

Oregon State Bar
Meeting of the Board of Governors
 April 22, 2016
 Oregon State Bar Center, Tigard, OR
Open Session Agenda

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:30pm on April 22, 2016.
 Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, April 22, 2016, 12:30pm

1. Call to Order / Finalization of Agenda

2. Joint Meeting with Professional Liability Fund Board of Directors

- | | | | |
|----|--|--------|---------|
| A. | Western States Bar Conference Highlights [Mr. Heysell, Ms. Bernick] | Inform | |
| B. | Innovations in Law Practice Models [Jay Hull, Davis Wright Tremaine] | Inform | |
| C. | PLF Financial Statements [Ms. Bernick] | Inform | Exhibit |
| D. | Future of the Legal Profession Task Force [Mr. Heysell] | Action | Exhibit |

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

- | | | | |
|----|---|--------|---------|
| A. | Public Affairs Committee [Mr. Ross] | | |
| 1) | Approve Legislative Package Recommendation for 2017 Session | Action | Handout |
| B. | Policy & Governance [Mr. Levelle] | | |
| 1) | Strategic Functions and Planning | Action | Exhibit |
| C. | Board Development Committee [Ms. Nordyke] | | |
| 1) | Member Appointments to Judicial Administration Committee | Action | Exhibit |
| 2) | Member Appointments to the Various Committees, Councils, Boards | Action | Handout |
| D. | Budget & Finance Committee [Mr. Mansfield] | | |
| 1) | Financial Update | Inform | |
| E. | Oregon eCourt Implementation Task Force [Ms. Grabe] | | |
| a) | Task Force Charge | Action | Handout |
| b) | Survey | Action | Handout |
| F. | Awards Special Committee [Ms. Hirschbiel] | | |
| a) | Annual Awards Nomination Deadline June 30 | Inform | Exhibit |

4. OSB Committees, Sections, Councils and Divisions

- | | | | |
|----|--|--------|---------|
| A. | Oregon New Lawyers Division Report [Mr. Andries] | Inform | Exhibit |
|----|--|--------|---------|

- B. Legal Services Program Committee [Ms. Baker]
 - 1) Approve Recommendation for Unclaimed Funds Disbursement Action Exhibit
 - 2) Accept the Legal Services Program Accountability Report Action Exhibit
- C. Board of Bar Examiners
 - 1) Approve Recommended Changes to RFA 16.05 Action Exhibit
- D. Client Security Fund Committee [Ms. Hirschbiel]
 - 1) Request for Review
 - a) CAIN (Mitchell) 2015-38 Action Exhibit
 - b) ALLEN (Reitz) 2016-08 Action Exhibit
 - c) LANDERS (Koepke) 2015-32 Action Exhibit
 - 2) CSF Financials Inform Exhibit
- E. Legal Ethics Committee [Ms. Hirschbiel]
 - 1) Updates to Formal Ethics Opinions 2005-106 and 2005-169 Action Exhibit

5. Consent Agenda

- A. Report of Officers & Executive Staff
 - 1) President’s Report [Mr. Heysell] Inform Exhibit
 - 2) President-elect’s Report [Mr. Levelle] Inform Exhibit
 - 3) Executive Director’s Report [Ms. Hirschbiel] Inform Exhibit
 - 4) Director of Regulatory Services [Ms. Evans] Inform Exhibit
 - 5) Diversity Action Plan: 2nd Year Implementation [Ms. Hirschbiel] Inform Exhibit
 - 6) MBA Liaison Report [Mr. Ramfjord] Inform
 - 7) OSB ADA Self-Evaluation 2016 [Ms. Hollister] Inform Exhibit
- B. Approve Minutes of Prior BOG Meetings
 - 1) Regular Session February 12, 2016 Action Exhibit
 - 2) Special Open Session March 11, 2016 Action Exhibit
- C. Other
 - 1) Fee Arbitration Rule Change Action Exhibit
 - 2) Sponsorship Policy Action Exhibit

6. Closed Sessions – CLOSED Agenda

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

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

- A. Correspondence
- B. Articles of Interest

**Oregon State Bar
Professional Liability Fund
Financial Statements
2/29/2016**

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6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
2/29/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$12,365,050.87	\$3,922,664.40
Investments at Fair Value	47,751,513.57	57,267,917.39
Assessment Installment Receivable	9,497,586.50	9,594,994.25
Due from Reinsurers	13,825.17	1,015,333.21
Other Current Assets	173,403.59	58,038.30
Net Fixed Assets	716,606.57	841,277.74
Claim Receivables	23,187.42	70,815.26
Other Long Term Assets	<u>6,550.00</u>	<u>7,100.00</u>
TOTAL ASSETS	<u>\$70,547,723.69</u>	<u>\$72,778,140.55</u>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$184,927.80	\$95,092.91
Due to Reinsurers	\$4,008,877.08	\$3,942,927.43
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	14,552,330.94	13,213,300.89
Liability for Claim Expense	14,931,441.82	15,169,395.11
Liability for Future ERC Claims	3,100,000.00	2,700,000.00
Liability for Suspense Files	1,600,000.00	1,500,000.00
Liability for Future Claims Administration (AOE)	2,400,000.00	2,500,000.00
Excess Ceding Commission Allocated for Rest of Year	642,393.57	631,215.62
Assessment and Installment Service Charge Allocated for Rest of Year	<u>20,443,974.17</u>	<u>20,487,689.73</u>
Total Liabilities	<u>\$62,261,373.20</u>	<u>\$60,594,323.86</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$10,027,170.73	\$10,928,972.39
Year to Date Net Income (Loss)	<u>(1,740,820.24)</u>	<u>1,254,844.30</u>
Net Position	<u>\$8,286,350.49</u>	<u>\$12,183,816.69</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$70,547,723.69</u>	<u>\$72,778,140.55</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
2 Months Ended 2/29/2016**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$4,034,565.00	\$4,054,166.00	\$19,601.00	\$4,042,219.61	\$24,325,000.00
Installment Service Charge	54,229.83	54,666.66	436.83	55,318.33	328,000.00
Other Income	16,700.00	6,666.66	(10,033.34)	18,300.00	40,000.00
Investment Return	(1,267,499.41)	557,916.00	1,825,415.41	981,691.99	3,347,495.00
TOTAL REVENUE	<u>\$2,837,995.42</u>	<u>\$4,673,415.32</u>	<u>\$1,835,419.90</u>	<u>\$5,097,529.93</u>	<u>\$28,040,495.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$3,432,000.00			\$2,751,000.00	
Coverage Opinions	20,913.70			11,604.72	
General Expense	6,025.48			26,347.36	
Less Recoveries & Contributions	(10.44)			(24.07)	
Budget for Claims Expense		<u>\$3,127,500.00</u>			<u>\$18,765,000.00</u>
Total Provision For Claims	<u>\$3,458,928.74</u>	<u>\$3,127,500.00</u>	<u>(\$331,428.74)</u>	<u>\$2,788,928.01</u>	<u>\$18,765,000.00</u>
Expense from Operations:					
Administrative Department	\$407,335.21	\$482,767.52	\$75,432.31	\$409,521.70	\$2,719,948.00
Accounting Department	120,505.80	140,875.00	20,369.20	112,933.98	863,251.00
Loss Prevention Department	326,170.74	373,385.00	47,214.26	315,537.63	2,229,864.00
Claims Department	384,585.55	461,199.66	76,614.11	386,487.06	2,750,806.00
Allocated to Excess Program	(177,663.32)	(177,662.00)	1.32	(158,069.30)	(1,065,980.00)
Total Expense from Operations	<u>\$1,060,933.98</u>	<u>\$1,280,565.18</u>	<u>\$219,631.20</u>	<u>\$1,066,411.07</u>	<u>\$7,497,889.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$21,230.00	\$21,230.00	\$0.00	\$127,382.00
Depreciation and Amortization	\$23,576.63	\$23,629.36	\$52.73	\$27,092.43	\$141,776.16
Allocated Depreciation	(4,043.50)	(4,044.00)	(0.50)	(2,830.00)	(24,261.00)
TOTAL EXPENSE	<u>\$4,539,395.85</u>	<u>\$4,448,880.54</u>	<u>(\$90,515.31)</u>	<u>\$3,879,601.51</u>	<u>\$26,507,786.16</u>
NET POSITION - INCOME (LOSS)	<u>(\$1,701,400.43)</u>	<u>\$50,784.78</u>	<u>\$1,752,185.21</u>	<u>\$1,217,928.42</u>	<u>\$490,208.84</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
2 Months Ended 2/29/2016**

<u>EXPENSE:</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
Salaries	\$352,732.11	\$639,958.33	\$768,016.00	\$128,057.67	\$635,277.32	\$4,608,093.00
Benefits and Payroll Taxes	130,339.88	254,083.08	280,896.00	26,812.92	277,846.07	1,647,119.00
Investment Services	0.00	0.00	0.00	0.00	0.00	40,000.00
Legal Services	0.00	0.00	1,666.00	1,666.00	2,212.50	10,000.00
Financial Audit Services	0.00	0.00	0.00	0.00	0.00	23,000.00
Actuarial Services	0.00	0.00	0.00	0.00	11,262.50	34,300.00
Information Services	1,823.67	3,314.84	12,666.66	9,351.82	7,093.60	76,000.00
Document Scanning Services	0.00	0.00	10,834.00	10,834.00	313.72	65,000.00
Other Professional Services	6,394.45	11,555.91	25,265.18	13,709.27	14,791.75	151,592.00
Staff Travel	666.72	1,860.50	4,916.00	3,055.50	2,259.89	29,500.00
Board Travel	1,920.30	1,920.30	10,333.34	8,413.04	6,352.43	62,000.00
NABRICO	0.00	250.00	0.00	(250.00)	427.75	13,750.00
Training	2,090.70	2,716.43	6,590.66	3,874.23	2,627.19	39,500.00
Rent	43,744.55	87,163.47	87,978.00	814.53	85,875.34	527,865.00
Printing and Supplies	4,417.44	11,387.51	13,750.00	2,362.49	13,139.29	82,500.00
Postage and Delivery	2,171.93	4,817.75	5,260.00	442.25	3,948.93	31,550.00
Equipment Rent & Maintenance	1,418.50	3,763.82	9,500.66	5,736.84	12,662.17	57,000.00
Telephone	4,154.53	8,163.32	8,584.00	420.68	7,425.94	51,500.00
L P Programs (less Salary & Benefits)	34,463.20	77,529.30	83,988.00	6,458.70	47,189.53	503,906.00
Bar Books Grant	16,666.67	33,333.34	33,334.00	0.66	33,333.34	200,000.00
Insurance	3,442.31	6,884.62	6,982.00	97.38	6,315.00	41,894.00
Library	3,532.24	3,617.24	5,250.00	1,632.76	2,441.65	31,500.00
Subscriptions, Memberships & Other	32,784.41	86,277.54	82,082.68	(4,194.86)	51,684.46	234,300.00
Allocated to Excess Program	<u>(88,831.66)</u>	<u>(177,663.32)</u>	<u>(177,662.00)</u>	<u>1.32</u>	<u>(158,069.30)</u>	<u>(1,065,980.00)</u>
TOTAL EXPENSE	<u>\$553,931.95</u>	<u>\$1,060,933.98</u>	<u>\$1,280,231.18</u>	<u>\$219,297.20</u>	<u>\$1,066,411.07</u>	<u>\$7,495,889.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
2 Months Ended 2/29/2016**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$128,478.71	\$127,000.00	(\$1,478.71)	\$126,243.13	\$762,000.00
Prior Year Adj. (Net of Reins.)	0.00	1,150.00	1,150.00	1,056.82	6,900.00
Installment Service Charge	44,705.00	42,000.00	(2,705.00)	40,396.00	42,000.00
Investment Return	(19,023.10)	<u>28,480.00</u>	<u>47,503.10</u>	<u>35,195.05</u>	<u>170,879.00</u>
TOTAL REVENUE	<u>\$154,160.61</u>	<u>\$198,630.00</u>	<u>\$44,469.39</u>	<u>\$202,891.00</u>	<u>\$981,779.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$189,536.92	\$190,666.00	\$1,129.08	\$163,145.12	\$1,146,830.00
Allocated Depreciation	<u>\$4,043.50</u>	<u>\$4,044.00</u>	<u>\$0.50</u>	<u>\$2,830.00</u>	<u>\$24,261.00</u>
NET POSITION - INCOME (LOSS)	<u>(\$39,419.81)</u>	<u>\$3,920.00</u>	<u>\$43,339.81</u>	<u>\$36,915.88</u>	<u>(\$189,312.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
2 Months Ended 2/29/2016**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$49,160.58	\$98,321.16	\$98,322.00	\$0.84	\$89,118.16	\$589,927.00
Benefits and Payroll Taxes	16,066.75	32,133.50	32,134.00	0.50	31,923.32	192,801.00
Investment Services	0.00	0.00	0.00	0.00	0.00	2,850.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,604.33	47,208.66	47,208.00	(0.66)	37,027.82	283,252.00
Reinsurance Placement & Travel	290.19	290.19	3,334.00	3,043.81	514.20	20,000.00
Training	0.00	0.00	84.00	84.00	0.00	500.00
Printing and Mailing	3,495.00	3,644.76	1,750.00	(1,894.76)	3,222.32	10,500.00
Program Promotion	0.00	1,700.00	4,166.66	2,466.66	1,040.00	25,000.00
Other Professional Services	0.00	0.00	334.00	334.00	299.30	2,000.00
Software Development	<u>2,746.45</u>	<u>6,238.65</u>	<u>3,333.34</u>	<u>(2,905.31)</u>	<u>0.00</u>	<u>20,000.00</u>
TOTAL EXPENSE	<u>\$95,363.30</u>	<u>\$189,536.92</u>	<u>\$190,666.00</u>	<u>\$1,129.08</u>	<u>\$163,145.12</u>	<u>\$1,146,830.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
2 Months Ended 2/29/2016**

	<u>CURRENT MONTH THIS YEAR</u>	<u>YEAR TO DATE THIS YEAR</u>	<u>CURRENT MONTH LAST YEAR</u>	<u>YEAR TO DATE LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$7,857.62	\$15,915.93	\$12,628.94	\$19,835.90
Intermediate Term Bond Funds	24,587.25	53,422.00	27,927.41	63,529.83
Domestic Common Stock Funds	0.00	0.00	0.00	0.00
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Dividends and Interest	<u>\$32,444.87</u>	<u>\$69,337.93</u>	<u>\$40,556.35</u>	<u>\$83,365.73</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$0.00	\$26,799.92	(\$31,798.32)	(\$11,187.74)
Intermediate Term Bond Funds	(3,676.29)	27,488.62	(50,460.16)	71,886.74
Domestic Common Stock Funds	(3,715.73)	(536,922.30)	580,260.49	293,141.98
International Equity Fund	(215,146.69)	(833,337.36)	318,191.46	467,726.18
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>3,230.66</u>	<u>(39,889.32)</u>	<u>52,582.27</u>	<u>111,954.15</u>
Total Gain (Loss) in Fair Value	<u>(\$219,308.05)</u>	<u>(\$1,355,860.44)</u>	<u>\$868,775.74</u>	<u>\$933,521.31</u>
TOTAL RETURN	<u>(\$186,863.18)</u>	<u>(\$1,286,522.51)</u>	<u>\$909,332.09</u>	<u>\$1,016,887.04</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$1,317.26	\$1,700.95	\$1,358.64	\$3,242.25
Gain (Loss) in Fair Value	<u>(8,903.91)</u>	<u>(20,724.05)</u>	<u>29,103.99</u>	<u>31,952.80</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>(\$7,586.65)</u>	<u>(\$19,023.10)</u>	<u>\$30,462.63</u>	<u>\$35,195.05</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
2/29/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$3,754,975.69	\$3,436,092.40
Assessment Installment Receivable	1,231,147.50	1,110,617.25
Due from Reinsurers	13,825.17	1,015,333.21
Investments at Fair Value	<u>1,934,146.56</u>	<u>1,497,855.60</u>
TOTAL ASSETS	<u>\$6,934,094.92</u>	<u>\$7,059,898.46</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$1,629.58	\$2,017.10
Due to Primary Fund	\$91,143.60	(\$34,006.45)
Due to Reinsurers	4,008,877.08	3,942,927.43
Ceding Commission Allocated for Remainder of Year	<u>642,393.57</u>	<u>631,215.62</u>
Total Liabilities	<u>\$4,744,043.83</u>	<u>\$4,542,153.70</u>
Net Position		
Net Position (Deficit) Beginning of Year	\$2,229,470.90	\$2,480,828.88
Year to Date Net Income (Loss)	<u>(39,419.81)</u>	<u>36,915.88</u>
Total Net Position	<u>\$2,190,051.09</u>	<u>\$2,517,744.76</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$6,934,094.92</u>	<u>\$7,059,898.46</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
2/29/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$8,610,075.18	\$486,572.00
Investments at Fair Value	45,817,367.01	55,770,061.79
Assessment Installment Receivable	8,266,439.00	8,484,377.00
Due From Excess Fund	91,143.60	(34,006.45)
Other Current Assets	82,259.99	92,044.75
Net Fixed Assets	716,606.57	841,277.74
Claim Receivables	23,187.42	70,815.26
Other Long Term Assets	<u>6,550.00</u>	<u>7,100.00</u>
TOTAL ASSETS	<u>\$63,613,628.77</u>	<u>\$65,718,242.09</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$92,154.62	\$127,082.26
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	14,552,330.94	13,213,300.89
Liability for Claim Expense	14,931,441.82	15,169,395.11
Liability for Future ERC Claims	3,100,000.00	2,700,000.00
Liability for Suspense Files	1,600,000.00	1,500,000.00
Liability for Future Claims Administration (ULAE)	2,400,000.00	2,500,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>20,443,974.17</u>	<u>20,487,689.73</u>
Total Liabilities	<u>\$57,517,329.37</u>	<u>\$56,052,170.16</u>
Net Position		
Net Position (Deficit) Beginning of the Year	\$7,797,699.83	\$8,448,143.51
Year to Date Net Income (Loss)	<u>(1,701,400.43)</u>	<u>1,217,928.42</u>
Total Net Position	<u>\$6,096,299.40</u>	<u>\$9,666,071.93</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$63,613,628.77</u>	<u>\$65,718,242.09</u>

Oregon State Bar Professional Liability Fund
Investment Portfolio Q1 2016 vs Q4 2015

Class	Investment Fund	December 31 2015		March 31 2016		Increase/(Decrease)
Short Term:						
	Wells Fargo Advantage Func	\$5,338,544.45	\$5,338,544.45	\$10,404,426.74 *	\$10,404,426.74	65,882.29
Intermediate:						
	Doubleline	\$5,054,098.77		\$5,187,798.81		
	Guggenheim Inv.	\$3,580,185.40	\$8,634,284.17	\$3,635,026.15	\$8,822,824.96	188,540.79
Domestic:						
	Vanguard Total Mkt	\$9,436,084.15	\$9,436,084.15	\$9,525,095.96	\$9,525,095.96	89,011.81
International						
	Euro Pac	\$4,244,215.65		\$4,144,793.14		
	Dodge & Cox	\$3,831,515.78	\$8,075,731.43	\$3,687,623.87	\$7,832,417.01	(243,314.42)
Real Estate:						
	RREEF	\$3,876,462.80		\$3,943,492.77		
	Cornerstone	\$1,485,239.79	\$5,361,702.59	\$1,524,995.79	\$5,468,488.56	106,785.97
Absolute Return						
	Westwood	\$6,306,061.43	\$6,306,061.43	\$6,404,901.12	\$6,404,901.12	98,839.69
Real Return						
	Pimco All Asset	\$4,217,957.43		\$4,437,266.97		
	Vanguard Inf	\$1,332,579.70		\$1,393,367.75		
	Pimco Com	\$335,090.73	\$5,885,627.86	\$340,932.24	\$6,171,566.96	285,939.10
		<u>\$49,038,036.08</u>	<u>\$49,038,036.08</u>	<u>\$54,629,721.31</u>	<u>\$54,629,721.31</u>	<u>\$591,685.23</u>

* (includes a \$5million transfer from Wells Fargo Bank Account)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Ray Heysell, OSB President
Re: Proposed Futures Task Force

Issue

John F. Kennedy said, “Change is the law of life. And those who look only at the past or present are certain to miss the future.”

The legal marketplace is changing rapidly. Technological advances are transforming how we deliver legal services, resolve legal disputes, and engage in legal learning. Consumers are demanding more for less and more apt to employ self-help than a professional. New lawyers remain un- and under- employed, as they face law school debt burdens in excess of \$100,000. At the same time, there is a rising inability to meet the legal needs of those in rural communities and those with limited income.

As professionals dedicated to serving the public—and as leaders in our profession—it is our responsibility to educate ourselves about the forces at work in the legal marketplace and determine how we as an organization can and should respond to these forces. Change is happening—with or without us. Now is a prime opportunity for us to determine how to leverage that change to make real progress on the OSB mission in the future.

Recommendation

I recommend that the Board of Governors appoint a Futures Task Force. Several states have used a similar model to generate deep and strategic discussions around the future of the legal profession and delivery of legal services.¹ I recommend the task force be given the following charge:

Examine how the Oregon State Bar can best serve its members by supporting all aspects of their continuing development and better serve and protect the public in the face of a rapidly evolving profession facing potential changes in the delivery of legal services.

¹ See, e.g., State Bar of Michigan 21st Century Task Force <http://www.michbar.org/file/generalinfo/pdfs/FutureReport.pdf>; Futures Commission of the Utah State Bar https://www.utahbar.org/wp-content/uploads/2015/07/2015_Futures_Report_revised.pdf; New York City Bar Association Task Force on new Lawyers in a Changing Profession <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>; Vermont Joint Commission on the Future of Legal Services <https://www.vtbar.org/UserFiles/files/Commission/Commission%20Report%20-%20First%20Year%20Study.pdf>. The ABA has also done significant work in this arena. http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html.

Those changes include the influence of technology, the blurring of traditional jurisdictional borders, new models for regulating legal services and educating legal professionals, public expectations about how to seek and obtain affordable legal services, and innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

Specifically, the task force should study and evaluate the challenges and opportunities brought on by disruptive economic forces that affect 1) the affordability and delivery of legal services, 2) developing and maintaining professional excellence in a dynamic marketplace, and 3) the viability and relevance of the current regulatory framework.

The task force should assess ongoing projects and recent developments relating to these areas and consider how the OSB might be involved in and contribute to innovations and initiatives that address one or more of the following:

- Increasing resources for the self-represented
- Increasing the availability of pro bono and low bono services
- Expanding access to justice in rural areas
- Promoting unbundling and alternative fee structures
- Addressing the cost of legal education
- Improving practice skills of newly admitted lawyers
- Developing and maintaining practice skills of lawyers throughout a legal career in the face of rapid changes in the legal marketplace and technology
- Effectively enforcing professional standards of conduct in the virtual marketplace
- Licensing of paraprofessionals to provide legal services
- Alternative business structures for law firms
- Regulation of entities that provide legal services, not just individuals

The task force should develop recommendations for the OSB to advance promising initiatives, either alone or in partnership with other entities, and prioritize those recommendations in light of relative projected costs, benefits, ongoing projects relevant to the issues, and the capacity of the OSB and other entities.

Handout.

OREGON STATE BAR

Board of Governors Agenda

From: Policy and Governance Committee
Meeting Date: April 22, 2016
Re: Oregon State Bar Strategic Functions and Goals

Action Recommended

Consider whether to approve the proposed strategic functions and goals for purposes of continued strategic planning around those goals.

Options

1. Approve the proposed strategic functions.
2. Revise the proposed strategic functions.
3. Leave the current strategic functions as currently configured.

Background and Discussion

At its November 20, 2015 retreat, the Board of Governors reviewed its 2014 Action Plan (attached) and expressed interest in beginning work in 2016 to develop a new strategic plan for 2017--2019. The retreat facilitator, Mark Engle, recommended that the planning process start with a review of the six core functions and a discussion about whether they can (or should) be pared down to three or four strategic domains. The P&G Committee agreed with this approach and took up the task of consolidating the core functions. It proposes the following:

Function 1: REGULATORY BODY PROTECTING THE PUBLIC

Goal: Protect the public by ensuring the competence and integrity of lawyers.

Function 2: PROFESSIONAL ORGANIZATION PROMOTING EXCELLENCE

Goal: Enhance the quality of legal services provided by bar members.

Function 3: GUARDIAN OF THE JUDICIAL SYSTEM

Goal: Support and protect the quality and integrity of the judicial system.

Function 4: CHAMPION OF ACCESS TO JUSTICE

Goal: Educate the public about the legal system and ensure access to legal services for all persons.

Function 5: ADVOCATE FOR DIVERSITY, EQUITY AND INCLUSION

Goal: Promote diversity, equity and inclusion within the legal community and the provision of legal services.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
Memo Date: April 7, 2016
From: Vanessa Nordyke, Board Development Committee Chair
Re: Judicial Administration Committee Appointments

Action Recommended

Approve the Board Development Committee's recommendation to appoint three new members to the OSB Judicial Administration Committee.

Background

The Judicial Administration Committee is tasked with studying and making recommendations to the BOG on matters concerning state judicial administration and the judiciary. Three member appointments are recommended due to current vacancies.

Patty Rissberger (871473) offers experience with the legislative process through her service with Oregon Trial Lawyers Association. Ms. Rissberger practices in Salem with the DOJ Trial Division and has varied experience with several areas of practice. She indicated the Judicial Administration Committee as her first choice committee preference when volunteering with the OSB. The term for Ms. Rissberger would expire December 31, 2017.

Nathan Orf (141093) offers geographic diversity based on his practice in Bend at Karnopp Petersen LLP. Prior to coming to Oregon, Mr. Orf practiced in Louisiana and has a wide range of experience ranging from maritime law, insurance coverage, international trade, business, and Indian law. He also clerked for the Oregon Law Commission and externed with Chief Justice Balmer during law school. Mr. Orf indicated the Judicial Administration Committee was his first choice preference for committee appointment. If selected, his term will run through December 31, 2018.

James Miner (074532) offers prior experience as a rural area practitioner from Boardman, OR. He includes arbitration and mediation among his practice area experience and identified the Judicial Administration Committee as his first choice for committee volunteer service. His committee term will expire on December 31, 2018.

OSB / OJD Task Force on Oregon eCourt Implementation

Charge

To work cooperatively with the Oregon Judicial Department and OSB members to assist in the implementation, monitor the ongoing operation of the Oregon eCourt initiative over the next five years; provide input and feedback from bar members on the implementation of Oregon eCourt; to gather input and feedback from OSB members on how well Oregon eCourt is working for them and their staff; to propose solutions for problems identified by OSB members and court staff, develop a strategy to maintain communication, communicate with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

Handout.

2016 Oregon State Bar Awards

The Oregon State Bar is seeking nominations for its annual awards. The Oregon State Bar presents the Award of Merit, President's Awards, and the Wallace P. Carson, Jr. Award for Judicial Excellence. The Oregon Bench and Bar Commission on Professionalism presents the Edwin J. Peterson Award. Please help us honor our most outstanding lawyers, judges and citizens by nominating your deserving colleagues for these awards.

Award of Merit

The Award of Merit is the highest honor that the bar can bestow. The recipient may be: 1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism; or 2) a non-lawyer who has made outstanding contributions to the bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year, and only one award may be bestowed in any year.

Wallace P. Carson, Jr. Award for Judicial Excellence

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity and judicial independence.

President's Awards

President's Awards are presented in five categories: Diversity & Inclusion Membership Service, Public Service, Public Leadership and Sustainability. The Board of Governors wants to honor innovative, hard-working individuals who stand out because of their special contributions to the legal profession.

Diversity & Inclusion Award Criteria: The nominee must be an active or emeritus member of the Oregon State Bar, or an Oregon law firm; the nominee must have made recent significant contributions to the goal of increasing minority representation in the legal profession in Oregon through creative employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

Membership Service Award Criteria: The nominee must have volunteered for the activity involved; must be an active or emeritus member of the Oregon State Bar; and must have made significant contributions to other lawyers through recent efforts in one or more of the following areas: OSB CLE programs or publications; OSB committees, sections, task forces, boards and other bar groups; the OSB legislative/public affairs process; or similar activities through local bar associations or other law-related groups.

Public Service Award Criteria: The nominee must have volunteered for the activity involved; must be an active or emeritus member of the Oregon State Bar; and must have made significant contributions to the public through recent efforts in one or more of the following areas: pro bono legal service to individuals or groups, law-related public education, coordination of public service law-related events (such as those associated with Law Day), service with community boards or organizations, or similar activities which benefit the public.

Public Leadership Award Criteria: The President's Public Leadership Award is given to someone who is not a member of the Oregon State Bar. The nominee must have made significant contributions in any of the areas covered by the president's awards to bar members.

Sustainability Award Criteria: The nominee must be an active or inactive member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

Nomination Guidelines

To ensure full consideration of the nominee's contributions, your nomination packet should include:

1. Award Nomination Form: Fill in all requested information and specify the desired award category. A letter can be substituted if it includes the same information.
2. Supporting Detail: The thoroughness of this information can make the difference in the selection process. Supporting detail may include resume information, narratives describing significant contributions and special qualifications, a list of references with phone numbers, letters of recommendation, articles, etc.
3. Submitting Nominations: Nominations must be received by Thursday, June 30, 2016. Electronic submissions are preferred and should be sent to kpulju@osbar.org. Printed nominations should be mailed to: Oregon State Bar, Attn: Awards, P.O. Box 231935, Tigard, OR 97281-1935. For further assistance contact Kay via email or at (503) 431-6402 or 800-452-8260, ext. 402.

Selection Process

Nominations for the OSB awards will be reviewed by the Board of Governors Member Services Committee. The committee will recommend recipients to the Board of Governors. The Oregon Bench and Bar Commission on Professionalism will select the Edwin J. Peterson Award recipient.

Annual Awards Event

Award recipients will be honored at a luncheon on December 8, 2016 at The Sentinel Hotel (formerly The Governor Hotel) in Portland.



2016 Oregon State Bar Awards

Nominee Information Sheet

Nominee Name _____ Bar No. _____

Office Address _____

Office Telephone _____ E-mail Address _____

Award Category: Please indicate the award category for which this nomination is submitted (*select one*)

- Award of Merit
- Diversity & Inclusion Award
- Public Leadership Award
- Carson Award
- Membership Service Award
- Sustainability Award
- Public Service Award

Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee’s unique qualifications for this award.

Nominating Group/Person _____

Contact Person _____

Office Telephone _____ E-mail Address _____

Please return this form by 5 p.m., Thursday, June 30, 2016 .
Electronic submission (preferred): kpulju@osbar.org or mail to:
Oregon State Bar, Attn: Awards, P.O. Box 231935, Tigard, OR 97281-1935

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
Memo Date: April 8, 2016
From: Colin Andries, Oregon New Lawyers Division Chair
Re: ONLD Report

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

- In conjunction with the February Executive Committee meeting in Eugene we hosted a Ethics gameshow CLE. Following the CLE the executive committee attended the Oregon Law Students Public Interest Fund Dinner and Auction. We purchased one table and then had the remaining executive committee members scattered at other tables. When in Salem next week we will hold a joint social with Marion County Bar Association at Bentley's Grill for both students and local practitioners alike. We have representatives from the DeMuniz Resource Center and the Marion County Re-entry Initiative attending to say a few words about their programs.
- Three new law student liaisons have been chosen to participate in ONLD Executive Committee meetings this year: Lorrie Heape (U of O), Bradley Crittenden (L&C), and Ben Eckstein (Willamette). Last year was the first year we had law student liaisons.
- The CLE Subcommittee held two brown bag lunch CLE programs in Portland focusing on E-Discovery for Beginners and Social Justice & the Law.
- The Member Services Subcommittee hosted one social in February and March and co-sponsored another social with the New Tax Lawyers Committee in March.
- Three representatives, Mae Lee Browning, Joe Kraus and Joel Sturm, were sent to the ABA Young Lawyers Division midyear meeting. I also attended the Western States Bar Conference as ONLD Chair.
- Two representatives, Mae Lee Browning and Jaimie Fender, attended the OLIO Employment Retreat.
- Jennifer Nichols and I have been planning a regional summit. One of the focuses for this summit will be how to draw more attorneys to rural areas.
- The CLE, Pro Bono and Practical Skills Subcommittees are planning on combining to put on a ½ day CLE program in October with speakers from the Immigration Counseling Services (ICS). The hope is to address the need for Special Immigrant Juvenile Status (SIJS) attorneys.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
Memo Date: April 4, 2016
From: Legal Services Program Committee
Re: Disbursing Unclaimed Client Funds from the Legal Services Program

Action Recommended

- 1) Approve the LSP Committee's recommendation to disburse \$117,500 from the annual unclaimed client funds for 2016 and hold the remainder in reserve.
- 2) Approve the LSP Committee's recommendation not to disburse the unclaimed client funds from the Strawn v Farmers class action and hold the remainder in reserve.

Background

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

In 2012 the committee and subsequently the BOG approved a recommendation regarding the distribution method of the unclaimed client funds. The distribution method was that the LSP hold \$100,000 in reserve to cover potential claims and distribute the revenue that arrives each year above that amount. The amount of funds disbursed changes from year to year depending on the unclaimed funds received and claims made each year. In addition, the OSB entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the remaining reserve gets diminished or depleted. This disbursement method and reserve amount was approved again in 2013 and 2014. In 2015 the BOG did not disburse any funds from the Annual Unclaimed Fund because it held only \$124,022 and there were larger claims outstanding.

In January, 2014 the LSP Program received approximately \$520,000 in one time unclaimed client funds from the Strawn v Farmers Class Action. The BOG approved distributing the one-time funds in equal amounts over three years with 1/3 of the funds disbursed in 2014 and 1/3 disbursed in 2015.

Annual Unclaimed Fund Disbursement for 2016

There is currently \$243,286 in the Annual Unclaimed Fund (see attached ULTA 2015 Report). The recommendation is to disburse \$117,500 which includes approximately \$110,000 from the Ben Franklin Litigation Account collected in 2015 and \$7,628 in interest

earned. The client funds from the Ben Franklin Litigation account will not be claimed because most of the funds cannot be traced back to a client. Disbursing \$117,500 leaves \$125,786 in reserve. There are two reasons to keep more than the original \$100,000 reserve:

- There have been large claims made in 2014 and 2015. It is apparent that owners will eventually find the large outstanding claims. There are currently six claims outstanding that are each over \$10,000.
- Since 2010, financial institutions have remitted to the Oregon State Bar \$50,566 from lawyer trust accounts. Of this total, \$31,917 came from 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. This may be an issue taken up by the BOG in the future.

It is recommended that the \$117,500 be disbursed pursuant to poverty population for the county programs with the remainder divided equally between the two statewide programs:

\$7,050 - Center for Nonprofit Legal Services 6%
\$1,175 - Columbia County Legal Aid 1%
\$12,925 - Lane County Legal Aid & Advocacy Center 11%
\$48,175 – Oregon Law Center
\$48,175 – Legal Aid Services of Oregon

Strawn Farmers Class Action Disbursement for 2016

By 2016 claims have been made totaling \$27,159 leaving \$145,395 in reserve. The 2016 recommendation is to not distribute any Strawn Farmer funds and hold the remainder in reserve. This reserve will be reviewed every year to determine whether it remains reasonable given the amount of claims received over time.

ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds
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Statistics since inception of program			
\$ 684,121	\$ 518,900	\$ 1,203,021	Total of all Submitted Unclaimed Property
\$ (92,762)	\$ (27,159)	\$ (119,921)	Total of all Claimed Property
\$ (32,598)	\$ -	\$ (32,598)	Total of Property Returned/Forward to Other Jurisdictions
\$ (440,603)	\$ (346,346)	\$ (786,949)	Total Funds Distributed to Programs
\$ 7,628	\$ -	\$ 7,628	Interest Earned
\$ 125,786	\$ 145,395	\$ 271,181	Balance of Funds on Hand by Fund

Breakdowns by Year

2016			
	\$ -	\$ -	Funds Collected
		\$ -	Funds Claimed
		\$ -	Funds Returned
\$ -	\$ -	\$ -	Subtotal
\$ (117,500)		\$ (117,500)	Funds Disbursed
		\$ -	Interest Earned
\$ 243,286	\$ 145,395	\$ 388,681	Previous Year Fund Balance
\$ 125,786	\$ 145,395	\$ 271,181	Fund Balance

2015			
\$ 155,965	\$ -	\$ 155,965	Funds Collected
\$ (43,154)	\$ (15,708)	\$ (58,862)	Funds Claimed
\$ (216)		\$ (216)	Funds Returned
\$ 112,595	\$ (15,708)	\$ 96,888	Subtotal
\$ -	\$ (155,000)	\$ (155,000)	Funds Disbursed
\$ 2,191		\$ 2,191	Interest Earned
\$ 128,500	\$ 316,102	\$ 444,602	Previous Year Fund Balance
\$ 243,286	\$ 145,395	\$ 388,681	Fund Balance

2014			
\$ 54,420	\$ 518,900	\$ 573,320	Funds Collected
\$ (45,649)	\$ (11,452)	\$ (57,100)	Funds Claimed
\$ (591)		\$ (591)	Funds Returned
\$ 8,180	\$ 507,448	\$ 515,629	Subtotal
\$ (61,103)	\$ (191,346)	\$ (252,449)	Funds Disbursed
\$ 2,416		\$ 2,416	Interest Earned
\$ 179,007	\$ -	\$ 179,007	Previous Year Fund Balance
\$ 128,500	\$ 316,102	\$ 444,602	Fund Balance

ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
2013			
\$ 106,952		\$ 106,952	Funds Collected
\$ (1,273)		\$ (1,273)	Funds Claimed
\$ (7,212)		\$ (7,212)	Funds Returned
\$ 98,467	\$ -	\$ 98,467	Subtotal
\$ (137,000)	\$ -	\$ (137,000)	Funds Disbursed
\$ 812		\$ 812	Interest Earned
\$ 216,728	\$ -	\$ 216,728	Previous Year Fund Balance
\$ 179,007	\$ -	\$ 179,007	Fund Balance

2012			
\$ 127,537		\$ 127,537	Funds Collected
\$ (1,146)		\$ (1,146)	Funds Claimed
\$ (7,098)		\$ (7,098)	Funds Returned
\$ 119,292	\$ -	\$ 119,292	Subtotal
\$ (125,000)	\$ -	\$ (125,000)	Funds Disbursed
\$ 1,119		\$ 1,119	Interest Earned
\$ 221,316	\$ -	\$ 221,316	Previous Year Fund Balance
\$ 216,728	\$ -	\$ 216,728	Fund Balance

2011			
\$ 141,092		\$ 141,092	Funds Collected
\$ (1,539)		\$ (1,539)	Funds Claimed
\$ (1,705)		\$ (1,705)	Funds Returned
\$ 137,847	\$ -	\$ 137,847	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 1,055		\$ 1,055	Interest Earned
\$ 82,414	\$ -	\$ 82,414	Previous Year Fund Balance
\$ 221,316	\$ -	\$ 221,316	Fund Balance

2010			
\$ 98,156	\$ -	\$ 98,156	Funds Collected
\$ -	\$ -	\$ -	Funds Claimed
\$ (15,776)	\$ -	\$ (15,776)	Funds Returned
\$ 82,379	\$ -	\$ 82,379	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 35		\$ 35	Interest Earned
\$ 82,414	\$ -	\$ 82,414	Fund Balance

OREGON STATE BAR
Board of Governors

Meeting Date: April 22, 2016
Memo Date: April 8, 2016
From: Legal Services Program Committee
Re: 2014 Legal Services Program Accountability Report

Action Recommended

The Legal Services Program Committee is recommending that the BOG accept the 2014 Legal Services Program Accountability Report.

Background

The OSB Legal Services Program (LSP) began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal aid services to the poor. Pursuant to ORS 9.572 the OSB is required to manage the funds, develop Standards and Guidelines for providers, appoint a Director of the LSP and create a LSP Committee to provide ongoing oversight, evaluation and support to legal aid providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the oversight and evaluation functions, the Director of the LSP conducts an accountability process that focuses on the effectiveness of the providers in meeting the needs of the individual clients and the larger client community, and the development and use of resources. The LSP Committee is the governing body responsible for making recommendations to the BOG on the assessment of provider programs. The LSP Committee has reviewed the 2014 Legal Services Program Accountability Report and is forwarding to the BOG.

**Oregon State Bar
Legal Services Program
Accountability Analysis**

Overview

The accountability process is designed to provide the OSB LSP with information about the work of legal services providers. With this information the OSB LSP can carry out its duties to the OSB Board of Governors as outlined in the *Oregon Legal Services Program Standards and Guidelines*.

The process focuses on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in developing and using resources. The goals of the review are to ensure compliance with OSB LSP *Standards and Guidelines*; to ensure accountability to clients, the public and funders; and to assist with each provider's self-assessment and improvement.

The process has four components:

1. **An annual Self Assessment Report (SAR)** submitted by providers, including a narrative portion and a statistical/financial portion;
2. **Ongoing Evaluation Activities by the OSB LSP**, including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP *Standards and Guidelines*;
3. **A periodic Peer Survey** conducted of attorney partners, clients, judges, opposing counsel and community partners, all of whom are identified by the providers; and
4. **A periodic Accountability Report** to the OSB Board of Governors and other stakeholders, summarizing the information from the providers' Self Assessment Reports and other information, including ongoing contacts with providers by OSB LSP staff, annual program financial audits and the Annual Peer Survey.

The accountability review is an analysis of the information supplied by the programs in the Self Assessment Report covering the 12 month period ending December 31, 2014.

The Providers

There are four providers that receive funding from the OSB LSP:

Legal Aid Services of Oregon (LASO) – statewide provider with regional offices and the only entity that receives federal funds;

Oregon Law Center (OLC) – statewide provider with regional offices;

Lane County Legal Aid and Advocacy Center (LCLAC) – provides service in Lane County; and

Center for Nonprofit Legal Services (CNPLS) – provides service in Jackson County

The Performance Areas

This accountability analysis is divided into "Performance Areas" that track the broad themes expressed in the mission statement and statement of goal in the OSB Legal Services Program Standards and Guidelines. Each section outlines and discusses the level of alignment found and makes recommendations. The performance areas are as follows:

- *“An integrated, statewide system of legal services... [that eliminates] barriers...caused by maintaining legal and physical separation between providers...”*
- *“Centered on the needs of the client community.”*
- *“Efficient and effective...by deploying limited resources in a manner that maximizes the system’s ability to provide representation*
- *Full spectrum of legal services... The broadest range of legal services required to serve the needs of clients.”*
- *“High quality legal services.”*

1) Performance Area One: Achieving an Integrated Statewide System of Legal Aid Services

It is the goal of the OSB LSP that all providers are part of an integrated statewide delivery system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon. This means that the providers need to work together strategically to target limited resources to ensure equality of access statewide. It also means that the providers need to minimize geographic and institutional parochialism. They should also be integrated in the Campaign for Equal Justice’s statewide efforts to increase resources for legal aid.

a) Strategic Planning

One of the structures that the four legal aid providers use to cooperate and provide relatively equal access for clients statewide is the strategic planning process. The last strategic planning process was in 2012/13 in response to the falling revenues for statewide legal aid funding in general and LASO in particular because of federal funding cuts including federal sequestration. The final result was the closing of the Lane County LASO Office with LCLAC remaining as the sole legal services provider in Lane County while keeping the statewide service delivery system stable. The strategic planning committee also created a long term strategic plan for providing efficient and effective service in future years without necessarily increasing revenue. The final report was December, 2013. Because the recommendations from the December, 2013 strategic planning report have been implemented, the providers are engaged in another strategic planning process which started in September, 2015.

Recommendation: Oregon’s strategic planning efforts have been recognized as a national best practice. That said those efforts need to be more integrated to meet this performance area. The last strategic planning report dated December 7, 2013 made recommendations on how OLC and LASO can enhance efficient and effective legal services to clients statewide. Although CNPLS and LCLAC information was included when looking at revenue, staffing and poverty population statistics, those organizations were not included in the main part of the plan that spoke to implementing recommendations on how to be effective and efficient. These are the recommendations having to do with advocacy, coordination, service delivery models, staffing patterns and technology.

LASO and OLC are the two statewide organizations with regional offices. They share a responsibility to provide services statewide while focusing on the needs of the local community. They work closely together to provide a full range of legal services to low-income clients. They maintain separate organizations only because of the restrictions on the federal funds and strive to integrate services as much as possible. They accomplish this by

sharing a board; they both use Legal Server as their case management system; they use the same policies for intake, priority setting, regional office management and regional manager evaluation. They also have joint quarterly managers meetings. Jackson and Lane County programs focus on providing services to clients in their community, except for the LCLAC lawyers who are experts in and focus on state policy. Because the county programs are stand alone nonprofits with different boards and different administrative and service delivery systems it makes it difficult for CNPLS and LCLAC to integrate with LASO and OLC in a way that promotes the efficiencies and effectiveness contemplated by this performance standard. The providers need to strive in this strategic planning process to look at ways to include all the providers in the recommendations that flow from the final strategic planning report.

b) Increasing Resources for Legal Aid

The Campaign for Equal Justice is legal aid's primary resource development arm. CEJ coordinates the annual fund drive, educates lawyers and the community about the importance of access to justice, works to increase state and federal funding for legal aid and builds an endowment. CEJ reports that the providers are integrated from a resource development and fund raising perspective. The providers engage in numerous activities to support CEJ's annual campaign and work closely with CEJ and the OSB to protect and expand funding for legal aid.

c) Integrated Training and Legislative Advocacy Network

Training: It is important that providers encourage lawyers to stay abreast of changes among the issues that affect low income clients in Oregon by participating in various forums in which such issues and strategies are discussed.

OLC houses the State Support Unit (SSU). The goal of the SSU is to provide support to all Oregon's legal aid lawyers. They do this by sponsoring trainings designed to provide professional development for legal aid lawyers statewide. These trainings include areas such as new lawyer training, motion practice training, discovery training, complex litigation training and trial advocacy training. The SSU also maintains listservs to keep all staff up to date on changes in legislative, administrative and case law. In addition, the SSU attorneys sponsor quarterly task force meetings organized by family, employment, housing and administrative law to keep staff up to date on substantive law developments and provide opportunities to network, discuss cases and understand statewide developments. It is important that legal aid attorneys participate in various forums in which areas of law and strategies are discussed. This allows attorneys to stay aware of changes among the issues that affect the low-income communities it serves.

The SSU reports that all provider attorneys are members of most of the statewide task force listservs. LCLAC attorneys routinely attend most state task force meetings but CNPLS only occasionally attends and has been absent from the family law task force. LCLAC and CNPLS are both absent from the employment law listserv and task force. LCLAC and CNPLS case closing statistics show that attorneys from those offices do not focus on employment law cases.

Recommendation: All provider practitioners should strive as much as practical to participate in the trainings and task force meetings facilitated by the SSU. Attorneys can currently attend task force by phone and providers should work on ways to allow lawyers located outside of Portland to attend trainings and task force meetings remotely to defray the cost of traveling to Portland. This may allow Medford attorneys to attend task force meetings more frequently although they should make it a priority to be more connected to the other lawyers who practice poverty law in Oregon.

Legislative Advocacy: LCLAC and CNPLS work closely with OLC in legislative advocacy in a variety of areas of law and the providers report that it is very effective.

2). Performance Area Two: Centered on the Needs of the Client Community

Performance Area Two gauges the success of providers at targeting their services on the most compelling needs of the client community and the ability to implement response to the changing circumstances. They do this by understanding their community through participation on boards and advisory committees as well as working with social service agencies and community based organizations that serve low income persons. In other words providers need to be integrated into the community to be able to understand current need and see emerging trends. Ongoing assessment should be coupled with periodically conducting a more formal needs assessments and setting program priorities to address the needs identified. To fully understand the needs of a community, providers should strive to reach those populations that have not traditionally sought the services of the legal aid office.

- a) **OLC and LASO:** OLC and LASO have both incorporated best practices for reviewing client need that determine the program's priorities. LASO and OLC report that the priority setting process happens approximately every two years at a regional office level and includes a periodic regional needs assessment to seek input from a wide variety of stakeholders including people who are income-eligible to be clients, former and current clients; local attorneys and county bar associations; government and non-profit partner agencies serving people who are income-eligible to be clients; local judges; and other community partners. The primary mechanism for input is a survey questionnaire distributed by a variety of methods, including on-line, mail and email, telephone calls, on-site availability of surveys for current clients and interviews and focus groups with clients. After survey information is collected and analyzed, each office conducts priority setting meetings involving office staff and others. The established priorities guide the work plans for each office, guide outreach/intake and become an integral part of each office's case acceptance decisions. LASO and OLC's priorities are adopted by the LASO and OLC Boards on an annual basis. Board policy is that LASO and OLC should implement the statewide program priorities through local office priority setting that contain more specific goals tailored to local considerations.

OLC and LASO report that local offices change priorities in response to changing client needs. Examples are the Bend office added housing cases for disabled clients to its list of priorities and the Pendleton office added three case priorities: guardianships; homeless rights issues; and pro se and pro bono assistance for expungement cases.

- b) **LCLAC:** LCLAC reports that the primary method of assessing client community needs is through “Case Priority Planning Sessions” which is an analysis of statistics at intake, surveys, and staff observations and communications with other agency representatives and potential clients. In 2014, the process involved analysis of statistics and staff discussion. The last thorough assessment of Lane County clients and their legal service needs was conducted in 2011 by the LASO Regional Lane County Legal Aid office. After gathering the information, LASO coordinated their priority setting process with LCLAC to avoid duplication of services. The LASO Lane County Regional office closed in 2012.

Recommendation: In order to meet the OSB LSP Standards and Guidelines it is recommended that LCLAC develop tools, methods and policies to establish a more formal and periodic Client Needs Assessment. The Assessment periodically appraises the needs of the eligible clients in the Lane County area. The appraisal should seek to include information from income-eligible to be clients, former and current clients, employees, social service agencies, the private bar and other interested persons. The appraisal should include surveying those populations that are eligible for services but have not traditionally sought LCLAC services.

- c) **CNPLS:** CNPLS reports that they conduct a legal needs assessment for Jackson County at least once every two years using assessment questionnaires to seek input from former and current clients, judges, local attorneys, government and non-profit agencies and other community stakeholders. They also pay particular attention to community needs assessments conducted by ACCESS, local Community Action Agency and United way. CNPLS conducts priority setting meetings with staff and the board of directors. Once established, the priorities guide employee work plans and become a part of the case acceptance decisions.

Recommendation: Although CNPLS has recently conducted a client assessment and set priorities, it is recommended that CNPLS seek to understand the legal needs of those populations that are eligible for services but have not traditionally sought CNPLS services. It is also recommended that CNPLS be prepared to change priorities and implement a response to changing client need.

Both LCLAC and CNPLS have service delivery models whereby staff attorneys are very specialized in the area of law they practice. This may inhibit a response to a new area of law that emerges and calls for substantive knowledge and strategic approaches that are unfamiliar to a specialized attorney. As indicated in the recommendations above CNPLS and LCLAC need to be prepared to change priorities and implement a response to emerging client need even if outside their specialization.

All providers should strive to incorporate best practices in how they assess community need, set priorities and incorporate service changes for changing client need for all communities. Consistency statewide is important to achieve an understanding of the most pressing client need and understand how resources should be spent.

3). Performance Area Three: Achieving Efficient and Effective Delivery of Services

Performance Area Three speaks to how effectively legal aid represents its clients and that it achieves the results with minimum waste of resources and effort. “Efficient and effective” is a phrase used throughout the ABA Standards. This includes those standards that address joint planning by providers around access and service delivery models; the importance of statewide training opportunities; and choosing advocacy methods that both accomplish a meaningful result and are a cost effective use of resources. Joint planning and statewide training opportunities were discussed under Performance Area One. This section will focus on advocacy methods that both accomplish a meaningful result and are a cost effective use of resources. The following are examples from the providers that highlight effective and efficient advocacy methods.

- a). **OLC:** Safe, decent and affordable housing is important for low-income Oregonians. Housing is typically the first or second highest priority in the community based on client needs assessments. OLC reported that they and the housing law task force strategically targeted limited resources to better protect and improve affordable housing for low income Oregonians by using a broad range of advocacy tools to improve the applicable statutes, case law and practice at the local and statewide lever. They did this by working with landlords and housing authorities to implement new housing law; litigating to protect government subsidized housing units from loss; working with partners to improve policies and practices to comply with state and federal foreclosure protection for tenants; setting legal precedent at the Oregon Supreme Court to Protect Tenants from Retaliation and participating in legislative advocacy to support housing.
- b). **LASO:** LASO’s Portland Regional Office worked with community partners in Clackamas County for several years to establish a new family justice center where survivors of domestic abuse, sexual assault, and vulnerable adults can access many of their services under one roof. The family justice center opened in December 2013. Throughout 2014 LASO attorneys and intake workers met with survivors at the justice center. The one-stop model is an efficient and effective model that benefits clients by providing comprehensive, holistic services.
- c). **LCLAC:** The Survivor’s Justice Center continues to work closely with the University of Oregon School of Law Domestic Violence Clinic to facilitate a coordinated approach and to avoid duplication of services. This division of cases promotes efficiency both for the University and for Lane County Legal Aid & Advocacy Center. The Survivor’s Justice Center is the hub for legal services for survivors in Lane County. They triage all cases once a week and determine which are appropriate for full or limited representation from their attorneys and which should be referred to the University’s program.
- d). **CNPLS:** CNPLS’s housing attorney has been working with the statewide Legal Aid Foreclosure Help Project since its inception in 2013 and has been collaborating with four attorneys from OLC and LASO and with the local and regional agencies and the private bar. She also has a good working relationship with ACCESS housing counselors in Jackson County. She has attended the most number of resolution conferences of the 5 project attorneys and has developed an expertise for holding the creditors accountable and negotiating favorable outcomes. She attended the May Project training session in Eugene where she was the trainer on resolution

conferences. She has also developed an expertise in seeking LRAPP. Due to her skill and knowledge, clients have received loan modifications. Cases without fee waivers are electronically filed in other Oregon counties.

Outcome Measures

The providers were also asked to report on outcome measures for cases closed in 2014 that involved litigation or settlement to show how effective the legal service was. The measure and results are as follows (includes outcomes from LASO, OLC and LCLAC) and reflect the excellent work that legal aid does for their clients:

LASO

- Client achieved a positive result - 93%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 82%
 2. The client is better able to keep children safe - 94%
 3. The client has obtained or maintained housing - 73%
 4. The client has improved housing conditions - 67%
 5. The client is more economically secure - 87%
 6. The case benefitted the client's family or household members - 94%
 7. The case will benefit other low-income clients - 18%
 8. Where a positive result was not achieved, cases filed for strategic reason - 13%

OLC

- Client achieved a positive result - 93%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 77%
 2. The client is better able to keep children safe - 68%
 3. The client has obtained or maintained housing - 71%
 4. The client has improved housing conditions - 63%
 5. The client is more economically secure - 71%
 6. The case benefitted the client's family or household members - 77%
 7. The case will benefit other low-income clients - 53%
 8. Where a positive result was not achieved, cases filed for strategic reason – 12.5%

LCLAC

- Client achieved a positive result - 92%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 90%

2. The client is better able to keep children safe - 100%
3. The client has obtained or maintained housing - 98%
4. The client has improved housing conditions - 75%
5. The client is more economically secure - 65%
6. The case benefitted the client's family or household members - 87%
7. The case will benefit other low-income clients - 90%
8. Where a positive result was not achieved, cases filed for strategic reason - 50%

4) Performance Area Four: Achieving a Full Spectrum of Legal Services

Performance area four reflects the principle expressed in the OSB LSP Standards and Guidelines that providing a wide range of legal services for the poor promotes fairness as well as efficiency and effectiveness. Enforcing broader rights of low-income communities is a function of legal services advocates, as well as providing individuals with representation in day-to-day matters. Providing community legal education and helping people represent themselves are also important functions.

All the programs provide a full range of legal services which include phone/walk-in intake and advice, direct legal representation for individuals by staff and pro bono lawyers, complex litigation, community legal education, assistance to self-represented litigants and legislative or administrative advocacy. Also the providers make extensive use of other resources in the service area including community-based organizations that serve the same population.

In 2014 the providers closed a total of 13,626 cases which includes staff and pro bono cases. 35% were family law cases, 28% were housing cases and 9% were consumer/finance cases. Approximately 83% were closed as advice and/or brief service.

The providers outlined cases that reflect the full spectrum of legal services given. Examples of typical cases are as follows:

Self-Represented Litigants: LCLAC reports a married couple with irregular income received advice and counsel from staff attorney. They appeared in court pro se and were successful in receiving a trial period plan (TPP), made all the payments, and then received a permanent modification of their loan. The wife later started work as a housing counselor.

Community Legal Education: CNPLS reports that their immigration attorney teaches citizenship classes to clients and community members at the First Presbyterian Church every Monday. Ten to twelve students attend these classes and 100% are deemed to be ready to pass the naturalization test to become citizens.

Direct Representation: LCLAC reports they represented a widow, age 75, with significant hearing problems, was listed on the deed with her deceased husband but was not on the home loan note. After significant negotiations, including citing applicable law and a resolution conference, the lender agreed to allow client to assume the loan and to modify its terms, making it more affordable.

LASO reports they represented Ruth who was recovering from surgery in a wheelchair when her husband of several decades grabbed her and yelled at her in a public place. She felt deeply humiliated, and the reaction from those around her was a life-changing moment. "Unless we have someone to enlighten us about abused women, we have no idea what to do, or that you can walk

out the door,” says Ruth. She contacted LASO to help her get protection from his abuse for herself and her teenage son, who is autistic. Ruth and her son have been thriving apart from the abuser. Ruth says, “I have a right to enjoy my life and our son has a right to explore every avenue out there and not be held back.” She wants everyone to know legal aid may have saved her life.

Major Cases and Projects That Have Systemic Impact: LASO, Oregon Law Center and the National Housing Law Project filed suit in federal court in an effort to preserve the only affordable housing complex in Merrill, Oregon. The complex is operated under the U.S. Department of Agriculture's Rural Development housing subsidy program. The plaintiffs filed a complaint and preliminary injunction motion to enjoin USDA from accepting the final payment on the property's mortgage in advance of the date the mortgage was originally supposed to mature. Accelerated payment of the mortgage would prematurely remove the complex from the affordable housing program. USDA responded to the motion by conceding that the agency would not accept a premature final payment on the mortgage. This decision by USDA has already helped stop the premature final payment on another 42 unit affordable housing complex in Oregon and may help to stop the premature mortgage maturity of at least 70 other properties across the country. Other issues in the case remain to be litigated.

