



April 17, 2015

Ms. Camille Greene  
Oregon State Bar  
16037 SW Upper Boones Ferry Road  
Tigard, OR 97224

RECEIVED

APR 21 2015

Oregon State Bar  
Executive Director

**Executive Director**  
Marilyn R. Cover

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620 SW Main St., Suite 102  
Portland, OR 97205  
Tel: 503-224-4424  
Fax: 503-224-1721  
office@classroomlaw.org  
www.classroomlaw.org

Dear Camille,

On behalf of Classroom Law Project and the more than 26,000 students we serve every year, I want to thank you for sponsoring a table at our April 23 Legal Citizen of the Year Award Dinner and Benefit.

I would also like to share a word of thanks from one of our students:

*"I would like to thank you for changing my life. Classroom Law Project has been the highlight of my education. Through it, I have learned about American History, law, and our constitution. In addition, I have made some of the most amazing friends through this program. CLP has been amazing, and I hope every student gets the same opportunity I did."*

Thank you again for your gift. We look forward to seeing you at the dinner on April 23 at the Sentinel Hotel in downtown Portland.

Sincerely,

Marilyn R. Cover  
Executive Director

Classroom Law Project is a 501(c)(3) tax-exempt organization.  
Thank you again for your support!

March 28, 2015

Ellen Osoinach, Chair  
Civil Rights Section  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281

Dear Ms. Osoinach:

Thank you for your March 4, 2015 letter regarding the Civil Rights Section's request to use Kaiser Permanente's Town Hall for a community presentation last year. We understand your disappointment over the way we handled your request to use Town Hall and appreciate this opportunity to respond.

Quite simply, we got this one wrong. It appears that we either did not fully understand the nature of your request, or we did not effectively apply our building use criteria, or both. In either case, we deeply regret our decision not to request additional information or permit the Section to use Town Hall.

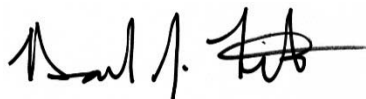
We sincerely apologize for this misunderstanding and for any confusion or concern we created.

This mistake was particularly unfortunate in light of Kaiser Permanente's long and proud history of promoting diversity in our community. In fact, our roots as an organization date back 70 years to WWII, when Henry Kaiser built Vanport, one of the largest public housing communities in the country to provide non-discriminatory housing to a racially diverse workforce during the war. Today, Kaiser Permanente continues to invest in a wide range of programs and initiatives to reduce health disparities in communities of color and underserved populations. Clearly, our handling of your Town Hall request was not consistent with these values.

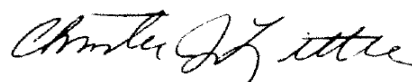
We are taking several steps to avoid future misunderstanding in handling community requests to use Town Hall. One, we will streamline and clarify our policy for reviewing these requests. Two, we will provide ongoing training to frontline staff who review community use applications. Three, we will provide a clear "appeal" process for organizations who believe they are eligible to use the building but have been declined.

Thank you to you and the Section for bringing this matter to our attention. We appreciate the opportunity to respond to your concern and make the internal improvements necessary to avoid similar mistakes in the future.

Sincerely,



Daniel Field  
Senior Director  
Community Benefit



Christie Little  
Senior Director  
Business Continuity & Regional Support Services

## Sylvia Stevens

---

**From:** Denise Cline  
**Sent:** Wednesday, May 06, 2015 4:24 PM  
**To:** Sylvia Stevens; Helen Hierschbiel  
**Subject:** FW: MCLE Suspension Letter

Part two.

Denise Cline  
MCLE Program Manager  
503-431-6315  
[dcline@osbar.org](mailto:dcline@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

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.

-----Original Message-----

**From:** Robert E. Repp [<mailto:robertrepplaw@comcast.net>]  
**Sent:** Wednesday, May 06, 2015 4:32 PM  
**To:** Denise Cline  
**Subject:** RE: MCLE Suspension Letter

M. Cline:

I appreciate your input in it and am hard at it as we speak. You can share my earlier communication with all at the Bar. My active membership is valuable to me and has been for the past 40 years. I expressed a frustration that many in sole practice have. Nonetheless, I'm hard at getting the administrative suspension resolved and want it cleared and restored not later than May 20th, 2015.