Legislative Efforts That Have Systemic Impact: LCLAC attorney John VanLandingham leads two coalitions of landlord and tenant advocates that have negotiated, drafted and gotten adopted into state law, consensus bills amending landlord/tenant law in every legislative session but one since 1983. John is the chief tenant advocate, chief drafter, electronic secretary and lead advocate within the Legislature for both coalitions. Oregon is the only state in the nation which amends its landlord/tenant laws through a coalition process; as a result, issues which require litigation in other states are usually addressed by state statute in Oregon.

Integrating the Resources of the Legal Profession: The legal profession is a valuable resource in addressing the needs of the low-income community and should be integrated to the greatest extent possible into a provider's efforts to provide a full spectrum of legal services that respond to its clients' needs. Oregon legal aid providers all report that pro bono attorney involvement is an integrated part of the structure used to deliver high quality legal services. The following are examples of how volunteer lawyers are used:

- The Volunteer Lawyer Project of the Portland Regional Office of LASO has existed for over 30 years. The bankruptcy clinic of the VLP serves clients in Multnomah, Washington, Clackamas, Yamhill, Columbia, Wasco and Hood River counties.
- The LASO Pendleton office uses pro bono attorneys for intake at several locations throughout its geographically wide service area.
- LCLAC uses both non-lawyers and lawyers for intake, to provide staffing in both the main office and Florence office.

Recommendation: Those attorneys who were pro bono volunteers and answered the survey agreed that they received adequate training and supervision and had positive experiences

volunteering. That said only 50% of those volunteers reported their volunteer hours to the organization. As this is a critical piece of information for the Oregon State Bar, the organizations should ensure that each volunteer reports his/her hours and that those hours are reported to the Oregon State Bar's Pro Bono Coordinator.

5) Achieving High Quality of Legal Services

Delivering high quality legal services is a fundamental requirement of the OSB LSP and the providers meet the requirements set out by the OSB LSP Standards and Guidelines. This area includes approaches for reviewing/supervising legal work, methods for assigning cases to legal staff, supervising support and fiscal staff, technical support, evaluating staff, training staff, recruiting and retaining diverse qualified staff and ensuring zealous advocacy of clients.

- a) **Technology:** Providers should utilize technology to support efficient operations and promote high quality and responsive service. The rapid and ongoing changes brought about by technology have a dramatic impact on how low income persons interact with their environment and with the legal system. Each provider has a responsibility to plan effectively how it will use technology in providing assistance to low income persons in its service area and in supporting its internal operations, including the production and management of legal work and the training and support of its staff. *ABA Standards for the Provision of Civil Legal Aid Standard 2.10 Use of Technology.*

LASO and OLC: LASO and OLC have incorporated the technologies that should be in a modern legal aid office today. They engage in adequate planning around needs and capacities; they have adequate funds budgeted for technology; they both use a robust case management system (CMS) that includes reporting features and access to client and case data and is available in real time in all regional offices. The CMS does document production, timekeeping, calendaring and conflicts checks. The CMS allows staff to generate reports, extract meaningful data for case supervision, plan, and evaluate programs and other purposes. All staff can access the system and database remotely. OLC and LASO work closely in development and innovation relating to the two statewide legal aid community websites OregonLawHelp and Oregon Advocates. OregonLawHelp is a statewide website that contains information for the client community. Oregon Advocates is a website to provide staff and pro bono lawyers with access to sample pleadings, briefs, motions and other documents. OLC and LASO coordinate closely in both planning and purchasing systems which achieves greater efficiencies.

LCLAC: LCLAC reports that its CMS system is old and its replacement is a high priority but additional grant funds must be sought to be able to buy a good CMS in the future. Some funds have also been set aside as a start on this need. LCLAC reports referring clients to Oregon Law Help but does not report using the Oregon Advocates website to access sample pleadings, briefs and other documents to assist practitioners.

Recommendation: It is recommended that LCLAC make it a priority to budget and plan for incorporating those technologies that should be in a legal aid office today. This includes an upgraded CMS and upgrading computer security systems.

CNPLS: CNPLS does not currently have the technologies that should be in a modern legal aid office today. This is due to the lack of resources. CNPLS was recently awarded a Meyer

Memorial Trust Foundation grant for \$85,000 to plan and implement a CMS system together with software and hardware needed to run the system. CNPLS reports referring clients to Oregon Law Help but does not report using the Oregon Advocates website to access sample pleadings, briefs and other documents to assist practitioners.

Recommendation: Use the grant funds to plan for and implement a new CMS system.

b) Management Systems: The providers report that they have systems in place to adequately review/supervise legal work, assign cases to legal staff and procedures for evaluating staff performance. They also report systems for appropriate legal research and investigation, provisions for ensuring client confidentiality and conflicts checks and provisions for zealous advocacy of clients' interests.

OLC and LASO: OLC and LASO specifically report that they have the same policies in place to assure that the regional offices provide quality services. The policies are outlined in two documents called Criteria for Operation of Offices and Criteria for Manager Evaluation. The criteria in both documents are the same because the regional managing attorneys are evaluated against whether the office criteria are met. The criteria covers important areas such as effectiveness of advocacy, setting advocacy goals, intake, management of legal work, community visibility, accessibility, private bar involvement, training and career development, office systems, OSB Standards and Guidelines and financial matters. Staff evaluations take place. LASO and OLC's collective bargaining agreement and the personnel policies for managers provide procedures for staff evaluations with regional managers evaluated every other year.

Every quarter LASO and OLC conduct quarterly managers meetings for all the managing attorneys. The agendas include topics such as "how to conduct a proper needs assessment" and "overcoming barriers to doing more systemic advocacy". The regional manager from Marion/Polk County commented on how helpful he finds the managers meetings both in substance and as a forum to interact with other managing attorneys.

Recommendation: LASO and OLC have incorporated best practices to assure the regional offices provide quality services. It is recommended that all providers adopt a similar set of criteria for operation of an office and for manager evaluation.

CNPLS: CNPLS reported that they have adequate systems in place for reviewing and supervising legal work, assigning cases to legal staff, supervising the work of fiscal and support staff and staff evaluation. It is not clear whether CNPLS has written management policies in place similar to LASO and OLC.

Recommendation: It is recommended that CNPLS adopt a set of criteria similar to that of LASO and OLC for operation of an office, and for manager and staff evaluations.

LCLAC: LCLAC's executive director retired the end of June, 2015. Two long time employees of LCLAC, John VanLandingham and Jean Beachdel, were appointed as co-directors on 10/1/2014. Mr. VanLandingham has taken on the responsibility of supervising the lawyers and Ms. Beachdel the support staff. LCLAC reports that in 2013 they developed a system for conducting staff evaluations for all staff which was replicated in 2014 and was slated again for July, 2015. LCLAC does not have written management policies in place similar to LASO and OLC.

Recommendation: It is recommended that LCLAC adopt a set of criteria similar to that of LASO and OLC for operation of an office, and for manager and staff evaluations.

Subcommittee Review of LCLAC: A LSP subcommittee is conducting a review of the delivery of legal services at LCLAC. The subcommittee will forward a report to the LSP Committee for further discussion.

Peer Survey: A peer survey was conducted of attorney partners, clients, judges, opposing counsel and community partners, all of whom are identified by the providers. A summary of the results are attached. The results are helpful for this review and also provide feedback to the providers from community stakeholders.

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.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-38 CAIN (Mitchell) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In early 2013, James R. Mitchell and his renter had a dispute over the lease with an option to buy agreement between them. Mr. Mitchell filed a claim against the renter in small claims court and obtained a judgment in the amount of \$1,709.

Disappointed in the amount of the judgment, Mr. Mitchell consulted with attorney Jessica Cain to determine the viability of pursuing a motion for reconsideration. Mr. Mitchell gave Ms. Cain \$500 and his file materials and met with Ms. Cain once. He says he never heard from Ms. Cain after that initial meeting.

Ms. Cain reports that she agreed to review Mr. Mitchell's case for a flat fee of \$500. Her case notes from their meeting include a notation of "\$500 ff," but there is no written fee agreement. Ms. Cain says she spent approximately three hours reviewing the file documents and the recording of the hearing. She also maintains that she either left a message for Mr. Mitchell or spoke to him shortly thereafter to convey that she believed a request for reconsideration was not warranted. She says she heard nothing from Mr. Mitchell until a year later, when he left a couple of messages, which she acknowledges she did not return.

The Committee investigator reviewed the file provided by Ms. Cain. It contained approximately 60 pages of documents, photos, and the audio recording from the hearing (which was approximately 1.75 hours long). The file did not contain any notes indicating the date or time that Ms. Cain conveyed her opinion to Mr. Mitchell.

Mr. Mitchell requested an award of \$500 from the Client Security Fund—the full amount of money he paid to Ms. Cain. In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee concluded that Ms. Cain did perform legal services for Mr. Mitchell, and that such services were more than de minimus. Moreover, the Committee found no evidence of dishonesty on Ms. Cain's part. Instead, the Committee determined that any claim Mr. Mitchell might have is, at best, a fee dispute.

March 16, 2016

From: James R. Mitchell
101 E. Oxford Street
Newberg, OR 97132

To: Oregon State Bar
16037 SW Upper Boones Ferry Rd./ PO Box 231935
Tigard, OR 97281-1935
Attention:
Helen Hierschbiel
CEO/Executive Director

Re: Client Security Fund Claim No. 2015-38
Lawyer: Jessica Cane

RECEIVED

MAR 21 2016

Oregon State Bar
Executive Director

Dear Ms. Hierschbiel:

Thank you for your consideration of my claim at your March 5, 2016 Client Security Fund Committee meeting. I am very disappointed in the committee's decision to deny my claim and respectfully request the decision be reconsidered.

I don't understand how the committee was able to conclude that pursuant to Client Security Fund Rule 2.2.3, the legal services of Ms. Cane were "not minimal or insignificant."

If the committee based their decision on information Ms. Cane provided, I feel should have had an opportunity to view the information and refute it if I felt it wasn't correct.

Ms. Cane provided me with absolutely NOTHING. I met with her one time, gave her my entire file, including a recording of the minutes of the meeting I'd had. That's it, I never heard another word from her and to this date she's never returned my file, the recording or any of my numerous phone calls.

If I as a contractor charged a client five hundred dollars to perform a job but only met with the client one time to discuss the job, took their blueprint and engineering documents but never performed the job nor returned their documents, it would be completely unacceptable, why is it any different with Ms. Cane? How can that action be considered okay?

Again, I respectfully request the committee reconsider their decision, Ms. Cane should be held accountable for her actions just like any other professional,

Sincerely,

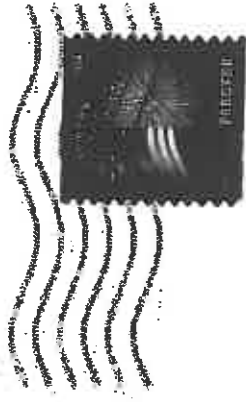


James R. Mitchell

James R. Mitchell
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Newberg, OR 97132

PORTLAND, OR 972

AT WASH DC, AS 212 1



Oregon State BAR
PO Box 231935
Tigard, OR 97281

ATT: Helen Hirschbiel

97281 193535



CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Karen Park
DATE: 03/05/2016
RE: CSF Claim No.: 2015-38
Claimant: James R. Mitchell
Amount of Claim: \$500
Attorney: Jessica Cain

Investigator's Recommendation

The claim appears to be a fee dispute between the attorney and former client and I therefore recommend denial of the claim.

Statement of Claim

In January/February 2013, the claimant and his renter had a dispute about the lease/option of the claimant's property and the renter's decision to not exercise the option to purchase the property. The dispute primarily involved whether or not the renter should be required to pay for installation of a fence on the property which was considered to be the basis for the option "money" in the lease/option agreement. The renter did not install the fence and notified the claimant he did not intend to exercise the option to purchase the property. The claimant and the renter disputed the value of the fence that should have been installed. The renter argued he would have installed chain link at a cost of approximately \$1,500 and the claimant argued the fence should have been cedar at a cost of \$7,000-\$8,000. The lease/option did not specify the type of fence to be installed.

A small claims judgment in favor of the claimant in the amount of \$1,709 was entered in July 2013. The claimant was disappointed with the amount of the judgment.

Shortly thereafter the claimant consulted with attorney Cain and asked attorney Cain to review the matter for a potential motion for reconsideration. The claimant gave attorney Cain \$500 and his file materials and met with attorney Cain once. The claimant says he never heard from attorney Cain after that meeting and she did not respond to his phone calls.

Attorney Cain provided copies of her client file which include notes from the meeting with the claimant and a notation of "\$500 ff." Attorney Cain told the investigator she accepted the claimant's case for a flat fee of \$500, that she spent approximately 3 hours reviewing the file documents and the recording of the small claims hearing and either left a message for the claimant with her conclusion that a request for reconsideration was not warranted or spoke to him directly. Attorney Cain did not hear anything further from the claimant for more than one year at which time he left "a couple of messages" which attorney Cain admits she did not return. Attorney Cain also admits that she failed to return the claimant's original file materials but is now willing to do so.

There is no written fee agreement. A copy of attorney Cain's file note is attached as Exhibit A.

Findings and Conclusions

Attorney Cain's client file consists of approximately 60 pages of documents, photos and the audio recording from the small claims hearing which attorney Cain estimates is 1 hour and 48 minutes long. There is no file note indicating the date/time attorney Cain conveyed her opinion to the claimant. The claimant says that attorney Cain never responded; Attorney Cain said she did provide her opinion to the claimant by telephone call or voice message.

It appears that attorney Cain did provide some legal services to the claimant, even if the claimant never received a message left by attorney Cain with her opinion on the issue of reconsideration. The claimant's application for reimbursement states:

"After several attempts to contact her over a period of two years, I realized she had no intention of responding."

It is questionable whether the claimant submitted the CSF application within two years of the date he knew or should have known of the existence of the claim. The claimant's application states he provided the funds to attorney Cain in "July 2013," but did not submit the CSF application until October 19, 2015. Arguably, if attorney Cain did not contact him for 3 months from the date of their first meeting, the claimant knew or should have known of the claim prior to October 19, 2013. Attorney Cain told the investigator she recalls leaving a message or speaking with the claimant within a few days of their July 2013 meeting.

In any event, the fact that the claimant did not pursue his claim in a more timely manner indicates to this investigator that the ultimate issue for the claimant was the retention of his original file materials by attorney Cain, as opposed to a lack of legal work by attorney Cain justifying the retention of the \$500 payment.

CSF Rule 2.2 requires the claimed loss to be caused by dishonest conduct of the lawyer. I do not believe any dishonest conduct occurred regarding retention of the \$500 payment, however, attorney Cain may be subject to other disciplinary proceedings regarding the failure to return the claimant's file materials or failure to respond to the claimant's phone messages.

CSF Rule 2.2.3(i) and (ii) require no or de minimis legal services. In this case, it appears that some legal services were provided by attorney Cain. I am not able to conclude that those services were de minimis.

For those reasons I recommend that the claim be denied.



Karen J. Park

1/C

Mitchell / Tague

\$500
ff

Lakeview subdivision - built out
rented 2 w/ lease option
failure to exercise option - no sale

Allowed fence & landscape as
down payment for option

Early termination, damages, no
approved landscaping

Small Claims filed - judge awarded
partial claim

request reconsideration

Review file, listen to hearing, advise
if reconsideration warranted,
write letter if advisable

- factual determinations made
Ø in writing



Client Security Fund
Application for Reimbursement

RECEIVED

OCT 19 2015

Return completed form to:

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

2015-38

Oregon State Bar
Executive Director

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.

1. Information about the client(s) making the claim:

a. Full Name: James R. Mitchell
b. Street Address: 101 E Oxford St.
c. City, State, Zip: Newberg OR, 97132
d. Phone: (Home) 503 799-9089 (Cell) same (Work) same (Other) 503-502-6408 wife - Sandy
e. Email: Sandy@theKellygroup.net

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

a. Lawyer's Name: Jessica Cain
b. Firm Name: Cain and Company
c. Street Address: 212 E 1st St. (OR) 101 E Mountainview
d. City, State, Zip: Newberg, OR
e. Phone: 503-538-8318
e. Email: unknown

Note: current address for her new business: 300 E 1st Street.
"SAVVY Sisters Inc" Newberg, OR 97132

3. Information about the representation:

a. When did you hire the lawyer? July 2013
b. What did you hire the lawyer to do? To ask a judge to reconsider the financial amount awarded to me on a small claiming case.

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

Pd. \$500.00 Retainer

d. Did anyone else pay the lawyer to represent you? [X]

e. If yes, explain the circumstances (and complete item 10B on page 3):

f. How much was actually paid to the lawyer? \$500.00

g. What services did the lawyer perform? [X] - Met with her one time to discuss the case.

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

NO

4. Information about your loss:

a. When did your loss occur? July 2013 and there after.

b. When did you discover the loss? After several attempts to contact her over a period of two years, I realized she had no intention of responding.

c. Please describe what the lawyer did that caused your loss She took our money and that was it, she never returned phone calls or did any work on the case whatsoever. She never returned my file without the documents, pictures etc.

d. How did you calculate your loss? The amount of the check I paid her.

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? If yes, please explain: NO

b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: NO

c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand. I've left several phone messages but she doesn't respond.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: NO

e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. NO

f. Have you obtained a judgment? If yes, please provide a copy NO

g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found: NO

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

If yes to any of the above, please provide copies of your complaint, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

Oregon state Bar Client Security Fund

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: NO

8. Please give the name and the telephone number of any other person who may have information about this claim: _____

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: James R. Mitchell

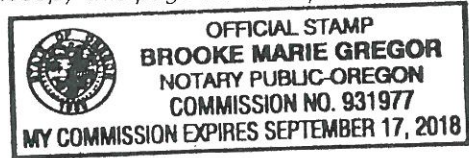
Address: 101 E Oxford St. Newberg, OR 97132

Phone: 503-799-9089 or wife Sandy @ 503-502-6408

11. Claimant's Signature and Verification

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

State of Oregon)
 County of Hamilton) ss



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

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

James R. Mitchell
 Claimant's Signature

Signed and sworn (or affirmed) before me this 13th day of October, 2015.

Notary's Signature [Signature]
 Notary Public for Oregon
 My Commission Expires 9/17/18

Please complete page 4 if an attorney is representing you for this claim.

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

1. I authorize _____ (*print name of attorney*)
to act as my attorney in presenting my claim.

Claimant's Signature

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

Without charge

Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

Oregon State Bar Complaint Form

Return completed form to:
Oregon State Bar
Client Assistance Office
PO Box 231935
Tigard, OR 97281-1935

GENERAL INSTRUCTIONS

- Fill out this form to the best of your ability by printing or typing and return it in an envelope to:
Oregon State Bar, Client Assistance Office, P.O. Box 231935, Tigard, Oregon 97281-1935
Telephone: (503) 620-0222, Toll Free in Oregon: 1-(800) 452-8260
- Read information on the OSB Client Assistance Office, available here: <http://www.osbar.org/cao>
Valuable time can be saved if you understand how the bar functions.
- No particular form is required. This form is provided for your convenience.
- Do not use highlighters on this form. Do not write on the back of any pages.
- Please note that all materials received by the bar are considered public record. A copy of your complaint will be provided to the attorney and a copy retained by the bar in accordance with current OSB records retention policy. Retained records are available for public inspection through the OSB public records clerk.

Name and Address of COMPLAINANT

Today's Date: September 6, 2015

Name: Mr. Ms. James R. Mitchell

Address: 101 E Oxford St.

City/State/Zip: Newberg, OR 97132

Primary Telephone: (503) 799-9089

Secondary Telephone: (503) 502-6408 wife Shirley

Name and Address of ATTORNEY

Name: Mr. Ms.

Address:

City/State/Zip:

Primary Telephone: ()

Secondary Telephone: ()

WHAT IS YOUR COMPLAINT?

Please be as specific yet concise as possible and remember to specify **what** your complaint is, **when** it happened, **where** the incident occurred, **why** you went to the attorney and any other factors you can think of which are relevant to your complaint. Use additional sheets of paper if you wish and attach them to this form.

Hired Jessica came to ASK A judge to reconsider the amount I was awarded in a small claims case. Jessica took my files, pictures etc. And never did any work on the case. She didn't return any phone calls, never sent anything via mail etc. I tried repeatedly to contact her via phone and she never returned any of my phone calls to this date, she still has my files etc.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-08 ALLEN (Reitz) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In April 2012, Gregory A. Reitz engaged Sara Allen to represent him in his divorce. He paid her a \$3,000 retainer and signed a written fee agreement providing for services at the rate of \$225 per hour.

Shortly thereafter, Mr. Reitz's wife's lawyer, Mark Cottle, filed a Petition for Dissolution of Marriage. Ms. Allen prepared and filed a response and a motion and order for temporary support. Mr. Reitz contends that Ms. Allen was largely unprepared at the hearing for temporary support. In addition, she failed to file a Uniform Support Declaration, resulting in the Motion being denied. Ms. Allen subsequently filed the Uniform Support Declaration on Mr. Reitz's behalf, but Mr. Reitz was so disappointed in her performance at the hearing, that he fired her shortly after the hearing. Mr. Cottle's recollection of the hearing differed from that of Mr. Reitz. He said that Ms. Allen knew the materials and the case, but that Mr. Reitz was a difficult client.

Ms. Allen has entered a Stipulation for Discipline, stemming from six separate bar complaints, including a complaint by Mr. Reitz. According to the stipulation, Mr. Reitz asked for a refund, but Ms. Allen failed to pay any refund and failed to timely account for his \$3,000 deposit. The stipulation did not include a discussion of the services performed by Ms. Allen.

Mr. Reitz requested an award of \$3,000 from the Client Security Fund—the full amount of money he paid to Ms. Allen. In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee denied the claim on several grounds. First, it concluded that Ms. Allen did perform legal services for Mr. Reitz, and that such services were more than de minimus. The Committee also found no evidence of dishonesty on Ms. Allen's part. Instead, the Committee determined that any claim Mr. Reitz might have is, at best, a fee dispute. Finally, Mr. Reitz failed to file the claim within two years of the discovery of Ms. Allen's conduct, as

required by CSF Rule 2.8. Mr. Reitz made no effort to collect from Ms. Allen in the meantime, and provided no good reason for his delay.

In his request for review, Mr. Reitz reiterates much of his original complaints about Ms. Allen. He does, however, provide additional explanation for the delay in submitting his claim for reimbursement from the Client Security Fund. He says that he suffers from PTSD which affects his memory.

Helen Hirschbuhl
c/o ORE STATE BAR

RECEIVED

3-15-16

MAR 22 2016

Oregon State Bar
Executive Director

Dear Ms Hirschbuhl

I would like to request that my
Client Security Fund Claim (# 2016-08)
involving attorney Sara Lynn Allen be
reviewed by the Board of Governors.

I am including with this letter my
response to the reasons identified in your
3-7-16 letter to me i.e. that my claim
is a single fee dispute and that my
claim was made too late without "good
reason." Thank you

Sincerely
Greg A. Reitz
Greg A. Reitz

Claim # 2016-08
Submitted by Greg Reitz
Attorney Sara Lynn Allen

To the Board of Governors

Ms Sara Lynn Allen (inactive attorney)
has not returned \$3000.⁰⁰ that I paid
her to retain her services in my responding
to a divorce case in May 2012. What
a lengthy OSB investigation found after
receiving my complaint verified everything
I'd described. It is best summarized
"In The Supreme Court/State of Oregon"
order for approving stipulation for Discipline
Case numbers 14-03, 14-68, 14-69, 14-70
14-71, 14-72.

This document was submitted with
my claim as well as others. I am also told
other documents in Disciplinary Counsel
office and investigations are available if
you wish but the above orders of stipulation
and discipline appear to me as not at all
supporting the OSB Client Security Fund
Committee that my claim is a simple
'fee dispute' and I respectfully request
a review. Also regarding the other
reason given me for my claim being denied
is that the claim was submitted late
without a "good reason". It was late

but there is a good reason as I will explain in course.

Issue - A 'fee dispute'

That is the Committee assessment of my claim per the 3-7-16 letter from Helen Hirschbriel of the Bar. It obviously upon my view of the record minimizes my complaint and attempts/succeeds in reducing the whole experience with Ms Allen to "Fee Dispute".

The documents I have cited offer a damning appraisal of Ms Allen's stewardship of my divorce case. I also learned of complaints (all Allen) to the USB, Complaint After Complaint, with a mirror-like resemblance to my own complaints. I don't recall them being labeled 'fee disputes'.

While I will try to be brief the documents submitted sometimes leave missing details that are not transcribed forward into final summaries, orders, stipulations. One has to go back to the investigation reports. As example we know by record Ms Allen could not produce any billing records at all. She told the Bar the reason was they had been 'lost' while a change in office software was underway. I do not believe

this, I don't think there were any records kept because none were generated as a result of Ms Allen's time, expense, or professional obligations and responsibilities - Ms Allen did not (literally) perform any service in my interest at all. In fact the only thing she did accomplish was insuring I would continue to be homeless for another 3 months waiting for a hearing in court.

I only met and had contact with Ms Allen twice - the day she was hired and the day she was fired by me. She did 'appear' in court once so make that three times. For that court appearance she hadn't prepared anything, the document the Judge requested hadn't been even started. This was 3 months after her hire. Three months to prepare and nothing!

In the 3 months preceding this financial details and support hearings, Ms Allen would not take any call from me, did not respond to any message left with her staff (no voicemail) not one response to personal letters, certified mail, or any other means I could think of to contact her. She never contacted me of her own volition either. I'm sure I

tried to contact her one way or another at least twenty times. Had I been thinking more clearly or had more experience in legal matters probably she should have been replead before this important hearing.

The OSB Committee reviewing my claim did not uncover my evidence of dishonest conduct by Ms Allen. I don't know. There are references or suggestions in the courts orders regarding Ms Allen that she suffers from depression. She has my empathy if that's the case but don't believe I should need about a \$3000 loss because of a problem I have no control over. What I see in this process I must say is confusing to me.

Everyone I've had contact with seems to be in one way or another affiliated with the OSB, 'Ms Allen', 'The Bar', the 'Investigation', the 'Discipline', 'The Committee', 'The Board of Governors', and I really don't know why conclusions arrived at in stages of my complaint in the system resulted in the Committee of the OSB could deny my claim while bringing its decision on the same OSB investigation & discipline documents that were available to me from apparently different 'offices' of the OSB umbrella. Unfortunately I could go on and on,

The OSB and Supreme Court stipulations and Discipline speak for themselves, they are accurate and true and uphold the legitimate status of my original complaint.

This is not a fee dispute. The money paid Ms Allen was to go into a "Trust Account" (see "Fee Agreement" with "Allen Law Firm". Was it ever? Again I don't know. The investigation did not look at this.

At this time Ms Allen is reported by OSB to be on 'inactive' status. I don't know when this began but think she probably didn't remain active long after my complaint. I don't know where she is now. If I'm right that she became inactive due to the OSB complaint by me then she hasn't had to comply with the orders/stipulations etc ordered by the Supreme Court. She would have to be recognized by OSB as 'active' for sanctions and supervision to be implemented.

Missed deadline for submission of claim

The Chat Security Firm deadline for filing a claim had passed. The deadline passed 'without a good reason'.

There is a good reason to be shown

with the Board although I did not grasp the importance of getting this info to the OSB investigator that called me and asked about my tardiness. I replied I had been sick but did not elaborate except to suggest if he needed to know more about my illness he could contact the Attorney that took over my case after Ms Allen was deposed. I gave his name and added that this attorney had had a difficult time with me as I was so impaired as to an ability to assist him much. Also the deadline passed due to my inability to remember a deadline, plus I had the naive idea that Ms Allen would return my funds which she had done more than once and almost always after a long delay return the funds of her clients before me. This is also documented in the record.

So in explaining why it took me so long to file that claim there is this — In 2005 I was diagnosed with PTSD. I wasn't convinced but by 2009 the symptoms were severe. I lost my job and believed I was dying, I was hospitalized at least twice. Since then I've had a marginal existence. Social Security approved Disability payments based on their experts

opinion that I would never work again.
My memory is poor. Often then I was
dismounted but mostly labile in the
extreme. The PTSD centered upon
incidents in which people died and I
had seen or ^{was} involved in some way when
these occurred. I had suppressed the
memories for over 20 years. Once
this was understood by me I still couldn't
stop it. My treatment, medications etc
continue to this day and probably well into
the future.

I do appreciate the words review
and thank you for your consideration of
my appeal -

I only want to add my illness is
not connected to my military service.
I just don't want to appear as though it
were. Many have made that assumption
due to my age.

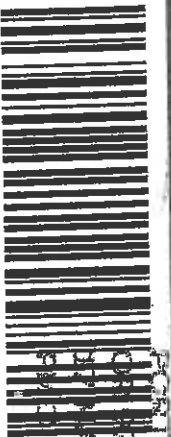
Again Thank you

Greg A. Pritz
Greg A. Pritz



Gregory A. Reitz
19008 Leland Rd.
Oregon City, OR 97045

CERTIFIED MAIL



POSTLAND
09 MAR '16
5:11 PM
PMD

7015 1730 0001 3024 8671

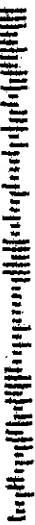
\$4.16⁰
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2/16/16

Helen Thereschiel
4/8 Oregon State Dr
16037 SW Upper Bowers Ferry Rd
Tigard, Ore

97281-1935

97281 1935 35



CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Steven R. Bennett
DATE: February 26, 2016
RE: CSF Claim No. 2016-08
Claimant: Gregory A. Reitz
Attorney: Sara Lynn Allen

Investigator's Recommendation

Recommend denial of the claim.

Statement of Claim

Claimant seeks reimbursement of a \$3,000.00 retainer paid to Sara Allen in a divorce case.

Material Dates

04/23/12	Claimant hired Allen to represent him after his wife indicated she would file for divorce; Claimant signed engagement letter
5/17/12	Wife's attorney filed Petition in court, seeking divorce
6/12/12	Allen filed Response on behalf of Claimant
7/23/12	Allen filed motion and order for temp support for Claimant, but failed to file Uniform Support Declaration
9/25/12	Hearing on temp support; Allen unprepared, judge gave 3 month setover
9/27/12	Allen filed Uniform Support Declaration for Claimant; Claimant terminated her
12/3/12	Claimant's new attorney filed Notice of Representation
2/25/13	Judgment of Dissolution was entered
11/4/14	Allen signed a Stipulation for Discipline
11/24/14	Allen was suspended by OSB
1/28/16	CSF claim filed

Discussion

This is my second CSF claim against Sara Allen. To investigate this claim, I attempted to reach Sara Allen by email twice, using the same email address as she used in the past. Unlike last time, she failed to respond to my inquiries this time.

I also interviewed Claimant, who confirmed the basic facts of his claim. To verify key dates, I obtained and reviewed the court docket for the divorce proceeding.

Sara Allen was admitted to the Oregon Bar in 1999. Reitz met with Allen in April of 2012, and paid her \$3,000, as a retainer deposit. He signed a written fee agreement providing for services at the rate of \$225 per hour. Shortly after Reitz engaged Allen, his wife's attorney, Mark Cottle, filed a Petition for Dissolution. Reitz admitted he prepared no documents, so the implication is that whatever was filed with the court on his behalf, Sara Allen prepared. This included a response, and motion and order for temporary support.

At the hearing on temporary support, Sara Allen appears to have been largely unprepared according to Reitz. This was confirmed during my investigation, in an email to me from the opposing counsel, Mark Cottle. He indicated Allen failed to file a Uniform Support Declaration, and for that reason he was able to have the temporary support denied. The court records show Allen then filed the Uniform Support Declaration on behalf of Reitz. Nevertheless, Reitz said he was so disappointed at her performance, he orally fired her shortly after the hearing.

Some time after terminating Allen, Reitz hired Francis Gieringer, who eventually settled the divorce case. I interviewed Mr. Gieringer, who generally confirmed it appeared Allen performed the limited services described above. He didn't recall much about the case.

In contrast, Mark Cottle recalled important facts. In his email to me, Cottle indicated the bigger problem was the refusal by Reitz to provide any documents per the requests for production of documents. Cottle moved to have the temp support hearing dismissed on that basis, but his motion was denied. Cottle also indicated that Allen seemed to know the material and case, but it was clear she had a very difficult client.

Sara Allen has entered a Stipulation for Discipline, stemming from six (6) separate bar complaints, including a complaint by Reitz. According to the stipulation, Reitz asked for refund, but Allen failed to pay any refund, and failed to timely account for his \$3000 deposit. However, there is no discussion of the services performed by Allen.

Based on my review of the 20-page Stipulation for Discipline, it is clear that Allen is dealing with many problems, including health condition, mental and emotional challenges, practice management issues, and possible other problems. These factors apparently led to her "dropping out" and abandoning numerous client projects. There is no excuse for such conduct.

On the other hand, Sara Allen did perform certain legal services for Reitz, and such services were more than de minimis. Furthermore, there is no direct indication of actual dishonesty on her part. Rather than a payment by the CSF to Reitz, the parties should resolve matters as a fee dispute.

Furthermore, Reitz allowed too much time to pass before he filed his claim. He fired Allen in September of 2012, but did not file his CSF claim for well over 3 years, in January of 2016. I asked him about this delay, and he had no good explanation. He also admitted he has made no attempt to collect a refund from Allen.

Findings and Conclusions

1. Claimant was the client of the accused.
2. The accused was an active attorney and member of the Oregon Bar at the time of the loss.
3. The accused maintained an office in Portland, Oregon, at the outset of the engagement.
4. Claimant engaged Allen at her office to represent him in a divorce proceeding.
5. After the initial consultation, Claimant met with Allen, and Allen performed certain valuable services for the benefit of Claimant.
6. Claimant paid Allen \$3,000 in advance, as a retainer deposit for her services, which were to be billed at \$225 per hour.
7. Allen performed substantial services for the benefit of Reitz, but neglected to file a key document in the divorce proceeding.
7. Claimant neglected to file the CSF claim within 2 years of the discovery of Allen's conduct.
8. Allen failed to account for any part of the \$3,000 retainer deposit.
9. Claimant has made no attempt to collect from Allen.
10. There is no direct evidence of dishonesty on the part of Sara Allen.

1-24-16

Dear Client Security Fund Staff

Enclosed is a completed/notarized Claim Form for loss of \$3000.

I believe all the information required is submitted. I would also be available as needed for clarification.

Have only submitted a few documents including what I believe is the end Supreme Court of St. of OR (Case # on document)

Stipulation for Discipline, I do not know if you are aware Ms Allen has not returned to "retire"

practice perhaps since

my complaint & loss resulted in
the 'stipulations' Ms Allen
with suppression never
began. So here we see
Ms Allen actually has history
of refunding retainers &
payments in previous
cases virtually ^{the same} to mine.
I'm not unsympathetic
towards her and see
that ^{with} usually some extended
time has refunded money
to clients.

As you review the
documents you'll see
Ms Allen ~~is~~ in some
state of depression. I
know she was disorganized
or overburdened. Or I do now

I was not aware of this
between hire date in Apr
and Spousal / child over 18
having 3 mo - later.
This having is original prob.
of complaint filed by writer
(me) with the OSB,
and especially Susan Lynn Allen
my attorney.

Regarding documents - only
original copies Reitz & Allen
plus last/end of CSE numbers
Susan Lynn Allen 14.03, 14.68,
14.69, 14.70, 14.71 & 14.72
are here. There is more
but was told it was available
to you. Regards
gmgA 9/21.



Client Security Fund Application for Reimbursement

Return completed form to:
Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

2016-08

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.

RECEIVED

JAN 28 2016

Oregon State Bar
Executive Director

1. Information about the client(s) making the claim:

a. Full Name: Gregory Alan Reitz

b. Street Address: 19008 Leland Rd

c. City, State, Zip: Oregon City, Oregon 97045

d. Phone: (Home) - (Cell) 503-501-7392
(Work) - (Other) -

e. Email: -

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

a. Lawyer's Name: Sara Lynn Allen PC

b. Firm Name: Allen Law Group

c. Street Address: 12755 SW 69th Ave Suite 204

d. City, State, Zip: Portland, Oregon 97223

d. Phone: 503 726-5207

e. Email: Dont Know

3. Information about the representation:

a. When did you hire the lawyer? MAY 11, 2012

b. What did you hire the lawyer to do? For representation in divorce case

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
X Written/Signed Agreement included.

d. Did anyone else pay the lawyer to represent you? NO

e. If yes, explain the circumstances (and complete item 10B on page 3):

f. How much was actually paid to the lawyer? \$ 3000.00

g. What services did the lawyer perform? From my perspective in Affairs None
Please see documents included, They Are Very Clear.

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

NO

4. Information about your loss:

a. When did your loss occur? when attorney was paid and fired directly after

b. When did you discover the loss? A support hearing she was not prepared

c. Please describe what the lawyer did that caused your loss She refused to respond to me in any way - vacating, opening phones, certified mail etc. I was completely unprepared for 1st (her only) court X. Had not spousal support info, written blank papers. Judge set off

d. How did you calculate your loss? next hearing 3 months. Result - I really lived in a camper for 6 months

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? If yes, please explain: NO

b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: NO

c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand.

NO.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: NO contract at all for 3 yr.

e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. NO

f. Have you obtained a judgment? If yes, please provide a copy NO

g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found: NO

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

If yes to any of the above, please provide copies of your complaint, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: Yes A substantial amount. FRANCIS T. Gieringer

Dont have attorney phone number

4660 NE Belknap Ct
Suite 101
Hillsboro, Ore 97124

8. Please give the name and the telephone number of any other person who may have information about this claim: Mr. Cooper At Ore St Bar Disciplinary Staff
OSB Investigative Staff Legal Staff of Bar As Needed

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

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

b. No Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to: Dont understand question or what authorizing,

Name: _____

Address: _____

Phone: _____

11. Claimant's Signature and Verification

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

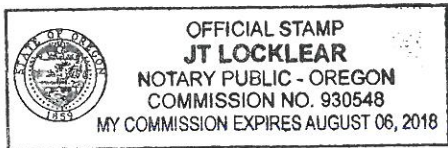
State of Oregon)
County of Clackamas) ss

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

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

[Signature]
Claimant's Signature

Signed and sworn (or affirmed) before me this 25th day of January, 2016.



[Signature]
Notary's Signature
Notary Public for State of Oregon, US Bank
My Commission Expires August 6, 2018

Please complete page 4 if an attorney is representing you for this claim.

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

1. I authorize _____ *(print name of attorney)*
to act as my attorney in presenting my claim.

Claimant's Signature

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

Without charge

Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

ALLEN LAW GROUP, PC
12755 SW 69th Ave., Suite 204
Portland, OR 97223

Client Information Sheet

Client's Full Name: Gregory Alan Reitz DOB: 4-11-53
Current Spouse/Partner Full Name: Valeriana P Reitz DOB: 4-20-58
Client Address: Homeless
Telephone: Home: NA Work: NA
Cell: 503-701-0534 Email: NA
Reason for Consultation (brief description): Believe DIVORCE is imminent

Opposing Party(ies): VAL REITZ

- How did you come to contact us:
- Personal Referral - _____
 - Attorney Referral - Jason Short,
 - Yellow Pages
 - Internet - Site if known _____
 - Other - _____

* Call client to pick up any documents

ALLEN LAW GROUP, PC

12755 SW 69th Ave., Suite 204
Portland, OR 97223

503.726.5207
sallen@allenlawgroup.com

March 8, 2012

Via first-class mail

Greg Reitz
23535 SW Aldergrove Avenue
Sherwood, OR 97140

RE: Engagement Agreement for Attorney-Client Relationship

Dear Greg:

Thank you for meeting with me to discuss your legal matter. I have agreed to represent you in connection with your dissolution matter, and I thank you for selecting our law firm to represent you. If you agree with the below, please sign and return this original.

AGREEMENT:

1. Retainer: I agree to pay an initial retainer in the amount of \$3,000, but understand and agree that attorney will draft a letter to opposing counsel upon receipt of \$225. Attorney agrees to fully represent client upon receipt of the \$3,000 retainer. I understand that attorney has not accepted my case and is not retained until this Agreement is signed AND the full retainer is received by the firm. I understand the retainer will be placed in a Trust Account. Funds will be withdrawn as needed for attorney fees and costs. I understand the firm/attorney(s) cannot predict the total amount of representation. If the representation costs less than the amount deposited, I will receive a refund at the conclusion of the representation. However, I agree to maintain a minimum of \$1,000 in the Trust Account. If my Trust Account falls below \$1,000 and is not brought to \$1,000 before the conclusion of representation, the attorney and/or firm may withdraw from representing me. Further, if the Trust Account does not have a large enough balance to cover fees and costs, I agree to pay the balance due in full within 30 days.
2. Hourly Rate: The attorney's hourly rate is set at \$225 per hour, billed in tenths of an hour. I understand every case is unique and it is impossible to estimate the total hours necessary on the case, or the total costs that will be incurred. Travel: travel time will be billed at half (1/2) the attorney's hourly rate listed above.
3. Costs/Fees: I agree that the attorney/firm may also withdraw from my Trust Account and/or bill me for expense incurred such as, but not limited to, filing fees, court fees, deposition charges, copying costs, postage, and related expenses.
4. Third Party Financial Assistance: If a third party is paying the retainer or other fees associated with this representation, I understand that this does not create an attorney-client relationship with this third party. The third party will not have the authority to request information or services of the attorney. Further, third party payment does not relieve me of my obligation to pay the attorney consistent with the terms of this agreement.

5. Monthly billing: Allen Law Group, PC bills approximately monthly. Funds held in my Trust Account may be applied toward amounts owing. I agree to pay any additional amount billed prior to the next billing cycle. I agree that the attorney/firm will assess a late fee of 1.5% per month for all outstanding balances not paid within 30 days of billing.
6. Collections: I understand that if I fail to pay my bill for over 90 days, this account may be referred to collections and any unpaid portion shall bear interest at 18% per annum until fully paid. I agree that the attorney/firm will be entitled to collect directly from me any necessary expenses of collection, including reasonable attorney fees incurred in the collection process. I further agree, if necessary, this agreement may be disclosed to the court.
7. Attorney Lien: I grant the attorney/firm a lien against any funds held for me in the trust account and against any real or personal property that is at issue in this matter. I authorize the attorney/firm to pay any outstanding balance on my account with any funds or property received on my behalf prior to releasing any balance to me.
8. Client Responsibility for Payment: Sometimes a third party may be ordered to pay my attorney fees and/or costs. I agree that I am personally responsible for the payment of fees and costs whether or not the court makes such an order. Further, the attorney/firm is not responsible for collection of fees and costs which may be ordered by the court to be paid by a third party.
9. Client Cooperation: I understand my attorney's intent is to provide conscientious, competent, and diligent legal services. However, my attorney needs my cooperation to achieve this goal. This includes keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments required under this agreement. It is also important that I promptly notify my attorney of any changes of address or telephone number.
10. Outside Counsel: It may be necessary for my attorney to consult with another attorney about issues in my case. Before doing this, my attorney will discuss the issue with me and I will decide whether I want to retain the attorney as a consulting attorney on the case.
11. Cases Involving Children: I understand and have been advised that certain court requirements apply in each county in cases involving children. These requirements include, but are not limited to my participation in the following: Parenting Classes, Mediation, and Custody/Parenting Evaluations. I agree to promptly participate fully and in good faith in the above requirements.
12. Attorney Incapacity: My attorney will protect my interests in the event of her unexpected death, disability, impairment, or incapacity. In order to do this, my attorney may arrange with another attorney to temporarily handle my matter and contact me to provide me with information about how to proceed.
13. File Documents: My attorney will send me pleadings, documents, correspondence and other information throughout the case. These copies are my file copies. My attorney will also keep the information in a file in her office. The file in the attorney's office will be the attorney's file. I will bring my file to our meetings so we both have all the necessary information available to us.
14. File Closure: When my attorney has completed all legal work necessary for my case, she will close her file and return the original documents to me. The attorney will then store the file for approximately 10 years. My attorney will destroy the file after that period of time unless I instruct her in writing now to keep it longer.

If any of the information in this letter is not consistent with your understanding of our agreement, please contact me before signing this letter. Otherwise, please sign below and return to me.

ALLEN LAW GROUP, PC

Receipt for payment

Date:

05-11-12

Client:

Craig A. Peitz

Attorney:

Sara Allen

Ben Evans

Type of payment:

Trust deposit

Payment towards balance owing

Other: _____

Amount:

\$ 3000.00

Method:

Cash

Check

Credit card

On behalf of the firm, we appreciate the opportunity to represent you in this matter. If you have any questions, please feel free to contact me.

Regards,

ALLEN LAW GROUP, PC



Sara L. Allen
Attorney at Law

I HAVE READ THIS LETTER AND CONSENT TO IT.


Greg Reitz

Date 4-23-12

IN THE SUPREME COURT
OF THE STATE OF OREGON

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In re:

Complaint as to the Conduct of

SARA LYNN ALLEN,

Accused.

)
)
) Case No. 14-03; 14-68; 14-69; 14-70;
) 14-71; & 14-72

)
) AMENDED ORDER APPROVING
) STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the
Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the
Accused is suspended for 6 months, all stayed pending completion of a 3-year probation,
effective seven days after the stipulation is approved, for violation of RPC 1.3; RPC 1.4(a); RPC
1.4(b); RPC 1.16(c); RPC 1.16(d); and RPC 8.1(a)(2).

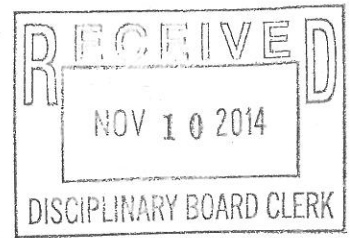
Nunc Pro Tunc this 17th day of November, 2014.



Pamela E. Yee
State Disciplinary Board Chairperson



Anthony A. Buccino, Region 7
Disciplinary Board Chairperson



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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
Complaint as to the Conduct of) Case Nos. 14-03; 14-68; 14-69; 14-70;
SARA LYNN ALLEN,) 14-71 & 14-72
Accused.) STIPULATION FOR DISCIPLINE

Sara Lynn Allen, attorney at law ("Allen"), and the Oregon State Bar ("Bar") hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Allen was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 30, 1999, and has been a member of the Bar continuously since that time, having her office and place of business in Clackamas County, Oregon.

3.

Allen enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 19, 2014, the State Professional Responsibility Board ("SPRB") authorized formal disciplinary proceedings against Allen for alleged violations of RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to adequately communicate with client]; RPC 1.4(b)

1 [duty to explain matter reasonably necessary to permit the client to make informed
2 decisions]; RPC 1.16(c) [duty to comply with rules upon withdrawal]; RPC 1.16(d) [duty
3 to take practicable steps to protect client upon termination of employment]; and RPC
4 8.1(a)(2) [duty to respond to a disciplinary authority] of the Oregon Rules of Professional
5 Conduct. The parties intend that this stipulation set forth all relevant facts, violations
6 and the agreed-upon sanction as a final disposition of this proceeding.

7
8 **Carolyn Mundon Matter**
9 **Case No. 14-03**

10 **Facts**

11 5.

12 In July 2013, Carolyn Mundon (“Mundon”) hired Allen for a flat fee of \$2,500 to
13 represent her in an uncontested guardianship involving her grandson. Mundon
14 expressed some urgency. Allen assured Mundon that she would act promptly, however
15 Allen was slow to start working on the matter because (1) she was moving her office to
16 her home (early September 2013), and (2) she was wrestling with depression. For these
17 same reasons, Allen also failed to respond to Mundon’s attempts to contact her.

18 6.

19 When nothing was accomplished by early October 2013, Mundon fired Allen and
20 demanded a refund of her \$2,500 retainer, which Allen ultimately returned in full after
21 Mundon filed a complaint with the Bar. Allen subsequently failed to timely respond to
22 the Bar’s requests for information.

23 **Violations**

24 7.

25 Allen admits that she neglected Mundon’s legal matter and failed to timely
respond to inquiries following Mundon’s Bar complaint, in violation of RPC 1.3 and RPC

PAGE 2 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

1 1.4(a). Allen also admits that her failure to return promptly the unearned retainer,
2 violated RPC 1.16(d), and her failure to timely respond to disciplinary inquiries violated
3 RPC 8.1(a)(2).

4
5 **Hon. Brian C. Dretke Matter**
Case No. 14-68

6 **Facts**

7 8.

8 In mid-May 2013, Allen filed a response and counterclaim on behalf of Tara
9 Cranmer ("Cranmer") in a Union County custody matter over which Honorable Brian C.
10 Dretke ("Judge Dretke") presided. The case was referred to mediation.

11 9.

12 In mid-November 2013, the court notified Allen of a status hearing set for
13 January 13, 2014, but the notice was returned as undeliverable because Allen had
14 moved her office without notice to the court.

15 10.

16 On January 3, 2014, the court emailed Allen to ask that she update her address
17 and telephone number. Allen did not respond.

18 11.

19 On January 13, 2014, Cranmer and the opposing party appeared for the status
20 hearing. Judge Dretke telephoned Allen at her old law firm, which told him that she had
21 left. He left a message on the cell phone number they gave him but she did not return it.
22 Approximately a week later, Judge Dretke called Allen again but her voicemail was full.
23 That same day, he wrote to her at the address provided by Allen's old law firm. The
24 letter was not returned but Allen did not respond.

25

PAGE 3 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

1

12.

2 Oregon UTCR 3.140 states that the attorney who files the initial appearance for a
3 party is deemed to be that party's attorney of record until the attorney otherwise
4 notifies the court and opposing parties in open court or makes an application to resign
5 made pursuant to ORS 9.380. ORS 9.380(1) allows lawyers to withdraw from ongoing
6 litigation only if they file either a consent to withdraw or the court grants a motion to
7 withdraw based on good and sufficient cause.

8

Violation

9

13.

10 Allen admits that her failure to comply with UTCR 3.140 and ORS 9.380 regarding
11 notice to or permission of a tribunal when terminating representation in Cranmer's
12 matter violated RPC 1.16(c).

13

**Dawn E. Murphy Matter
Case No. 14-69**

14

15

Facts

16

14.

17 In late February 2013, Dawn Murphy ("Murphy") retained Allen to prepare and
18 file a guardianship petition for her disabled son, paying her \$1,550. Murphy called and
19 emailed Allen repeatedly but received limited responses. Although Allen provided a
20 draft of the guardianship papers, she failed to timely file them with the court. Allen
21 believes that the delay in filing was due, in part, to her struggles with depression. In
22 mid-September 2013, Murphy terminated Allen's services.

23

15.

24 Allen failed to respond to the Bar's inquiries concerning Murphy's matter for
25 several months, but eventually did so.

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Violations

16.

Allen admits that her failure to substantively progress on Murphy's legal matter between February 2013 and September 2013, constituted neglect of a legal matter in violation of RPC 1.3. Allen also acknowledges that her failure to respond to Murphy's attempts to communicate with her violated RPC 1.4(a) and that her several-month delay in responding to the Bar violated RPC 8.1(a)(2).

**Greg A. Reitz Matter
Case No. 14-70**

Facts

17.

In May 2012, Greg Reitz ("Reitz") hired Allen to handle his divorce. In early 2013, at a spousal support hearing in Washington County Circuit Court, the judge was concerned that Allen had not had her client complete the Uniform Child Support Affidavit. He made her and Reitz complete a Uniform Child Support affidavit in the hallway outside the courtroom.

Not correct

Judge rescheduled for next 3 months. Declined Ms. Allen's request to wait for affidavit and left

Following that spousal support hearing, Reitz fired Allen and hired new counsel. Reitz asked for a refund. However, Allen did not refund any of his money or timely account for the money she had received from him.

Court rule,

Violation

19.

Allen admits that her failure to timely account for Reitz's funds following his termination of her services violated RPC 1.16(d).

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**Charles R. Waterman Matter
Case No. 14-71**

Facts

20.

In August 2012, Charles Waterman ("Waterman") retained Allen to represent him in a custody parenting time case. She represented him well through the trial in November 2012, but after sending him the judgment in early December 2012, stopped communicating with him despite his efforts to contact her.

21.

In late August 2013, Waterman learned that another judgment had been entered against him (judgment of paternity, custody, parenting time, and a lien for attorney fees) without his knowledge. Allen did not respond to or forward Waterman the proposed judgment. Waterman retained new counsel and requested that Allen provide him with an accounting of his \$3,000 retainer. Allen did not timely respond to Waterman's or the Bar's inquiries.

Violations

22.

Allen admits that she neglected Waterman's legal matter in violation of RPC 1.3. She further admits that her failures to adequately communicate with him, including failing to notify him of the proposed judgment and explain its import, violated RPC 1.4(a) and RPC 1.4(b). Allen also admits that her failure to timely respond to the Bar concerning Waterman's matter violated RPC 8.1(a)(2).

1 **MeiMei Welker Matter**
2 **Case No. 14-72**

3 **Facts**

4 23.

5 Prior to September 2013, MeiMei Welker ("Welker") hired Allen to represent her
6 in a divorce proceeding. Allen moved her office in September 2013, without ensuring
7 that Welker was specifically aware of her relocation. She also failed to respond to a
8 number of Welker's telephone calls and emails.

9 24.

10 In December 2013, divorce papers were submitted to the court for signature.
11 Allen assured Welker that she would let them know when they were signed but lost
12 track of the matter for several weeks and not until after Welker contacted the court
13 directly and was notified that they had been signed.

14 **Violations**

15 25.

16 Allen admits that her erratic communication and failure to notify Welker that the
17 divorce papers had been signed violated RPC 1.4(a) and RPC 1.4(b).

18 **Sanction**

19 26.

20 Allen and the Bar agree that in fashioning an appropriate sanction in this case,
21 the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions*
22 ("*Standards*"). The *Standards* require that Allen's conduct be analyzed by considering
23 the following factors: (1) the ethical duty violated; (2) the attorney's mental state;
24 (3) the actual or potential injury; and (4) the existence of aggravating and mitigating
25 circumstances.

PAGE 7 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

1 a. **Duty Violated.** Allen violated her duty of diligence to her clients,
2 including her duty to adequately communicate with them. *Standards* § 4.4. She
3 also violated her duty to her clients to properly handle their property, particularly
4 following termination of representation. *Standards* § 4.1. The *Standards* presume
5 that the most important ethical duties are those obligations which lawyers owe
6 to their clients. *Standards* at 5. Allen also violated her duty to the legal system to
7 comply with rules of a tribunal (*Standards* § 6.2) and her duty to the profession to
8 respond to inquiries from the Bar. *Standards* § 7.0

9 b. **Mental State.** Allen acted knowingly and negligently. “Knowledge”
10 is the conscious awareness of the nature or attendant circumstances of the
11 conduct but without the conscious objective or purpose to accomplish a
12 particular result. *Standards* at 9. “Negligence” is the failure of a lawyer to heed a
13 substantial risk that circumstances exist or that a result will follow, which failure
14 is a deviation from the standard of care that a reasonable lawyer would exercise
15 in the situation. *Id.*

16 c. **Injury.** Injury can be either actual or potential under the *Standards*.
17 *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Allen’s neglect of her clients’
18 matters caused both actual and potential injury. Their cases were stalled and
19 resolutions of their matters were delayed. Allen’s failures to act and
20 communicate with her clients caused further actual injury in terms of anxiety and
21 frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and
22 frustration as a result of the attorney neglect can constitute actual injury); *In re*
23 *Schaffner II*, 325 Or 421, 426-27, 939 P2d 39 (1997).

24 In addition, Allen caused either potential or actual injury to those clients
25 who did not timely receive accountings of their fees or the unearned portions of

1 their retainers. Allen did eventually send refunds to Mundon and Murphy, and
2 also assisted Murphy in having the guardianship completed.

3 Allen's failure to cooperate with the Bar's investigations of her conduct
4 caused actual injury to both the legal profession and to the public because many
5 requests were necessitated by her failures to respond to the Bar or provide
6 complete information, thereby delaying the Bar's investigations and,
7 consequently, the resolution of the complaints against her. *In re Schaffner II*,
8 *supra*; *In re Miles, supra*; *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

9 d. **Aggravating Circumstances.** Aggravating circumstances include:

10 1. A pattern of misconduct. *Standards* § 9.22(c). Allen's
11 violations spanned multiple matters over approximately a one-year period
12 of time. *See In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996).

13 2. Multiple offenses. *Standards* § 9.22(d).

14 3. Substantial experience in the practice of law. *Standards*
15 §9.22(i). Allen was admitted to practice in Oregon in 1999.

16 e. **Mitigating Circumstances.** Mitigating circumstances include:

17 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).

18 2. Absence of a dishonest motive. *Standards* § 9.32(b).

19 3. Personal or emotional problems. *Standards* § 9.32(c).

20 4. Remorse. *Standards* § 9.32(l).

21 27.

22 Under the ABA *Standards*, a suspension is generally appropriate when a lawyer
23 knowingly fails to perform services for a client and causes injury or potential injury to a
24 client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to
25 a client. *Standards* § 4.42(a) & (b). Suspension is also generally appropriate when a

PAGE 9 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

1 lawyer knows or should know that he is dealing improperly with client property (such as
2 failing to promptly account for and return it to clients) and causes injury or potential
3 injury to a client. *Standards* § 4.12. A reprimand is generally appropriate when a lawyer
4 negligently fails to comply with a court order or rule, and causes injury or potential
5 injury to a client or other party, or causes interference or potential interference with a
6 legal proceeding. *Standards* § 6.23. Finally, a suspension is generally appropriate when a
7 lawyer knowingly engages in conduct that is a violation of a duty owed as a professional,
8 and causes injury or potential injury to a client, the public, or the legal system.
9 *Standards* § 7.2.

10 28.

11 Oregon cases also support the imposition of a substantial suspension for Allen's
12 misconduct. *See, e.g., In re Parker*, 330 Or 541, 9 P3d 107 (2000) (four-year suspension
13 for knowing neglect, including failing to respond to client messages, and knowing failure
14 to respond to Bar inquiries in four matters); *In re Schaffner*, 325 Or 421, 939 P2d 39
15 (1997) (two-year suspension for neglect, failing to return client property, and failing to
16 fully respond to the Bar); *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996) (three-year
17 suspension for neglect and failing to respond to the Bar, as well as misrepresentations
18 and dishonesty); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988) (two-year suspension
19 for neglect of five client matters, three instances of failing to return client property, and
20 substantially refusing to cooperate with Bar authorities).

21 *See also, In re Morasch*, 26 DB Rptr 146 (2012); *In re Kent*, 20 DB Rptr 136 (2006);
22 *In re O'Dell*, 19 DB Rptr 287 (2005); *In re Ames*, 19 DB Rptr 66 (2005); *In re Cumfer*, 19
23 DB Rptr 27 (2005); *In re Barrow*, 13 DB Rptr 126 (1999) (all stipulations to two-year
24 suspensions for neglect and/or failures to respond to the Bar related to numerous client
25 matters).

PAGE 10 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

1 In light of Allen's mitigating factors, particularly her absence of prior discipline.
2 and depression issues, a probated term of suspension is appropriate.

3 29.

4 Consistent with the *Standards* and Oregon case law, the parties agree that Allen
5 shall be suspended for six months for violations of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC
6 1.16(c); RPC 1.16(d); and RPC 8.1(a)(2), effective October 1, 2014 or seven days after
7 approval by the Disciplinary Board, whichever is later. However, all of the suspension
8 shall be stayed, pending completion of a three-year term of probation supervised by the
9 State Lawyers Assistance Committee ("SLAC") which shall include the following terms
10 and conditions:

11 (a) Allen shall comply with all provisions of this stipulation, the Rules of
12 Professional Conduct applicable to Oregon lawyers, and the provisions of
13 ORS Chapter 9.

14 (b) A member of SLAC or such other person approved by Disciplinary
15 Counsel's Office ("DCO") in writing shall supervise Allen's probation
16 ("Supervising Attorney"). Allen is currently is working with the Oregon
17 Attorney Assistance Program ("OAAP") on treatment. Allen shall
18 immediately notify SLAC upon approval of this Stipulation for Discipline by
19 the Disciplinary Board of: 1) the existence and contents of this Stipulation
20 for Discipline, 2) the history and status of any OAAP treatment or
21 programs in which Allen has/is participating, and 3) discuss with SLAC
22 whether and how to modify her current treatment plan to best accomplish
23 the objectives of Allen's probation.

24 (c) Beth Wolfsong or such other person approved by DCO in writing shall
25 perform as a mentor during the term of Allen's probation ("Mentoring

- 1 Attorney"). Allen agrees to cooperate and comply with all reasonable
2 requests made by her Mentoring Attorney that the Mentoring Attorney, in
3 his or her sole discretion, determines are designed to achieve the purpose
4 of the probation and the protection of Allen's clients, the profession, the
5 legal system, and the public.
- 6 (d) Allen shall meet at least monthly with her Supervising Attorney for the
7 purpose of reviewing Allen's compliance with the terms of the probation.
8 Allen shall cooperate and shall comply with all reasonable requests of
9 SLAC that will allow the SLAC and DCO to evaluate her compliance with the
10 terms of this stipulation for discipline.
- 11 (e) Allen shall continue regular treatment sessions with Dr. Garen Weitman
12 ("Dr. Weitman") or another treatment provider determined by SLAC to be
13 appropriate.
- 14 ✓ (f) Within 60 days of the effective date of this agreement, Allen shall provide
15 Reitz and Waterman with accountings of monies paid to her by them or on
16 their behalf, and verify this fact to DCO.
- 17 (g) Allen agrees that, if SLAC is alerted to facts that raise concern that the she
18 may be violating her requirements as described in paragraph 29(b) above,
19 she will participate in a further evaluation at the request and direction of
20 SLAC.
- 21 (h) Allen shall arrange for and meet with Dr. Weitman or another health care
22 professional acceptable to DCO and her Supervising Attorney to develop
23 and implement a course of treatment that will address any identifiable
24 concerns.
25

- 1 (i) Allen shall continue to attend regular counseling/treatment sessions with
2 the approved health care professional for the entire term of her
3 probation. Allen shall obtain and take and/or continue to take, as
4 prescribed, any health-related medications.
- 5 (j) Allen shall not terminate her counseling/treatment or reduce the
6 frequency of her counseling/ treatment sessions without first submitting
7 to DCO a written recommendation from the health care professional that
8 her counseling/treatment sessions should be reduced in frequency or
9 terminated and Allen undergoes an independent evaluation by a second
10 professional acceptable to DCO and the Supervising Attorney, which
11 evaluation confirms her fitness.
- 12 (k) Within 30 days of the effective date of this agreement, Allen shall meet
13 with her Mentoring Attorney in person at least once for the purpose of
14 reviewing the status of Allen's law practice and her performance of legal
15 services on the behalf of clients. Thereafter, Allen shall meet with her
16 Mentoring Attorney at least once on or before the 15th day of each third
17 month to review her law practice and performance of legal services and
18 Allen's compliance with the terms of the probation. Allen shall cooperate
19 and shall comply with all reasonable requests of her Mentoring Attorney
20 that will allow the Mentoring Attorney and DCO to evaluate her
21 compliance with the terms of this stipulation for discipline.
- 22 (l) Every month for the term of this agreement, Allen shall review all client
23 files to ensure that she is timely attending to the clients' matters and that
24 she is maintaining adequate communication with clients, the court, and
25 opposing counsel.

- 1 (m) During the meetings between Allen and her Mentoring Attorney, in
2 addition to providing an opportunity to discuss any general or specific
3 practice management concerns, Allen and her Mentoring Attorney shall
4 audit a random sampling (15-20%) of Allen's active files to verify:
- 5 (1) Allen is timely attending to the clients' matters and that she is
6 adequately communicating with clients, the court, and opposing
7 counsel, as appropriate.
- 8 (2) Allen has reviewed her client files and reconciled them with her
9 calendaring system, such that all necessary appearances and
10 deadlines are noted and memorialized.
- 11 (n) During the term of her probation, Allen shall attend not less than 9 MCLE
12 accredited programs, for a total of 30 hours, which shall emphasize client
13 management, adequate communication, and how to get along with
14 difficult people. These credit hours shall be in addition to those MCLE
15 credit hours required of Allen for her normal MCLE reporting period.
- 16 (o) Upon completion of the MCLE programs described in paragraph (n), and
17 no later than August 31, 2017, Allen shall submit an Affidavit of
18 Compliance to DCO regarding this condition.
- 19 (p) Allen shall meet with office management consultants from the
20 Professional Liability Fund ("PLF") within 60 days of the effective date of
21 this agreement, or as soon thereafter as a PLF practice manager is
22 available. The PLF practice manager shall conduct an evaluation of
23 whether Allen would benefit from changes to her office practices or
24 management. When Allen receives recommendations from the PLF
25 regarding her office practices or management, she shall notify DCO of the

1 PLF's recommendations in her next due quarterly report described in
2 paragraph (t) below. Allen shall implement all recommended changes, to
3 the extent reasonably possible, and provide an explanation as to the
4 reasons any recommendations have not been implemented. Allen shall
5 participate in at least one follow-up review by the PLF on or before August
6 31, 2015. Allen shall promptly report implementation of recommendations
7 to her Mentoring Attorney.

8 (q) On or before August 31, 2015, Allen shall enroll in and complete the OAAP
9 program, "Getting it Done" or a similar OAAP program. In the alternative,
10 on or before August 31, 2015, Allen shall arrange for, attend and complete
11 individual counseling session(s) with an OAAP attorney representative, or
12 other program suggested or recommended by OAAP that cover the same
13 subject matter as the "Getting it Done" program.

14 ✓(r) In the event Allen fails to comply with any condition of this stipulation, she
15 shall immediately notify her Supervising Attorney, her Mentoring
16 Attorney, SLAC and DCO in writing.

17 (s) At least quarterly, and by such dates as established by DCO, Allen shall
18 submit a written report to DCO, approved in substance by her Supervising
19 Attorney, advising whether she is in compliance or non-compliance with
20 the terms of this stipulation and the recommendations of her treatment
21 providers, and each of them. Allen's report shall also identify: the dates
22 and purpose of her meetings with her Supervising Attorney and the dates
23 of meetings and other consultations between Allen and all health care
24 professionals during the reporting period. In the event Allen has not
25 complied with any term of probation in this disciplinary case, the report

1 shall also describe the non-compliance and the reason for it, and when
2 and what steps have been taken to correct the non-compliance.

3 (t) At least quarterly, and by such dates as established by DCO, Allen shall
4 submit a written report to DCO, approved in substance by her Mentoring
5 Attorney, advising whether she is in compliance or non-compliance with
6 the terms of this stipulation, including:

7 (1) The dates and purpose of Allen's meetings with her Mentoring
8 Attorney.

9 (2) The number of Allen's active cases and percentage reviewed in the
10 audit with her Mentoring Attorney per paragraph (m) and the
11 results thereof.

12 (3) Whether Allen has completed the other provisions recommended
13 by her Mentoring Attorney, if applicable.

14 ✓ (4) In the event Allen has not complied with any term of probation in
15 this disciplinary case, the report shall also describe the non-
16 compliance and the reason for it, and when and what steps have
17 been taken to correct the non-compliance.

18 (u) Allen hereby waives any privilege or right of confidentiality to the extent
19 necessary to permit disclosure by OAAP, SLAC, her Mentoring Attorney,
20 her Supervising Attorney or any other health care treatment providers of
21 her compliance or non-compliance with this stipulation and their
22 treatment recommendations to SLAC and DCO. Allen agrees to execute
23 any additional waivers or authorizations necessary to permit such
24 disclosures.
25

1 (v) Allen is responsible for the cost of all professional services required under
2 the terms of this stipulation and the terms of probation.

3 (w) In the event Allen fails to comply with any condition of her probation, DCO
4 may initiate proceedings to revoke her probation pursuant to BR 6.2(d),
5 and impose the stayed six months of suspension. In such event, the
6 probation and its terms shall be continued until resolution of any
7 revocation proceeding.

8 30.

9 Allen acknowledges that she has certain duties and responsibilities under the
10 Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to
11 avoid foreseeable prejudice to her clients during the term of her suspension. In this
12 regard, Allen has arranged for Beth Wolfson, an active member of the Bar, to either
13 take possession of or have ongoing access to Allen's client files and serve as the contact
14 person for clients in need of the files during the term of her suspension. Allen
15 represents that Beth Wolfson has agreed to accept this responsibility.

16 31.

17 Allen acknowledges that reinstatement is not automatic on expiration of any
18 period of suspension, if any stayed period of suspension is actually imposed. If a period
19 of suspension is necessitated by her non-compliance with the terms of her probation,
20 she will be required to comply with the applicable provisions of Title 8 of the Bar Rules
21 of Procedure. Allen also acknowledges that, should a suspension occur, she cannot hold
22 herself out as an active member of the Bar or provide legal services or advice until she is
23 notified that her license to practice has been reinstated.

24

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PAGE 17 – STIPULATION FOR DISCIPLINE – SARA LYNN ALLEN

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32.

Allen acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

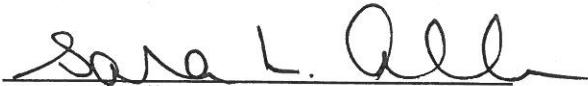
33.

Allen represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Allen is admitted: none.

34.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 7th day of November, 2014.


Sara Lynn Allen
OSB No. 992081

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EXECUTED this 10th day of November, 2014.

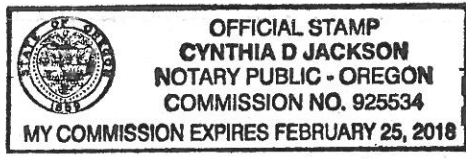
OREGON STATE BAR

By: *Amber Bevacqua-Lynott*
Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel

I, Sara Lynn Allen, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

Sara L. Allen
Sara Lynn Allen

Subscribed and sworn to before me this 7th day of November, 2014.



Cynthia D. Jackson
Notary Public for Oregon
My commission expires: 2/25/18

I, Amber Bevacqua-Lynott, being first duly sworn, say that I am Chief Assistant Disciplinary Counsel for the Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that the sanction was approved by the SPRB for submission to the Disciplinary Board on the 19th day of July, 2014.

Amber Bevacqua-Lynott
Amber Bevacqua-Lynott

Subscribed and sworn to before me this 10th day of November, 2014.



Emily Schwartz
Notary Public for Oregon
My commission expires: Jan. 15, 2018

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016,
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-32 LANDERS (Koepke) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In October 2011, Gregory Koepke hired Mary Landers to represent him in defense of multiple criminal charges in Josephine County Court. Judith Koepke (Mr. Koepke's mother) paid Ms. Landers \$15,075 for the representation, but never received a written fee agreement from her. Mr. Koepke is dissatisfied with the representation and seeks a full refund of the money his mother paid. He says she was sick a lot prior to trial and did not work on his case during that time.

Ms. Landers agrees that she was sick, but maintains that she worked on his case. She says that she and her investigator visited him several times and spoke with him on the phone almost daily. Mr. Koepke admits that she visited him three or four times and that her investigator visited him three times, and that he spoke with Ms. Landers on the phone three times. The court docket shows a release hearing was held on December 8, 2011, and trial was on December 20 and 21, 2011. There is no dispute that Ms. Landers represented Mr. Koepke at the hearing and trial. Mr. Koepke was found guilty on the assault II and menacing charges, and not guilty on the strangulation charge.

In his request for review, Mr. Koepke admits that he did receive a "new client information sheet" which set forth Ms. Lander's hourly rate at \$175 per hour, and her staff rate at \$75 per hour. He expresses particular concern that he never received any bills from Ms. Landers or accounting of her time. He concedes that she is entitled to payment "to some extent," but doesn't believe she is entitled to the full \$15,000 paid.

The CSF Committee investigator acknowledged problems with the representation and expressed understanding of Mr. Koepke's dissatisfaction with Ms. Lander's services. Nonetheless, the investigator found no evidence of dishonesty.

In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee denied Mr. Koepke's claim on several grounds. First, it concluded that Ms. Landers did perform legal services for Mr. Koepke, and that such services were more than de minimus. The Committee also found no evidence of dishonesty on Ms. Lander's part. Instead, the Committee determined that any claim Mr. Koepke might have is, at best, a fee dispute. Finally, Mr. Koepke failed to file the claim within two years of the discovery of Ms. Lander's conduct, as required by CSF Rule 2.8. Mr. Koepke identifies his date of loss as January 2012, which is when his sentencing occurred. Mr. Koepke did not submit the claim until September 2015, over three years later. Mr. Koepke made no effort to collect from Ms. Landers in the meantime, and provided no good reason for his delay.

Gregory Allen Koepke SID#18450647
Snake River Correctional Institution
777 Stanton Blvd.
Ontario: Oregon 97914-8335
(541) 881-4537

Helen Hierschbiel
CEO/Executive Director
c/o Sylvia Stevens
Executive Director
Oregon State Bar
PO. Box 231935
Tigard, Oregon 97281-1935

RECEIVED

JAN 25 2016

Oregon State Bar
Executive Director

January 16, 2016

RE: Request for Board Review of Client Security Fund Claim
No. 2015-32.

Sylvia Stevens,

Please accept and process this request for board review of my claim. While I am not disputing the fact that Ms. Landers did work for and earn some of the \$15,000⁰⁰ retainer I provided her, I do firmly dispute the supposition that she worked enough hours to have earned the entire retainer.

As I stated in my December 12, 2015 declaration in relation to both TJW 1501323 and Client Security Fund Claim No. 2015-32, to the best of my knowledge and belief, neither my mother, nor myself ever entered into or signed any retainer agreement with Ms. Landers. We were merely provided a "New Client Information Sheet" which is essentially a fee schedule stating \$175⁰⁰ per hour for "attorney time" to be billed in increments of 1/10th of an hour and \$75⁰⁰ per hour for "staff time" to be billed in increments of 1/10th of an hour.

This fee schedule also states after I agree to retain Ms. Landers, I will be billed for specific services provided, I will be happy to provide a copy of this document upon request.

I believe that before my retainer money could legally be applied to any bill I had accrued for the services of Ms. Landers and/or her staff, her and her staff would have first been required to provide me with bills for actual services rendered.

Ms. Landers and her staff had a duty to provide me with billing statements down to the $\frac{1}{10}$ th of an hour for services rendered and a copy of any signed retainer agreement. This has not been done. In her November 17, 2015 response to my bar complaint (TJW 1501323) she made several false statements, which I addressed in my December 12, 2015 declaration, which Ms. Landers has failed to answer and has subsequently been suspended from practicing law until she does. (Oregon Supreme Court Case No. 15-141).

The fact is that the records show that Ms. Landers has been dishonest, made false statements relating to the billing and retainer agreement and failed in her fiduciary duties towards the \$15,000⁰⁰ retainer she was paid. I can prove she was dishonest about her visits to the jail and the alleged almost daily phone contacts. I can prove I paid her investigator Ms. Wicklund separately and I can prove that her assistant Leah Honga never came to visit me.

Because Ms. Landers did show up for trial, albeit unprepared (Ms. Landers failed to file Notice to have witnesses before the court, though she

claimed she had. Trial Court Record pages 251-262). I agree that she would have been eligible for payment to some extent, however she failed to bill me or my mother, and engaged in dishonest business practices when called on it. I believe as a result she should be required to payback the entire \$15,000⁰⁰ retainer, but for the purposes of "Client Security Fund Claim No. 2015-32 only" I will agree to stipulate to receiving \$7,500⁰⁰ reimbursement of my retainer.

This above stipulation should in no way be perceived as any statement by me concerning the adequacy of Ms. Landers representation concerning Oregon State Bar Complaint No. TJW 1501323; Oregon Supreme Court Case No. 15-141; and Malheur County Circuit Case No. 15CV1399

I do truly appreciate your assistance, and your valent attempts to help clients of attorneys who practice unscrupulous and dishonest business. I assure you, Ms. Landers is one such attorney and I was treated unscrupulously and dishonestly by her, as was the bar by her dishonest statements which are not based on any facts.

Sincerely 

18450647
SRC 777 Stanton Blvd
Ontario Or 97914

★

Postscript: Please return copies of the following attached documents
(1) New Client Information Sheet and
(2) Declaration. Thank you

DECLARATION
(ORCP Rule 1E)

I, Gregory A Koepke, do declare that:

(1) To the best of my knowledge and belief, neither my mother, nor myself ever entered into or signed any retainer agreement with Mary Landers, I believe it is the duty of the party asserting the existence of a contract to provide proof of said contractual instrument. (Ms Landers duty.)


(2) Ms Landers didn't come visit me "several" times as she claimes, she came 3 or 4 times. Leah Honga never came to visit me, and Mr Wicklund came to visit 3 times, and those visits were very brief. I did not speak to Ms Landers on the phone daily, I spoke to her on the phone approximately 3 times and she was unavailable during her said illness. The jail visiting and phone records prove this.

(3) Ms Landers and Mr Wicklund never told me that they believed a reasonable jury could convict me on all charges and suggested I enter a plea, in fact ~~it~~ she told me I shouldn't take any deal and threw them aside. Therefore my mother did not agree with any such statement. (see Declaration)

(4) I wrote a letter and attempted calling Ms Landers asking why she didn't test the DNA evidence, and to question the bail hearing appeal that was never entered, and I needed to know that if Ms Landers in fact even appealed my case, I also wanted to ask Ms Landers to see the accounting of my case. I found out sometime later through the Josephine County District attorneys office that in fact Ms Landers was under investigation for abandoning her practice.

"I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY."

Dated this 12 day of December, 20 15.



(Signature)

Print Name: Gregory Koepke

S.I.D. No. 18450647

5201 777 Stanton Blvd

Ontario Oregon 97914

New Client Information Sheet

Date 10/25/11

Your Name Gregory Allen Koepke DOB 7-27-67

What type of case? Asst II Asst II

Opposing Party Tana Swight DOB _____

Their attorney _____

Your address _____

Your primary phone NA - other phone 916 315 4569 (Mom)

Consultation Fee: The initial consultation fee is \$75.00, not to exceed one hour.

If the consultation lasts more than one hour, you must be prepared to pay \$ 175.00 an hour for additional time spent discussing your case. This will be billed in increments of 1/10th of an hour. \$75.00 is due prior to meeting with Ms. Landers.

Office Staff time is billed at \$75.00 per hour, billed in increments of 1/10 of an hour.

Staff time is not accrued until after you have agreed to retain Ms. Landers. You will be billed for telephone calls, copies, administrative fees, postage etc. after the retainer agreement has been signed.

We accept cash, checks or money orders.

If you must cancel an appointment, please call 24 hours in advance, so we can utilize that time to review your case or help another client. When you cancel an appointment, it is a \$175.00 loss to our business, so please keep your appointment!

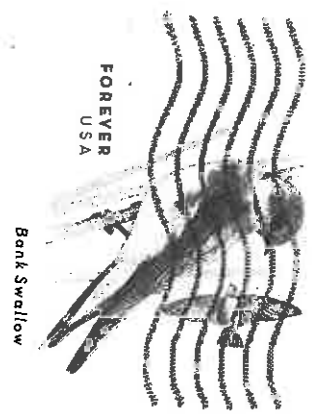
4/1/11

*Sail -
all of the motions denied*

Oregon Department of Corrections - Inmate Mail

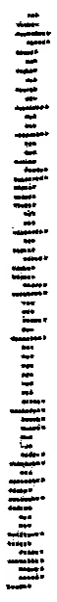
Institution Sec 1 SID 18450647
Name Keoke, Gregory
Address 777 Stawton Blvd
City Denver State OR Zip 97914

BOISE ID: 837
20 JAN 2016 PM 11



O.S.B
Sylvia Stevens, Executive Director
P.O. Box 231935
Tigard OR 97281-1935

9728181935



Client Security Fund Investigative Report

From: Dave Malcolm, Investigator
Date: January 7, 2016
RE: CSF Claim #2015-32
Claimant: Gregory Koepke
Attorney (status): Mary Landers (suspended, non-disciplinary)

Recommendation. Investigator recommends denying this claim as there is no evidence of dishonest conduct by Attorney and the claim is late and thereby time barred.

Statement of Claim. Claimant Koepke retained Attorney Landers to defend him in a criminal case. Judith Koepke (Claimant's mother) paid Attorney \$15,075. Claimant is dissatisfied with Attorney's services and wants the money refunded to his mother.

Discussion. Attorney likely made legal errors in this case (witnesses not obtained, matters not investigated, DNA testing not done, Claimant testimony not presented). Claimant is understandably dissatisfied with Attorney's performance yet he does not make any claim of Attorney's dishonest conduct. Claimant is pursuing post-conviction relief.

Attorney could have done several things better in this case. Attorney did not use a written fee agreement or provide a written invoice or accounting of Attorney's services. Attorney's health issues were a factor in this case. We don't know what Attorney's health issues were but they were cited as a reason for Attorney's inaction.

Investigator emailed Attorney to follow up and discuss the case. Attorney responded by email once, initially but there was no further contact with Attorney. The phone number Attorney provided was out of service.

Findings & Conclusions.

1. An attorney-client relationship existed between Claimant and Attorney. Attorney defended Claimant in case #11CR0748 against Assault II charges. Claimant was convicted and is serving a 140-month sentence.
2. Although Claimant filed a CAO complaint and this CSF claim against Attorney, Claimant did not make any effort to collect from Attorney.
3. Attorney was out sick for a month before trial. Claimant states Attorney didn't work at that time while Attorney states she did. Attorney has generally been unavailable (disappeared) from just after Claimant's trial ended.
4. Attorney represented Claimant from shortly after arrest through completion of a 3-day trial. Although the quality and thoroughness of Attorney's services may be questionable, Attorney certainly provided more than minimal or insignificant services.
5. Claimant stated he did not think Attorney acted dishonestly. Investigator did not learn of any dishonest behavior by Attorney. Rule 2.2 requires a claimant's loss to be caused by a lawyer's dishonest conduct to be eligible for reimbursement.
6. Claimant states his loss occurred "January 2012". Claimant was sentenced January 24, 2012. Claimant submitted this claim September 28, 2015; over two years after his date of loss. Under Rule 2.8 (d), a claim is generally barred if the claim is not filed within two years of Claimant's loss.
7. This Claim should be denied.

Respectfully submitted,
s/ Dave Malcolm

RECEIVED

Oregon State Bar

SEP 28 2015

Return completed form to:

Client Security Fund Application for Reimbursement

Oregon State Bar Executive Director

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

2015-32

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar. Submission of this claim does not guarantee payment. The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records. Please attach additional sheets if necessary to give a full explanation.

1. Information about the client(s) making the claim:

- a. Full Name: Gregory Allen Koepke
b. Street Address: SRC1 777 stanton blvd / 18450647
c. City, State, Zip: Ontario Oregon 97914
d. Phone: (Home) n/a (Cell) n/a (Work) n/a (Other) n/a
e. Email: n/a

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name: Mary E. Landers
b. Firm Name: "Last Known": Josephine County Defense Lawyers Inc
c. Street Address: 115 NW E St
d. City, State, Zip: Grants Pass Oregon 97526
d. Phone: 541-956-9922
e. Email: mary-landers-attorney@yahoo.com

3. Information about the representation:

- a. When did you hire the lawyer? Oct, 2011
b. What did you hire the lawyer to do? Defense attorney, I was denied court appointed public defender

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

There was never any agreement, she demanded cash to take case

d. Did anyone else pay the lawyer to represent you? yes, mother & father

e. If yes, explain the circumstances (and complete item 10B on page 3):

I was denied a public defender, she was referred to my mother & father by Mr Chris Mecca, attorney at law.

f. How much was actually paid to the lawyer? around \$15,000 including investigator

g. What services did the lawyer perform? Very little if any, except being at trial I really didn't know at time of trial how much she failed in representing me.

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

No, There was not she only met with me three times

4. Information about your loss:

a. When did your loss occur? January 2012

b. When did you discover the loss? The past few months he been completing my post conviction appeal and it is becoming troublosomly more clear.

c. Please describe what the lawyer did that caused your loss Trial counsel fail to investigate this case she was sick most of the time prior to trial. I was never ~~giving~~ givin a retainer agreement nor ~~was~~ ^{was} any accounting being done. Directly after sentencing she VANISHED, abandoning her practice.

d. How did you calculate your loss? Could never really do because no accounting was provided and very little work done.

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? If yes, please explain: no never,

b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: no was never made aware of such a thing.

c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand.

I have no way of contacting her.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: no

e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. Just a bar complaint

f. Have you obtained a judgment? If yes, please provide a copy no

g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found: no

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

If yes to any of the above, please provide copies of your complaint, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer:

Attorney Robert Graham Robert Graham was cant appointed to represent me at restitution level, no telephone number or address available at this time, It is Josephine CO.

8. Please give the name and the telephone number of any other person who may have information about this claim: Judith L Koepke (916) 316-4569, Vicki R Vernon Attorney at Law, (503) 206-8719

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: Judith L Koepke

Address: 1507 Gingersnap Ln Lincoln CA 95648

Phone: 916-316-4569

11. Claimant's Signature and Verification

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

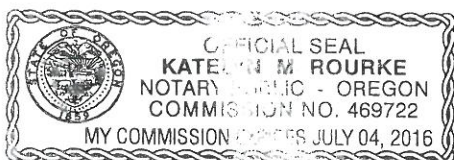
State of Oregon)
 County of Malheur) ss

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

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

[Signature]
 Claimant's Signature

Signed and sworn (or affirmed) before me this 11 day of September, 2015.



Notary's Signature Katelyn M Rourke
 Notary Public for MALHEUR COUNTY
 My Commission Expires 07/04/2016

Please complete page 4 if an attorney is representing you for this claim.

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

1. I authorize _____ *(print name of attorney)*
to act as my attorney in presenting my claim.

Claimant's Signature

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

Without charge

Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

JUDITH L. KOEPKE
 THEODORE L. KOEPKE
 1507 GINGERSNAP LANE 916-434-1576
 LINCOLN, CA 95648

90-7162 41073 6576
 3222

DATE Oct 13, 2011

PAY TO THE ORDER OF Mary Sanders Attorney \$ 75.00
Seventy five DOLLARS

CHASE
 JPMorgan Chase Bank, N.A.
 www.Chase.com

MEMO

⑆322271627⑆ 861069196218576

Judith Koepke

Posting Date:20111024
 Sequence Number:2290152785
 Amount:\$75.00
 Account:8610691962
 Routing Transit Number:32227162
 Check/Serial Number:000000006576
 Bank Number:703
 IRD Indicator:0
 BOFD:000000000
 Capture Source:PV
 Entry Number:3809
 UDK:703111024002290152785
 Cost Center:
 Teller Number:
 Teller Sequence Number:
 Missing Image:5
 PE Indicator:N
 Application Code:1
 Trancode:006576
 DB/CR:DB
 Item Type:P
 Processing Date:
 #:56

4570050040 10/21/2011 SO Valley B & T 132205973

DO NOT WRITE IN THESE SPACES

ENDORSE HERE

Present to the account of the within named payee. Absence of endorsement guaranteed South Valley Bank & Trust

90-7182 41073 6577
3222

JUDITH L. KOEPKE
THEODORE L. KOEPKE
1507 GINGERSNAP LANE 916-434-1576
LINCOLN, CA 95648

DATE Oct 18, 11

PAY TO THE ORDER OF Mary Sanders Attorney \$ 2,000.00
two thousand no DOLLARS only

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com

MEMO

⑆3 2227 1627⑆ 8610691962⑆6577

Posting Date:20111024
Sequence Number:2290152786
Amount:\$2,000.00
Account:8610691962
Routing Transit Number:32227162
Check/Serial Number:00000006577
Bank Number:703
IRD Indicator:0
BOFD:000000000
Capture Source:PV
Entry Number:3809
UDK:703111024002290152786
Cost Center:
Teller Number:
Teller Sequence Number:
Missing Image:5
PE Indicator:N
Application Code:1
Trancode:006577
DB/CR:DB
Item Type:P
Processing Date:
#:33

4570050050 10/21/2011 SO Valley B & T - 122205978

DO NOT WRITE STENCIL OR SIGN BELOW THIS LINE
FOR DEPOSIT ONLY. RETURN TO THE ISSUING BANK.

ENDORSE HERE

Credited to the account of
the within named payee.
Absence of endorsement guaranteed
South Valley Bank & Trust

JUDITH L. KOEPKE
 THEODORE L. KOEPKE
 1507 GINGERSNAP LANE 916-434-1576
 LINCOLN, CA 95648

90-7162 41073 6578
 3222

DATE Oct 19, 2011 ^{HK}

PAY TO THE ORDER OF Mary Seanders Attorneys \$ 5000.00
five thousand no DOLLARS Equally Preferred
cash Check on Bank

CHASE JPMorgan Chase Bank, N.A. www.Chase.com

MEMO _____

⑆322271627⑆ 8610691962⑈6578

Judith Koepke

Posting Date:20111031
 Sequence Number:5380164818
 Amount:\$5,000.00
 Account:8610691962
 Routing Transit Number:32227162
 Check/Serial Number:00000006578
 Bank Number:703
 IRD Indicator:0
 BOFD:00000000
 Capture Source:PV
 Entry Number:1806
 UDK:703111031005380164818
 Cost Center:
 Teller Number:
 Teller Sequence Number:
 Missing Image:5
 PE Indicator:N
 Application Code:1
 Trancode:006578
 DB/CR:DB
 Item Type:P
 Processing Date:
 #:46

4570150119 10/28/2011 SO Valley B & T 133205073

ENDORSE HERE

JUDITH L. KOEPKE
 THEODORE L. KOEPKE
 1507 GINGERSNAP LANE 916-434-1576
 LINCOLN, CA 95648

90-7162 41073 6605
 3222

DATE 12-1-11

PAY TO THE ORDER OF Mary Sanders Attorney \$ 5,000
five thousand no DOLLARS cents

CHASE
 JPMorgan Chase Bank, N.A.
 www.Chase.com

MEMO

⑆322271627⑆ 8610691962⑆6605

Posting Date:20111208
 Sequence
 Number:7370462035
 Amount:\$5,000.00
 Account:8610691962
 Routing Transit
 Number:32227162
 Check/Serial
 Number:00000006605
 Bank Number:703
 IRD Indicator:0
 BOFD:000000000
 Capture Source:PV
 Entry Number:1583
 UDK:70311208007370462035
 Cost Center:
 Teller Number:
 Teller Sequence Number:
 Missing Image:5
 PE Indicator:N
 Application Code:1
 Trancode:006605
 DB/CR:DB
 Item Type:P
 Processing Date:
 #:57

JUDITH L. KOEPKE
 THEODORE L. KOEPKE
 1507 GINGERSNAP LANE 916-434-1576
 LINCOLN, CA 95648

90-7162 41073 6675
 3222

DATE 12-19-11

PAY TO THE ORDER OF Mary Sanders Attorney \$ 3,000
three thousand & no cents

CHASE
 JPMorgan Chase Bank, N.A.
 www.Chase.com

MEMO _____

⑆32227⑆627⑆ 86⑆069⑆962⑆6675

REVERSE SIDE OF CHECK

ENDORSE HERE

VOID

Posting Date:20111223
 Sequence
 Number:5370698075
 Amount:\$3,000.00
 Account:8610691962
 Routing Transit
 Number:32227162
 Check/Serial
 Number:00000006675
 Bank Number:703
 IRD Indicator:0
 BOFD:000000000
 Capture Source:PV
 Entry Number:4794
 UDK:70311223005370698075
 Cost Center:
 Teller Number:
 Teller Sequence Number:
 Missing Image:5
 PE Indicator:N
 Application Code:1
 Trancode:006675
 DB/CR:DB
 Item Type:P
 Processing Date:
 #37

We never received a
retainer agreement
No paperwork from
Mary Lenders

OREGON STATE BAR
Client Security - 113
For the Twelve Months Ending December 31, 2015

Description	December 2015	YTD 2015	Budget 2015	% of Budget	December Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$520	\$5,593			\$222	\$2,512	122.6%
Judgments	50	28,350	1,000	2835.0%	150	1,100	2477.3%
Membership Fees		674,928	693,500	97.3%	(180)	675,194	0.0%
TOTAL REVENUE	570	708,871	694,500	102.1%	192	678,806	4.4%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	6,480	36,636	32,600	112.4%	538	26,832	36.5%
Employee Taxes & Benefits - Reg	1,235	11,628	11,900	97.7%	695	10,663	9.1%
TOTAL SALARIES & BENEFITS	7,715	48,265	44,500	108.5%	1,234	37,495	28.7%
DIRECT PROGRAM							
Claims	74,699	148,217	250,000	59.3%	28,900	51,944	185.3%
Collection Fees	167	2,573	1,500	171.5%		1,194	115.5%
Committees		98	250	39.2%			
Travel & Expense		1,760	1,400	125.7%		1,123	56.8%
TOTAL DIRECT PROGRAM EXPENSE	74,866	152,648	253,150	60.3%	28,900	54,260	181.3%
GENERAL & ADMINISTRATIVE							
Office Supplies			150				
Photocopying		5	50	9.6%		34	-86.0%
Postage	6	151	300	50.2%	11	301	-50.0%
Professional Dues		200	200	100.0%		200	
Telephone	32	352	150	234.7%	23	91	286.8%
Training & Education			600				
Staff Travel & Expense		734	974	75.4%		478	53.7%
TOTAL G & A	38	1,442	2,424	59.5%	34	1,104	30.5%
TOTAL EXPENSE	82,619	202,354	300,074	67.4%	30,168	92,859	117.9%
NET REVENUE (EXPENSE)	(82,049)	506,517	394,426		(29,976)	585,947	-13.6%
Indirect Cost Allocation	1,108	28,905	30,319		1,318	16,245	77.9%
NET REV (EXP) AFTER ICA	(83,157)	477,613	364,107		(31,293)	569,702	-16.2%
Fund Balance beginning of year		620,503					
Ending Fund Balance		1,098,116					

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-106 and 2005-169

Issue

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

Options

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

Discussion

The Oregon Supreme Court adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. In addition, there have been several court decisions on matters of professional responsibility. The Committee continues its review of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules and case law.

OSB Formal Op No 2005-106 and 169 have been amended to reflect the amendment to the advertising rules. The amendments to these opinions include swapping out the relevant prior rule with the amended rule and providing additional explanation to the extent necessary. The committee made no changes to the substantive positions taken in the opinion.

Staff recommends adopting the proposed amended opinions.

Attachments: Redline versions of OSB Formal Ethics Op Nos. 2005-106 and 2005-169.

FORMAL OPINION NO. 2005-106
Information about Legal Services:
Purchase of Tax Preparation Business

Facts:

Lawyer represents clients in tax matters. Lawyer would like to purchase the tax preparation business of Tax Consultant, a licensed non-lawyer tax consultant.

Question:

May Lawyer make the purchases?

Conclusion:

Yes.

Discussion:

Neither the Oregon RPCs nor ORS chapter 9 prohibit the purchase of businesses by lawyers.¹

However, Lawyer may not engage in improper solicitation. Lawyer cannot use this acquisition directly or indirectly to engage in improper in-person solicitation of additional clients. *See* Oregon RPC 7.3 (generally limiting in-person, telephone, or real-time electronic solicitation);² Oregon RPC 8.4(a)(1) (making it professional misconduct for a lawyer to violate

¹ Oregon RPC 1.17 however does specify ethical rules related to the sale or purchase of a law practice.

² Oregon RPC 7.3 provides:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

the Oregon RPCs “through the acts of another”). For example, Lawyer could not make it an expressed or implied condition of the acquisition that Tax Consultant solicit clients for Lawyer.³ Oregon RPC 7.2;⁴ OSB Formal Ethics [Op No 2005-2](#). Without endorsement or influence from Lawyer, Tax Consultant may inform their clients of their possible need for legal services and inform them of Lawyer’s availability to do the work. However, if clients of the Lawyer are clients of the tax preparation business after purchase, Lawyer may solicit them as a prior business relationship exists.

If clients of Lawyer are also clients of the tax preparation business of Tax Consultant, Lawyer may be required to determine if Lawyer’s business interest in the tax preparation

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

³ We express no opinion as to whether Tax Consultant is under any obligation of confidentiality that would prevent disclosure to Lawyer.

⁴ Oregon RPC 7.2 provides:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(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.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

business gives rise to a conflict of interest under RPC 1.7(a)(2)⁵ or RPC 1.8(a).⁶ If so, Lawyer may be required to obtain informed consent in writing from the client under RPC 1.7(b)(4) or RPC 1.8(a)(3), or may be required to withdraw from representation if the conflict may not be waived. A more detailed analysis of the ethical concerns and potential conflicts of a lawyer acting in multiple roles may be found in OSB Formal Ethics Op. No. 2006-176.

For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6, 2.13–2.15, 2.23–2.27, 2.31, 12.9–12.11, 12.35, 12.39 (Oregon CLE 2003); and ABA Model Rules 7.2–7.3, 5.6(a), 8.4(a). *See also* Washington Ethics Op. Nos., 1953 (2001), 1965 (2001), 2055 (2004), 2098 (2005).

Approved by Board of Governors, _____ 2016.

⁵ Oregon RPC 1.7(a)(2) provides:

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

(1) . . .

(3) 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; . . .

⁶ RPC 1.8(a) provides

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

FORMAL OPINION NO. 2005-106

Information ~~About~~about Legal Services:
Purchase of Tax Preparation Business ~~or Private Law Practice~~

Facts:

Lawyer ~~A~~ represents clients in tax matters. Lawyer ~~A~~ would like to purchase the tax preparation business of Tax Consultant, a licensed non-lawyer tax consultant. ~~Lawyer A also would like to purchase the private practice of Lawyer B because this practice is similar to Lawyer A's practice.~~

Question:

May Lawyer ~~A~~ make the purchases?

Conclusion:

~~See discussion~~Yes.

Discussion:

Neither the Oregon RPCs nor ORS chapter 9 prohibits ~~the purchase of businesses by lawyers.~~¹ ~~such purchases. In fact, Oregon RPC 1.17 expressly contemplates the purchase and sale of a law practice.~~

~~However, Lawyer~~Prior to the purchase of the business lawyer cannot ~~may not engage in improper~~ ~~solicitation~~solicitation. ~~-. Cf. Oregon RPC 5.6(a).~~² ~~However, Lawyer A,~~ ~~however, Lawyer~~ cannot use ~~this~~these acquisitions ~~directly or indirectly~~ to engage ~~directly or indirectly~~ in improper in-person solicitation of additional clients. ~~See Cf. Oregon RPC 8.4(a)(1) (making it~~

¹ ~~Oregon RPC 1.17 however does specify ethical rules related to the sale or purchase of a law practice.~~

² ~~Oregon RPC 5.6(a) provides that a lawyer shall not participate in offering or making "a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except as agreement concerning benefits upon retirement." The present hypothetical involves none of the agreements listed above, nor a partnership.~~

professional misconduct for a lawyer to violate the Oregon RPCs “through the acts of another”); Oregon RPC 7.3 (generally limiting in-person, telephone, or real-time electronic solicitation);³ Oregon RPC 8.4(a)(1) (making it professional misconduct for a lawyer to violate

³ Oregon RPC 7.3 provides:

~~— (a) — A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:~~

~~— (1) — is a lawyer; or~~

~~— (2) — has a family, close personal, or prior professional relationship with the lawyer.~~

~~— (b) — A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~— (1) — the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;~~

~~— (2) — the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~— (3) — the solicitation involves coercion, duress or harassment.~~

~~— (c) — Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words “Advertisement” in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).~~

~~— (d) — Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

the Oregon RPCs “through the acts of another”). For example, Lawyer A could not, for example, make it an expressed or implied condition of the acquisition that Tax Consultant or Lawyer B solicit clients for Lawyer A.⁴ Oregon RPC 7.2;⁵ OSB ~~Formal Ethics~~ Formal Ethics Op No

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

⁴ We express no opinion as to whether Tax Consultant is under any obligations of confidentiality that would prevent disclosure to Lawyer A.

⁵ Oregon RPC 7.2 provides:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(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.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content. —(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.

—(b)— A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a

2005-2. Without endorsement or influence from Lawyer, Tax Consultant, ~~however,~~ and Lawyer B could, ~~however,~~ may, inform their clients of their possible need for legal services, ~~respective transactions~~ and inform them of Lawyer A's availability to do their work. ~~without endorsement.~~ However, if clients of the Lawyer are clients of the tax preparation business after purchase, Lawyer may solicit them as a prior business relationship exists.

If clients of Lawyer are also clients of the tax preparation business of Tax Consultant, Lawyer may be required to determine if Lawyer's business interest in the tax preparation business gives rise to a conflict of interest under RPC 1.7(a)(2)⁶ or RPC 1.8(a).⁷ Lawyer B,

~~lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.~~

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

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

~~———— (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.~~

~~———— We express no opinion as to whether Tax Consultant is under similar obligations of confidentiality that would prevent disclosure to Lawyer A.~~

⁶ Oregon RPC 1.7(a)(2) provides:

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

(1) . . .

(3) 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; . . .

⁷ RPC 1.8(a) provides

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

~~however, may be bound to~~ See, e.g., Oregon RPC 1.17(c), which provides:

~~—— The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.~~

~~If so, Lawyer may be required to obtain informed consent in writing from the client under RPC 1.7(b)(4) or RPC 1.8(a)(3), or may be required to withdraw from representation if the conflict may not be waived. A more detailed analysis of the ethical concerns and potential conflicts of a lawyer acting in multiple roles may be found in OSB Formal Ethics Op. No. 2006-176.~~

~~—— Note, too, that although Lawyer B is generally prohibited from disclosing information relating to the representation of a client, Oregon RPC 1.6(b)(6)⁸ permits the~~

~~(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;~~

~~(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and~~

~~(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.~~

~~⁸—Oregon RPC 1.6(b)(6) provides:~~

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

~~(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~~

~~disclosure to a potential purchaser of Lawyer B's practice by imposing the same duty of confidentiality on Lawyer A.~~

~~For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6, 2.13–2.15, 2.23–2.27, 2.31, 12.9–12.11, 12.35, 12.39 (Oregon CLE 2003); and ABA Model Rules 7.2–7.3, 5.6(a), 8.4(a). See also Washington Formal Ethics Op No 192; Washington Informal Ethics Op. Nos. 927, 1260, 1953 (2001), 1965 (2001), 1998, 2055 (unpublished 2004), 2098 (2005).~~

~~Approved by Board of Governors, August 2005 _____ 2016.~~

~~—~~

~~the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~— COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6, 2.13–2.15, 2.23–2.27, 2.31, 12.9–12.11, 12.35, 12.39 (Oregon CLE 2003); and ABA Model Rules 7.2–7.3, 5.6(a), 8.4(a). See also Washington Formal Ethics Op No 192; Washington Informal Ethics Op Nos 927, 1260, 1953, 1965, 1998, 2055 (unpublished).~~

FORMAL OPINION NO. 2005-169
Information About Legal Services:
Firm Names—Retired Partner Mediator

Facts:

Lawyer *A* is a former partner in the *AB&C* Law Firm. Lawyer *A* has retired from the active practice of law but continues to practice as a mediator. Lawyer *A* also consults with members of the *AB&C* Law Firm and receives a salary from the firm. Lawyer *A*'s name continues to be used in the firm name and Lawyer *A* is identified on the firm's letterhead as "available solely as mediator." Lawyer *A* has ceased to maintain PLF coverage under ORS 9.080(2)(a), which requires coverage for lawyers "engaged in the private practice of law."

Questions:

1. May the *AB&C* Law Firm continue to use Lawyer *A*'s name in the firm name and list Lawyer *A* on the firm's letterhead as a mediator?
2. May Lawyer *A* work as a consultant within the firm if Lawyer *A* no longer maintains PLF coverage?

Conclusions:

1. Yes.
2. Yes, qualified.

Discussion:

Oregon RPC 7.5 provides:

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

* * *

(e) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer of the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

Oregon RPC 7.1 provides:

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

These rules permit the use of Lawyer *A*'s name in the firm name as long as the use of the name is not false or misleading. Although RPC 7.5 has been amended to more closely resemble the current version of ABA Model Rule 7.5, the ABA comments make it clear that a law firm may still use a retired lawyer's name in the firm name.¹ Accordingly, the AB&C Law Firm may continue to use Lawyer *A*'s name in the firm name because Lawyer *A* is a former partner of the Firm, Lawyer *A* retired from the active practice of law (e.g. Lawyer *A* is not practicing at another law firm), and the Firm is clear about the services that Lawyer *A* may provide.

The firm may hold out Lawyer *A* as "available [to clients] solely as a mediator" if this representation is true and Lawyer *A*'s conduct is lawful. Under Oregon law, PLF coverage is required only of lawyers who engage in the private practice of law. ORS 9.080. Because mediation is not the practice of law, a lawyer who limits services to mediation is not required to have PLF coverage. *Cf. In re Kluge*, 332 Or 251, 27 P3d 102 (2001); *Balderree v. Oregon State Bar*, 301 Or 155, 719 P2d 1300 (1986). Moreover, Lawyer *A* can provide consulting advice to others engaged in the firm's legal practice without personally practicing law. *See also* OSB Formal Ethics Op No 2005-65 (nonlawyer personnel may be listed as such on letterhead). Affected clients should be informed that Lawyer *A*'s participation is advisory only, and that Lawyer *A* does not assume responsibility for the handling of any client's matter.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§ 2.19, 12.16 (Oregon CLE 2006); and ABA Model Rules 7.1, 7.5.

¹ See, e.g., RPC 7.5 cmt [1] which provides in part: "it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer" (emphasis added). Other jurisdictions are in accord. See, e.g., DC Ethics Opinion 277 (November 1997), which concludes that "[a] law firm may retain in its name the name of a former partner, except where the former partner is practicing law elsewhere or where the firm is prohibited by law from retaining the name." The Opinion explained that "at least as regards retired or deceased partners, ethics law has been clear since at least the time of the predecessor Code of Professional Responsibility that the names of such partners could ethically be included in law firm names." See also Ethics Comm. of the Mass. Bar Assoc., Op. No. 81-5, (April 14, 1981) (concluding that it would be permissible to include the names of retired partners in firm name); Washington Advisory Opinion 2164 (2007) (providing that "[p]rior opinions of the Committee make clear that a firm may continue to use the name of a former partner where the former partner is deceased, fully retired or inactive, or maintains some ownership stake in the firm").

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Questions:

1. May the *AB&C* Law Firm continue to use Lawyer *A*'s name in the firm name and list Lawyer *A* on the firm's letterhead as a mediator?
2. May Lawyer *A* work as a consultant within the firm if Lawyer *A* no longer maintains PLF coverage?

Conclusions:

1. Yes.
2. Yes, qualified.

Discussion:

Oregon RPC 7.5 provides:

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

* * *

(e) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer of the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

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

_____ (e) _____ A lawyer in private practice:

_____ (1) _____ shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

~~_____ (3) _____ may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.~~

~~_____ (d) _____ Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.~~

~~_____ (e) _____ Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.~~

Oregon RPC 7.1 provides, ~~in pertinent part:~~

~~A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. (a) _____ A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:~~

~~_____ (1) _____ contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;~~

~~_____ . . .~~

~~_____ (7) _____ states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;~~

~~_____ . . .~~

~~_____ (11) _____ is false or misleading in any manner not otherwise described above; or~~

~~_____ (12) _____ violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.~~

These rules permit the use of Lawyer A's name in the firm name as long as the use of the name is not false or misleading. Because Lawyer A's professional activities are limited to mediation, which is not the practice of law, Lawyer A is retired within the meaning of Oregon RPC 7.5(e)(3). Although RPC 7.5 has been amended to more closely resemble the current version of ABA Model Rule 7.5, the ABA comments make it clear that a law firm may still use a retired lawyer's name in the firm name.¹ Accordingly, the AB&C Law Firm may continue to

¹ See, e.g., RPC 7.5 cmt [1] which provides in part: "it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer" (emphasis added). Other jurisdictions are in accord. See, e.g., DC Ethics Opinion 277 (November 1997), which concludes that "[a] law firm may retain in its

use Lawyer A's name in the firm name because Lawyer A is a former partner of the Firm, Lawyer A retired from the active practice of law (e.g. Lawyer A is not practicing at another law firm), and the Firm is clear about the services that Lawyer A may provide.

The firm may hold out Lawyer *A* as “available [to clients] solely as a mediator” if this representation is true and Lawyer *A*'s conduct is lawful. Under Oregon law, PLF coverage is required only of lawyers who engage in the private practice of law. ORS 9.080. Because mediation is not the practice of law, a lawyer who limits services to mediation is not required to have PLF coverage. *Cf. In re Kluge*, 332 Or 251, 27 P3d 102 (2001); *Balderree v. Oregon State Bar*, 301 Or 155, 719 P2d 1300 (1986). Moreover, Lawyer *A* can provide consulting advice to others engaged in the firm's legal practice without personally practicing law. *See also* OSB Formal Ethics Op No 2005-65 (nonlawyer personnel may be listed as such on letterhead). Affected clients should be informed that Lawyer *A*'s participation is advisory only, and that Lawyer *A* does not assume responsibility for the handling of any client's matter.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§ 2.19, 12.16 (Oregon CLE 2003~~6~~); ~~RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 58, 98 (2003)~~; and ABA Model Rules 7.1, 7.5.

name the name of a former partner, except where the former partner is practicing law elsewhere or where the firm is prohibited by law from retaining the name.” The Opinion explained that “at least as regards retired or deceased partners, ethics law has been clear since at least the time of the predecessor Code of Professional Responsibility that the names of such partners could ethically be included in law firm names.” See also Ethics Comm. of the Mass. Bar Assoc., Op. No. 81-5, (April 14, 1981) (concluding that it would be permissible to include the names of retired partners in firm name); Washington Advisory Opinion 2164 (2007) (providing that “[p]rior opinions of the Committee make clear that a firm may continue to use the name of a former partner where the former partner is deceased, fully retired or inactive, or maintains some ownership stake in the firm”).

Dear Board of Govenors,

For this President's Report, I would again like to complement the Board on the preparation, serious Board discussion, and the decisions made in regard to the DSRC Report.

Secondly, I would like to relay some of my thoughts on the Western States bar Conference I recently attended, along with Helen, Vanessa, Michael, Ramon, John, and Carol Burnick, Executive Director of the PLF.

If misery loves company, I found all states, especially those with integrated bars, are facing the same challenges we are, including issue dealing with the Keller and North Carolina Dental Board cases, lack of employment for new lawyers, attracting lawyers to rural areas, and maybe most important dealing with our changing society and competition from nonlawyer legal service providers. Each state is dealing with these issues somewhat differently. For instance, one state is aggressively attempting to enforce their UPL statutes while others are saying UPL laws are of little value except in the most obvious and clear cut cases.

The few independent bars in the west are facing somewhat different issues. Their biggest is dealing with declining memberships. They are trying to find meaningful benefits to attract members. They also are dealing with issues involving legal services to rural communities and outside competitors.

The presentations and board panels dealt almost exclusively with future issues regarding encroachment by outsiders on areas of legal services traditionally provided only by lawyers and the governance of the profession in light of the North Carolina Dental Board and subsequent cases. My take away was we need to be proactive in continuing to examine our governance structure and the types of issues we as a Board become involved with.

The Utah State Bar is now in the process of drafting rules to allow for and regulate licensed paralegal practitioners. The only thing certain at this point about the rules is the practitioners will not be allowed to appear in court. On the other hand, the Washington LLLT program is moving ahead quickly. They are already looking at rule amendments to allow limited court appearances and expansion of practice areas allowed under the license. Other states have instituted programs to deal with the rural lawyer issue, encouraging Native Americans to consider law as a profession and creating websites for better lawyer referrals.

I believe all of these efforts to deal with issues that are new to society and state bars are just the beginning of changes we will see in the future. For us as a Board of Govenors, it means we cannot do business as usual but need to be open to look at ways to improve the practice life of our members and create better access to justice for Oregon citizens.

Report of President-Elect

Michael D. Levelle

April 22, 2016

FEBRUARY 2016

- February 9: Local Bar Network project, H. Hirschbiel's office
(Discuss ACDI, interview candidate process, BOG liaison)
- February 12: BOG Meetings, Salem Conference Center
- February 22: ACDI meeting, Tigard
- February 23: OSB Indian Law Section (conference call)
- February 26: Campaign for Equal Justice, Sentinel Hotel

MARCH 2016

- March 7: Meeting with H. Hirschbiel and Per Ramfjord, Per's office
- March 11: BOG and Committees meetings, OSB Center, Tigard
50-Year Luncheon
OWL's Awards Dinner, Portland Art Museum
- March 16-19: ABA Bar Leadership Institute, Chicago, IL
- March 28: Meeting with Chief Justice, Salem

MARCH/APRIL 2016

- March 30-April 2: Western States Bar Conference, San Diego, CA

APRIL 2016

- April 7: County Bar Association Outreach, conference call
- April 8: 2016 OLIO Spring Social
- April 19: Specialty Bar Leader's Mixer, Portland Prime
- April 21: BOG and PLF BOD dinner, Fogo de Chão, Portland
- April 26: OSB Indian Law Section Executive Committee Meeting,
conference call

(Report submitted April 13, 2016)

County Bar Presidents Conference Call Notes

April 7, 2016

In attendance: Michael Levelle (OSB BOG President Elect), Krischele Whitnah (Baker), Cara Ponzini (Deschutes), Peter Carini (Jackson), Tyler Reid (Linn/Benton), Deb Lush (Marion), Andrew Schpak (Multnomah), Rosalie Westenskow (Union), Ben Boyd (Wallowa), Colin Andries (ONLD), Helen Hirschbiel (OSB Executive Director/CEO), Dani Edwards (OSB Director of Member Services), Michelle Lane (OSB Member Services Specialist)

Project Summary:

After an overview of current BOG issues, each county bar gave highlights of their programs including:

Multnomah: Implicit bias, recent newsletter article on the red report. Considering ways to address the issue and new ways of attracting diverse attorneys to stay in Oregon.

Jackson: Focus on offering CLEs, particularly access to justice and child abuse reporting.

Deschutes: Recently added support of pro bono and access to justice as organizational missions. Looking at ways to serve public who are underserved due to distance and limited income.

Marion: Struggling with a gradual reduction in membership over several years and looking at ways of increasing their relevancy and value to members in the area.

Linn/Benton: Primarily focusing on expanding scope, topics, and speakers for their free CLE programs.

Baker and Union: Both stated they are working towards development of bylaws.

Discussion/Questions:

Oregon New Lawyers Division is available to provide support in generating new membership. Discussion of a national trend where younger generations are not joining and participating as previous generations have.

OSB annual bar tours were discussed and several attendees commented on their importance to the community membership. In Baker County the bar tour is one of the only events their members show up for.

OSB leadership resources for county bar association leaders are not utilized as often. Staff provided information about live CLE program speakers available through General Counsel's Office and Client Assistance Office. Marion County seemed interested in assistance planning a Law Day event in the future.

Ongoing Collaboration:

Overall the general response was that the conference call was helpful for those in attendance. Most would like to continue similar calls quarterly in the morning.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Helen M. Hirschbiel, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	
Accounting & Finance/ Facilities/IT (Rod Wegener)	<p><i>Accounting</i></p> <ul style="list-style-type: none"> ▪ In January the bar’s Controller resigned to take a position with another company. In mid-February Michael Dunlap assumed the position. Mr. Dunlap has an MBA with a focus in accounting and has participated in two major software upgrades at former positions. ▪ The financial records conversion from 2015 to 2016 was complicated by the dated MS Dynamics accounting system software which also will be upgraded in May to integrate with the new AMS system in September. The current accounting system no longer is supported by vendors. ▪ In April, Moss Adams auditors began their field work on the bar’s financial statements for 2014-2015. ▪ As a result of changes in the department and software, the bar’s financial statements have been delayed. Preliminary statements have been generated internally, and statements for the first three months of 2016 will be distributed to the Board of Governors late April. <p><i>Information Technology</i></p> <ul style="list-style-type: none"> ▪ The IT Manager is leading the bar through the build phase of the Aptify AMS. User Acceptance Testing for all groups should be underway in mid-May. As groups test configurations, IT will be focusing on data conversion and integrations with 3rd party systems. Go-live is still planned for mid- to late September. <p><i>Facilities</i></p> <ul style="list-style-type: none"> ▪ The Joffe Medi-Center lease expires September 30. We are uncertain whether the tenant will want to renew its lease. The tenant has until June 2 to notify the bar of its intentions.
Communications & Public Services (includes RIS and Creative Services)	<p><i>Communications</i></p> <ul style="list-style-type: none"> ▪ The 50-Year Member Luncheon took place on March 11, with the largest group of honorees to date. Planning is underway for the annual OSB Awards Luncheon, which will be held on December 8. Nominations are due June 30.