Thank you for your courtesies,

Robert E. Repp, OSB 742687

-----Original Message-----

**From:** Denise Cline [<mailto:dcline@osbar.org>]  
**Sent:** Wednesday, May 06, 2015 3:57 PM  
**To:** 'Robert E. Repp'  
**Subject:** RE: MCLE Suspension Letter

Mr. Repp:

A hard copy of the letter is being sent to you via regular mail today.

I will certainly waive the MCLE late fee due to the financial hardship but it is very important that you file your completed compliance report as soon as possible to avoid MCLE Suspension on top of the suspensions for failure to pay the PLF and bar fees.

I've attached a compliance report to this message for your completion and return to me.

Thank you.  
Denise

Denise Cline  
MCLE Program Manager  
503-431-6315  
[dcline@osbar.org](mailto:dcline@osbar.org)

Oregon State Bar \* 16037 SW Upper Boones Ferry Road \* PO Box 231935 \* Tigard, OR 97281-1935 \* [www.osbar.org](http://www.osbar.org)

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-----Original Message-----

From: Robert E. Repp [<mailto:robertrepplaw@comcast.net>]  
Sent: Wednesday, May 06, 2015 4:14 PM  
To: Denise Cline  
Subject: RE: MCLE Suspension Letter

I cant even open this up! I regret this but I'm assembling all the money requiring for you, for bar dues, and for the PLF. This has all been substantial. That is why you hadn't heard anything from me. I have to have all money together before I can get fully reinstated. Sometimes I don't think the Bar takes into account how onerous their requirements are on the sole practitioner. I have been ill but fine now. But I'm not going to feel ashamed because I haven't been able to come up with all the money to practice my profession. I will do what I need to but am paralyzed until I assemble the \$5,000 roughly to feed the Oregon State Bar so I can get a new start in practicing my profession of 40 years. A Government lawyer or a firm member doesn't have these sorts of problems and the little guy gets squished. Sincerely Robert E. Repp

-----Original Message-----

From: Denise Cline [<mailto:dcline@osbar.org>]  
Sent: Wednesday, May 06, 2015 3:36 PM  
To: 'robertrepplaw@comcast.net'  
Subject: MCLE Suspension Letter

Mr. Repp,



The attached letter was sent to the Oregon Supreme Court today.

Thank you.

Denise

OSB.gifDenise Cline

MCLE Program Manager

503-431-6315

[dcline@osbar.org](mailto:dcline@osbar.org) <<mailto:dcline@osbar.org>>

Oregon State Bar . 16037 SW Upper Boones Ferry Road . PO Box 231935 .  
Tigard, OR 97281-1935 . [www.osbar.org](http://www.osbar.org) <<http://www.osbar.org/>>

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## Federal Reserve appoints Portland business leader Charles Wilhoite to Western economic advisory council

Molly Young | The Oregonian/OregonLive By Molly Young | The Oregonian/OregonLive

Email the author | Follow on Twitter

on February 24, 2014 at 1:31 PM, updated February 24, 2014 at 3:04 PM

Portland business and community leader **Charles Wilhoite** will join the Federal Reserve Bank of San Francisco's circle of economic advisers, the Fed announced Monday.

Wilhoite is the lone Oregonian on the Fed's 12th District **Economic Advisory Council**. The 11-member board weighs in on the Western U.S. economy for the central bank.

Wilhoite's appointment is to a three-year term.

As managing director of financial consulting firm Willamette Management Associates, Wilhoite is keyed into a number of area industries, including health care, manufacturing and forest products.

The Portland Development Commissioner said he is excited to offer his perspective to the Fed, which implements policies that affect "so much of what we do in our business and the world."

Wilhoite said he expects the regional and national economies to expand moderately this year, though businesses are still cautious to invest. He said there are signs that employment is picking up, and companies are bringing on temporary hires to meet demand.

Wilhoite serves on the **Meyer Memorial Trust** and regional U.S. Bank boards. He's also past chair of the Oregon Health & Sciences University board, **the Portland Business Alliance** and Urban League of Portland.

Wilhoite joins executives from Toyota, Microsoft, Clorox and Genentech, among other firms, on the Fed council.

-- Molly Young



[View full size](#)

Charles Wilhoite

Brent Wojahn/  
The Oregonian

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# True innovation in the legal industry requires outside views and thinking, summit speakers say

POSTED MAY 04, 2015 06:34 PM CDT

BY [VICTOR LI](#)



*Photo of Victor Li by Saverio Truglia*

**Corrected:** To paraphrase Hillary Clinton, it takes a village in order to have true innovation within the legal industry—especially when it comes to closing the sizable gap between those who need access to legal services and the ability of the bar to provide them.

It was a jam-packed second day of the [National Summit on Innovation in Legal Services](#) at Stanford University, with numerous panels, keynote speakers and rapid-fire TED-talk style mini-lectures from professionals from a wide range of industries. On Sunday, we heard from nearly 30 speakers, including judges, government officials, academics, legal service providers, activists, and private practice lawyers ranging from big firm partners to solo practitioners to representatives from legal incubators.

The summit, organized by the [ABA Presidential Commission on the Future of Legal Services](#), also solicited views from individuals in the medical, engineering, social design and information technology fields in addition to those with JDs, demonstrating that no ideas were off-limits.

“Lawyers can learn from innovators at groups like Doctors Without Borders,” ABA President William Hubbard [tweeted](#). Judit Rius Sanjuan, U.S. manager at the MSF Access Campaign for Doctors Without Borders, spoke about how her organization is working with lawyers to change the way it

serves patients, including altering the norms and policies for pharmaceuticals to better deploy cutting-edge vaccines, as well as using intellectual property law to increase access to books and other sources of knowledge.

“Nine out of 10 lawyers are trying to maintain the status quo,” said Sanjuan, who spoke on a panel with design strategist Denis Weil and legal technologist Ron Dolin. “Very few are challenging the system to make sure it is really delivering for underprivileged.”

As it turns out, there is a broad swath of the general population that needs legal services of some sort. Gillian Hadfield, a professor at the University of Southern California law school, noted that 62 percent of U.S. households have a problem that requires some sort of legal representation. In fact, more often than not, members of these households who think they only have one problem actually have at least three.

“Do we have pain? Yes we have pain,” said Hadfield. “And we’re not going to solve it through existing models.” Hadfield, who was on a panel alongside Avvo founder Mark Britton and informational economics professor Marshall Van Alstyne of Boston University, spoke about how the legal industry puts restrictions on itself ranging from the pool of available talent to the types of capital law firms have access to.

Britton went further, citing the ABA’s restrictive rules on who can practice law as a barrier to innovation. “Lack of third-party investment in our legal systems forces lawyers to be everything to everyone,” Britton said. “We require that they be business people, technicians and innovators while supporting the entire system.”

The ABA continues to be opposed to nonlawyer ownership of law firms. Nevertheless, Hadfield maintained that innovative platforms would not be able to exist in the legal industry “without a change in the [professional regulation] rules.”

That’s not to say that innovative programs can’t exist under the current system. One panel identified seven innovative approaches to legal education and the practice of law:

- Stephen Crossland, chair of the [Limited License Legal Technicians Board](#) of Washington State, spoke about the use of nonlawyers with limited licenses to perform certain legal tasks relating to family law. “An LLLT may be better-equipped to handle a family law case than a first-year attorney or recent law grad because they’ve gone through intense training for several years,” said Crossland, who hopes to expand the use of LTTTs to immigration, landlord-tenant and elder law matters.
- Terri Mascherin, a partner at Jenner & Block, talked about the [Chicago Bar Foundation’s Justice Entrepreneurs Project \(“JEP”\)](#), a legal incubator that she helped form. “We brought together all sorts of people in Chicago to try and solve the problems of lawyer underemployment and lack of legal services for regular people,” said Mascherin. “We looked to the business and tech sectors and decided on the legal incubator model.” According to Mascherin, there have been 36 attorneys that have been part of JEP so far.
- Andrew Perlman, professor of law and director of the Institute on Law Practice Technology &