<p>(Kay Pulju)</p>	<ul style="list-style-type: none">▪ The February/March edition of the Bulletin included features on how the clock can control lawyers’ lives and the intersection of legal and health issues. The April edition covered gangs in Oregon and concerns regarding data security.▪ Updating of online legal information materials is ongoing, along with development of new video “Q&A” content. Total page views for public legal information topics exceeded 1,000,000 in 2015. The most popular topic was “Rights and Duties of Tenants,” viewed 130,140 times. <p><i>Creative Services</i></p> <ul style="list-style-type: none">▪ Progress on transitioning section websites to the OSB WordPress platform: 13 are complete and 6 have been developed and are now being reviewed by the appropriate section leaders. Five sections have no website presence (other than an identity page on the bar’s website), which leaves 18 section sites that need to be transitioned in 2016.▪ The color palette used in the <i>Bulletin</i> was updated and expanded with new colors introduced in the first three issues of 2016.▪ Marketing efforts included promotion of a new legal publication and the CLE seminar spring sale and institutes, with advertising created for the <i>Bulletin</i>, print, web and email campaign materials. <p><i>Referral & Information Services</i></p> <ul style="list-style-type: none">▪ Lawyer Referral Service (LRS) revenue exceeded budget projections for 2015, generating \$811,000 in revenue for the bar. Total revenue generated since percentage-fee inception in 2012 is \$1,800,000. This revenue represents over \$14,800,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the past three years. 2016 revenue remains steady and should yield similar results to 2015.▪ RIS is continuing its marketing campaign, focusing on Google Ads and Craigslist. The department is also designing a new edition of “Legal Issues for Older Adults” as part of our grassroots marketing strategy.▪ Training is currently underway for three new RIS staff members.
<p>CLE Seminars (Karen Lee)</p>	<ul style="list-style-type: none">▪ The first seminar of the year was a full-day program on how Alzheimer’s Disease affects a lawyer’s clients. Attendance was strong – 79 between the live seminar and webcast – and the evaluations were excellent. Net revenue was around \$8,500, which is very good in these days of CLE. We plan to replay the seminar later in the year.▪ We added an educational partner that specializes in showing lawyers how to use technology for legal research. The online seminars began in early March and the first seminar garnered 28 registrations (very strong).▪ Planning was completed for the bar’s first solo and small firm conference. It is cosponsored by the Solo and Small Firm Section. There were a lot of

	<p>last minute changes, but all the speakers have been confirmed, a save the date card has mailed, and online registration is open.</p> <ul style="list-style-type: none"> ▪ We are working with the Executive Director to plan a futures conference for this summer, as suggested by bar President Ray Heysell. ▪ Staff have been attending training sessions for the new AMS and online content delivery system (INXPO).
<p>General Counsel (includes CAO and MCLE) (Helen Hirschbiel)</p>	<ul style="list-style-type: none"> ▪ The annual Disciplinary Board Conference took place on April 11, 2016. Conference speakers included Justice Jack Landau and Senior Judge Kristena LaMar. Over 60 members registered to attend. ▪ GCO has been reviewing contracts related to the AMS update, including contracts for a new bar CLE webcast service and system security. ▪ The Unlawful Practice of Law Committee formed a new Public Outreach Subcommittee to provide the public with information about the dangers of unlawful practice and resources about avoiding consumer fraud. ▪ General Counsel and Deputy General Counsel have been providing elder abuse reporting and ethics CLE presentations over the past two months. In March, General Counsel presented a nationwide webcast government ethics CLE to attorneys with U.S. Citizenship and Immigration Services. ▪ The MCLE Rule and Regulation amendments approved by the BOG in February were submitted to the Oregon Supreme Court in March. We are awaiting a Court’s order adopting the changes. ▪ MCLE staff have had several meetings with the IT department, completed online trainings, and attended several sessions with Aptify’s business analyst to prepare for software conversion this year. ▪ As of April 14, 2016, we have processed 2,298 accreditation applications. ▪ Notices of Noncompliance were sent to 373 members on March 3. The deadline to cure the noncompliance is May 2, 2016.
<p>Human Resources (Christine Kennedy)</p>	<p><i>Recruitment Activities</i></p> <ul style="list-style-type: none"> ▪ Replacements Hired <ul style="list-style-type: none"> ○ Brynn Minor – RIS Assistant (part-time) ○ Daniel Valenzuela-Apodaca – RIS Assistant (part-time) ○ Kelly Dilbeck (rehire) – CLE Seminars Event Coordinator ○ Michael Dunlap – Controller ○ Mark Johnson-Roberts – Deputy General Counsel ▪ Active Searches <ul style="list-style-type: none"> ○ Director of Diversity & Inclusion <p><i>Policy and Procedure Revisions</i></p> <ul style="list-style-type: none"> ▪ Employee Emergency and Security Handbook – completed ▪ Sick Time—ongoing ▪ Severe Weather or Emergency Closure—ongoing

	<p><i>Additional activities</i></p> <ul style="list-style-type: none"> ▪ Form 1095-C distributed to all employees in compliance with ACA requirements ▪ Attended BOLI training for Oregon Statewide Sick Time ▪ Performance Evaluations for 2015 are nearly complete ▪ Open Enrollment for the 2016-2017 Benefit Plan Year is nearly complete ▪ Obtained reduced rates for life and long-term disability insurance
<p>Legal Publications (Linda Kruschke)</p>	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since January 1, 2016: <ul style="list-style-type: none"> o Two chapters of Environmental Law vol. 2. o Seven chapters of Creditors’ Rights and Remedies. o Eight chapters of Damages. o One revised Uniform Civil Jury Instructions, plus the supplement PDFs for both Uniform Civil and Uniform Criminal Jury Instructions. ▪ Preorder marketing started for the Creditors’ Rights and Remedies. <ul style="list-style-type: none"> o Preorders and Standing orders to date = \$5,940 o Budget = \$31,800 o The final book will go to the printer by the end of May. ▪ Uniform Civil and Criminal Jury Instructions were released in January. <ul style="list-style-type: none"> o Civil: YTD revenue=\$16,624; 2016 budget=\$36,950 o Criminal: YTD revenue=\$11,745; 2016 budget=\$22,375 ▪ We have started work on a new project, the Oregon RPCs Annotated, which will be marketed and released in conjunction with a revision of the Oregon Formal Ethics Opinions. Both books are scheduled to be sent to the printer in May for a June shipment date. ▪ We have started working with the Military and Veterans Law Section on a new project tentatively titled Rights of Veterans and Military Personnel. Under our Lexis licensing agreement, we earned royalties of \$1,086 for the second half of 2015. We received a royalty of \$2,190 under our Westlaw agreement for the second half of 2015.
<p>Legal Services (Judith Baker) (includes LRAP, Pro Bono and an OLF report)</p>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> ▪ The LSP Subcommittee finished its review of Lane County Legal Aid and Advocacy Center and issued a report to the LSP Committee and Director of Legal Services Program outlining findings and recommendations. ▪ The Accountability report that includes a review of all four legal aid providers will be forwarded to the BOG in April. ▪ LRAP is coming up on the April 15 application deadline with nine application in already with two weeks to go. ▪ In the pro bono world, we are exploring partnering with the ABA on a nationwide pro bono website, with a later roll-out than most of the country, so that we have the opportunity to connect the website with our own software and to connect the Lawyer Referral Service and Modest Means Program with the pro bono website. The Pro Bono Committee

	<p>looks forward to publicizing the new CLE credit for Pro Bono work when it is effective in September or October. Planning is underway for this year’s Pro Bono Fair.</p> <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> ▪ Nationwide each IOLTA program will receive a portion of the funds from the Bank of America Settlement. The distribution must be used for the sole purpose of providing funds to legal aid organizations to be used for “foreclosure prevention legal assistance and community redevelopment assistance”.
<p>Media Relations (Kateri Walsh)</p>	<ul style="list-style-type: none"> ▪ Leading the effort to produce a video “town-hall” format of the annual “Building a Culture of Dialogue” program hosted by the Bar Press Broadcasters Council. The program has resisted cameras in the past, fearing it would chill the very robust discussion. There is energy around trying it this year, in partnership with KGW TV. Planning is under way with OSB Media Relations providing key leadership. ▪ Providing media outreach planning and management to the UPL committee on the topic of Notario Fraud, and the passage of HB 4128 . Staff will be supporting a multi-faceted effort through remainder of year to reach out in various mediums to educate the public on the issue. ▪ Supporting the Multnomah Bar Foundation Public Outreach Committee – which will launch a new judicial outreach and civic education effort beginning this year. This will revitalize the work that used to be done through the Multnomah County Judicial Outreach group. OSB staff will provide media relations strategy and support. ▪ Preparing for annual role as faculty for the New Judge Seminar by OJD. The Director of Media Relations provides counsel to new judges on managing media interest in cases in their courtrooms. ▪ Managing approximately 10-12 CAO and/or DCO cases being actively tracked by media. Staff also responds on a daily basis to calls from journalists seeking guidance or expert sources on all variety of law-related stories.
<p>Member Services (Dani Edwards)</p>	<ul style="list-style-type: none"> ▪ The OSB and ABA House of Delegates election began on April 4 in conjunction with several contested circuit court judicial election preference polls. There are 51 OSB HOD seats up for election this year. The out of state region is the most heavily contested race with 20 candidates running for the 10 open seats. After the election only region 2 will have a remaining vacant seat requiring a BOG appointment. ▪ Candidate recruitment for the BOG elections in region 1, 3, 4, and 5 continues through May 10. Interested candidates should review the information available at http://www.osbar.org/leadership/bog. ▪ Section membership enrolment for 2016 remains steady from recent

	<p>years with 16,500 total memberships. Nearly 7,800 members joined one or more sections. The largest sections include Estate Planning & Administration, Litigation, and Real Estate & Land Use with approximately 1,200 members in each. The smallest sections are Admiralty, Animal, Aviation, Disability, International, and Military & Veterans Law with fewer than 100 members in each.</p> <ul style="list-style-type: none"> ▪ A summit for section leaders to continue discussing CLE seminar, website, and fund balance policy changes is scheduled for Wednesday, June 8 from 9:00 to 10:30 am. Rich Spier will lead the discussion and utilize the new webcast education platform available through the CLE Seminars Department this fall. ▪ Public member volunteer recruitment will begin in late April. Interested non-lawyers are encouraged to complete the online application found at http://www.osbar.org/volunteer/publicmember.html.
<p>New Lawyer Mentoring (Kateri Walsh)</p>	<ul style="list-style-type: none"> ▪ Preparing for a May 31 deadline for many NLMP participants to complete their mentoring year and have their mentoring packets certified. Communicating with those with deadlines approaching and handling completion inquiries and extension requests. ▪ Preparing for the April swearing-in ceremony and the key enrollment/matching period for new NLMP participants. Drafting communications for new members, checking available mentor numbers, updating materials. ▪ Finalizing a new Law Firm Certification policy which will allow firms with well-established in-house mentoring programs to streamline the administrative requirements for new associates’ participation in NLMP. ▪ On the planning committee for the National Legal Mentoring Conference being held in Denver May 4-7. Ms. Walsh is on the national board. ▪ Continuing to establish partnership strategies with several specialty and local bars interested in mentoring support services. ▪ Crafting a plan for a thorough evaluation of the NLMP, which has not been done since the conclusion of its first year of operation in 2012. ▪ Actively seeking several pro bono cases to be shopped out to participants as a model for a new <i>Mentoring Through Pro Bono</i> initiative we expect to get off the ground in 2016.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none"> ▪ <u>2016 Oregon Legislation Highlights Publication:</u> The Public Affairs staff is preparing a 2016 Session edition of the Legislation Highlights Notebook which summarizes the highlights of the short session. Authors and editors have been selected and the publication should be available in May. ▪ <u>2017 Law Improvement Package:</u> Public Affairs is hosting a Legislative Forum on April 15, 2016 where bills will be considered for bar sponsorship and introduction in the 2017 Legislative Session. Once Public Affairs and the Board of Governors approve the Law Improvement

	<p>Package of legislation, we will submit it to Legislative Counsel’s Office for drafting and pre-session filing for the 2017 Legislative Session. Outreach to both internal and external interest groups will take place over the next few months leading up to the session.</p> <ul style="list-style-type: none"> ▪ <u>ABA Lobby Day</u>: OSB President Ray Heysell and Susan Grabe will travel to Washington, D.C., to meet with our congressional delegation in support of federal funding for legal services as well as to voice opposition to legislation that would require businesses providing professional services to switch to an accrual instead of a cash method of accounting. ▪ <u>Oregon eCourt</u>: Public Affairs has worked with the OSB/OJD eCourt Implementation Task Force to assist the court with the Oregon eCourt rollout and to develop new Uniform Trial Court Rules regarding Oregon eCourt. Mandatory eFiling for active members of the Oregon State Bar will be in place in all Oregon circuit courts by the fall of 2016. Public Affairs has also worked to ensure outreach to and training opportunities for OSB members regarding the move to mandatory eFiling. ▪ <u>Interim legislative workgroups</u>: Public Affairs will be engaging in a number of interim work group projects. At this point, we have identified the following issues: <ul style="list-style-type: none"> ○ Advance Directive ○ Definition for elder abuse reporting ○ Uniform Collateral Consequences of Conviction Act ○ Uniform Collaborative Law Act ○ Guardianship, Due Process and cost shifting in contested case hearings ○ Probate Modernization ○ Power of Attorney
<p>Regulatory Services (Dawn Evans)</p>	<p><i>Admissions Office</i></p> <ul style="list-style-type: none"> ▪ The February 2016 bar exam was administered to 263 applicants, the largest number tested in February since 2011, when 267 took the exam. Bar exam results were announced on April 8, 2016. ▪ The Admissions Ceremony for successful applicants will take place on April 28, 2016, at Willamette University. ▪ The Board of Bar Examiners (BBX) held a retreat in conjunction with the Sun River grading session on Thursday, March 24, 2016, to discuss issues related to the anticipated transition of Oregon to being a Uniform Bar Examination (UBE) jurisdiction. Members were provided materials pertaining to other UBE states’ approaches to admission of UBE applicants from other states. The BBX voted to recommend to the Court the acceptance of UBE scores for a period of 3 years (36 months) from when taken and determined not to recommend the acceptance of any transferred scores earned prior to the first UBE examination to be given

	<p>on Oregon. The BBX is still studying what to recommend as the Oregon law component of the UBE examination.</p> <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"> ▪ Preparations for the upcoming Ethics School on Friday, May 6, 2016, are ongoing. Staff attorneys from DCO and the Client Assistance Office are joined by Doug Querin from OAAP, offering a full day of useful information about ethics, practice management, and self-care for the busy, practicing lawyer. ▪ Disciplinary Counsel Dawn Evans participated in a panel on professionalism for criminal law practitioners presented by the Multnomah County Bar Association on March 15, 2016, held in the Portland courtroom of Judge Karin Immergut, who moderated the event. Also participating were Multnomah County District Attorney Rod Underhill and Lane Borg, with Metro Public Defender, Inc. <p><i>Regulatory Services</i></p> <ul style="list-style-type: none"> ▪ Brandi Norris, Regulatory Services Coordinator, is the point person from her department in working toward testing and implementation of the new Aptify association management software. The staff looks forward to the ability to seamlessly and efficiently respond to member and public requests, once the new system is in place.
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Executive Director’s Activities January 4 to April 22, 2016

Date	Event
1/9	Client Security Fund Committee Meeting
1/11	Judge Patrick Henry’s Investiture
1/14	CEJ Conference
1/15	Access to Justice Planning Group
1/19	Regional Telephone Conferences re DSRC Report
1/20	Regional Telephone Conferences re DSRC Report
1/21	Regional Telephone Conferences re DSRC Report
1/22	Meeting with Don Friedman re Incubator Feasibility Study
1/25	Justice Lynn Nakamoto’s Investiture
2/1	ACDI Committee Meeting
2/2—2/6	NABE and NCBP Meetings
2/9	Testify before House Judiciary Committee
2/11-2/12	BOG Meetings
2/16	Meeting with Jinan Foreign Language School Students
2/19	OHBA Annual Award Dinner

2/20	Legal Ethics Committee Meeting
2/25	OMLA luncheon
2/25	Judge DeHoog Investiture
2/26	CEJ Annual Awards Dinner
3/3	Sean Armstrong and Channing Bennett Investitures
3/5	Client Security Fund Meeting
3/10	Judge Shorr Investiture
3/11	50-year member luncheon
3/11	BOG Meeting
3/11	OWLS Roberts-Deiz Awards Dinner
3/16—3/18	Bar Leadership Institute
3/25	Professionalism Commission
3/28	Meeting with Chief Justice
3/28	Attend Minoru Yasui Day Celebration
3/29—4/2	Western States Bar Conference
4/4	Lunch at Kell Alterman
4/5	Lunch at Jordan Ramis
4/6	Folawn, Alterman & Richardson open house
4/8	Meeting with Lisa Kerr and Don Friedman re Incubator Feasibility Study
4/8	OLIO Spring Social at Willamette University
4/12	Oregon Supreme Court Public Meeting re Disciplinary Rule recommendations
4/13	Lunch at Gevurtz Menashe
4/13	Meeting with Professor Farr re Legal Needs Study
4/14	Tonkon Torp Litigation Party
4/16	Legal Ethics Committee Meeting
4/19	Lunch at Garvey Shubert
4/20	Executive Directors Breakfast
4/21	BOG/PLF Joint Dinner
4/22	BOG Meeting—Joint Meeting with PLF

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
Memo Date: April 5, 2016
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors met in February 2016, the Supreme Court took the following action in disciplinary matters:

- Accepted the Form B resignation from Portland lawyer *Jason Gore*; and
- Accepted the Form B resignation from Portland lawyer *Timothy J. Vanagas*; and
- Accepted the Form B resignation from Portland lawyer *Jacob Wieselman*; and
- Issued an order in *In the Matter of the Notice of Criminal Conviction and Recommendation Re Christian V. Day*, suspending Portland lawyer *Christian V. Day* until further notice under BR 3.4(d).
- Issued an order in *In Re Complaint as to the Conduct of John P. Eckrem*, suspending Medford lawyer *John P. Eckrem* under BR 3.1.

b. Disciplinary Board

Four Disciplinary Board trial panel opinions have been issued since February 2016:

- A trial panel recently issued an opinion in *In re Jefferson Campbell* of Medford (disbarment) for engaging in an ongoing pattern of behavior including misrepresentation and conduct prejudicial to the administration of justice, resulting in both potential and actual harm to the courts and parties.
- A trial panel recently issued an opinion in *In re Mariel Marjorie Ettinger*, formerly of La Grande, now living in Twin Falls, Idaho (disbarment), for failing to deposit and maintain client funds in trust, failing to promptly return client property, failing to take reasonable steps upon withdrawal of employment, including the refund of unearned fees, and engaging in dishonest conduct including knowing misappropriation and wrongful conversion of client funds for her personal use.

- A trial panel recently issued an opinion in *In re Franco Dorian Ferrua*, formerly of Portland, now living in Brazil (181-day suspension), for neglecting a legal matter, failing to keep a client reasonably informed and to respond to reasonable requests for information, charging or collecting a clearly excessive fee, failing to include necessary language in a flat fee agreement, failing to deposit and maintain client funds in a trust account, failing to return client property or to provide an accounting, and engaging in conduct prejudicial to the administration of justice.
- A trial panel recently issued an opinion in *In re Scott McGraw* of Salem (disbarment), for charging a clearly excessive fee, in representing a client or himself bringing or defending a proceeding in the absence of a basis in law or fact for doing so that is not frivolous, on behalf of a client or his own interests using means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, and engaging in conduct prejudicial to the administration of justice.

In addition to these trial panel opinions, the Disciplinary Board entered an order in *In re Mary E. Landers* revoking the Springfield lawyer’s probation and suspending her for 30 days; and approved a stipulation for discipline in *In re Howard Hudson* of Eugene (120-day suspension, 60 days stayed, 2-year probation), in *In re Carolyn R. Smale* of Hood River (60-day suspension, all stayed, 2-year probation), in *In re Michael G. Romano* of Bend (60-day suspension), and in *In re Jennifer L. Lupton* of Medford (6-month suspension, all stayed, 1-year probation).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Jessica S. Cain* of Newberg and *In re Matthew C. Daily* of Bay City.

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; trial panel opinion issued (disbarment); accused appealed.

In re Robert Rosenthal – BR 3.4 petition pending.

In re Shane A. Reed – BR 3.4 petition pending.

In re David Brian Williamson – BR 3.1 petition pending.

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

In re G. James R. Kirchoff – February 18-19, 2016

The following matter was tried for four days and continued until June to complete testimony:

In re Lisa Klemp – March 23-26, 2016

3. Trials.

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

In re Thomas O. Carter – April 21, 2016

In re Dale Maximiliano Roller – May 9-11, 2016

In re Russell Lipetzky – May 23-25, 2016

In re Gary B. Bertoni – May 24-25, 2016

4. Diversions.

The SPRB approved the following diversion agreements since January 2016:

In re Robert A. Graham, Jr. – February 27, 2016

In re Michael Schocket – February 27, 2016

5. Admonitions.

The SPRB issued 2 letters of admonition in March 2016. The outcome in these matters is as follows:

- 2 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 admonition.

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 #):

MONTH	2012	2013	2014	2015	2016
January	46/49	21/21	29/31	18/19	30/30
February	27/27	23/23	24/25	28/28	38/38
March	38/39	30/30	41/45	22/22	
April	35/38	42/43	45/47	17/17	
May	19/20	37/37	23/24	24/24	
June	39/40	31/31	23/24	31/31	
July	22/22	28/30	43/44	27/27	
August	35/35	33/36	19/21	28/29	
September	22/22	26/27	24/24	21/21	
October	23/23	26/26	25/25	38/39	
November	18/18	25/26	19/19	24/25	
December	26/26	19/19	21/23	20/20	
TOTALS	350/359	341/349	336/352	298/302	

As of March 25, 2016, there were 186 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 45% are less than three months old, 25% are three to six months old, and 30% are more than six months old. Twenty-one of these matters will be on the SPRB agenda in April.

7. Reinstatements.

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

8. Staff Outreach.

On March 15, Disciplinary Counsel Dawn Evans participated in a panel on professionalism for criminal law practitioners presented by the Multnomah County Bar Association.

DME/de

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



Celebrating Year Two

Diversity Action Plan | 2015 Implementation Report

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

Strategy 1 – Increase the accuracy of the bar’s diversity demographic membership data

Strategy 2 – Develop a diverse pipeline of law students who feel supported, welcomed, and encouraged to practice law in Oregon

Strategy 3 – Encourage a diverse applicant pool for judicial appointments

Strategy 4 – Ensure the Board of Governors’ judicial appointment recommendations includes candidates who have demonstrated competency in dealing with diverse people and issues

GOAL #2**Increase engagement by bar leadership for community outreach**

Strategy 1 – Increase participation in events hosted by diverse organizations

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

Strategy 1 – Increase the diversity of OSB CLE seminar speaker pool

Strategy 2 – Increase the diversity of lawyers and community members in Board of Governors appointed volunteer positions and on the Board of Governors

Strategy 3 – Increase the diversity of the New Lawyer Mentoring Committee and volunteer mentor pool

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

Strategy 1 – Assess the OSB climate and workforce

Strategy 2 – Increase outreach to diversify the pool of applicants for vacant positions at the OSB

Strategy 3 – Provide educational opportunities for OSB staff

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

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

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

Strategy 1 – Increase the participation of all OSB sections in the legislative process

Strategy 2 – Increase the coverage of diversity-related subjects in the *Capitol Insider* newsletter

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

Strategy 1 – Increase Access to Justice CLE seminar programs

Strategy 2 – Increase outreach to diverse communities regarding OSB services to address the unlawful practice of law

Strategy 3 – Enhance Client Assistance Office to meet the needs of a diverse community

Strategy 4 – Enhance outreach and services provided to diverse constituents by Discipline and Regulatory Services

Strategy 5 – Position the OSB to attract new members by adopting the Uniform Bar Exam

Strategy 6 – Develop and sell e-books adapted for use by underserved individuals and communities

Strategy 7 – Increase the diversity of the Bar/Press/Broadcasters Council and legal experts available to assist the media

Strategy 8 – Enhance outreach to underserved communities regarding the modest means and lawyer referral programs

Strategy 9 – Identify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities and premises

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

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

Strategy 2 – Increase pro bono representation of low income Oregonians

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

Diversity and Inclusion: Making Us Stronger



Helen Hierschbiel
Executive Director

As the new CEO/Executive Director for the Oregon State Bar, I understand that a diverse and inclusive bench and bar are vital components to ensuring access to justice, respect for the rule of the law, the credibility of the legal profession, and the integrity of the justice system. I have been a long-time supporter of the bar's mission and efforts around diversity and inclusion, starting with my first year at OLIO in 2008. As a member of the Diversity Action Council, I am proud to have participated in development of the Diversity Action Plan and have shared in the celebration of our accomplishments. I look forward to continuing the bar's strategic work to promote diversity and inclusion within the legal profession, the judicial system, and the bar in 2016 and beyond. I also welcome feedback about our progress and recommendations for the future.

I want to thank all of the bar staff and volunteers who worked tirelessly to advance the OSB mission and goals around diversity and inclusion; this report is a reflection of your commitment to and achievements in this important work



As OSB President my main goal is to challenge our profession to adapt to change and prepare for the future. One aspect of that is the importance of fostering diversity and inclusion within the bar. According to the Pew Research Center's Next America project we are now in the midst of two different demographic transformations: "Our population is becoming majority non-white at the same time a record share is going gray." These shifts present both challenges and opportunities, and it is vitally important that the legal profession recognize and address them both. I am honored to serve the OSB during a time of such focused, concrete effort to advance diversity, inclusion, and accessibility for all.

R. Ray Heysell
President, 2016

Goal #1**Increase the diversity of the Oregon bar and bench**

Strategy 1 – Increase the accuracy of the bar’s diversity demographic membership data

Strategy 2 – Develop a diverse pipeline of law students who feel supported, welcomed, and encouraged to practice law in Oregon

Strategy 3 – Encourage a diverse applicant pool for judicial appointments

Strategy 4 – Ensure the Board of Governors’ judicial appointment recommendations include candidates who have demonstrated competency in dealing with diverse people and issues

Accuracy of OSB Member Demographic Data Improved

The Oregon State Bar first created an online reporting tool and promoted participation through regular communications channels. Step two, implemented in November 2014, was to require members visiting the bar’s website to either complete the form or decline to participate. After eight weeks, the percentage of bar members listed in our database as “declined to state” dropped significantly across all demographic categories. In addition, several categories achieved significant gains in member totals: sexual orientation other than heterosexual (+211); multiple ethnicities (+235); and disability of some type (+129). The effort continued in 2015, with gains in all areas of reporting. The chart below, displaying the declining percentage of active members with unknown/declined to state demographic data in their bar record, details our progress to date.

Field	12/31/2013	12/31/2014	12/31/2015
Race	43%	32%	26%
Gender ID	93%	58%	43%
Sexual Orientation	94%	62%	48%
Disability	93%	59%	45%
Active Member Count	15,098	15,161	15,178

Student Pipeline Outreach Efforts Enhanced and Yield Results

The OSB wants to see at least 35% of OLIO Orientation participants who graduate from law school become Oregon bar members by April of the year after they graduate. For the 2014 graduating class, 45% of OLIO Orientation participants who graduated law school passed the Oregon bar exam, exceeding our 35% goal. Currently, 25% of OLIO Orientation participants who graduated from law school in 2015 have taken and passed the Oregon bar exam. We will know whether we reach our 35% goal after the February 2016 bar exam results are available.

In 2015 the D&I Department awarded six bar exam grants in July and three bar exam grants in February. Our July 2015 bar exam grant recipients pass rate was 66%, exceeding the overall July 2015 bar pass rate of 60%. Our February bar exam grant recipient pass rate did not meet the overall February 2015 pass rate.

In 2015, ten D&I scholarships were awarded by the department, increasing the number of scholarships awarded in 2014 by two.

The D&I Department held its annual employment retreat on January 25, 2015. Survey results show that 95% of student participants indicated the program enhanced their skill set for seeking employment, exceeding our goal of 75%.

In 2015 the D&I Department awarded thirteen clerkship stipend awards. Survey results show that 85% of student participants indicated the clerkship experience affirmed or increased their interest in practicing law in Oregon, exceeding our goal of 75%.

In 2015, the D&I Department awarded six grants to fund students in public employment fellowships. Survey results show that 85% of student participants indicated the clerkship experience affirmed or increased their interest in practicing law in Oregon, exceeding our goal of 75%.

In 2015, the D&I Department established and implemented its first rural opportunity fellowship. The first fellowship took place in Medford, Oregon. In 2016 the department will increase the number of rural opportunity fellowships to two.

Improved Appellate Judicial Screening Process

The Oregon State Bar participates in the appellate judicial selection process by interviewing appellate judicial candidates and making recommendations for appointment to the governor. In 2015, there were several appellate judicial openings. The OSB Appellate Screening Committee rewrote the candidate questions to address diversity in the selection process and to allow follow up questions to clarify answers. In addition, the Appellate Screening Committee reached out to the minority bar associations to share information about the candidate selection process to ensure minority bar input was factored into the process. Finally, the Appellate Screening Committee identified other stakeholders to participate in the screening process

GOAL #2

Increase engagement by bar leadership for community outreach

Strategy 1 – Increase participation in events hosted by diverse organizations

Bar Leaders Expand Engagement with Diverse Communities and Organizations

Members of the Board of Governors continue their engagement with diverse communities by attending and supporting events hosted by diverse specialty bars and community-based organizations. In addition, the Board of Governors appointed Tom Kranovich in 2015 to lead an effort to meet with members of the Oregon minority business community to open a conversation about what other efforts the Board could be making to advance diversity and inclusion in the legal profession in Oregon.

GOAL #3

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

Strategy 1 – Increase the diversity of OSB CLE seminar speaker pool

Strategy 2 – Increase the diversity of lawyers and community members in Board of Governors appointed volunteer positions and on the Board of Governors

Strategy 3 – Increase the diversity of the New Lawyer Mentoring Committee and volunteer mentor pool

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

Of the 140 members who presented one or more CLE programs in 2015, 12% of the speakers self-identified as belonging to a historically underrepresented group. This reflects a 5% increase from the 2014 data.

During the section annual meeting planning process executive committees were encouraged to offer a demographically balanced election slate to their membership. To assist them with development of the slate, each executive committee was provided a membership list with demographic information for all section members. The Member Services Department will continue to work with sections to encourage balanced executive committee membership and CLE speaker participation.

In February 2015, the bar sponsored a complimentary CLE seminar speaker training workshop, which it marketed to diverse bar members as a strategy to increase the pool of diverse speakers. A survey will be sent to participants in March 2016 to ascertain the level of speaker engagement.

The BOG Board Development Committee focused on strengthening relationships with minority and specialty bar associations as well as bar affiliated and community organizations. As a result, the number of diverse candidates interested in volunteering with the OSB increased significantly. Of the 22 non-lawyer volunteer candidates, 50% self-identified as a racial or ethnic minority, 18% indicated they had a disability, and 5% self-identified as gender nonconforming.

There were 407 bar members who applied to serve as a volunteer in 2015. Of those who provided their race and ethnicity, 13% are minority, which is an increase of 4% over 2014. Regarding gender, 49% self-identified as female and 51% self-identified as male as compared to 43% and 57% respectively in 2014. Of those who provided their sexual orientation, 4% identified as lesbian, gay, or bisexual, which represented a 2% reduction over 2014 volunteer interest. Of the members who provided their demographic information on the survey, 5% indicated they have a disability, which is a 2% increase from last year.

The Oregon State Bar continued to advance its objective of diversifying the membership on the New Lawyer Mentoring Program Committee. New appointments for 2016 increased both our Hispanic and Asian representation. We also specifically sought a balance in generational representation, with appointment of several senior members of the OSB. Finally, we are striving to reach beyond the Portland Metro area, and with the appointment of a new volunteer from Eugene have begun to begin to expand that geographic reach.

Of particular note this year is an increased focus on partnerships with our specialty bars. Beginning in 2015, we started informing OWLS of new lawyers who requested mentors who are also OWLS members. That organization's leadership, in turn, is assisting with identifying possible mentors. We see that as a valuable tool for recruiting, but also a way to more closely engage the specialty bars in the greater objectives of the mentoring program. Ultimately, we also expect this to help us attract a more diverse mentoring pool to the New Lawyer Mentoring Program.

GOAL #4

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

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

OSB Expands Assessment and Staff Education

The Human Resources Department continues to monitor gender and racial diversity of bar staff. From 2014, there were nineteen positions filled and gender diversity remains consistent; however, over the last ten years,

the male population has increased 10% in a predominantly female employee population. Racial diversity statistics monitor only those groups monitored by the Metropolitan Statistical Area so the bar has accurate data for comparison. The groups monitored are Caucasian, African American, Asian, Hispanic, and other. At the end of 2015, the makeup of bar staff by race remained consistent. The bar does not monitor other racial groups, employees who represent the LGBT community, or an employee's age category.

Outreach for increasing a diverse applicant pool included a presence at the "Say Hey" events.

In 2015, the bar presented for staff a seminar titled, "Appropriate Workplace Conduct: Anti-Harassment and Anti-Discrimination." All staff were required to attend the seminar presented by Clarence Belnavis of Fisher & Phillips.

GOAL #5

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

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

OSB Prepares to Begin Assessment in 2015

In 2015, the bar began its assessment of its contractors, suppliers, vendors, and renters, and looked for opportunities to increase the diversity of those individuals and entities with whom it does business. The bar had occasion to hire outside counsel on one new litigation matter and encouraged its insurance provider to hire a firm that has been a leader in promoting diversity among partners. As a result, counsel who was ultimately hired in the case is an Asian-American woman.

GOAL #6

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

Strategy 1 – Increase the participation of all OSB sections in the legislative process

Strategy 2 – Increase the coverage of diversity-related subjects in the Capitol Insider newsletter

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

The Public Affairs Department reached out to bar sections and committees to provide an overview of the bar's legislative process as well as to explain how to engage at whatever level is appropriate for the makeup of that particular group. Particular attention was given to sections identified as not historically participating in the legislative process to encourage a higher level of awareness and possible engagement.

The Public Affairs Department has worked to include greater coverage of diversity-related issues in the *Capitol Insider*, including articles on the use of radical and ethnic impact statements for proposed legislation and the efforts to combat notario fraud.

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

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

Access to Justice CLE Seminar Programs Are Increased

In 2015, access to justice credit was approved for six community events that involved a discussion of diversity in conjunction with a program, class, or theatrical performance. In addition, one *Race Talks* program was approved for access to justice credits. Finally, there were 18 online sales in 2015 of *Race: The Power of an Illusion*, a DVD series and CLE panel presentation.

Outreach to Diverse Communities Regarding the Unlawful Practice of Law Is Expanded

The bar identified Russian-speaking immigrants as a vulnerable population that has been the target of exploitation by illegal immigration consultants. General Counsel's Office developed an outreach plan to combat such exploitation and began implementation of that plan in partnership with various bar departments and key stakeholders outside the bar. We also continued our outreach efforts into the Spanish-speaking immigrant communities in order to combat notario fraud. Together we:

- Developed print and electronic versions of a *Stop Notario Fraud* brochure in Russian, which will be published in early 2016.
- Distributed an additional 5,000 copies of a *Stop Notario Fraud* brochure in Spanish through community partners, including the Mexican Consulate and Catholic Charities.
- Created a new webpage devoted to notario fraud, including English and Spanish language materials: www.osbar.org/upl/notario.html
- Worked with the Oregon Secretary of State to update their online materials regarding notario fraud, and include information about notario fraud in the Notary Public training materials: <http://sos.oregon.gov/business/Pages/notary-public-notario-publico.aspx>
- Worked with Oregon Advocacy Commissions to develop a legislative proposal on improving enforcement of prohibition on notario fraud, and reducing harm to victims. Based on this work, Deputy General Counsel was appointed to serve on the Legislative Task Force on Immigration Consultant Fraud, participating in work sessions and drafting a final report and recommendations to the Legislature. www.oregon.gov/OAC/PDFs/Task%20Force%20on%20Immigration%20Consultant%20Fraud%20Report%2009-2015.pdf.
- Presented on unlawful practice and notario fraud at a March 2015 community forum titled "Forum for Community Service Providers on DACA and Notario Fraud" attended by over 75 social service agencies that serve immigrant communities.

- Worked with American Immigration Lawyers Association Oregon Chapter and Catholic Charities to host Refugee Adjustment Day in November 2015 with Oregon New Lawyer Division volunteers.
- Included representatives from the Oregon Department of Justice and Department of Consumer and Business Services on the UPL Committee to help better coordinate enforcement efforts and added members from the Multnomah County District Attorney's Office to develop closer relationships with law enforcement on issues related to notario fraud.

Discipline and Regulatory Services Enhanced Outreach to Diverse Constituents

2015 was a year of internal transition. There was a turnover in one-quarter of the lawyer staff within the Disciplinary Counsel's office. This afforded an opportunity to broaden our perspective with an infusion of new lawyers with diverse practice backgrounds and experience. There was also an in-depth examination of the disciplinary process. The ad-hoc Disciplinary System Review Committee (DSRC) poured over the ABA study of Oregon's discipline system and ultimately made its own recommendations by the end of the calendar year. This is a process that will continue during 2016 as the Board of Governors determines which recommendations to endorse and recommend to the Oregon Supreme Court. Staff served as a resource to the DSRC and engaged in member outreach through participation in continuing legal education opportunities in diverse locations to enhance member awareness of the issues being explored.

Bar Promoted E-Books on Bar's Website

The Legal Publications Department continues to offer both a *Family Law Series* and a *Consumer Law Series* of e-books, which are available for purchase on Amazon. Each e-book includes a Quick Resource Guide in the front with links to lawyer referral and legal services websites. A total of 23 e-books were sold in 2015, primarily from the *Family Law Series*. However, there have been no reviews or ratings. We enhanced the marketing of the availability of this resource in 2015 by adding a Legal Publications page to the bar's main website with links to each of the e-books on Amazon. We discussed plans with the Communications and Public Services Department to add links to the Legal Publications page from the Public pages of the bar's website, but those links have not yet been added.

Because of the focus on promotion and evaluation of the success of the existing titles, the Legal Publications Department did not expand the e-book library in 2015.

Bar Enhanced Public Outreach Efforts to Underserved Communities Regarding Lawyer Referral Service and Modest Means Program

Beginning with the 2015–16 program year, which runs from September 2015 through August 2016, Lawyer Referral Service and Modest Means Program panelists will have the option of indicating whether they are a member of an Oregon-based specialty bar. A primary purpose of this new option is to promote diversity within the legal profession and in the provision of legal services. Membership in these groups is now a searchable referral criteria, similar to foreign language ability and other special services, e.g., credit card acceptance. The organizations that currently qualify, all of which hold membership open to any Oregon lawyer, are: OWLS (Oregon Women Lawyers), OMLA (Oregon Minority Lawyers Association), OC-NBA (Oregon Chapter of the National Bar Association), OAPABA (Oregon Asian-Pacific American Bar Association), OGALLA (Oregon Gay & Lesbian Law Association), and OHBA (Oregon Hispanic Bar Association).

This development will help referral staff to better respond to lawyer referral requests, while remaining consistent with a long-held policy that we do not refer on the basis of sex, gender, religion, national origin,

sexual orientation, or race. It offers an opportunity to help clients find lawyers who are more likely to understand them personally and culturally. In 2015, key bar staff began meeting with the relevant specialty bars to spread the word about the new policy and encourage their members who participate in the LRS and MMP to list their specialty bar memberships.

Bar Continued Its Efforts to Identify and Remedy Barriers to Accessibility Experienced by Individuals with Disabilities Who Access Bar Programs, Services, Activities, and Premises

In 2014, the OSB established the Bar Accessibility Review Team (BART) to review and address accessibility issues reported by bar staff, bar members, and members of the public, and to raise awareness of accessibility issues within and around the bar. In 2015, BART met quarterly to discuss and address barriers to accessibility experienced by individuals with accessibility, and maintained a log of accessibility issues discussed and resolved throughout the year. BART finalized an ADA self-evaluation of the bar's services and programs, which is under final review. The evaluation process included a survey of all members who self-identified as experiencing a disability, which is available via a link on the bar's website to allow others to complete the survey.

In 2015, the bar's web developer attended a day-long training on advanced methods for ensuring online materials are accessible to people with disabilities. Multiple bar staff also attended Adobe software trainings, with follow-up instructions on how to save documents in Adobe format so they work with screen readers. The Creative Services Department worked with software vendor Survey Monkey to improve the accessibility of OSB surveys, including one sent to all bar members who have self-identified as having a disability. BART is using the survey results for planning purposes.

In addition, the Creative Services Department has been working with bar sections to ensure that new sites developed on the WordPress platform are accessible. Seven new sites were completed in 2015 and seven more are currently under construction or set for construction in 2016. Section sites previously built on WordPress using older themes will also be transitioned to new formats in 2016. The Disability Law Section was key in this effort, reviewing its revised site several times with a focus on accessibility issues and providing helpful feedback.

GOAL #8

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

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

Efforts to Increase IOLTA Account Interest Rates for Legal Services Funding

The Oregon Law Foundation made a concerted effort to convince banks to increase the amount of interest offered for IOLTA Accounts, which goes directly to fund legal services for low-income Oregonians. The goal in 2015 was to have 60% of total IOLTA deposits earn 0.7% to 1% interest. The Oregon Law Foundation met that goal with 60% of overall IOLTA deposits in OLF Leadership Banks.

In 2015, the OSB continued to explore funding options for legal aid. Two things happened during the 2015 Legislative Session. HB 2700 was passed, allowing 50% of class action *cy pres* awards to go to the OSB Legal Services Program to fund legal aid. Class action *cy pres* awards are not common in Oregon so although important legislation it is not expected to provide the funding necessary to achieve the goal of obtaining minimally adequate funding for legal aid. The OSB LSP was also awarded \$600,000 from the General Fund to provide funding for legal aid services.

Call to Action: Report Pro Bono Service Hours

Baseline data regarding pro bono participation gathered for approximately nine years shows a fairly steady but low reporting of pro bono hours by attorneys. Without mandatory pro bono reporting it is impossible to measure pro bono activity accurately. OSB staff will continue to encourage voluntary reporting and will work with the new OSB data system to find more efficient ways to encourage pro bono reporting. Since 2013, five new programs have become Certified Pro Bono Programs bringing the total, with required pro bono reporting, to 19. Staff will continue to encourage new programs to become certified. Current programs, under-staffed due to shrinking budgets, do not have the staff support to increase pro bono participation by 10% annually for the foreseeable future.

Assessment of Legal Service Providers (LSP) Underway

Legal aid providers are currently assessed using the OSB *LSP Standards and Guidelines*, which incorporate the American Bar Association's (ABA) *Standards for the Provisions of Civil Legal Aid*. The ABA standards already measure the cultural responsiveness of legal aid in the key areas of staff diversity, community outreach, and training. In 2015, the LSP accountability self-assessment tool collected information in those key areas.

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

Danielle Edwards – Director of Member Services

Dawn Evans – Disciplinary Counsel
/ Director of Regulatory Services

Susan Grabe – Director of Public Affairs

Helen Hirschbiel – CEO/Executive Director

Amber Hollister – General Counsel

Christine Kennedy – Director of Human Resources

Linda Kruschke – Director of Legal Publications

Karen Lee – Director of CLE Seminars

Christopher Ling – Acting Director of Diversity & Inclusion

Audrey Matsumonji – Board of Governors

Kay Pulju – Director of Communications
& Public Services

Josh Ross – Board of Governors

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

Rod Wegener – Chief Financial Officer

GLOSSARY

ACRONYMS

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

TERMS AND CONCEPTS

Community Reinvestment Act

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

Culture:

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

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

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

Gardenswartz & Rowe, www.gardenswartzrowe.com

Cultural Proficiency

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

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

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

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

Cultural Responsiveness

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

OSB Diversity Demographic Membership Data

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

Demonstrated Competency

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

OSB Diversity and Inclusion

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

E-Books

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

Low-income Oregonians

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

Member Dashboard

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

Underserved Populations

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

Vulnerable Populations

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

Why Diversity and Inclusion Matters

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

Mission

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

Functions of the Oregon State Bar

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

Values of the Oregon State Bar

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

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

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

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

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

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

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

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

Diversity & Inclusion Department

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**Americans with Disabilities Act
Self-Evaluation
Oregon State Bar
March 2016**

Oregon  State Bar

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Submitted by:

Office of General Counsel

Director of Human Resources

Bar Accessibility Review Team (BART)

1. Introduction

The Oregon State Bar, a public corporation and an instrumentality of the Oregon Judicial Department, is committed to ensuring that its programs, activities and services are accessible to all persons, regardless of their abilities. To further this goal, the bar has undertaken this self-evaluation to identify potential barriers to equal access.

i. The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a comprehensive civil rights law that provides a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” In general terms, the ADA prohibits discrimination in access to jobs, public accommodations, government services, public transportation and telecommunications. The bar is classified as a “public entity” pursuant to Title II of the ADA. “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 29 USC § 12132.

Under the ADA, the bar is required to make its programs and services accessible to persons with disabilities. In addition, the bar must “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” The bar is required to do so in every situation, unless it can demonstrate “that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 CFR § 35.130(7).

ii. The Self-Evaluation Process

The ADA requires public entities such as the bar to identify and evaluate all programs, activities, and services, and to review all policies, practices, and procedures that govern administration of the bar’s programs, activities, and services. This document memorializes the bar’s self-evaluation process, outlines the bar’s findings, provides recommendations and identifies plans to remove barriers over time.

2. Self-Evaluation

A. Overview

The bar is required to undertake a self-evaluation of its programs, services, and facilities. This self-evaluation report is based on guidance found in the United States Department of Justice Title II Technical Assistance Manual (Sections 8100 and 8200).

This self-evaluation is also drafted in response to the aspirations outlined in the **OSB Diversity Action Plan** (<https://www.osbar.org/diversity/actionplan.html>) (DAP). Goal 7, Strategy 9, of the DAP, exhorts the bar to “[i]dentify and remedy barriers to accessibility experienced by individuals with disabilities who access bar programs, services, activities and premises.” See Exhibit F. In order to achieve this goal, the DAP provides that the bar will engage in an “assessment process to identify barriers to accessibility experienced by individuals with disabilities.” *Id.*

To facilitate its self-evaluation, in early 2014 the bar formed the **Bar Accessibility Review Team (BART)**. BART’s membership includes the ADA Coordinator, Director of Human Resources, Director of Diversity & Inclusion, Client Assistance Office Manager, Admissions Director, Director of Communications & Public Services, Director of Member Services and Creative Services Manager. BART met monthly throughout 2014, and has continued quarterly meetings in 2015 and 2016.

The self-evaluation process took place during 2014 and 2015. During the self-evaluation process, the bar took the following steps:

- **BART Meetings.** BART met regularly to discuss and evaluate the accessibility of the bar’s building, programs and services.
- **ADA Departmental Reviews.** The ADA Coordinator and Director of Human Resources met with each departmental manager or director to discuss obligations under the ADA and to request feedback.
- **Member Survey.** BART surveyed members who self-identified as experiencing disability for their feedback on bar programs and services.
- **Staff Training.** In October and November 2014, bar staff participated in two mandatory ADA trainings. The first session focused on ADA compliance, and the second session focused on disability etiquette and service animals. The training was recorded so it could be screened for new staff that later join the bar.

B. General & Administrative Requirements

This self-evaluation assesses whether the bar has met specific requirements outlined by Title II of the ADA. Title II (or, more precisely, the regulations promulgated under Title II) requires that the bar:

1. Designate at least one employee as an ADA Coordinator to be responsible for the ADA compliance program;
2. Provide notice to the public of the bar's obligations under Title II to prohibit discrimination on the basis of disability;
3. Establish a grievance procedure to respond to complaints regarding accessibility;
4. Prepare a self-evaluation of whether the bar's programs, services and activities are accessible to individuals with disabilities;
5. Develop a transition plan to provide for the elimination of barriers for individuals with disabilities to access these programs, services and activities; and
6. Provide an opportunity for interested persons, including individuals with disabilities, or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments and making specific recommendations.

28 CFR §§ 35.105 – 35.107; 28 CFR § 35.150(d).

2.1 Key ADA Personnel at the Bar

The ADA requires public agencies with 50 or more employees to designate at least one responsible employee to coordinate ADA compliance and investigate complaints. The public entity must provide the ADA coordinator's name, office address, and telephone number to all interested individuals. 28 CFR § 35.107(a).

The bar has designated its Deputy General Counsel to serve as **ADA Coordinator**. The ADA Coordinator responsibility is incorporated into the Deputy General Counsel's job description. At the time of writing, the bar's ADA Coordinator is Mark Johnson Roberts. The ADA Coordinator provides centralized oversight and coordination of the bar's ADA compliance efforts with its membership and the public. The identity and contact information for the bar's ADA Coordinator has been provided to staff, is listed in the bar's ADA Notice, and is included on the bar's website and in staff and public directories.

The bar has designated its **Director of Human Resources** as the individual responsible for ADA Compliance with respect to the bar's responsibilities to bar staff and applicants for employment. At the time of writing, the bar's Director of Human Resources is Christine Ford.

Together, the ADA Coordinator and Director of Human Resources ensure that staff members receive regular training and guidance on the ADA, and that they respond appropriately to ADA requests.

The bar has also designated the manager and director of each department as a **Departmental ADA Liaison**, in order to build a strong network for accessibility awareness and compliance. A department manager or director may choose to delegate this responsibility to another member of the department. Departmental ADA Liaisons often serve as the first point of contact for individuals who have a request for accommodation, or questions or concerns about accessibility. Departmental ADA Liaisons communicate with the ADA Coordinator about accommodation requests and pending accessibility issues at the bar.

2.2 ADA Notice

The bar is required to provide information about the rights and protections of Title II to applicants, participants, beneficiaries, employees, and other interested persons. 28 CFR § 35.106. The bar's ADA Notice is modeled on the form provided by the U.S. Department of Justice in its ADA Best Practices Tool Kit for State and Local Governments. See Appendix, Exhibit A.

The bar's ADA Notice is featured in the "About the Bar" section of the bar's website in HTML and PDF formats (<http://www.osbar.org/ada/adanotice.html>); a link to the ADA Notice is included in the footer of every page of the website. The bar's ADA Notice is also displayed in hard copy in the second floor reception area of Oregon State Bar Center, and in the McKenzie and Columbia Conference Rooms.

Bar emails inviting members and the public to events, meetings, and continuing legal education seminars include information about how individuals may request accommodations as needed and a link to the bar's ADA Notice. For example, an emailed notice of a section meeting provides:

"If you would like to request accommodations for a section meeting or event, please contact the section liaison at _____ or _____@osbar.org as soon as possible but no later than 48 hours before the scheduled event as described [here](#)."

In addition to the ADA Notice, a nondiscrimination notice is included in the bar's employment advertisements, as well as on the bar's employment application. The bar's employment application also includes instructions on how applicants may request ADA accommodations.

The bar should continue to incorporate a nondiscrimination notice in its publications and materials. The nondiscrimination notice should provide:

"The Oregon State Bar does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. The bar does not

discriminate on the basis of disability in its hiring or employment practices. Questions, concerns, complaints, or requests for additional information regarding the Americans with Disabilities Act may be forwarded to the bar's Director of Human Resources or the bar's ADA Coordinator at 503-620-0222 or _____@osbar.org."

2.3 Grievance Procedure

The ADA requires that the bar establish a grievance procedure. 28 C.F.R § 35.106. Grievance procedures provide a system for resolving complaints of disability discrimination in a prompt and fair manner. The bar's grievance procedure is modeled on the form proposed by the U.S. Department of Justice in its ADA Best Practices Tool Kit for State and Local Governments. See Appendix, Exhibit B.

The OSB Americans with Disabilities Act (ADA) Grievance Procedure is available on the bar's website at <https://www.osbar.org/ada/adagrievanceprocedure.html>.

2.4 Self-Evaluation

This document is the bar's self-evaluation. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements.

This self-evaluation identifies the bar's programs, activities, and services; and reviews the policies and practices that govern the administration of the bar's programs, activities, and services. The bar's policies and practices are reflected in the bar Act, bylaws, rules, policy directives, and memoranda.

Finally, this self-evaluation analyzes whether bar policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities, and services.

2.5 Transition Plan

Where structural modifications are required to achieve program accessibility, the bar must create a transition plan that provides for the removal of these barriers. A transition plan should contain, at a minimum:

- 1) A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;
- 2) A detailed outline of the methods to be utilized to remove those barriers and to make the facilities accessible;
- 3) The schedule for taking the necessary steps to achieve compliance with Title II. If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and,
- 4) The name of the person responsible for the plan's implementation.

The bar has not identified any structural modifications required to achieve program accessibility at the Oregon State Bar Center. Accordingly, the bar has not drafted a Transition Plan at this time.

Although the bar has not identified any changes that are required for ADA compliance, it continues to seek opportunities to improve the building's function for individuals with disabilities.

2.6 Public Outreach Plan

The bar is required to enable interested persons to participate in the development of its transition plan by submitting comments and making specific recommendations about the bar's compliance with the ADA.

As part of the self-evaluation process, BART surveyed members who have self-identified as having disabilities for their feedback on accessibility issues. The bar received about 30 responses, out of about 200 members who have self-identified as having a disability.

In the future, BART will circulate the survey to the OSB membership at large to obtain information on member concerns and thoughts on ADA accessibility issues for bar services and programs, and on any physical barriers to access.

Outreach will continue with a survey to the public users of the bar's programs and services, with a special focus on soliciting feedback from the users of the Client Assistance Office and Referral & Information Services.

3. Self-Evaluation of Programs & Services

In April 2014, the ADA Coordinator and Director of Human Resources utilized the U.S. DOJ Americans with Disabilities Act Self-Evaluation Tool to evaluate compliance. Based on that process, items for further review and ongoing implementation are noted in Exhibit G.

3.1 Departmental Review

The ADA Coordinator and Director of Human Resources also met with the manager and director of each bar department to survey and assess each department's programs and services. See Exhibit C. During the meeting, the meeting participants discussed general ADA compliance requirements, and provided managers with the ADA Notice, grievance procedure, and ADA Quick Guide. The ADA Coordinator discussed the resources available on the BART intranet site, and asked the manager or director to identify any areas of concern. The Director of Human Resources outlined the process for responding to staff accommodation requests.

The departmental reviews revealed that all bar managers and directors are aware of the bar's obligations under Title II of the ADA and are working to increase the accessibility of the bar's services and programs by effectively communicating, providing accommodations and removing any identified barriers. Managers and directors have attended two trainings on ADA

compliance, and have access to additional resources on the BART intranet page to help them further understand ADA requirements. They are aware of the need to provide reasonable modification of bar policies, practices and procedures to enable access to bar programs and services and avoid discrimination.

Managers are ready to contact the ADA Coordinator, Director of Human Resources or BART with any issues or questions. They understand that ADA complaints should be directed to the ADA Coordinator, and that the bar has a grievance procedure in place.

A summary of bar programs and services follows, together with a brief ADA evaluation of each department.

A. Executive Director's Office

The Executive Director's Office is responsible for overall administration of the Oregon State Bar, and for governance operations, *i.e.*, the Board of Governors and the House of Delegates. The office approves all OSB policies.

ADA Departmental Evaluation: The Executive Director's Office primarily provides services to the membership, but sets policy for the bar as a whole. The Executive Director has taken leadership by supporting the self-evaluation initiative, the formation of BART, and instituting mandatory ADA training for members.

The Office includes accommodation notices with each of its event and meeting notices and provides accommodations to members and the public who attend or participate in BOG and HOD meetings.

B. Admissions Department

The Admissions Department receives and processes applications for admission to practice law in Oregon. As part of the admissions process, the department conducts character and fitness investigations of all applicants, assists the Board of Bar Examiners (BBX) in drafting essay questions for bar exams, coordinates with the National Conference of Bar Examiners (NCBE) to obtain Multistate Bar Examination (MBE) and Multistate Performance Test (MPT) exam questions.

The department administers the bar exam twice each year and assists the BBX with two grading sessions each year. The department then works with a statistician to compile and deliver exam results to the Supreme Court.

The department processes reciprocity, house counsel, and law professor applications on a year-round basis.

ADA Departmental Evaluation: The department is aware of ADA requirements, and responds to requests for accommodation. The department makes alternative forms of bar exam applications available to applicants.

The department receives and evaluates requests for bar examination testing accommodations. Ultimately, decisions on testing accommodations are made by the BBX pursuant to the Supreme Court Rules for Admission of Attorneys. Once the BBX determines what accommodations to provide, bar staff administers the exam according to the BBX's directions.

C. Communications & Public Services Department, Creative Services, Referral & Information Services

The Communications & Public Services Department produces and publishes the OSB *Bulletin* and the electronic *Bar News*. The department organizes the annual bar awards and the 50-year member luncheon.

Creative Services is responsible for internal and external design services, and development and maintenance of the bar's website.

The department also administers Referral and Information Services (RIS) and provides public information on lawyers, the legal system, and legal issues through the OSB website.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The Communications & Public Services Department periodically provides information to members on the ADA through the *Bulletin*, and general legal information to members of the public who may be experiencing discrimination. The department ensures bar events include a notice that accommodations are available. Accommodations are frequently requested and provided for the annual 50-year member luncheon.

Creative Services is responsible for creating a website that is accessible to members and the public.

RIS has regular contact with the public, and referral clients regularly request accommodations. RIS seeks to match individuals with disabilities with lawyers, and to educate lawyers about their duties to provide accommodations.

D. CLE Seminars Department

The Continuing Legal Education (CLE) Seminars Department produces live seminars and video replays by maintaining:

- contact with speakers and planners;
- contact with facilities, replay site hosts, and supporting vendors;
- accurate registration and accounting information; and
- course materials.

On an ongoing basis, the department assures seminars, course materials, and audio or video product sales order fulfillment by maintaining accurate order and fulfillment information. The department works with an outside vendor to deliver on-line and mp3 seminars.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The CLE Seminars Department strives to deliver seminars through multiple mediums (e.g. in person, online, through hand-held devices); this varied approach increases accessibility to members. The department includes ADA accommodation notices in all of its seminar advertisements. The department regularly makes headsets available to members at live events who request accommodations for hearing impairment, and responds to requests for seminar materials in alternative formats.

E. Diversity & Inclusion

The mission of the Diversity & Inclusion Department of the Oregon State Bar is to support the mission of the Oregon State Bar by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The Program serves this mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon. The department staffs the Diversity Advisory Committee and administers the Diversity Action Plan. It also hosts the Opportunities in Law in Oregon (OLIO) program for law students.

ADA Departmental Evaluation: The D&I Department is a strong proponent of removing barriers to accessibility at the bar. The department includes an accommodation notice in all of its event notices, and provides accommodations to lawyers who participate in OLIO.