Innovation at Suffolk University Law School, discussed his school's new [Accelerator-to-Practice](#) program which creates a fee-generating law firm within the school and trains students during all three years of law school in technology as well as business development and marketing. "We decided to flip the incubator model on its head," Perlman said. "Why should students have to go through three years of law school and then learn how to practice law? Why not do it from the very beginning of law school?"

- Shantelle Argyle, co-founder and executive managing director of [Open Legal Services](#) in Salt Lake City, spoke about her law firm, which is set up as a 501(c)(3) public charity. "There is a way to be a 501(c)(3) and rely on client fees and be still be sustainable," said Argyle, who was admitted to the bar in 2013. She noted that her firm can be profitable with fees as low as \$60 per hour, in part by keeping office expenditures and overhead as low as possible.
- [Ann Aiken](#), chief judge of the U.S. District Court for the District of Oregon, talked about the work of its [Reentry Court](#), a program that relies on technology to help keep convicted felons from re-offending. "We drew on the best practices of medical community, as well as others, to serve as the model for the Reentry Court," said Aiken, who estimates that the 160 reentry court graduates have saved the state more than \$1.6 million.
- Laurie White, a judge of the Orleans Parish Criminal District Court in Louisiana, presented the [Orleans Parish Re-Entry Program](#), which tackled the problem from a different angle. White recruited several lifers at the Louisiana State Penitentiary to provide guidance, counseling and job training for nonviolent felons in order to give them a better chance at succeeding in the outside world. "One in 75 Louisianans are in prison—that's more than any other place in the world," White said. "We cannot arrest and incarcerate our way out of Louisiana's crime problem."
- Colin Rule, founder and chief operating officer of [Modria](#), advised the audience to embrace online dispute resolution. "The next justice system will look more like ODR than traditional courts," Rule said. "Most people aren't interested in hiring a lawyer, paying a large retainer and then going to court."
- Charles Harrington, a judge of the Arizona Superior Court of Pima County, presented the North Canyon Kiosk, an automated booth at the Department of Motor Vehicles in Mojave County that allows people to file papers, speak with court clerks and pay fines remotely. "We hope to expand this to include hearings," Harrington said.

Two of the biggest names speaking during the marathon Sunday session drove home the point about the need for the legal profession to bridge the access-to-justice gap. Author and legal consultant Richard Susskind warned of the dangers of ignoring technology and staying stuck in the 19th and 20th centuries.

"Law should be affordable, accessible and intelligible for all," Susskind said. "It's not the purpose of the law to provide a living for lawyers." Susskind noted that by the 2020s, technology will have fundamentally changed the practice of law, especially at the lower end of the legal industry.

Technology will be able to answer legal questions more easily and efficiently than humans. “The legal industry is too costly, too slow, too forbidding, too unintelligible, too combative and too out-of-step with the Internet society,” Susskind said.

Sherrilyn Ifill, president and director of the NAACP Legal Defense and Educational Fund, had a more sobering thought for summit attendees. Referencing the recent civil unrest in Baltimore and Ferguson, Missouri. Ifill called on all lawyers to help fix what’s wrong with the legal system and preserve democracy.

“There’s an entire generation now that believes that law is unfair and inequitably applied,” Ifill said. “Public confidence in rule of law is essential. As the public loses confidence in the rule of law, the less they believe me when I tell them to trust in the law. If they don’t believe me, then what recourse will they have?”

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [National Law Journal](#)

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# Law School Grads' Jobs Rate Rises—But There's a Catch

Karen Sloan, The National Law Journal

April 29, 2015

A higher percentage of 2014 law school graduates landed jobs compared to their predecessors the year before, according to employment figures released Wednesday by the American Bar Association.