F. Finance, Operations, and Information Technology

The Finance and Operations Department performs all accounting functions, including processing member fees. The department prepares and monitors the bar's annual budget, oversees all in-house printing and distribution (provided through an on-site vendor), as well as outside printing and distribution.

The department also oversees bar facilities including lease management.

The Information Technology Department provides for the access to and management of information technology resources for the bar including the design, implementation, maintenance and support of client and server hardware, operating systems and third-party business applications, as well as network and telephone equipment. The department develops internal and online business applications to fulfill OSB business needs and requirements.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The department regularly receives and responds to requests from members and staff.

G. General Counsel's Office, Minimum Continuing Legal Education, and Client Assistance Office

General Counsel's Office serves as legal counsel to the Executive Director and the Board of Governors. The ADA Coordinator is a member of of General Counsel's Office and the BART is housed here. The office administers Disciplinary Board proceedings, administers the Fee Arbitration Program, and drafts or reviews and approves all contracts with the bar.

The office supervises the Minimum Continuing Legal Education (MCLE) program, which accredits CLE programs and monitors member compliance, and the Client Assistance Office, which serves as intake for all inquiries regarding lawyer conduct and provides information to the public.

The office staffs the Unlawful Practice of Law Committee and provides information to members and the public about the Unlawful Practice of Law (UPL). The Office also staffs the State Lawyers Assistance Committee (SLAC) and the Legal Ethics Committee.

The Office regularly provides informal ethics guidance to Oregon lawyers.

ADA Departmental Evaluation: General Counsel's Office is responsible for maintaining the bar's ADA Notice and grievance procedure, providing legal guidance on ADA compliance, ensuring contracts support accessibility, and assisting departments with responding to accommodation requests. The Client Assistance Office regularly provides accommodations to individuals who wish to file bar complaints. Through SLAC, General Counsel regularly interacts with lawyers who may have a disability.

H. Human Resources Department

The Human Resources (HR) Department is responsible for the bar's employment practices, including the hiring process, staff evaluation process, payroll and benefit administration, workers compensation and safety administration, and preservation of human resource records.

ADA Departmental Evaluation: The HR Department is aware of ADA requirements, and is ready to respond to requests for accommodation. The department works to ensure that the bar's employment practices comply with the ADA. The department includes non-discrimination language in its job opening advertisements, and offers to provide accommodations through the hiring process. The HR Department also assists managers and directors to respond to accommodation requests from bar staff, and holds regular staff trainings.

I. Legal Publications

Legal Publications works with volunteer authors and editorial review boards to produce a library of legal resources for Oregon lawyers, ranging from Administering Oregon Estates to Workers' Compensation. All of the department's resources are available for purchase

in hard copy. All of its publications, plus the annual Legislation Highlights publication, the Disciplinary Board Reporter, and three Professional Liability Fund publications are available online as the BarBooks™ online library. This online resource is available as a member benefit for all active and active pro bono members of the Oregon State Bar. Inactive members and nonmembers can also purchase an annual subscription to BarBooks™.

ADA Departmental Evaluation: The department is aware of ADA Requirements, and responds to individualized requests for accommodation by members (typically requests for alternative format materials).

J. Legal Services

The Legal Services Department administers the filing fees for legal aid programs and pro bono efforts, administers the Loan Repayment Assistance Program, staffs the Oregon Law Foundation and administers the Interest on Lawyer Trust Accounts (IOLTA) program.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The department has worked with Creative Services to ensure the IOLTA reporting form available online is compatible with screen readers.

K. Media Relations & New Lawyer Mentoring Program

The Media Relations Department serves as the primary point of contact for the press. The New Lawyer Mentoring Program is a mentoring program mandated by the Supreme Court. Newly admitted lawyers who practice in Oregon are required to participate in the program in order to maintain their licenses. The bar matches new lawyers with experienced Oregon lawyers, who are appointed by the Oregon Supreme Court to serve as mentors. Over a 12- to 18-month period, the mentor pairs complete a curriculum developed by the New Lawyer Mentor Program Committee.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The department has worked with mentors and new lawyers to modify the NLMP curriculum in response to requests for accommodation.

L. Member Services and Reception

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 to the Oregon New Lawyers Division. The department is responsible for and 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 (BOG).

The reception desk on the second floor of the Oregon State Bar Center is a part of the Member Services Department. Reception serves the public face of the bar, answering calls from the public, and welcoming visitors to the bar center.

ADA Departmental Evaluation: The department is aware of ADA requirements, and regularly responds to requests for accommodation. The department works with bar groups to ensure that they are aware of ADA requirements. The department includes ADA accommodation notices in all section and committee event and meeting notices.

M. Public Affairs

The Public Affairs Department advocates for the legal profession for and BOG-adopted legislative policy changes. The department advocates for law improvement legislation, partners with the Judicial System to ensure access to and funding of an independent judicial system, and monitors and advocates bar positions on ballot measures.

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation.

N. Regulatory Services

Disciplinary Counsel's Office investigates disciplinary complaints referred by the Client Assistance Office; evaluates trust account overdrafts referred by banks; provides counsel to the State Professional Responsibility Board (SPRB); prosecutes formal disciplinary charges authorized by the SPRB; and monitors diversions, probations, conditional admissions and reinstatements.

In addition, the department investigates the merits of all reinstatement applications, counsels the Executive Director and BOG regarding reinstatements, processes membership status changes, processes *pro hac vice* admission applications and responds to public records requests.

The department also supervises the Admissions Department (see above).

ADA Departmental Evaluation: The department is aware of ADA requirements, and is ready to respond to requests for accommodation. The department may receive requests for accommodation from lawyers and other parties who are involved in the lawyer discipline process.

3.2 Website Review

As members and the public turn to the Internet as their primary source of information regarding the bar's services, programs, activities, and facilities, the bar's website becomes a focal point for facilitating effective communications.

With this goal in mind, the bar strives to make its website as accessible as possible for all visitors. The bar's Creative Services group has invested in sending staff to specialized trainings on improving website accessibility. Creative Services is working to overhaul the bar's website to make the website more compatible with screen readers.

In addition, Creative Services is engaged in a review of all web forms to improve accessibility. The bar is committed to providing accessible formats of important policies and forms. This effort will continue as the bar adopts new association management software (Aptify) in the summer of 2016.

3.3 Facilities Review

The Oregon State Bar Center was constructed in 2007, and the bar made every effort to ensure that the construction complied with all accessibility requirements.

The bar facilities were audited for ADA compliance by the initial contractor, and later by ADA Northwest. The facilities department implemented all recommendations from both audits. Unfortunately, staff is unable to locate records of the second audit, which occurred in about 2008.

Most recently, the bar is exploring options toward making internal doors, particularly restroom doors and the second floor entrance to the bar's lobby, more accessible. At this time, the bar has not identified any structural barriers to program accessibility at the Oregon State Bar Center.

The bar is in the process of modifying its Members Room so that it can be used by visitors and staff who have health needs that require privacy. While not required by the ADA, the bar believes this effort will make the OSB Center a more welcoming place for individuals with disabilities.

3.4 Offsite Facilities Review

Many bar meetings and events take place offsite at hotels, restaurants, law firms and in other public spaces. Member Services is working with General Counsel to develop a process to assist staff and educate members who are selecting off-site locations. General Counsel strives to include provisions on ADA Compliance in all contracts for off-site space.

4. Conclusion

As described in this Self-Evaluation, the bar has made great strides to comply with the letter and the spirit of the Americans with Disabilities Act.

The bar recognizes the need for constant examination and continued improvement. Going forward, in addition to addressing the issues identified in Exhibit G, the bar will focus its energy on the following tasks:

- Improving accessibility of the bar's website;
- Improving accessibility of off-site events and meetings;
- Continuing public outreach;
- Seeking to respond to accommodation requests in an efficient and effective manner;
- Creating a welcoming environment for people with disabilities at the bar center; and
- Educating membership about how the ADA applies to lawyers.

BART will provide periodic progress reports to the Executive Director.

Oregon State Bar
Meeting of the Board of Governors
February 12, 2016
Open Session Minutes

President Ray Heysell called the meeting to order at 9:00 a.m. on February 12, 2016. The meeting adjourned at 1:30 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Vanessa Nordyke, Ramón A. Pagán, Per Ramfjord, Kathleen Rastetter, Julia Rice, Josh Ross, Kerry Sharp, Rich Spier, Kate von Ter Stegge, Charles Wilhoite, Tim Williams and Elisabeth Zinser. Staff present were Helen Hierschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Kay Pulju, Kateri Walsh, Judith Baker, and Camille Greene. Also present were Carol Bernick, PLF CEO, Teresa Statler, PLF Board of Directors Vice-Chair, Colin Andries, ONLD Chair, Jovita Wang ABA HOD YLD Delegate, Marilyn Harbur, ABA HOD Delegate, Nadia Dahab, Oregon Federal Bar Association, and Lisa Ludwig, Chair of the Bar Press Broadcasters Council.

1. Call to Order/Adoption of the Agenda

The board accepted the agenda, as presented, by consensus.

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

A. Board Development Committee

Ms. Nordyke presented the committee's motion to make the appointments to various OSB committees and affiliated boards. **[Exhibit A]**

Motion: The board unanimously approved the committee motion.

Ms. Nordyke presented the committee's motion for recommendations for co-graders on the Board of Bar Examiners. **[Exhibit B]**

Motion: The board unanimously approved the committee motion.

B. Budget and Finance Committee

Mr. Mansfield gave a general financial update. Final revisions to bylaws regarding the investment committee will be presented to the board in April for consideration. The committee will be looking at the admissions process and the cost of grading the bar exam. They will also be looking at the general reserves and holdings.

C. Policy and Governance Committee

Ms. Hierschbiel presented the committee motion for proposed changes to the retired status rules and asked for flexibility on the timing of implementation of these rules due to the role out of the new AMS database. **[Exhibit C]**

Motion: The board unanimously approved the committee motion.

Mr. Levelle presented the committee motion for board approval of the proposed strategic functions and goals. The committee proposes a reduction in the number of functions by consolidation. Mr. Ramfjord said the committee is looking for approval to proceed with these changes in concept and suggested that the wording is a work in process. Ms. Hierschbiel

suggested the board consider one of each of the four concepts at subsequent board meetings. Mr. Levelle proposed function #3 stand alone or be incorporated into another function.

[Exhibit D]

Motion: The board unanimously approved the committee motion to move forward with development of the concepts of the strategic plan.

Mr. Ramfjord presented the committee motion for proposed changes to the current sponsorship bylaw and to develop a sponsorship policy for the budgeted funds. **[Exhibit E]**

Motion: The board approved the committee motion 11-3-1. The motion to approve the bylaw will be on the April consent agenda. (Yes: C. Costantino, K. von Ter Stegge, P. Ramfjord, J. Chaney, V. Nordyke, R. Pagan, M. Levelle, T. Williams, G. Greco, K. Sharp, R. Gratchner. No: J. Rice, J. Bachofner, K. Rastetter. Abstain: J. Mansfield)

D. Public Affairs Committee

Mr. Ross and Ms. Grabe updated the board on the latest legislative activity.

Mr. Ross presented the committee motion to adopt the 2016 Legislative Priorities. **[Exhibit F]**

Motion: The board unanimously approved the committee motion.

E. Discipline System Review Committee Report

Mr. Heysell presented members' emails containing feedback on the DSRC report. Member comments will be accepted through March 2. All comments will be sent to board members in writing, including comments from members during the regional conference calls. The DSRC report will be reviewed by the board at a special open session in March before forwarding the DSRC recommendations to the Supreme Court.

At 1:00pm, the meeting was open for public comment on the DSRC report. Ms. Ludwig presented a memo from Mr. Pat Ehlers requesting continued transparency regarding OSB complaints. **[Exhibit G]**

3. Professional Liability Fund

Ms. Bernick introduced the new BOD Chair-elect, Teresa Statler, and reported on the 2015 claims attorney and defense counsel evaluations. She stated that the OAAP is reaching out to law school students informing them of their services. Ms. Bernick provided a general update on the PLF's December 2015 financial statements and reported that the PLF had a \$1.1 million deficit due to investment losses and an increase in claim dollar amounts. Claims are going down but severity is rising.

Ms. Bernick presented the PLF request to approve excess cyber extortion coverage. **[Exhibit H]**

Motion: Mr. Greco moved, Mr. Wilhoite seconded, and the board voted to approve the PLF request. Mr. Bachofner abstained.

4. Board of Bar Examiners

Ms. Hirschbiel presented the BBX comments on the International Trade Task Force recommendations.

5. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

In addition to the written report, Mr. Andries introduced himself and updated the board on the function of the ONLD. He reported on the ONLD's subcommittee activities and new lawyer mental health and alcohol issues.

B. MCLE Committee

Ms. Hirschbiel presented the proposed amendments to various MCLE rules and regulations..
[Exhibit I]

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted to approve the amendments. Mr. Bachofner was opposed.

C. Client Security Fund Committee

Claim 2015-02 BERTONI(Miranda)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit J]**

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-12 CAROLAN(Avery)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit K]**

Motion: Mr. Ramfjord moved, Ms. Rastetter seconded, and the board voted to uphold the committee's denial of the claim. Mr. Levelle voted no. Mr. Williams abstained.

Claim 2015-37 CHIPMAN(Noel)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit L]**

Motion: Mr. Ross moved, Ms. von Ter Stegge seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-18 GERBER(Chappue)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit M]**

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to uphold the committee's denial of the claim. Ms. von Ter Stegge and Ms. Nordyke abstained.

Claim 2015-34 GRECO(Patillo)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. Mr. Greco removed himself from the room for the discussion and vote. **[Exhibit N]**

Motion: Mr. Bachofner moved, Mr. Ramfjord seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-22 JORDAN(Hernandez)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit O]**

Motion: Mr. Williams moved, Mr. Greco seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-32 LANDERS(Koepke)

This request was removed from the agenda.

Claim 2015-17 GERBER(Graue)

Ms. Hirschbiel asked the board to review the CSF Committee's recommendation to award \$12,500 to Mr. Graue, as explained in her memo. **[Exhibit P]**

Motion: Mr. Bachofner moved, Mr. Greco seconded, and the board voted to award the client \$12,500. Ms. Nordyke and Ms. von Ter Stegge abstained.

D. Legal Services Committee

Ms. Baker presented the committee recommendation for General Fund Disbursement, based on poverty population, for the board's approval. **[Exhibit Q]**

Motion: Mr. Greco moved, Mr. Ross seconded, and the board unanimously approved the committee recommendation.

E. Legal Ethics Committee

Ms. Hirschbiel presented the committee's request for board approval of proposed amendments to formal ethics opinions. **[Exhibit R]**

Motion: Mr. Bachofner moved, Ms. Rastetter seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

6. Other Action Items

Mr. Williams outlined the barriers to accessing the new bar email. Mr. Chaney agreed and admitted that it is difficult to keep bar emails separate from business emails. Mr. Bachofner suggested creating a rule to forward BOG emails to work email. Ms. Nordyke does not have a problem with the email system but supports a system that works for all BOG members. Ms. Hollister shared potential implications of not using a separate email address, as laid out in her memo. **[Exhibit S]**

Motion: Mr. Ross moved, Mr. Levelle seconded, and the board voted to remove the email requirement. Yes: Mr. Levelle, Ms. Zinser, Mr. Ross, Mr. Ramfjord, Mr. Chaney, Ms. Nordyke, Mr. Williams, Mr. Greco, Mr. Wilhoite. No: Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Bachofner, Mr. Mansfield, Mr. Sharp, Ms. Rastetter.) Those board members who would like to continue to use the bar email should notify Camille Greene.

Ms. Dahab asked to board to help the Federal Bar Association fund an exhibit entitled "A Class Action: A Grassroots Struggle for School Desegregation in California" with a donation of \$2,000. **[Exhibit T]**

Motion: Mr. Ross moved and Mr. Levelle seconded to approve the donation. Ms. Zinser moved to amend the motion with a donation of \$1000 instead of \$2000, Mr. Greco seconded.

Mr. Ross commented we keep the donation at \$2000, Mr. Wilhoite, Mr. Levelle and Mr. Williams agreed. Mr. Heysell asked the board to support this rare opportunity with a donation of \$2000. Mr. Bachofner agreed. Mr. Greco reminded the board that it is in their best interest to be consistent with donation amounts. Mr. Wilhoite suggested we model our donation

amount after the amount the FBA donates. Mr. Mansfield pointed out that the board is now taking a fundamentally different position than it took when considering past FBA donation requests. Mr. Heysell clarified that the current bylaw states the board does not make such donations. Ms. Rastetter said this inconsistency in policy needs to be addressed in future sponsorship bylaw changes. Mr. Ramfjord said the current policy stating the bar should not spend member money making donations is a correct policy.

The motion to amend failed. (Yes: Mr. Ramfjord, Mr. Sharp, Mr. Greco, Ms. Zinser. No: Mr. Levelle, Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Ross, Mr. Chaney, Ms. Nordyke, Mr. Pagan, Mr. Bachofner, Mr. Wilhoite and Mr. Williams. Abstain: Mr. Mansfield.)

The original motion passed. (Yes: Mr. Levelle, Ms. Zinser, Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Ross, Mr. Chaney, Ms. Nordyke, Mr. Pagan, Mr. Bachofner, Mr. Wilhoite, Mr. Williams, Mr. Greco and Ms. Rastetter. No: Mr. Sharp, Mr. Ramfjord. Abstain: Mr. Mansfield)

7. Consent Agenda

A. Report of Officers & Executive Staff

Report of the President

In addition to his written report, Mr. Heysell reported on the ABA Mid-year meeting theme of the changing law profession.

Report of the President-elect

Mr. Levelle reported he is working on a project to connect with local bar associations around the state.

Report of the Executive Director

Ms. Hirschbiel presented the department program evaluations.

Director of Regulatory Services

In her written report, Ms. Evans brought to the board's attention the table of New Matters. Her staff is working on disposing of the oldest cases as reflected in the reduced case count.

Director of Diversity & Inclusion

No report.

MBA Liaison Reports

No report.

ABA HOD Delegate Report on ABA HOD Mid-year Meeting

Ms. Wang reported on the resolutions at the meeting and encouraged board members to contact her with any questions. Ms. Harbur reported on various items that were approved by the house, noting in particular the debate around Resolution 107, which urges states to include a diversity component in the MCLE requirements, and Resolution 105, which proposes adoption of regulatory objectives that states should apply when developing regulations for non-

traditional legal services providers. An amendment was added to reinforce the idea that the ABA does not promote non-lawyer legal services providers but rather recommends regulation of their activities in order to protect the public.

B. 2015 ULTA Annual Report

As written.

Motion: Mr. Chaney moved, Mr. Ramfjord seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

8. Closed Sessions – see CLOSED Minutes

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

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

None.

DRAFT

**Oregon State Bar
Board of Governors Meeting
February 12, 2016
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

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

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other

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

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: February 11, 2016
From: Vanessa Nordyke, Board Development Committee Chair
Re: Appointments to various OSB Committees and affiliated boards

Action Recommended

Approve the Board Development Committee recommendations for appointments to various OSB standing committees and the Oregon Law Commission. All recommendations were approved unanimously by the committee.

Background

Legal Heritage Interest Group

The Legal Heritage Interest Group is tasked with preserving and communicating the history of the OSB to interested groups. Two member appointments are recommended due to current and expected vacancies.

Mark Douglas Monson (110133) and **Spencer Q. Parsons** (034205) are recommended as new members with terms expiring December 31, 2018. Both indicated the LHIG as their first choice of committee service when applying for volunteer service with the OSB.

Public Service Advisory Committee

The Public Service Advisory Committee is responsible for advising the BOG and OSB staff on public service priorities and issues to assist in achieving the Bar's public outreach and education goals. One new member appointment is necessary to fill a vacant seat.

Bonnie Marie Palka (024147) is recommended as a new member with at term expiring December 31, 2018. Ms. Palka offers the perspective of having practiced in other states (California and Massachusetts) and knows four languages to varying degrees.

Quality of Life Committee

The Quality of Life Committee encourages and supports a culture within the legal community that recognizes, accepts, and promotes quality of life objectives as important to personal and professional development. Two new member appointments are necessary as well as the appointment of a new secretary from the existing committee membership.

Nadia Dahab (125630) and **Mark Baskerville** (142006) are recommended as new members with terms expiring December 31, 2017. Ms. Dahab offers the perspective of a newly admitted member and has experience as a judicial clerk which is not currently represented on the committee. Mr. Baskerville is a physician at OHSU and is actively involved with physician wellness; his perspective offers insight into how quality of life is addressed in other professions.

Michael Turner (095300) is recommended for the secretary position through December 31, 2016. Mr. Turner is an estate planning attorney and has served on the QOL Committee since 2015.

Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. The committee has one vacant member seat for appointment through December 31, 2017.

Wendy L. Hain (923236) is employed by the Port of Portland which is helpful to the committee since a majority of the UPL complaints stem from the metro area. OSB Bylaws limit the number of private practitioners on this committee to no more than ¼ of the membership; Ms. Hain's eligibility meets with this requirement.

Oregon Law Commission

The OSB Board of Governors is responsible for the appointment of three commissioners to the Oregon Law Commission. One new appointment is necessary to fill a vacant seat with a term expiring June 30, 2018.

Keith Dubanevich (975200) is a litigator from the Stoll Berne firm in Portland. He has practiced since 1997 and offers a balanced perspective based on the plaintiff and defense-oriented positions he has held over the years in both the private and public sectors. He expressed an interest in serving as a commissioner on his volunteer application with the OSB.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: February 11, 2016
From: Vanessa Nordyke, Board Development Committee Chair
Re: Board of Bar Examiner co-grader recommendations

Action Recommended

Recommend the following candidates to the Board of Bar Examiners (BBX) for co-grader appointment consideration.

Background

As provided in OSB bylaw 28.2, the Board of Governors has an opportunity to provide input to the BBX as they select candidates to serve as board members and co-graders. The BOG's first opportunity to provide comment on the BBX appointments came last September. During this time the BOG encouraged the BBX to take steps to increase the diversity of the pool of co-graders. Specifically the BOG suggested considering more lawyers from private practice, from medium or large firms, and from locations outside the Portland and Salem metropolitan areas. The BOG also highlighted the importance of considering candidates with diversity of practice experience and demographic backgrounds.

The Board Development Committee considered each of these factors when reviewing the list of 134 volunteers interested in serving as a Board of Bar Examiner co-grader. Below is a list of the members the committee recommends the BOG submit to the Board of Bar Examiners for consideration.

Daniel Simcoe, 810243

Ernest (Ernie) Warren, 891384

Hon Frank R Alley, 770110

John R HuttI, 953086

Josh Simko, 034508

Karen A Moore, 040922

Kate Wilkinson, 001705

Kendra Matthews, 965672

Kenneth L Brinich, 824845

Lissa Kaufman, 970728

Mandi Philpott, 023692

Marisha Childs, 125994

Patrick M Gregg, 093698

Rosa Chavez, 032855

Todd E Bofferding, 883720

OREGON STATE BAR

Governance & Strategic Planning Committee Agenda

Meeting Date: January 9, 2016
From: Helen Hirschbiel, Executive Director
Re: Retired Status Amendments

Action Recommended

Approve the proposed language for a new bylaw establishing Retired membership status and for several statutory and other bylaw amendments necessitated by the creation of the new Retired status.

Discussion

At its meeting on November 20, 2015, after considerable discussion, the committee voted unanimously to create a new membership status for retired members. Set out below is the proposed bylaw amendment to create the new membership status, followed by suggested statutory and other bylaw and rule changes that should be made to incorporate the new status:

Article 6 Membership Classification and Fees **Section 6.1 Classification of Members** **Subsection 6.100 General**

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive, [retired](#), or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon.

[\(c\) Retired member – A member of the Bar who is at least 65 years old and who is retired from the practice of law \(as defined in paragraph \(b\)\) may be enrolled as a retired member.](#)

ORS Chapter 9—The Bar Act

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

9.180 Classes of membership. All persons admitted to practice law in this state thereby shall become active members of the bar. Every member shall be an active member unless, at the member's request, or for reasons prescribed by statute, the rules of the Supreme Court, or the rules of procedure, the member is enrolled as an inactive or retired member. An inactive or retired member may, on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees, again become an active member. Inactive and retired members shall not hold office or vote, but they shall have such other privileges as the board may provide.

9.210 Board of bar examiners; fees of applicants for admission to bar. The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar examiners. The Supreme Court shall also appoint two public members to the board who are not active, ~~or~~ inactive or retired members of the Oregon State Bar. The board shall examine applicants 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.

OSB Bylaws

Article 3 House of Delegates

Section 3.4 Meeting Agenda

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in Keller v. the State Bar of California. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all ~~active and inactive~~ bar members, at least 20 days in advance of the House meeting.

Article 4 Awards

Section 4.8 President's Public Leadership Award

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active, ~~or~~ inactive or retired member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

Section 4.9 President's Sustainability Award

The criteria for the President's Sustainability Award are as follows: The nominee must be an active, ~~or~~ inactive or retired member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

Article 6 Membership Classification and Fees

Subsection 6.101 Active Pro Bono Status

(a) Purpose

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive or retired status or even resign from membership in the Bar, and by lawyers who move to Oregon.

Subsection 6.102 Transfer of Classification of Membership

An inactive or retired member may be enrolled as an active member only by complying with the Bar Act, the Rules of the Supreme Court, the Rules of Procedure of the Bar and paying required fees. An active member may voluntarily transfer to inactive or retired status on certification by the member that the criteria of that classification are met and on payment of required fees.

Section 6.3 Rights of Members

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive [and retired](#) members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

Section 6.4 Annual Membership Fees and Assessments

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 26 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive [or retired status membership](#) after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive [or retired](#) status and pays the [inactive required](#) membership assessment by that date, but does not timely submit a ~~signed Rr~~ request for [Enrollment enrollment](#) as an ~~inactive or retired Membermember~~, may be allowed to complete the [inactive](#) transfer without payment of the active membership assessment, if extenuating circumstances exist. The Executive Director's decision regarding the existence of sufficient extenuating circumstances is final.

Section 6.5 Hardship Exemptions

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active, ~~or~~ inactive [or retired](#) member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

Article 16 Continuing Legal Education

Section 16.3 OSB Legal Publications Program

Subsection 16.300 Benefit of Membership

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive [or retired](#) members, non-members, and libraries.

OSB Bylaw 17 Member Services¹

[Section 17.2 Insurance](#)

~~Providers of Bar-sponsored insurance may use the Bar's logo in their advertising and promotional material with the prior approval of the Executive Director. They may also indicate approval or endorsement by the Board in such material if the Board has approved or endorsed the insurance. Inactive membership status does not affect the eligibility of a member for bar-sponsored insurance.~~

Bar Rules of Procedure

Title 1 – General Provisions

Rule 1.11 Designation of Contact Information.

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except ~~(i) attorneys whose [se status is are over the age of 65 and fully](#) retired [from the practice of law](#) and (ii) attorneys for whom reasonable accommodation is required by applicable law. [For purposes of this rule an attorney is “fully retired from the practice of law” if the attorney does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB bylaws 6.100 and 20.2.](#)~~

(c) An attorney seeking an exemption from the e-mail address requirement ~~for the reasons stated in~~ paragraph (b)(ii) must submit a written request to the Executive Director, whose decision on the request will be final.

(d) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her contact information. A new designation shall not become effective until actually received by the Oregon State Bar.

¹ This bylaw is an overlooked vestige of time when we had a bar-sponsored insurance program in which members could participate, and should have been deleted long ago.

Title 8 – Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

- (a) Applicants. Any person who has been a member of the Bar, but who has
- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
 - (ii) resigned under Form B of these rules prior to January 1, 1996; or
 - (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
 - (iv) been suspended for misconduct for a period of more than six months; or
 - (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
 - (vi) been enrolled voluntarily as an inactive [or retired](#) member for more than five years; or
 - (vii) been involuntarily enrolled as an inactive member; or
 - (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive [or retired](#) status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

* * *

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive [or retired](#) member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Bar may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the

applicant's suspension, resignation or inactive [or retired](#) status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive [or retired](#) status in this state.

* * *

Rule 8.2 Reinstatement — Informal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive [or retired](#) member for five years or less prior to the date of application for reinstatement; or

* * *

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive [or retired](#) status, suspension or resignation. Reinstatements to inactive [or retired](#) status shall not be allowed under this rule except for those applicants who were inactive [or retired](#) and are seeking reinstatement to inactive [or retired](#) status after a financial suspension. No applicant shall resume the practice of law in this state or active, ~~or~~ inactive [or retired](#) membership status unless all the requirements of this rule are met.

* * *

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive [or retired](#) status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

* * *

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation, or inactive [or retired](#) status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

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, or retired membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

Rule 8.8 Petition To Review Adverse Recommendation.

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Bar's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive or retired membership status shall remain in effect until final disposition of the petition by the court.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

(a) Reinstatement from Inactive or Retired Status. An applicant who has been enrolled voluntarily as an inactive or retired member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

Title 12 -- Forms

Rule 12.9 Compliance Affidavit.

A compliance affidavit filed under BR 8.3 shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Application of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

* * *

Rule 12.10 Compliance Affidavit.

A compliance affidavit filed under BR 7.1(g) shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Reinstatement of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

* * *

**Minimum Continuing Legal Education
Rules and Regulations**

**Rule One
Terms and Definitions**

1.1 Active Member: An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

* * *

~~**1.12 Retired Member:** An active member who is over 65 years old and is fully retired from the practice of law.~~

* * *

**Regulations to MCLE Rule 1
Terms and Definitions**

1.100 Inactive or Retired Member. An inactive or Retired member of the Oregon State Bar, as defined in Article 3 of the Bylaws.

**Rule Three
Minimum Continuing Legal Education Requirement**

3.7 Reporting Period.

- (a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).
- (b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.
- (c) Reinstatements.
 - (1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at

the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.7(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.7(c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

~~(d) Retired Members:~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

**Regulations to MCLE Rule 3
Minimum Continuing Legal Education Requirement**

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

OREGON STATE BAR

Board of Governors Agenda

From: Policy and Governance Committee
Meeting Date: February 12, 2016
Re: Oregon State Bar Strategic Functions and Goals

Action Recommended

Consider whether to approve the proposed strategic functions and goals.

Options

1. Approve the proposed strategic functions.
2. Revise the proposed strategic functions.
3. Leave the current strategic functions as currently configured.

Background and Discussion

At its November 20, 2015 retreat, the Board of Governors reviewed its 2014 Action Plan (attached) and expressed interest in beginning work in 2016 to develop a new strategic plan for 2017. The retreat facilitator, Mark Engle, recommended that the planning process start with a review of the six core functions and a discussion about whether they can (or should) be pared down to three or four strategic domains. The Policy and Governance Committee agreed with this approach and took up the task of consolidating the core functions. It offers the following for the Board's consideration.

Function 1: REGULATORY BODY PROVIDING PROTECTION TO THE PUBLIC
Goal: Protect the public by promoting the quality and integrity of lawyers.

Function 2: PARTNER WITH JUDICIAL SYSTEM
Goal: Promote and protect the quality of the judicial system.

Function 3: CHAMPION OF ACCESS TO JUSTICE
Goal: Promote public understanding of the legal system and access to legal services to all persons.

Function 4: ADVOCATE FOR EQUITY
Goal: Promote equity and diversity in the legal community and in the provision of legal services.

OREGON STATE BAR

Governance and Strategic Planning Committee Agenda

From: Amber Hollister, General Counsel
Meeting Date: February 12, 2016
Re: Guidelines for Sponsorships/Contributions

Action Recommended

Consider the adoption of formal policy and an annual budget for sponsorships and contributions.

Options

3. Amend existing Bylaw 5.5 regarding Grants to require that the Board set an annual budget for sponsorships and contributions. Continue to permit section donations.
4. Adopt a formal policy against purely financial sponsorships or contributions, but provide Bar support through the purchase of tickets to events. Continue to permit Bar contributions for access to justice and section donations.
5. Adopt a policy allowing for a fixed dollar amount of financial sponsorships or contributions annually, limited to programs or events that are germane to the bar's mission. Create an application process to consider requests. Continue to permit section donations.

Background and Discussion

At its October 9, 2015 meeting, the Board asked staff to draft language for a bylaw governing sponsorships and contributions.

At its January 2016 meeting, this Committee considered two proposals outlined in Sylvia E. Stevens' memo, dated November 20, 2015 (see attached). The proposals were based on policies adopted by bars in Arizona and Michigan. The first proposal (Option 1), modeled after Michigan, was to adopt a formal policy of only sponsoring various organizations through the purchase of event tickets, except in limited circumstances. The second proposal (Option 2), modeled after Arizona, was to adopt a budget for sponsorships and contributions and allow organizations to apply for allocated funds in a formal application process.

This Committee considered the proposals presented, and assigned a subcommittee to further consider the issue. After hearing comments from OLF Executive Director Judith Baker, the Committee generally agreed that it was not the intent of the new policy to diminish the long-standing relationship between the Bar and the Campaign for Equal Justice and Oregon Law Foundation. The subcommittee was tasked, in part, with considering how the proposals would

be read together with existing OSB Bylaws (in particular, Subsection 7.203 Grants and Subsection 15.401 Donations).

The subcommittee met and discussed the purpose of the sponsorship and contribution policy. The subcommittee noted the different types of financial provided by the bar to legal and community organizations (organizational and staff support; attendance at events; sponsorships of specific events; and outright financial contributions).

The subcommittee also discussed the Board's discretion to determine its level of involvement in making contributions. For instance, the Board may elect to delegate authority to the Executive Director to make contribution decisions based on general criteria, or may choose to be more involved in the decision making process. The subcommittee also considered the possibility of developing donation criteria for use by the Board in making sponsorship and contribution decisions in addition to any bylaw amendments (e.g., the Bar will not contribute over \$1,000, except in extraordinary circumstances).

Proposals

Three additional options are presented below.

Option 3 would amend existing Subsection 7.203 Grants, but would make no other changes.

Options 4 and 5 are based on the previously presented Options 1 and 2, but incorporate additional changes to preserve the bar's historic funding of access to justice programs and to ensure internal consistency in the bylaws. Option 4 would amend existing Subsection 7.203 Grants; Option 5 would delete Subsection 7.203 as unnecessary.

All of the proposals assume that Subsection 15.401 Donations, regarding section donations, would remain unchanged.

Option 3

Subsection 7.203 Grants & Contributions

The bar does not **generally** accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that [*in the sole discretion of the Board of Governors, furthers the mission of the bar*] **is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws**. The **bar's annual budget shall include** an amount **dedicated to providing such financial support, although that amount** [*allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and*] may change from year to year based upon the overall financial needs of the bar. **This budgeted amount shall be in addition to any amounts**

budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

Option 4

Section 7.7 Sponsorships

It is the policy of the bar to support events of Oregon's local and specialty bars and of other legal and community organizations that are germane to the bar's mission through the purchase of event tickets and attendance of bar leadership and staff. The board will identify the events for which tickets will be purchased and will include an allocation in the annual budget for that purpose. **Except as provided in Subsections 7.203 and 15.401**, no other support, financial or in-kind, will be provided to such groups except in extraordinary and limited circumstances with the prior approval of the board and a showing that the contribution is germane to the bar's purpose and mission **as set forth in Section 12.1**.

Subsection 7.203 Access to Justice Grants

The bar does not accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the [Classroom Law Project] **Oregon Law Foundation** and Campaign for Equal Justice (CEJ) or any other organization that, in the sole discretion of the Board of Governors, **increases access to justice**. The amount allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and may change from year to year based upon the overall financial needs of the bar.

Option 5

Section 7.7 Sponsorship and Contribution Requests

Subsection 7.7.1 General

The board may establish an annual budget for sponsorships and contributions for the purpose of supporting legal and community organizations. This budget shall be in addition to the budget established for bar leadership and staff attendance at local bar and community dinners and similar events **and any donations made by sections under Subsection 15.401**.

Subsection 7.7.2 Qualification

The program or event for which the contribution is requested must be germane to the bar's mission to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The program or event must be germane to the bar's functions as a professional organization, as a provider of assistance to the public, as a partner with the judicial system, as a regulatory agency, as leaders serving a diverse community, and as advocates for access to justice **as set forth in Section 12.1**.

The program or event must be non-partisan and non-political, and must comply with the bar's non-discrimination policy **as set forth in Article 10**.

Subsection 7.7.3 Application and Use of Funds

The Bar will establish a due date for applications in the last quarter of the year prior to the event for which funds are requested. Applications will be reviewed by the Budget & Finance Committee and submitted with a recommendation to the Board of Governors at its last meeting of the year. Successful applicants will be notified after the board has made its decision, and funds will be distributed in January unless a later distribution date is requested by the recipient. Late applications will be considered if there are budgeted funds remaining after the distribution date.

Funds awarded may be used only for the program or event designated in the application unless the applicant obtains approval from the bar for an alternative use. Funds awarded may not be used for alcohol, religious activities, lobbying or fundraising.

Recipients must include recognition of the bar's sponsorship in brochures, programs or other event materials.

[Subsection 7.203 Grants

The bar does not accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that, in the sole discretion of the Board of Governors, furthers the mission of the bar. The amount allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and may change from year to year based upon the overall financial needs of the bar.]

OSB Board of Governors

Action Plan 2014

INTRODUCTION

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The OSB is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established. The BOG has translated the statutory purposes into six core functions that provide overall direction for OSB programs and activities:

- We are a regulatory agency providing protection to the public.
- We are a partner with the judicial system.
- We are a professional organization.
- We are a provider of assistance to the public.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

FUNCTIONS , GOALS AND STRATEGIES

FUNCTION #1 – REGULATORY AGENCY PROVIDING PROTECTION TO THE PUBLIC

Goal: Provide meaningful protection of the public while enhancing member and public understanding of and respect for the discipline system.

Strategy 1	Conduct a comprehensive review of disciplinary procedures and practices focusing on fairness and efficiency.
Strategy 2	Improve member and public understanding of the disciplinary process and of their role in client protection.
Strategy 3	Increase the visibility of disciplinary staff attorneys among the membership.
Strategy 4	Provide adequate channels for public information and comment.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

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

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

Goal: Promote and protect the integrity of the judicial system.

Strategy 1	Support adequate funding for the Judicial Branch in the legislature.
Strategy 2	Respond appropriately to challenges to the independence of the judiciary.
Strategy 3	Participate meaningfully in judicial selection processes.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

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

Strategy 1	Review OSB programs for adherence to mission, value to members and efficiency.
Strategy 2	Upgrade organizational software to meet changing member demands for online services.
Strategy 3	Develop and enhance programs that support career opportunities and professional development of new lawyers.
Strategy 4	Coordinate and collaborate with law schools to develop effective models for graduating new lawyers with needed skills.

FUNCTION #4 – ASSISTANCE TO THE PUBLIC

Goal: Promote public understanding of and respect for the justice system.

Strategy 1	Support civic education programs and activities that promote understanding of and respect for the rule of law and the legal profession.
Strategy 2	Enhance the availability of public information about OSB regulatory and client protection programs.
Strategy 3	Promote the Referral & Information Service programs.

FUNCTION #5 – SERVING A DIVERSE COMMUNITY

Goal: Increase the diversity of the Oregon bench and bar; increase participation by the OSB's diverse membership at all levels of the organization and assist bar members in serving a diverse community.

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

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

Strategy 1	Identify new and additional sources of funding for low-income legal services.
Strategy 2	Explore expansion of who can provide legal services in Oregon.
Strategy 3	Support the leveraging of technology to provide legal information to self-represented persons.
Strategy 4	Support and promote funding for indigent defense services for children and adults.

DRAFT

MEMORANDUM

TO: Oregon State Bar Board of Governors
FROM: Lisa Ludwig, Chair, Bar Press Broadcasters Council
RE: Request for Continued Transparency Regarding OSB Complaints
DATE: February 12, 2016

On Saturday, February 6, 2016, during a regular meeting of the Council, the members considered, and discussed at length, the Discipline System Review Committee's recommendation that:

[C]omplaints of misconduct and all information and documents pertaining to them are confidential and not subject to public disclosure until either (a) the SPRB has authorized the filing of a formal complaint, or (b) the complaint has been finally resolved without SPRB authorization to file a formal complaint.

After thorough consideration, the Council members present voted unanimously, with one abstention, to urge the Oregon State Bar Board of Governors to:

Maintain the status quo with respect to public records status of Oregon State Bar complaints.

The Oregon State Bar has had a more than forty year history of a disciplinary system fully open to public disclosure. Such transparency stands as a national example among state bar disciplinary systems of an unwavering commitment to integrity and public protection.

Diminishing transparency, by making the complaint process confidential at any point in the proceedings, will result in a number of consequences that run contrary to the OSB's dedication to an open system designed to serve the citizens' of Oregon by:

- Providing protection from lawyers whose conduct is unprofessional, immoral, or offensive when such conduct does not result in bar discipline
- Preventing erosion of public trust
- Eliminating Sixth Amendment claims of ineffective assistance of counsel during post-conviction proceedings
- Maintaining the reputation of the OSB as a national leader in transparency and fairness

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 11-12, 2016

Memo Date: January 27, 2016

From: Carol J. Bernick, PLF CEO

Re: Cyber Extortion Coverage Added to 2016 Breach Response
Endorsement

Action Recommended

Please approve the recommended changes to the PLF Excess Plan. These changes will be presented to our board at its February 5, 2016 meeting. I will present the actual vote at the BOG meeting.

Background

In late December 2015, the PLF was contacted by our reinsurance brokers at AON with information about an optional enhancement to our current Cyber Liability and Breach Response Endorsement provided by the Beazley Group. Beazley offered, at no additional cost to the PLF or to our covered firms, to add language to our current Cyber Liability Endorsement that would include claims arising from cyber extortion events (the claims were previously excluded under the Endorsement).

Cyber extortion occurs when a business's computer system is attacked and data stored on the computers and/or networks is held under lock and key by extortionists and only released after a payment demand is met. Another term for this type of virus or attack is ransom ware. The PLF is aware of at least one cyber extortion attack made against a Covered Party in 2015. That claim was not covered under the 2015 Excess Breach Response Endorsement.

Beazley recognized that cyber extortion claims were an area of concern for many insurers (including the PLF), and decided to offer coverage for those claims as part of the existing Endorsement. The sublimit available to cover cyber extortion claims under the Endorsement would be \$10,000 with a \$2,000 deductible. Though cyber extortion demands are often quite small (many would not exceed the deductible), Beazley thinks it would be valuable to have these claims submitted and monitored under the Endorsement. This would be particularly valuable if additional claims resulted from the cyber extortion event that would be covered under the Endorsement.

Proposed language for this change to the current Endorsement is included on the following pages. Since this would constitute a change to the 2016 Claims Made Excess Plan, we are submitting it for BOG review and approval.

CYBER LIABILITY AND BREACH RESPONSE ENDORSEMENT

NOTICE

COVERAGE AGREEMENTS I.A., I.C. AND I.D. OF THIS ENDORSEMENT PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST A COVERED PARTY DURING THE COVERAGE PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. OF THIS ENDORSEMENT. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS ENDORSEMENT SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY.

COVERAGE AGREEMENT I.B. OF THIS ENDORSEMENT PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY A COVERED PARTY AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD.

THIS ENDORSEMENT IS INTENDED TO COVER CERTAIN CLAIMS EXCLUDED UNDER THE PLF CLAIMS MADE PLAN AND PLF CLAIMS MADE EXCESS PLAN. HOWEVER, THE COVERAGE TERMS OF THIS ENDORSEMENT ARE DIFFERENT FROM THE PLF PLANS AND SHOULD BE REVIEWED CAREFULLY. THIS ENDORSEMENT DOES NOT MODIFY IN ANY RESPECT THE TERMS OF THE PLF CLAIMS MADE PLAN OR CLAIMS MADE EXCESS PLAN.

THIS IS A CLAIMS MADE AND REPORTED ENDORSEMENT.

SCHEDULE

Item 1. **The Firm and Covered Parties** qualifying as such under Section II - WHO IS A COVERED PARTY of the applicable PLF Claims Made Excess Plan and Declarations Sheet to which this endorsement is attached.

Item 2. **Coverage Period:** see Section 3 of the Declarations to which this endorsement is attached.

Item 3. **Limits of Liability:**

Endorsement Aggregate Limit of Liability for Coverage Agreements I.A. (Information Security & Privacy Liability), I.B. (Privacy Breach Response Services), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability), ~~and I.E. (Crisis Management & Public Relations)~~, and I.F. (Cyber Extortion Loss):

1-10 attorneys

USD 100,000

11+ attorneys:

USD 250,000

But sublimited to:

A. Aggregate sublimit of liability applicable to Coverage Agreement I.B. (Privacy Breach Response Services)

USD 100,000

B. Aggregate sublimit of liability applicable to Coverage

USD 50,000

Agreement I.B.1 (legal and forensic)

C. Aggregate sublimit of liability applicable to Coverage Agreement I.C. (Regulatory Defense & Penalties): USD 50,000

D. Aggregate sublimit applicable to Coverage Agreement I.E. (Crisis Management & Public Relations): USD 10,000

E. Aggregate sublimit of liability for all **Cyber Extortion Loss** under Coverage Agreement I.F.: USD 10,000

~~D.~~ The above sublimit of liability is part of, and not in addition to, the overall **Endorsement Aggregate Limit of Liability** set forth therein.

Item 4. **Retentions:**

A. Coverage Agreements I.A. (Information Security & Privacy Liability), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations): USD 0

B. Coverage Agreement I.B. (Privacy Breach Response Services):

Each Incident, event or related incidents or events giving rise to an obligation to provide **Privacy Breach Response Services:**

1. Costs for services provided under Coverage Agreements I.B.1. (legal and forensic services) and I.B.2. (notification costs) combined: USD 0

2. Services provided under I.B.3. (Call Center Services) and I.B.4. (Credit Monitoring Program): Breaches involving an obligation to notify fewer than 100 individuals

C. Coverage Agreement I.F. (Cyber Extortion Loss):
Each **Extortion Threat** Retention: USD 2,000

Item 5. **Endorsement Retroactive Date:** see Section 7 of the Declarations to which this endorsement is attached.

In consideration for the premium charged for the **PLF Claims Made Excess Plan**, the following additional coverages are added to the **FIRM's PLF Claims Made Excess Plan**. The following provisions in the **PLF Claims Made Excess Plan** shall also apply to this Endorsement: SECTION II – WHO IS A COVERED PARTY, SECTION VIII – COVERAGE DETERMINATIONS, SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY, paragraphs 1. to 3. of the PLF Claims Made Plan only, SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES, SECTION XII – RELATION OF THE PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE, SECTION XIII – WAIVER AND ESTOPPEL and SECTION XV – ASSIGNMENT. Except as otherwise specifically set forth herein, no other provisions in the **PLF Claims Made Excess Plan** shall apply to this Endorsement.

I. COVERAGE AGREEMENTS

A. **Information Security & Privacy Liability**

To pay on behalf of a **Covered Party**:

Damages and Claims Expenses, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for:

1. (a) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**; or
(b) theft or loss of **Third Party Corporate Information**;
that is in the care, custody or control of **The Firm**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** or **Third Party Corporate Information** **The Firm** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act (“HIPAA”)), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
 - (a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;
 - (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
 - (c) the participation by **The Firm’s Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;
3. **The Firm’s** failure to timely disclose an incident described in Coverage Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to **The Firm’s** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
4. failure by a **Covered Party** to comply with that part of a **Privacy Policy** that specifically:
 - (a) prohibits or restricts **The Firm’s** disclosure, sharing or selling of a person’s **Personally Identifiable Non-Public Information**;
 - (b) requires **The Firm** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
 - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**, and a **Covered Party** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

B. Privacy Breach Response Services

To provide **Privacy Breach Response Services** to a **Covered Party** in excess of the **Retention** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period** and is discovered by a **Covered Party** and is reported to the PLF during the **Coverage Period**.

Privacy Breach Response Services means the following:

1. Costs incurred:
 - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require a **Covered Party** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
 - (b) for fees charged by an attorney to determine the applicability of and actions necessary by a **Covered Party** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;

provided amounts covered by (a) and (b) in this paragraph combined shall not exceed the amount set forth in Item 3.B. of the Schedule in the aggregate for the **Coverage Period**.

2. Costs incurred to provide notification to:
 - (a) individuals who are required to be notified by a **Covered Party** under the applicable **Breach Notice Law**; and
 - (b) in the PLF's discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.
3. The offering of **Call Center Services** to **Notified Individuals**.
4. The offering of the **Credit Monitoring Product** to **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. **The Firm** will be provided with access to educational and loss control information provided by or on behalf of the PLF at no charge.

Privacy Breach Response Services and the conditions applicable thereto are set forth more fully in Clause XIII. of this Endorsement, Conditions Applicable to Privacy Breach Response Services.

Privacy Breach Response Services shall not include any internal salary or overhead expenses of a **Covered Party**.

C. **Regulatory Defense and Penalties**

To pay on behalf of a **Covered Party**:

Claims Expenses and **Penalties** in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement, resulting from a violation of a **Privacy Law** and caused by an incident described in Coverage Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**.

D. **Website Media Content Liability**

To pay on behalf of a **Covered Party**:

Damages and **Claims Expenses**, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay resulting from any **Claim** first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for one or more of the following acts first committed on or after the **Retroactive Date** and before the end of the **Coverage Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

E. **Crisis Management and Public Relations**

To pay **Public Relations and Crisis Management Expenses** incurred by **The Firm** resulting from a **Public Relations Event**. **Public Relations Event** means:

1. the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Endorsement; or

2. an incident described in Coverage Agreement I.A.1. or I.A.2. which results in the provision of **Privacy Breach Response Services**, or which reasonably may result in a covered **Claim** under this Endorsement and which **The Firm** has notified the PLF as a circumstance under Clause IX.C. of this Endorsement.

Public Relations and Crisis Management Expenses shall mean the following costs, if agreed in advance by the PLF in its reasonable discretion, which are directly related to mitigating harm to **The Firm's** reputation or potential **Loss** covered by this Endorsement resulting from a covered **Claim** or incident:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the event;
3. costs to provide notifications to clients where such notifications are not required by law ("voluntary notifications"), including notices to non-affected clients of **The Firm**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act ("HITECH"));
5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the PLF.

Public Relations and Crisis Management Expenses must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the PLF and, with respect to clauses 1. and 2., within ninety (90) days following the first publication of such **Claim** or breach event.

F. Cyber Extortion

To indemnify the Covered Party for:

Cyber Extortion Loss, in excess of the Retention, incurred by The Firm as a direct result of an Extortion Threat first made against The Firm during the Coverage Period by a person, other than the FIRM's employees, directors, officers, principals, members, law partners, contractors, or any person in collusion with any of the foregoing. Coverage under this Coverage Agreement is subject to the applicable conditions and reporting requirements, including those set forth in Clause XIII, Obligations in The Event of an Extortion Threat.

II. DEFENSE AND SETTLEMENT OF CLAIMS

- A. The PLF shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Endorsement:
 1. any **Claim** against a **Covered Party** seeking **Damages** which are payable under the terms of this Endorsement, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
 2. under Coverage Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.

- B. With respect to any **Claim** against a **Covered Party** seeking **Damages** or **Penalties** which are payable under the terms of this Endorsement, the PLF will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.
- C. If a **Covered Party** shall refuse to consent to any settlement or compromise recommended by the PLF and acceptable to the claimant under this Endorsement and elects to contest the **Claim**, the PLF's liability for all **Damages, Penalties** and **Claims Expenses** shall not exceed:
1. the amount for which the **Claim** could have been settled, less the remaining **Retention**, plus the **Claims Expenses** incurred up to the time of such refusal; plus
 2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to a **Covered Party** plus fifty percent (50%) of any **Damages** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses** and **Damages** must be borne by **The Firm** at its own risk and would not be covered;

or the applicable Limit of Liability, whichever is less, and the PLF shall have the right to withdraw from the further defense thereof by tendering control of said defense to a **Covered Party**. The portion of any proposed settlement or compromise that requires a **Covered Party** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Coverage Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

III. TERRITORY

This Coverage applies only to **Claims** brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Coverage does not apply to **Claims** brought in any other jurisdiction, or to **Claims** brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

IV. EXCLUSIONS

The coverage under this Coverage does not apply to any **Claim** or **Loss**;

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. For, arising out of or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under the Coverage Agreement I.A.1., I.A.2., or I.A.3. by a current or former employee of **The Firm**; or to the providing of **Privacy Breach Response Services** involving current or former employees of **The Firm**;
- C. For, arising out of or resulting from any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the **Firm**, a subsidiary, or any principals, directors, officers, members or employees of the **Firm**.

- D. For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply:
1. only with respect to the coverage provided by Coverage Agreement I.A.1., to any obligation of **The Firm** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
 2. only with respect to Coverage Agreement I.D.4., for misappropriation of ideas under implied contract; or
 3. to the extent a **Covered Party** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any liability or obligation under a **Merchant Services Agreement**;
- F. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- G. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:
1. any **Claim** covered under Coverage Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
 2. the providing of **Privacy Breach Response Services** covered under Coverage Agreement I.B.,

that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** provided that no **Covered Party** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

- H. For, arising out of or resulting from:
1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** or other personal information by, on behalf of, or with the consent or cooperation of **The Firm**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of a **Covered Party**; or
 2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of a **Covered Party**;
- I. ~~For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the **Endorsement Retroactive Date**~~Arising out of or resulting from any act, error, omission, incident failure of **Computer Security**, **Extortion Threat**, **Security Breach** or event committed or occurring prior to the Coverage Period start date listed in Section 3 of the Declarations:

1. ~~if any **Covered Party** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**~~ any member of **The Firm** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, failure of **Computer Security**, **Extortion Threat**, or **Security Breach** might be expected to be the basis of a **Claim** or **loss**; or
 2. in respect of which any **Covered Party** has given notice of a circumstance, which might lead to a **Claim**, ~~or **Loss**~~, or an **Extortion Threat**, to the insurer **PLF or Beazley Group** of any other coverage in force prior to the **Endorsement Retroactive Date** inception date of this Coverage;
- J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Endorsement Retroactive Date**;
- K. For, arising out of resulting from any of the following:
1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
 2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
 3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
 4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to providing **Privacy Breach Response Services** covered under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;
- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of **The Firm's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or

legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by a **Covered Party**, or by others if the **Covered Party** colluded or participated in any such conduct or activity; provided this Endorsement shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Covered Party**, or written admission by the **Covered Party**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time **The Firm** shall reimburse the PLF for all **Claims Expenses** incurred defending the **Claim** and the PLF shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Endorsement would be excluded, suspended or lost because of this exclusion relating to acts or violations by a **Covered Party**, and with respect to which any other **Covered Party** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the PLF agrees that such Coverage as would otherwise be afforded under this Endorsement shall cover and be paid with respect to those **Covered Parties** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in above.

- N. For, arising out of or resulting from any actual or alleged:
1. infringement of patent or patent rights or misuse or abuse of patent;
 2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Covered Party** or employee of **The Firm**;
 3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate Information** (i) by, or on behalf of, **The Firm**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a **Covered Party**;
 4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director, **member**, principal, partner or subsidiary of **The Firm**; or
 5. under Coverage Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;
- O. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official

capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Coverage Agreement I.C. or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B. to the extent such services are legally required to comply with a **Breach Notice Law**;

P. ~~Reserved.~~ With respect to Coverage Agreement I.F., for, arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any **Security Breach, Extortion Threat, or intentional or knowing violation of the law, if committed by any of The Firm's directors, officers, principals, members, law partners, or any person in participation or collusion with any of The Firm's directors, officers, principals, members, or law partners;**

Q. For, arising out of or resulting from:

1. any **Claim** made by any business enterprise in which any **Covered Party** has greater than a fifteen percent (15%) ownership interest or made by **The Firm**; or
2. a **Covered Party's** activities as a trustee, partner, member, manager, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of **The Firm**;

R. For, arising out of or resulting from any of the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of **The Firm**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of a **Covered Party** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;

S. With respect to Coverage Agreements I.A., I.B. and I.C., any **Claim** or **Loss** for, arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:

1. broadcasts, by or on behalf of, or with the permission or direction of any **Covered Party**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
2. publications, by or on behalf of, or with the permission or direction of any **Covered Party**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
3. advertising by or on behalf of any **Covered Party**;

provided however this exclusion does not apply to the publication, distribution or display of **The Firm's Privacy Policy**;

T. With respect to Coverage Agreement I.D., any **Claim** or **Loss**:

1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by a **Covered Party** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;

3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;
 4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
 5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
 6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
- U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- V. For, arising out of or resulting from a Claim covered by the PLF Claims Made Excess Plan or any other professional liability Coverage available to any **Covered Party**, including any self insured retention or deductible portion thereof;
- W. For, arising out of or resulting from any theft, loss or disclosure of **Third Party Corporate Information** by a **Related Party**;
- X. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
 2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

the PLF will have no duty or obligation to defend any **Covered Party** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that a **Covered Party** or anyone acting under the direction or control of a **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

V. DEFINITIONS

As used in this Endorsement:

- A. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- B. **Breach Notice Law** means any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

Breach Notice Law also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; provided, however, that the **Credit Monitoring Product** provided by Coverage Agreement I.B.4. shall not apply to persons notified pursuant to any such foreign statute or regulation.

- C. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Coverage Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- D. **Claim** means:
 1. a written demand received by any **Covered Party** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;
 2. with respect to coverage provided under Coverage Agreement I.C. only, institution of a **Regulatory Proceeding** against any **Covered Party**; and
 3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Endorsement, irrespective of the number of claimants or

Covered Parties involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

E. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the PLF, or by a **Covered Party** with the PLF's prior written consent; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against a **Covered Party**; provided the PLF shall have no obligation to appeal or to obtain bonds.

Claims Expenses do not include any salary, overhead, or other charges by a **Covered Party** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments.

F. **Computer Security** means software, computer or network hardware devices, as well as **The Firm's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a **Denial of Service Attack** against **Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.

G. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to **The Firm**; or
2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to **The Firm** or for processing, maintaining, hosting or storing **The Firm's** electronic data, pursuant to written contract with **The Firm** for such services.

H. **Coverage Period** means the Coverage period as set forth in Item 2. of the Schedule.

I. **Reserved. Cyber Extortion Loss** means:

1. any **Extortion Payment** that has been made under duress by or on behalf of **The Firm** with the PLF or Beazley Group's prior written consent, but solely to prevent or terminate an **Extortion Threat** and in an amount that does not exceed the covered **Damages and Claims Expenses** that would have been incurred had the **Extortion Payment** not been paid;
2. an otherwise covered **Extortion Payment** that is lost in transit by actual destruction, disappearance or wrongful abstraction while being conveyed by any person authorized by or on behalf of **The Firm** to make such conveyance; and
3. fees and expenses paid by or on behalf of **The Firm** for security consultants retained with the PLF or Beazley Group's prior written approval, but solely to prevent or terminate an **Extortion Threat**.