Nearly 60 percent of those graduates were in full-time jobs that require bar passage 10 months following graduation, up from 57 percent from 2013. Those jobs are widely considered the gold standard for legal employment.

## [CHART: Law Graduate Job Placement 2014, Top Schools](#)

Still, demand for new lawyers was flat—the actual number of jobs obtained by recent graduates declined by 2 percent in 2014. In other words, the higher employment rate happened because law schools turned out fewer graduates, not because the job market picked up.

“The employment situation has gotten better,” said Brian Tamanaha, a professor at Washington University in St. Louis School of Law. “But that’s mainly because the number of graduates has gone down. The market itself hasn’t improved. I thought the market was turning around, so I was surprised to see that.”

Indeed, 2,709 fewer students obtained Juris Doctor degrees in 2014, meaning there were nearly 6 percent fewer graduates seeking jobs. Law schools that began shrinking class sizes four years ago were seeing the delayed employment benefits of that move, said Derek Muller, a professor at Pepperdine University School of Law who tracks employment trends.

“Because law schools are getting smaller, the job prospects for graduates are getting better,” he said. “There are fewer graduates competing for those jobs.”

An additional 11 percent of 2014 law graduates found full-time jobs for which a J.D. offered an advantage—meaning 71 percent of all graduates held jobs that either require or prefer a law degree. That was up from nearly 68 percent the previous year.

The unemployment rate declined slightly. Nearly 10 percent of recent graduates reported that they were unemployed and seeking work, down from more than 11 percent in 2013. Still, that figure remained much higher than the 6 percent unemployment rate for the class of 2010,

Tamanaha said.

The University of Pennsylvania Law School had the highest percentage of graduates in full-time, bar passage-required jobs not financed by the school itself—more than 91 percent. Cornell Law School was next at 90 percent, followed by Duke Law School at nearly 88 percent. Columbia Law School and the University of Chicago Law School rounded out the top five.

On the other end of the spectrum, Golden Gate University School of Law had the lowest percentage of graduates in full-time jobs that require bar passage, at less than 25 percent. The University of the District of Columbia David A. Clarke School of Law placed 26 percent of 2014 graduates in those jobs.

The bump in entry-level employment reported to the American Bar Association by law schools tracked with earlier figures from the National Association for Law Placement, which found that law firm associate hiring ticked up slightly in 2014.

The latest ABA employment figures don't offer an apples-to-apples comparison to the previous year, however.

A cohort of law deans successfully lobbied the ABA last year to push back the employment data-collection timing by one month to make the process fairer to schools in states slow to release bar-exam results. They argued that the nine-month reporting timeline gave students too little time to secure jobs after their exam results came in, as some employers won't consider applicants who haven't yet passed the bar. The ABA's collection schedule this year moved from March 15 to April 15, or to 10 months following graduation.

But the new timing doesn't appear to have had much of an effect on employment rates, Muller said. Job placement increased slightly at California schools collectively, but mostly because there were fewer graduates. Several California schools boosted their number of school-funded jobs, which helped improve their employment rates.

Lower bar-passage rates in many jurisdictions during the July 2014 administration may have hurt employment rates slightly, Muller said. "Graduates failed the bar at a higher rate this year than previous years, which may have had an impact on some jobs on the margin."

The number of jobs funded by the law schools themselves crept up slightly in 2014—4.3 percent of graduates were in jobs paid for by their schools, up from 4 percent the previous year. A quarter of Emory University School of Law's 2014 graduates were in school-funded jobs—more than any other school. The College of William and Mary Marshall-Wythe School of Law was next at more than 22 percent, followed by the University of California, Davis School of Law.

Both Tamanaha and Muller predicted that employment rates would continue to improve because the next three graduating classes each will be smaller than their predecessors.

"That's good news for the people who do go [to law school], because you will have less competition for jobs," Muller said. "The odds will be better for these students."

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