- J. **Covered Media Activities** means the display of **Media Material** on **The Firm's** web site.
- K. **Covered Party** has the same meaning as set forth in Section II – WHO IS A COVERED PARTY in the PLF Claims Made Excess Plan.
- L. **Credit Monitoring Product** means a credit monitoring product that provides daily credit monitoring from the following credit bureaus: Experian, TransUnion and Equifax.

Notified Individuals who subscribe to the **Credit Monitoring Product** shall also receive:

1. access to their credit report from one of the three credit bureaus at the time of enrollment;
2. ID theft insurance for certain expenses resulting from identity theft;
3. notification of a critical change to their credit that may indicate fraud (such as an address change, new credit inquiry, new account opening, posting of negative credit information such as late payments, public record posting, as well as other factors); and
4. fraud resolution services if they become victims of identity theft as a result of the incident for which notification is provided pursuant to Coverage Agreement I.B.2.

If the Credit Monitoring Product becomes commercially unavailable, it shall be substituted with a similar commercial product that provides individual credit monitoring for potential identity theft. The **Credit Monitoring Product** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- M. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by **The Firm** in its ordinary course of business.

- N. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by a **Covered Party**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions charged by or owed to a **Covered Party** for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
4. punitive or exemplary damages;
5. discounts, coupons, prizes, awards or other incentives offered to a **Covered Party's** customers or clients;
6. liquidated damages to the extent that such damages exceed the amount for which a **Covered Party** would have been liable in the absence of such liquidated damages agreement;

7. fines, costs or other amounts a **Covered Party** is responsible to pay under a **Merchant Services Agreement**; or
 8. any amounts for which a **Covered Party** is not liable, or for which there is no legal recourse against a **Covered Party**.
- O. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- P. **Endorsement Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3. of the Schedule.
- Q. **Endorsement Retroactive Date** means the date specified in Section 7 of the Declarations Sheet attached to this Endorsement.
- R. **The Firm** means the entities as defined in Section I – Definitions of the applicable Claims Made Excess Plan and Declarations Sheet to which this Endorsement is attached.
- S. **Loss** means **Damages, Claims Expenses, Penalties, ~~Public Relations and Crisis Management Expenses~~ PCI Fines, Expenses and Costs, Cyber Extortion Loss and Privacy Breach Response Services**.
- T. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- U. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- V. **Merchant Services Agreement** means any agreement between a **Covered Party** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling a **Covered Party** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- W. **~~Reserved~~ Extortion Payment** means cash, marketable goods or services demanded to prevent or terminate an Extortion Threat.
- X. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Coverage Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- Y. **Optional Extension Period** means the period of time after the end of the **Coverage Period** for reporting **Claims** as provided in Clause VIII., Optional Extension Period, of this Endorsement.
- Z. **Penalties** means:
1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; and
 2. amounts which a **Covered Party** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment

or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a “Consumer Redress Fund”); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Coverage Agreements A.1., A.2. or A.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

AA. **Personally Identifiable Non-Public Information** means:

1. information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. the individual’s drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

BB. ~~**Reserved.**~~ **Extortion Threat** means a threat to breach **Computer Security** in order to:

1. alter, destroy, damage, delete or corrupt an **Data Asset**;
2. prevent access to **Computer Systems** or a **Data Asset**, including a denial of service attack or encrypting a **Data Asset** and withholding the decryption key for such **Data Asset**;
3. perpetrate a theft or misuse of a **Data Asset** on **Computer Systems** through external access;
4. introduce malicious code into **Computer Systems** or to third party computers and systems from **Computer Systems**; or
5. interrupt or suspend **Computer Systems**;

unless an **Extortion Payment** is received from or on behalf of **The Firm**.

Multiple related or continuing **Extortion Threats** shall be considered a single **Extortion Threat** for purposes of this Coverage and shall be deemed to have occurred at the time of the first such **Extortion Threat**.

- CC. **Privacy Law** means a federal, state or foreign statute or regulation requiring **The Firm** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.
- DD. **Privacy Policy** means **The Firm's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Non-Public Information**.
- EE. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- FF. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- GG. Reserved.
- HH. **Retention** means the applicable retention for each Coverage Agreement as specified in Item 4. of the Schedule.
- II. Reserved.
- JJ. **Security Breach** means:
1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Covered Party**;
 2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**; or
 3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,
- whether any of the foregoing is a specifically targeted attack or a generally distributed attack.
- A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.
- KK. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by a **Covered Party**; and (2) does not include computer systems of a third party on which a **Covered Party** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.
- LL. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not covered under this Endorsement which is not available to the general public and is provided to a **Covered Party** subject to a mutually executed written confidentiality

agreement or which **The Firm** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.

- MM. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- NN. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by **The Firm** and is without knowledge of, consent, or acquiescence of any **Covered Party**.

VI. LIMIT OF LIABILITY AND COVERAGE

- A. The **Endorsement Aggregate Limit of Liability** stated in Item 3. of the Schedule is the PLF's combined total limit of liability for all **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses and Claims Expenses** payable under this Endorsement. The **Endorsement Aggregate Limit of Liability** is in addition to the Limit of Coverage under the PLF Claims Made Excess Plan.

The sublimit of liability stated in Item 3.A. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B. Privacy Breach Response Services of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.B. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B.(1) of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.C. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.C. Regulatory Defense and Penalties of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.D. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.E. Crisis Management and Public Relations of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 1.E. of the Schedule is the aggregate limit of liability payable under this Coverage for all **Cyber Extortion Loss** covered under Coverage Agreement I.F. and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

Neither the inclusion of more than one **Covered Party** under this Endorsement, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Endorsement Aggregate Limit of Liability**.
- C. The PLF shall not be obligated to pay any **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses or Claims Expenses**, or to undertake or continue defense of any suit or proceeding, after the **Endorsement Aggregate Limit of Liability** has been exhausted by payment of **Damages, Penalties, Public Relations and Crisis Management Expenses or Claims Expenses**, or after deposit of the **Endorsement Aggregate Limit of Liability** in a

court of competent jurisdiction. Upon such payment, the PLF shall have the right to withdraw from the further defense of any **Claim** under this Endorsement by tendering control of said defense to a **Covered Party**.

VII. RETENTION

- A. The **Retention** amount set forth in Item 4.A. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by **The Firm of Damages, Claims Expenses, Public Relations and Crisis Management Expenses or Penalties**.
- B. The **Retention** amount set forth in Item 4.B. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide Privacy Breach Response Services. Services under Coverage Agreements I.B.3. and I.B.4. will only be provided for incidents requiring notification to 100 or more individuals..
- C. The **Retention** set forth in Item 4.C. of the Schedule applies separately to each Extortion Threat. The **Retention** shall be satisfied by monetary payments by **The Firm of covered Cyber Extortion Loss**.

VIII. OPTIONAL EXTENSION PERIOD

- A. In the event **The Firm** purchases Extended Reporting Coverage for its Excess Plan, as provided for in Section XIV of the Excess Plan, **The Firm** will also be provided a corresponding **Optional Extension Period** under this Endorsement. If such **Optional Extension Period** is provided, then the time period for **Claims** to be made and reported to the PLF and Beazley Group will be extended by the same Extended Reporting Coverage Period purchased in the Extended Reporting Coverage; provided that such **Claims** must arise out of acts, errors or omissions committed on or after the **Endorsement Retroactive Date** and before the end of the **Coverage Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the applicable Limit of Liability of the PLF for the **Coverage Period** and the exercise of the **Optional Extension Period** shall not in any way increase the **Endorsement Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Coverage Agreement I.B.
- C. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the PLF and Beazley Group.
- D. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event **The Firm** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the PLF will not be liable to return any premium paid for the **Optional Extension Period**.

IX. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against a **Covered Party**, the **Covered Party** shall forward as soon as practicable to both the PLF and Beazley Group, written notice of such **Claim** in the form of an email or express or certified mail together with every demand, notice, summons or other process received by a **Covered Party** or a **Covered Party's** representative. In no event shall such notice be later than the end of the **Coverage Period** or the end of the **Optional Extension Period**. **Notice to the PLF may be made at excess@osbplf.org or PLF Excess Program, PO Box 231600, Tigard, OR 97281. Notice to Beazley Group may be made at: bbr.claims@beazley.com or**

Beazley Group, 1270 Avenue of the Americas, 12th Floor, New York, NY 10020 or Tel: 866-567-8570.

- B. With respect to Coverage Agreement I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2., such incident or reasonably suspected incident must be reported as soon as practicable to the persons in paragraph A. above during the **Coverage Period** after discovery by a **Covered Party**.
- C. If during the **Coverage Period**, a **Covered Party** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to both the PLF through and Beazley Group in the form of a telecopy, email or express or certified mail as soon as practicable during the **Coverage Period**. Such a notice must include:
1. the specific details of the act, error, omission, or **Security Breach** that could reasonably be the basis for a **Claim**;
 2. the injury or damage which may result or has resulted from the circumstance; and
 3. the facts by which a **Covered Party** first became aware of the act, error, omission or **Security Breach**.

Any subsequent **Claim** made against a **Covered Party** arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the PLF.

An incident or reasonably suspected incident reported to both the PLF and Beazley Group during the **Coverage Period** and in conformance with Clause IX.B shall also constitute notice of a circumstance under this Clause IX.C.

~~D.~~ ~~D.~~ A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the PLF when written notice is first received by both the PLF or Beazley Group in the form of a telecopy, email or express or certified mail or email through persons named in paragraph A. above of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

E. With respect to the Coverage Agreement, in the event of an **Extortion Threat** to which this Coverage applies, the Firm shall notify the PLF or Beazley Group by contacting the persons specified in Item IX.A immediately upon receipt of any **Extortion Threat**, and shall thereafter also provide written notice by telecopy, email or express mail within five (5) days following the **Extortion Threat**.

X. MERGERS AND ACQUISITIONS

If during the **Coverage Period** The Firm consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Endorsement shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Endorsement for any other **Claim** or **Loss**.

XI. THE FIRM AS AGENT

The Firm shall be considered the agent of all **Covered Parties**, and shall act on behalf of all **Covered Parties** with respect to the giving of or receipt of all notices pertaining to this

Endorsement, the acceptance of any endorsements to this Endorsement, and **The Firm** shall be responsible for the payment of all premiums and **Retentions**.

XII. AUTHORIZATION

By acceptance of this Endorsement, the **Covered Parties** agree that **The Firm** will act on their behalf with respect to the giving and receiving of any notice provided for in this Endorsement, the payment of premiums and the receipt of any return premiums that may become due under this Endorsement, and the agreement to and acceptance of endorsements.

XIII. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES

The availability of any coverage under Coverage Agreement I.B. for Privacy Breach Response **Services** (called the “Services” in this Clause) is subject to the following conditions.

In the event of an incident (or reasonably suspected incident) covered by Coverage Agreement I.B of this Endorsement, the PLF (referred to as “we” or “us” in this Clause) will provide **The Firm** (referred to as “you” in this Clause) with assistance with the Services and with the investigation and notification process as soon as you notify us of an incident or reasonably suspected incident (an “Incident”).

- A. The Services provided under the Endorsement have been developed to expedite the investigation and notification process and help ensure that your response to a covered Incident will comply with legal requirements and will be performed economically and efficiently. It is therefore important that in the event of an Incident, you follow the program’s requirements stated below, as well as any further procedures described in the *Information Packet* provided with this Endorsement, and that you communicate with us so that we can assist you with handling the Incident and with the Services. You must also assist us and cooperate with us and any third parties involved in providing the Services. In addition to the requirements stated below, such assistance and cooperation shall include, without limitation, responding to requests and inquiries in a timely manner and entering into third party contracts required for provision of the Services.
- B. If the costs of a computer security expert are covered under Coverage Agreement I.B.1, you must select such expert, in consultation with us, from the program’s list of approved computer security experts included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The computer security expert will require access to information, files and systems and you must comply with the expert’s requests and cooperate with the expert’s investigation. Reports or findings of the expert will be made available to you, us and any attorney that is retained to provide advice to you with regard to the Incident.
- C. If the costs of an attorney are covered under Coverage Agreement I.B.1., such attorney shall be selected by you from the program’s list of approved legal counsel included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The attorney will represent you in determining the applicability of, and the actions necessary to comply with, **Breach Notice Laws** in connection with the Incident.
- D. If notification to individuals in connection with an Incident is covered under Coverage Agreement I.B.2., such notice will be accomplished through a mailing, email, or other method if allowed by statute and if it is more economical to do so (though we will not provide notice by publication unless you and we agree or it is specifically required by law), and will be performed by a service provider selected by us from the program’s list of approved breach notification service providers included in the *Information Packet*

provided with this Endorsement, which list may be updated by us from time to time. The selected breach notification service provider will work with you to provide the required notifications.

Our staff will assist you with the notification process, but it is important that you timely respond to requests, approve letter drafts, and provide address lists and other information as required to provide the Services. It will be your responsibility to pay any costs caused by your delay in providing information or approvals necessary to provide the Services, mistakes in information you provide, changes to the letter after approval, or any other failure to follow the notification procedure if it increases the cost of providing the Services in connection with an Incident.

- E. If **Call Center Services** are offered under Coverage Agreement I.B.3., such services shall be performed by a service provider selected by us who will work with you to provide the **Call Center Services** as described in Clause V.C. above.
- F. If a **Credit Monitoring Product** is offered under Coverage Agreement I.B.4, such product shall be provided by a service provider selected by us.

XIII. OBLIGATIONS IN THE EVENT OF AN EXTORTION THREAT

A. Covered Party's Duty of Confidentiality

The Firm shall use its best efforts at all times to ensure that knowledge regarding the existence of this Coverage for **Cyber Extortion Loss** afforded by this Coverage is kept confidential. The PLF may terminate coverage for **Cyber Extortion Loss** under this Coverage upon ten (10) days written notice to **The Firm** if the existence of Coverage for **Cyber Extortion Loss** provided by this Coverage becomes public knowledge or is revealed to a person making an **Extortion Threat** through no fault of the PLF.

B. The Firm's Obligation to Investigate Extortion Threat and Avoid or Limit Extortion Payment

Prior to the payment of any **Extortion Payment**, **The Firm** shall make every reasonable effort to determine that the **Extortion Threat** is not a hoax, or otherwise not credible. **The Firm** shall take all steps reasonable and practical to avoid or limit the payment of an **Extortion Threat**.

C. Conditions Precedent

As conditions precedent to this coverage for **Cyber Extortion Loss** under the terms of this Coverage:

1. **The Firm** must be able to demonstrate that the **Extortion Payment** was surrendered under duress; and
 2. **The Firm** shall allow the PLF, Beazley Group, or their representative to notify the police or other responsible law enforcement authorities or any **Extortion Threat**.
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**Oregon State Bar
Minimum Continuing Legal Education
Rules and Regulations**

(As amended effective ??)

Reviewed by MCLE Committee on 12/11/2015

Purpose

It is of primary importance to the members of the bar and to the public that attorneys continue their legal education after admission to the bar. Continuing legal education assists Oregon lawyers in maintaining and improving their competence and skills and in meeting their obligations to the profession. These Rules establish the minimum requirements for continuing legal education for members of the Oregon State Bar.

**Rule One
Terms and Definitions**

1.1 Active Member: An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

1.2 Accreditation: The formal process of accreditation of activities by the MCLE Administrator Program Manager.

1.4 1.3 BOG: The Board of Governors of the Oregon State Bar.

1.5 1.4 Accredited CLE Activity: An activity that provides legal or professional education to attorneys in accordance with MCLE Rule 5.

1.6 1.5 Executive Director: The executive director of the Oregon State Bar.

1.7 1.6 Hour or Credit Hour: Sixty minutes of accredited group CLE activity or other CLE activity.

1.8 1.7 MCLE Committee: The Minimum Continuing Legal Education Committee appointed by the BOG to assist in the administration of these Rules.

1.9 1.8 New Admittee: A person is a new admittee from the date of initial admission as an active member of the Oregon State Bar through the end of his or her first reporting period.

1.10 1.9 Regulations: Any regulation adopted by the BOG to implement these Rules.

1.11 1.10 Reporting Period: The period during which an active member must satisfy the MCLE requirement.

1.12 Retired Member: An active member who is over 65 years old and is fully retired from the practice of law.

1.13 1.11 Sponsor: An individual or organization providing a CLE activity.

1.14 1.12 Supreme Court: The Supreme Court of the State of Oregon.

**Regulations to MCLE Rule 1
Terms and Definitions**

1.100 Inactive or Retired Member. An inactive or retired member of the Oregon State Bar, as defined in Article 6 of the Bylaws.

1.101 Suspended Member. A member who has been suspended from the practice of law by the Supreme Court.

1.110 MCLE Filings.

(a) Anything to be filed under the MCLE Rules shall be delivered to the MCLE ~~Administrator~~ Program Manager, at 16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon, 97281-1935.

(b) Filing shall not be timely unless the document is actually received by the MCLE Administrator by the close of business on the day the filing is due.

(c) Timely filing of a completed compliance report as required by Rule 7.1 and 7.4(a)(2) is defined as the actual physical receipt of the signed report at the MCLE office, regardless of the date of posting or postmark, or the date of delivery to a delivery service of any kind. Reports may be delivered by facsimile or electronic transmission. If the due date for anything to be filed under the MCLE Rules is a Saturday or legal holiday, including Sunday, or a day that the Oregon State Bar office is closed, the due date shall be the next regular business day.

1.115 Service Method.

(a) MCLE Compliance Reports shall be sent to the member's email address on file with the bar, except that reports shall be sent by first-class mail (to the last designated business or residence address on file with the Oregon State Bar) to any member who is exempt from having an email address on file with the bar.

(b) Notices of Noncompliance shall be sent via regular mail and email to the member's last designated business or residence address on file with the Oregon State Bar and to the email address on file with the bar on the date of the notice. Email notices will not be sent to any member who is exempt from having an email address on file with the bar.

(c) Service by mail shall be complete on deposit in the mail.

1.120 Regularly Scheduled Meeting. A meeting schedule for each calendar year will be established for the BOG and the MCLE Committee, if one is appointed. All meetings identified on the schedule will be considered to be regularly scheduled meetings. Any other meeting will be for a special reason and/or request and will not be considered as a regularly scheduled meeting.

1.130 Reporting Period. Reporting periods shall begin on January 1 and end on December 31 of the reporting year.

~~**1.140 Fully Retired.** A member is fully retired from the practice of law if the member is over 65 years of age and does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB Bylaws 6.100 and 20.2.~~

**Rule Two
Administration of Minimum Continuing Legal Education**

2.1 Duties and Responsibilities of the Board of Governors. The Minimum Continuing Legal Education Rules shall be administered by the BOG. The BOG may modify and amend these Rules and adopt new rules subject to the approval of the Supreme Court. The BOG may adopt, modify and amend regulations to implement these Rules. The BOG may appoint an MCLE Committee to assist in the administration of these rules. There shall be an MCLE ~~Administrator~~ Program Manager who shall be an employee of the Oregon State Bar.

2.2 Duties of the MCLE Administrator—Program Manager. The MCLE Administrator Program Manager shall:

- (a) Oversee the day-to-day operation of the program as specified in these Rules.
- (b) Approve applications for accreditation and requests for exemption, and make compliance determinations.
- (c) Develop the preliminary annual budget for MCLE operations.
- (d) Prepare an annual report of MCLE activities.
- (e) Perform other duties identified by the BOG or as required to implement these Rules.

2.3 Expenses. The executive director shall allocate and shall pay the expenses of the program including, but not limited to staff salaries, out of the bar's general fund.

Rule Three Minimum Continuing Legal Education Requirement

3.1 Effective Date. These Rules, or any amendments thereto, shall take effect upon their approval by the Supreme Court of the State of Oregon.

3.2 Active Members.

(a) **Minimum Hours.** Except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

(b) **Ethics.** At least ~~six~~ five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), ~~including one hour on the subject of a lawyer's statutory duty to report child abuse or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

(c) Child Abuse or Elder Abuse Reporting. One hour must be on the subject of a lawyer's statutory duty to report child abuse or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

~~(e)~~ (d) **Access to Justice.** In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b).

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule 3.2(a) shall apply.

~~**3.4 Retired Members.** A retired member shall be exempt from compliance with these Rules, provided the member files a compliance report for any reporting period during which the exemption is claimed certifying that the member was or became retired during the reporting period. A retired member shall not resume the practice of law, either on a full or part-time basis, without prior written notice to the MCLE Administrator.~~

3.5 3.4 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(b) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

~~**3.6 3.5 Retired and Active Pro Bono.** Members who are in Retired or Active Pro Bono status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.~~

3.7 3.6 Reporting Period.

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(c) Reinstatements.

(1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.7(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.7(c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

~~(d) Retired Members.~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement

~~**3.200 Resumption of Law Practice By a Retired Member.** The resumption of the practice of law by a retired member occurs when the member undertakes to perform any activity that would constitute the practice of law including, without limitation the activities described in OSB Bylaws 6.100 and 20.2.~~

~~**3.250 3.100 Out-of-State Compliance.** An active member seeking credit pursuant to MCLE Rule 3.5(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules 3.2(a) and (b) with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.~~

~~**3.260 3.200 Reciprocity.** An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

3.300 Application of Credits.

(a) Legal ethics and access to justice credits in excess of the minimum required can be applied to the general or practical skills requirement.

(b) Practical skills credits can be applied to the general requirement.

(c) For members in a three-year reporting period, one child abuse or elder abuse reporting credit earned in a non-required reporting period may be applied to the ethics credit requirement. Additional child-abuse and elder abuse reporting credits will be applied to the general or practical skills requirement. For members in a shorter reporting period, child abuse and elder abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits earned in a non-required reporting period will be credited as general credits.

(d) Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

(b) A CLE course on any subject matter can contain as part of the curriculum a portion devoted to practical skills. The sponsor shall designate those portions of any program which it claims is eligible for practical skills credit.

(c) A credit hour cannot be applied to both the practical skills requirement and the ethics requirement.

(d) A new admittee applying for an exemption from the practical skills requirement, pursuant to Rule 3.3(b), shall submit in writing to the MCLE Administrator a request for exemption describing the nature and extent of the admittee's prior practice of law sufficient for the Administrator to determine whether the admittee has current skills equivalent to the practical skills requirements set forth in this regulation.

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Rule Four Accreditation Procedure

4.1 In General.

(a) In order to qualify as an accredited CLE activity, the activity must be given activity accreditation by the MCLE Administrator Program Manager.

(b) The MCLE Administrator Program Manager shall electronically publish a list of accredited programs.

(c) All sponsors shall permit the MCLE Administrator Program Manager or a member of the MCLE Committee to audit the sponsors' CLE activities without charge for purposes of monitoring compliance with MCLE requirements. Monitoring may include attending CLE activities, conducting surveys of participants and verifying attendance of registrants.

4.2 Group Activity Accreditation.

(a) CLE activities will be considered for accreditation on a case-by-case basis and must satisfy the accreditation standards listed in these Rules for the particular type of activity for which accreditation is being requested.

(b) A sponsor or individual active member may apply for accreditation of a group CLE activity by filing a written application for accreditation with the MCLE Administrator Program Manager. The application

shall be made on the form required by the MCLE Administrator Program Manager for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

(c) A written application for accreditation of a group CLE activity submitted by or on behalf of the sponsor of the CLE activity shall be accompanied by the program sponsor fee required by MCLE Regulation 4.300. An additional program sponsor fee is required for a repeat live presentation of a group CLE activity.

(d) A written application for accreditation of a group CLE activity must be filed either before or no later than 30 days after the completion of the activity. An application received more than 30 days after the completion of the activity is subject to a late processing fee as provided in Regulation 4.300.

(e) The MCLE Administrator Program Manager may revoke the accreditation of an activity at any time if it determines that the accreditation standards were not met for the activity. Notice of revocation shall be sent to the sponsor of the activity.

(f) Accreditation of a group CLE activity obtained by a sponsor or an active member shall apply for all active members participating in the activity.

4.4 Credit Hours. Credit hours shall be assigned in multiples of one-quarter of an hour. The BOG shall adopt regulations to assist sponsors in determining the appropriate number of credit hours to be assigned.

4.5 Sponsor Advertising.

(a) Only sponsors of accredited group CLE activities may include in their advertising the accredited status of the activity and the credit hours assigned.

(b) Specific language and other advertising requirements may be established in regulations adopted by the BOG.

Regulations to MCLE Rule 4 Accreditation Procedure

~~4.300~~ 4.200 Group Activity Accreditation.

(a) Review procedures shall be pursuant to MCLE Rule 8.1 and Regulation 8.100.

(b) The number of credit hours assigned to the activity shall be determined based upon the information provided by the applicant. The applicant shall be notified via email or regular mail of the number of credit hours assigned or if more information is needed in order to process the application.

~~4.350~~ 4.300 Sponsor Fees.

(a) A sponsor of a group CLE activity that is accredited for 4 or fewer credit hours shall pay a program sponsor fee of \$40.00. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(b) A sponsor of a group CLE activity that is accredited for more than 4 credit hours shall pay a program sponsor fee of \$75. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:

- (i) The presentations do not exceed a total of three credit hours for the approved series; and
- (ii) Any one presentation does not exceed one credit hour.

(d) A late processing fee of \$40 is due for accreditation applications that are received more than 30 days after the program date. This fee is in addition to the program sponsor fee and accreditation shall not be granted until the fee is received.

~~(e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.~~

4.400 Credit Hours.

(a) Credit hours shall be assigned to CLE activities in multiples of one-quarter of an hour or .25 credits and are rounded to the nearest one-quarter credit.

(b) Credit Exclusions. Only CLE activities that meet the accreditation standards stated in MCLE Rule 5 shall be included in computing total CLE credits. Credit exclusions include the following:

- (1) Registration
- (2) Non-substantive introductory remarks
- (3) Breaks ~~exceeding 15 minutes per three hours of instruction~~
- (4) Business meetings
- (5) Programs of less than 30 minutes in length

4.500 Sponsor Advertising.

(a) Advertisements by sponsors of accredited CLE activities shall not contain any false or misleading information.

(b) Information is false or misleading if it:

- (i) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (ii) Is intended or is reasonably likely to create an unjustified expectation as to the results to be achieved from participation in the CLE activity;
- (iii) Is intended or is reasonably likely to convey the impression that the sponsor or the CLE activity is endorsed by, or affiliated with, any court or other public body or office or organization when such is not the case.

(c) Advertisements may list the number of approved credit hours. If approval of accreditation is pending, the advertisement shall so state and may list the number of CLE credit hours for which application has been made.

(d) If a sponsor includes in its advertisement the number of credit hours that a member will receive for attending the program, the sponsor must have previously applied for and received MCLE accreditation for the number of hours being advertised.

Rule Five **Accreditation Standards for Category I Activities**

5.1 Group CLE Activities. Group CLE activities shall satisfy the following:

~~(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and~~

~~(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice; and~~

~~(c) (a) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and~~

~~(d) (b) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and~~

~~(e) (c) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials.~~

~~(f) (d) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.~~

5.4 5.2 Attending Classes.

(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.

(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

(1) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and

(2) The class is a graduate-level course offered by a university; and

(3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(e) 5.3 Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

(f) 5.4 New Lawyer Mentoring Program (NLMP)

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

5.3 5.5 Other Professionals. Notwithstanding the requirements of Rules 5.12(a) and (b), 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.

Accreditation Standards for Category II Activities

5.2 Other CLE Activities.

(a) 5.6 Teaching Activities.

~~(1) Teaching activities may be accredited at a ratio of two credit hours for each sixty minutes of actual instruction.~~

~~(2) (a) Teaching credit is allowed~~ may be claimed for teaching for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

~~(3) (b) Credit may be claimed for teaching~~ Teaching other courses may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

~~(i) (1) The MCLE Program Manager Administrator~~ determines that the content of the activity is in compliance with other MCLE ~~accreditation~~ content standards; and

~~(ii) (2) The course is a graduate-level course offered by a university; and~~

~~(iii) (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~

~~(4) (c) Credit shall~~ may not be claimed by given to an active member whose primary employment is as a full-time or part-time law teacher, but may be claimed by given to an active member who teaches on a part-time basis in addition to the member's primary employment.

~~(5) Teaching credit is not allowed for programs and activities for which the primary audience is nonlawyers unless the applicant establishes to the MCLE Administrator's satisfaction that the teaching activity contributed to the professional education of the presenter.~~

~~(6) (d) No credit may be claimed~~ is allowed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Program Manager Administrator.

5.7 (e) Legal Research and Writing.

(1) Credit for legal ~~Legal~~ research and writing activities, including the preparation of written materials for use in a teaching activity may be claimed ~~accredited~~ provided the activity satisfies the following criteria:

~~(i) (a)~~ (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and

~~(ii) (b)~~ (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and

~~(iii) (c)~~ (c) It contributes substantially to the legal education of the applicant and other attorneys; and

~~(iv) (d)~~ (d) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Program Manager Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. ~~One hour of credit will be granted for each sixty minutes of~~

~~research and writing, but no credit shall be granted for time spent on stylistic editing.~~

~~(b) 5.8 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon may be accredited, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period. Up to six (6) credit hours may be earned for writing and grading a question, and up to three (3) credit hours may be earned for grading a question.~~

~~(d) 5.9 Legal Ethics Service. Credit may be claimed for A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.~~

~~(e) Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.~~

~~(f) New Lawyer Mentoring Program (NLMP)~~

~~—— (1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.~~

~~—— (2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three year reporting period.~~

~~(g) 5.10 Jury instructions Committee Service. Credit may be claimed for A member serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee may earn two general credits for each 12 months of service.~~

~~(h) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.~~

~~**5.3 Other Professionals.** Notwithstanding the requirements of Rules 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

~~**5.4 Attending Classes.**~~

~~(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.~~

~~(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:~~

~~(1) — The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and~~

~~(2) — The class is a graduate level course offered by a university; and~~

~~(3) — The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~

Accreditation Standards for Category III Activities

5.6 5.11 Credit for Other Activities

(a) Personal Management Assistance. Credit may be claimed for activities that deal with personal self-improvement may be accredited, provided the MCLE Program Manager Administrator determines the self-improvement relates to professional competence as a lawyer.

(b) Other Volunteer Activities. Credit for volunteer activities for which accreditation is not available pursuant to MCLE Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

~~5.400~~ (c) Business Development and Marketing Courses. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.

Activity Content Standards

(a) 5.12 Group and Teaching CLE Activities

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice. ; and

5.5 5.13 Ethics and Access to Justice.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, rules of professional conduct or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(b) Child abuse or elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

~~(b)~~ (c) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(e), (d) an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

~~(c)~~ (d) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

~~**5.6 Personal Management Assistance.** Activities that deal with personal self-improvement may be accredited, provided the MCLE Administrator determines the self-improvement relates to professional competence as a lawyer.~~

Teaching Activity Content Standards

~~**5.3 5.14 Other Professionals.** Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b) 5.1(b) and (c) and 5.2, participation in or credit may be claimed for teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

Unaccredited Activities

~~**5.7 5.15 Unaccredited Activities.** The following activities shall not be accredited:~~

- ~~(a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and~~
- ~~(b) Activities designed primarily to sell services or equipment; and~~
- ~~(c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.~~
- ~~(d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.~~

Regulations to MCLE Rule 5 Accreditation Standards

5.050 Written Materials.

(a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(e), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.

(b) Factors to be considered by the MCLE Administrator Program Manager in determining whether a group CLE activity has substantial educational value without written materials include, but are not limited to: the qualifications and experience of the program sponsor; the credentials of the program faculty; information concerning program content provided by program attendees or monitors; whether the subject matter of the program is such that comprehension and retention by members is likely without written materials; and whether accreditation previously was given for the same or substantially similar program.

5.100 Category I Activities

~~(b)~~ (a) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ (b) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ (c) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

~~5.100 Other CLE~~ **5.200 Category II Activities.** The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

~~(a)~~ (a) Teaching credit may be claimed at a ratio of two one credit hour for each sixty minutes of actual instruction.

~~(b)~~ (b) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

~~(b)~~ Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

5.200 Legal Research and Writing Activities.

~~(a)~~ (c) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

~~(d)~~ One hour of credit may be claimed for each sixty minutes of research and writing, but no credit may be claimed for time spent on stylistic editing.

~~(b)~~ (e) Credit may be claimed for Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

5.250 (f) Jury Instructions Committee Service. Members may claim two general credits for each 12 months of service. To be eligible for credit under MCLE Rule ~~5.10~~ 5.2(g), a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.

(g) Service as a Bar Examiner. Three (3) credit hours may be claimed for writing a question and three (3) credit hours may be claimed for grading a question.

(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide ~~A program may be accredited as a personal management assistance program if it provides assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling or other addictions or compulsive behaviors, and other health and mental health related issues).~~ Credit may also be claimed for programs ~~A program may also be accredited as a personal management assistance program if it is designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).~~

(b) Other Volunteer Activities. Volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed at a ratio of one credit hour for each two hours of uncompensated volunteer activities provided that the MCLE Program Manager determines the primary purpose of such activity is the provision of legal services or legal expertise. Such activities include but are not limited to:

(i) Providing direct pro bono representation to low-income clients referred by certified pro bono programs;

(ii) Serving as a judge, evaluator, mentor or coach in any type of mock trial, moot court, congressional hearing or client legal-counseling competition, law-related class or law-related program at the high school level and above; and

(iii) Teaching a legal education activity offered primarily to nonlawyers high school age and older.

~~5.400 (c) Business Development and Marketing Courses. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue Examples include but are not limited to courses focusing on business development approaches, strategies and techniques available to attorneys, marketing to clients seeking legal services, and website development to promote one's practice. through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

5.500 5.400 Access to Justice. A program shall not be ineligible for accreditation as an access to justice activity solely because it is limited to a discussion of substantive law, provided the substantive law relates to access to justice issues involving race, gender, economic status, creed, color, religion, national origin, disability, age, or sexual orientation.

5.600 5.500 Independent Study. Members may earn credit through independent screening or viewing of audio-or video-tapes of programs originally presented to live group audiences, or through online programs designed for presentation to a wide audience. A lawyer who is licensed in a jurisdiction that allows credit for reading and successfully completing an examination about specific material may use such credits to meet the Oregon requirement. No credit will be allowed for independent reading of material selected by a member except as part of an organized and accredited group program.

5.700 5.600 Child and Elder Abuse Reporting. In order to be accredited as a child abuse reporting or elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney's

requirements to report child abuse or elder abuse and the exceptions to those requirements.

Rule Six Credit Limitations

6.1 In General.

(a) Category I Activities. Credits in this category are unlimited. Credit shall be allowed only for CLE activities that are accredited as provided in these Rules, and substantial participation by the active member is required. The MCLE Administrator Program Manager may allow partial credit for completion of designated portions of a CLE activity.

(b) Category II Activities. Credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. No accreditation application is required.

(c) Category III Activities. Credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. No accreditation application is required.

~~(b) Except as provided in Rule 6.1(c), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~(c) (d) An active member may carry forward 15 or fewer unused credit hours from the reporting period during which the credit hours were earned to the next reporting period.~~

~~(b) (e) Except as provided in Rule 6.1(c)(d), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~**6.2 Teaching and Legal Research and Writing Limitation.** No more than 15 credit hours shall be allowed for each legal research activity for which credit is sought under MCLE Rule 5.2(c) and no more than 20 hours of combined teaching and legal research and writing credit may be claimed in one three year reporting period. Not more than 10 hours may be claimed in any shorter reporting period.~~

~~**6.3 Personal Management Assistance Limitation.** No more than 6 credit hours may be claimed in one three year reporting period and not more than 3 hours may be claimed in a shorter reporting period for personal management assistance activities.~~

Regulations to MCLE Rule 6 Credit Limitations

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse and elder abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse or elder abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

6.200 Credits Earned in Excess of Credit Limitations. Any credits earned in excess of the credit limitations set forth in MCLE Rule Six ~~6.2 and 6.3~~ may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

Rule Seven Compliance

7.1 Reports. Every active member shall file a completed compliance report certifying completion of the member's MCLE requirement, on a form provided by the MCLE ~~Administrator~~ Program Manager, on or before 5:00 p.m. on January 31 of the year immediately following the active member's reporting period.

7.2 Recordkeeping.

(a) Every active member shall maintain records of participation in CLE activities for use in completing a compliance report and shall retain these records for a period of twelve months after the end of the member's reporting period.

(b) The MCLE ~~Administrator~~ Program Manager may maintain records of active members' participation in CLE activities as necessary to verify compliance with the MCLE requirement.

7.3 Audits.

(a) The MCLE ~~Administrator~~ Program Manager may audit compliance reports selected because of facial defects or by random selection or other appropriate method.

(b) For the purpose of conducting audits, the MCLE ~~Administrator~~ Program Manager may request and review records of participation in CLE activities reported by active members.

(c) Failure to substantiate participation in CLE activities in accordance with applicable rules and regulations after request by the MCLE ~~Administrator~~ Program Manager shall result in disallowance of credits for the reported activity, and in certain situations, assessment of the late filing fee specified in 7.5(f).

(d) The MCLE ~~Administrator~~ Program Manager shall refer active members to the Oregon State Bar Disciplinary Counsel for further action where questions of dishonesty in reporting occur.

7.4 Noncompliance.

(a) Grounds. The following are considered grounds for a finding of non-compliance with these Rules:

(1) Failure to complete the MCLE requirement for the applicable reporting period.

(2) Failure to file a completed compliance report on time.

(3) Failure to provide sufficient records of participation in CLE activities to substantiate credits reported, after request by the MCLE ~~Administrator~~ Program Manager.

(b) Notice. In the event of a finding of noncompliance, the MCLE ~~Administrator~~ Program Manager shall send a written notice of noncompliance to the affected active member. The notice shall be sent via regular mail and email 30 days after the filing deadline and shall state the nature of the noncompliance and shall summarize the applicable rules regarding noncompliance and its consequences.

7.5 Cure.

(a) Noncompliance for failure to file a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following no more than 60 days after the notice of noncompliance was sent:

(1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable

reporting period;

(2) Filing the completed compliance report; and

(3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE ~~Administrator~~ Program Manager with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE ~~Administrator~~ Program Manager with sufficient records, together with the late fee specified in MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE ~~Administrator~~ Program Manager shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period. Curing noncompliance does not prevent subsequent audit and action specified in Rule 7.3.

7.6 Suspension. If the noncompliance is not cured within the deadline specified in Rule 7.5, the MCLE ~~Administrator~~ Program Manager shall recommend to the Supreme Court that the affected active member be suspended from membership in the bar.

Regulations to MCLE Rule 7 Compliance

7.100. Member Records of Participation.

(a) In furtherance of its audit responsibilities, the MCLE ~~Administrator~~ Program Manager may review an active member's records of participation in Category I CLE activities. Records which may satisfy such a request include, but are not limited to, certificates of attendance or transcripts issued by sponsors, MCLE recordkeeping forms, canceled checks or other proof of payment for registration fees or audio or video tapes, course materials, notes or annotations to course materials, or daily calendars for the dates of CLE activities. For individually screened presentations, contemporaneous records of screening dates and times shall be required.

(b) Members claiming credit for Category II activities should keep course descriptions, course schedules or other documentation verifying the number of minutes of actual instruction, along with a sample of the written materials prepared, if applicable. Members claiming Legal Research and Writing credit should keep a log sheet indicating the dates and number of hours engaged in legal research and writing in addition to a copy of the written product.

(c) Members claiming credit for Category III activities should keep log sheets indicating the dates and number of hours engaged in pro-bono representation and other volunteer activities, along with course descriptions and course schedules, if applicable. Members claiming credit for direct pro-bono representation to low-income clients should also keep documentation establishing the referral by a certified pro bono provider.

7.150 Sponsor Records of Participation. Within 30 days after completion of an accredited CLE activity, the sponsor shall submit an attendance record reflecting the name and Oregon bar number of each Oregon bar member attendee. The record shall be in a compatible electronic format or as otherwise directed by the MCLE ~~Administrator~~ Program Manager.

7.200 Late Fees. Members who complete any portion of the minimum credit requirement after the end of the reporting period or who fail to file a completed compliance report by the filing deadline set forth in Rule 7.1 must pay a \$200 late fee.

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

~~(b) The late fee for not completing the MCLE requirement during the applicable reporting period is \$200 if the requirement is completed after the end of the reporting period but before the end of the 60 day cure period; if additional time for meeting the requirement is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.~~

Rule Eight Review and Enforcement

8.1 Review.

(a) ~~Decisions of the MCLE Administrator~~ Program Manager. A decision, other than a suspension recommended pursuant to Rule 7.6, affecting any active member or sponsor is final unless a request for review is filed with the ~~MCLE Administrator~~ Program Manager within 21 days after notice of the decision is mailed. The request for review may be by letter and requires no special form, but it shall state the decision to be reviewed and give the reasons for review. The matter shall be reviewed by the BOG or, if one has been appointed, the MCLE Committee, at its next regular meeting. An active member or sponsor shall have the right, upon request, to be heard, and any such hearing request shall be made in the initial letter. The hearing shall be informal. On review, the BOG or the MCLE Committee shall have authority to take whatever action consistent with these rules is deemed proper. The ~~MCLE Administrator~~ Program Manager shall notify the member or sponsor in writing of the decision on review and the reasons therefor.

(b) ~~Decisions of the MCLE Committee.~~ If a decision of the ~~MCLE Administrator~~ Program Manager is initially reviewed by the MCLE Committee, the decision of the MCLE Committee may be reviewed by the BOG on written request of the affected active member or sponsor made within 21 days of the issuance of the MCLE Committee's decision. The decision of the BOG shall be final.

(c) ~~Suspension Recommendation of the MCLE Administrator~~ Program Manager. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

(1) A copy of the ~~MCLE Administrator's~~ Program Manager's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by regular mail and email to the member.

(2) If the recommendation of the ~~MCLE Administrator~~ Program Manager is approved, the court shall enter its order and an effective date for the member's suspension shall be stated therein.

8.2 Reinstatement. An active member suspended for noncompliance with the MCLE requirement shall be reinstated only upon completion of the MCLE requirement, submission of a completed compliance report to the bar, payment of the late filing and reinstatement fees, and compliance with the applicable provisions of the Rules of Procedure.

Regulations to MCLE Rule 8 Review and Enforcement

8.100 Review Procedure.

(a) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the date, time and place of the BOG or MCLE Committee meeting at which the request for review will be considered. Such notice must be sent no later than 14 days prior to such meeting. If the request for review is received less than 14 days before the next regularly scheduled meeting, the request will be considered at the following regularly scheduled meeting of the BOG or MCLE Committee, unless the member or sponsor waives the 14 day notice.

(b) A hearing before the MCLE Committee may be recorded at the request of the active member or sponsor or the MCLE Committee. In such event, the party requesting that the matter be recorded shall bear the expense of such recording. The other party shall be entitled to a copy of the record of the proceedings at their own expense.

(c) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the decision and the reasons therefor within 28 days of the date of the review. A decision of the MCLE Committee shall be subject to BOG review as provided in Rule 8.1.

Rule Nine Waivers and Exemptions

Upon written request of a member or sponsor, the MCLE ~~Administrator~~ Program Manager may waive in full or part, grant exemption from or permit substitute compliance with any requirement of these Rules upon a finding that hardship or other special circumstances makes compliance impossible or inordinately difficult, or upon a finding that the requested waiver, exemption or substitute compliance is not inconsistent with the purposes of these Rules. The request shall state the reason for the waiver or exemption and shall describe a continuing legal education plan tailored to the particular circumstances of the requestor.

Regulations to MCLE Rule 9 Waivers and Exemptions

9.100 Waivers and Exemptions . The MCLE ~~Administrator~~ Program Manager will consider requests for waivers and exemptions from the MCLE Rules and Regulations on a case by case basis.

Rule Ten Amendment

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or an active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hirschbiel, Executive Director
Re: CSF Claim 2015-02 BERTONI (Miranda-Lopez) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Claimant seeks reimbursement of unearned fees paid to Gary Bertoni for post-conviction relief, alleging that Bertoni did not to earn the fee and neglected to recognize that the statute of limitations for seeking PCR had already run.

Claimant was convicted in Washington County in 2004. He was represented by a public defender who Claimant believed did little or no investigation of the case. After his release, Claimant began looking for an attorney to challenge the conviction and have it expunged, but was unable to afford the retainer deposit required by the attorneys he contacted.

In late January 2014, Claimant eventually hired Bertoni to pursue post-conviction relief, and deposited a \$1,500 retainer towards Bertoni's fees. Claimant says Bertoni expressed optimism about the case and they communicated regularly for a few months. Claimant says he then learned from others that there was a two-year statute of limitations on post-conviction relief, so he decided to fire Bertoni. On May 30, 2014, Claimant met with Bertoni, who gave Claimant a check for \$125 while also offering to continue working on the case. Claimant took the refund check, but agreed to Bertoni continuing to work on his case. In mid-June, Claimant again sent a termination letter to Bertoni and refused Bertoni's subsequent request to continue the representation.

In response to the investigator's inquiry, Bertoni claimed to have fully earned the fees he received. Bertoni says he informed Claimant at the outset that the two-year statute of limitations made it extremely unlikely that anything could be done; thereafter, at Claimant's insistence, Bertoni reviewed the court files and transcripts, performed some legal research, spoke to the DA, and discussed the matter with Claimant.

While the Committee questioned the quality and value of Bertoni's services, it found no basis to conclude that Bertoni was dishonest or that he didn't provide some of the services he claimed.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-12 CAROLAN (Avery) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In March 2009, James Avery pleaded guilty in Maryland to misdemeanor assault of a now-adult step-daughter who alleged that James had sexually abused her when she was a child. The plea was on the advice of James's Maryland defense counsel, who believed the plea would insulate James from being charge in Oregon (where he and the victim had previously resided). Maryland sentenced Avery to 10 years (14 months to be actually served) and required him to register as a sex offender.

In August 2010, James was indicted in Josephine County on felony sex abuse charges involving the same victim. His public defender in Oregon advised James to plead guilty to the Oregon charges because his prior guilty plea in Maryland could be used against him. James took his lawyer's advice and was sentenced to 144 months.

While in prison in Oregon, James reconnected with his former wife, Catherine.¹ In October 2011, Catherine arranged for attorney Kevin Carolan to evaluate whether James had a basis for post-conviction relief, as Catherine and James were concerned that neither of his criminal defense attorneys had given him good advice. According to Catherine, she had an oral agreement with Carolan about the services to be provided for James, and she paid an initial retainer of \$2,000 against what she understood to be an hourly rate of \$165.

James subsequently signed a written agreement on November 11, 2011, which acknowledged receipt of the initial retainer and provided that he would be billed for Carolan's time at the rate of \$200/hour, and for his assistant's time at \$70/hour. The agreement also contained the following: "I understand Mr. Carolan may assign work on my case to an associate within or outside of his firm."

Almost immediately after being retained, Carolan engaged a contract lawyer to research some issues relating to James' convictions; Carolan agreed to pay the contract lawyer \$50/hour. He did not tell James or Catherine that he was using a contract lawyer. His billing statement did

¹ Catherine is not the mother of Avery's step-daughter victim. She and James had apparently been estranged for several years prior to the incidents at issue here.

not indicate a contract lawyer had been hired; rather, the contracted work was billed as Carolan's own and at his hourly rate. Upon receiving the first bill, Catherine contacted Carolan to clarify the billing rate. Carolan agreed to the lower rate of \$165 and adjusted the bill. By December 2011, the initial retainer had been exhausted and he requested another \$2000, which Catherine paid in several installments.

In September 2012, again without informing the client, Carolan replaced the first contract lawyer with a second one, who he paid \$75-100/hour. Again, Carolan's billing statement did not indicate that a contract lawyer did the work shown, which was billed at Carolan's hourly rate.

In early October 2012, James terminated Carolan's representation after a telephone conversation with the new contract lawyer led James to believe that Carolan had been pursuing a flawed strategy. Upon the termination, Carolan refunded an unearned balance of \$614 and delivered a research memo to Catherine. When asked about the records from the underlying cases, Carolan said he had never obtained them.²

James and Catherine complained to the bar, alleging that Carolan had been dishonest and charged an excessive fee. They claimed he never met with either of them and had only a couple of phone calls with James. After a year of "investigating," Carolan lacked a clear understanding of the facts. Carolan responded that he likely mis-remembering a conversation with James, but that it was irrelevant to the issue of whether James received an adequate defense in either state; he also described in some detail his varying theories of what relief might be available to James. In the spring of 2014, the SPRB authorized formal prosecution of Carolan for lack of competence and improper division of a fee between lawyers not in the same firm, in connection with his representation of James.

James requested an award of \$3,386 from the Client Security Fund (representing the \$4,000 paid to Carolan, less the \$614 refund). The committee investigator recommended an award of \$1,438 based on her calculation of the work done by the contract lawyers at their respective rates. After discussion, the CSF Committee rejected that recommendation. Essentially, the denial was based on the Committee's conclusion that it is not dishonest for a lawyer to use contract lawyers to perform services, particularly where it is expressly contemplated in the fee agreement. As for charging his own rates for the contract lawyers' time, the Committee members believed that "upcharging" for a contract lawyer is common practice, as it captures the lawyer's time in assigning and reviewing the work and recognizes that the lawyer is ultimately responsible. The Committee also analogized the practice to the way that firms bill for the services of associate attorneys. The Committee acknowledges that Carolan's services may have been of poor quality, but found no basis to conclude he had been dishonest or had failed to provide services in exchange for the fees he received.

² The CSF Application indicates that the parties participated in fee mediation, during which Carolan offered another \$200 refund that the client rejected.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-37 CHIPMAN (Noel) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF's denial of his claim for reimbursement.

Discussion

Claimant Sainfort Noel seeks reimbursement of \$385 (an initial consultation fee of \$35 plus a flat fee of \$250) paid to Kerry Chipman, claiming that Chipman didn't do what he was asked or agreed to do and that his services were therefore of no value.

According to his application for reimbursement, Noel hired Chipman on March 26, 2015 "to get a deny [sic] letter from [employment] administration [sic] judge and account showing a 0 balance." Noel alleges that after two weeks with no word, he called Chipman who said he wasn't interested in the case and wouldn't pursue it further.

To get a fuller understanding of the facts, the CSF Committee investigator reviewed Noel's CAO complaint, which included documents from his participation in fee arbitration over the same issue. Based on those documents, the following facts were developed.

Noel hired Chipman to obtain documents from the Oregon Employment Department that he believed were being wrongfully withheld. In November 2014, Noel's application for unemployment benefits had been allowed, but he received no money. He had received an overpayment on a prior claim, but had repaid it. Based on his review of the documents and Noel's explanations, Chipman suspected that Noel may have been wrong, that his new claim had been denied rather than approved, and that he should have received an administrative denial.

Chipman agreed to correspond with the employment department to clarify the situation and obtain copies of what he expected would be a denial letter and an accounting of Noel's reimbursement of the earlier overpayment. Chipman called Heinechen, the employment department person in charge of Noel's case, that very day (March 26), but he was out until March 30. Chipman immediately informed Noel that he wouldn't have any information for him for a few days.

On March 30, Chipman spoke to Heinechen, who confirmed that Noel's fall 2014 application for benefits had been approved (not denied as Chipman expected). However, Heinechen also explained that in Noel's previous claim he had been assessed three penalty weeks in addition to having to reimburse an overpayment of \$464. Those decisions were the result of the department's conclusion that Noel had made misrepresentations in his earlier claim for benefits. Noel had made two payments of \$50 each, reducing the overpayment obligation to \$364.

When he received the hearings decisions and accounting from Heinechen, Chipman explained to Noel that, although his claim had been approved, no benefits were paid during the three penalty weeks. For the following two weeks, the department applied the benefits to the unpaid balance of the overpayment (the entire \$314 benefit one week and \$50 the second).

Noel refused to accept Chipman's explanation of the situation. He complained to CAO and also requested fee arbitration. When the fee arbitrator found for Chipman, Noel also complained to CAO about the arbitrator.

The CSF Committee found no dishonesty here, merely a misunderstanding. Noel has focused on Chipman's initial suspicion that the fall 2014 claim for benefit had been denied and that it is illegal for the department to withhold benefits absent a denial letter. Noel refuses to accept that Chipman provided reasonable services, albeit somewhat different than they both anticipated. As Chipman noted in his response to CAO:

"If [Noel] had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case."

Despite the fact that Chipman was able to clarify Noel's benefit situation for him, Noel argues that he is entitled to a full refund because Chipman didn't do what he agreed to do, i.e., obtain a copy of a denial letter and an accounting showing that Noel's overpayment obligation had been satisfied. However, there was no denial letter, so Chipman could never have obtained one. Chipman's agreement to do so was based on his initial misunderstanding of Noel's situation and his preliminary conclusion (based on what Noel told him), that benefits had been denied without the proper notice.

Accompanying documents: Noel Application for Reimbursement
Investigator's Report
Chipman Response to CAO Inquiry
Noel Request for Review

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-08 GERBER (Chappue) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Joseph Chappue's conviction on several criminal charges was final in April 2013. He hired Susan Gerber in October 2013 to pursue post-conviction relief. Over time, Chappue's fiancée paid Gerber a total of \$12,800 on his behalf.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.¹

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 per hour for her services to the clients whose matters were transferred.

¹ Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

Court records and documents obtained from Ms. Vernon show that Gerber performed significant services on Chappue's behalf. Gerber's records show that she spent nearly 50 hours on the case. In November 2013, she filed a notice of representation and a motion to allow the filing of a formal petition; thereafter she met with claimant, spoke numerous times with his fiancée, and gathered and reviewed trial transcripts. In July 2014, she drafted and filed a petition for post-conviction relief, an exhibit list and a motion for Chappue to proceed *in forma pauperis*. She also prepared and filed a response to the state's motion to dismiss. Chappue recalls a hearing at which the judge commented that the petition filed by Gerber was "poorly done" and "needed changes."

In October 2014, Gerber informed Chappue that she was going to transfer to involuntary inactive status for an undetermined period, but indicated she could assist Vernon with Chappue's case. In November 2014 Chappue spoke to Gerber and demanded a refund of his fees. He says she admitted having failed in her duties, but that she had done a significant amount of work on the case. Vernon represented Chappue at his post-conviction hearing in October 2015, at which his petition was denied.

The CSF Committee denied this claim on the ground that it does not meet the requirements for a claim for unearned fees.² There was no evidence that Gerber didn't intend to perform the services for which she was hired, and that she performed more than de minimis services. Moreover, CSF Rule 2.2.4 provides that a fee is eligible for reimbursement if the client receives equivalent legal services from another lawyer without cost to the client:

2.2.4 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.

As indicated above, Chappue's post-conviction case was completed by Vernon at no additional cost to him. While the Committee acknowledged that Chappue may have legitimate concerns about the quality and value of Gerber's services, the claim is not eligible for reimbursement from the CSF.

² CSF Rule 2.2 provides: 2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-34 GRECO (Patillo) Request for BOG Review

Action Requested

Consider the claimant's request for review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Claimant Daniel Patillo hired attorney Guy Greco in late July 2011 for defense against criminal charges and deposited a \$5,000 retainer. On October 19, Greco contacted Patillo about the status of his case and reminded him that an additional \$10,000 retainer would be required for Greco to handle the trial. Patillo declined to pay the additional retainer and Greco obtained court approval to withdraw from the case on November 15, 2011. Shortly thereafter, Greco returned \$1,794.55 to Patillo as the unused portion of the retainer.

Patillo's claim is rambling and nearly incomprehensible, but it appears he believes that Greco received (and misappropriated) an additional \$5,000 of his money. In support of this, Claimant has provided a *Statement of Lawyers Trust Account for Daniel Patillo* from a Michigan attorney who represented Patillo in a workplace injury claim. The statement shows the following debit:

"11-25-11 Overnight retainer Attorney Guy Greco (cashier's check).....\$5,000"

The Michigan attorney has no personal recollection of the transaction, but stands by his accounting that he overnighted a \$5,000 check to Greco at Patillo's request. Greco denies ever having received the check, and says he would have returned it he had, as it would have been received after he withdrew from Patillo's criminal case. Because it was a cashier's check, it is difficult to trace. Greco provided copies of his bank statements from November and December 2011, neither of which reflect a \$5,000 deposit.

Patillo filed a small claims action against Greco in Lincoln County in August 2015 seeking return of the \$5,000 "unearned retainer;" Greco demanded a jury trial and the case has been transferred to circuit court but there has been no activity since the transfer. Patillo has also sued his Michigan attorney in Lincoln County, alleging he did not authorize the distribution to Greco.

Patillo suffers from significant cognitive and emotional difficulties as a result of his 1988 workplace injury and the Committee was unsure of his credibility. The Committee also found it unlikely that Patillo would have authorized a \$5,000 transfer when the additional retainer

requested by Greco was \$10,000; additionally, the supposed transfer came after Greco had withdrawn from the case, so Patillo had no reason to be sending him additional funds. Ultimately the Committee concluded there was insufficient evidence of dishonesty by Greco to support the claim.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-22 JORDAN (Hernandez) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of her claim for reimbursement.

Discussion

Hernandez retained Keith Jordan in March 2007 to represent her in an immigration removal proceeding arising out of criminal convictions for which she was incarcerated. Through her friend and employer (Kundelius), Hernandez paid \$2,000 towards the \$12,000 fixed fee requested by Jordan. Jordan did not tell Hernandez that in December 2006 he had entered into a stipulation with the California State Bar for a two-year disciplinary suspension that was awaiting approval from the California Supreme Court.¹

On April 12, Jordan filed a motion to allow him to appear by telephone at a hearing set for April 16; the motion also sought termination of the removal proceeding, and asked that Hernandez be released on bond. Jordan did not appear on April 16 and the hearing was reset to April 23. Jordan again failed to appear and the hearing was reset to April 26. Jordan appeared and the court denied his motions to terminate the proceeding and release Hernandez.

On May 9, Jordan missed another hearing that was reset to August 13. On May 15, Kundelius deposited another \$5,000 toward Jordan's fee. On May 29, the California Supreme Court ordered Jordan's suspension, effective June 28, 2007.² The Executive Office for Immigration Review (EOIR) and the US Department of Homeland Security initiated disciplinary sanction against Jordan, but Jordan did not convey that information to Hernandez.

On July 17, Kundelius paid Jordan another \$500. On July 20, EOIR suspended Jordan from practicing in immigration matters. On August 10, Jordan told Hernandez about his suspension and did nothing more on her case. Hernandez appeared by herself at the August 13 removal hearing and prevailed.

¹ In subsequent disciplinary proceedings in Oregon, Jordan claimed he didn't realize that a suspension of his California license would affect his ability represent clients in immigration matter because he expected to remain an active member of the Oregon State Bar.

² The California suspension was for two years, with all but nine months stayed, and a three-year probation. That resulted in Jordan's reciprocal nine-month suspension in Oregon, beginning January 1, 2008.

In September 2009 (two years after the completion of her immigration case), Hernandez filed a complaint about Jordan with the OSB. In July 2012, Jordan stipulated to an 18-month suspension arising in part from his representation of Hernandez, acknowledging that he had charged her an excessive fee.

In May 2012, Kundelius submitted a claim for reimbursement from the CSF for the \$7,500 he had paid to Jordan on Hernandez' behalf. On June 4, Sylvia Stevens notified Kundelius in writing that under CSF rules, only the client is eligible for reimbursement from the CSF, and providing a new application for Hernandez to submit.

Nothing further was heard from Hernandez until August 2015, when she submitted her application for reimbursement. In response to the CSF investigator's inquiry as to why she had waited so long to submit a claim to the CSF, Hernandez said she thought a payment from the CSF would be automatic in light of the "favorable disciplinary proceeding" against Jordan. The CSF Committee didn't disagree that Jordan was dishonest in failing to refund the unearned portion of the fee (which the CSF calculated at \$5,500), but found the claim to be untimely.

CSF Rule 2.8 provides that a claim must be filed:

"...within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

Hernandez filed her claim three years after Jordan's suspension and more than 8 years after Jordan's representation of her ended. The Committee believed she should have known of her loss in August 2007 when Jordan refused to refund any of the fees he had been paid. The Committee also noted that Hernandez has made no effort to collect from Jordan, other than one telephone call in which he agreed he owed her the \$500 that was paid three days before his EOIR suspension.

In her request for BOG review, Hernandez argues that her claim should be deemed filed when Kundelius submitted an application in May 2012, because he had her power of attorney.³ Unfortunately, Kundelius' application doesn't indicate he is acting under a power of attorney, nor did he so indicate in response to Ms. Stevens' letter returning his application. Hernandez offers no explanation for the three year delay between Kundelius' application and hers.

³ CSF Rule 2.1: A loss of money or other property of a lawyer's client is eligible for reimbursement if...the claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hirschbiel, Executive Director
Re: CSF Awards Recommended for Payment

Action Requested

Consider the following claim for which the Client Security Fund Committee recommends awards:

GERBER (Graue)	\$12,500.00
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Discussion

SUSAN GERBER COMMON FACTS

Beginning sometime in 2010, Susan Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, then in a brief partnership with Vicki Vernon, and by 2013 on her own. She represented clients in post-conviction relief cases and criminal appeals.

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or

law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF. Three of Gerber's clients declined to be represented by Vernon, but she continues to represent the remainder.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.¹

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000

¹ Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: January 29, 2016
From: Judith Baker, Director Legal Services Program and LSP Committee
Re: Disbursement of General Fund Revenue to Legal Aid Providers

Action Recommended

Approve the following recommendation from the Legal Services Program Committee disbursing the general fund revenue held by the Oregon State Bar to the legal aid providers.

Background

The four legal aid programs, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), Lane County Legal Aid and Advocacy Center (LCLAC) and Center for Nonprofit Legal Services (CNPLS), ask the OSB Legal Services Committee and the Board of Governors to distribute the general fund revenue based on poverty population. The American Community Survey (ACS) data provides the most reliable population estimates. Legal aid uses this demographic data in strategic planning. According to the ACS data, 11.34% of the individuals living in Oregon who are financially eligible for legal aid, because they have incomes below 125% of the national poverty guidelines, live in Lane County. Therefore, 11.34% of the \$600,000 should be sent to LCLAC. Similarly, 5.76% of the \$600,000 should be sent to CNPLS because that is the percentage of people who are eligible for legal aid who live in Jackson County. LASO and OLC serve the remainder of the state and should receive 82.9% of the \$600,000 to serve the low-income people living in the regions where they have primary responsibility. LASO and OLC will divide their share equally. This would breakout as follows:

- LCLAC \$68,040 ($\$600,000 \times .1134 = \$68,040$)
- CNPLC \$34,560 ($\$600,000 \times .0576 = \$34,560$)
- LASO \$248,700 ($\$600,000 \times .82.9 = \$497,400/2 = \$248,700$)
- OLC \$248,700 ($\$600,000 \times .82.9 = \$497,400/2 = \$248,700$)

The legal aid programs in Oregon ask that this revenue be distributed by OSB to each legal aid program in two equal payments, with one payment distributed in March 2016 and one payment distributed in January of 2017. To the extent that there are new developments, the programs may ask the OSB Legal Services Committee and the OSB to make adjustments to the payments scheduled for January of 2017. For example, further reductions in the federal appropriation for the Legal Services Corporation for FY2017 could cause the programs to request that a higher percentage be sent to LASO in order to maintain a stable statewide delivery system.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166

Issue

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

Options

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

Discussion

The Oregon Supreme Court adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. In addition, there have been several court decisions on matters of professional responsibility. The Committee continues its review of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules and case law.

OSB Formal Op No 2005-128 has been amended to reflect the amendment to RPC 1.6(b) that allows for limited disclosure of client confidences in order to detect and resolve conflicts of interest when a lawyer moves firms. The amendments to this opinion include swapping out the relevant prior rule with the amended rule and providing additional explanation to the extent necessary. The committee made no changes to the substantive positions taken in the opinion.

OSB Formal Op No 2005-94 has been amended to bring it in conformance with the Oregon Supreme Court's decision in *In re Spencer*, 355 Or 679 (2014), which clarified that a lawyer who serves as both lawyer and real estate broker for a client does not have a conflict under RPC 1.7(a)(2) solely by virtue of the fact that the lawyer may receive a sales commission.

OSB Formal Op Nos 2005-30, 2005-68, 2005-77, 2005-121, 2005-157, 2005-166 have been amended to include a footnote that clarifies that the tripartite relationship that is generally presumed to exist in the insurance defense context can be overcome by the specific facts and circumstances in a particular matter.

Staff recommends adopting the proposed amended opinions.

Attachments: Redline versions of OSB Formal Ethics Op Nos. 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166.

FORMAL OPINION NO. 2005-30

Conflicts of Interest, Current Clients: Simultaneous Representation of Insurer and Insured

Facts:

Insured has a property damage insurance policy with Insurer. When Insured's property is damaged by the negligent conduct of a third party, Insurer pays Insured to the extent required by the policy, minus the applicable deductible. The policy provides that, to the extent that Insurer pays Insured, Insurer is subrogated to Insured's claims against third parties.

Insurer now proposes to pay Lawyer to represent both Insurer and Insured in an action against a third party to recover damages not reimbursed by Insurer to Insured as well as the sums that Insurer paid to Insured. At the time that Insurer makes this request, it does not appear that the interests of Insurer and Insured do or may diverge.

Question:

May Lawyer undertake to represent both Insurer and Insured in an action against the third party?

Conclusion:

Yes, qualified.

Discussion:

In undertaking this representation, Lawyer would have both Insurer and Insured as clients, even though the action may be prosecuted solely in Insured's name.¹ See, e.g., ABA Informal Ethics Op No 1476

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See *In re Weidner*, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); *Evrax Inc., N.A., v. Continental Ins. Co.*, Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

(1981); ABA Formal Ethics Op No 282 (1950); 1 *Insurance* ch 14 (Oregon CLE 1996 & Supp 2003). Since Insurer would be paying Lawyer's fee, Lawyer must comply with the requirements of Oregon RPC 1.8(f):

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

- (1) the client gives informed consent;
- (2) there is not interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) is also relevant:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as Lawyer does not permit improper influence within the meaning of Oregon RPC 5.4(c) and obtains informed consent from Insured pursuant to Oregon RPC 1.8(f)(1) and [Oregon RPC 1.0\(g\)](#),² the simultaneous representation would not be prohibited. There also is no reason this representation should be prohibited by Oregon RPC 1.7.³ As

² Oregon RPC 1.0(g) provides:

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

³ 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;

discussed in OSB Formal Ethics Op No 2005-27, a lawyer may represent multiple clients without special disclosure and consent if it does not reasonably appear that a conflict is present. *Cf. In re Stauffer*, 327 Or 44, 48 n 2, 956 P2d 967 (1998) (citing *In re Samuels & Weiner*, 296 Or 224, 230, 674 P2d 1166 (1983)).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* § 134 (2003); and ABA Model Rule 1.8(f). See also OSB Formal Ethics Op Nos 2005-166 (insurance defense lawyer may not agree to comply with insurer's billing guidelines if to do so requires lawyer to materially compromise his or her ability to exercise independent judgment on behalf of client in violation of RPCs), [OSB Formal Ethics Op No 2005-115](#) (lawyer may not

(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.

Formal Opinion No 2005-30

ethically permit representation of client to be controlled by others), [OSB Formal Ethics Op No 2005-98](#) (lawyer may ethically agree with insurer to handle number of cases for insurer at flat rate per case regardless of amount of work required as long as overall fee is not clearly excessive and as long as lawyer does not permit existence of agreement to limit work that lawyer would otherwise do for particular client).

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FORMAL OPINION NO. 2005-68

Trust Accounts: Claims of Two or More Persons

Facts:

Lawyer represents Insurer and Insured in an action against a third party to recover damages allegedly caused by a third party's negligence. Insurer tells Lawyer that when settlement funds are received, Lawyer must forward all funds to Insurer and that Insurer will be the one to decide how much Insurer keeps by way of subrogation and how much is forwarded to Insured for uninsured losses.

Question:

May Lawyer honor Insurer's request?

Conclusion:

No.

Discussion:

Under these facts, Lawyer has two clients, Insurer and Insured.¹ OSB Formal Ethics Op No 2005-30. Any settlement proceeds would represent funds of both of Lawyer's clients.

Oregon RPC 1.15-1(d) and (e) provide:

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

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

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request by the client or third person, shall promptly render a full accounting regarding such property.

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

On the facts as presented, Insurer is not “entitled to receive” the full amount of settlement funds collected within the meaning of Oregon RPC 1.15-1(d). *Cf. In re Conduct of Howard*, 304 Or 193, 204, 743 P2d 719 (1987); OSB Formal Ethics Op No 2005-52. If Insurer and Insured agree on how to divide the money, Lawyer must make the agreed-on division. If not, Lawyer must either retain any disputed sums pending resolution of the dispute, as provided in Oregon RPC 1.15(e), or interplead the disputed funds. *Cf. OSB Formal Ethics Op No 2005-52.*

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* §§ 9.17, § 11.3, §§ 11.7–11.8 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 45, § 46 comment d, 134 (2003); and ABA Model Rule 1.15.

FORMAL OPINION NO. 2005-77

**Conflicts of Interest, Current Clients:
Representation of Insured
After Investigation of Matter for Insurer**

Facts:

Lawyer is retained by Insurer to review an insurance policy issued to Insured because of a complaint filed by a third party against Insured. Lawyer advises Insurer that Insurer has a duty to defend Insured but may well not have a duty to pay any ultimate judgment. After that work is completed, Insurer asks Lawyer to represent Insurer and Insured in defense of the underlying litigation subject to a reservation of rights.

Question:

May Lawyer represent Insurer and Insured in defense of the underlying litigation?

Conclusion:

See discussion.

Discussion:

As discussed in OSB Formal Ethics Op No 2005-30, both Insured and Insurer would be Lawyer's clients in the defense of the underlying action.¹ Simultaneous representation in insurance defense cases is generally permissible: a conflict that falls within Oregon RPC 1.7

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

generally will not exist because the clients have common interest in defeating the claim.² See also OSB Formal Ethics Op No 2005-121.

² If the representation of one client will be directly adverse to the other client, the proposed representation would be impermissible even if both Insurer and Insured consented. See *In re Holmes*, 290 Or 173, 619 P2d 1284 (1980) (under former DR 5-105, consent would not have cured actual conflict of interest between lawyer's two clients). If there a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to the other client, the representation would be permissible, but only if Lawyer reasonably believes that he or she is able to competently represent both clients, and Insurer and Insured give informed consent, confirmed in writing. Cf. *In re Conduct of Barber*, 322 Or 194, 904 P2d 620 (1995).

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.

In this situation, however, the fact of Lawyer's recently completed work for Insurer on the coverage question must also be considered. Because of that work, if there is a significant risk that Lawyer's representation of Insured in defense of the underlying claim will be materially limited by Lawyer's responsibilities to Insurer, a conflict will be present under Oregon RPC 1.7(a). Consequently, Lawyer could not represent both Insurer and Insured in the underlying action without a reasonable belief that Lawyer could competently represent both clients, and only after receiving informed consent, confirmed in writing, from both Insurer and Insured pursuant to Oregon RPC 1.7(b), Oregon RPC 1.0(b), and ~~1.0~~(g). The disclosure to Insured must include a discussion of the fact of the prior representation of Insurer on the coverage question and its potential significance. Cf. *In re Germundson*, 301 Or 656, 661, 724 P2d 793 (1986); *In re Conduct of Montgomery*, 292 Or 796, 802–804, 643 P2d 338 (1982); *In re Benson*, 12 DB Rptr 167 (1998); *In re Rich*, 13 DB Rptr 67 (1999).

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

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

. . . .

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

Oregon RPC 1.8(f) and [Oregon RPC 5.4\(c\)](#) also apply to this situation.³ On the present facts, however, these rules do not create any additional requirements beyond those created by Oregon RPC 1.7.

Approved by Board of Governors, August 2005.

³ Oregon RPC 1.8(f) provides:

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

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

Oregon RPC 5.4(c) provides:

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, § 9.2, §§ 9.8–9.11, § 9.13, § 9.17, § 9.20, §§ 20.1–20.15 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 121–122, § 128, § 130, § 134 (2003); and ABA Model Rules 1.0(b) and (e), 1.7, 1.8(f), 5.4(c). See also OSB Formal Ethics Op No 2005-157; Washington Informal Ethics Op No 943 (unpublished).

FORMAL OPINION NO. 2005-94
Conflicts of Interest:
Lawyer's Spouse as Real Estate Broker

Facts:

Lawyer is married to Real Estate Broker but does no legal work for Real Estate Broker.

Questions:

1. May Lawyer represent a seller in drafting a listing agreement with Real Estate Broker?
2. May Lawyer represent the seller or buyer in a transaction from which Real Estate Broker will earn a commission?

Conclusions:

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

Discussion:

Because Real Estate Broker is ~~by hypothesis~~, not a client of Lawyer, it is unnecessary to consider the potential applicability of Oregon RPC 1.7 as it relates to a current client conflict between two clients.¹ However, Lawyer must consider whether Lawyer's own personal interests, or Lawyer's interests in and responsibilities to Lawyer's spouse, would create a conflict in representing seller under either scenario. Oregon RPC 1.7 is relevant in regard to Lawyer's personal interest in the matter.²

Oregon RPC 1.7 provides, in pertinent part:

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

....

(2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.

....

¹ For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; In re Harrington, 301 Or 18, 718 P2d 725 (1986); and In re Weidner, 310 Or 757, 801 P2d 828 (1990).

² For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; In re Harrington, 301 Or 18, 718 P2d 725 (1986); and In re Weidner, 310 Or 757, 801 P2d 828 (1990).

(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 1.8(a) provides:~~

~~A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:~~

~~(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;~~

~~(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and~~

~~(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.~~

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

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

. . . .

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

Marriage is a civil contract (ORS 106.010) carrying with it a myriad of rights and responsibilities under federal and state law.³ The degree to which spouses share common rights,

³ Spouses may file joint tax returns becoming jointly and severally liable for income taxes for relevant years; they may incur joint and several liabilities for acquisition of major assets; they share government regulated benefits, including those regulated by ERISA; if they have lived in a community property state, community property rights may have attached to their assets as they move from state to state; upon filing a petition for dissolution, assets become shared, as a matter of law.

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liabilities and interests may affect how significant the risk that the representation of a client will be materially affected by Lawyer's interests in or responsibility to his or her spouse.⁴ See Restatement (Third) of the Law Governing Lawyers §125 (2003).

The Oregon Supreme Court recently discussed a similar situation in which Lawyer served as both lawyer and broker for a client, addressing whether there was a significant risk that representation of the client in a bankruptcy and real estate transaction would be materially limited by the lawyer's personal interest in receiving a sales commission. The Court determined that the prospect of receiving a commission was not enough, standing alone, to create a conflict under RPC 1.7(a)(2). *In re Conduct of Spencer*, 355 Or. 679, 692 (2014). Even so, the Court cautioned:

If, as other jurisdictions have held, additional aspects of a real estate transaction (on which the Bar does not rely here) can result in a current conflict under RPC 1.7(a)(2), careful lawyers who seek to serve as both a client's legal advisor and broker in the same real estate transaction would be advised to satisfy the advice and consent requirements of both RPC 1.8(a) and RPC 1.7(b). See ABA Model Rules, Rule 1.8, comment [3] (recognizing that the same transaction can implicate both rules and require that both consent requirements be satisfied).

Id. at 697.

It seems unlikely that Lawyer can successfully deny that there is a significant risk there is either personal interest or a duty to a third person (a spouse) creating a current conflict of interest. Lawyer should take the steps described in Oregon RPC 1.7(2) to advise client of the current conflict and obtain "informed consent" to representation.

Oregon RPC 1.7(a)(2) would clearly be violated if Lawyer were to represent a buyer or seller in a real property transaction in which Lawyer's spouse stood to earn a commission unless Lawyer's client gives informed consent, confirmed in writing. Cf. *In re Baer*, 298 Or 29, 688 P2d 1324 (1984); *In re Henderson*, 10 DB Rptr 51 (1996). Assuming, without concluding, that representation of a client under these circumstances also constitutes a "business transaction with a client" within the meaning of Oregon RPC 1.8(a), the client's informed consent would also be required to avoid a violation of that rule. Cf. *In re Luebke*, 301 Or 321, 722 P2d 1221 (1986).

Approved by Board of Governors, August 2005.

⁴ Oregon courts have long recognized that a husband and wife do not deal at arms' length and have imposed a fiduciary duty of the highest degree in transactions between them. *Matter of Marriage of Eltroth*, 67 Or.App. 520 (1984). Arguably, this duty alone may trigger Lawyer's duties under Oregon RPC 1.7(a)(2).

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§8.2–8.5, 8.9–8.12, 8.14, 9.22, 20.1–20.15 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§122, 125–126 (2003); and ABA Model Rules 1.0(b), (e), 1.7–1.8.

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FORMAL OPINION NO. 2005-121

**Conflicts of Interest, Current Clients:
Insurance Defense**

Facts:

Plaintiff files a complaint against Insured that includes two claims for relief. Insured has an insurance policy pursuant to which Insurer owes a duty to defend against, and a duty to pay damages on, the first claim for relief. Insurer would have no such duties, however, if Plaintiff had sued only on the second claim for relief. The amount of damages sought on the second claim exceeds policy limits.

Insured tenders the defense of the entire action to Insurer. Insurer accepts the tender of defense of both claims subject to a reservation of rights with respect to the second claim. Insurer then hires Lawyer to represent Insured in the case brought by Plaintiff.

After reviewing the pleadings and investigating the facts, Lawyer concludes that the first claim for relief may be subject to a motion to dismiss or a summary judgment motion or that it may be possible, for a sum that Insurer would be willing to pay, to settle the first claim only. The second claim, however, is not potentially subject to such motions and cannot be settled. Lawyer also knows that Insured does not want Lawyer to bring such a motion or effect such a partial settlement because doing so would leave Insured without an Insurer-paid defense on the second claim for relief and would diminish the ability of Insured to get funds from Insurer to help settle the case as a whole.

Question:

May Lawyer file a motion against the first claim or settle it?

Conclusion:

No.

Discussion:

As a general proposition, a lawyer who represents an insured in an insurance defense case has two clients: the insurer and the insured.¹ OSB Formal Ethics Op Nos 2005-77, [OSB Formal Ethics Op No 2005-30](#). Consequently, a lawyer in such a situation must be mindful of the restrictions in Oregon RPC 1.7 on current-client conflicts of interest:

(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.

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See *In re Weidner*, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); *Evraz Inc., N.A., v. Continental Ins. Co.*, Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

For the definitions of *informed consent* and *confirmed in writing*, see Oregon RPC 1.0(b) and (g).²

The relationship between Lawyer, Insured, and Insurer is both created and limited by the insurance policy. As the court stated in *Nielsen v. St. Paul Companies*, 283 Or 277, 280, 583 P2d 545 (1978), for example:

When a complaint is filed against the insured which alleges, without amendment, that the insured is liable for conduct covered by the policy, the insurer has the duty to defend the insured, even though other conduct is also alleged which is not within the coverage. . . . The insurer owes a duty to defend if the claimant can recover against the insured under the allegations of the complaint *upon any basis* for which the insurer affords coverage. [Emphasis in original; citations omitted.]

See also ABA Formal Ethics Op No 282 (1950), which notes that simultaneous representation of insurers and insureds in actions brought by third parties generally does not raise conflict problems because of the “community of interest” growing out of the insurance contract.

When an insurer defends an insured without any reservation of rights (by which the insured reserves its right to deny coverage), there is

² Oregon RPC 1.0(b) and (g) provide:

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

. . . .

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

little or no opportunity for a conflict of interest because the community of interest between the insurer and insured should be complete. When an insurer defends subject to a reservation of rights, however, a risk of conflict is present. To minimize this risk and to permit joint representation in such cases, both the ethics rules and insurance law require that a lawyer hired by the insurer to defend an insured must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. *See, e.g.*, ABA Informal Ethics Op No 1476 (1981); 1 *Insurance* chs 6, 14 (Oregon CLE 1996 & Supp 2003).³ Consequently, a lawyer who is hired to defend the insured in a situation such as the one described in this opinion cannot file a motion that would adversely affect the insured’s right to a defense or to coverage but must indeed act in a manner that is consistent with the interests of the insured.⁴ *See Insurance, supra. See also Barmat v. John and Jane Doe Partners A–D*, [155 Ariz 519](#), 747 P2d 1218, 1219 (~~Ariz~~1987).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* § 134 (2000); and ABA Model Rules 1.0(b), (e), 1.7.

³ The law also provides that if there is a potential conflict between the insurer and the insured, the facts found by the court in the action by the third party against the insured will not be given collateral estoppel effect as to either the insurer or the insured in a subsequent coverage dispute. *See, e.g., Ferguson v. Birmingham Fire Ins. Co.*, 254 Or 496, 509–~~5~~11, 460 P2d 342 (1969).

⁴ The insurer is free to hire other counsel to litigate the coverage issue.

FORMAL OPINION NO. 2005-128

**Conflicts of Interest, Current and Former Clients:
Lawyer Changing Firms, Imputed Disqualification**

Facts:

While Lawyer was at Old-Former Firm, Lawyer was the only lawyer who worked on or acquired information relating to the representation of Client. Subsequently, Lawyer left Old-Former Firm to start New Firm, and Client directed all pending or further work to New Firm.

Question:

May Old-Former Firm represent parties adversely to Client without Client's consent?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 1.10(b) provides:

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

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) 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.~~ (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.

Oregon RPC 1.9(c) provides:

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

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

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

~~Ordinarily, OldFormer~~ Firm's representation in matters adverse to Client ~~might~~ may give rise to former client conflicts that could be waived only with the informed consent of all affected clients, confirmed in writing. See, e.g., Oregon RPC 1.0(b), and 1.0(g) as; cited in OSB Formal Ethics Op Nos 2005-17 and 2005-11.

Because Lawyer has left ~~OldFormer~~ Firm, however, ~~OldFormer~~ Firm will need conflicts waivers to pursue matters involving ~~its former~~ Client only when "the matter is the same or substantially related to that in which Lawyer formerly represented Client while associated with OldFormer Firm, and any lawyer remaining in ~~OldtheFormer F~~ firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.²² Oregon RPC 1.10(b).

As presented in these facts, no lawyer ~~who is~~ still at OldFormer Firm worked on, or actually acquired information relating to the representation of Client while Lawyer was at Old Firm~~protected by these rules~~. Cf. OSB Formal Ethics Op No 2005-120 and sources cited; *Gas-A-Tron v. Union Oil Co.*, 534 F2d 1322 (9th Cir 1976).¹ The sole remaining question, then, is whether it can be said that any lawyer remaining at OldFormer Firm subsequent to Lawyer's departure acquired information or is deemed to "have" "has" information relating to the representation of Client while Lawyer was at OldFormer Firm, and whether if OldFormer Firm has retained files, including electronic documents, of Client that contain information that is material to the matter.

If OldFormer Firm takes sufficient steps to assure that no lawyer at OldFormer Firm has or will actually acquire ~~the~~ information relating to the representation of Client while Lawyer was at OldFormer Firm in the future—by, for example, by segregating, restricting access to, or destroying such materials or returning them to Client without retaining copies—OldFormer Firm has or will have established that no lawyer remaining at OldFormer Firm will have such information, and any obligations under Oregon RPC 1.10(b) will clearly have been met.² *See also* OSB Formal Ethics Op No 2005-174.

Approved by Board of Governors, August 2005.

¹ Cf. Oregon RPC 1.9(b), which prohibits a lawyer from being adverse to a client of the lawyer's former law firm if the lawyer "had acquired information" about the former firm's client that is protected by Oregon RPC 1.6 and 1.9(c) and is material to the matter. ABA Model Rule 1.9 comment [5] explains that Model Rule 1.9(b) operates to disqualify the lawyer who has *actual* knowledge of protected information.

² Cf. Oregon RPC 1.18, which permits a firm to undertake a representation adverse to a prospective client who consulted with one member of a firm, provided the consulting member is adequately screened from participating in the matter, and written notice is promptly given to the prospective client. Adequate screening means employing procedures reasonably adequate to protect information that the isolated lawyer is obligated to protect.

COMMENT: For additional information on this general topic, and other related subjects, see THE ETHICAL OREGON LAWYER §§9.3–9.6, 9.25 (Oregon CLE 2006 rev.2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121–124, 132 (2003); and ABA Model Rules 1.6, 1.9–1.10.

FORMAL OPINION NO 2005-157

[REVISED 2014]

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

Facts:

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

Questions:

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

Conclusions:

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

Discussion:

Absent an agreement to the contrary, an Oregon lawyer who represents an insured in an insurance defense case will generally have two clients: the insurer and the insured.¹ OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#). Both the Oregon RPCs and insurance law as interpreted in Oregon require that a lawyer hired by the insurer to defend an insured

¹ Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 (1990) (articulating the test for an attorney-client relationship); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 (D.Or. 2013) (finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured).

must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. OSB Formal Ethics Op No 2005-121.

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

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

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

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

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

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

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

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

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

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

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

1. *Submission of Bills to Third Party.*

If the bills contain no information protected by Oregon RPC 1.6, Lawyer may submit the bills to the third-party audit service. On the other hand, if the bills contain such information, Lawyer may not disclose them unless one of the exceptions contained in Oregon RPC 1.6 applies. In effect, this means that absent Client's consent, Lawyer must not reveal the information. Depending on the facts of the matter and the substantive law applicable to such situations, Lawyer may need to discuss with Client the risks, if any, that the submission of the detailed bills to the third-party audit service may entail. This might include, for example, a risk of inappropriate disclosure of protected information, a risk of waiver of the lawyer-client privilege,² or a risk of adverse effects on the insurer-insured relationship.

2. *Seeking Consent to Disclose Bills.*

Oregon RPC 1.7 provides:

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

² For a discussion regarding the waiver of lawyer-client privilege on the disclosure of bills to a government auditor, see *United States v. Massachusetts Institute of Technology*, 129 F3d 681, [97-2 US Tax Cas P 50955](#) (1st Cir 1997).

(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.

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

Approved by the Board of Governors, April 2014.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 6.8, 9.15 (Oregon CLE 2006); *Restatement (Third) of the Law Governing Lawyers* §§ 59–60, 62, 121, 128 (2003); and ABA Model Rules 1.6–1.7.

FORMAL OPINION ~~NO.~~NO 2005-166

Competence and Diligence: Compliance with Insurance Defense Guidelines

Facts:

Insurer has an ongoing professional relationship with Lawyer to defend claims asserted against its insureds. As a part of that relationship, Insurer requires Lawyer to agree to comply with its Litigation Billing/Management Guidelines (the “Guidelines”).¹ The Guidelines may mandate, among other things, (1) approval by Insurer before Lawyer may schedule and take depositions, conduct legal research, prepare substantive motions, or hire experts, (2) delegation of particular tasks to paralegals, and (3) submission to Insurer of status reports or litigation plans or both.

A cause of action is filed against defendant Insured. Insurer retains Lawyer to provide a defense for Insured. Insurer sends Lawyer a cover letter confirming representation, along with the claim file. The letter contains a reminder to Lawyer to comply with Insurer’s Guidelines. Insurer also requests that Lawyer sign an acknowledgement form that Lawyer has received the claim file and the Guidelines.

Question:

May Lawyer agree to comply with the Guidelines without regard to their effect on Lawyer’s clients?

Conclusion:

No.

Discussion:

Lawyer may sign and return the acknowledgment letter to indicate that Lawyer has accepted the *assignment* of the matter, but must advise

¹ The Guidelines may also be referred to as “case handling” or “case management” guidelines.

Insurer that he or she cannot agree to comply with Guidelines that might compromise Lawyer's ethical obligations as discussed below.

Lawyer may comply with the Guidelines only if Lawyer has an opportunity to review and evaluate the Guidelines with respect to each case and, based on that review, Lawyer reasonably concludes that compliance with the Guidelines will not materially compromise Lawyer's professional, independent judgment or Lawyer's ability to provide competent representation to Insured. Lawyer cannot agree to comply with the Guidelines before reviewing and analyzing the facts and issues of each case because such an advance agreement would potentially surrender Lawyer's professional judgment. Moreover, throughout the case, Lawyer has an ongoing ethical obligation to reevaluate whether his or her continued compliance with the Guidelines impedes his or her ability to exercise independent judgment.

In Oregon, a lawyer retained by an insurer to represent both the insurer and the insured must treat the insured as the "primary client" whose protection must remain the lawyer's "dominant concern."² OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#).

Oregon RPC 1.8(f) provides:

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information related to the representation of a client is protected as required by Rule 1.6.

² [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

Oregon RPC 1.1 requires that Lawyer provide “competent representation” to Insured, which requires the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Notwithstanding the directives set forth in the Guidelines, Lawyer must not allow his or her professional judgment or the quality of his or her legal services to be compromised materially by Insurer.

Under Oregon RPC 5.5(a), Lawyer also must not assist a nonlawyer in the unauthorized practice of law. Thus, Lawyer may comply with the Guidelines requirements that certain tasks be delegated to a paralegal only if, in Lawyer’s independent professional judgment, the particular task is appropriate for performance by a paralegal in the particular case and the paralegal is appropriately supervised.

Insurer may require Lawyer to inform Insurer about the litigation process through periodic status reports, detailed billing statements, and the submission of other information. Lawyer’s compliance with this aspect of the Guidelines does not necessarily violate Lawyer’s ethical obligations if the disclosure of such information advances the interests of both Insured and Insurer, and does not otherwise compromise Lawyer’s duty to maintain his or her independent judgment. *Cf.* OSB Formal Ethics Op No 2005-157.

In the final analysis, Lawyer must determine on a case-by-case and step-by-step basis whether compliance with the Guidelines will restrict Lawyer’s ability to perform tasks that, in Lawyer’s professional judgment, are necessary to protect Insured’s interests. Lawyer cannot commit in advance to comply with Guidelines that restrict Lawyer’s representation of Insured, possibly to Insured’s detriment. Lawyer also must continue to monitor the effect of the Guidelines during the entire course of representation. If Lawyer cannot ethically comply with any particular aspect of the Guidelines, Lawyer must obtain a modification of the Guidelines from Insurer, or decline or withdraw from the representation.

Approved by Board of Governors, August 2005.

Formal Opinion No 2005-166

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 3, 16, 134 (2003); and ABA Model Rule 1.8.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: February 1, 2016
From: Amber Hollister, General Counsel
Re: Board of Governors' Bar Email Accounts

Action Recommended

Consider Board's use of bar email accounts.

Background

Beginning in 2016, at the Board's request, the Bar established email accounts for each member of the Board. This memorandum addresses how maintaining Board email accounts may impact the bar's ability to respond to public records requests and to implement litigation holds.

A. Oregon's Public Records Law

Using bar email accounts may streamline responding to public records requests. The bar is subject to Oregon's Public Records Act. ORS 9.010(3)(e). Accordingly, the bar regularly receives requests for its records which are fielded by the bar's public records custodian.

From time to time, the bar may receive public records requests that include requests for Board member emails. Emails to and from Board members related to bar business are public records that must be produced unless they are subject to an exemption to the public records law.¹

By maintaining email accounts for members of the Board, the bar may be able to simplify responses to public record requests. In theory, if all emails are contained in osbar.org accounts, bar staff could search for responsive emails and produce them when necessary.

If emails related to bar business are located in other accounts, searching for responsive emails may be more complicated. If emails related to bar business are in an email account with confidential client communications it could be difficult for bar staff to provide assistance locating responsive emails.

B. Litigation Holds

Utilizing bar email accounts may also aid the bar in creating effective litigation holds. On occasion, the bar is a party to litigation. The bar has a duty, like any other potential litigant, to preserve evidence when there is a reasonable likelihood of litigation.

¹ Under the Act, a public record is broadly defined to include "any writing that contains information relating to the conduct of the public's business" that is "prepared, owned, used or retained by a public body." ORS 192.410(4).

In modern day litigation, much of the relevant evidence is in electronic form. Board member email accounts allow the bar to maintain records of potentially relevant electronic discovery throughout the pendency of litigation. If all Board member email related to bar business is contained in the bar's email system, the bar will be able to preserve evidence on behalf of Board members. Bar email could potentially save Board members the time and energy required to segregate and preserve email when the bar implements a litigation hold.

Conclusion

Ultimately, whether to maintain Board member email accounts is the prerogative of the Board. A number of Board members have reported technical difficulties in using the bar's email system, and it is unclear at this point whether those difficulties may be overcome.

The Board has the following options:

1. **Require the Use of Bar Email Accounts.** This option could create efficiencies when responding to public records requests or implementing litigation holds. However, even with bar email accounts in place, Board members may, from time to time, receive emails in their personal email accounts related to bar business. Board members could make a practice of only using bar email accounts to respond to inquiries related to bar business, and of forwarding all email related to bar business received in personal accounts to their bar accounts.
2. **Make Use of Bar Email Accounts Discretionary.** This option would provide Board members with maximum flexibility, but would not ensure the bar maintains a complete record of emails related to bar business. In many ways, this is the least desirable option because the bar would maintain Board email accounts without reaping the efficiencies of a consistent practice. I do not recommend this option.
3. **Discontinue Bar Email Accounts.** This option would require Board members to rely on their existing email accounts for bar related communications. Bar staff would need to work with Board members as necessary to respond to public records requests or implement litigation holds. This option may create additional risks for Board members who wish to protect client confidences. This option may also increase costs to the Bar.

Oregon State Bar Sponsorship Proposal
District of Oregon Chapter
“A Class Action: The Grassroots Struggle for School Desegregation”
Amount of Proposed Sponsorship: \$2000

Project Description:

The Oregon Chapter of the Federal Bar Association plans to host “**A Class Action: The Grassroots Struggle for School Desegregation,**” at the Mark O. Hatfield U.S. District Courthouse between April and June 2016. This traveling exhibit, created by the Museum of Teaching and Learning (MOTAL) and the Ninth Judicial Circuit Historical Society, depicts the history of school segregation and desegregation, particularly with respect to Mexican American elementary school students. It focuses on the Ninth Circuit’s landmark decision in Mendez v. Westminster School District, which was, in all respects, the precursor to Brown v. Board of Education. It further tells the story of how community organizing and grassroots activism can produce positive change in schools and communities across the United States.

At present, the Mendez exhibit has been hosted at various courthouses throughout California, including the Ninth Circuit’s James R. Browning Courthouse in San Francisco and the Edward J. Schwartz Courthouse in the Southern District of California (San Diego). It is a traveling exhibit, and MOTAL’s goal is to provide more opportunities throughout the Ninth Circuit for bar and community members to explore the case, learn about its origins, and engage in discussions about how its legacy has inspired change in recent years.

The Oregon Chapter of the Federal Bar Association has chosen to host the Mendez exhibit in Portland to provide the opportunity for our local bar and community members to participate in the important dialogue that the exhibit inspires. We believe that it will serve to educate not only members of our local bar, but also elementary and high school students, parents, and citizens in our community. It will encourage members of the public to visit our courthouse, learn about the justice system, and engage with their local judges, lawyers, and courthouse staff. In light of the exhibit’s theme, we further believe that the exhibit will teach members of our community the value of engaging or continuing to be engaged in issues of local and national importance.

In addition to hosting the traveling exhibit, our chapter will plan and host the following exhibit-related programs, which will be open to members of the bar and the community:

- A welcome reception, featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit;
- A community lecture addressing issues related to the Mendez case;
- A lunch CLE series for members of the bar, which will include 2-3 lunch programs addressing civil rights class action litigation, grassroots organizing, and issues of discrimination in our schools and communities;
- Chapter-member-led tours of the Mendez exhibit at the Hatfield U.S. District Courthouse.

Objectives:

The table below summarizes the objectives of the Mendez project.

Target Audience	Objectives	Expected Benefits and Results	Method of Implementation
Local Bar	<ul style="list-style-type: none"> - Promote education and awareness; - Facilitate the science and development of jurisprudence; - Foster engagement with the community and within the bar, for the purposes of furthering our understanding of community legal needs and current concerns. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Opportunities to engage with community members and colleagues; - Increased understanding of the process of grassroots activism; - Opportunities to engage and develop relationships with students, schools, and civic organizations; - Increased understanding of community needs beyond those addressed with this project. 	<ul style="list-style-type: none"> - CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case; - Bar-member-led tours of the <u>Mendez</u> exhibit; - Community lecture.
Students	<ul style="list-style-type: none"> - Promote education and awareness through a visual and interactive experience; - Foster engagement with our judicial system; - Inspire grassroots activism. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Increased understanding of the 	<ul style="list-style-type: none"> - Participation in exhibit tours and community lecture.

Oregon State Bar Sponsorship Proposal
 District of Oregon Chapter
 “A Class Action: The Grassroots Struggle for School Desegregation”
 Amount of Proposed Sponsorship: \$2000

		judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status.	
Community Members	<ul style="list-style-type: none"> - Promote education and awareness through visual and interactive exhibit experience; - Foster engagement with our judicial system; - Inspire grassroots activism. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Increased understanding of the judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status. 	<ul style="list-style-type: none"> - Participation in exhibit tours and community lecture.
Minority Bar Associations	<ul style="list-style-type: none"> - Promote education and awareness; - Facilitate the science of jurisprudence; - Foster engagement with the community and other bar associations. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Better understanding of jurisprudence in areas related civil rights and discrimination; - Increased engagement with students, schools, and civic organizations. 	<ul style="list-style-type: none"> - CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case; - Community lecture and welcome reception.
Law Firms	<ul style="list-style-type: none"> - Promote education and awareness; 	<ul style="list-style-type: none"> - Education surrounding current 	<ul style="list-style-type: none"> - CLE lunch/speaker

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	<ul style="list-style-type: none"> - Foster engagement with the community and other bar associations; - Facilitate the science of jurisprudence; Foster engagement with the community and other bar associations. 	<ul style="list-style-type: none"> issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Better understanding of jurisprudence in areas related civil rights and discrimination; - Increased engagement with students, schools, and civic organizations; - Understanding of community needs beyond those addressed with this project. 	<ul style="list-style-type: none"> series addressing topics related to the <u>Mendez</u> case; - Community lecture and welcome reception.
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Budget:

The cost to host this exhibit is such that we intend to partner with a number of local bar associations to fund the project. Below is an estimate of the costs associated with travel, community outreach, and programming associated with the exhibit:

Travel:	\$10,800
Community Outreach and Tour Materials:	\$500
Welcome Reception and Community Lecture:	\$3500
 Total:	 \$14,800

Our local chapter plans to contribute \$2500 to the event, and the U.S. District Court for the District of Oregon has agreed to contribute \$1500. We have also applied for a grant from the Federal Bar Association Foundation in the amount of \$5000. **We hope that the Oregon State Bar will be willing to contribute \$2000 to the project.** Other potential funding sources, which we are currently pursuing, include minority bar associations, local bar association foundations, and private law firms.

Community outreach costs include providing curriculum materials to local schools, materials for exhibit tours, and preparation/distribution of education materials addressing civil rights, judicial

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District of Oregon Chapter
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administration, and community activism. Costs associated with the welcome reception and the CLE lunch series will be paid separately by the chapter. We plan to use the Oregon State Bar funding to pay for a portion of the exhibit’s travel cost.

Timing

We will host the exhibit starting in April 2016. The exhibit would be housed at the Hatfield U.S. Courthouse for 10 weeks. When the exhibit arrives in April, we will have a welcome reception featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit. We anticipate hosting 2-3 lunchtime CLEs over the course of the 10-week period, and at least one community lecture during that time. The specific dates of the CLE programs and community lecture are not yet determined.

Publicity:

We plan to conduct local and regional publicity in the following manner:

- **School (4th Grade) and Community Outreach:** We are currently working with MOTAL to develop curriculum materials that we can make available to local schools and community organizations. Our membership will be reaching out to all local school districts and certain community organizations to invite groups of students and children to tour the exhibit, attend the welcome reception, and incorporate the curriculum materials into the classroom.
- **FBA Membership Publicity:** We will use our local chapter listserv to publicize events to our membership. Members of our executive board will be tasked with publicity within their respective law firms or offices. Executive board members will also conduct community outreach efforts described above.
- **Cosponsor Publicity:** Should we secure funding from the Oregon State Bar and other bar associations and law firms, we expect that you and others will help us publicize the event through your available channels, including websites, listservs, and newsletters.

Oregon State Bar
Special Open Session of the Board of Governors
March 11, 2016
Minutes

President Ray Heysell called the meeting to order at 1:30 p.m. on March 11, 2016. The meeting adjourned at 4:20 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Guy Greco, Michael Levelle, Vanessa Nordyke, Per Ramfjord, Kathleen Rastetter, Julia Rice, Josh Ross, Kerry Sharp, Rich Spier, Kate von Ter Stegge, Tim Williams and Elisabeth Zinser. Not present were Robert Gratchner, John Mansfield, Ramón A. Pagán and Charles Wilhoite. Staff present was Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Mark Johnson Roberts, Kateri Walsh, Karen Duncan and Camille Greene. Also present were Carol Bernick, PLF CEO, and unidentified members of the public.

1. Call to Order

Mr. Heysell reminded the audience that this was a working session and only board members and those they call upon will be able to speak. He also reminded the board members that they may remove agenda items from the consent agenda and add them to the open agenda for discussion.

At Mr. Heysell's request, Mark Johnson Roberts, Chair of the Disciplinary System Review Committee, gave background on the Committee and development of the recommendations.

Mr. Heysell asked the board to consider the Disciplinary System Review Committee recommendations in the order set forth in Exhibit A.

1. Professional Adjudicator

(16) Oregon should establish a professional adjudicator position.

If YES to (16), consider:

(12) Retain the regional Disciplinary Board panels and the State Chair, but eliminate Regional Chairs.

If NO to (16), (12) should be rejected as inapplicable.

Several members expressed concern about the proposed position being a bar employee and too close to other bar employees. If the adjudicator were a bar employee, it might suggest that the adjudicator and the disciplinary attorneys were not independent of one another. Concerns were also expressed that there would be a lack of oversight, transparency, and accountability with the creation of such a position. Some suggested that the idea ought to be vetted further and more thought given to the details of how it would work. Others were troubled by the reversal rate of trial panel opinions by the Supreme Court and by the quality and consistency of the trial panel opinions. Several members opined that a professional adjudicator would necessarily result in improved quality, consistency and efficiency. In addition, it would add professionalism to the process. Volunteers would still be involved and provide accountability and transparency.

Motion: Mr. Greco moved the board disapprove recommendation (16). Mr. Greco withdrew his motion.

Motion: Mr. Chaney moved, Ms. von Ter Stegge seconded, and the board accept recommendation (16). Mr. Ramfjord amended the motion, Ms. Nordyke seconded, to add discussion with Supreme Court to employ the position. Mr. Chaney withdrew his motion.

Motion: Mr. Ramfjord moved the board approve recommendation (16) provided the Supreme Court would employ the position. Mr. Chaney seconded. The board voted 7 in favor and 7 against the motion. Yes: Mr. Greco, Ms. Nordyke, Ms. von Ter Stegge, Mr. Chaney, Mr. Ramfjord, Mr. Levelle, and Ms. Zinser. No: Mr. Ross, Ms. Rastetter, Mr. Williams, Ms. Rice, Mr. Bachofner, Ms. Costantino, and Mr. Sharp. Mr. Heysell broke the tie with his vote in favor of the motion to accept recommendation (16) provided the Supreme Court would employ the adjudicator. The motion passed.

Motion: Mr. Chaney moved, Mr. Greco seconded, to table recommendation (12). The board unanimously approved the motion.

2. SPRB and DCO Roles and Responsibilities

(8) SPRB jurisdiction over a matter should end once it authorizes the filing of a formal complaint or a letter of admonition.

Motion: Mr. Levelle moved recommendation (8) be approved. Mr. Ramfjord seconded. Ms. von Ter Stegge asked for clarification of the current role of the SPRB. Ms. Evans informed the board of the SPRB's current role. After considerable discussion about the role of the SPRB, the board voted 2 in favor and 12 against the motion to accept recommendation (8). Yes: Ms. von Ter Stegge and Mr. Ramfjord. No: Ms. Zinser, Mr. Sharp, Mr. Greco, Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Ms. Costantino, Ms. Rice, Mr. Chaney, Ms. Nordyke and Mr. Levelle. The motion failed.

*If **NO** to (8), the following would also likely be “no” but can be considered independently in an effort to streamline aspects of the process:*

Authority to determine resolution and appeal

(3) DCO should have sole authority to enter into diversion agreements for lesser misconduct.

Motion: Mr. Levelle moved recommendation (3) be approved. Mr. Greco seconded. Mr. Bachofner moved to amend the motion to say where appropriate DCO could enter into diversion agreements with SPRB approval. The motion to amend died due to lack of a second. The board voted 7 in favor and 7 against the motion to accept recommendation (3). Yes: Mr. Greco, Ms. Nordyke, Ms. von Ter Stegge, Mr. Chaney, Mr. Ramfjord, Ms. Zinser, and Mr. Sharp. No: Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Mr. Levelle, Ms. Rice and Ms. Costantino. Mr. Heysell broke the tie with his vote in favor of the motion. The motion passed.

(4) After the SPRB has authorized the filing of a formal complaint, DCO should have sole authority to enter into mediation and agree to a resolution, to negotiate Discipline by Consent (settlements), and to decide whether to appeal a trial panel decision.

Motion: Mr. Greco moved to accept recommendation (4). Ms. Nordyke seconded. The board voted 6 in favor and 8 against the motion to accept recommendation (4). Yes: Ms. von Ter Stegge, Ms.

Costantino, Mr. Ramfjord, Mr. Sharp, Ms. Zinser, Ms. Rastetter. No: Mr. Greco, Mr. Ross, Mr. Williams, Mr. Bachofner, Mr. Levelle, Mr. Chaney, Ms. Rice, Ms. Nordyke. The motion failed.

Authority to initiate special proceedings

(6) DCO should have sole authority to initiate temporary suspension proceedings because of a lawyer's disability or to protect the public during the pendency of discipline investigations and proceedings.

Motion: Mr. Greco moved to approve recommendation (6). Mr. Ramfjord seconded. The board voted unanimously to accept recommendation (6). The motion passed.

(7) DCO should be responsible for reporting to the proper prosecuting authority upon its finding that a crime may have been committed, without the need to seek SPRB authorization to do so.

Motion: Mr. Greco moved to accept recommendation (7). Mr. Ramfjord seconded. The board voted unanimously to accept recommendation (7). The motion passed.

(19) DCO should have sole authority to initiate reciprocal discipline proceedings; there should be a rebuttable presumption that the sanction in Oregon will be of the same severity as in the original jurisdiction.

Motion: Mr. Greco moved to accept recommendation (19). Mr. Chaney seconded. The board voted 11 in favor and 2 against with 1 abstention to the motion to accept recommendation (19). Yes: Mr. Greco, Mr. Ross, Mr. Williams, Mr. Sharp, Mr. Bachofner, Mr. Levelle, Mr. Ramfjord, Mr. Chaney, Ms. Costantino, Ms. von Ter Stegge and Ms. Nordyke. No: Ms. Rastetter and Ms. Rice. Ms. Zinser abstained. The motion passed.

(22) DCO should have authority to initiate temporary suspension proceedings when a lawyer has been convicted of a crime and where immediate and irreparable harm will result if the lawyer is not suspended.

Motion: Mr. Williams moved to accept recommendation (22). Mr. Chaney seconded. The board voted unanimously to accept recommendation (22).

(30) In proceedings before the SPRB, the Respondent should be provided with the entirety of DCO's recommendation and an opportunity to submit a response to the SPRB.

Motion: Mr. Chaney moved to accept recommendation (30). Mr. Greco seconded. Several members expressed concern that this recommendation would burden the process without necessarily accomplish its goal. Others were in favor of the recommendation because it opens discovery of all the strengths and weaknesses of a case. Mr. Bachofner moved to amend the motion to require the full file be turned over. The motion to amend failed due to a lack of a second. Mr. Bachofner moved to end debate on the motion. The motion to end debate was passed unanimously. The board voted 4 in favor and 10 against the motion to approve recommendation (30). Yes: Mr. Levelle, Mr. Ramfjord, Mr. Chaney, Mr. Sharp. No: Ms. Zinser,

Mr. Greco, Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Ms. Rice, Ms. Costantino, Ms. von Ter Stegge, Ms. Nordyke. The motion failed.

3. Extent of Volunteer Involvement in Process

(2) DCO's dismissal of a complaint for lack of probable cause should be final and should not be subject to review by the SPRB.

Motion: Mr. Greco moved to accept recommendation (2). Mr. Chaney seconded. The board voted 7 in favor and 7 against the motion to approve recommendation (2). Yes: Mr. Ramfjord, Ms. Zinser, Ms. von Ter Stegge, Ms. Costantino, Mr. Chaney, Mr. Sharp and Mr. Levelle. No: Mr. Greco, Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Ms. Nordyke and Ms. Rice. Mr. Heysell broke the tie with his vote against the motion to approve recommendation (2). The motion failed.

(11) The Local Professional Responsibility Committees should be eliminated.

Motion: Mr. Chaney moved to accept recommendation (11). Mr. Ramfjord seconded. The board voted unanimously to accept recommendation (11). The motion passed.

4. Records of Disciplinary Matters

(18) Records of dismissed complaints should be retained for only three years and then should be considered "expunged."

Motion: Mr. Chaney moved to accept recommendation (18). Mr. Greco seconded. Several members of the board noted that retaining files related to dismissed complaints for a longer period of time provides greater transparency, and provides information that may assist individuals in selecting a lawyer of their choice. The motion failed.

(26) Amend the Bar Act to provide that complaints of misconduct and all information and documents pertaining to them are confidential and not subject to public disclosure until either (a) the SPRB has authorized the filing of a formal complaint, or (b) the complaint has been finally resolved without SPRB authorization to file a formal complaint.

Motion: Mr. Greco moved to accept recommendation (26). Mr. Ramfjord seconded. Several members of the board noted the importance of transparency in the process for the credibility and protection of the public. Members noted that although many bar complaints do not result in discipline, some complaints reveal matters that are of public concern. For this reason, the public deserves to know about complaints early in the process. The board voted unanimously against the motion. The motion failed.

5. Other Miscellaneous Process Amendments

(10) In exercising its discretion to decline to authorize prosecution, the SPRB should also consider (a) the lapse of time between the alleged misconduct and the SPRB's consideration of the matter, and (b) whether, given the relative seriousness of the misconduct and the likely sanction, formal proceedings are an appropriate use of resources.

Motion: Mr. Greco moved to accept recommendation (10). Mr. Ross seconded. The board voted 4 in favor and 9 against the motion to approve recommendation (10) Yes: Mr. Ross, Ms. Nordyke, Mr. Chaney, and Mr. Ramfjord. No: Mr. Greco, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Ms. Von Ter Stegge, Ms. Costantino, Ms. Rice, Ms. Zinser, and Mr. Sharp. The motion failed.

(24) The Bar Rules should set out a menu of the requirements for suspended or disbarred lawyers regarding notice to clients, disposition of client files, etc., from which the parties in a negotiated resolution or the final adjudicator can select based on the circumstances.

Motion: Mr. Greco moved to accept recommendation (24). Ms. Nordyke seconded. The board voted unanimously to accept recommendation (24). The motion passed.

(25) In making its decision to pursue formal proceedings, the SPRB should find “cause for complaint,” which incorporates probable cause and a reasonable belief that the case can be proved by clear and convincing evidence.

Motion: Mr. Greco moved to accept recommendation (25). Mr. Chaney seconded. The board voted 2 in favor and 11 against the motion to accept recommendation (25). Yes: Mr. Sharp and Ms. Zinser. No: Mr. Greco, Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Mr. Ramfjord, Mr. Chaney, Ms. Rice, Ms. Costantino, Ms. von Ter Stegge, and Ms. Nordyke. The motion failed.

(27) Amend BR 4.1 to conform formal discipline complaints to Oregon civil pleading practice.

Motion: Mr. Greco moved to accept recommendation (27). Mr. Ross seconded. The board voted 1 in favor and 11 against the motion to approve recommendation (27). The motion failed. Yes: Mr. Ramfjord. No: Mr. Ross, Mr. Williams, Ms. Rastetter, Mr. Bachofner, Ms. Nordyke, Mr. Sharp, Ms. Zinser, Mr. Chaney, Ms. Costantino, Ms. von Ter Stegge, Ms. Rice. Abstain: Mr. Greco. The motion failed.

(28) Eliminate from reciprocal discipline lawyers who resigned prior to hearing on pending charges in another jurisdiction.

Motion: Mr. Greco moved to accept recommendation (28). Mr. Chaney seconded. The board voted unanimously to reject the motion. The motion failed.

(31) Permit Respondents to waive a trial panel at the time of filing the answer.

Motion: Mr. Greco moved to accept recommendation (31). Mr. Chaney seconded. The board voted 1 in favor and 12 against the motion to accept recommendation (31). Yes: Ms. von Ter Stegge. No: Mr. Greco, Ms. Zinser, Mr. Sharp, Mr. Ross, Ms. Rastetter, Mr. Williams, Mr. Bachofner, Mr. Ramfjord, Mr. Chaney, Ms. Rice, Ms. Costantino, Ms. Nordyke. The motion failed.

Mr. Heysell asked the board to consider the Disciplinary System Review Committee’s other recommendations in their final report as listed on the consent agenda. **[Exhibit B]**

Ms. Rice requested that recommendation (5) be removed from the consent agenda to be discussed and voted on by the board in open session.

(5): DCO should have sole authority to amend formal complaints to correct scrivener errors, drop charges, delete factual allegations, or add new non-substantive allegations, subject to the discretion of the appropriate DB authority.

Motion: Mr. Greco moved to accept recommendation (5). Mr. Ramfjord seconded. The board voted unanimously to accept recommendation (5). The motion passed.

Motion: Mr. Bachofner moved to approve the remaining recommendations contained on the consent agenda. Mr. Chaney seconded. The board voted unanimously to approve the recommendations on the consent agenda. **[Exhibit B]**

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Exhibit A
Disciplinary System Review Committee Recommendations
Board of Governors Special Meeting
March 11, 2016

1. Professional Adjudicator

(16) Oregon should establish a professional adjudicator position.

If YES to (16), consider:

(12) Retain the regional Disciplinary Board panels and the State Chair, but eliminate Regional Chairs.

If NO to (16), (12) should be rejected as inapplicable.

2. SPRB and DCO Roles and Responsibilities

(8) SPRB jurisdiction over a matter should end once it authorizes the filing of a formal complaint or a letter of admonition.

If YES to (8), the following would also likely be "yes" in order to be consistent with (8), but can be considered independently:

Authority to determine resolution and appeal

(3) DCO should have sole authority to enter into diversion agreements for lesser misconduct.

(4) After the SPRB has authorized the filing of a formal complaint, DCO should have sole authority to enter into mediation and agree to a resolution, to negotiate Discipline by Consent (settlements), and to decide whether to appeal a trial panel decision.

Authority to initiate special proceedings

(6) DCO should have sole authority to initiate temporary suspension proceedings because of a lawyer's disability or to protect the public during the pendency of discipline investigations and proceedings.

(7) DCO should be responsible for reporting to the proper prosecuting authority upon its finding that a crime may have been committed, without the need to seek SPRB authorization to do so.

(19) DCO should have sole authority to initiate reciprocal discipline proceedings; there should be a rebuttable presumption that the sanction in Oregon will be of the same severity as in the original jurisdiction.

(22) DCO should have authority to initiate temporary suspension proceedings when a lawyer has been convicted of a crime and where immediate and irreparable harm will result if the lawyer is not suspended.

*If **NO** to (8), the following would also likely be “no” but can be considered independently in an effort to streamline aspects of the process:*

Authority to determine resolution and appeal

(3) DCO should have sole authority to enter into diversion agreements for lesser misconduct.

(4) After the SPRB has authorized the filing of a formal complaint, DCO should have sole authority to enter into mediation and agree to a resolution, to negotiate Discipline by Consent (settlements), and to decide whether to appeal a trial panel decision.

Authority to initiate special proceedings

(6) DCO should have sole authority to initiate temporary suspension proceedings because of a lawyer’s disability or to protect the public during the pendency of discipline investigations and proceedings.

(7) DCO should be responsible for reporting to the proper prosecuting authority upon its finding that a crime may have been committed, without the need to seek SPRB authorization to do so.

(19) DCO should have sole authority to initiate reciprocal discipline proceedings; there should be a rebuttable presumption that the sanction in Oregon will be of the same severity as in the original jurisdiction.

(22) DCO should have authority to initiate temporary suspension proceedings when a lawyer has been convicted of a crime and where immediate and irreparable harm will result if the lawyer is not suspended.

(30) In proceedings before the SPRB, the Respondent should be provided with the entirety of DCO’s recommendation and an opportunity to submit a response to the SPRB.

[Current practice is to provide Respondent with the factual summary portion of the memorandum, but not the legal analysis. This is based on exemptions available under the Oregon Public Records Act and a determination that the SPRB is a client under the current rules.]

3. Extent of Volunteer Involvement in Process

(2) DCO's dismissal of a complaint for lack of probable cause should be final and should not be subject to review by the SPRB.

[ABA recommended delegating review to the SPRB chair, but did not recommend eliminating a complainant's ability to seek a review.]

(11) The Local Professional Responsibility Committees should be eliminated.

[ABA, DSRC and DCO concur in recommendation. Requires amendment to Bar Act.]

4. Records of Disciplinary Matters

(18) Records of dismissed complaints should be retained for only three years and then should be considered "expunged."

[ABA recommended establishing a retention policy in court rule, but did not specify a period of time. Current retention policy is 10 years after dismissal.]

(26) Amend the Bar Act to provide that complaints of misconduct and all information and documents pertaining to them are confidential and not subject to public disclosure until either (a) the SPRB has authorized the filing of a formal complaint, or (b) the complaint has been finally resolved without SPRB authorization to file a formal complaint.

[Not an ABA recommendation; Recommended by DSRC. Requires amendment to Bar Act.]

5. Other Miscellaneous Process Amendments

(10) In exercising its discretion to decline to authorize prosecution, the SPRB should also consider (a) the lapse of time between the alleged misconduct and the SPRB's consideration of the matter, and (b) whether, given the relative seriousness of the misconduct and the likely sanction, formal proceedings are an appropriate use of resources.

[Discretion currently exists in BR 2.6(f). See Recommendation (9).]

(24) The Bar Rules should set out a menu of the requirements for suspended or disbarred lawyers regarding notice to clients, disposition of client files, etc., from which the parties in a negotiated resolution or the final adjudicator can select based on the circumstances.

[BR 6.3(b) requires a disbarred or suspended attorney to "take all reasonable steps to avoid foreseeable prejudice to any client" and to comply with all applicable laws and disciplinary rules.]

(25) In making its decision to pursue formal proceedings, the SPRB should find “cause for complaint,” which incorporates probable cause and a reasonable belief that the case can be proved by clear and convincing evidence.

(27) Amend BR 4.1 to conform formal discipline complaints to Oregon civil pleading practice.

(28) Eliminate from reciprocal discipline lawyers who resigned prior to hearing on pending charges in another jurisdiction.

(31) Permit Respondents to waive a trial panel at the time of filing the answer.

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Exhibit B
Disciplinary System Review Committee Recommendations
Board of Governors Special Meeting
March 11, 2016

(1) The SPRB should be appointed by the Supreme Court on nominations from the BOG, with members eligible for reappointment to a non-consecutive term.

[No opposition expressed. May require amendment to Bar Act.]

(5) DCO should have sole authority to amend formal complaints to correct scrivener errors, drop charges, delete factual allegations, or add new non-substantive allegations, subject to the discretion of the appropriate DB authority.

[No opposition expressed. The rules currently provide for this. See BR 2.3(b)(3), 4.1 and 4.4(b). In practice, DCO has brought all amendments to the SPRB, but is not opposed to exercising discretion in these matters.]

(9) The SPRB's existing discretion to direct, in some circumstances, that no formal complaint be filed notwithstanding the existence of probable cause should be continued.

[BR 2.6(f) currently allows this. ABA recommended deleting but no opposition expressed to its continuation.]

(13) Trial panels should be appointed promptly upon the filing of the answer or upon the expiration of the time allowed to answer.

[ABA recommended; DSRC recommended. No opposition expressed.]

(14) The Bar Rules should be amended to clarify that the trial panel chair decides all pre-hearing motions and conducts prehearing trial management conferences.

[BR 2.4(h) currently provides for this. No opposition expressed, however, to clarifying the rules to say that the trial panel chair would not preside at mediation. See also BR 4.6 and Recommendation 15.]

(15) Settlement conferences requested by either DCO or the accused lawyer should be conducted by a mediator selected by mutual agreement of the parties.

[BR 4.9 currently provides for this. No opposition expressed to continuing.]

(17) The neutral terms "Respondent" and "finding of misconduct" should be substituted for "Accused" and "guilt" throughout the discipline process.

[ABA recommended; DSRC recommended. No opposition expressed.]

(20) DCO may opt, instead of or in addition to a reciprocal proceeding, to request authority from the SPRB to file a formal complaint based on the facts of the discipline matter in the other jurisdiction, in which case there is no presumption or preclusive effect of the other jurisdiction's findings and conclusions as to the facts or the sanction.

[The rules currently provide for this. See BR 3.5(a), 4.1(a) and RPC 8.5(a). No opposition expressed to continuing and clarifying the rules on this issue.]

(21) A two-step process should be implemented that allows for the imposition of a temporary restraining order in exigent circumstances, followed by an order for interlocutory suspension following a hearing if requested.

[No opposition expressed.]

(23) Statutory immunity should be extended to volunteer probation and diversion monitors.

[No opposition expressed. Requires amendment to Bar Act.]

(29) Authorize DCO to initiate transfers to Involuntary Inactive Status for Mental Incompetency or Addiction.

[BR 3.2 does not require SPRB involvement (unlike BR 3.1), but no opposition expressed to clarifying.]

OUR VIEW

MED FOR MAIL TRIBUNE EDITORIAL
3/17/2016

Bar takes a stand for transparency

The Oregon State Bar has rejected an ill-advised attempt to make its disciplinary procedures less open. The move is a victory for the principle of public disclosure.



SUNSHINE WEEK

The Oregon State Bar is not, strictly speaking, a government agency, but it fulfills the governmental role of protecting the public by licensing attorneys, investigating reports of wrongdoing and meting out punishment if necessary. It also has maintained one of the most open disciplinary processes of any Bar in the country. The Bar investigates complaints against attorneys filed by their clients, the public or other

attorneys. Members of the Bar can be disciplined for lying, providing standard representation or mishandling or stealing clients' money.

A committee of lawyers worked for a year on recommended changes to that disciplinary system. Among the committee's recommendations were to destroy disciplinary records after three years instead of 10 and to keep pending complaints secret. As it stands now, the complaint process is open from the beginning.

The Bar's governing board voted down those changes last week, along with others that would have raised the burden of proof for launching prosecutions of attorneys and given accused attorneys access to the Bar's internal deliberations about their case.

The board's decision came just in time for Sunshine Week, dedicated to promoting openness and transparency in government.

Public confidence that governmental and quasi-governmental institutions are acting in the public interest depends on the disclosure of those actions. An agency that won't even acknowledge that an investigation is underway does not inspire confidence.

The Oregon Medical Board, for example, keeps complaints against doctors secret unless the board finds a violation has occurred and issues an order. That kind of secrecy benefits doctors, not the public.

The Bar's board of governors is to be commended for valuing the public interest over that of the legal profession.



From: [Kateri Walsh](#)
To: [Camille Greene](#); [Helen Hirschbiel](#); [Dawn Evans](#); [Mark Johnson Roberts](#); [Linn Davis](#); [Susan Grabe](#); [Kateri Walsh](#)
Subject: Bend Bulletin Editorial on Discipline
Date: Friday, March 11, 2016 7:47:32 AM

Another media piece for packet. 3/11/16 editorial, Bend Bulletin.

<http://www.bendbulletin.com/opinion/4102077-151/editorial-dont-hide-complaints-against-lawyers?referrer=fpblob>

DRAFT

OREGON STATE BAR

Board of Governors Agenda

From: Amber Hollister, General Counsel
Meeting Date: April 22, 2016
Re: Amendments to Fee Dispute Resolution Rules

Action Recommended

Consider a proposed revision to the bar's Fee Dispute Resolution Rules to approve a single \$75.00 fee for voluntary participation in the Fee Dispute Resolution Program.

Background and Discussion

In September 2015, the Board adopted amended Fee Dispute Resolution Rules, which created a permanent Fee Mediation Program at the bar.

At that time, the Policy & Governance Committee approved the idea of a single fee of \$75 for mediation and arbitration, but the change was not reflected in the version of the Fee Dispute Resolution Rules approved by the Board.

Charging a single fee for participation in the Dispute Resolution Program, regardless of the amount in dispute, will simplify the bar's explanation of the program, and streamline implementation of the bar's new AMS system.

Currently, the bar charges a \$50 fee for disputes up to and including \$7500, and \$75 for disputes of \$7501 or more. Charging a \$75 fee for all participants is affordable in light of the fees charged in other comparable dispute resolution forums, such as small claims court. (General Counsel also offers fee waivers where Petitioners demonstrate financial need.)

General Counsel does not anticipate that this change will have any material impact on program revenue, which is modest.

Attachments: Fee Dispute Resolution Rules Redline version

Style Definition: Text 1

Fee Dispute Resolution Rules

Rules of the Oregon State Bar on Mediation and Arbitration of Fee Disputes

Effective ~~September 2015~~ April 2016

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Appendix A 9

Section 1 Purpose

1.1 The purpose of these Rules is to provide a voluntary method to resolve fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; between those members and other active members of the Oregon State Bar, and; between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon. Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.

Section 2 Mediation and Arbitration Panels; Advisory Committee

2.1 The Fee Dispute Resolution Administrator (“Administrator”) shall appoint attorney members to mediation panels in each board of governors region, from which mediators will be selected. The normal term of appointment shall be three years, and a mediation panelist may be reappointed to a further term. All mediation panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment.

2.2 The Administrator shall appoint attorney and public members to arbitration panels in each board of governors region, from which arbitrators will be selected. The normal term of appointment shall be three years, and an arbitration panelist may be reappointed to a further term. All attorney panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment. All public panelists shall reside or maintain a principal business office in the board of governors region of appointment and shall be neither active nor inactive members of any bar.

2.3 General Counsel shall appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel and the Administrator with training and recruitment of arbitration and mediation panel members, provide guidance as needed in the interpretation and implementation of the fee dispute rules, and make recommendations to the board of governors for changes in the rules or program.

Section 3 Training

3.1 The Oregon State Bar will offer training opportunities to panelists regarding mediation and arbitration techniques and the application of RPC 1.5 in fee disputes.

3.2 The Administrator may request information about panelists’ prior training and experience and may appoint panelists based on their related training and experience.

Section 4 Initiation of Proceedings

4.1 A mediation proceeding shall be initiated by the filing of a written petition and mediation agreement. The mediation agreement must be signed by one of the parties to the dispute and filed with General Counsel’s Office within 6 years of the completion of the legal services involved in the dispute.

4.2 An arbitration proceeding shall be initiated by the filing of a written petition and arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel's Office within 6 years of the completion of the legal services involved in the dispute.

4.3 Upon receipt of a petition and agreement(s) signed by the petitioning party, the Administrator shall forward a copy of the petition and the agreement(s) to the respondent named in the petition by regular first-class mail e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to mediation or arbitration the respondent shall sign the agreement(s) and return the agreement(s) to the Administrator within twenty-one (21) days of receipt. A twenty-one (21) day extension of time to sign and return the petition may be granted by the Administrator. Failure to sign and return the agreement within the specified time shall be deemed a rejection of the request to mediate or arbitrate.

4.4 A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

4.5 If the respondent agrees to mediate or arbitrate, the Administrator shall notify the petitioner who shall, within twenty-one (21) days of the mailing of the notice, pay a filing fee of ~~\$75-75~~ [for claims of less than \\$7500 10,000 and \\$100 for claims of \\$10,0007500 or more regardless of the amount claimed](#). The filing fee may be waived at the discretion of the Administrator based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded, except on a showing satisfactory to General Counsel of extraordinary circumstances or hardship.

4.6 If the request to mediate or arbitrate is rejected, the Administrator shall notify the petitioner of the rejection and of any stated reasons for the rejection.

4.7 The petition, mediation agreement, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that mediation and arbitration agreements may be modified with the consent of both parties and the approval of General Counsel.

4.8 After the parties have signed a mediation or arbitration agreement, if one party requests that a mediation or arbitration proceeding not continue, the Administrator shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

Section 5 Amounts in Dispute

5.1 Any amount of fees or costs in controversy may be mediated or arbitrated. The Administrator may decline to mediate or arbitrate cases in which the amount in dispute is less than \$250.00.

5.2 The sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5.

Section 6 Selection of Mediators and Arbitrators

6.1 Each party to a mediation shall receive with the petition and mediation agreement a list of the members of the mediation panel from the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.2 Each party to an arbitration shall receive with the petition and arbitration agreement a list of the members of the arbitration panel in the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.3 Each party may challenge without cause, and thereby disqualify as mediators or arbitrators, not more than two panelists. Each party may also challenge any panelist for cause. Any challenge for cause must be made by written notice to the Administrator, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the panelist, and shall be submitted with the required fee. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party. Upon receipt of the agreement signed by both parties, the Administrator shall select the appropriate number of panelists from the list of unchallenged panelists to hear a particular dispute.

6.4 All mediations shall be mediated by one lawyer panelist selected the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give the parties notice of the mediator's appointment.

6.5 Disputed amounts of less than \$10,000 shall be arbitrated by one lawyer panelist. Disputed amounts of \$10,000~~01~~ or more shall be arbitrated by three panelists, including two lawyer arbitrators and one public arbitrator. If three (3) arbitrators are appointed, the Administrator shall appoint one lawyer arbitrator to serve as chairperson. The Administrator shall appoint panelists from the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give notice of appointment to the parties of the appointment. Regardless of the amount in controversy, the parties may agree that one lawyer arbitrator hear and decide the dispute. If three arbitrators cannot be appointed in a fee dispute from the arbitration panel of the board of governors region in which a dispute involving \$10,000 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with the Administrator within ten (10) days after receiving notice that a single arbitrator will be appointed under this subsection, two (2) additional arbitrators shall be appointed.

6.6 Any change or addition in appointment of mediators or arbitrators shall be made by the Administrator. When necessary, the Administrator may appoint mediators or arbitrators from a region other than the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.7 Before accepting appointment, a mediator or arbitrator shall disclose to the parties and, if applicable, to the other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the mediator or arbitrator in the proceeding. Mediators and arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the mediator or arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, the Administrator

will appoint a replacement mediator or arbitrator and, if appropriate, extend the time for the hearing.

6.8 In the absence of consent by all parties, no person appointed as a mediator may thereafter serve as an arbitrator for the same fee dispute.

Section 7 Mediation

7.1 The mediator shall arrange a mutually agreeable date, time and place for the mediation. The mediator shall provide notice of the mediation date, time and place to the parties and to the Administrator not less than 14 days before the mediation, unless the notice requirement is waived by the parties.

7.2 The mediation shall be held within ninety (90) days of appointment of the mediator by the Administrator. Upon request of a party, or upon his or her own determination, the mediator may adjourn, continue or postpone the mediation as the mediator determines necessary.

7.3 Any communications made during the course of mediation are confidential to the extent provided by law. ORS 36.220. Mediations are not public meetings; the mediator has the sole discretion to allow persons who are not parties to the mediation to attend the proceedings.

7.4 If the parties reach a settlement in mediation, the mediator may draft a settlement agreement consistent with RPC 2.4 to memorialize the parties' agreement.

7.5 At the conclusion of the mediation, the mediator shall notify the Administrator if the fee dispute was resolved. The mediator shall not provide a copy of the settlement agreement to the bar.

Section 8 Arbitration Hearing

8.1 The chairperson or sole arbitrator shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or sole arbitrator shall provide written notice of the hearing date, time and place to the parties and to the Administrator not less than 14 days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

8.2 The arbitration hearing shall be held within ninety (90) days after appointment of the arbitrator(s) by Administrator, subject to the authority granted in subsection 8.3.

8.3 The arbitrator or chairperson may adjourn the hearing as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the presiding arbitrator may postpone the hearing from time to time.

8.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. The chairperson or the sole arbitrator may receive any evidence relevant to a determination under Rule 5.2, including evidence of the value of the lawyer's services rendered to the client. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence

shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

8.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by a lawyer at the hearing or at any stage of the arbitration.

8.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

8.7 Upon request of one party, and with consent of both parties, the panel or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

8.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

8.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

8.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

Section 9 Arbitration Award

9.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

9.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion regarding the reasons for the award. Awards shall be substantially in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

9.3 Arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the fee dispute proceeding. An attorney shall not be awarded more than the amount for services

billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.

9.4 The original award shall be forwarded to the Administrator, who shall mail certified copies of the award to each party to the arbitration. The Administrator shall retain the original award, together with the original fee dispute agreement. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

9.5 If a majority of the arbitrators cannot agree on an award, they shall so advise the Administrator within 30 days after the hearing. The Administrator shall resubmit the matter, de novo, to a new panel within thirty days.

9.6 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

9.7 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision;
- c. the arbitration panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

Section 10 Confidentiality

10.1 The resolution of a fee dispute through the Oregon State Bar Fee Dispute Resolution Program is a private, contract dispute resolution mechanism, and not the transaction of public business.

10.2 Except as provided in paragraph 10.4 below, or as required by law or court order, all electronic and written records and other materials submitted by the parties to General Counsel's Office, or to the mediators or arbitrators, and any award rendered by the arbitrator(s), shall not be subject to public disclosure, unless all parties to an arbitration agree otherwise. The Oregon State Bar considers all electronic and written records and other materials submitted by the parties to General Counsel's Office, or to the mediators or arbitrators, to be submitted on the condition that they are kept confidential.

10.3 Mediations and arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend an arbitration hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

10.4 Notwithstanding paragraphs 10.1, 10.2, and 10.3, lawyer mediators and arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

10.5 Notwithstanding paragraphs 10.1, 10.2, and 10.3, and 10.4, all electronic and written records and other materials submitted to General Counsel's Office or to the mediators or arbitrators during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing any alleged ethical violation in accordance with BR 2.5 and BR 2.6.

10.6 Notwithstanding paragraphs 10.1, 10.2, 10.3 and 10.4, General Counsel's Office may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a dispute resolution proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of an arbitration proceeding, in whose favor the arbitration award was rendered.

10.7 Notwithstanding paragraphs 10.1, 10.2 and 10.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, the Administrator shall notify the administrator of such program(s).

10.8 Mediators and parties who agree to participate in this program expressly waive the confidentiality provisions of ORS 36.222 to the extent necessary to allow disclosures pursuant to Rule 7.5, 10.4, 10.5 and 10.6.

Section 11 Immunity and Competency to Testify

11.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar dispute resolution program.

Appendix A

**Oregon State Bar
Fee Arbitration**

) Case No.

Petitioner

)

v.

) Arbitration Award

Respondent

)

)

Jurisdiction

Nature of Dispute

Amount of Award

Opinion

Award Summary

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter is:

\$

Of which the Client is found to have paid:

\$

For a net amount due of:

\$

Accordingly, the following award is made:

\$

Client shall pay Attorney the sum of:

\$

(or)

Attorney shall refund to Client the sum of:

\$

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Policy & Governance Committee
Re: Grants, Sponsorships & Contribution Policy

Issue

Consider adopting an amended bylaw on the bar's provision of grants, sponsorships and contributions to law related and community organizations.

Options

1. Adopt the proposed amendments to Bylaw Subsection 7.203 today. Doing so would require the BOG to also waive the one meeting notice requirement.
2. Put the issue of whether to adopt the amendment to Bylaw Section 7.203 on the BOG agenda for its April 2016 meeting.
3. Decline to adopt the proposed amendment.
4. If the proposed amendment is adopted, consider whether to direct the Policy & Governance Committee to draft a policy on distribution of grants, contributions and sponsorships for consideration by the Board.

Background

In recent years, and with increasing frequency, the BOG has been asked to contribute funds to co-sponsor an upcoming event of interest or relevance to the legal community. The requests are presented to the BOG and addressed on an *ad hoc* basis, as there is no policy for making such contributions and no budget for them. In 2014 and 2015, the BOG approved \$20,050 in "sponsorship" contributions:

2014-Nat'l. Legal Aid & Defender Association Conference - \$5,000
2014-Nat'l. Black Law Students Conference - \$5,000
2014-OWLs 25th Anniversary Celebration - \$250
2014-ABA Young Lawyers Fall Conference - \$5,000
2015-District of Oregon Conference - \$1,000
2015-ABA President's Visit - \$1,000
2015-CEJ Laf-Off - \$1,000

These contributions were in addition to the budgeted expenditures for the BOG and some senior staff to attend a variety of local bar, specialty bar and community events. BOG attendance at bar and community events is a demonstration of the bar's leadership role in the Oregon legal community and its commitment to promoting diversity and inclusion in the profession.

In establishing any policy regarding grants, sponsorships and charitable contributions, the BOG must be mindful of the restrictions on the use of mandatory fees under *Keller v. State Bar of California*.¹ In that case, the US Supreme Court held that an integrated bar's use of compulsory fees to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services. Stated another way, mandatory fees may be used *only* to fund activities "germane" to the purpose for which the bar exists. This requirement is articulated in OSB Bylaws Section 12.1.

ORS 9.080(1) charges the Board of Governors to "direct its power to the *advancement of the science of jurisprudence* and the *improvement of the administration of justice*." The first phrase connotes the creation and interpretation of law and support for the rule of law. The second phrase, while clearly relating to judicial processes, also captures what we refer to broadly as "access to justice." That phrase in turn encompasses diversity in the profession, the elimination of barriers to legal services and justice, and regulation of the legal profession (including education to assure competency).

Discussion

At its October 9, 2015 meeting, the Board asked staff to draft language for a bylaw governing sponsorships and contributions, and referred the matter to the Policy & Governance Committee. Staff surveyed the policies of other bars, and reported back. At its January and February 2016 meetings, this Committee considered several options.

First, the Committee discussed amending the bylaws to provide that the bar would not provide any sponsorships or contributions other than purchasing tickets to events, except in extraordinary circumstances. This approach was based on the policy of the State Bar of Michigan. It would sharply curtail the Bar's sponsorships and contributions, except in extraordinary circumstances.

Second, the Committee discussed amending the bylaws to set a budget for sponsorships and contributions, and to create a formal process for organizations to apply for funds on an annual basis. This approach was based on the policy of the State Bar of Arizona. This option would provide transparency through the establishment of a set budget. It would also allow organizations equal opportunity to apply for bar funds on an annual basis.

Finally, the Committee considered amending existing bylaws (in particular, Subsection 7.203 Grants), to require that the Board set a budget for grants, sponsorships and contributions. In conjunction with this approach, the Committee discussed recommending that the Board establish a Board policy for the distribution of grants, sponsorships and

¹ 499 US 1, 111 Sct 2228 (1990).

contributions, outside of the bylaws. The Committee believed this option would provide added transparency, but would have the advantage of giving the Board flexibility to tailor its processes going forward. In particular, the Committee believed it would be prudent to delegate decisions that fall under a set monetary threshold to the Chief Executive Officer/Executive Director.

After discussing all of the options, the Committee voted to recommend that the Board amend existing Subsection 7.203 Grants, and adopt a separate Board policy on the distribution of grants, contributions and sponsorships. The bylaw would be amended as follows:

Subsection 7.203 Grants, Contributions & Sponsorships

The bar does not **generally** accept proposals for **grants, contributions or sponsorships** to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that [*in the sole discretion of the Board of Governors, furthers the mission of the bar*] **is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws.** The **bar's annual budget shall include** an amount **dedicated to providing such financial support, although that amount** [*allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and*] may change from year to year based upon the overall financial needs of the bar. **This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.**

March 29, 2016

Hon. Thomas A Balmer
Chief Justice
Oregon Supreme Court
Supreme Court Bldg
1163 State St
Salem, OR 97301

Re: Recommendations for Amendments to Disciplinary System

Dear Chief Justice Balmer:

At its March 11, 2016 meeting, the Board of Governors met to discuss the Disciplinary System Review Committee (“DSRC”) report and recommendations. Out of the thirty-one DSRC recommendations, the Board favors eighteen of them and conditionally approved a nineteenth recommendation.

This letter provides some explanation of the Board’s position with respect to the more controversial recommendations; a summary of the Board’s position on each of the recommendations is attached. The Board hopes to receive direction from the Court regarding which of the recommendations should be incorporated into proposed amendments to the Bar Rules of Procedure. In addition, the Board welcomes the Court’s comments on DSRC recommendations that were not approved by the Board.

Summary of Recommendations

The proposal that engendered the most debate was the establishment of a professional adjudicator position (DSRC # 16). The DSRC envisioned that this person would be a permanent employee of the Oregon State Bar (OSB), either full- or part-time as warranted, appointed by the Supreme Court and not a “judicial officer” within the meaning of ORS 1.210. This person would preside in every three-member trial panel (the second and third members of which would continue to be a lawyer and a nonlawyer from the OSB region where the respondent lawyer practices), resolve all prehearing motions and matters, and author every trial panel opinion.

During a lengthy discussion, Board members expressed concerns about the appearance of a lack of independence by making the position an employee of the OSB. Nonetheless, the Board was swayed by the promise of improvements to efficiency, consistency and quality of trial panel opinions. Thus, the Board approved the creation of a professional adjudicator position, subject to the Court's approval that the position be an employee of the Court, and not of the OSB.

The Board rejected the recommendation that the State Professional Responsibility Board (SPRB) role be limited solely to that of a grand jury (DSRC#8). It was persuaded by comments in the minority reports and from members of the bar about the important role the SPRB plays in adding credibility and accountability to the disciplinary process by providing oversight in critical stages of the process, such as settlement.

Even so, the Board does favor several enhancements to DCO's ability to take certain steps without requiring approval of or authorization by the SPRB. Some of these abilities already exist in rule but not in practice (indicated by an asterisk):

- Entering into diversion agreements for lesser misconduct (DSRC # 3);
- Amending formal complaints to correct scrivener errors, drop charges, delete factual allegations, or add new non-substantive allegations, subject the discretion of the appropriate Disciplinary Board (DB) authority (DSRC # 5)*;
- Initiating temporary suspension proceedings because of a lawyer's disability (BR 3.2)* or to protect the public during the pendency of a disciplinary proceeding (BR 3.1)(DSRC #6);
- Reporting to the proper prosecuting authority that a crime may have been committed by an Oregon lawyer (DSRC # 7);
- Initiating reciprocal discipline proceedings, which will be predicated on a rebuttable presumption that the sanction in Oregon will be of the same severity as in the original jurisdiction (DSRC # 19). DCO may also opt, instead of or in addition to the reciprocal proceeding, to seek authority from the SPRB to pursue a formal complaint on the facts underlying the discipline, in which case no rebuttable presumption applies (DSRC #20)*;
- Initiating temporary suspension proceedings when a lawyer has been convicted of a crime and immediate and irreparable harm will result if the lawyer is not suspended (DSRC # 22);
- Initiating transfers to involuntary inactive status based upon mental incompetency or addiction (BR 3.2)* (DSRC # 29).

The Board recommends the elimination of the Local Professional Responsibility Committees (LPRC's)(DSRC # 11) as well as extending the same statutory immunity to volunteer probation and diversion monitors that presently covers witnesses in disciplinary and admission matters, OSB officials and employees (DSRC # 23). Both of these recommendations would require amendments to the Bar Act to fully implement.

The Board recommends that members of the SPRB be appointed by the Supreme Court upon nominations made by the BOG, with members eligible to be reappointed for a non-consecutive term (DSRC # 1).

The terms "Accused" and "guilty" should be changed to "respondent" and "finding of misconduct," respectively (DSRC # 17).

Finally, the Board approved a number of recommendations that are intended to provide additional clarification to the process, including:

- Continuation of the SPRB's current ability to direct that no formal complaint be filed, in certain circumstances, notwithstanding the existence of probable cause (DSRC #9);
- Assigning a trial panel upon the filing of an answer or the expiration of the time to answer (DSRC #13);
- Articulating a two-step process for 3.2 interim suspension matters that contemplates obtaining an ex parte temporary restraining order that would be served on the lawyer, followed by a hearing to determine whether a temporary injunctive order would be entered pending the outcome of the underlying disciplinary proceeding (DSRC # 21);
- Clarifying that trial panel chairs decide all prehearing motions and conduct all prehearing trial management conferences (DSRC #14);
- Articulating that mediations should be conducted by a mediator mutually agreed upon by the parties (DSRC #15);
- Imposing specific requirements upon suspended and disbarred lawyers upon suspension or disbarment, including such things as notification to clients, disposition of files, etc. (DSRC #24).

Please let me know if the Court has any questions or concerns about this matter. Dawn Evans and I would be happy to attend the public meeting at which the Court discusses these proposals. After we receive the Court's feedback about which of the recommendations it supports in concept, we will submit redlined version of the Bar Rules of Procedure to the Court. To the extent that some of the proposed recommendations already exist in the current rules, we will look for ways to clarify the language to ensure that the intent of the rules clearly

Hon. Thomas Balmer
March 29, 2016
Page 4

implements the proposed recommendations. We anticipate, at the same time, submitting some additional proposed changes that can be described as clean-up or housekeeping. An accompanying letter will distinguish which changes emanate from the Board recommendations and which are simply clean-up.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen M. Hirschbiel". The signature is fluid and cursive, with the first name being the most prominent.

Helen M. Hirschbiel
CEO/Executive Director
Ext. 361
Email: hhirschbiel@osbar.org

Attachment: DSRC Recommendation Chart

DSRC Recommendation	BOG Favors	BOG Does not favor	Other
(1) The SPRB should be appointed by the Supreme Court on nominations from the BOG, with members eligible for reappointment to a non-consecutive term.	X		
(2) DCO's dismissal of a complaint for lack of probable cause should be final and should not be subject to review by the SPRB.		X	
(3) DCO should have sole authority to enter into diversion agreements for lesser misconduct.	X		
(4) After the SPRB has authorized the filing of a formal complaint, DCO should have sole authority to enter into mediation and agree to a resolution, to negotiate Discipline by Consent (settlements), and to decide whether to appeal a trial panel decision.		X	
(5) DCO should have sole authority to amend formal complaints to correct scrivener errors, drop charges, delete factual allegations, or add new non-substantive allegations, subject to the discretion of the appropriate DB authority.	X		
(6) DCO should have sole authority to initiate temporary suspension proceedings because of a lawyer's disability or to protect the public during the pendency of discipline investigations and proceedings.	X		
(7) DCO should be responsible for reporting to the proper prosecuting authority upon its finding that a crime may have been committed, without the need to seek SPRB authorization to do so.	X		
(8) SPRB jurisdiction over a matter should end once it authorizes the filing of a formal complaint or a letter of admonition.		X	
(9) The SPRB's existing discretion to direct, in some circumstances, that no formal complaint be filed notwithstanding the existence of probable cause should be continued.	X		

DSRC Recommendation	BOG Favors	BOG Does not favor	Other
(10) In exercising its discretion to decline to authorize prosecution, the SPRB should also consider (a) the lapse of time between the alleged misconduct and the SPRB's consideration of the matter, and (b) whether, given the relative seriousness of the misconduct and the likely sanction, formal proceedings are an appropriate use of resources.		X	
(11) The Local Professional Responsibility Committees should be eliminated.	X		
(12) Retain the regional Disciplinary Board panels and the State Chair, but eliminate Regional Chairs.			tabled
(13) Trial panels should be appointed promptly upon the filing of the answer or upon the expiration of the time allowed to answer.	X		
(14) The Bar Rules should be amended to clarify that the trial panel chair decides all pre-hearing motions and conducts prehearing trial management conferences.	X		
(15) Settlement conferences requested by either DCO or the accused lawyer should be conducted by a mediator selected by mutual agreement of the parties.	X		
(16) Oregon should establish a professional adjudicator position.	X		Subject to Court approval of position being Court employee
(17) The neutral terms "Respondent" and "finding of misconduct" should be substituted for "Accused" and "guilt" throughout the discipline process.	X		
(18) Records of dismissed complaints should be retained for only three years and then should be considered "expunged."		X	

DSRC Recommendation	BOG Favors	BOG Does not favor	Other
(19) DCO should have sole authority to initiate reciprocal discipline proceedings; there should be a rebuttable presumption that the sanction in Oregon will be of the same severity as in the original jurisdiction.	X		
(20) DCO may opt, instead of or in addition to a reciprocal proceeding, to request authority from the SPRB to file a formal complaint based on the facts of the discipline matter in the other jurisdiction, in which case there is no presumption or preclusive effect of the other jurisdiction's findings and conclusions as to the facts or the sanction.	X		
(21) A two-step process should be implemented that allows for the imposition of a temporary restraining order in exigent circumstances, followed by an order for interlocutory suspension following a hearing if requested.	X		
(22) DCO should have authority to initiate temporary suspension proceedings when a lawyer has been convicted of a crime and where immediate and irreparable harm will result if the lawyer is not suspended.	X		
(23) Statutory immunity should be extended to volunteer probation and diversion monitors.	X		
(24) The Bar Rules should set out a menu of the requirements for suspended or disbarred lawyers regarding notice to clients, disposition of client files, etc., from which the parties in a negotiated resolution or the final adjudicator can select based on the circumstances.	X		
(25) In making its decision to pursue formal proceedings, the SPRB should find "cause for complaint," which incorporates probable cause and a reasonable belief that the case can be proved by clear and convincing evidence.		X	

DSRC Recommendation	BOG Favors	BOG Does not favor	Other
(26) Amend the Bar Act to provide that complaints of misconduct and all information and documents pertaining to them are confidential and not subject to public disclosure until either (a) the SPRB has authorized the filing of a formal complaint, or (b) the complaint has been finally resolved without SPRB authorization to file a formal complaint.		X	
(27) Amend BR 4.1 to conform formal discipline complaints to Oregon civil pleading practice.		X	
(28) Eliminate from reciprocal discipline lawyers who resigned prior to hearing on pending charges in another jurisdiction.		X	
(29) Authorize DCO to initiate transfers to Involuntary Inactive Status for Mental Incompetency or Addiction.	X		
(30) In proceedings before the SPRB, the Respondent should be provided with the entirety of DCO's recommendation and an opportunity to submit a response to the SPRB.		X	
(31) Permit Respondents to waive a trial panel at the time of filing the answer.		X	

To Helen Hierschbiel & Associates,

2-8-16

I want to say thank you from the bottom of my heart for all of the honest help you and your office have done for me with the issue between Gary B. Bertoni and myself. It really says a lot about the way the Oregon State Bar runs business and the standard the O.S.B. holds the people to that work through your office.

Without the hard work of everyone involved, I would have lost quite a bit to Mr. Bertoni's dishonest behavior and poor quality of business ethics.

Thank you and your office once again for all of your support and help.

RECEIVED

FEB 16 2016

Oregon State Bar
Executive Director

Sincerely,

Derrick Lyons
S.I.D. #15763257





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office@classroomlaw.org
www.classroomlaw.org

February 16, 2016

Oregon State Bar
c/o Camille Greene
16037 SW Upper Boones Ferry Rd
Tigard, OR 97224

Dear Ms. Greene,

On behalf of the more than 50,000 students we reach each year with the highest quality civic and law-related educational curriculum, I want to thank you for sponsoring a table at the 2016 Legal Citizen of the Year Award Dinner & Benefit celebrating The Honorable Thomas A. Balmer, Chief Justice of the Oregon Supreme Court. It's shaping up to be a magical night!

We look forward to seeing you and your guests at the Dinner on April 27, 2016 at the Sentinel Hotel in downtown Portland. Please forward the names of your table guests, as well as your company logo, as soon as possible. For updates on the evening, please check our website, www.classroomlaw.org or contact me directly at 503.224.4424 or development@classroomlaw.org.

Thank you again. We can't wait to see you in April!

Sincerely,

Jeannemarie C. Halleck
Director of Development & Communications

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FEB 22 2016

Oregon State Bar
Executive Director

Classroom Law Project is a 501(c)(3) tax-exempt organization.
Thank you again for your support!

Oregon State Bar

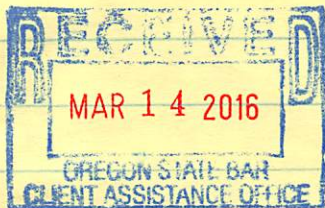
March 8th, 2016

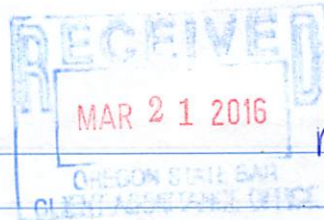
I am writing this in presenting you with a great Comendation for Thomas, O'Neil, his actions have far surpassed what is required of legal counsel. I am having a difficult time in my life with the death of my Mother, Brother-in-law and the news of my sister being diagnosed with cancer all in a few months span; Not to mention my legal matters. Mr O'Neil has given me great advise to be applied towards future goals and has given hope for a better outcome surrounding my circumstances. I feel special recognition is due to him especially for continuing to serve his clients after his medical procedure; when most would still be recovering. A man of his nature is hard to find and is a huge benefit to the Oregon State Bar Association.

with all respect and gratitude,

Randall Fox Gal.6:2

Randall Fox
SID 13552584
4000 Aumsville Hwy
Salem, Or 97317





MARCH 15, 2015

DEAR Oregon STATE BAR,

Hello my NAME is Christopher Lee Rarrick I'm writing you today in regards to Sammy Sanchez Attorney At Law... This woman is not only AMAZINGLY Beautiful, She Also holds Care, when handling my Criminal Case load! She goes Above An Beyond her Calls As Public Defendants, remain in high DEMAND For A Attorney To Actually Stand For their rights AS WELL AS defend them to the Fullest Knowledge, in regards to their Cases.

I HAVE EXPERIENCED NOTHING BUT Greatness, An Assurance AS I walk into the Courtroom knowing I hold such legal Council by my side such AS Ms. SAMMY SANCHEZ She's very professional Bein AS such I feel the word AS Bein Almost A understatement!! In my experiences in this KLAMATH FALLS STATE OF OREGON She's Among the TOP BEST Attorney's I've Experienced!!

Thank you For your time TO read my Honors TO your Choice's TO Employment!

Current Location is A Prisoner OF Corruption At 320 Vandenberg rd. Klamath County Jail Klamath Falls OR, 97603

Thank you very much
Christopher Lee Rarrick
541-331-5010
3931 Shasta Way
Klamath Falls OR, 97603




3/7/16

Alfred Willstatter

DEAR BOARD OF GOVERNORS
OREGON STATE BAR

AS A RETIRED ARMY RESERVE
VIST, WITH WWII & KOREAN
SVC, AS WELL US DEPT OF
STATE SPECIAL STAFF OFFER,
AN OREGONIAN "BY CHOICE OF
OVER 50 YEARS" AND FORMER
SMALL BUSINESS OWNER I AM
PROUD OF MY VOLUNTEER SVC.
WITH YOUR AGENCY. I WAS
TOTALLY DELIGHTED WITH YOUR
DECISION NOT TO DILUTE YOUR
ETHIC OR INTEGRITY FOR "CONVENIENCE"
SAKE. KEEP UP YOUR GOOD WORK - A
RAY OF SUNSHINE"

SINCERELY
Alfred Willstatter

 **Alfred Willstatter**
128 Central Ave.
Ashland, OR 97520-1715

OPINION

LETTERS POLICY

Letters to the editor must be 200 words or less, 150 words for election and thank-you letters, and are limited to one per month. Include author's address and phone number for verification. Send to Letters, Mail Tribune, P.O. Box 1108, Medford, OR 97501 or letters@mailtribune.com; fax to 541-776-4376.

Contact Gary Nelson, opinion page editor, gnelson@mailtribune.com or 541-776-4472

Mail Tribune

pages to stimulate discussing of issues important to editorials labeled "Our View" of the Mail Tribune.

TY Publisher
..... Editor
..... Editorial Page Editor

OUR VIEW

Bar takes a stand for transparency

The Oregon State Bar has rejected an ill-advised attempt to make its disciplinary procedures less open. The move is a victory for the principle of public disclosure.

The Oregon State Bar is not, strictly speaking, a government agency, but it fulfills the governmental role of protecting the public by licensing attorneys, investigating reports of wrongdoing and meting out punishment if necessary. It also has maintained one of the most open disciplinary processes of any Bar in the country. The Bar investigates complaints against attorneys filed by their clients, the public or other

attorneys. Members of the Bar can be disciplined for lying, providing substandard representation or mishandling or stealing clients' money. A committee of lawyers worked for a year on recommended changes to that disciplinary system. Among the committee's recommendations were to destroy disciplinary records after three years instead of 10 and to keep pending complaints secret. As it stands now, the complaint process is open from the beginning.

The Bar's governing board voted down those changes last week, along with others that would have raised the burden of proof for launching prosecutions of attorneys and given accused attorneys access to the Bar's internal deliberations about their case.

The board's decision came just in time for Sunshine Week, dedicated to promoting openness and transparency in government. Public confidence that governmental and quasi-governmental institutions are acting in the public interest depends on the disclosure of those actions. An agency that won't even acknowledge that an investigation is underway does not inspire confidence.

The Oregon Medical Board, for example, keeps complaints against doctors secret unless the board finds a violation has occurred and issues an order. That kind of secrecy benefits doctors, not the public. The Bar's board of governors is to be commended for valuing the public interest over that of the legal profession.



RELATIONS

[Handwritten signature]

From: [Richard Spier](#)
To: [Helen Hirschbiel](#); [Christopher Ling](#); [Ray Heysell](#); [Michael D. Levelle](#)
Cc: [Camille Greene](#)
Subject: FW: 3L bar exam
Date: Wednesday, April 13, 2016 9:45:27 AM

Hi Helen, Chris, Ray and Michael,

I thought you might be interested in the email string, below, with an OLIO attendee.

Camille, perhaps you would include this as an exhibit for the next full next BOG agenda.

Best wishes,

Rich

From: Melina Martinez [mailto:mlara@lclark.edu]
Sent: Wednesday, April 13, 2016 9:22 AM
To: Richard Spier
Subject: Re: 3L bar exam

Dear Mr. Spier:

I hope this email finds you well. We met last year at OLIO after I sought out your thoughts and guidance on Admission Rule 3.05(4). I wanted to express my gratitude for providing me with such helpful information. Also, I wanted to report that I passed the bar exam before graduating from Lewis and Clark. I know that taking the exam would not have been possible without the new rule and without the amazing workers at the OSB. Again, THANK YOU!

Best regards,

Melina Lara Martinez
JD Candidate 2016
Lewis & Clark Law School
Ph: 619-495-2585

On Sat, Aug 8, 2015 at 7:13 AM, Richard Spier <rspier@spier-mediate.com> wrote:
Melina, see below. Good luck. Keep me posted! Rich Spier

Sent from my iPhone

Begin forwarded message:

From: Helen Hirschbiel <HHirschbiel@osbar.org>
Date: August 7, 2015 at 11:22:56 PM PDT
To: Richard Spier <rspier@spier-mediate.com>, Sylvia Stevens <sstevens@osbar.org>
Subject: RE: 3L bar exam

Yes, Rich. It's Admission Rule 3.05(4), which you can find here:
http://www.osbar.org/_docs/rulesregs/admissions.pdf.

From: Richard Spier
Sent: Friday, August 07, 2015 10:46 PM
To: Sylvia Stevens; Helen Hirschbiel
Subject: 3L bar exam

A student here at OLIO asked me if the rule allowing 3L students to take the February bar exam is in effect. Is it? Can you give me a website link or reference to which to refer the student? Thanks!

Sent from my iPhone

Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis

By Selina Thomas

Selina Thomas is Client Protection Counsel, American Bar Association, Center for Professional Responsibility. The perspectives offered in this article are the author's and do not necessarily reflect or express policy of the American Bar Association.

There is an access to civil justice problem in the United States. The US Constitution guarantees a right to counsel in criminal matters, but there is no equivalent right to civil legal assistance. Many in need of legal services in the civil arena simply do without. Others seek the help of untrained and unregulated nonlawyers. In both scenarios, the consequences for the person needing legal help can be dire. The legal profession traditionally has deferred to regulatory enforcement to address the unauthorized practice of law (UPL),¹ but little has been done to address the underlying access to justice problem that feeds UPL violations. There is an emerging sense among those concerned about both problems that state supreme courts and the organized bar cannot effectively address UPL without doing more to close the access to justice gap.

In order to help inform solutions to that daunting justice gap, the legal profession will have to seriously consider whether its bedrock beliefs on essential qualifications of legal service providers continue to serve the public interest. Do traditional, restrictive approaches to UPL enforcement allow broad public access to quality legal services, or are such concepts antiquated? If ensuring access to justice is the highest aspiration, should we not consider whether those traditional approaches to curbing UPL do more to protect lawyers than consumers? And could it be time to shift the regulatory focus from punishing providers who are not lawyers to accepting other legal service provider classes who can competently fill the vast unmet need for legal services. Andrew Perlman, dean of Suffolk University Law School and vice chair of the ABA Commission on the Future of Legal Services, suggests the legal profession should distinguish between the “law of lawyering”, i.e., the law governing lawyers, and the “law of legal services,” a broader concept that encompasses the regulation of lawyers as well as of nonlawyers who deliver legal services.²

The relationship between UPL and access to civil justice was explored during the 2nd ABA UPL School held in April 2015 at the Loyola University School of Law in Chicago. At the UPL School, sponsored by the ABA Standing Committee on Client Protection, professionals concerned with the regulation and enforcement of UPL engaged on current trends in UPL violations and enforcement. Bar counsel, federal and state prosecutors, law professors, state and local bar committee members, and private practitioners

also discussed the challenge of narrowing the access to justice gap by expanding availability of legal services, even while guarding against unauthorized practice of law and ensuring that proper public protections remain in place.

The Access to Justice Problem

According to Paula Littlewood, executive director of the Washington State Bar Association and a UPL School keynote presenter, roughly 80 to 85 percent of the US population that is in need of civil legal services is underserved.³ A number of factors inform that deficit, said Ms. Littlewood:

- Legal aid agencies are overwhelmed and, in some rural communities, nonexistent;
- Middle-class people, and sometimes the working poor, do not qualify for civil legal aid, and yet cannot afford traditional legal services;
- Lawyers are transitioning out of practice at a faster pace than new lawyers are entering;
- Student-loan debt makes it difficult for many lawyers to represent clients at reduced fee rates; and
- Potential consumers of legal services engage in their own cost-benefit analysis, decide that they do not need a lawyer, opt for “self-help” options, or simply do not recognize their issues as legal problems at all.

The Washington State Supreme Court responded to the civil law access gap by creating the Limited License Legal Technician (LLLT) program.⁴ The program allows nonlawyers who are properly trained and licensed to independently represent clients. Licensure is currently limited to persons providing family law services, but the Court is expected to expand the LLLT program to other areas of law in the future.⁵

This program is a significant departure from the traditional concept of the practice of law, a concept we lawyers tend to regard as readily grasped, but that on closer examination is ambiguous in key aspects and not easily defined. A lawyer’s standard “all-things-law-related” definition of the practice of law by lawyers effectively excludes any provision of legal services by nonlawyers, unless the nonlawyer is under the direct supervision of a licensed lawyer. In contrast, Washington’s LLLT program legitimizes acts, by individuals who are not lawyers, that would conventionally constitute the unauthorized practice of law. The new program acknowledges that there are aspects of legal representation that do not require the expertise and skills of a lawyer. The LLLT program builds upon the premise that simplified and targeted methods of training nonlawyer legal professionals could provide a better means of assisting certain clients than the profession of law – lawyers – can deliver. Perhaps it is this aspect of the LLLT program that elicits the most fervent opposition from within the bar. It evokes the fear that these programs will eventually render certain traditional lawyers, particularly the sole practitioners, obsolete.⁶

The stark reality, however, is that the bar in totality has proved incapable of reducing the enormous justice gap in our nation. There is no cause for assuming that licensure of alternative providers for the purpose of addressing that gap will do any harm to the bar on balance. Beyond Washington state, a number

of jurisdictions have begun to actively explore adoption of limited licenses. California was the first to form a committee to seriously examine the issue. The Oregon State Bar's Task Force on Limited Legal Technicians issued its final report to their Board of Governors recommending it consider a legal technician program as part of the overall strategy to address the access to justice problem.⁷

Whom Are We Protecting?

At the UPL School, the tension between protection of the public and the need to regulate legal services came to a head in the session "The Users and Abusers: Technology and the Unauthorized Practice of Law," where an audience member posed the question, "What is our goal in addressing UPL?" The session, originally labeled a review of current technologies deemed the practice of law and a discussion of how to identify and deter such practices, evolved into a broader discussion of whether technology models are truly harmful to consumers or part of inevitable progress in the delivery of legal services.

Dr. Ron Dolin, research fellow at the Stanford Law School Center on the Legal Profession, suggested that as the legal profession discusses infringements on the practice of law, particularly as they relate to technology, it must examine whether software can replace more ministerial types of legal representation, such as completing forms or drafting simple pleadings. He asked attendees to consider whether the use of software to aid pro se litigants through the legal process is preferable to purely pro se representation with no assistance. Dr. Dolin also questioned how well the legal profession regulates the quality of a lawyer's work and whether the legal profession sets standards and minimum thresholds of accuracy for lawyers' work.

Implicit in the argument against alternative delivery methods is the assumption that the distinction of a law license also guarantees the delivery of quality legal services. But the practice of law is broad, and a lawyer's competence to practice within a certain area is not guaranteed. Lawyers are subject to a mandatory continuing legal education requirement in the vast majority of jurisdictions, but that requirement is not specific to the lawyer's practice area.⁸ Some lawyers obtain specialist certification. A lawyer who is properly qualified and approved may advertise as a specialist in a particular field of law.⁹ Currently, there are approximately 20 recognized specialties in US jurisdictions, with 14 specialties recognized across all jurisdictions. Certification requirements vary by specialty and certifying entity, but each program requires both re-certification and continuing legal education in the area of specialty.¹⁰ Nevertheless, there is no requirement to specialize and, therefore, no requirement that a lawyer maintain current competency in a particular area of practice outside of certification programs.

On the other hand, while the LLLT has a presumptively shorter, and less expensive, road to licensure, the subject matter requirements are extensive.¹¹ In addition to the general education requirement, LLLTs must complete 45 hours of core curriculum instruction in paralegal studies, as well as a required number of subject hours in the practice area in which the applicant seeks licensure. LLLTs must pass a bar-like exam and complete a total of 3,000 hours of training under the supervision of a lawyer in the specified practice area. Arguably, the extensive and focused requirements of LLLT training better prepare them to enter the legal marketplace in their particular area of training than law school does for

many new lawyers entering the market. In theory, at least, such specialized training, affordably delivered in a narrow scope of representation, would plainly be beneficial to law clients, effectively negating the argument that limited training, in itself, means substandard representation.

Such representation currently exists in various forms and is accepted by lawyers. Nonlawyer practice has long been permitted in the fields of federal tax and patent law.¹² The federal government, recognizing that the need for legal assistance in immigration cases exceeds the number of affordable and qualified lawyers, also allows nonlawyer representatives to provide independent representation to immigration clients. These "accredited representatives" are qualified by the Board of Immigration Appeals (BIA), and may represent individuals before the Department of Homeland Security and the Executive Office of Immigration Review, provided those services are delivered through an approved not-for-profit organization.

Immigration advocacy services that promote the protection of clients in immigration not only support these authorized accredited representatives, but also guide non-profit service organizations on how to become accredited under the BIA.¹³ The support of nonlawyer service providers by those who advocate on behalf of clients in immigration matters seems to support the conclusion that limited nonlawyer representation, when regulated, is preferable to no representation. So, why is the provision of immigration services by nonlawyers more acceptable than licensure of LLLTs or equivalent alternative legal providers?

Not So Fast

Some who attended the UPL School voiced opposition to expanding the field of alternative legal service providers. They challenged the assumption that the justice gap is a function of "too few lawyers," noting the high incidence of unemployed lawyers. Additionally, some noted that many of the safeguards in place to protect law clients in the client-lawyer relationship do not currently exist for nonlawyer representatives. Washington has established a disciplinary system for LLLTs, but it is untested. And although LLLTs are allowed to hold client funds, some voice concern that there is not yet a system to reimburse losses to clients in case of theft. And some who oppose LLLTs strongly asserted the belief that it is not the job of the legal profession to take business away from licensed lawyers. Instead, the goal should be to develop ways in which the legal profession can better respond to the access gap, they maintain.

It is also important to distinguish between representation and assistance. Representation assumes there is an individual who is considering the client's particular needs and providing services to that client accordingly. Assistance, particularly as applied to technology-based models, implies a lesser standard. As Jason Abrams, chair of the New York chapter of the American Immigration Lawyers Association, pointed out, when the consequence of inadequate representation is, for example, deportation, properly trained legal representation takes on greater importance. The use of technology without the benefit of an authorized professional who has the ability to apply independent analysis can have catastrophic consequences.

Doing the Most with Limited Resources

Those on both sides of the alternative-provider debate agreed on the importance of effective enforcement against the unauthorized practice of law. But the challenge of limited enforcement resources is as universal as the access to justice gap. Jurisdictions are struggling to allocate financial and personnel resources in a way that will impart maximum deterrent effect. Participants suggested that, in making this determination, it is necessary to distinguish between intentional bad actors who unlawfully hold themselves out as able to practice law and those who reasonably believe that their actions are within the bounds of the law, or are only working outside the bounds of the law due to what many believe are overly broad UPL regulations.

According to Ghunise Coaxum, Branch UPL Counsel at The Florida Bar, most of the UPL complaints that her office receives come from judges, bar associations, and private practitioners, not members of the public.¹⁴ This does not negate the importance of effective UPL enforcement, and there are several contributing factors to the dearth of public complaints, including the public's lack of knowledge, but it does raise a question as to whether spending resources on enforcement where no harm is reported is truly protecting the public interest. Would a more practical approach to UPL enforcement that specifically targets harmful conduct allow for increased public protection, and also address the access gap?

Lawyers Can Make a Difference

There are opportunities to expand the provision of legal services by lawyers. Law schools can look for ways to lower the cost of legal education so that new lawyers have the option of rendering low-cost legal services. Law schools can expand legal clinics to allow third-year law students to provide free or low-cost legal assistance for school credit under the supervision of a licensed lawyer. Bar associations can develop incubator programs where licensed lawyers without employment can be matched with and represent clients at a reduced rate, thus providing income to the lawyer and representation to the client. The legal profession can find ways to expand funding to legal service organizations, and those organizations can then add staff and other resources. More lawyers can provide unbundled legal services to clients, who would benefit from limited assistance.¹⁵

One of the more inventive solutions, offered by Ann Cosimano, General Counsel of the ARAG Group and past president of Group Legal Services Association, is legal insurance. The concept is similar to medical insurance. Consumers purchase a policy in anticipation of potential legal issues. At the time that an issue arises, the consumer would receive the services of a properly vetted lawyer under the plan. The services provided under legal insurance plans are generally more expansive than those offered under traditional pre-paid legal service plans. This is not a new concept, but many people who would benefit from such policies are unaware of their existence or don't understand how such policies would specifically benefit them. This option would be particularly helpful to middle-income persons who would not necessarily qualify for other legal assistance programs. Bar associations could develop public educational initiatives to better educate consumers not only on the existence of legal insurance policies, but also on the ways in which having such a policy would be beneficial.

What Is the Answer?

Participants agreed that the answer is not to provide unfettered access to nonlawyers who are interested in entering the legal service marketplace. There is a place for proper UPL enforcement to protect the public, and those efforts should be encouraged. But enforcement efforts must make sense in light of both the public's need for access to the civil justice system and the public's right to have meaningful choices in civil legal representation.

Just as there is no single reason that those in need of legal assistance will not or cannot receive those services, there is no single approach that will solve the problem.

But in crafting solutions, regulated alternative legal service models must be a part of the conversation. In order for the legal profession to maintain credibility and fulfill its professional responsibility, it is incumbent upon the profession to take an honest look at current models of the delivery of legal services, and make some potentially difficult choices to address the access to justice gap, lest the profession lose its voice altogether.

Endnotes

1. Since the US Supreme Court decision in *North Carolina Board of Dental Examiners v. FTC*, 574 U.S. ____ (2015), many jurisdictions are evaluating, and when appropriate amending, enforcement procedures to ensure compliance with the Court's decision. See, for example, proposed amendments to Article 20 of the Oregon State Bar Bylaws: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/oregon_article20_unlawful_practice_of_law_redlined_amendments.authcheckdam.pdf
2. Perlman, Andrew M., *Towards the Law of Legal Services*, Suffolk University Law School Legal Studies Research Paper Series, Paper 15-5.
3. See also, Sandufor, Rebecca L., *Accessing Justice in the Contemporary USA: Findings From the Community Needs and Services Study* (August 8, 2014). Available at SSRN: <http://ssrn.com/abstract=2478040>
4. See, Rule 28, Washington Supreme Court, Admission and Practice Rules
5. See, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians>
6. Elefant, Carolyn, *Future Fridays: Will Limited Licensed Technicians Kill Solos & Smalls?*, My Shingle.com (September 27, 2013)
7. Final Report of Oregon State Bar Task Force on Limited License Legal Technicians, See: http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf
8. The continuing education requirements for lawyers are significantly lower than those required of doctors in most jurisdictions. See, for example, Washington State Board of Health Physician and Surgeon Continuing Education Requirements, <http://www.doh.wa.gov/Portals/1/Documents/3000/657-128.pdf>
9. See, Rule 7.4 (d), ABA Model Rules of Professional Conduct
10. See, ABA Standing Committee on Specialization at: http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers.html
11. Rule 28, *supra* note ii

12. See, 37 CFR §11.6 (b) Agents: “Any citizen of the United States who is not an attorney, and who fulfills the requirements of this Part may be registered as a patent agent to practice before the Office.” See also, 31 C.F.R. § 10. Practice Before the Internal Revenue Service.

13. See for example, Catholic Legal Immigration Network, Inc., *Managing an Immigration Program: Steps for Creating and Increasing Legal Capacity*, Ch. 4, Authorization for Non-Attorneys to Practice Immigration Law (BIA Accreditation and Recognition), at: <https://cliniclegal.org/resources/guides-reports-publications/managing-immigration-program-steps-creating-and-increasing>

14. See also, Rhode, Deborah L. and Lucy Buford Ricca, *Protection the Professional or the Public? Rethinking Unauthorized Practice Enforcement*, *Fordham L. Rev.*, Vol. 82, p. 2587. (Article includes an empirical analysis of UPL enforcement activity, including a comparison of complaints received by clients/consumers and those received by other lawyers.)

15. For more information on innovation within the legal profession, see “Be the Change,” ABA Legal Access Job Corps at: http://stream.americanbar.org/services/player/bcpid2059188277001?bckey=AQ~~,AAABsp7SiCE~,aEBLYbQyvDzG_ilsy3VR1brzH8RuBIr&bctid=3192987496001